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In the Matter of the Tenure Hearing of Jodi Bocco:

SCHOOL DISTRICT OF THE BOROUGH
OF WEST LONG BRANCH, MONMOUTH COUNTY

"Petitioner,"

- and -

JODI BOCCO

"Respondent."

OPINION
AND
AWARD

Agency Docket No. 366-12/12

Before
James W. Mastriani
Arbitrator

Appearances:

For the Petitioner:

Viola S. Lordi, Esq.
Wilentz, Goldman & Spitzer P.A.

For the Respondent:

William J. Courtney, Esq.
William J. Courtney, L.L.C.

This arbitration proceeding involves a case of a tenure dismissal from tenured positions arising under the terms of N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1. Specifically, the Borough of West Long Branch Board of Education [the "Petitioner"] filed tenure charges with the Commissioner of Education on December 11, 2012 seeking the removal of Jodi Bocco's [the "Respondent"] employment from her tenured positions in the District as School Counselor and Substance Awareness Coordinator. The filing occurred after the District returned Respondent to her previous position as a Health and Physical Education teacher at the beginning of the 2012-2013 school year, apparently without loss of compensation.

The Petitioner alleges that the Respondent engaged in unbecoming conduct through (1) willful refusal to cooperate with officials of outside agencies, (2) improper conduct towards supervisors, staff members, Department of Child Protection and Permanency (DCP&P) officials, local law enforcement authorities and others, (3) insubordination and (4) inappropriate comments to a student. Petitioner shoulders the burden to prove, by a preponderance of the evidence, that it had cause to file the tenure charges. On December 19, 2012, the Respondent denied all of the charges and requested that the Commissioner dismiss the tenure charges and provide her any such other relief as may be deemed just and equitable. Pursuant to N.J.S.A. 18A:6-16, as amended by PL

2012, Chapter 26, this controversy and dispute is subject to arbitration and was assigned to this arbitrator on December 21, 2012.

An initial arbitration hearing was scheduled on February 13, 2013 during which counsel for the Respondent moved to be relieved after Respondent had raised issues of conflict of interest. I granted the motion. Respondent was then afforded time to retain new counsel.¹ This necessitated a request for an extension of time in which to schedule further hearings. Pursuant to extensions of time granted by the Commissioner, arbitration hearings were continued on April 3, 4, 5, 8, 9, May 1 and 3, 2013.² Post-hearing briefs were filed by the Petitioner and the Respondent on June 5, 2013 after the arbitrator granted a brief extension of time at Respondent's request.

During the course of the arbitration hearings, the parties argued orally, examined and cross-examined witnesses and submitted documentary evidence into the record. Testimony was received from thirty-one witnesses: David Alvarado, Department of Child Protection and Permanency, Caryn Anderson, Administrative Assistant to Business Administrator, West Long Branch Schools, Respondent Jodi Ann Bocco, Police Officer David Brosonski, West Long Branch Police Department, Detective Kevin Condon, Monmouth County Prosecutor's

¹ In the event of any continuing dispute over the 120 day period for suspension without pay, the time period between February 14, 2013 and April 3, 2013 shall be deemed as delay caused by Respondent, thereby extending the 120 day period.

² The timelines for holding the hearings and for rendering a written decision were extended after receiving approval from the Commissioner. The parties agreed to conduct some of the hearings from 9:00 a.m. to 9:00 p.m. in an attempt to expedite the conclusion of the hearing process.

Office, B█████ L█████ C█████, Parent, Kerri Dickerson, State Central Registry, Sharon Eisenstark, Substitute Teacher, West Long Branch, James Erhardt, Principal of Betty McElmon School, Patricia Falco, School Nurse, Thomas Farrell, Assistant Administrator, State Central Registry, Edmund C. Fitterer, Jr., Esq., Widman, Cooney & Wilson, Sergeant James P. Gomez, West Long Branch Police Department, Sergeant William Lynch, West Long Branch Police Department, P█████ M█████-R█████, Parent, Herbert Massa, Interim Superintendent of Schools in the West Long Branch School District, Detective Lieutenant Michael Meany, West Long Branch Police Department, Chief Laurence Mihlon, West Long Branch Police Department, Denise Mitchell, Sixth Grade Teacher, Frank Antonides School, Maureen O'Reilly, a former Principal of Betty McElmon School, Detective Michael Paolantonio, West Long Branch Police Department, Lou Petrone, Physical Education Teacher, Bruce Preston, Regional Director of Curriculum and Instruction, Shore Regional High School District/West Long Branch/Oceanport/ Monmouth school districts, A█████ R█████, Student, S█████ R█████, Parent, Angel Somers, Media Specialist, West Long Branch Schools, D█████ V█████, Parent, Charles Welsh, Interim Principal at Frank Antonides School, Approved Shared Services, Karen Wood, former Superintendent of Schools, and Randy Yelton, Area Resource Family Specialist, Department of Children and Families.

BACKGROUND

Respondent has been employed in the District for more than 25 years. The District seeks her dismissal from her tenured positions of School Counselor and Substance Awareness Coordinator. She held these positions at least since the 1995-1996 school year. Prior to this, Respondent served as a teacher of Health and Physical Education, a position to which she was returned to at the beginning of the 2012-2013 school year.

The District is a two school elementary district at grade levels kindergarten through eighth. The schools are at the Frank Antonides School (FAS) and the Betty McElmon Elementary School (BME). As the District's School Counselor and Substance Awareness Coordinator, the Respondent's duties encompassed both schools. The District employs only one professional in this capacity. During the time period relevant to the evidence in this dispute, Respondent's recent supervisors have been Maureen O'Reilly, former Principal of BME, Karen Wood, former Superintendent of Schools, James Erhardt, Principal of BME, Charles Welsh, Interim Principal at FAS, and Herbert Massa, former Interim Superintendent of Schools. All testified in this proceeding as District witnesses. Observation Reports and Teacher Evaluations for the relevant time period show that the Respondent's overall ratings ranged from Satisfactory to Superior. But for the alleged conduct contained in the charges filed against the Respondent, the Petitioner does not allege that the Respondent's job performance was not otherwise satisfactory.

The positions occupied by the Respondent are significant and important to the District's overall responsibilities. It is the only such position in the District. Respondent's positions required her to engage in wide-ranging responsibilities relating to the safety and wellbeing of students. They include, but are not limited to, creating positive school environments, helping troubled youths who are at risk, conflict resolution, promoting drug and alcohol prevention and education, combating school violence and sexual abuse, crisis management, life skills development, safety, anti-bullying, social skills development, behavioral and academic instruction development. By their very nature, many of these activities could result in referrals to outside agencies and potentially implicate civil or criminal action, thus requiring cooperation between the District and local law enforcement officials³ and employees of DCP&P. The District asserts, and the Respondent does not disagree, that cooperation with these outside agencies is necessary in order to serve the best interests of the students and the entire school community. The record indicates that the District's pupils are served by a school counselor and substance abuse coordinator who, on behalf of the District, can effectively interface with these outside agencies who are charged with the heavy responsibility to conduct investigations in alleged abuse cases and make judgments pursuant to their statutory responsibilities. The District asserts that the Respondent's conduct did not meet this standard and that it has met its burden in this regard while the Respondent disagrees.

³ Such officials are those employed by the West Long Branch Police Department and the Monmouth County Prosecutor's Office.

The substantial volume of record evidence developed during the hearings does not lend to a concise statement or summary of all of the facts, exhibits and testimony nor an analysis of each and every incident raised by the Petitioner and the Respondent though all record evidence has been reviewed and considered. The charges of unbecoming conduct are alleged to include a pattern of conduct by Respondent with supervisors, staff and students that was inappropriate and unprofessional through insubordination, disregard of administrative directives and failing or refusing to cooperate with law enforcement agencies and officers and DCP&P employees. The District contends that through her conduct, Respondent's ability to continue to serve the needs of the District and the students was compromised and required the District to remove her from her counseling positions and appoint another counselor who could more effectively represent the interests of the District. The District further contends that Respondent's improper conduct and failure to cooperate with the outside agencies was fueled by the Respondent's belief of improper conspiracies between and among law enforcement officers, DCP&P and community officials for the purpose of suppressing information, covering up and destroying evidence and creating an environment of fear in order to thwart Respondent's efforts to protect the safety and wellbeing of students and to protect their agencies from exposure to wrongdoing.

The nature of the charges against the Respondent encompass dozens of individual circumstances involving personal interactions, communications, e-mails, memos and recollections of events over a several year period. By virtue of conflicts in testimony, many, if not most, of the incidents and events involve witness credibility. In evaluating this record, I have had to assess witness credibility and have attempted to provide reasoned explanations as to these credibility assessments as an aid to resolving factual disputes and arriving at conclusions.

The Respondent contends that the Petitioner has not satisfied its burden to prove the validity of the tenure charges. Respondent disputes that she conducted herself inappropriately in any way during the time she served as School Counselor and/or Substance Awareness Counselor. Instead, Respondent asserts that all of her actions in her counseling capacity were directed solely towards protecting the wellbeing and safety of the students who were under her supervision. Respondent points to having historically received favorable performance reviews and that she went out of her way to communicate and interface with fellow teachers, staff and outside agencies, including law enforcement and DCP&P. Respondent asserts that she was a highly productive counselor who conducted several hundred interactions annually with students and that her calls to law enforcement and/or DCP&P were relatively few. Respondent emphatically denies she engaged in unbecoming conduct, that she did not cooperate with the West Long Branch Police Department ["WLBPD"] and

DCP&P [formerly DYFS] and submits that she has achieved a long record of respect and collaboration with all law enforcement authorities and DCP&P.

DISCUSSION AND ANALYSIS

The main incident that prompted the District to file charges against Respondent occurred during May and June of 2012 during the processing of her referral of a child in the "H" family to DCP&P. The H family has two sons in the District. One is G.H., then a nine year old third grade student, and J.H., an older brother of four years. The District alleges that the Respondent did not cooperate with outside agencies and was insubordinate when she refused to personally turn over covert recordings she had made of a conversation with G.H. to the District, law enforcement representatives and David Alvarado, an intake or case worker employed by DCP&P.

Respondent had made a referral to DCP&P asserting that G.H. had disclosed that he was a victim of sexual abuse. Testimony involving this incident was offered by several District representatives, representatives of DCP&P, representatives of the Monmouth County Prosecutor's Office and the West Long Branch Police Department, the Respondent and Sharon Eisenstark, the teacher of G.H. While this incident appears to have been the triggering event leading to the filing of tenure charges, the District cites many prior incidents and events preceding the "H" case that the District asserts support its contention that the Respondent engaged in a pattern of conduct that showed her inability to

cooperate with outside agencies. The "H" incident and Respondent's conduct in these prior incidents are all encompassed within the District's overall allegations of alleged unbecoming conduct and failure to cooperate with law enforcement agencies.

One such incident prior to May 2012 involved Detective Michael Paolantonio of the West Long Branch Police department in March 2012. Detective Paolantonio was asked by Principal Welsh to investigate a written report or story that a seventh grade student had anonymously left on a teacher's desk. The content had violent implications that required law enforcement investigation. Nicknames were used in the story and Detective Paolantonio tried to determine who the author was based on scant information. The third student he spoke to was at home in the presence of his mother. His mother told Paolantonio that Respondent had already spoken to her. Paolantonio returned to the school and spoke to Interim Principal Welsh. He told him that he learned that Respondent had already spoken to this child's parent. Because Welsh was also unaware that Respondent had been involved, Paolantonio requested permission to speak with Respondent to see if she could provide information that would help him during his investigation such as ruling out certain students and identifying students that she had not spoken to. Welsh consented to have Paolantonio visit the Respondent for this purpose.

As Paolantonio approached Respondent's room, the door was closed and nobody was in the room. Paolantonio then observed Respondent coming back to the room with a group of students. He waited for a few minutes until the students got settled in. Paolantonio went to the doorway of the classroom. He noticed that the door was open. He knocked on the door and gave Respondent a little wave in an attempt not to be intrusive. He believed that she would come over and speak with him. Because she did not move towards him, he then asked her if he could speak with her for a minute. According to Paolantonio, Respondent had keys and a little radio in her hand. He testified "I remember (her) tossing them on her desk, kind of like in disgust, like I was bothering her, kind of rolled her eyes, made her way to the door. I explained to her why I was there." Paolantonio testified that he tried to stay in a remote position and keep things quiet. After telling Respondent the purpose of his visit, Paolantonio described Respondent's actions:

She kind of just looked at me like she knew nothing about it. I then told her I understood that you talked to this particular student. I said before I go and talk to the other students, is there anybody else you talked to, at which time she indicated, I speak to a lot of kids about a lot of things. I told her, listen, I am just looking into this one matter. This is really all I want to know about. I know there is a handful of kids.

Again she repeated, I speak to a lot of kids about a lot of different things. I said I am not worried about a lot of different things. I'm here to investigate this one incident and that is all I want to know about. She repeated the same thing. She repeated the same thing and walked away.

At that time, I raised my voice only enough to let her hear me as she walked away. I said, excuse me, Ms. Bocco, I am in the middle of an investigation, I am looking for your assistance. She said if I

need anything from her to go to the office, speak to them. I told her I already spoke to Mr. Welsh, he knows I am here. She said, well, they can call me up to the Board office, and then she walked away.

I left it at that. I left there, went down to the office, asked to see Mr. Welsh, went in, told him what happened. He asked if I wanted him to call her down to the office to speak about it or go back to her classroom. Obviously she wasn't happy to see me. At that point I really was not happy to talk to her. I left it at that. And I didn't want to upset her anymore. We left it at that.

Paolantonio testified that he never received the information he sought to receive from the Respondent so he proceeded to complete his investigation by speaking to every student individually who was on the list that he had developed. In other portions of his testimony, Paolantonio stated that he normally had a good relationship with Respondent but that this changed after his involvement in 2012 with Rachel's Challenge Program. Respondent had objected to the District's use of the program asserting that it had potential for inducing at risk students into suicidal behavior.

Principal Welsh also testified to his knowledge of this incident. He testified that he worked closely with Paolantonio in the past and he specifically requested him to come to the school to see if he could get some information from Respondent about students that may have been involved in writing the violent story. After Paolantonio came back to his room and told him that Respondent would not speak with him, Welsh testified:

I was kind of taken aback by that because once again if the safety and security of the students is the issue, this kind of -- there was no good reason for her not to have spoken to him. This kind of

negative interaction and this building of a wall between the school and the police department was counterproductive to our need to provide the safest possible environment. That is the way I saw it.

Respondent testified that she objected to Paolantonio's presence outside her classroom, asserting that it would have been inappropriate to speak with him. She explained that she sent an e-mail to Principal Welsh and Interim Superintendent Massa labeled "police officers walking into classroom to speak to teacher (Ms. Bocco) unannounced and while students were present regarding a police investigation regarding student conduct." She identified the officer as Michael Paolantonio and stated, "In addition, it is clear they do not understand the federal confidentiality laws – 42 CFR Part 2 and N.J.S.A. 18A:40A-7.1 and 7.2. I had a 7th and 8th grade student support group in the room at the above time." She testified that these laws would be violated if Paolantonio were to gain identity of the students who were in her classroom.

An additional incident that gave rise to a District concern about Respondent's ability to cooperate with law enforcement officials arose during late winter or early spring of 2012. At that time, the District was involved in the planning and staffing of a school trip to Stokes State Forest, an environmental center involving overnight camping in north Jersey. Principal Welsh felt that it would be beneficial to have a school counselor go on the trip. He understood that Respondent had occasionally performed this role in the past. According to Welsh, Respondent asked him which Dare Officer would be attending. Welsh had a roster of potential police officers who could be assigned, one of whom was

Sergeant James P. Gomez. When Welsh mentioned Sgt. Gomez, Respondent said "I will not go on the trip if Sgt. Gomez is going." Welsh asked her why that would be the case. He testified that Respondent stated "I am afraid he is going to bump me off." Welsh confirmed that these were her exact words. He testified that her response was chilling to him and that he concluded that it was not an attempt at humor.

Respondent denied being serious when she stated that Sgt. Gomez was going to "bump her off." Beyond Welsh's testimony that Respondent was not joking, the District raises other record testimony to support its contention that the Respondent expressed fear towards her life if an armed Gomez were to accompany her on the trip. Interim Superintendent Massa testified that Respondent told him that Officer Gomez would often walk near her classroom "as if to intimidate her." Respondent confirmed that she did not want police officers to walk around the building unsupervised and in particular, stated "I did not want to be cornered by Officer Gomez in the building under the circumstances." She testified that this did occur on the last day of the 2011-2012 school year when she was alone in a hallway with him and that he made her feel uncomfortable. Respondent further testified that she had a concern that Gomez would retaliate against her because she had reported to the Prosecutor's Office that he had lost or destroyed evidence several years earlier. In addition, based upon her own initiative and investigation, Respondent testified that she learned from a local women's protection center, upon her specific request for information,

that Gomez had a history of domestic violence. Although Respondent continued to deny that she stated a real concern about being “bumped off” by Gomez, she testified “I mentioned that I did not feel comfortable with him being there (the Stokes State Forest trip) and that he would be carrying a weapon.” She also testified that a Mrs. Hess, who she identified as the person who was running the trip, told her that Sgt. Gomez met with her and demanded that Respondent go on the trip before she was even asked to go, a claim that Gomez denied. Respondent’s testimony about her conversations with Mrs. Hess clearly reflect that she held a belief that Gomez was planning his presence on the trip with Respondent and that she feared for her safety.

Respondent’s concern about lost or destroyed evidence related to an incident that occurred in 2004 in which she alleged that Gomez had lost papers in connection with a referral. She testified that she went to the Prosecutor’s office about the issue in 2006 and had also reported Gomez to the State Police Corruptions Unit in connection with the alleged incident. Respondent was unhappy when the Prosecutor’s Office would refer her complaints to the Internal Affairs unit of the West Long Branch Police Department.

Respondent theorized that strange and intimidating things then began to happen to her after she reported the evidence issue to the State Police Corruption Unit:

Upon doing all these things, the day I reported this to the State Police Corruptions Unit, a dead pigeon was left belly up in the center of my door as I was exiting my home. It was there after, as I was leaving to go meet with the State Police Corruptions Unit detectives.

The day we went to the Prosecutor's Office, a fish was taken out of my fish tank and placed behind my fish tank, a very large fish. I had two teachers walk in and say, "it smells like fish in here."

The day we went to hand deliver those papers to the Prosecutor's Office, "A goat's head was left on the front of the school property."

And whether this was related, but there seemed to be a pattern that I was concerned about. The fact that when we went to the Prosecutor's Office a large fish was left behind the tank. There is no way it could fall out. ...

The tank has a lid on it. The fish was found behind the tank in the back. It was fish there that was this big. I never had a fish any way, it would be impossible for the fish to get out over the lid and go behind the tank on its own.

In addition to the fact that I have been at my home for 18 years now and have never found a dead pigeon anywhere on my property other than that day.

It was staged. It was literally centered so I would have to step on it or over it as I was going to exit the house, and it was belly up.

That was concerning because I think they knew that I was going to the State Police Corruptions Unit.

Respondent acknowledged that she was not sure as to how "they," an apparent reference to the West Long Branch Police Department, knew that she was going to the State Police Corruptions Unit, that she was going on that day or how they knew she was going to the Prosecutor's Office. She testified to receiving a telephone message from the West Long Branch Police Department telling her that an officer entered her home because of an unlocked rear door. It is not in

dispute that a call was made advising her to check that her belongings were not disturbed. Respondent also testified that Gomez made statements to her that she needed to keep her mouth shut and that he often made statements to her that concerned her. When asked about the statements, Respondent testified that she would not comment on what his statements were "unless I'm going into witness protection when I leave here, I don't want to put this on the record."

Gomez testified that he has been the DARE Officer since 2002. He is in the schools once a week from 10 to 15 weeks. He recalled that the police department suggested that DARE Officers go on the Stokes State Forest trip after 2001 to ease the fear of parents. Gomez denied ever telling Ms. Hess, nor any other teacher, that Respondent needed to go on the trip. He denied ever concealing documents submitted by Respondent with respect to suspected child abuse, destroying documents or ever threatening Respondent. Gomez denied ever admonishing Respondent professionally but did recall having a concern with Respondent's response in connection with a report Respondent made with a suspected child abuse case. Gomez described the incident and his concern as follows:

It was an incident of a male student who had a hand print on his face, and he had disclosed that his mother had done it the night before. When we went to the school to speak to the student, we obviously saw the hand print on the face and made arrangements for a forensic interview with the Monmouth County Prosecutor's Office, the Sex Crimes Division, and we were taking him out there. Myself, a DYFS worker, we were driving him out there.

It was just about school-ending time, and Ms. Bocco made a comment that she had to notify the mother that the child wasn't going to be on the bus. I explained to her that the mother was a target, that she should not be notified, and that if she called the school asking where her child was to have her call the police department and we would tell her that he was in our custody.

She was very concerned that the mother would be upset over this. I told her that I didn't really care. The mother was a target, and she didn't need to know until we were finished with our investigation. ... I remember telling her that if she did tell the mother anything other than call the West Long Branch Police Department, that I would look into charges regarding interfering or witness tampering.

Petitioner contends that Respondent held a theory of conspiracy directed toward suppressing evidence in child abuse and neglect cases and that this conspiracy included local law enforcement agencies, DCP&P and real estate agents. In addition to providing specific examples in support of this contention, Petitioner offered internet postings into evidence containing subject matters Respondent had submitted to a legal internet site.⁴ Respondent objected to the submission of this document into evidence on the bases that Respondent believed that it involved lawyer/client privilege, that the content was not publicly posted by her but by the party to which she corresponded with and that there was no evidence that there was public knowledge as to the contents of the posting. I admitted the document into evidence because it was relevant to Petitioner's contentions, because there is a visible disclaimer on the website stating that answers from experts on the JustAnswer site are not substitutes for the advice of an attorney and that questions and responses on the website are not private or confidential or protected by attorney/client privilege. The subject

matter of Respondent's inquiries and the postings, in pertinent part, state the following:

Police Corruption and local school, and polical (sic) corruption affecting children who have been victimized. RAPES and VIOLENT Crime. As stated by them, which I have documented, as a school counselor, I am ruining the property values of this community. The victims of these crimes are children in special needs situations, the perpetrators have gone unaddressed and have been empowered to continue to harm these children and others. Rape counts like a murder on the UCR. County Prosecutors office sent my complaint back to police dept to address themselves. The individual in charge of the investigation has stated directly that the numbers of calls to DYFS are high. I made three last year!

Can you help? I need a lawyer who will not be affected by polical (sic) pressure to allow this common practice to continue. Please reply with a contact name I can call. ...

Contacted agencies/private lawyer Local, county, state Police – went to prosecutors office 1st time, because – 11 pages of evidence was destroyed by local police officer and school administrator on the rape of a 6 year old child. Who is the best civil rights attorney in NJ who would help to advocate for these children? The local police officers get appointed to be detectives not based on testing etc. Officers have stated and superintendent of schools pressure to keep numbers down. Very small Town – WEST LONG BRANCH, NJ extremely intolerant community members. ...

This is something I believe the aclu urgently. There are numerous minority children who have been affected by the negligence of the school dyfs and the police dept because of their ethnicity and economic status. Please have an aclu representative contact me asap. Thanks. Sincerely. Jodi bocco ...

I contacted the number you had mentioned for Debora Jacobs. Electronic mail to request forms to be filled out.

Can you help me to get a person at the ACLU that can help them. I have everything set up to bring to them ASAP. These children need an advocate who will address the corruption and crime occurring in this community. As the school counselor in the district I have a lot of substantiative (sic) data to support what has occurred. I have documentation of what has been occurring here for over 20 years the

⁴ It appears that the postings were made sometime in 2010. The subject matter of the postings is also consistent with Respondent's testimony.

last few have been outrageously blatant after investigations occurred because of my repeated requests to authorities to have this addressed which resulted in direct threats made from them to me. They had a parent in which the child stated had raped her come in and right a note to make sure I didn't see her – the police told DYFS NOT TO COME TO THE SCHOOL and instead called the mother who knew what was happening, and as stated by the child, the mother told her it was her fault he was doing this. An hour after this interrogation by the mother and the local police dept the child made it to the prosecutors office and was given a male to do the forensic interview. The child is afraid of men and she stated one of the reasons she came to me that day was because she had a female substitute.

Many more documented situations similar to this case which involve violent crime, gang violence, drug distribution, and child abuse can prove the corruption which has gone un-addressed by authorities who are aware but have chosen not to address. (Lots of pressure by community officials to keep the crime rate down as stated by them so it won't effect (sic) the property values. (NO CONCERN FOR THE WELFARE OF THESE CHILDREN AND THE FACT THAT THE PERPRETRATORS WILL GO ON TO CONTINUE TO ASSULT COMMIT CRIMES.

A contact person/number to call at the ACLU – not voice mail to request a form to be sent is needed.

Sincerely,

Jodi Bocco

The facts surrounding the “H” case began to unfold on May 22, 2012. At some point prior to this date, Respondent testified that G.H. had told her that his older brother J.H. had been taking down his pants and had exposed himself to G.H. and some of his friends. She also believed that Mr. H. was a substance abuser and was sleeping with G.H. in a potentially sexually inappropriate manner. The events associated with the investigation of this incident after Respondent's referral were the subject of much testimony from many witnesses. Petitioner and Respondent's positions as to the facts and circumstances of this incident sharply conflict. The testimony, directly and indirectly, implicates how

this case was handled by Respondent in relation to the West Long Branch Police Department, the Monmouth County Prosecutor's Office, DCP&P representatives and school administrators. The events will be summarized in order to place their respective positions into relevant context.

On May 22, 2011 Respondent testified that she called James Erhardt, Principal of Betty McElmon School and Interim Principal Welsh's office to meet with her and G.H. to brief them and to gain administrative support for her decision to refer the matter to DCP&P. Her version of events follow. Erhardt came in first and began speaking to G.H. before Welsh arrived and then left the room. According to Respondent, Erhardt did not feel that it was a valid referral or disclosure, a claim he denies having made. Respondent acknowledged that Erhardt never said that to her but she held a belief that Erhardt felt that it was not worthy of going forward with a referral. Welsh then entered the room. According to Respondent, Welsh was very appropriate with the child and handled him extremely well. Welsh felt that they should first try to confirm G.H.'s statements with his mother. Respondent testified that G.H.'s mother had been very supportive in the past. During the call, the mother acknowledged that "this is occurring" but, according to Respondent, she said, in so many words, that "boys will be boys." Respondent testified her concerns became heightened because she felt that the mother was being defensive. Respondent testified that she was also aware prior to this point that G.H. occasionally slept in his father's bed but she said there were no discussions with G.H. about that issue at the time.

Respondent told Mrs. H. that she would move forward and act (to make a referral) because of the need to make sure that no child is harmed. Respondent testified that she did not know exactly what the case facts were nor whether G.H. was telling the truth. At the time, Respondent had recorded an interview with G.H. but no one was aware of this fact.

Respondent told Welsh that they should call DCP&P and that Welsh felt it was the appropriate action. She left a message to that effect with Interim Superintendent Massa. Massa told Respondent that she should exercise her professional judgment. She then made a call to John Williams, a DCP&P screener at the DCP&P hotline on May 23, 2012. Respondent testified that she was not sure whether the call was warranted or justified but wanted Williams to make the call as to whether to go forward. Respondent testified that Williams called back and left a message that he felt that a call to the local DCP&P office was warranted. According to Respondent, he said that that the perpetrator (J.H.) would be considered an unknown "because of my concerns that this behavior may have been triggered by the father and that it may be the brother and the father who are engaging in the inappropriate sexual assault, sexual contact, exposure to this child, and the other children." Williams told her that the case would be referred to the local DCP&P office.

Respondent testified that Erhardt was "agitated" upon learning that she had made the call to DCP&P without clearing it with him but presented no

evidence to support this claim. In accordance with policy, Erhardt called the West Long Branch Police Department. Police Officers Rockhill and Knott were dispatched to the school. According to Respondent, the Police Officers told her that no DCP&P caseworker would be allowed to come to investigate until Detective Lynch determined that it was a "founded call," a claim that Lynch denies. According to Respondent, Lynch had the authority to determine whether any call was warranted or unwarranted before DCP&P was allowed to come into the building. She based this upon what she was allegedly told by Lynch, Rockhill and Knott, although there is no evidentiary support for her claim. Respondent's testimony in this regard was consistent, namely that it was Lynch who had the authority to determine whether a DCP&P response would occur.

Respondent testified that at 8:40 a.m. on May 24, 2012, Erhardt called her saying that she was required to attend a meeting in his office with Mr. H. at 2:00 p.m. in regard to her DCP&P phone call and that the G.H. case had been closed by DCP&P. She was unaware at the time that the West Long Branch Police Department and DCP&P had conducted interviews and made assessments. She told Erhardt that she was concerned if the case had already been closed. She was concerned not only that the case had been closed but that she would be confronted by the parent and feared she would be criticized for doing her job. She told Erhardt that it was not okay for her to be present with the parent after she had called DCP&P. She spoke to Massa and Massa told her she would be

insubordinate if she did not attend. Respondent testified that Massa said, "if the case is closed, you must meet with Mr. H."

Respondent testified she then called DCP&P Caseworker Alvarado on May 24, 2012 for the purpose of verifying her information that the case had been closed. Respondent stated that Alvarado told her that the case was closed because it was considered unfounded by Lynch and that he could not and would not take any additional information Respondent had. The new information Respondent testified she had was that G.H.'s teacher, Ms. Eisenstark, told her that G.H. had his head in the lap of another student during music class. She also testified that G.H. was "again touching other children but not in a sexual way."

According to Respondent:

I told him I had more information. I told him that we really felt strongly. I told him I met with these other teachers. I told him that there were more than a few teachers with concerns. I mentioned that he had put his head in the lap of another child and it was very inappropriate, and it was inferred by the teachers that it was a sexually -- it was more than just sticking his head in the lap, it had a sexual nature to it.

Respondent testified that Alvarado told her that he could not take any new information because her referral was considered unfounded by Lynch. She told Alvarado that "we had more evidence" but he reaffirmed that he would not take new information because the police determined the referral to be unfounded.

Respondent testified that she then told Alvarado "this call is being recorded." She testified that she did not mean that she was recording the call but instead that when you call the state hotline it says "your call is being recorded." According to Respondent, Alvarado got "very, very, very agitated" and that "he was furious." Respondent testified that she believed that "he was concerned that I had evidence against him and the police." She then testified that her allegation was only an opinion based upon Alvarado's defensive reaction. She then testified that:

In this discussion with him, I then explained to him that I had the child, his disclosure in a free narrative recorded, as a part of my notes, so that when I wrote my notes down on a piece of paper as stated by all the forensics and any referrals, you want to quote exactly what they say. And I know from experience that if I record it, as you are doing here, you can accurately transcribe what was said.

So I explained that to Mr. Alvarado.

He did not care.

He continued to say, "The case is unfounded. We will not take any information. And if you have me recorded" -- he went off on whether I was recording him at that time.

He made it very clear, he was not opening this case, and he ended with, "And you will meet with Mr. H [REDACTED] at 2 o'clock because this case is closed and we will not take any more new information."

Respondent testified that the phone discussions between Respondent and Alvarado ended with him saying "you will meet with Mr. H [REDACTED] and we will not take any new information. This case was determined to be unfounded by Officer Lynch."

Alvarado's version of his conversations with Respondent are in sharp conflict with her version. Alvarado had received the case assignment from his supervisor Sarah Jankowski. He learned that the West Long Branch Police Department had an understanding about the case and said he began by contacting law enforcement to coordinate a time for them to interview the children. He was aware that Respondent was the reporter for the referral. He testified that he did not contact Respondent because she had already spoken with the police department and felt that they were in possession of the information relevant to conduct the investigation. They spoke separately to Mr. H. and J.H. Because G.H. was not at home, they decided to come back and interview G.H. upon his return. Alvarado and the police officer then later met with G.H. in an isolated location. Alvarado summarized his interview with G.H.:

We asked him a lot of basic information, household dynamics. I was able to observe the child, his demeanor. I was able to get an understanding of his intellectual capacities. Then we went into the allegations that were reported. Again, we are trained to conduct forensic interviews.

We asked him questions regarding the alleged sex abuse. At that point we can't really ask leading questions, so there was no disclosure. The child didn't say anything regarding being sexually abused, being sexually touched, any misconduct.

At that point, given the observation of the child, his demeanor, I was able to like really see that that wasn't the case. That wasn't happening. He wasn't a sex abuse victim. I didn't see that. I felt confident that there wasn't any sex abuse in the home. So, that was my take on it.

Then I met with the mom, spoke with the mom, again addressed the concerns. Again, it was in an isolated area, just her. Nothing

came out that this was going on from either one of the family members. Again, I felt confident that that was not the case. He was not being sexually abused.

Alvarado also investigated the report by Respondent that G.H. was sleeping with his father and, according to a drawing the Respondent asked G.H. to make, said that G.H. would, at times, sleep on top of his father. Alvarado testified:

I discussed this with both children, both parents. Yes, that did happen where he had slept with the father, but it wasn't in any like perverse or sexual manner. It was innocent. The child was going in and he would sleep between his father and the mother. The mother was always there. The father was never alone with the son or anything like that. The mother was always there. Nothing inappropriate was disclosed that happened. It was something innocent.

Alvarado elaborated on this issue and Respondent's claim that there was improper sleeping between G.H. and his father during cross-examination based upon his conversation with G.H.'s mother:

Q. Did the mother tell you she and the father slept in different rooms?

A. At some point during the night, yes, but not like every night. In the situation -- let's put it in perspective. Dad snores a lot, so in the middle of the night he wakes up because he snores a lot. He goes to the basement, sleeps there. Mom stays upstairs in the bed.

Sometimes G. [REDACTED] gets in the bed with him. He stays with mom. Sometimes dad will put him back into his own bed, into G. [REDACTED]'s bed.

Q. When did you go into this discussion?

A. This is when I was interviewing mom, also with dad, also with the older brother. They all were across the board, same story.

Q. You interviewed them all together?

A. No, separately, but they all had -- they all had the same observation, or let's say they were all reporting the same thing.

Q. In your direct testimony you said that you found out that the boy would go into mom and dad's bed and sleep between them.

A. Right.

Q. And now you are saying that at some point in time the mother told you that the mother and father sometimes -- is it sometimes don't sleep together or is it always?

MS. LORDI: That was not the testimony, that they didn't sleep together. This is a mischaracterization of this witness's testimony.

Q. Did the mother tell you that she and the father sleep in different rooms?

A. No.

Q. Did you observe the room where the father sleeps?

A. Yes.

Q. Where is that?

A. The first floor, I guess.

Q. Is there a bed there or a sofa?

A. It is a bed.

Q. Where does the mother sleep?

A. In the same room with the father.

Q. First floor?

A. Yes.

Q. Where does the father go to sleep when he's sleeping on his own because he's snoring?

A. He will go to the basement.

Q. So, it is not the mother leaves when the father snores?

A. No, it is the dad. He wakes up and goes to the basement.

Q. The father is asleep snoring, and he wakes up because he is snoring and realizes he is snoring and goes to the basement? Is that what happened?

A. Yes.

Q. Did he tell you how he does that?

A. Wakes up, he walks downstairs and stays on his couch.

Q. How does he know he's snoring, if he's asleep?

A. His wife usually wakes him up.

Q. The wife would wake him up and tell him, you go downstairs, you are snoring?

A. Yeah, that is fair.

Alvarado concluded that there was no evidence of sexual contact or abuse of G.H. by his father.

Alvarado also investigated a claim, based on a concern expressed by Respondent, that Mr. H. was involved with substance abuse. He found that the father has a back injury and prescription medicine to address the injury but that he found no evidence that he was engaging in substance abuse. He testified that it was an unannounced visit and that Mr. H. was normal, coherent and able to focus while he investigated this issue with Mr. H, Mrs. H. and their children.

He found no evidence of the claim that Mr. H. engaged in substance abuse or had been intoxicated or observed to be under the influence of alcohol.

On the following day, Alvarado contacted Respondent and they engaged in the telephone discussion. Alvarado gave her his findings and assessment of what he observed in the home. Based upon the interviews with Mr. H., Mrs. H., G.H. and J.H., he concluded that no disclosures had been made regarding sexual abuse, that he doubted the case was going to be substantiated and believed it would be determined to be unfounded. According to Alvarado, Respondent was not satisfied with his findings. She insisted that G.H. be the subject of a forensic interview at the Child Advocacy Center of the County Prosecutor's Office and protested that failure to conduct that investigation. She also told him that she wanted J.H. to be charged. Alvarado testified that Respondent got very angry and hostile towards him. He testified that her demeanor changed, that he was "dumbfounded" by surprise and tried to tell Respondent that he was only trying to explain to her the basis for his assessments.

Alvarado testified that Respondent then told him that she had recordings of G.H. disclosing that he was being sexually abused. He asked her where the recordings were, why she did not produce them and that he needed the recordings. Alvarado further testified that Respondent then told him that she was recording him. He told her that he did not give her permission to record him.

According to Alvarado, Respondent got flustered and hung up after saying she was not recording him.

Alvarado then contacted Principal Erhardt to relay his conversation with Respondent and asserted the need to review the recordings. Erhardt told him that he would speak with Respondent and get the tapes for him. Erhardt told him that he had no knowledge of the recordings but that he would get them. Alvarado received a call back from Erhardt and Massa telling him that they would talk to Respondent and get the recordings. Alvarado then called the West Long Branch Police Department. He spoke to Sgt. Gomez and told him about the tapes and that he needed them. Alvarado was concerned that, if the child had disclosed sex abuse on the recordings, the child might be at risk. He explained the basis of his concern:

The initial response to the family, the assessment I made was basically saying the child is safe, given all the interviews I had with the family.

Now, after that, the next day, being told that there is a recording of a child disclosing that there is sexual abuse, that kind of throws everything out the window. At that point the kid is at risk because he is with the family. He is with the family.

If that was his case where he is being sexually abused, then the perp has access to him, is what would be the scenario.

Gomez returned Alvarado's call the following Monday. He told him that the Prosecutor's Office would be contacted and that, if necessary, the recordings would be subpoenaed. After internal meetings at the school with Respondent

concerning the recordings, Alvarado received a call from Detective Kevin Condon from the Prosecutor's office, telling him that on June 11, 2012 they obtained the recordings, that he listened to them and did not find anything regarding sexual abuse nor a basis for requiring a forensic interview at the Prosecutor's Office. After Alvarado discussed the matter with his supervisors, it was concluded that the allegations of sexual abuse were unfounded. A letter indicating this was sent to Mr. H. by Alvarado and his supervisor on June 26, 2012.

Alvarado testified on cross-examination that he did not interview any other children that might have been subjected to exposure by J.H. He acknowledged seeing a picture that J.H. allegedly drew of a character with a caption stating "I suck balls." He testified that he did not go to Mrs. Eisenstark because she was the one who went to Respondent and Respondent was the reporter. Alvarado testified that when Respondent initially called the hotline, she never indicated she had a recording. He testified that it was three minutes into the call with her that she initially told him that she was recording their conversation. Alvarado denied ever telling Respondent that she was going to have to meet with Erhardt or be charged with insubordination. He also denied telling Respondent that he had spoken with Mr. H. and that she would have to meet with him at 2:00 p.m. Alvarado acknowledged that if there is a disclosure of sex abuse, he is told to stop the investigation and bring the child into the Child Advocacy Center for a forensic interview but that there is a threshold that must be met before doing so and that it was not met in this case.

Respondent testified that she objected so strongly to the case being closed "without an investigation" that she called the state hotline to bring to DCP&P's attention that if she "had new information, the DCP&P worker was obligated to take it, which he would not." According to Respondent, she wanted to speak to Williams or his supervisor. She testified that her experience was that when children disclose sexual assault, they are immediately interviewed by local law enforcement, that the cases are then determined to be unfounded and that they don't end up at the prosecutor's office. Respondent testified that she attempted to discuss the new information that she had about the "H" case but because the person on the hotline would not take it, she asked to speak to the supervisor, Tom Farrell. According to Respondent, she told Farrell she had "supportive evidence to support the child made a disclosure in a free narrative." Respondent testified that the new information was that Mrs. Eisenstark told her that G.H. had his head in the lap of another student and that he had been spending too much time in the bathroom. Concerning the recording, Respondent testified that:

And the fact that I had this initial disclosure recorded, and that would support the fact that, you know, it was evidence to support that he did say this initially.

Now, he may not have repeated it in front of the officers, but he did say this and I felt strongly that they needed to have it. I wanted them to have it. I wanted them to give it to the Prosecutor's Office as part of their forensic interviews to address the needs of the child.

Respondent confirmed that she told Alvarado about the recording she had of G.H. She testified:

[H]e said he didn't want it. He said the case was unfounded, we will not take any more information, the case was closed. And he was very angry, though, and was not focused on the fact that I had the child recorded in a narrative. It was that he continued, as he did here, to be agitated because he thought I recorded him.

After speaking with Alvarado, Respondent told Farrell that she wanted to file a claim of Institutional Neglect against the school, and Erhardt in particular, for demanding that she be present to speak with a parent right after she had made a referral. She accused Mr. H. of being a substance abuser and potentially a perpetrator by writing a note that would prevent his child from having access to her programs. This was a reference to a letter Mr. H. sent to the District saying he did not want his children to have contact with Respondent. She also mentioned that she was concerned that the police had not done an investigation that incorporated the prosecutor's office in regard to a child who had disclosed a sexual assault. This was a reference to the decision not to bring G.H. to the Child Advocacy Center. Respondent acknowledged that Farrell told her that he did not feel that Institutional Neglect occurred because there was no evidence that a child had been harmed. She disagreed with his assessment. Farrell testified as to why he felt that Respondent's complaint did not meet Institutional Neglect criteria.

According to Respondent, she and Mrs. Eisenstark intended to go see Erhardt for the 2:00 p.m. meeting. They stopped to see Massa who was not in his office and they then stopped in to see Welsh. They met with Welsh for the purpose of assuring Eisenstark that she should feel comfortable about making the disclosure that Respondent said Eisenstark had been afraid to make. In the meantime, she said that Erhardt called and said they needed to go down to his office. She testified that when she went to see Erhardt, no one was there and she then searched to find him without success.

According to Respondent, she gave the recordings to her attorney Edmund G. Fitterer, Jr., Esq. on May 25, 2012. She testified she did so because she not want to compromise the recording and was afraid to have it in her possession: "I did not want it physically in my home, in my hands, anywhere." She asked Fitterer to make copies because she wanted to give copies to anyone who could address the wellbeing of G.H. and protect him because of the disclosure he made on the recording. Respondent told Welsh she had given the recording to her attorney that proved the basis of her referral and substantiate G.H's disclosure of sex abuse. Respondent testified that on the last day of May, Alvarado requested that she forward information on the case to him and she sent him a fax [R. Ex. #14] containing her notes on a form that she had constructed.

According to Respondent, no one asked her to provide copies of the tapes but she wanted "someone to take them because they supported the initial

disclosure.” Although Erhardt told her to gather information and give it to Alvarado, she testified that no one asked for the tapes, including Alvarado. Respondent testified that she did not recall Erhardt or Massa directing her to turn them over to them or Alvarado on May 24, 2012. Respondent testified that it was not until June 4 that she went to Welsh’s office to tell him that Fitterer had the recordings. She acknowledged that Welsh told her they wanted the recordings and “I told him anyone who wants a copy could contact Fitterer because he has a chain of custody and confidentiality agreement that goes with it” and that it was not until June 8 that Welsh made a statement that they wanted all the copies and the originals.

Gomez testified that he received a call from Alvarado asking for help in obtaining a recording that Respondent told him she had made of an interview with G.H. According to Gomez, Alvarado said Respondent told him, “no you can’t have it, you have to contact my attorney.” Gomez then called the Monmouth County Prosecutor’s Office in the Child Abuse Sex Crimes Unit and spoke with Lieutenant Mike Meaney. Gomez was looking for direction as to whether the recording should be obtained immediately or if it could wait another day. Lt. Meaney told him it could wait until the next day. Gomez then briefed his Captain and Detective Paolantonio. He wanted Paolantonio to follow up the next day because Gomez was off. He understood that Paolantonio would go to the school and obtain the tape and seek assistance from Lt. Meaney if necessary, including obtaining a subpoena. Gomez did not tell Meaney that Alvarado told

him that the tape was with Respondent's attorney nor the attorney's name. According to Gomez, he had a belief that the tape was the property of the school and the school's administration, that the school could demand it from Respondent and Respondent would need to produce it. When pressed as to the basis of his belief, he testified:

If I make a recording of somebody, it is public information depending on when it could be released in a criminal investigation. If I'm on my own, normal Jim Gomez citizen, and I make a recording, it's mine.

She works for a government agency, which is a school board; therefore, it is the government's property, not her property.

Gomez' view was shared by Massa who believed that the Respondent was required to provide the tape to the school and Alvarado and that he should not be required to go through Respondent's attorney to get it. He confirmed that Alvarado also said to him that Respondent told him she was recording the conversation despite the fact that he told her not to do so and that she then hung up the phone.

Interim Principal Welsh provided testimony concerning these events. He confirmed Respondent's testimony that she asked him to sit in on discussion she was having with G.H. When he met with Respondent in connection with the meeting, Welsh testified that Respondent asked G.H. to make a drawing that depicted the location of where he slept in relation to his father. Then, according

to Welsh, Respondent focused on G.H.'s claim that his older brother had exposed himself to him. Welsh described his view of G.H.'s comments:

My impression from what he was saying was that if this did happen, it was like the older kid kind of mooning him, like the kids say; they drop their pants down and moon. But it was obviously concerning behavior.

Also in connection with the incident, Welsh testified that Respondent later told him that she was upset upon hearing that DCP&P had closed the case although she had the drawing and recordings of G.H. A day or so later, Respondent brought Ms. Eisenstark in to see Welsh to express their feelings that the investigation should be reopened. After this meeting, Welsh received a call from Erhardt who asked him if Respondent was with him. He asked Welsh to put her on the phone. Welsh then explained:

She took the phone maybe two feet away from me. Our phones went to the lowest bidder. I could hear every word he said. Wasn't on speaker phone.

He said to her Mr. Alvarado wants the recordings and the pictures because the case hasn't been closed. That part I am not quoting directly, but I heard him saying that he wants the recordings and the pictures. She hesitated for a moment. And then she said, well, I will have to talk to my lawyer about that, and hung up the phone. She walked around my desk toward the door. I stopped her. I said wait a minute. He wants what you said he should have. That is what you wanted. She mumbled something about well, I am going to have to check on this.

Welsh described his reaction:

I was dumbfounded. It just didn't make any sense to me because all along she was leading me to believe that this case was closed, that

they weren't using the evidence that she had to pursue the case properly, and it was another example of the collusion between DYFS and all these other agencies, who wanted to keep the property values from being suppressed.

And in my mind I reached the tipping point with her because I thought if you say that you want to help kids and you say that that agency is wrong, they aren't taking the information I have, and then you don't give it to them, I couldn't think of any rational reason why that would occur.

It really made me concerned about the safety and security of the kids. If you are not going to share this information for whatever reason you have. That is what you said you wanted to do. I was once again dumbfounded.

According to Welsh, Massa called him and told him that he wanted to meet with Respondent and his administrative team to release the "critical information" to Alvarado. The meeting was held with Massa, Respondent, Erhardt, and an NJEA Building Representative Mr. Cammarano who attended at Massa's request. Respondent testified that she objected to Cammarano's presence because she did not believe he would properly represent her. Massa told Respondent the purpose of the meeting was for her to release the information to Alvarado. After Respondent began to review some concerns about how the investigation had been conducted, Massa again stated that Respondent needed to let Alvarado have the tapes. According to Welsh, Respondent "referred to the fact that she needed to talk to her lawyer." Welsh continued to describe the meeting:

It got to a point where it was very emotional. Ms. Bocco was very emotional, very upset. Mr. Massa did the best he could to keep things calm, but he was getting frustrated as well with the fact that

she didn't say, all right, I will do that. She never did say that during the meeting.

At one point during the exchange between Ms. Bocco and Mr. Erhardt, at least one time, she looked right at him and said, Mr. Erhardt, you are a liar. ... I have been in this business a long time. I have never heard anybody call anybody else a liar like that in a meeting as formal as that was. I was pretty taken aback by it.

Later that afternoon, Respondent went to Welsh's offices. According to Welsh, he told Respondent that she was out of line by calling Erhardt a liar and she responded "he is."

Erhardt's confirmed that he received a call from Alvarado telling him that he was concerned over the telephone conversation he had with Respondent. According to Erhardt, Alvarado told him that Respondent said she was taping their conversation, that DCP&P should not have closed the case and that she had recordings and drawings to support the alleged sex abuse. Erhardt called Interim Superintendent Massa and asked him if he could discuss the matter involving Alvarado. A conference call was held with Alvarado wherein Alvarado reiterated what he had previously told Erhardt. Massa told Alvarado that they would try to get the recordings. Massa directed Erhardt to speak with Respondent to get the recordings. He learned that Respondent was in the FAS main office and made a call to Welsh's office. Consistent with Welsh's testimony, Welsh gave the phone to Respondent to speak with Erhardt. Erhardt told Respondent to turn the tape over to the District "at which point, she quickly got me off the phone." According to Erhardt, Respondent said "I will have to look into

that, or something along those lines.” Erhardt then provided a description of the meeting that was held with Welsh, Massa, Cammarano and Respondent. He testified that Massa asked Respondent to turn over the recordings. He then described Respondent’s response:

At one point she said, well, I can get them if I still have them. I think I turned to Herb (Massa) and I said -- because she had shared with us that her lawyer was in possession of them. When she said if he still had them, I simply said -- I thought I said it very professionally - - why would he not have them, why would he destroy them, he should still have them.

I have never seen -- during that meeting I witnessed screaming. I was called a liar. A principal of the district was called a liar on three or four occasions. That in itself I thought was insubordinate.

She was crying. She was screaming at the superintendent. I have never seen anything like that in 18 years of public education. I hope I never see anything like that again.

Interim Superintendent Massa’s involvement in the “H” matter began during a meeting with Erhardt who told him he had received a call from Alvarado telling him that he was unhappy with the way Respondent had dealt with him and that she told him that she had recordings that he was unaware of. They phoned Alvarado, spoke to him, and told him they would get him the tapes and drawings. Massa asked Erhardt to speak with Respondent for this purpose. Massa did not return to school until May 30, 2012. When he learned that the recordings had not been provided, he convened a meeting on June 5 between himself, Respondent, Welsh and Cammarano. He testified that he asked Cammarano to sit in, witness the meeting because he was a representative of the local union. Massa testified that Respondent was reluctant to attend saying “I need my attorney.” He

responded, "you don't need an attorney" and asked her to come to the meeting to discuss the existence and location of the recordings.

Massa testified that because he was aware that Respondent harbored concerns about the police and DYFS, he suggested that she, Welsh, Alvarado sit in a room and listen to the tape in order to help Alvarado evaluate the situation and that he wanted her to do this by the end of the week. Massa testified that he received a call from Welsh on June 8 telling him that Detective Paolantonio was present at the direction of the Monmouth County Prosecutor's Office telling him that the Prosecutor's Office wants the tapes. He asked Welsh to convene a meeting with Erhardt, himself and the Prosecutor's Office. He also invited Alvarado and the West Long Branch Police Department in order to "get to the bottom of this." The meeting was set up for June 11 and attended by Captain Mihlon, Detective Paolantonio, Sergeant Lynch, Lieutenant Meaney, an unnamed Investigator from the Prosecutor's Office, Welsh, Erhardt and himself. According to Massa, Lieutenant Meaney (MCPO) told him that legal action could be taken against Respondent unless she provided the information to Alvarado.

Detective Lieutenant Michael Meaney testified as to the circumstances under which the recordings were obtained. The Prosecutor's Office had been contacted by the West Long Branch Police Department stating that Respondent had not turned over recordings she said contained evidence of a child's disclosure of sex abuse. He advised them to contact her supervisors to see if

they could compel her to turn them over to the police or DYFS. Meaney testified that legal action could be pursued to compel her to turn over the evidence. Meaney further testified as to the role of the Prosecutor's office in conducting forensic interviews. He testified that there is discretion and judgment in making such decisions. He testified that not every child is brought in to the Child Advocacy Center for a forensic interview. He testified that a DYFS worker is frequently sent out to interview, assess the situation and make a recommendation or determination as to whether there is a disclosure of sexual abuse or physical abuse.

Meaney testified that absent Respondent personally turning over the recordings to the District, he eventually sent Detective Kevin Condon from the Major Crimes Unit of the Prosecutor's Office on June 11, 2012 to see Respondent's attorney to obtain the recordings. He pointed to a receipt that Condon received from Respondent's attorney's office. According to Meaney, Detective Condon reviewed the tapes and informed him that he believed that the recordings did not contain evidence disclosing child abuse. Lieutenant Condon testified to receiving the recordings at the attorney's office. When asked if he had any concerns about whether sex abuse may have occurred after listening to the recordings, Condon responded "no."

The record regarding the "H" incident is extensive. Petitioner contends that the incident is part of Respondent's refusal to cooperate with officials of

outside agencies as well as showing acts of insubordination. Respondent rejects these allegations as either not occurring or warranted based upon her concern over how representatives of outside agencies would handle evidence in relation to her views as to how the investigations should be handled. Much of Respondent's defense to Petitioner's allegations flow from her active disagreements over the decisions and assessments that were made by DCP&P and law enforcement personnel in connection with the G.H. incident.

I am persuaded by the record before me that the Petitioner has established that Respondent was not cooperative with District officials, law enforcement representatives and DCP&P during the course of their investigation of Respondent's referral of the "H" incident to DCP&P. I initially observe that there is no evidence that any District representative prevented Respondent from making the referral nor engaged in any retaliation towards her because the referral was made. Instead, the record is clear that Interim Principal Welsh supported Respondent's decision to make the referral and Interim Superintendent Massa deferred to her use of her professional judgment.

The record clearly reflects that after Respondent made the referral she strongly and actively objected to virtually every aspect of conduct engaged in by law enforcement and DCP&P despite the fact that she had no authority to oversee or monitor their official actions. The record reflects that they immediately investigated the referral and engaged in interviews with Mr. H., Mrs.

H., G.H. and J.H. Alvarado's testimony reflects that they were sensitive to the need to separate all individuals of the H. household while performing the investigation. Their investigation included J.H.'s exposure to G.H., Respondent's concerns about family sleeping arrangements including potential sexual implications of Mr. H. sleeping on occasion with G.H. and alleged drug and alcohol abuse by Mr. H. DCP&P Caseworker Alvarado did not conclude that there was a basis for further action to be taken and indicated that the case would be closed. There is no evidence that the West Long Branch Police Department disagreed with that assessment. The facts belie the Respondent's contention that there was no investigation.

After Respondent learned the potential results of the investigation, she called Alvarado. The substance of the telephone discussions between Alvarado and Respondent are in stark contrast based upon their testimony. Credibility assessments need to be made as to the substance of their telephone conversation. At the outset, I note that Alvarado's testimony shows that his major objective during the conversation was to provide Respondent with explanations as to why he was going to reach the decision that he believed the case was unfounded. He had not spoken to Respondent prior to this because others in the investigation had done so and he felt comfortable that Respondent's concerns had been properly expressed to law enforcement. There is no evidence that Alvarado was hostile towards Respondent when their conversation began. In contrast, Respondent's call to Alvarado, from its beginning, reflected

that she totally disagreed with DCP&P and law enforcement and sought to advocate a reversal of their assessments. The fact that she disagreed was not an offense, nor inappropriate, nor the basis of Alvarado's concerns. However, the manner in which she exhibited this disagreement reflected a lack of cooperation and respect for the duties and responsibilities of these outside agencies and also a belief that these actions were caused by ulterior motives. I am compelled to conclude that Alvarado's version of their conversation was more credible.

Specifically, Respondent's testimony that Alvarado told her that he would not take any new information because her referral was considered unfounded by Officer Lynch is unsupported. Alvarado's posture, in contrast to Respondent's view, was to the contrary. Namely, he was sensitive to receiving evidence that could potentially show that G.H. was at risk. Respondent's testimony as to Alvarado's conduct is inconsistent with common sense given Alvarado's responsibility and the fact that his investigation was conducted in the presence of law enforcement. Given law enforcement's and Alvarado's lawful responsibilities to investigate disclosures of sexual abuse, Respondent's testimony that it would have been "illegal" to turn the recording containing disclosure of sexual abuse over to Alvarado is not a reasonable explanation for not providing him with the recording as soon as it was humanly possible. Alvarado explained that he needed to listen to the recording to aid in a determination as to whether there was sufficient disclosure to continue the investigation. Respondent's testimony

that Alvarado was concerned that Respondent had evidence against him and the police as a source of his agitation was clearly unsupported by record evidence and was acknowledged as such by Respondent who conceded that this conclusion was only her opinion based upon her feeling that Alvarado was defensive. I also find that Respondent's testimony that Alvarado told her that she was required to meet with Mr. H. was unsupported and I credit Alvarado's denial that he ever made this statement. Alvarado, as a DCP&P Caseworker, would have no official interest in directing Respondent to meet with a parent.

Respondent acknowledged that she had strong objections to the case being closed and that it was being closed "without an investigation." Given the totality of her testimony criticizing the conduct of such outside investigations, her testimony cannot be regarded as merely an inartful expression. She testified clearly that when there are disclosures of sexual assault, the children are interviewed by law enforcement and the cases are then determined to be unfounded and they don't end up on the Prosecutor's office. Respondent disagreed with the decision not to bring G.H. to the Child Advocacy Center in the Prosecutor's Office for a forensic interview. The testimony of Alvarado and Lieutenant Meaney from the Monmouth County Prosecutor's Office clearly reflects that the decision to conduct an interview at the Child Advocacy Center is not automatic and that not every child who is the subject of a referral is brought. Their testimony was that a certain threshold must be met based upon the judgments and assessments that are made during the initial investigation

process. Respondent's failure to provide the recording in timely fashion during the course of the investigation deprived the investigators of an opportunity to hear the statements of G.H. in his own words even if upon such review the recording might not have been a useful aid. When the substance of the recordings eventually surfaced, the conclusions drawn by those trained to make such determinations was that the content of the recordings did not support that a disclosure of sex abuse had been made. Respondent's testimony on the substance of the recordings differed. In one regard, she testified that the contents showed nothing more than what she had already told everybody but in another regard, she was emphatic that the recordings were supportive evidence that G.H. had made a disclosure of sex abuse that could impact on the course of the investigation. The simple fact is that Respondent was obligated to provide this information when she believed that there was a basis for referral but she consciously refused to do so at that time and during the investigation of the referral by law enforcement and DCP&P.

Respondent's conduct with law enforcement and DCP&P reflected that she held the belief of an illegal conspiracy to prevent referrals and to whitewash those that were made through the suppression of evidence. I credit Alvarado's testimony that he asked for the recording and Respondent was resistant to providing it to him. I credit Erhardt's testimony that he directed Respondent to provide the recording on May 24, 2012 and that Respondent was not responsive to his directive. Respondent testified that she could not recall whether Erhardt

asked for the recording but the testimony of Erhardt and Massa is crystal clear that on May 24, 2012 she was told that she had to produce the recording because DYFS requested it. There was no other purpose for their telephone conversation with Respondent and the meeting other than to direct Respondent to provide the recording. Her repeated testimony that she did not recall that she was asked is simply not credible. Respondent eventually acknowledged that she told Erhardt "I will have to talk to my attorney." Significantly, Respondent testified that she did not provide the tapes to her attorney until May 25, 2012, two days after the meeting. Petitioner has established that Respondent deliberately withheld the recordings until she could place them in the custody of her attorney.

I cannot credit Respondent's chief defenses for not providing the District with a recording she had made of third grade student G.H. Any concern that she expressed concerning the possibility that the evidence would be suppressed or tampered with is without merit. Clearly, she had the ability to maintain a copy of the recording in a safe place even if her concern that the recording would be lost or tampered with was legitimate. Respondent has also not established that the content of the recording could not be provided to DCP&P or law enforcement representatives except through her personal attorney and only after these official representatives charged with the investigation signed a stipulation of confidentiality. Her testimony that she eventually obeyed Massa's directive to provide the tape to DYFS on June 5 by telling him where the recording was located and how to obtain it has been shown to fall well below her responsibility

to cooperate with school administration, law enforcement and DCP&P during the time of the investigation.

Given all of the above, I conclude that the Petitioner has met its burden to show that Respondent, in her capacity as a school counselor, willfully refused to cooperate with officials of outside agencies and was insubordinate by not promptly following the directives of school administrators in producing the recording she made between herself and G.H. Beyond this, I conclude that the District has established that her ability to effectively serve as the school counselor was so severely compromised by her conduct and her continued belief in conspiracy that it was in the best interests of the District to remove Respondent from her counseling positions.

It is significant that the District's substance abuse counseling and student assistant counseling services are discharged by one single professional. The District has established that the professional that serves these important responsibilities must be someone who is not only certified and capable to perform these services, but also must be someone who can effectively interface with law enforcement and social service professionals who are responsible to enforce the law and fulfill statutory responsibilities that concern the protection and welfare of students.

The evidence in support of removal has been further established by the tenure charge filed by the District that Respondent made inappropriate comments to a student. The evidence in support of this tenure charge centered around the Respondent's interactions with A.R., then a thirteen year old female student, at the beginning of the 2012-2013 school year after Respondent had been transferred from her counselor positions to a teacher of health and physical education. Testimony concerning this charge was received from A.R., S.R., (A.R.'s mother), Lou Petrone, a Health and Physical Education teacher, Principal Welsh and the Respondent.

Prior to the incident at issue, there were prior interactions between Respondent and A.R.'s family the preceding school year. According to S.R., an incident occurred late in 2011 in which her daughter, A.R., alleged that she had been bullied by two female students, J.R. and M.W. These students, according to S.R. and the Respondent, had been harassing A.R. with online postings and behaviors including ridiculing A.R. for conduct that J.R. and M.W. attributed to A.R.'s father. S.R. contends that Respondent agreed that A.R. had been harassed and promised that letters of apology would be written to A.R. Because no letters were forthcoming, S.R. went to Principal Welsh to complain. S.R. said Principal Welsh resolved the situation. Despite S.R.'s claim that Respondent promised that letters would be forthcoming, S.R. accepted that if the girls' mothers refused to have them written there was nothing she could do and she accepted the situation after her meeting with Principal Welsh. A second incident

occurred during the spring of 2012 when someone alleged to Respondent that A.R. had struck a fifth grade boy. According to S.R., Respondent requested that A.R. write a letter of apology to the boy. A.R. vehemently denied that this conduct ever occurred. She along with several other boys, went to Principal Welsh to say that it did not happen. S.R. went to school and asked to speak to Respondent. She told Respondent that A.R. would not write a letter of apology. According to S.R., the letter would not be written because A.R. never received a letter of apology as Respondent had promised in connection with the incident involving two other girls and, more importantly, because the incident where Respondent asserted that A.R. had hit a fifth grade boy simply did not occur. S.R. acknowledged that A.R. was not forced to write the letter but her complaint was that Respondent assumed A.R. was guilty and asked her to write a letter of apology despite her innocence.

On the first day of the 2012-2013 school year, A.R. came home and told her mother that Respondent requested that A.R. tell S.R. to call Respondent. S.R. testified that she asked A.R. why. A.R. said that Respondent informed her "that the reason why she was a gym teacher was because all the problems she had with A.R. and other students the prior school year." The first day of this school year coincided with Respondent's first day working as a physical education teacher after having been transferred from her counselor positions. S.R. testified that she was furious and upset. She contacted Principal Welsh immediately and told him she was unhappy about Respondent speaking to A.R.

in that manner. According to S.R., on the next school day, Respondent confronted A.R. and asked A.R. what she had told her mother because Respondent had learned that Principal Welsh wanted to speak with her. S.R. again went to school to speak with Principal Welsh. S.R. and her husband instructed A.R. to politely walk away from Respondent if Respondent sought to speak with her again. According to S.R., Respondent again approached A.R. on the third day of school and A.R. told Respondent that she was not allowed to speak with her.

S.R. acknowledged that she did not call Respondent after A.R. told her that Respondent wanted to speak with her. Counsel for Respondent pressed S.R. as to exactly what A.R. told her Respondent had said and she responded "I want your mother to call me." A.R. asked Respondent, "what for?" Ms. Bocco informed her that the reason she had been demoted to gym teacher was because of the problem Respondent had with A.R. and other children the prior school year.

A.R. testified to these events. A.R. acknowledged that she knew on the first day of school that Respondent was no longer the anti-bullying specialist because word had gotten around to the students that Respondent had been relieved of her prior duties and had become a new gym teacher. She is in the eighth grade at Frank Antonides School and a straight A student. According to A.R., she was in gym class the first day of school and Respondent approached

her asking her to have her mother call her. When she asked Respondent why, she was told that the reason she was teaching gym was because of the problems that A.R. had with a student the prior year. According to A.R., she then went to tell her gym teacher, Lou Petrone, what Respondent had said to her. After returning home from school, she told S.R. what Respondent told her and S.R. said to wait and see what happens on the next day. According to A.R., on the next day she was playing kick ball and was on first base when Respondent came up to her and pulled her aside. A.R. stated that Respondent said "what did you say to your mother because now Principal Welsh wants to speak with me." A.R. again went to Petrone to tell him about this incident and she also told her mother when she arrived home. A.R. testified that on the next day, she was heading to the locker room to put on her soccer equipment and Respondent again tried to talk to her. A.R. told her that she was not allowed to speak with her and walked away.

Petrone testified to the incidents involving A.R. Petrone is a health and physical education teacher who has been employed by the Board for eleven (11) years. Petrone testified that A.R. came to him and asked if he had heard what Respondent had said to her. After telling her "no," A.R. told him that Respondent said that "you need to have your mother call me. Because of you I was fired as a counselor and now that is why I am a gym teacher." Petrone told A.R. that "if you are upset, you need to speak with Principal Welsh." He also told her that he had a responsibility to speak with him. Petrone then spoke to Principal Welsh.

Petrone testified to having directly observed the kick-ball game that was the subject of A.R.'s testimony. According to Petrone, A.R. had reached first base and he saw Respondent walk over and say something to her. Towards the end of the period, A.R. walked over to him and asked if he had heard what Respondent had said to her. After saying "no," A.R. told him that Respondent said "what did your mother say to get me in trouble?" Petrone again told A.R. that if she felt uncomfortable with anything the Respondent said she should tell Principal Welsh and that he again would also tell him what had occurred.

Petrone acknowledged that he never heard what Respondent allegedly told A.R. the first day and had not seen Respondent talk to A.R. on that day. He acknowledged that he perceived Respondent to be professional and one who cared for the safety of the children. When asked what Principal Welsh told him after Petrone went to see him, he said Principal Welsh would take care of it on both occasions. No additional problems ensued thereafter. When asked why he did not speak to Respondent about the incidents, Petrone testified that his responsibility as a teacher was to go see his administrator.

Respondent testified to these events. She said that when the behaviors of J.R. and M.W. were brought to her attention by S.R., she went to see Principal Welsh in her capacity as an anti-bullying specialist. Respondent acknowledged that she discussed the possibility of getting a letter of apology but because M.W.'s mother refused, she could not force her to do so. Respondent testified

that because of confidentiality laws, she could not explain to S.R. what her conversations were with another parent. Because of this, Respondent testified she could not have that conversation with S.R. Respondent pointed to S.R.'s testimony that the situation had improved and Respondent attributed that to the involvement of Principal Welsh.

Respondent acknowledged speaking with A.R. on the first day of school in September of 2012. According to Respondent, she did so only because she was concerned that there was a possibility that J.R. and M.W. were continuing to harass A.R. and that if they were doing so, A.R. would have to have her mother come in to speak with Principal Welsh because after having been removed from her counseling positions she was no longer the anti-bullying specialist. She testified that she said "have your mom call me and/or come in and talk to Mr. Welsh." She denied telling A.R. that the incidents the prior year were responsible for her transfer. Respondent testified that she experienced a difficult climate when she returned to school as a physical education teacher in September of 2012. She testified that she was aware that the students were circulating rumors as to why she was assigned to be a gym teacher, including that she had stabbed her husband, had harmed a student or that she was dangerous and should not be in the school. None of these rumors were attributed to A.R.

Respondent testified that on the second day of school she mentioned to A.R. that her mother should come to see her if she was still being bullied. There

is no evidence that A.R. asserted to Respondent that she continued to be a victim of harassment. Although Respondent was absent on the next day, she received an email from Principal Welsh, telling her that S.R. had come in and wanted to speak with her. According to Respondent, she thought that something had occurred between A.R. and J.R. and M.W., so when she saw A.R. the next day, she asked A.R. what happened. Respondent testified that she said to A.R. "I heard your mom came in, what happened" and A.R. told her "I can't talk about it" and walked away. Respondent testified that she did not know that S.R. had come in to complain about her, that A.R. never told her that she had upset her, that she had gone to see Petrone upset but Petrone never mentioned anything to her.

When Respondent testified to finally meeting with Principal Welsh about the A.R. incidents, she described the discussions as follows:

The discussion was, if she felt somehow it was her fault that I was removed, I was very concerned that not just she, of all people, because I had a very good relationship, I had thought, with this child the year before, that there were many other children, especially the younger children, who may have thought it was something they had done to have me removed. ... I had made it clear to him that we need to make the children very aware in all cases that this had nothing to do with them ...

The Respondent continued testimony on this point as follows:

Q. After you spoke to Mr. Welsh about this, what did he tell you was the problem? Did he tell you the same story that [A.R.'s] mom testified to here today?

-
- A. As I mentioned before, Mr. Welsh mentioned to me that the child had felt that I had said that it was her fault that I was removed.
- Q. Did he say the child felt you said it or the child claimed you said it?
- A. I don't know. I was under the impression that the child had felt that it was her fault because I know I didn't say that.
- Q. Did you say that to Mr. Welsh?
- A. Yes, I did.
- Q. Did you explain to Mr. Welsh what took place?
- A. Yes, I did.
- Q. He said, "this is very, very serious. You should have representation." He stated that I was not to speak to [A.R.] He stated that I was not to contact the mother. I mentioned that it was really important that I clarify this for the child and make it very clear to all the children that in no way was it their fault that I had been removed from my position. I also mentioned to him that I could very quickly address this if given the opportunity to speak to [S.R.]. I was told that under no circumstances was I to speak to the child. I would be insubordinate if I did, and if I spoke to the parent, I would be insubordinate if I spoke to the parent. He stated the parent would be writing a letter. I said "before a letter is written about something I allegedly did, can I please speak to the mother? I need a chance to clarify what happened." And he said no.

Principal Welsh also testified as to what he knew concerning the interaction between Respondent and A.R. Welsh confirmed that Petrone had come to him that A.R. reported to him that Respondent said that she and her family were the reason that she no longer works as a counselor.⁵

⁵ This testimony was received over objections from Respondent's counsel.

Welsh testified that he conferred with Respondent and told her that it would be inappropriate to make any comment to a student relative to her placement. Welsh stated that he Respondent initially denied making the statement and then expressed the desire to call S.R. to review the incident. Welsh told Respondent that it would not be a good idea and directed her not to have these types of communications with students.

Welsh testified that the next morning he received a phone call from S.R. asking to meet with him. S.R. objected to her daughter being "singled out" and told Welsh that she was going to write a letter of objection to the Board or Interim Superintendent Massa. On the next day, Welsh received the letter. The letter stated:

Please let me start by saying it is with deep regret that I feel compelled to have to write this letter. I have 3 children who have attended Frank Antonides School and have never felt it necessary to compose such a letter. However I would like to inform you of a teacher's conduct which I no longer feel can be ignored.

I have had several dealings last year with Ms. Jody Bocco who was the Student Assistance Coordinator at the Frank Antonides School. My daughter A.R. was involved in a disturbing circumstance with 2 other girls in school. This matter was brought to Ms. Bocco's attention. Ms. Bocco then went to A.R. to confirm what had happened, after confirmation that the other students were maliciously attacking A.R.; little was done to help A.R. the victim in the situation. I spoke to Ms. Bocco at great length and promises were made none of which came to fruition. I then sought out the help of Mr. Welsh who spoke with A.R. at great lengths and made her feel that she was safe at the school and he did in fact have an open door policy for her if she ever needed it. I thought this would be the end of this matter.

Unfortunately, I was wrong on the first full day (Sept. 10, 2012) of this school year Ms. Bocco went to A.R. during gym class and asked A.R. "to have her mother call her." A.R. replied "what for?" Ms. Bocco response was "well the reason I am now a Gym teacher is because of all the problems I had with you and other students last year." I find this behavior appalling that an educator with a background in psychology would imply to a thirteen year old girl that she was the reason for her being demoted. I am shocked that any adult would confront a child in this manner. A.R. is certainly not the reason for her problems and she had no right even suggesting that she was or even discussing the matter with her.

The following day (Sept 11, 2012) again during Gym class Ms. Bocco went to A.R. and asked her "exactly what did you say to your parents because now Mr. Welsh wants to speak with me." A.R. was instructed to have no further discussion with Ms. Bocco on this subject matter by her father and myself and walked away. If Ms. Bocco has a problem she should have contacted me directly and not gone through my daughter. I do not feel under any circumstance her actions can or should be allowed. The children are taught that bullying harassment is not acceptable at this school and yet here is a teacher not practicing what she preaches, if this is not an example of bullying I don't know what is.

I feel that Ms. Bocco's actions were deplorable and if she felt the need to confront my child who else's child did she confront? A teacher is there to guide, educate, and stimulate their students, not confront, blame or harass. It is my hope by writing this letter that you are made aware the circumstance and actions may be taken on the part of not only my daughter but other students who may have faced a similar experience by Ms. Bocco.

Welsh further testified that Petrone met with him once again to describe another interaction that took place between Respondent and A.R. Petrone told him that Respondent made an inquiry with A.R. while she was playing kick-ball as to what she said to her mother because Principal Welsh had gotten involved. Welsh reported this to Massa. He also spoke to Respondent again. Respondent again denied having said anything but Welsh reminded her that it would be

inappropriate to have discussions with students that went beyond her duties as a physical education teacher.

I am persuaded, after review of all of the testimony, that the District has sustained its burden in respect to the charge that Respondent made inappropriate comments to a student. The removal of Respondent from one position to another, and the reason for doing so, are inappropriate topics for a teacher to communicate to a student. The record on this incident shows that it was Respondent who initiated dialogue with A.R. and on repeated occasions. Nothing that A.R. did contributed to Respondent taking this initiative. The reasons offered by Respondent for doing so are not credible. They include having a concern that A.R. may have been continuing to be harassed by J.R. and M.W. But there is no evidence that this was the case and I find Respondent's defense in this regard to be contrived and without merit. Respondent's additional defense is that rumors were circulating among students about her own conduct and that she simply wanted A.R. to understand that children frequently take on guilt for problems that others are experiencing. I find this reason to be equally without merit. The testimony of A.R., on the other hand, was believable and consistent with all surrounding circumstances. A.R. was on the receiving end of Respondent's initiatives and had no reason to invent the substance of those initiatives. Her recollection of the incidents was clear and wholly consistent with the events testified to by Petrone and Welsh. A.R. went to Petrone on two occasions. Petrone confirmed what A.R. told him and Welsh confirmed

Petrone's version of what he was told. S.R.'s testimony was consistent with what A.R. told Petrone. The only basis to dismiss the accuracy of A.R.'s testimony would be that she was mistaken about Respondent's communications with her and that she relayed misinformation to her mother and to Petrone. I do not find that this occurred. Petrone's testimony was also credible. He did not hear the substance of Respondent's communication with A.R. However, he did observe Respondent's actions when interceding with A.R. while she was on first base during the kick-ball game. This initiative taken by Respondent was unnecessary and not reasonably related to any reason that would have been motivated by furthering the welfare of the student. Further, Petrone was in a good position to evaluate what A.R. told him and what her emotional state was at the time. Accordingly, I find that Respondent engaged in improper communications with A.R.

The District also charges Respondent with exhibiting improper conduct towards supervisors and staff members. One such incident is alleged to have occurred between Respondent and Bruce Preston. Preston is a Regional Director of Curriculum and Instruction and shares that role with the West Long Branch District, the Shore Regional High School District, Ocean Port School District and Monmouth Beach School District. Preston described an initial incident wherein the Respondent approached him during the fall of 2010 for the purpose of seeking his assistance in adding an anti-violence, anti-bullying program to the health and physical education curriculum. Preston believed that it

was a good idea, although he testified that this type of curriculum fell outside of his authority. He met with the physical education teachers in West Long Branch and agreed that such program should be put into place. Preston testified that he normally did not work with health and physical education programs in any of the districts and that the subject matter was not part of his responsibility. During the winter of the 2010-2011 school year, the District decided to bring Rachel's Challenge into its program. At that time, Preston testified that Shore Regional had decided to use the program. Preston had worked with Rachel's Challenge in his former District.⁶ The District had done an initial assembly on the program. Thereafter, Respondent approached Preston and expressed concerns that the program was not research based and scientifically proven. She said she had some information showing that the program could be damaging. Preston emphasized that he was not in charge of bringing the program in but was interested in the research that the Respondent could provide to him that supported her concerns. Preston met with Respondent in her classroom and asked her for the research that she told him she could provide. According to Preston, she again expressed her opinion that the program was harmful and that it triggered significant family traumas to those students who have gone through such domestic problems.

Preston described the tone of his discussions with Respondent:

⁶ Rachel Joy Scott was the first victim in the Columbine shootings. According to testimony, Scott's family started a foundation to spread Rachel's message of hope and caring and presented the program nationally to schools.

Initially it was calm. Then as I continued to press for research, Ms. Bocco got more and more irate. Eventually it got to the point where I couldn't get a word in. I was being cut off. Voices were -- she was yelling. I did try to raise my voice over to ask her to give me an opportunity to speak.

Finally, I stopped doing that. I let her go. Then when she was done with that, again yelling and no research, and I finally said, you told me that you had research that said this program has been proven to hurt kids. I told you that I would hear that research. You haven't presented any.

Again, she became frustrated and irate. And then I said I need two minutes to give you my case, uninterrupted, two minutes so that I can state my case and the things I need to say. I have given you time to talk. I would ask that you give me the same courtesy. She agreed.

I started talking. 30 seconds, she cut me off again, loud, yelling, angry. When she stopped, I looked at the clock, and I said, Jodi, I didn't even make it through 30 seconds and you cut me off again. So, the conversation did not end well. I don't remember specifically how we ended it. I think it was sort of an agree to disagree, and it was over. ...

Preston testified that he was concerned over how fast Respondent escalated the conversation. He felt a concern that Respondent was the person in charge of the District's conflict resolution program. He said he did not press the issue because he was new to the District.

Preston also testified to an incident that occurred during late April or early May of 2012. At the time, he was in the mailroom at Frank Antonides School. Respondent walked in telling him that the District needed to approve the bullying curriculum that she sought to put in place called the second step program. According to Preston, he told Respondent that he thought that the program was

not under his purview but he believed that it had been approved the prior year. Preston testified that Respondent said that curriculum such as this is under his purview and walked out. He testified that he calmly called her back in to tell her that "you should not end a professional conversation in that manner," when, according to Preston, she started yelling at him while pointing a finger. Preston testified that the incident was witnessed by a Mr. Marvuli who was standing just outside of the main office. After Respondent left, Marvuli said to Preston that he saw the Respondent accusing him of harassing and intimidating her. After the incident ended, Preston testified that he sent an email to Interim Superintendent Massa explaining that an altercation had occurred in the mailroom. The email states the following:

Hi Susan,

This is the exact email I had sent. Can you please give me some context as to why I'm sending this?

Also, I will have curriculum guides for you by the end of the day tomorrow.

Jody Bocco Incident 5/3/12

At approximately 2:30 in the afternoon, I had entered the mail room. As I was looking at my phone, I heard Ms. Bocco's voice asking if we could please approve an HIB curriculum. When it told her I thought that had all been approved last year she said we never discussed this last year and that it is my job and we need to do something and the gym teachers have the kids playing Gym instead of teaching the health curriculum. I repeated my position to which she responded well it is your job and if we don't have something ... And she walked away. I calmly called after her and said "Jody." When she came back in I said "That is not an appropriate way to end a conversation ..." at which point she began yelling at me telling me that she did not like the way I was speaking to her, that she had already written two memos about how I

harassed previously. By asking her to stop, I was trying to prevent Ms. Bocco from escalating her emotional tirade any further. I again stated that walling away was not an appropriate way to end a conversation. She continued to berrate (sic) me about how I was and have mistreated her. I said "Jodi, you started talking to me. Then yelling at me." At which point she walked away.

Immediately following her departure, Mr. Marvuli came to me and said that she was the own (sic) being inappropriate.

Preston was questioned by Respondent's counsel as to his version of these incidents. Preston acknowledged that he was not a direct supervisor of the Respondent and that the span of his function mainly includes core academic areas and not counseling or anti-bullying procedures. He acknowledged agreeing with Respondent that a bullying curriculum would be a good idea and made this recommendation to the District and that on May 3, 2012 Respondent was correct when she told him it had not been implemented. He reiterated that he thought it was proper to tell Respondent that her walking away was not an appropriate way to end a conversation. He testified that she took offense at the way he said it saying that she did not like his tone and that he was being accusatory or condescending.

Respondent acknowledged that she engaged in a discussion with Preston in the mailroom and asked if he could help implement a program called the Second Step Program. She felt that implementing the program would be helpful because of the many bullying incidents that were occurring. She described the Second Step Program as a violence prevention program that was meant for teachers to infuse into the classroom. She acknowledged that Preston stated it

was not his responsibility and that she would have to speak to the Superintendent. She described Preston as being agitated because Preston felt that the Rachel's Challenge Program was what the District should be doing. Respondent described her objections to the Rachel Program as having a "contagion effect." She felt that the emotionally charged pictures and images associated with the program would be detrimental to children who had attempted suicide and might see suicide as a glorified thing to do, thereby putting them at higher risk that could trigger a response that could not be controlled. She testified that her concern was for the wellbeing of the children and that Rachel's Challenge could possibly invoke a response where students would associate "I'm being bullied so it's okay for me to shoot someone or it's okay for me to hurt myself." Respondent believed that Preston became agitated with her because she said to him that it was his responsibility to make sure the curriculum was implemented. She denied screaming, rolling her eyes and pointing her finger in Preston's face nor doing anything that would be considered inappropriate. She acknowledged that Marvuli had made a comment but that his comment was not that she did anything wrong but that Marvuli simply did not agree with her statement that Preston's tone, attitude or conduct was inappropriate towards her. Respondent testified that she sent an email to Massa and Welsh concerning the incident. Respondent acknowledged that the District implemented Rachel's Challenge Program but that it caused quite a few problems and that students at the high school attempted suicide thereafter. She testified that she could not

attribute their attempting suicide directly to implementation of the program but could not say that it was not because of the program.

The Preston incident, standing alone, is not a matter of great significance. Yet, it is an example that supports the District's allegation that the Respondent has engaged in improper and uncooperative conduct with staff members and school administrators. Preston did not exhibit any bias or interest in the proceeding except to recall the incident which was the subject of his testimony. Significantly, both Preston and Respondent recalled Marvuli's presence in sufficient proximity to hear their dialogue. Marvuli did not testify but Preston's testimony that Marvuli exhibited concern over Respondent's conduct towards him was supported by Respondent's testimony that Marvuli did not agree with her that Preston's conduct towards her was inappropriate. The incident is also consistent with other incidents which reflect Respondent's difficulty with accepting facts and circumstances that she disagrees with. In this instance, her zealous opposition to Rachel's Challenge manifested itself in a manner that was inconsistent with maintaining cooperative relationships with staff. Her objection to Rachel's Challenge was also the subject of testimony by Detective Michael Paolantonio of the West Long Branch Police Department who testified that the Respondent accurately credited him with helping the District develop Rachel's Challenge and that her displeasure with this caused a turning point in their relationship that caused friction in his future efforts to serve the District. Respondent argues that whatever disagreement Respondent may have had with

Paolantonio was not a law enforcement issue. While this may be true, the record concerning the relationship between Respondent and Paolantonio in his law enforcement capacity clearly deteriorated after their disagreement over the value of the program. Respondent was entitled to her professional opinion about the merits of the program and the record shows that it was not her displeasure with the program that anyone objected to but rather the manner in which her objections were voiced.

An additional incident in which the District alleged that Respondent engaged in negative interactions with staff was the subject of testimony from Caryn Anderson, Administrative Assistant to the Business Administrator. Anderson testified that during October 2012 Respondent asked if she could speak with her. When asked, Anderson told Respondent that she did the minutes for the Board meetings. According to Anderson, Respondent told her that there was an April 24, 2012 meeting in which Anderson had misrepresented what she said in her public comments. This was a reference to Respondent's statement that she knew what type of weapons that police officers carry during school lockdown drills. According to Anderson, the minutes from the April 24th Board meeting represent an accurate representation of what Respondent said at that meeting. Anderson testified to Respondent's demeanor during the conversation:

She started to get loud, telling me that I was the reason that she was now a phys ed teacher. I told her if she felt that I misrepresented what she said, put it in writing and I would discuss

it with Mr. Massa who was the super at the time. And she said it was too late now; she had already been demoted, and I misrepresented her.

She was getting loud and there were doors open in the hallway. Teachers were walking by. I walked away from the conversation because I felt it was really unprofessional to be having that conversation in a hallway.

Through testimony, Anderson authenticated the memo that she sent on that day to Principal Welsh in which she described the incident [P. Ex. #27]:

This letter is to document a situation that occurred today, October 1, 2012 in the hallway of the Frank Antonides Elementary School. I was approached by Mrs. Bocco as I was walking to pick up the custodial attendance sheet (week ending 9/28) from the BME office. Mrs. Bocco asked if she could walk with me to talk to me about something. She began by saying that she just had the opportunity to read the Board Minutes from the 24th and I did not accurately represent what she said. I asked her what month she was referring to, as I did not recall her commenting at a Board meeting recently. She told me April and it was about the automatic weapons that the police use during the lockdown drills. I said that I recalled the meeting she was referring to and I typically am very general in writing the minutes but I was specific as to what I wrote because after Mrs. Bocco commented about the police using automatic weapons, Board Member, Brian Kramer said "for the record, the police do not have M-16's" and when someone says "for the record", I am obligated to record it exactly as it was said.

She then said that I completely misrepresented what she said, that her credibility is ruined because of this and that is why she is teaching Phys Ed now. I told her if she believes that what I wrote was wrong, I would be happy to change it if she put it in writing. She told me she had pictures of the kind of weapons and she knows what they are and she would give that to me. I told her I did not need her to send me pictures, I would need her to put in writing what she recalls saying at the meeting on April 24 and I would adjust the minutes. She said "it's too late, my credibility is ruined". I told her it was not too late, then turned around and began walking in the direction of BME because Mrs. Ghaffari was walking by and I didn't feel it was appropriate or professional to be arguing in the hallway in front of other faculty.

I feel it is completely inappropriate that not only did a teacher ambush me and blame me for their reassignment because I take notes at the Board Meetings but she did so in front of other staff members in the hallway of school where any number of faculty and students could have heard. Her behavior was so unprofessional that I reported the incident to Mr. Welsh shortly after it happened and am now documenting it. Thank you.

Anderson acknowledged that Principal Welsh advised her to document the incident after she had spoken to him. She confirmed that Respondent's concern about the minutes was a public comment statement saying that she commented about the use of M-16 weapons. The minutes reflect that a Board Member said that the West Long Branch Police Department does not have M-16s and that he prefaced his statement by saying "for the record." Anderson testified that when someone says "for the record" she repeats the statement as it was made. She testified that there is a procedure to go back and change minutes if someone says they are wrong but that Respondent never put any such request in writing.

The testimony of Anderson has not been effectively rebutted nor discredited. As an Administrative Assistant, no motive has been shown to exist for Anderson to be anything but truthful about the incident. The incident, standing alone, is not one of monumental importance. However, it represents a consistency in the Respondent's unprofessional conduct exhibiting loss of personal control.

The record contains numerous other incidents and evaluations of Respondent's conduct that have not been the specific subjects of this analysis. They include the testimony of a former Superintendent, former Principal, staff members, law enforcement officials and documentary evidence of past interrelationships between Respondent with school administrators, parents, law enforcement and DYFS representatives. While the evidence generally supports the District's claims, I have not relied upon this evidence in reaching the ultimate conclusion that the District has met its burden to prove that Respondent engaged in unbecoming conduct.

The District's attempted removal of Respondent from her counseling positions is asserted to be unwarranted and unjustified for many reasons. Among them, the Respondent contends that she has shown that her actions have been consistent with her responsibility to confront instances of child endangerment and that the District, and outside agencies, have essentially sanctioned her by her exercise of her lawful affirmative duty to report such instances. In this regard, she attributes reprisals and retaliations as among the motives for the District's claims that she was cooperative, insubordinate and engaged in unbecoming conduct. Respondent correctly cites the fact that her position requires legal protections and immunity against adverse actions arising from the exercise of her obligations to report instances of child abuse and endangerment. Here, Respondent contends that her conduct has always been consistent with her lawful obligations but simply not recognized as such by

school administrators, law enforcement, DCP&P officials, parents, staff members and politically motivated community members.

The arguments and evidence of Respondent have been given very careful review and with full appreciation that counseling responsibilities are challenging and often place a counselor at odds with others who, for whatever reason, may object to, or interfere with, the referral of child victims to appropriate authorities. Respondent is not only entitled to report and refer such instances but is under a lawful obligation to do so. Moreover, failure to act can be a basis for charges that she did not fulfill her responsibilities for which she could then be discharged or dismissed. However, in the matter before me, I cannot and do not conclude that the tenure charges were the result of improper motivation by the District in response to Respondent's good faith reporting or referring of any child to DCP&P or law enforcement.

Based upon all of the foregoing and the entire record of this proceeding, I conclude that the District has proven, by a preponderance of the evidence, that Respondent engaged in unbecoming conduct and that it had just cause to remove Respondent from her tenured counseling positions.

AWARD


The School District of the Borough of West Long Branch had just cause to dismiss Jodi Bocco from her tenured counseling positions.

Dated: July 14, 2013
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 14th day of July, 2013, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014