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 In the Matter of the Tenure Charges : Agency Docket 74-3/13
 : Tenure Charges
 THE VERNON TOWNSHIP SCHOOL :
 DISTRICT :
 "District"
 - and - :
 KATHLEEN ALAXANDER :
 :
 :
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APPEARANCES:

For the District

APRUZZESE, McDERMOTT, MASTRO & MURPHY
James L Plosia Jr. Esquire

For the Union

OXFELD COHEN
Randi Doner April, Esquire

BACKGROUND

This case arises under the terms of N.J.S.A. 18A:6-16, as amended by P.L. 2012,C26, entitled "Teacher Effectiveness and Accountability for Children of New Jersey."

On March 5, 2013 the School District filed Charges maintaining Kathleen Alexander, Tenured School Nurse, unbecoming conduct warranted her dismissal. On April 2, 2013 the matter was received by the Bureau of Controversies and Disputes of the State Department of Education. On April 9 Counsel for Alexander filed answers. On April 22, after review, the Bureau's Director held the Charges were "deemed sufficient, if true, to warrant dismissal or reduction in salary." Under terms of the Act, as amended the matter was referred to me for hearing and ruling.

Alexander has been a Registered Nurse (RN) employed by the District since December 19, 1991. She became tenured on January 2, 1994. Over the period in question she worked as a school Nurse at the Lounsberry Hollow Middle School. That school has some 580 students in the fifth and sixth grades. The events which ultimately led to the Charges began on the afternoon of January 30, 2013.

W██████ E██████ is a 12 year old student at Lounsberry. He testified that he had gym class during the seventh period. He and others were playing basketball. At some point someone stepped on his foot. He fell over backwards and another student fell on his foot. Although the foot hurt he went to

his next class. After a short time the pain increased and his shoe felt tight. He told the substitute Teacher and asked to go to the Nurse.

E█████ said he walked down the hall and stairs and enter the Nurse's Office. Alexander was sitting at her desk. He told her he hurt his foot in gym. She told him to sit down. He went over to one of the two benches and sat next to a fellow student, J█████ C█████. He took off his left sneaker and sock. His foot looked swollen. From her desk, Alexander told him to put his sock back on and get an ice pack. He limped over to the refrigerator and got an ice pack, returned to the bench with C█████ and put it on his sock cover foot. As the end of the period approached he wanted to get his home work. He asked if he could back to the class. Alexander said Yes. He asked her if he could take the ice pack. She said No. He put on his sneaker and left. He tripped on the stairs outside the office. After that the foot hurt more.

E█████ stated that Alexander never left her desk during the time he was there. Most of the time she was doing something on her computer. She did make phone calls. He was not sure who she spoke to. He never talked to anyone on the phone while in her office.

The bus dropped him at his mother's day care center. His mother saw him limping and asked what happened. He told her about the gym and that he went to the Nurse. She asked why she was not called. He said she may have called his dad.

She took him home and put his foot up. He did not go to school the next day. His foot felt worse. That afternoon she took him to the emergency room. The Doctor could not tell if his foot was broken. He put on a walking cast and gave him crutches. The next day they went to another Doctor. He took off the boot and put on a full cast. Some weeks later the Doctor took off the cast. When the foot did not improve they put the boot back on. As of the May 22, 2013 hearing he still had the boot on.

On February 4, Mrs. E [REDACTED] filed a four page complaint letter with the school. (E 7) She maintained her son had not received proper examination or treatment by Alexander. She cited past problems with Alexander. She said her son was being directed to go to the main office not Alexander with any medical problems.

Stewart Stumper, the schools Principal, received the letter early on the morning of February 4. He immediately began an investigation. He had Alexander told to send him an Accident Report and details of what had occurred with E [REDACTED]. At 8:47 AM she sent him a four sentence reply and a log entry she said was made on made on "Thursday January 31, 2013 at 1:58pm." (E 9) After an additional request she sent in an Accident report. It corrected the date of E [REDACTED]'s visit and stated "Mr. Wilkerson" was the gym Teacher involved. After reviewing those documents, Stumper asked for more detail. At 4:16 PM she sent an additional two page memo. (E 10)

The next day Stumper found out that Wilkerson was not the gym teacher and had a question checked with Alexander. He also called the E█████s who were in West Virginia attending a family funeral. He read Alexander's expanded statement (E 10) to both parents. They disputed a number of Alexander's statements. He also spoke to the student. He wrote notes on the conversations. (E 11)

On February 7, a meeting was held with Alexander by Superintendent Alfieri, Stumper and others. At its conclusion Alexander was suspended with pay pending completion of the investigation. (E 1) After additional investigation the Tenure Charges were filed.

THE HEARINGS

Hearings were held on May 16, 22, and 30, 2013. The District called 7 witnesses - Stewart, Stumper, J█████ C█████, W█████ E█████ (the Father), S█████ E█████ (Mother), W█████ E█████ III, B. Linkenheimer, and in rebuttal B. Rodrigues. Kathleen Alexander was called by her Attorney. All witnesses were sworn.

W█████ E█████ III testimony as to the events of January 30, 2013 is summarized above. Alexander also testified in detail regarding what occurred that day. She said E█████ came in at 1:50 PM. He said his foot was stepped on at 12:30 in gym class. She told him to sit down and take off his shoe and sock. He sat on one of the couches. She stood up, came over and watched him from about three feet away. He took

them off with ease. He did not grimace, cry or give any evidence of injury. She went to him took his foot and touched the top to get a closer look. There was no swelling or bruising. She later charted it as "no obvious injury." She thought she told him to put the sock back on and get ice. She wanted to see him walk. He appeared to limp "a little bit." He remained on the couch with the ice on and his leg elevated. J. ██████ C. ██████ was lying on the same couch.

Alexander told him she needed to call his parent to let them know he was there. He said "call my dad, I live with him." She called and told him his son said he injured his foot in gym. The father asked if she "thought he was faking." He then told her that "he should stay in school and take the bus home." She replied he is right here and said he could speak with him. She handed the phone to W. ██████ and he talked with his father. She ended the call by telling the father "if the foot continues to bother him he should get medical attention."

She then sent the boy back to class. He asked if he could take the ice. She had prior problems with students that had taken ice so she said no.

Alexander said on the morning of February 4 Dr. Stumper came and told her to write a memo of what happened on January 30. He did not tell why. She immediately complied and gave his secretary what has been marked as Exhibit 10. Later the secretary to the Business Administrator called and said she

also needed to complete a Accident Report. Although she did not think the facts required that report she complied.

Alexander strongly asserted she took E█████'s complaint seriously and render proper medical care. There was no indication he had been seriously injured. He must have aggravated it slipping and falling on the stairs after he left her office. She was only following the direct instructions of the father when she sent E█████ back to class. When he told his Mother he was in pain he should have been taken for immediate medical care.

DISCUSSION AND OPINION

Position of the Parties:

Both Parties filed extensive post hearing briefs. The Board's was some 71 pages long and Alexander's 41. Both then filed reply briefs. I closed the record on June 17, 2013. In order to expedite a Decision and Award, I will forgo recitation of their numerous arguments. Suffice it to say, all have been carefully reviewed and given the weight each deserves. As appropriate, I will comment on them in the body of my opinion.

Opinion:

The first question that must be answered is what really occurred that faithful January afternoon. The testimony of the two directly involved is summarized above. It is obvious they told directly conflicting stories. In kindest words one or the other, at the minimum, was "shading" the truth. The

majority of both Parties briefs set forth why I should find their version true and the others false. Which am I to believe?

I was fully convinced the testimony of E█████ must be credited over that of Alexander. Numerous reasons led to that holding.

I found young W█████ E█████ a fully believable witness. He was somewhat nervous. Any sixth grader would be. His testimony was direct. He only set forth what he said happen. He did not add to, try to embellish or draw conclusions from his statements. He fully admitted he tripped on the stairs causing additional pain. His testimony paralleled what he told Stumper in the February 5, (E 11) and February 11, interview. (E12) He stood up well to cross examination.

J█████ C█████ is also a sixth grader at Lounsberry. He was in the Nurses office when E█████ came in. He testified E█████ came over and sat by him. He took off his sneaker. Mrs. Alexander told him to get ice. After a while she told him "you can go back to class." He estimated that E█████ was there about 20 minutes. Except for getting ice, E█████ was on the bench with him. During that time Alexander never left her desk. He thought she was mostly on the phone but was not sure. He did not hear E█████ ask to take ice. He was limping when he left. I accept C█████'s testimony. It fully supports E█████'s.

E█████'s father testified he was driving his crew home

from a job when a call came in on his cell phone. He put it on the speaker. It was the school Nurse. He had never met or previously spoken to her. She said W [REDACTED] "claims to have hurt his foot." She stated "there is no swelling" and "I am sending him back to class." He did not recall her saying anything about having him see a Doctor. He never told her to have him take the bus home. He was "positive" she did not put W [REDACTED] on the phone or they spoke during the call. He said the entire call was "short and sweet", it "lasted no more than 30 seconds." On cross examination Alexander's counsel inquired about the complaint filed by his wife. (E 7) He said he had nothing to do with it. She also questioned him about his sons medical records. He replied his wife, not him, handled all of that. I found Mr. E [REDACTED] completely believable. I accept his testimony.

That leads to consideration of Alexander's testimony. It did not have the ring of truth to it. At its best, I found it confusing. On direct she gave a number of versions of her conversation with the father. She first said he instructed that W [REDACTED] "should stay in school and take the bus home." Less than a minute later she twice quoted him as saying "send him back to class and take the bus home." She repeated those exact same words on cross examination. In direct testimony she quoted the father as asking if she thought W [REDACTED] "was faking." On cross and in her February 4 expanded note (E 10) she quoted him as asking if he was

"really injured." She was questioned about her changing versions. She denied any were inconsistent but argued that although the words were different they mean the same thing.

From the very beginning the question of if E [REDACTED] remained in the Nurses office or was sent back to class was an open issue. On February 5, B. Rodrigues was assigned to check. She asked " did you dismiss him from the Nurses Office?" Alexander replied "yes." Alexander admitted she told Rodrigues he remained in her office. She said later she remembered he "may have" been sent back to class. However "since she was not asked about it again" she did not bother to correct or modify her statement.

I carefully reviewed all of the written statements submitted by Alexander. Contrary to her testimony, the first was a note sent to Stumper at 8:47 AM on February 4. (E9 not E 10) It quotes the log entry Alexander says she made at 1:58 pm on the day of the incident. That is the only contemporary written evidence of her actions. It reads:

c/o pain left ankle child thinks he injured
it during gym today pain only started now
no obvious injury cold pack to ankle t/c
to father advised of injury. (Emphasis mine)

There can be no question it was E [REDACTED]'s foot not ankle that was injured. That was what he reported. At the May 30, 2013 hearing Alexander maintained she physically handled and examined "his foot" and "pressed on the top of it." She said there was "no swelling or redness/bruises to the foot." A RN who just performed such an examination would not identify a

foot injury as an ankle injury in her official log entry.

In sum, I find the District has met its burden of proving Alexander was guilty of a number of the actions detailed in paragraph 18 of the Tenure charges. Her conduct on January 30, 2013 was unbecoming a school Nurse. That holding leads to the issue of whether her dismissal is warranted.

Alexander testified regarding her past record. On February 7, 2006 she was late and could not assist in a emergency. She could not recall the details. However, she denied having a dispute with the Assistant Principle in front of students and staff. (E 15) December 1, 2006 she told a student with diarrhea and soiled clothing to change in the bathroom. He declined help. She did not notice he kept the soiled clothing on his lap for the entire period. When the parent found him in that condition she filed a complaint. Alexander conceded toileting issues were discussed with her but could not remember the details. (E 16)

On the morning June 19, 2007 she attended a special meeting of staff in the cafeteria. She had been taking medication for a 2001 neck injury and 2002 surgery. She had a problem and was taken to the Hospital. After signing some papers she was tested for drugs and alcohol. She was found positive for opiates. (E 17) She did not recall passing out or telling school officials, including Stumper, she had only taken aspirin. (E 18) She maintained she had no idea she why

she was put on leave. She did not have a drug problem. However, she was kept out of work from September 2007 until cleared by a Doctor in March of 2008. The Union entered a April 9-10, 2013 Drug Test report from LabCorp showing negative results. (Union 3)

Beginning September 19 and continuing through October 3, 2012 there were a series of situations involving disputes with parents over her handling of the vaccination program. (E 19, 20, 21) She denied a student came to her office seeking treatment for a vaccination reaction on September 19. She did not send him away on September 20 without treatment. (E20) The mother took him away before she could treat him. The next complaint regarding an argument with another parent at a hair dressers was only a misunderstanding. (E 19) She was not discourteous but could not answer the parent's question because of HEPA laws. She did not recall an incident with Mrs. Bowers. She was not sure she even spoke to her. She denied ever being rude or abrupt to her or any parent. (E 21)

Alexander said she did receive Stumper's October 3, 2012 letter regarding those situations, citing her past record and telling her he was recommending her 2013-14 increment be withheld. (E 21)

In her brief Alexander's Counsel maintained the penalty of dismissal is not just or warranted here. There was no challenge to her medical competency. She has never received any formal letter of reprimand or warning. Many of the prior

situations happened years ago. The 2012 incidents cover just a three week period at the beginning of the school year. She has always received excellent evaluations. Her increment was never actually withheld. When viewed with Alexander's 22 years of service termination is not justified.

In support Counsel cites a series of Court, Administrative Law and Arbitration Decisions under the new Tenure Act that modified proposed termination penalties. I have often taken that action myself. However, before doing so numerous factors must be weighed. One of the most important is that the Employee accepts responsibility for their actions and fully understand they can not be repeated in the future. That did not happen here.

Time and time again Alexander was told she must correct her behavior. Rather than change she continued to deny she did anything wrong and blamed others. The events of January 30 were just the final example. In her testimony and written statements she maintained she did nothing wrong but the child and his family were totally responsible. Under a heading of "Note Well:" in her February 4 (E 10) reply to Stumper among six charges she blamed E [REDACTED] for not immediately reporting the accident to the gym teacher and only coming to her office an hour later. She blamed the family for not seeking "medical attention/care until 1/31/2013...dispite the Nurse giving the childs father a professional opinion that the child should be seen by a physician." (Emphases Alexander)

She left me no alternative but to uphold her discharge.

AWARD

Kathleen Alexander was guilty of UNBECOMING CONDUCT as set forth in the March 5, 2013 Tenure Charges. Her dismissal from the Vernon Township School District is upheld.

DATED

July 27, 2013

John B. Dorsey
JOHN B. DORSEY, ARBITRATOR

STATE OF NEW JERSEY)

: SS.

COUNTY OF ESSEX)

On this 27th day of June, 2013 before me personally came and appeared, John B. Dorsey, to me known and known to me to be the individual who executed the foregoing instrument and who acknowledged to me that he executed the same.

Kevin A. Bedoya

Kevin A Bedoya
Notary Public
New Jersey
My Commission Expires 3-1-18
ID No. 2430661