

PURSUANT TO THE REFERRAL BY THE
COMMISSIONER OF EDUCATION, STATE OF NEW JERSEY

IN THE MATTER OF THE TENURE :
HEARING OF BELINDA MENDEZ- : BEFORE THE COMMISSIONER OF
AZZOLLINI : EDUCATION, STATE OF NEW JERSEY
:
:
BY THE SCHOOL DISTRICT OF THE : AGENCY DOCKET NO. 219-8/16
TOWNSHIP OF IRVINGTON, ESSEX :
COUNTY :

BEFORE: CAROL F. LASKIN, ESQUIRE, ARBITRATOR

APPEARANCES:

On behalf of Belinda Mendez-Azzollini
Caruso Smith Picini, P.C.
Nick Poberezhsky, Esquire
Paul W. Tyshchenko, Esquire
W.P. Tyshchenko, Esquire

On behalf of Irvington Board of Education
The Law Firm of Hunt, Hamlin & Ridley
Ronald Hunt, Esquire

PROCEDURAL BACKGROUND

Pursuant to N.J.S.A. 18A:6-16, as amended by *P.L. 2012, c. 26* ("TEACHNJ"), tenure charges were brought by the Board of Education, Irvington Public School, Essex County ("Petitioner", "District" or "Irvington") against Belinda Mendez-Azzollini ("Respondent" or "Mendez-Azzollini" or "Azzollini") on August 19, 2016. Respondent filed an Answer of Evidence/Position in Opposition to the Tenure Charges on September 21, 2016. This matter was referred to me by the Bureau of Controversies and

Disputes on October 3, 2016, for hearing and decision. The hearings in this matter were conducted on November 15, 2016, December 16, 2016, February 15, 2017, and March 2, 2017. Final submissions were received by April 11, 2017, whereupon the record was closed.

THE CHARGES

The Sworn Tenure Charges brought against Belinda Mendez-Azzolini in pertinent part state:¹

"A. Just Cause Termination

The Respondent had been charged with the following conduct and/or other good cause necessitating the need to terminate her employment with the Irvington School District (hereafter 'Petitioner') for Conduct Unbecoming a Public School Guidance Counselor:

7. During this same time frame, June 16, 2016, it was discovered by the Supervisor of Guidance, Claire Hamm, during an audit of senior transcripts that J.D. had not obtained a passing grade in Geometry, a requirement for graduation.
8. J.D. had obtained a failing grade in Geometry during the 2013-2014, school year and had never made up the grade. Ms. Hamm informed the Respondent of this at the time of the initial senior transcript review in the beginning of the 2015-2016, school year.
9. On June 17, 2016, Ms. Hamm again reminded the Respondent that J.D had not passed Geometry to which Respondent suggested that she check the Historical Grades screen in Power School

¹With regard to the original charges 1 through 6, the parties stipulated, : "The historical record should reflect that prior to the alleged events giving rise to the instant tenure charges, the district alleges that another incident involving respondent occurred earlier in the same school year for which the district had already taken disciplinary action against respondent. Respondent is challenging the discipline imposed in connection with the earlier incident in a separate grievance procedure, and as such the counts of the district tenure charges against respondent pertaining to that earlier incident are not part of the instant tenure proceedings."
IT 6/6 to 18

and not rely on the student's transcript.

10. Thereafter, Ms. Hamm checked the Historical Grades screen for J.D. and observed a grade of "D" for the 2013-2014 school year. Ms. Hamm was somewhat puzzled by the discovery and questioned how the "D" grade suddenly appeared when the grade on his printed transcript reflected an "F" just two weeks earlier.
11. When questioned, the Respondent could not explain the change, but only mentioned that they should rely on the Historical Grades screen and not the transcript.
12. Thereafter, while reviewing the Historical grades screen, Ms. Hamm discovered that J.D.'s Geometry grade had been changed from an "F" to a "D" on June 15, 2016 at 11:02 am by Belinda Mendez-Azzollini.
13. On June 20, 2016, during the Senior Transcript meeting with the Superintendent, High School Principal, Ms. Hamm and the Respondent, the Respondent was asked directly if she changed J.D.'s grade, to which she replied "no." Thereafter in a later meeting with her Union President present, the Respondent was again asked whether she changed the grade and again replied "no."
14. At that point, the Respondent was shown a copy of the Historical Grades screen showing that her user code was used to modify the student's grade. She then admitted that she had changed the grade and claimed for the first time that the student had informed her in September 2015, that he had passed Geometry in summer school.
15. Subsequent review of the summer school rosters for 2014 and 2015, did not demonstrate evidence that J.D. ever attended summer school. Additionally, J.D. was questioned on the subject and wrote a statement confirming that he never attended summer school or had a conversation with the Respondent about summer school.
16. The Respondent was unable to produce any documentation to support her action of modifying the student's grade. Her conduct constitutes unbecoming conduct for a public school employee." (R-1, P-2)²

²Exhibits shall be referenced as J-Joint, P-Petitioner, and R-Respondent. The transcript of the hearing conducted on December 15, 2016 shall be referenced as IT followed by page/line. The transcript of the hearing conducted on February 15, 2017 shall be referenced as 2T followed by

ISSUE PRESENTED

Has the School District of the Township of Irvington, Essex County, met its burden of establishing by a preponderance of the credible evidence the tenure charges against Respondent, Belinda Mendez-Azzollini?

If so, do the tenure charges warrant dismissal or a lesser discipline?

EVIDENTIARY FINDINGS

At hearing, the parties were zealously represented. Each was given a full opportunity to present testimony, written evidence, cross-examine witnesses and submit post hearing briefs.

Petitioner Irvington proffered:

Claire Hamm - Supervisor of Guidance
Sandra Y. Boone-Gibbs - High School Principal
Bevin Subocz - Director of Technology and Media Services
Dr. Neely Hackett - Superintendent of Schools

Petitioner Belinda Mendez-Azzollini testified on her own behalf in addition to:

Eleanor Gatling - School Counselor - Transcript Coordinator
Blue Knights Academy
Eileen Wesley - Irvington High School Social Studies Teacher,
President-Irvington Education Association

Based upon a through review of the record, including all relevant exhibits, arguments and observations of the demeanor of each witness, I **find** the following as fact:³

Irvington Public Schools is a kindergarten through twelfth

page/line. The transcript of the hearing conducted on March 2, 2017 shall be referenced as 3T followed by page/line.

³Controverted evidence will be identified and discussed in *Position of the Parties* below.

grade district, classified as special needs, referred to as an "SDA District." The Superintendent of Schools, Dr. Neely Hackett attended Irvington Public Schools as a child. With the exception of a short tenure as High School Principal at Franklin High School in Somerset County, Dr. Hackett has been employed by the District as a teacher and in a series of progressive administrative positions. (2T236/21-237/11)

Upon her appointment as Superintendent five (5) years ago, Irvington High School's graduation rate was fifty percent (50%). The District is being monitored; the State is seeking a graduation rate of eighty-five percent (85%). The last school year - 2015/2016, Irvington High School's graduation rate was seventy percent (70%). (2T 242/5-22)

Respondent, Belinda Mendez-Azzollini, was hired in 2004 as a Guidance Counselor at the Union Avenue School by its then Building Principal, Dr. Hackett (then known as Nettie Settle). Dr. Hackett was replaced at the middle school by Mr. Joy and ultimately Ronald Bligh. In 2010, Ms. Mendez-Azzollini's contract for employment was non renewed based upon the District's mistaken belief the Petitioner had not worked long enough to obtain tenure. In addition to seeking tenure before the Commissioner of Education, in 2010, Ms. Mendez-Azzollini filed a civil action in Superior Court against Ronald Bligh, then Superintendent Ethel Davion and the Board of Education. On November 7, 2013, Ms. Mendez-Azzollini executed a Settlement Agreement and Release after receiving Eighty

Thousand Dollars (\$80,000.00). Neither the District nor the named Defendants made any admission of liability. (J-1)

When Respondent returned to the District, she was assigned to the Blue Knights Academy, a night school program within Irvington Public Schools. When a position opened for a guidance counselor in the high school, Ms. Mendez-Azzollini applied for the transfer which was granted by Dr. Hackett. Thus, Respondent transferred from the night school to Irvington Public High School in or around April 2014. Prior to June 2016, Ms. Mendez-Azzollini was not issued discipline; she earned consistent positive evaluations. (R-10)

GUIDANCE DEPARTMENT

Claire Hamm was appointed Supervisor of Guidance prior to the 2015/2016 school year. Approximately twenty-two (22) guidance counselors service all schools within the District. As to the duties of a high school guidance counselor in Irvington, Ms. Hamm revealed,

"Q. What does a guidance counselor do?

A. A guidance counselor's role is to support their students in a caseload academically, social development and behavioral development. At the high school level, that means ensuring that your student and your caseload have all the required courses to graduate to make sure that they are progressing academically, make sure their attendance is not becoming an issue, make sure there's no behavior issues to prepare them for colleges and applications and careers, so they really have the full circle of responsibilities for high school students." (1T 13/5-17) (See also R-9 - *Guidance Counselor Position Description*)

At Irvington High School, it is the duty/responsibility of each guidance counselor to ensure students are assigned to courses which fulfill the New Jersey State requirements for graduation.

Ms. Hamm disclosed courses required to complete:

English Language Arts, four years or 20 credits
Mathematics, three years or 15 credits
Social Studies, three years
Science, three years including a lab science - one must be biology
Physical Education - every year enrolled
One year of a World Language
One year of Art
One year of a career or practical Art
One half year of financial literacy
(IT 15/16 to 16/6)

The Guidance Supervisor is responsible for assigning duties to each guidance counselor in the high school. Dr. Hackett informed that within the last three (3) years these assignments have been tweaked. One counselor may be assigned all English learning language students, one counselor may be assigned only Freshman students, one counselor may be assigned special education students.

Since her reassignment to the high school in 2014, Respondent was "responsible for between 250-275" students every school year. (3T429/17) Counselors are also assigned additional duties. These include, *inter alia*, HIB specialist, college and career fairs, college visits, senior awards ceremony, translating transcripts from students of a foreign country. There is an attempt to equalize these roles between the Counselors. (2T319/14 to 321/8) In the school year 2015/2016, Ms. Mendez-Azzollini's

additional duties included assignment as the high school HIB specialist (Harassment Intimidation and Bullying).

SEPTEMBER 2015

Counselors meet their students throughout the year and schedule courses for the next school year. In order to ensure seniors have scheduled all required courses to graduate in June, Principal Boone-Gibbs meets in September separately with the Supervisor of Guidance and each Guidance Counselor. Consistent with this process, in September 2015, Principal Boone-Gibbs and Ms. Hamm requested each Guidance Counselor to provide, for their 2016 graduating students, transcripts and schedules. (1T 126/3-13)

Upon receipt, Ms. Hamm reviewed the approximately three hundred (300) graduating student transcripts before the meetings. In the event a student's transcript evidences he or she will have problems with graduation, students can be assigned a credit recovery course embedded during the school day, after school on the premises, and at the Blue Knights Academy. (1T 126/14 to 127/11) This process was designed to ensure graduating seniors are on track to graduate; given an opportunity to take all required courses.

In preparation for the September meeting, Guidance Supervisor Hamm created a form identifying all graduation requirements with a check list for completion to graduate in June 2016. During this process, she discovered that student J.D. had failed "geometry."

(P-4)

The meeting on September 29, 2015, was conducted by Principal Boone-Gibbs and Guidance Supervisor Hamm. When Respondent met with them to review her senior case load, she was informed student J.D. had failed geometry and needed to pass this mathematics course in order to graduate in June 2016. (1T 21/2 to 22/18; 3T 452/19 to 453/21)

NOVEMBER 2015

Upon her transfer to the high school in April 2014, Respondent was assigned Sophomore student J.D. She remained his counselor throughout J.D.'s Junior and Senior years of high school. After J.D. failed geometry during the 2013-2014 school year, Ms. Mendez-Azzollini never addressed this deficiency by scheduling J.D. to another geometry class, credit recovery, or Blue Knights Academy.

Prior to the September 29, 2015, meeting with the Principal and Guidance Supervisor, J.D.'s official transcript evidenced grade F and zero credit for geometry in his Sophomore year. On November 10, 2015, Ms. Mendez-Azzollini changed J.D.'s geometry credit from zero credit to five credits.⁴

Acknowledging she made this change, on cross, Respondent testified,

"Q Now I think I heard your testimony today, it was a

⁴This change was not discovered by the District until the Fall of 2016, after Respondent's suspension. Director of Technology Bevin Subocz, upon request of Dr. Hackett, conducted an in depth review of all grade changes made by Respondent in Power School during the 2015-2016 school year.

little confusing to me but I want to be clear about what you said, I think you said you changed his credits on November 10th, to five credits; is that accurate?

A Yes.

Q On what authority did you do that?

A Because guidance counselors are able to update information.

Q Okay, and what updated information did you get that he had five credits?

A Well, like I said, like I testified before that I don't actually recall it, recall it but if that was the cause and in November we were getting information in to update the audit sheet or their transcripts I may have mistakenly changed it thinking it was summer school grade.

Q Let's stop there, let's stop this.

You know at this point in time in 2014/15, how long have you been a guidance counselor?

ARBITRATOR LASKIN: You mean 15/16?

Q 15/16, how long had you been a guidance counselor?

A Twelve years.

Q You would be considered like a veteran at that point, right, yes, more or less?

A Yeah.

Q It is a very serious thing to change a grade or to give anyone credits that he hasn't earned, you would agree with that statement, wouldn't you?

A Yes. I would never intentionally do that.

Q Let's forget intentionally.

A I would never intentionally fabricate or change any grade.

(3T 453/22 to 455/4)

...

Q Okay, I think the testimony was in November you changed the credit; is that accurate?

A Yes.

Q Did you change the credit and the grade or just the credit?

A Just the credit.

Q What was the grade that you left, was it an F?

A I don't know." (3T 457/3 to 10)

JUNE 2016

The final graduating senior review, under the direction of Dr. Hackett, is conducted every June with each guidance counselor, together with the Supervisor of Guidance and the High School Principal. Each Guidance Counselor's case load of graduating seniors is reviewed to confirm all requirements were met; the student(s) had earned their Irvington High School diploma.

In preparation for this meeting, on June 9, 2016, Guidance Supervisor Hamm directed her secretary to print out all senior transcripts and historical grade screens. (1T 65/25 - 66/7) Ms. Hamm reviewed these records for each the approximately three hundred (300) graduating students. On Friday, June 17, 2016, in preparation for the review meeting scheduled on Monday, June 20, 2016, Claire Hamm sent questions to counselors requesting updated information.

At 8:21 a.m., Supervisor Hamm emailed Ms. Mendez-Azzollini as follows,

On Fri, June 17, 2016 at 8:21 AM, Claire Hamm <chamm@irvington.k12.nj.us> wrote:

Just a couple of questions that I have after reviewing your senior transcripts...

1) For J. D., I don't see a Geometry course listed on his transcript. Please advise.

2) For L. J., I am seeing five years of studies, but only four PE classes. Please advise.

3) For T. L., if he fails Spanish II and African American History, he will not have enough credits to graduate. Do we have an update from both teachers regarding his status in

both classes at this time?

4) For S. L., I don't see Financial Literacy (or an equivalent) on his transcript. Please advise.

5) For A. M., I don't see an visual/performing art elective. Please advise.

I will need your updates on these five students before you leave for the day today because, as you know, I am meeting with Dr. Hackett tomorrow to review all transcripts.

Thanks so much,
Claire"

Respondent replied, by email:

"From: Belinda Mendez-Azzollini
Date: Fri, Jun 17, 2016 at 1:18 PM
Subject: Re: URGENT: QUESTIONS RE SENIOR TRANSCRIPTS -
RESPONSES DUE TODAY FRI JUNE 17, 2016
To: Claire Hamm

can you please call me" (P-11)

Prior to receipt of the Friday email, on Wednesday, June 15, 2016, at 11:02 a.m., utilizing Power School, Respondent modified J.D.'s geometry class grade and credit. To accomplish this task, Ms. Mendez-Azzollini made multiple changes in various quarters of his tenth grade geometry class resulting in the change of the final grade from F to D and credit from zero to five. (P-8)

Complying with Respondent's request, Guidance Supervisor Hamm called asking if J.D. earned a passing grade for Geometry. Ms. Mendez-Azzollini insisted he did. Guidance Supervisor Hamm advised Respondent that J.D. had an F in geometry. Respondent insisted her Supervisor was looking at the wrong computer screen. At hearing, Guidance Counselor Hamm reiterated this conversation

as follows:

"I am very worried. Does this student have a passing grade for geometry?

And she said to me: Yes, yes, he is fine. Everything is fine. He has a passing grade.

And I said: Well, how can that be? Because I have a transcript that has an F and zero credits.

And she said: No, no, he is fine. You must be looking at the wrong screens.

And I said: Well, I am looking at Historical. Is that not what I am supposed to be looking at?

And she said: Well, yeah, but you must be looking at the wrong thing, because look at it now.

And so while I was on the phone with Ms. Azzollini I did go into the Power School, I did go into the historical grade screen, and sure enough, I saw something different. I saw a D with five credits. So I was very puzzled at that moment and I kept saying to Ms. Azzollini, I don't understand this. How could I have a transcript that says F with zero credits that was printed out a couple of weeks ago and now I am looking at a screen that says a D with five credits? I am really confused.

And she just kept saying: No, its right, it's right. You were probably looking at the wrong screen."

(1T 28/20 to 29/23)

During this conversation, Ms. Mendez-Azzollini failed to advise her Supervisor that J.D.'s Sophomore Geometry record was changed by her two (2) days previous, on June 15, 2015.

After speaking to Ms. Mendez-Azzollini, Ms. Hamm immediately contacted Director of Technology Bevan Subocz, communicating her concern of "Big Problems with Power School" believing it was a "computer glitch" which caused the grade change. Ms. Hamm added, "I wouldn't have in my wildest dreams thought anybody would have gone in and changed a grade." (1T 34/2 to 35/2)

Director Subocz immediately investigated. Her testimony disclosed, upon clicking the final grade in the Power School data

base, an edit stored grade page is opened. Any change in a grade is saved and recorded with the notation of the user. (2T 203/5 to 204/1) Subocz's investigation revealed J.D.'s credit and grade was changed on June 15, 2016. Ms. Subocz relayed her findings; user 3309 made multiple manipulations on J.D.'s transcript. Ms. Hamm requested the identity of user 3309. Upon further investigation, Director Subocz identified 3309 as Respondent, Belinda Mendez-Azzollini. (P-8)

JUNE 20, 2016

Prior to the commencement of the senior transcript meeting, Ms. Hamm informed Dr. Hackett and Principal Boone-Gibbs about the Director of Technology's finding regarding J.D.'s geometry grade. When Ms. Mendez-Azzollini came before the committee, her senior transcripts were reviewed. The final student was J.D. Dr. Hackett's testimony, corroborated by Ms. Hamm, Principal Boone-Gibbs and Respondent exclaimed,

"We get to J.D. and then she says fine. And Ms. Hamm says are you sure, she says yes, he is fine. So Ms. Hamm says we have an issue because I had a D - there was an F, I am sorry, and now the passing - Ms. Hamm said what did he get in geometry and Ms. Azzollini said a D. And Ms. Hamm said there's a problem because I saw an F when I did my review and now it is a D. So Ms. Mendez-Azzollini said, no, no, he is fine, he is fine. So I believe at that point I said, Ms. Mendez-Azzollini, did you change the grade, she said no.

Q. Who was there when you said that, when you asked the question?

A. Ms. Boone-Gibbs and Ms. Hamm. So I said again because now I am getting a little nervous, I said Ms. Mendez-Azzollini, did you change the grade. She said, no. I think I might have asked her two or three times.

Q. And her answer was the same?

A. Her answer was the same. At that point I knew something was wrong. I didn't quite know what it was. I knew something was wrong." (2T 247/5 to 24)

After the denials, Dr. Hackett interrupted the meeting directing Respondent to return with a Union representative. President of the Irvington Education Association, Eileen Wesley, a high school social studies teacher, returned to the meeting with Respondent. In the presence of her representative, Dr. Hackett again asked Respondent if she had changed any grades. Ms. Mendez-Azzollini expressed, she "had not." (3T 378/20 to 25) Thereupon, Dr. Hackett showed Respondent and Ms. Wesley a copy of the historical grade screen, researched by Technology Director Subocz evidencing that J.D.'s grade was modified by an individual using Respondent's user code. (P-6, P-8)

Soon thereafter, Ms. Mendez-Azzollini acknowledged she changed J.D.'s grade from F to D. Dr. Hackett asked why the grade change was from an F to a D instead of an A, B or C. The Superintendent sought documentation as to why Respondent changed the grade and why that grade was a D. Ms. Mendez-Azzollini informed she believed J.D. had taken Summer school. Thereupon, Director Hackett requested Ms. Wesley accompany Respondent to her office to find the Summer school documentation.

When they left the room, Dr. Hackett directed the Principal to meet privately the student. J.D. informed the Principal he

neither spoke of nor attended Summer school to rectify his geometry failure.

In addition to Ms. Wesley, another counselor and Guidance Secretary assisted to find Summer school lists. Approximately 15 to 20 minutes later, finding no documentation to support her claim, Respondent along with Ms. Wesley returned to the meeting informing the participants of the lack of documentation. Thereupon, Dr. Hackett instructed Ms. Mendez-Azzollini to leave the school grounds, notifying "she would be officially suspended pending further investigation." (2T 225/9 to 10; 3T 467/9 to 469/21)

POSITION OF THE PARTIES

The parties presented argument at hearing and through post hearing submissions; the essence of each is as follows:

School District of the Township of Irvington

The District maintains Respondent's conduct was deliberate and calculated, warranting dismissal from her guidance counselor position at the Irvington Board of Education. She engaged in a series of unethical acts. She had numerous opportunities to cure her failure to provide J.D. a geometry course and/or admit her changes in the Power School data base. Her conduct, the District avers, cannot be rehabilitated by interventions available to a school district.

Irvington views Respondent's defense as lacking genuine

candor as she blamed others and feigned confusion.

Arguing her behavior throughout the 2015-16 school year presents a series of deliberate actions, "unbecoming conduct," Counsel reflected upon her deportment during the senior transcript meeting,

"The meeting of June 20, 2016, was the culmination of all deception demonstrated by the Respondent, but also another failed opportunity to admit her error and accept the consequences. On this occasion, when confronted with what appeared to be an unauthorized grade and credit change, the Respondent chose to lie to her Supervisor, Building Principal and Superintendent of Schools, when asked repeatedly and simply, did you change the grade? The transgression was further enhanced when the Respondent suggested that the Student himself had told her he had taken summer school and passed the class. This myth was quickly dispelled when the student was called and denied her version. The Respondent finally relented and suggested that she changed the grade in June because she was confused when she audited the student's transcript and noticed that he had an F and 5 credits. What she conveniently failed to disclose to the committee was that there was no confusion to her, since it was she who had changed JD's credits to 5 earlier that year on November 10, 2015. At no point in this process did the Respondent simply take a principled stance and admit her fault.

Here, the Respondent's conduct did not only not meet the high standards expected of public employees, it demonstrated a lack of fundamental honesty and integrity in a position in which guidance is sought by our students. **In re Fulcomer**, 93 N.J. Super. 404 (App. Div. 1967)." (Brief pps 14-15)

Moreover, neither Respondent's years of service, positive evaluations, award recognition, or personal story nullify her conduct, avers the district. Trust is lost between the District and Guidance Counselor Belinda Mendez-Azzollini.

Accordingly, Irvington requests this arbitrator sustain the Tenure Charges and determine dismissal is the appropriate

discipline.

Belinda Mendez-Azzollini

Respondent maintains the fact pattern in this matter is "not illustrative of the type of nefarious, intentional, misconduct that would warrant loss of tenure." Ms. Mendez-Azzollini argues she held a good faith basis "at least in her mind" to change J.D.'s credit based upon her mistaken belief J.D. passed geometry when she made the credit change in November 2015. (Brief at 2, 3)

Acknowledging she is not free from blame, Respondent contends her "serious error" was unintentional. Counsel cites recent tenure cases arguing the loss of tenure in TEACHNJ decisions are predicated on more egregious conduct than Respondents. (See In re Gilda Nicole Harris, Agency Dkt. Nos. 342-11/14 & 379-12/14, final decision, (October 2, 2015); In re Carol Zepralka, Agency Dkt. No. 162-7/15, final decision, (September 4, 2015))

Comparing her actions to those in the cases cited by counsel, Respondent asserts her missteps do not warrant the forfeiture of tenure. (Brief at page 5) Particularly, Ms. Mendez-Azzollini is aggrieved to face punishment for an act that did not violate any District policy - reasoning the failure of the District to have a written policy for processing grade changes is a "severe, even fatal deficiency in the tenure charge."

In addition, Ms. Mendez-Azzollini claims her \$80,000 settlement from the District in 2013, J-1, and Dr. Hackett's lack of knowledge of the settlement raises the inference of a potential

inappropriate factor in the District's decision to file tenure charges. Moreover, Dr. Hackett's failure to initially confront Ms. Mendez-Azzollini about J.D.'s grades without any effort to have her union representative present, violated her *Weingarten* rights to union representation.

Listing other mitigating factors, Respondent notes she was burdened with a work load disproportionate to that of other guidance counselors. And, reassignment to an elementary school would obviate the District's concern about any future grade changes. Finally, Respondent views the tremendous impact her loss of position on her family as a mitigating factor. Counsel concludes,

"As a result, were Ms. Mendez-Azzollini to be terminated, her entire family would lose most of its income, its health insurance coverage, and its retirement income and associated benefits. Such a devastating impact is unwarranted given the foregoing fact pattern. Accordingly, Respondent urges the Arbitrator to exercise her discretion to refrain from penalizing Ms. Mendez-Azzollini beyond what would be appropriate for a first-time offender under the circumstances." (Brief at 12)

ANALYSIS OF EVIDENTIARY FINDINGS

Has the School District of the Township of Irvington, Essex County, met its burden of establishing by a preponderance of the credible evidence the tenure charges against Respondent, Belinda Mendez-Azzollini?

If so, do the tenure charges warrant dismissal or a lesser discipline?

New Jersey provides protection to tenured guidance counselors such as Belinda Mendez-Azzollini from dismissal for "unfounded,

flimsy or political reasons.” Spiewak v. Rutherford Board of Education, 90 N.J. 63, 73 (1982) The Statute expresses, *inter alia*, tenured staff “shall not be dismissed or reduced in compensation except for inefficiency, incapacity or conduct unbecoming such a teaching staff member or other just cause....” N.J.S.A. 18A:28-5. While “conduct unbecoming” is not defined by statute, it is an “elastic standard” determined on a case by case basis, embracing a wide range of conduct. (In The Matter of Tenure Hearing of Thomas Strassle and the School District of the Township of Ulbridge, Middlesex County, Agency Dk. No. Number 131-5/16 (Biren, October 5, 2016)).

At all times, the District maintains the burden of establishing by a preponderance of the credible evidence Brenda Mendez-Azzollini engaged in conduct unbecoming a public school guidance counselor. Upon consideration of this record, with emphasis upon resolution of the credibility of the witnesses, I **find** the District has met its burden.

The evidentiary findings above reveal the District has established Belinda Mendez-Azzollini engaged in the conduct outlined in *Charges 7 through 16, infra* at pages 2-3. Her behavior resulted in the inability of J.D. to graduate with his class in June 2016. J.D. had no knowledge of this possibility until the day the students practiced their graduation ceremony. From June 2014 through June 2016, Respondent failed to provide him

opportunity to obtain a passing grade in geometry, a requirement for graduation. While Respondent's conduct affected only one student, J.D., her actions from November 2015 through June 20, 2016 present a series of an intentional deliberate acts establishing conduct unbecoming.

During her testimony, and in argument, Ms. Mendez-Azzollini repeatedly claimed she did not "intentionally fabricate or change any grade"; that she "mistakenly changed" the credits and grade. Reviewing the record and Respondent's demeanor during hearing, I **find** her position unworthy of belief. Respondent's testimony was not credible.

Even after finally admitting she was "untruthful" to Dr. Hackett, Principal Boone-Gibbs and Guidance Supervisor Hamm at the senior transcript meeting, Respondent attempted to limit her culpability. On direct,

"Q. Now you heard obviously the testimony from a number of people indicating that you were untruthful during the meeting, did you deny changing J.D.'s grade at all?

A. At first, yes, I did. My mind wasn't clear in that meeting, I actually was coming back from suspension I was in the rubber room five days prior to that and I panicked, I was scared and I definitely wasn't thinking clearly." (3T 423/18 to 424/1)

Ms. Mendez-Azzollini intentionally, on November 10, 2015, changed J.D.'s geometry credit from zero (0) credits to five (5) credits. Ms. Mendez-Azzollini purposefully made numerous manipulations in Power School on June 15, 2016 resulting in J.D.'s final "D" geometry grade with five (5) credits. Ms. Mendez-

Azzollini deliberately, pre-meditatively, and wantonly lied to Guidance Supervisor Hamm on June 17, 2016 that J.D. had a passing grade, claiming "everything is fine" and the "wrong screen" was being viewed. Ms. Mendez-Azzollini, on at least three (3) occasions on June 20, 2016 at the senior transcript meeting, consciously lied to Superintendent Hackett, Principal Bone-Gibbs and Guidance Supervisor Hamm asserting she did not change J.D.'s geometry grade. And, when she finally acknowledged she made the changes, Ms Mendez- Azzollini "lied" on J.D- the student she was charged to protect.⁵

Accordingly, this record is patently clear. Irvington School District has established by a preponderance of the credible evidence Ms. Mendez-Azzollini engaged in the actions expressed in paragraphs 7 through 16 of the Tenure Charges, *Conduct Unbecoming a Public School Guidance Counselor*.

Does the finding of Conduct Unbecoming a Public School Guidance Counselor warrant dismissal or a lesser discipline?

Brenda Mendez-Azzollini, prior to the 2015-2016 school year, served both the District and her students in performing the duties of a guidance counselor (R-9). These duties included, *inter alia*,

"(GUIDANCE COUNSELOR

DUTIES

The Guidance Counselor is responsible for, but not limited to the following duties:

1. Assemble, maintain and interpret information regarding

⁵ See Dr. Hackett's rationale for seeking dismissal.(3T 264/12 to 267/5)

pupils

2. Plan and supervise advance scheduling and orientations as required
3. Counsel pupils individually and in groups
4. Consult with teachers and other school staff members regarding the adjustment of individual pupils
5. Conduct conferences with parents in order to help them better understand and assist in the educational, vocational, personal and social adjustment needs of their children
6. If necessary, adjust the programs of pupils having difficulty in school
7. Identify pupils who require evaluation by the Child Study Team, collate the data necessary for the referral and refer these pupils to the Team after notification to the child's parents
8. Schedule case conferences between the Team and the faculty
9. Coordinate the implementation of the Child Study Team recommendations in the school
10. Participate in the school testing program and assist in interpreting the test results to parents, pupils and teachers" (R-9)

The District views these duties as requiring ethics and the ability to be trusted, reviewing confidential documents and engaging with children, colleagues, supervision, and parents. If she had not changed J.D.'s grade, or had admitted her mistake, the District would not have sought her dismissal. Dr. Hackett, explained,

"But she changed the grade so she wouldn't get in trouble. In my world and how I believe you take whatever consequence comes your way when you make a mistake but you do not change a grade and possibly allow a child to get a diploma who has

not earned it. You do not do that, you say Dr. Hackett, Ms. Hamm, Ms. Boone-Gibbs, I made a mistake, I never made sure this kid was re-enrolled in geometry. And then I would have to scramble and make it happen. I am not saying it wouldn't have been a consequence for her but it wouldn't have been tenure charges. It wouldn't have been my belief that tenure charges. Tenure charges came from the fact I cannot trust her again." 2T 265/16 to 266/3)

Seeking a lesser discipline than dismissal, Respondent raised defenses and requests for this arbitrator to consider mitigating factors as follow:

1. Failure of the Board to have a written policy on grade changes. This failure, Respondent argues, is a fatal flaw to the tenure charges. The record, however, does not support this position. Rather, testimony revealed all employees recognize documentation is necessary to change grades, and prior approval is required.

2. Weingarten Rights. Ms. Mendez-Azzollini claim her statutory rights were violated is not consistent with this record. Dr. Hackett appropriately stopped the senior transcript meeting, directing Respondent to return with Union representation, after Respondent lied about changing J.D.'s grade. She was not obligated to do so at the commencement of the meeting wherein the transcripts of all the seniors' Respondent counseled were reviewed.

3. Bias and Burdens. Respondent did not proffer any corroborative evidence supporting her inference Dr. Hackett held an inappropriate bias toward her due to the 2013 Settlement of her

2010 Civil Action, J-1. Dr. Hackett hired Ms. Mendez-Azzollini as a guidance counselor in 2004 and approved her request for transfer to the high school in 2014, after Respondent received eighty thousand dollars (\$80,000) in settlement. Likewise, Respondent failed to present documentary or testamentary evidence in support of the assertion her duties and work burdens were greater than any other guidance counselor and/or affected her behavior.

Finally, Respondent's suggestion that placement in an elementary school could obviate District concern as these students do not receive grades, is not an appropriate request for mitigation. The district cannot be required to limit its ability to assign Guidance Counselors where needed.

Brenda Mendez-Azzollini's conduct in the school year 2015/2016 cannot be rehabilitated by workshops, professional development courses, or any interventions available to Irvington. Her conduct has broken the level of trust the District expects to rely upon for a guidance counselor to perform requisite duties, R-9.

AWARD

The School District of the Township of Irvington, Essex County has established Belinda Mendez-Azzollini engaged in the actions expressed in paragraphs 7 through 16 of the Tenure Charges, *Conduct Unbecoming a Public School Guidance Counselor*.

There is insufficient evidence in this record to support a

discipline less than dismissal. Accordingly, Belinda Mendez-Azzollini engaged in unbecoming conduct constituting just cause for dismissal.

DATED: 5/27/17

Carol F. Laskin
CAROL F. LASKIN, ESQUIRE

STATE OF NEW JERSEY :

COUNTY OF CAMDEN :

I CERTIFY that on May 25, 2017

I, CAROL F. LASKIN, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Decision and Award.

DATED: May 25, 2017

Lynda A Green
NOTARY PUBLIC OF THE
STATE OF NEW JERSEY

