

Pursuant to Referral by the Commissioner of Education  
State of New Jersey  
Before Timothy J. Brown, Esquire

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**In the matter of:**

**The Tenure Hearing of  
Irene Sincaglia**

**Board of Education of the  
Andover Regional School District,  
Sussex County**

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: **Agency Docket No. 44-2/18**  
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**Decision and Award**

**Appearances:**

**On behalf of the Board of Education of the  
Andover Regional School District,  
Sussex County:**

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**On behalf of Irene Sincaglia:**

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**Introduction**

This matter arises from tenure charges dated February 2, 2018 and received by the New Jersey Department of Education, Bureau of Controversies and Disputes on February 23, 2018; charges submitted by **the Board of Education of the Andover Regional School District, Sussex**

**County** (the School District or the District) based upon Conduct Unbecoming and Other Just Cause pursuant to N.J.S.A. 18A:6-10, N.J.S.A. 18A6-11, N.J.S.A. 18A6-16; N.J.S.A. 18A6-17.1 and N.J.S.C. 6A:3- 5.1 against Irene Sincaglia (Respondent), a tenured school nurse, a March 19, 2018 determination by the Department of Education that the tenure charges are deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by the arbitrator of Respondent's defenses and any motions filed with the arbitrator and a March 19, 2018 referral of the tenure charges to the undersigned by the Department of Education, pursuant to *P.L. 2012, c. 26, as amended by P.L. 2015, c. 109*, to hear and decide the tenure matter.

On March 28, 2018, the Undersigned executed a **SEALING ORDER** in the matter requiring, among other things, that all documents admitted into evidence shall have personal identifiers of any student redacted; all references to any student in any stenographic notes or the Arbitrator's Decision shall be by initials only and that:

The evidentiary record in the arbitration shall be impounded and sealed and forwarded to the Commissioner of Education in sealed form at the conclusion of the arbitration proceeding.

The hearing in the matter was conducted on April 25, May 1, 11 and 21, 2018, in Newton, New Jersey. At the hearing, all parties were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. A transcript was taken of the hearing. Respondent was present for the entire hearing and testified on her own behalf. At the close of the hearing on May 21, 2018 the parties elected to submit written closing argument, upon the receipt of which by the arbitrator on June 12, 2018, the matter was deemed submitted.

This Award is made following my careful consideration of the entire record in the matter, including my observation of the demeanor of all witnesses.

## **Issues**

The issues presented in this matter may be accurately stated as follows:

Has the District met its burden of establishing by a preponderance of the evidence the truth of its tenure charges against Respondent, and if not, what is the appropriate remedy?

## **The Tenure Charge**

The tenure charges in this matter are based upon Conduct Unbecoming and Other Just Cause pursuant to N.J.S.A. 18A:6-10, N.J.S.A. 18A6-11, N.J.S.A. 18A6-16; N.J.S.A. 18A6-17.1 and N.J.S.C. 6A:3- 5.1 and state:

### CHARGE ONE: CONDUCT UNBECOMING

- i. During the period from September 2017 to present, Respondent has demonstrated unbecoming conduct in the following manner:
  - a. The Respondent has failed to maintain a standard of care for the protection of a student commensurate with her assigned duties and responsibilities.
  - b. The Respondent has failed to confer and advise Administration when she received a completed individualized health plan from the student's physician which detailed the necessary accommodations and or nursing services to be provided.
  - c. The Respondent has misrepresented to Principal that an individualized health plan may not be required for a student when physician approved plan was in her possession.
  - d. The Respondent has misrepresented to Administration that she did not have in her possession an emergency individualized health plan specifying the delivery of accommodations and services needed by a student in the event of an emergency.
  - e. The Respondent failed to finalize the written healthcare provisions required under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Sec.794(a), for a student.

- f. The Respondent failed to review, summarize, and transmit available health and medical information regarding a student to the Child Study Team.
- g. The Respondent failed to inform the principal of receipt of medical information from the student's medical home providing accommodation's information used to develop an individualized health plan and emergency health plan.
- h. The Respondent has falsely stated to Principal that an IHP could not be finalized due to a lack of parental consent when the school nurse was the parent.
- i. The Respondent has failed to render a prompt report as required by district policy.
- j. The Respondent has placed a student at risk for anaphylactic shock by not developing an individualized health plan and individualized emergency health plan.
- k. The Respondent has placed a student at risk for failing to have a form on file permitting the school district to contact and communicate with a student's physician regarding an individualized health plan and individualized emergency health plan.
- l. The Respondent has placed the district at risk when in her capacity as the school nurse, she contacted student's physician without having a signed authorization form on file and commingled her role as school nurse and parent.
- m. The Respondent has failed to follow Board policies and procedures including but not limited to Board Policy No. 5310 "Health Services"; Board Policy No. 5308 "Student Health Records"; Board Policy No. 5330 "Administration of Medication", Board Policy No. 3214 "Conflict of Interest", Board Policy No. 3280 "Liability For Student Welfare".

CHARGE TWO: CONDUCT UNBECOMING

- 2. The Board restates the allegations contained in Charge One and re-alleges and incorporates them by reference as if fully set forth at length herein.
- 3. During the period from September 2017 to present, Respondent has additionally demonstrated unbecoming conduct in the following manner:
  - a. The Respondent has failed to adhere to school policies and procedures.
  - b. The Respondent has been insubordinate.
  - c. The Respondent has failed to comply with administrative directives.
  - d. The Respondent has failed to proceed with the verification process for the free and reduced lunch applications and has

- caused the district to miss its deadline and has required the district to request an extension for which the district may be at risk of having its funds held.
- e. The Respondent has failed to comply with Board Policy No. 3270 "Professional Responsibility" and Board Policy No. 8540 "School Nutrition Programs".
  - f. Respondent has approached teachers and related service providers in the hallway and in their classrooms to discuss her own child's progress while school was in session and in contravention to the Principal's directive.
  - g. The Respondent has engaged in a pattern of behavior contrary to the position of a tenured teaching staff member.

### CHARGE THREE: OTHER JUST CAUSE

- 4. The Board restates the allegations contained in Charge One Through Charge Two and re-alleges and incorporates them by reference as if fully set forth at length herein.
- 5. During the period from September 2017 to present, Respondent has additionally demonstrated other just cause to warrant dismissal in the following manner:
  - a. The Respondent has improperly allowed her child to use the restroom in the nurse's office and without reason for same.
  - b. The Respondent has improperly taken her children into the teacher's lounge to fill up their water bottles without authorization to do so.
  - c. The Respondent has kept her child in the nurse's office for an improper amount of time, sometimes over four hours, resulting in missed instruction and without documented reason for the length of time spent in the nurse's office.
  - d. The Respondent has kept her child in the nurse's office for recess and lunch although no medical documentation was provided to support her actions.
  - e. The Respondent has kept her child in the nurse's office during outdoor physical education class causing the child to be absent from physical education without medical documentation to support her action.
  - f. Respondent has sent her child to Occupational Therapy room for recess without medical documentation to support her action.
  - g. Respondent has contacted teachers, therapists and child study team members during the school day to discuss child's progress, express her concerns and to request private evaluations be conducted after the Principal has directed Ms.

Sineaglia as shared with other employees to after hours and during scheduled meeting times.

- h. The Respondent has used her position as school nurse to obtain the above unwarranted privileges and advantages for her children in contravention of Board Policy 3214.
- i. The Respondent has consistently failed to follow instructions and violated the District's policies and procedures.

The cumulative effect of Respondent's misconduct as set forth above constitutes other sufficient cause sufficient to warrant dismissal.

## **Facts**

### **Respondent**

Respondent has been employed by the District as a School Nurse since September 2013 and has always worked at the Florence M. Burd Elementary School (FMB). She has consistently received high ratings on her observations and reviews and has no history discipline. Following the 2016-2017 school year, Respondent and her husband decided to transfer their child MS<sup>1</sup> - a special needs student - to the District from a small, private school. After some delay, MS's file was transferred to the District during the summer of 2017, a District Child Study Team (CST) was assigned to MS, and an initial, transfer IEP meeting was held by the Child Study Team and parents on August 1, 2017.<sup>2</sup> During the meeting Respondent expressed concern about keeping her roles of mother of a student and school nurse separate. The meeting resulted in a continuation of the then existing "Service Plan" previously in place at MS's former school, with the understanding that the District's CST would meet again after a period of observation and getting to know MS.

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<sup>1</sup> Students are referred to herein only by their Initials. Respondent has two children enrolled in the District; of which MS is involved in this matter.

<sup>2</sup> All dates are 2017 unless otherwise indicated.

Respondent and her husband retained legal counsel on or about September 8 or 9 for purposes of representing themselves and MS in regard to the District providing MS “a free, appropriate public education.” The record establishes that the District became aware of Respondent’s legal representation on or about September 18.

### **MS**

MS was enrolled in FMB. MS is classified as autistic and has asthma, multiple food allergies and cold urticaria. Cold-urticaria is an allergy to cold temperatures or chilling weather conditions and can result in hives and, in some cases, anaphylactic shock. As the parent of MS, Respondent supplied the school nurse with a prescribed inhaler for asthma and an epi-pen for anaphylactic shock. The record establishes that an “Allergy Action Plan” dated October 18 for peanut and tree nut allergies was in the school nurse’s files. The Action Plan listed EpiPen and Proair HFA as medications and provided directions for EpiPen auto injection in the event of anaphylaxis.

### **September**

During the first weeks of the school year, Respondent regularly “took a peek” at MS while the student was in the cafeteria to check that MS was not exposed to allergens, to check that the student was not experiencing hives from recess (recess for MS was scheduled immediately before lunch) and to check on MS’s social interaction. The record also establishes that throughout the month of September and during the first week of October, teachers and other professionals such as the occupational therapist and speech pathologist would discuss MS in-passing with Respondent and Respondent would do the same with them. At one point during the month of September, Respondent asked her

school principal, Cindy Mizelle, to encourage other professionals in the school to not approach Respondent during her school day to discuss non-health related matters concerning MS, that those were parent matters to be raised at other times. Also during the month of September principal Mizelle became concerned that MS was going to Respondent's nurse's office to avoid class or use the lavatory there rather than those provided for students. Respondent shared this concern. However, Mizelle held the view that Respondent was too encouraging of MS's "going to the nurse conduct" and facilitated the student's use of the nurse's bathroom and visits to the nurse's office to avoid school. Mizelle was also concerned that Respondent was inappropriately engaging teachers and other staff during school hours to discuss non-health-related, school and/or IEP-related matters concerning MS.

Principal Mizelle testified that for the first five weeks of the 2017-2018 school year, Respondent performed her duties as a school nurse responsibly, in a proper fashion. In any event, Mizelle also testified that before an October 6 meeting between Respondent and management, Mizelle had not communicated her concerns or issues about the nurse's conduct to Respondent. However, Mizelle did communicate her concerns about Respondent's conduct to the District's Superintendent and was instructed to meet with Respondent to address the concerns.

## **October**

### **Meeting of October 6**

On October 6 Mizelle and District Supervisor of Special Services and Learning (and in charge of the District's Child Study Teams) Lee Ann Smith met with Respondent

to discuss issues related to Respondent's job performance.<sup>3</sup> As to the content of the discussions during the meeting, the memorandum documenting the meeting, written shortly after the meeting by Smith, provides:

Friday, October 6, 2017

Due to a number of reports, Mrs. Mizelle and myself met with her [Respondent] to remind her about not crossing the lines between being a nurse and being a mom. Son (Sic) reports from staff members are as follows:

- Irene approached Mrs. Pepe regarding speech services asking for a change in frequency/duration of services
- Irene approached the OT regarding her [child's] services
- Irene brought her [child] into the teacher's lounge to fill up [the child's] water bottles from the teacher's water dispenser
- Irene brought her [child] to have lunch in the nurse's office prior to any health plan
- Irene continually went to the lunchroom to check on her [child]
- Irene approach the case manager, Nick Wilbur regarding IEP concerns during the school day
- Irene approached her [child's] teacher about various IEP concerns during the school day

During the meeting she asked if the conversation was about her [child], to which Cindy replied "no". We brought up the concerns about her role as a nurse and not crossing the line. We shared reports and incidents to which she denied. Irene stated that people have approached her about her [child], not the other way around. She also stated that other parents that work in the district, such as Tara Rossi and Mindy DuCharme, check on their kids throughout the day. I told her that wasn't true but on the off chance it was I would remind them to not do that. There was a conversation to which Irene admitted taking her [child] to her office when [the child] needed a break from recess. We informed her that wasn't appropriate and recess was a break. There was a discussion about [the child] needing to use the restroom during lunch and [the child] tried to go to the nurse's office to use the restroom there and Cindy redirected [the child] to the student restroom off the gym. During the conversation Cindy asked Irene how she felt her [child] was

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<sup>3</sup> When Respondent was asked to speak with Mizelle, she was told by the principal that the conversation would not be about MS and was not told that the Child Study Team supervisor would be present. The inclusion of the Child Study Team Supervisor – an individual who had a supervisory roll over MS's IEP process - in a discussion ostensibly relating *only* to the school nurse's performance and not to matters related to MS, highlights the interrelated, overlapping and confusing character of the conduct of the parties and the circumstances involved.

doing in the new school, to which Irene replied” I’m not going to discuss my [child]”. At that point Irene talked about her [child’s] diagnosis of Cold Urticaria and explained the issues with the school day such as recess, gym class, etc. We informed her multiple time that she needed to treat her children as she would any other student while acting as school nurse.

According to Mizelle, earlier in the school year Respondent had come to her complaining that staff members were approaching her during the school day to discuss MS and asked that Mizelle speak with them. Mizelle thereafter instructed staff members not to discuss MS with Respondent during school time, but that staff members thereafter - and prior to October 6 - reported to Mizelle that Respondent was approaching them and discussing MS. In any event, Mizelle testified that at the October 6 meeting, she communicated to Respondent that the nurse should honor the line between her role as a school nurse and her role as a parent.

#### **District Evidence of Respondent’s Interaction with Staff**

MS’s third grade classroom teacher Jennifer Moriarty reported that MS ate lunch in the nurse’s office “multiple times” in September and October, that “multiple times during the fall” Respondent approached Moriarty and asked how MS was doing, and “often” wanted to show the teacher the student’s work and ask the teacher’s opinion of it. At the hearing, Moriarty testified Respondent approached her about once a week and that on one such occasion Respondent had MS with her and asked Moriarty about work MS had done. Because she didn’t think it appropriate to speak about the student in the presence of the student, Moriarty testified, she did not directly address Respondent’s question.

CST case manager Nicholas Wilbur reported that “since September” he had observed Respondent in the lunch room on a number of occasions and had been approached by Respondent about MS’s homework in late September and that Respondent had handed him Vanderbilt Assessments of MS during a school day “in November.”

Speech therapist Jennifer Pepe reported that sometime in early September she went into Respondent’s office and talked to Respondent about MS’s speech schedule and that sometime “in the Fall” and after the principal had told Pepe Respondent did not want staff approaching her during the school day to discuss MS, Respondent saw Pepe in the hallway and asked Pepe to speak with her while Respondent was at the copy machine and asked the therapist about MS fabricating stories.

#### **October 27 IEP Meeting**

On October 27, the District conducted an annual IEP meeting for MS, attended by MS’s IEP Case Manager Wilbur, Respondent and her husband and at different times during the meeting different members of the CST team, including MS’s primary classroom teacher, the school’s Occupational Therapist and the school’s Speech Pathologist. CST supervisor Smith did not attend. Nor did principal Mizelle who is not a member of the CST. The meeting was recorded by both Respondent and the District. The Respondent’s recording was transcribed and admitted into evidence at the Tenure hearing.

As reflected in the transcript of the IEP meeting, the October 27 meeting was long and establishes that rather than taking on a hearing-like quality, the meeting was a discussion-like forum with individuals frequently talking over or cutting off others as

they discuss various aspects of the challenges presented by MS and explored the student's learning-related and health-related concerns. Significant time was spent on discussions related to the student's food allergies, the student's Cold Urticaria, the student's emotional needs including the need to take sensory breaks to let off steam, the student's and parent's challenges with homework at home and wish that homework be done in school during the school day or in school during homework club, the concern that the student was being routinely pulled from math in order to attend sessions with the OT and Speech Pathologist, the concern that MS should not go outside for recess under conditions that could result in his getting hives due to his cold allergies – conditions that varied based upon temperature, wind and precipitation; concern about where MS would go if recess was not appropriate, concern about who would supervise MS during recess to monitor weather conditions and MS's skin condition, concern about the need for MS to take sensory breaks on a non-scheduled basis when the student was feeling anxious and how MS would be monitored for such need and where the student would go and who would supervise the student, concerns about potential scheduled breaks and where the student would go and who would supervise the student for such as well as what subjects the student would be pulled from for such scheduled breaks. The meeting was an exploration with many of the participants learning about different aspects of the students and the student's challenges for the first time.

Although case manager Wilbur offered very few explicit statements about details of the student's IEP or explicit answers to Respondent's questions during the meeting, the gist of Wilbur's statements and responses can fairly be interpreted as establishing: (1) that the CST's consideration of how best to address MS's needs was ongoing; (2) that the

CST had enough health-related information about cold urticaria and declined Respondent's offer to have the student's doctor provide information to the CST; (3) that the administration would have to determine which staff would be responsible for monitoring MS during recess and lunch and establish a plan on how to provide breaks, break locations and related supervision for MS; (4) that there was nothing different about Respondent asking Wilbur about her child's IEP-related questions during the school day than other parents calling the case manager about their children during the work day; (5) that Respondent was not precluded from providing MS school-nurse-services in the same manner she would provide such services to other students and (6) that Respondent would draft an individual health plan (IHP) for MS relating to cold urticaria to be attached to MS's plan.

Wilbur's wrote an email to Lee Ann Smith, Principal Mizelle<sup>4</sup> and consultant Courtney Wisinski during the afternoon of October 27 summarizing the meeting as follows:

Hi All

I had a very thorough meeting for [MS] this morning. A few things came up that I did not know how to fully address. Also, not sure if I may need administrative assistance, so we agreed that I would reach out to you guys.

Irene brought up MS's allergy condition to cold weather. Since it is getting cold out, she asked for a medical/cold plan<sup>5</sup> to be developed. At first, she wanted it to be placed into IEP. I initially said I would check on this, but finished off by saying since it had no impact on his academic capabilities that it could be a plan outside of his IEP. His condition is already documented in his IEP. Basically, any temperature below 40 he definitely cannot go out. However, there

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<sup>4</sup> Mizelle testified that she received no communication from Wilbur in the immediate aftermath of the October 27 meeting.

<sup>5</sup> I note that the plan to deal with MS's medical/cold allergy related conduct by the school is referenced in Wilbur's email in the singular.

has been instances when it was warmer than 40 and he has had an allergic reaction. Some ideas were brought up for recess time that include: helper at younger grade lunch, give him a chrome book, have a buddy come in to give him company. However, we did not finalize anything. Just begun conversation. Also, she questioned fire drills during cold weather.

Second thing she brought up was creating a “structured” break period for him during the day.<sup>6</sup> This had some back and forth. I feel she contradicted herself because she was telling me that we need to create more of a structure break period for him, but then she said that their private psychologist does not fully support break times because he uses it to avoid work. Anyway, we began discussing possibly creating a 5 minute “structured” break time in the afternoon. The only issue is to find adult supervision. I indicated that if we agree on a time for break, we would definitely be able to provide supervision. We ended by agreeing on that I would start the conversation with staff here and she would speak to her private psychologist.

The last thing Irene mentioned what should she do if staff approach her during school hours about MS? I truly did not know how to really respond to this because we call parents throughout the day. She gave an example of Donna approaching her about MS following an OT session. Irene asked is that OK or should it not happen? I think I may have said that Donna could email her instead of going to her directly. I do not fully remember how I responded...

## **November**

Mizelle testified that throughout the month of October the CST as well as herself “mentioned” to Respondent the need for a health plan for MS. Mizelle did not identified any further detail of her claim other than to testify that:

I would approach Ms. Sincaglia and let her know that we need to do a health plan and we would discuss that, yeah, we’ll get

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<sup>6</sup> The structured break idea referenced by Wilbur – in the sense of a standard time and place - was actually brought up by another member of the staff at the meeting in response to Respondent’s explaining how MS needs occasional sensory breaks on an as-needed basis depending upon the circumstances and that those breaks are best to be of a “structured” or consistent character in terms of where they would be taken and who would supervise the child. Rather than such an open-ended, ever-changing process, it was suggested that a standard break time and place would be more logistically viable, with its time targeted to when the child is usually in need of a break, with the child then having the option to take advantage of the break or not.

something on the calendar or she was waiting for more documents or something so there was a reason why, but we were aware that we needed to get one.

Mizelle also testified that the school nurse and school principal are responsible for preparing health plans and that it would normally take only a day or two to prepare them.

Mizelle testified that on or about November 15 Respondent came to her "distracted" about a fax Respondent was supposed to receive at FMB but had not come through. Respondent stated at the time that the fax contained confidential student health information. Mizelle testified that she spent "some time" with Respondent attempting to determine what had happened to the fax, including having the District's IT person review the fax machine log and determine that the fax had come through. According to Mizelle, Respondent did not tell her the fax was information related to MS or related to MS's health plan.

Mizelle also testified that at some point she was handed an envelope for hand-delivery to Respondent. Mizelle testified that she did not know what was in the envelope and that unbeknownst to her the envelope; (1) contained the fax for which Respondent was search on November 15 and (2) the fax was a health plan for MS signed by MS's doctor.

According to Mizelle, on November 20 she spoke to Respondent about scheduling a time to create a health plan and that Respondent responded that the lawyers were working on it. Mizelle testified that prior to that time she did not know "lawyers were involved in this." On November 21 or 22 Mizelle had another conversation with Respondent during which Respondent reported that she and her husband were taking MS to a new doctor and the new doctor thought there might be another condition going on

with MS and was going to try taking the child off medication and going to put the child on steroids without restrictions for going outside in the cold. Mizelle replied that that sounded great.<sup>7</sup>

On November 27 Mizelle was approached by Courtney Wisinski, the District's Special Ed Associate Consultant, and asked about the status of the health plan for MS. Mizelle reported that she had asked to schedule a meeting with Respondent and that Respondent had state that the lawyers were discussing the issue and the nurse was not sure if there was going to be a health plan or a 504 plan, and that Respondent did not want to discuss the matter until the lawyers had made a decision. Mizelle sent an email to Wisinski stating the same and by return email Wisinski expressed confusion about the matter of a health plan and referred to an enclosed copy of a November 16 email received by the District's attorney from Respondent's attorney stating, in relevant part:

Thank you for your prompt responses. I spoke with my client.

I was advised that mom, as school nurse, is working on developing a comprehensive health plan in consultation with [MS's] allergist. When it is completed she will provide a copy to the case manager and I will also send you a copy for your records...

In her view, Meltzer considered the information she had received about the MS health plan conflicted.

According to Mizelle's notes, on November 29 she again asked Respondent about the need for a health plan and the need to schedule a time to meet and that Respondent did not want to talk. As a consequence, Mizelle requested to meet at a specific time later

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<sup>7</sup> As it turned out, it became apparent within a matter of days that the new strategy was not nearly as effective as had been hoped.

that day and Respondent asked that Union representation be present. At the meeting, Respondent was accompanied by the union building rep. Mizelle testified that she asked Respondent three pre-prepared questions and wrote down Respondent's answers.

First, Mizelle asked: "Do we have documentation from a doctor stating that this child needs a health plan?" To which Respondent answered no, that we had information from the school the child had attended last year and that information was forwarded to FMB, that the parents took the child to a doctor on November 27 and the treatment protocol may change and the child has another doctor appointment in two weeks. Mizelle testified she then asked; "Do we have a Health Plan on file for this child?" To which Mizelle testified. Respondent said "no," that the nurse created a plan with input from the doctor, the draft plan was shared with the parents and they have not signed and returned the plan, and the parent is waiting to hear from their attorney before sharing/signing the Health Plan with the school. Finally, Mizelle, testified, she asked; "Does this child require a Health Plan at this time?" to which Respondent answered she feels that yes, the child should have a plan.

According to Mizelle, on November 30 Respondent was out on sick leave and Mizelle telephoned her (or sent her a text) asking if MS had a prescription for an inhaler at the school. Mizelle confirmed that a doctor's note was in the school

Mizelle testified that on December 1 she attended a meeting with the members of MS's CST team, Superintendent Beck, Consultant Wisinski, and CST Supervisor Smith to "discuss our concerns about a lack of a plan." Mizelle went on to testify:

...The CST Team had a copy of an FMB health plan. It was the first time I had seen that plan...and that it was signed by a doctor...I was surprised, because in my numerous

conversations with her [Respondent], it had never been brought up that there was a plan.

Q. Okay. And what did you think of Ms. Sincaglia not telling you that a plan existed at some point?

A. It was concerning; concerning that information - she wasn't forthright with this information. It was concerning that - it became clear to me that the fax that she was looking for that she was so concerned over was in fact the health plan. Never was that shared with me.

Q. Okay.

A. So that just seemed -- it was all very secretive and not forthright and it was --

Q. Okay. It was of concern to you?

A. It was of, yeah, great concern.

Q. Okay ..then...?

A. We met with Ms. Sincaglia to inform her she as being put on administrative leave. That was on December 4<sup>th</sup>.

Mizelle signed the tenure charges herein and testified as to the reasons for the

charges:

Q. Turning on then, based on all the information that we have discussed today and your memoranda and your emails that you had sent, did you have concerns about Ms. Sincaglia's performance?

A. No. I mean I didn't have concerns - she was a good nurse, she was available for the students, but yeah, I do have concerns with her ability to

A. Based on what we've been discussing this morning -

A. Yes.

Q. -and the issues that you've recounted, did you have concerns regarding her performance and -

A. Yes.

Q. -the events of the fall?

A. Yes.

Q. Okay. Could you share those with us?

A. Concerned that information - - she wasn't forthright with information, concerned that she was overstepping the bounds within her position to give special treatment to her child, not working with the team that was in place to support her child; the lack of information, the lack of what I felt is honesty to some of our questions is very much concerning.

Q. Okay. By honesty to questions, do you mean her comments regarding the health plan?

A. Right.

Q. And did you view that as insubordination?

A. Yes. At the time, I felt – kind of at the end, I realized it was. At the time you're trying to work with somebody and you're asking questions and you're taking them at face value and then – yeah...

...

Q. Okay. And then did you say anything to the superintendent about your concerns

A. Yes...I told him that I had a lot of concerns. I'm concerned that the relationship has been fractured, that there's not a sense of trust on either side at this time, and I have concerns with her concerning or continuing to be the nurse in my school...I felt we needed to have a conversation or we needed to move forward with having her dismissed.

## **Respondent's Testimony**

### **The Meeting of October 6**

Respondent testified that at the meeting both Mizelle and Smith made statements about being a mother and that Mizelle said two or three times something to the effect of Respondent needed to "back off" from her child. There were no warnings that if Respondent continued any activity that she could be subject to discipline or discharge.

Respondent recalled that she was upset that Mizelle began to discuss MS when the principal had stated that the meeting was not about MS and recalled that when the subject came up Respondent explained cold urticaria, said that they needed to have a plan because the weather was turning colder and was told they would talk at the next IEP meeting.

### **The October 27 IEP Meeting**

Respondent testified that she did state at the meeting that MS was a risk of anaphylactic shock from the cold urticaria and that the CST members present seemed

confused. As a result, she attempted to explain that there was a real need to monitor MS closely and to have a plan about where MS would go if weather conditions were not good for recess and who would supervise him. In her opinion, at the time of the October 27 meeting there were already medical plans in the nurse's office for MS relating to food allergy, anaphylaxis and asthma. As for "the plan" that she agreed to do, it was her understanding that the plan was about how to address MS's need for breaks, and that Wilbur would begin discussions with the administration and they would come up with a plan as to "when and who" and that she would come up with a plan about what the person(s) designated would "do."

### **The Fax**

Respondent testified that in response to a request from principal Mizelle that Respondent provide medical information from MS's doctor relating to MS's cold urticaria. Respondent had a conversation with MS's doctor's office on or about November 13 explaining what she needed and thereafter faxed the doctor's office the same materials Respondent had previously provided the CST about the condition as well as a blank Individual Health Plan form. Respondent testified that what she was to receive from the doctor was not a "health plan" but rather the documentation that Mizelle had requested.

On November 15 Respondent expected to receive a return fax from the doctor. When she arrived at school the fax was not at her school and she began to search for it, included principal Mizelle in the search, and later discovered that the fax had been sent to the District Board's fax machine. Later in the day of November 15 Respondent asked

Mizelle if the principal had seen the fax and Mizelle replied no, that the fax was with the Child Study Team and would bring it over. Respondent testified that Mizelle knew the fax related to MS. Still later in the day Mizelle came to Respondent's office. Also present was Mary Helen Coiro.<sup>8</sup> Mizelle handed Respondent the fax from MS's doctor. The fax was not in an envelope, Respondent testified, and she recalled Mizelle pushing the fax across the desk and saying it was not a plan and the Respondent replied it was a plan and needed to be implemented.

According to Case Manager Wilbur he was given the November 15 fax by the CST secretary on the day it came into the District, reviewed the fax, had copies made for Respondent and CST supervisor Smith and uploaded it into the District's Encore data base system. In his view, Wilbur testified, this was a "basic plan" but did not meet the specific needs of MS.

CST supervisor Smith testified that when she came to work on the day the fax came in, her secretary told Smith about a fax the secretary had found on her desk or in the fax machine. Smith looked at the fax and saw that it appeared to be a health plan for MS. So, Smith testified, she told the secretary to make copies and provide a copy to the case manager (Wilbur) and consultant Wisinski and to send a copy over to FMB.

According to Wisinski, although the fax may have been placed in her District mailbox, she does not check the box often and first saw the fax on or about November 30. According to Wisinski, she was told by Smith that Smith did not see the fax until November 20 and forwarded a copy to Respondent at that time.

### **November 21**

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<sup>8</sup> Neither party called Coiro as a witness.

Respondent testified that on November 21 Mizelle came to her and said she wanted to sit down and come up with a plan, and that Respondent said it was in the hands of the attorneys, they were working on it and she was not going to discuss it.

### **The School Lunch Filing Issue**

District school business administrator Donna Mosner testified about Respondent's involvement in the application process for the District to receive reimbursement from the state for the free and reduced lunch program; an amount equal to approximately \$25,000.00 annually. The District's policy provides that the school nurse is to determine the students eligible for the program. Respondent had served such a function since Mosner began working for the District in 2015. Mosner explained that for the 2017/2018 school year there were changes to the process including an option for school districts to complete their application for reimbursement on line. The District opted to continue to complete the process in paper form. Mosner explained that the program has a two-step verification process; that for the 2017/2018 school year Respondent completed the first step of the process on time. The second step of the verification process requires school districts to review in detail 3% of the free and reduced lunch applications and verify the accuracy of the information submitted by families on such applications. For the two previous school years for which Mosner is familiar, as well as for the 2017/2018 school year, that meant that the District had to complete such step-two verification for one application.

Mosner testified that she and Respondent communicated continuously throughout the process by email and telephone. On October 4 Mosner emailed Respondent asking

how many “error-prone” applications for the lunch program there were. (The step-two verifications are required to be from such error-prone applications). On November 6 Mosner received an email from Respondent stating she had not received the number of applications to verify. Mosner testified that she was “a little perplexed” by this as they had always had to verify only one application in the past. According to Mosner, in response to the November 6 email she telephoned Respondent, informed the nurse one application had to be verified and that Respondent needed to proceed because it can take a week or two to complete a verification. On November 30<sup>9</sup> Mosner emailed Respondent reminding that she had followed up with Respondent on November 28 and that Mosner needed the second-step verification by 3 o’clock that afternoon to file it on a timely basis. In addition to her emails, Mosner testified, the state sent at least two reminder emails to Respondent notifying that the verifications were due November 30. Mosner testified that although she and the state reminded Respondent of the November 30 verification deadline at least eight-plus times, by 3:45 pm on November 30 Respondent had not submitted the verification. At that time Mosner requested an extension to file the verification and the state granted a two-week extension. Mosner further testified that she did the verification and submitted it on time on December 15, and that Respondent never told her why Respondent was unable to complete the verification.

On cross examination, Mosner agreed that the District’s regulations relating to the free and reduced school lunch program require that District verification activity be completed by December 15, that the District’s information for the 2017/2018 school year was submitted on December 15 and that the District did not lose any money as a result of

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<sup>9</sup> Respondent was out due to illness on November 30 and December 1.

the December 15 filing. Mosner also identified a September 27 email from Respondent expressing difficulties the nurse was experiencing as a result of various changes in the school lunch process and requesting training, and testified that she responded that training was only available in the summer and that she could contact the District's IT person for help with the District's food service software.

Respondent testified that on October 4 she completed all of the lunch-related applications and forwarded them to Mosner. Mosner signed the applications as she was required to do and then told Respondent to proceed with the verification process. Respondent responded by email asking "how many?" In this latter regard, Respondent explained, she needed Mosner's signature on the "verification tracker," before Respondent could send out any letters to families. Respondent testified that in regard to her "how many?" inquiry, she knew that in the past it had always been one, but she could not proceed on the verification until she actually received a number from Mosner and the signature that she had confirmed that particular application. Respondent testified that she did not receive a response that day from Mosner. The need for the signature was not new and Respondent identified an email from a year earlier, dated November 16, 2016 also asking Mosner for the number of applications to be verified for that year.

On November 10 Respondent sent Mosner an email identifying the error prone lunch program applications the District had received (three) because, Respondent explained, it is required that all verified application(s) submitted to the state be error-prone (reflecting family finances close to the applicable financial limits).

Respondent denied that Mosner called her on November 6 in response to Respondent's November 6 email asking how many applications needed to be verified and

further testified that Respondent took a half day that day and was not in school that afternoon.

The evidence establishes that the District was closed November 23-26 for the Thanksgiving holiday. Respondent was present on November 27, 28 and 29, was out sick November 30 and December 1, and was subject to interview and placed on administrative leave December 4.

### **Arguments**

The parties submitted post hearing briefs containing exhaustive analysis of the factual and legal issues presented by the record, the entirety of which have been fully and carefully considered by the undersigned. Only summaries of the post hearing briefs are offered below.

#### **The District**

The District asserts that Respondent's dishonesty, breach of trust and violation of District policies warrants her removal. During the portion of the 2017-2018 school year at issue, Respondent violated numerous policies. District records establish that MS visited the nurse's office some 48 times during the period September through November. Respondent violated District policy by granting her child special privileges such as permitting the child to eat lunch in the nurse's office, permitting the child to avoid class by sitting in the nurse's office, permitting the child to use the nurse's office bathroom, allowing the child to fill the child's water bottle in the teachers' lounge and by interfering with her own work by monitoring her child in the lunch room and recess. Respondent

further interfered with the work of other school staff by discussing issues relating to MS with them and seeking benefits for MS. Notwithstanding being warned on October 6 to cease her inappropriate conduct, Respondent continued to violate District policy.

Although required to draft individual health plans for students who need them in a timely manner, typically in a period of days, Respondent failed and effectively refused to draft such a plan for MS; a student at risk for life-threatening anaphylactic shock due to the unusual condition of cold urticaria, and when Respondent had an individual health plan signed by the student's doctor in her possession, she hid the existence of the plan from her school's administration – specifically the school principal – and when asked by the principal if there was health plan for the student, lied to the principal and claimed there was no such plan. Respondent lied, was dishonest, was deceptive and was not forthcoming.

In addition, Respondent failed in her responsibilities relating to the free and reduced lunch program and caused to be at risk \$25,000.00 in program-related aide. Although Respondent was responsible for completing the verification process by November 30 and received approximately ten reminders that she had to comply with the deadline from the District's business administrator, Respondent failed to complete the verification process and the business administrator had to seek an extension of time for submission of the verification and submitted the verification herself by the extended deadline.

Based upon her violations of District policies, her failure to meet her responsibilities and her dishonesty toward district administrators, Respondent has shown she does not have the trustworthiness required of a school nurse and the District has

justifiably lost confidence in Respondent such that she cannot be returned to the District. The tenure charges and the dismissal of Respondent should be sustained.

### **Respondent**

The District has the burden of proof. Here, the District claims Respondent acted in an insubordinate manner. To prove insubordination, the District is required to show that Respondent engaged in willful disobedience, or willful refusal to obey orders or directives. The District has not proven such willful conduct by Respondent. Rather, the evidence establishes that the principal filed tenure charges at least in part because of Respondent's responses to the principal's attempt to inappropriately compromise the parental rights of the school nurse whose child was enrolled in the school, including statements by the principal that suggested Respondent could not give her own child services the child would otherwise be entitled to receive from a school nurse. Although principal Mizelle attempted to give "mother to mother" advise to Respondent about Respondent's role as both nurse and mother, Respondent was never warned that any conduct she had engaged in would amount to insubordination, or would result in discipline, let alone that Respondent's continued conduct would result in her removal. Moreover, the District failed to show that Respondent engaged in any conduct in her capacity of school nurse that warranted any form of discipline.

As for the District's primary claim that Respondent lied in response to principal Mizelle's inquiry if the school had a plan, or an individual health plan for MS, the evidence establishes that Respondent truthfully, and correctly, responded to the questions relating to an IHP that the school did not have a plan, but had a draft plan. As established

by the record, the school had received a plan drafted by Respondent and signed by MS's doctor but not yet approved by the student's parents. Further, as to inquiries about "the plan" Respondent consistently responded in a truthful manner about the plan for managing the monitoring and supervision of her child discussed at length at the child's October 27 IEP meeting relating to both: (1) the child's cold allergy and (2) the child's need for breaks due to non-allergy considerations; that being that she was waiting for the administration to provide guidance on "who" (i.e. who on staff would be responsible for monitoring and supervising the student under various conditions) and "where" (i.e. where the child would go when recess was unavailable for health related reasons or when the student needed a sensory-related break either on an impromptu or scheduled basis). The fact is, there was already an emergency, allergy related health plan on file in the nurse's office.

As for the reduced and free lunch related allegations, the evidence establishes that Respondent acted in accordance with District policy. She performed her responsibilities, and when she was faced with newly established aspects of the program sought assistance from business administrator Mosner for addressing those requirements, assistance not forthcoming. District policy requires that program related verification be completed by December 15; a deadline met by the District. When Respondent requested training relating to lunch program verification, she received a response from the business administrator that training was available only in the summer. The evidence establishes that Respondent completed the first part of the process well before the related deadline and that as of October 10 Respondent had done everything she was required to do up to that point. On November 6 Respondent emailed Mosner asking verification-related

questions about calculation of family income and how many applications she needed to verify. Mosner does not recall responding to Respondent's November 6 inquiries. On November 16 Respondent was notified by the state that part 2 of the verification process had not been completed by the District and on that same day Respondent again emailed Mosner asking how many applications needed to be verified and additionally supplied the administrator with form 30 information. On November 17 Mosner emailed Respondent that she needed a part 2 collection report by November 20 and on November 20 Respondent emailed Mosner asking if forms already submitted were what Mosner was looking for and again asked the business administrator how many applications needed to be verified. On November 24, the state reminded the District that verifications were due on November 30. On November 30 Mosner emailed Respondent that one application required verification and wrote that she had previously followed-up with Respondent on this issue on November 28 and that Respondent should try to complete the verification by 3:00 pm November 30. Respondent was absent on November 30 and December 1. She was placed on administrative leave on December 4. Mosner requested an extension, received the extension and submitted the required verification by December 15. The District was in no way penalized for the December 15 filing and at no time during the process was Respondent ever warned that she was being insubordinate or that her conduct amounted to conduct unbecoming.

The District has not met its burden of establishing the truth of its tenure charges against Respondent. The charges should be dismissed.

## **Discussion**

This matter generally involves assertions by the School District that school nurse Respondent violated District policy by: (1) not keeping separate her roles as school nurse and parent to her special needs child/District student “MS”; (2) failing to timely draft and finalize an Individual Health Plan (IHP) for MS to be attached to the student’s IHP; (3) being dishonest in responses to health-plan-related questions asked of her by her principal, and (4) failing to meet her obligations relating to required filings for District participation in the free and reduced school lunch program.

Considering the record as a whole, and particularly the arguments proffered by the District, it is plain that the primary and determining motivation for the District’s filing of tenure charges against Respondent is the belief by District school principal Cindy Mizelle that in Respondent’s capacity as school nurse, Respondent lied to Mizelle, or was otherwise not forthcoming, in her responses to questions asked by the principal relating to the status of MS’s Individual Health Plan.

### **An Environment of Confusion**

I find that the record establishes a set of circumstances that created fertile ground for the seeds of misunderstandings and miscommunication between participants, including Respondent and principal Mizelle. In this regard, the case presents: (1) a student with learning and health related challenges – including health challenges not previously known to anyone involved; (2) parents who take an activist role in working with the District to establish frameworks to address the education, health and safety interests of their child, one parent of which must also satisfy her role as school nurse for

that child as well as other students in the school; (3) a Child Study Team (CST) faced with challenges of working with a parent who is also a staff member of the subject student's school and is responsible for providing the CST certain information and documentation related to the student; (4) a student with multiple challenges, including a health-related allergic condition that is not singular in its causes/triggers or its manifestations and for which the parents are continuing to search for effective treatment and/or management from health care professionals; (5) numerous *plan*-related discussions among CST members, parents, Respondent and administration personnel including an IEP plan, an IHP plan, a plan for decisions on whether weather conditions permit MS to go outside for recess, where MS will be and how the student will be supervised when outdoor recess is not appropriate, a plan for when MS should be excused from gym and a plan to establish under what circumstances and/or when MS should be given a break for sensory reasons and supervision of MS during such times; (6) a CST case manager who represented to Respondent that, (a) he and the CST had sufficient documentation related to MS's condition of cold urticaria, and (b) it is permissible for the parent to contact him during the school day about IEP-related matters as that is when other parents contact him; (7) a CST case manager who has responsibility to facilitate an effective IEP for MS but does not have supervisory authority to direct employees or bind the District or school administration to any personnel-related action; (8) a school principal who is not a part of the CST and does not have direct access to CST deliberations, but nevertheless has responsibilities relating to the education, health and well-being of the student involved; (9) a school principal who communicated directives to Respondent that contradicted the CST's representation that it had sufficient medical

information on MS's cold urticaria and that Respondent could contact the case manager about the student's IEP during the school day; and (10) overlaying all such circumstances, the conflict between the "open communication" goal of the CST between it and the student's parents, and the fact that Respondent, her husband and her child are represented by counsel and said counsel being engaged in interaction with the District's legal counsel on IEP-related matters involving MS.

I find that the lack of experience of those involved with similar circumstances to those presented, the vagueness relating to the authority of the CST; the constrictions on communications that inherently occurred as a result of student health-related confidentiality requirements; the non-participation of the principal in the IEP process and the resulting lack of her specific knowledge of the deliberations of the CST; the pressure to funnel information and communication through the conduit of communications between counsel (a circumstance not previously experienced by many involved); and the amorphous quality of the health issues of MS and the consequent impact upon the educational plan of the student, resulted in confusion and potential for miscommunication among all participants.

### **Dishonesty**

The recurring assertion by the District, and its overriding reason for terminating Respondent, is the claim that Respondent knew the November 15 fax from MS's doctor was in the possession of the District and knew the fax constituted an Individual Health Plan for MS, and that Respondent nevertheless kept the existence of the plan secret and outside of the knowledge of the CST team, the District's administration and

Respondent's school principal Mizelle, and that Respondent out-and-out lied to Mizelle about the existence and content of the faxed document. I find that the record does not support such assertions by the District.

**Respondent did not Hide the November 15 Fax  
from the District**

Contrary to the claims of the District that Respondent hid the November 15 fax from MS's doctor from District personnel, I find that the evidence establishes that as of November 15 the District had full knowledge and control of the November 15 faxed "Individual Health Plan" from MS's doctor. In this regard, the record establishes that the fax originally came into the Board's office where it was forwarded to the CST team, the fax was reviewed by CST team supervisor Smith and CST case manager Wilbur, copied, distributed and downloaded into the District's electronic records system, and then delivered to Respondent by principal Mizelle. Although Mizelle testified she did not look at the fax and delivered it in a closed envelope to Respondent, I credit Respondent that the fax was not in an envelope when Mizelle handed it to Respondent and that Mizelle spoke to Respondent about the MS-related contents of the fax at the time.<sup>10</sup>

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<sup>10</sup> Although each of the two witness has incentive to recall events in a manner that supports her interests, I find that Respondent's version of events to be, under the circumstances, more likely, and consequently more reliable. My finding in this regard is also based upon the following considerations: (1) the overall demeanor of the two conflicting witnesses, (2) the testimony of Respondent that when Mizelle gave Respondent the November 15 fax it was not in an envelope and that such occurred in the presence of third party witness Coiro and the fact that the District failed to call Coiro to rebut such testimony of Respondent, and (3) the fact that District offered into evidence an October 27 email from Wilbur to Mizelle and others offering details of that afternoon's IEP meeting and Mizelle's inconsistent testimony that she was not informed of the contents of the meeting.

I find that Respondent's November responses to Mizelle's questions about the IHP responses forming the District's primary support for its Tenure Charges - can only be fairly judged giving full consideration to the facts, which I find, that Respondent reasonably believed that Mizelle had received and read the November 15 fax; a faxed plan containing the doctor's signature but not the required signatures of the subject child's parents. Fair consideration of such circumstances also supports a finding, which I herein make, that at the time she responded to the principal's questions Respondent's believed the "plan" to which Mizelle was inquiring was the portion of "the plan" relating to who would monitor and supervisor MS under various circumstances.

**Respondent Did Not Lie About the "Draft" Status of the Plan or About the Fact that She and Her Husband were Awaiting Advice from Their Attorney**

Mizelle testified that when she asked Respondent about whether an IHP was completed, Respondent referenced a "draft plan." There is no dispute that at the time of Mizelle's inquiry, the contents of the November 15 fax in the possession of the District reflected the signature of MS's doctor but had not been signed by the student's parents. The fax did not present a complete plan. The record also establishes that from Respondent's perspective, a perspective reasonably supported by the circumstances and facts I have found herein, the "plan" was awaiting administrative decisions relating to the various breaks and monitoring issues discussed during the October 27 IEP meeting.

Nor are either Respondent's statement to the principal or her testimony that she and her husband were waiting for information from their attorney contradicted by the

evidence. Although the record contains a November 16 email from Respondent's counsel to the District's counsel stating, in part;

...mom...is working on developing a comprehensive health plan in consultation with her allergist. When it is completed she will provide a copy to the case manager and I will also send a copy to you for your records.

the attorney's email does not establish that Respondent was lying to Mizelle. The record establishes that as of November 16 Respondent was working on a plan and there is no evidence that the District's representative ever received the "completed plan" from Respondent's counsel promised in the November 16 email – an event that would have arguably contradicted Respondent's representations. Also, considering; (a) the relevant discussions between Respondent and Mizelle occurred on or about November 27-29, over ten days after the November 16 email, (b) the dynamic nature of the events involved, (c) the ongoing representation by counsel, and (d) the lack of evidence to contradict Respondent's testimony, I find that the evidence is insufficient to establish that Respondent lied or otherwise misrepresented when she stated that she and her husband were in ongoing conversations with their counsel and awaiting direction therefrom.

**Respondent Did Not Represent to Mizelle  
That no IHP was Required**

Contrary to the assertions of the Tenure Charges, I do not find that Respondent communicated to the District or Mizelle anything approaching notice that due to the treatment of MS by a new doctor in late November that the student did not need a health plan. In this regard, the conversation between the principal and Respondent focused upon by the principal and the District consisted of the Mizelle's passing inquiry about how a

doctor's appointment went and the nurse relaying the doctor's effort to apply a new treatment and, what can fairly be described as, the hoped-for result of the treatment. Respondent may have communicated that a new treatment was being pursued and the parents and doctor were in a state of optimism that it could turn out that no health plan would be needed, but the evidence does not establish any basis whatsoever for a conclusion that Respondent was affirmatively representing that an HIP would therefore not be needed.

### **Conclusion as to the District's Dishonesty-Relates Claims**

Under the circumstances, I am not persuaded that Respondent intentionally or willfully lied, failed to be forthcoming or was otherwise dishonest in her communication with principal Mizelle or the District and find that the District has failed to show by a preponderance of the evidence that the dishonesty related allegations contained in the tenure charges are true.

### **Insubordination**

I do not find sufficient evidence to support a finding that Respondent willfully refused to comply with directives of the principal or other District administrators or supervisors. In regard to the District's claims as they relate to the drafting of a health plan, I find that the plan-related-focus of principal Mizelle when she inquired of Respondent in mid-to late November was on the potential of harm to MS due to the student's cold allergy and possible anaphylactic shock. Whereas the plan-related-focus of Respondent at the time of the inquiries – knowing that an anaphylactic-epi-pen plan was

already present in the nurse's office relating to MS – was on the administration's plan to deal with the health related and educational related logistical needs of her child, including who would be responsible for monitoring and supervising the student under various conditions and where the child would go when recess was unavailable for health-related reasons or when the student needed a sensory-related break.

I am persuaded by the full record and the argument of Respondent that following the October 27 IEP meeting, Respondent was under the impression that school administration was considering and developing a plan for the District's "when and who" responses to the various needs of MS to avoid harm caused by cold urticaria and to provide the student necessary sensory breaks, and that her plan would be attached to the District's plan. As discussed above, during the District's deliberations relating to MS, confusion by the participants was endemic. Under such circumstances, confusion on the part of Respondent and Mizelle is entirely consistent with the continually evolving process involved. Such atmosphere of confusion does not support a finding Respondent willfully refused to assist in the drafting of the plan.

The District has failed to meet its burden of establishing the truth of its allegations that Respondent willfully and intentionally refused or failed to complete any assignment or directive.

### **Crossing the Mother/School Nurse Line**

In regard to the other allegations raised by the District, the record fails to establish that: (1) Respondent was put on notice that conduct alleged in the tenure charges would

result in her discipline or termination, (2) the District applied progressive discipline or (3) Respondent engaged in much of the conduct alleged in the Charges.

There is insufficient evidence in the record that Respondent was informed during the October 6 meeting that she was receiving anything like a formal counseling or discipline relating to any conduct in which she may have engaged, nor was she warned that further conduct by Respondent identified by the administrators would result in Respondent being disciplined and/or terminated.<sup>11</sup>

Even assuming for argument purposes that Respondent's pre-October 6 conduct was the subject of supervisor counseling of Respondent at the meeting, progressive discipline allows only for consideration of the counseling itself or the noticed concomitant to the counseling to be considered in future discipline. Generally recognized standards of fairness do not embrace "double jeopardy" and considerations of fairness do not allow the specific conduct once the subject of counseling to be again "resurrected" later to support subsequent discipline. Here, the vast majority of evidence offered by the District of Respondent's conversations with other staff members about MS and the visits of MS to the nurse's office (many of which were health-related) occurred prior to the October 6 meeting and even assuming only for purposes of argument that such contact violated District policy, there is scant evidence that Respondent engaged in any significant similar conduct after October 6. Thus, the claimed "many reports" by staff of

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<sup>11</sup> The District must bear the burden of any ambiguity of purpose inherent in the October 6 meeting. (i.e.: was the meeting counseling, disciplinary or truly focused upon MS?) In this regard, the District's claim that the meeting was only about Respondent's conduct as nurse was subject to a somewhat inconsistent message when the supervisor of District Child Study Teams -- a District official with administrative responsibility over Respondent's son's IEP rather than Respondent's function as a school nurse - was waiting for her in the principal's office to meet with Respondent.

Respondent approaching them to discuss MS, was supported by testimony of only three employees which predominantly focused upon events that occurred prior to October 6 and/or the dates of which were not specified.

### **Conflict of Interest**

As for the District's claim that Respondent violated the District's policies relating to conflict of interest, the record contains only speculation that Respondent's interest in her own child came at the expense of the care of any other student and contains insufficient evidence of any interest of the District that was compromised, or could have been compromised, by any conduct of Respondent.

### **The School Lunch Program Charge**

The evidence is insufficient to support a finding that Respondent willfully failed to perform her responsibilities relating to the reduced and free school lunch program. There is no dispute that the final verification by the District was not submitted by November 30. However, I do not find sufficient evidence that such failure was caused by Respondent exclusively. In this regard, the record establishes that Respondent made reasonable attempts to complete the tasks associated with the program and was delayed in her final completion of the final verification by the failure of the business manager to identify and sign-off on the application to be subject to verification. Although this requirement may have been akin to a formality, the unrebutted testimony of Respondent establishes that she was not permitted to complete the process until such formality was satisfied, and that the formality was also subject to late-in-the-process communication

between the nurse and business administrator in 2016. Although the evidence does not exculpate Respondent from all responsibility for the District's failure to meet the November 30 deadline, a responsibility shared by the business manager, I find Respondent's conduct in this regard is insufficient to warrant a withholding of increase or removal.

### **Conclusion**

Considering the record as a whole, including all evidence and arguments offered by the parties as well as my observations of the demeanor of all witness and resolution of credibility conflicts based thereupon, I find that the District has failed to meet its burden of establishing the truth of the allegations contained in the subject Tenure Charges.

**Award**

The subject tenure charges filed by the Board of Education of the Andover Regional School District against Respondent Irene Sincaglia are dismissed.

The District is ordered to:

1. Promptly offer Respondent reinstatement to her former position.
2. Make Respondent whole for any and all losses of pay, seniority and other benefits she may have suffered as a result of her being placed on leave from December 4, 2017 to the date of her reinstatement by the District.
3. Expunge any and all record of the subjects of the tenure charges from Respondent's disciplinary files.

Dated: July 5, 2018



Timothy J Brown, Esquire  
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket No. 264-9/15 relating to tenure charges against Irene Sincaglia on Thursday, July 5, 2018.



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Timothy J Brown