

NEW YORK STATE EDUCATION DEPARTMENT
UNIVERSITY OF THE STATE OF NEW YORK

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In the Matter of the Disciplinary Proceeding between

**THE BOARD OF EDUCATION OF THE EAST ROCKAWAY
UNION FREE SCHOOL DISTRICT,**

Complainant

SED FILE # 26,297

-and-

**OPINION
AND AWARD**

STAVROULA GRETES-COYLE,

Respondent

Pursuant to Education Law Section 3020-a

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Before LISA BROGAN, ESQ., Hearing Officer

APPEARANCES:

For the Complainant:

FRAZER & FELDMAN, LLP by JOSEPH LILLY, ESQ.

For the Respondent:

**RICHARD E. CASAGRANDE, GENERAL COUNSEL, NYSUT
by LORI SMITH, ESQ.**

Pursuant to the provisions of New York State Education Law §3020-a, the undersigned was appointed to hear and decide whether there is just cause for the proposed disciplinary action against the Respondent, Stavroula Gretes-Coyle. A pre-hearing conference was held on February 5, 2015. Hearings were conducted at the offices of the East Rockaway Union Free School District (the "District") at 443 Ocean Avenue, East Rockaway, NY on March 9, 17, April 24, May 5, 26, June 17, 19, 26, September 11, 16, 24, October 29, November 5, 19 and December 8, 2015, and January 22, 25, March 4, 11, April 5, 26 and May 16, 2016. Briefs were submitted by both sides on July 8, 2016 at which time the record was closed. After briefing, settlement discussions were re-opened but concluded without a resolution on August 31, 2016.

Both parties were represented by counsel in this proceeding and had a full and fair opportunity to adduce evidence, cross-examine witnesses and to make argument in support of their respective positions. The evidence adduced, the legal authorities cited and all the positions and arguments set forth by the parties have been fully considered in the preparation and issuance of this Opinion and Award, whether or not specifically mentioned herein.

THE CHARGES

STAVROULA GRETES-COYLE (hereinafter referred to as “Respondent”), has been charged with misconduct, conduct unbecoming her position, insubordination and neglect of duty as set forth in eight Charges, each of which is broken down and explicated through a total of ninety-three Specifications. The Statement of Charges is annexed hereto as Appendix A, and is also part of the record as District Exhibit 1.¹

Respondent was charged by Superintendent Lisa Ruiz and Laura Guggino, Director of Pupil Personnel Services, and the Board of Education of the District voted to find probable cause as to these Charges on December 16, 2014. The District seeks dismissal of Respondent, a tenured employee.

FACTS

Respondent is a tenured teacher who has been employed by the District for approximately twenty-five years. After beginning as a student teacher and a substitute, she received a permanent position in 2001 and has taught elementary school at Rhame Avenue School in the District ever since. She holds a common branch license for elementary education, grades pre-kindergarten through 6. Since 2001 she worked under the direct supervision of Principal Laura Guggino, who left Rhame to become Director of Pupil Personnel Services in August 2014. Since being placed on administrative assignment on May 1, 2014, Respondent has

¹ District exhibits are referred to hereinafter as D1, D2, etc., and Respondent exhibits as R1, R2, etc.

been supervised by John Piccarella, Director of Curriculum and Technology. The Superintendent of Schools is currently Lisa Ruiz, who has held that position since August 2013, following Dr. Roseanne Malucci who held that position during all other times relevant to these charges.

During the 2011-2012 school year Respondent was assigned to teach fourth grade in a co-teaching environment with special education teacher Allison Gerbert. In addition to Ms. Gerbert, there were other paraprofessionals and teaching assistants in the classroom that year assigned to work with individual students, including Eileen Rogers, Jeanne Abrami and Gina Sardegna. While there is no definitive evidence of exactly when or how often the other adults in the room would leave, there were certainly times – perhaps several periods in the course of a week – when Respondent would be alone with students in the classroom. That year, [REDACTED] and [REDACTED] were students in her class. [REDACTED] and his mother testified at trial for the District, and [REDACTED] for Respondent.

During the 2012-2013 school year Respondent again co-taught fourth grade with Allison Gerbert and, as in the previous year, there were paraprofessionals assigned to individual students in her class, including Rogers and Jill Toye, as well as teaching assistants who would come in from time to time. It was during this school year that Superstorm Sandy hit the New York area on October 29, 2012, and the East Rockaway area and many students and their families were displaced or otherwise affected by the storm for varying periods of time. Students in that class who appeared at trial include [REDACTED] and [REDACTED] testifying for the District and [REDACTED] testifying for Respondent. Each child's mother testified as well. [REDACTED] was also a student in that class and his mother testified for the District.

During the 2013-2014 school year Respondent was the sole teacher in her fourth grade classroom. Two teaching assistants, Megan Rice and Gina Sardegna, would come in on occasion, but no other adults were assigned to the room on a regular basis. Six students from this

class testified for the District at trial, [REDACTED] and [REDACTED] as did each of their mothers. Student [REDACTED] and his father testified for Respondent. The mother of student [REDACTED] testified on rebuttal for the District.

There is no dispute that prior to the events which led to this hearing, and specifically prior to April 29, 2014 Respondent had received no prior discipline nor were there any letters to file or counseling memoranda written to her, either about any of the incidents which became part of these charges or otherwise. [REDACTED]

[REDACTED]

It is undisputed that during the Spring of 2014 students were being called down from their classes for interviews [REDACTED] During these interviews and others with parents, two alleged incidents said to have occurred in or around early April 2014, one involving a purported “letter of apology” and the other a forged parent signature on a student’s agenda, were brought to the attention of District administrators. These reports prompted Principal Guggino, after an exchange of emails on the subject (D44), to convene a meeting with Respondent on April 23, 2014. A recording of that meeting is in evidence as D35. At the meeting Guggino asked Respondent to comment on these two matters, and Respondent denied knowledge of the incidents and/or that they had occurred as reported by the students. At

the same meeting, Guggino informed Respondent that student [REDACTED] who had been experiencing issues with anxiety throughout the year, was being removed from Respondent's class.

On April 29, 2014 Guggino presented Respondent with a Counseling Memorandum (R48) recounting the details of the two alleged incidents and their April 23 meeting, in which she explained that she credited the students' stories over Respondent's denials, and proceeded to counsel Respondent on what she found to be her unacceptable responses to these two situations, directed her to use good judgment in the future when dealing with "genuine student misconduct," and warned her that failure to comply with these and other directives set forth in the letter could lead to disciplinary education under §3020a, including seeking to terminate Respondent's employment. [REDACTED]

[REDACTED] On May 1, 2014 she was removed from the classroom and placed on administrative assignment at the high school, where she remains to this day.

District administrators and counsel continued speaking with students and parents who raised additional allegations about Respondent, prompting the District to expand its inquiry. Separate and apart from these interviews, Superintendent Ruiz was also made aware of certain concerns connected with Respondent's classroom from [REDACTED]'s mother in October 2013, and again when an issue involving "report cards" was brought to her attention in March 2014. These various allegations became the subject of new charges brought against Respondent on December 16, 2014 which are the subject of this proceeding. This hearing convened on March 9, 2015, continued for twenty-two days of hearing over fourteen months, with the District calling 26 witnesses and Respondent calling 14 witnesses, including herself.

POSITIONS OF THE PARTIES³

CONTENTIONS OF THE DISTRICT

The District argues that the charges, which it asserts show a pattern of verbal and emotional abuse endured by students in Respondent's care during the charged years, have been proven through the testimony of the "people who lived it," i.e. those students. It maintains that the evidence shows Respondent is guilty of persistent, egregious and willful misconduct, displaying a lack of judgment, temperament and even compassion towards the students in her care. It insists that Respondent's assertion that the charges are "absolutely baseless" and her theory that this entire case was fabricated [REDACTED] [REDACTED] are hollow claims which do not withstand the scrutiny of the relative credibility of the District's and Respondent's witnesses.

The District contends that the testimony of Respondent and her witnesses was either incredible or irrelevant, citing numerous examples which will be discussed at greater length below in connection with the individual Charges. While Respondent accused the District of manipulating students to testify as they did against her, it suggests that it is she who is guilty of manipulating and conditioning children, pointing to examples such as the allegation that she told children she was "not yelling, she was disciplining them," having them fill out report cards on her performance which included their names, and suggesting that a student be brought in for questioning without his parent during the April 23 meeting with Principal Guggino, without revealing that she had already discussed the matter with the student earlier that day.

The District seeks to further impugn Respondent's credibility by pointing out that her testimony that she was unaware of any complaints about her conduct is not supported by the evidence, noting specifically [REDACTED]

³ The positions of the parties with respect to the individual charges will be discussed at greater length below.

[REDACTED] as well as the testimony of various parents to the effect that they had expressed concerns or complained directly to Respondent about her yelling at children. It dismisses the testimony of Respondent's colleagues and the absence of reports of any misconduct on her part, even from other adults in her room, asserting that Respondent was alone with the class for extended periods each day, and that many of the witnesses spent minimal time in the classroom. It also points to what it observes to be the culture in the District, as revealed through witness testimony, of staff not reporting the misconduct of their colleagues. The District also claims that, contrary to Respondent's assertion that she had not discussed the case with her colleagues, the testimony of many of them actually suggests otherwise in the District's view, and it deems it incredible that all of these colleagues, many social friends, never once discussed the matter with one another. The District also dismisses the claims of several of Respondent's witnesses that they [REDACTED]

[REDACTED] feared retribution for testifying [REDACTED] claiming that none were able to substantiate those claims with credible evidence. It stresses that the District's actions, and specifically those of the Superintendent, in pursuing this investigation and charges, were an appropriate response to disturbing information suggesting verbal abuse of students, based solely on the safety and well-being of students, and any suggestion that these actions were based on [REDACTED] or manipulation of testimony, as Respondent accuses, is unfounded.

The District also seeks to cast doubt on the reliability of a number of Respondent's exhibits introduced into evidence, including student "report cards" (both as to the truth of the students' answers and their inability, in some cases, to authenticate their handwriting), seating charts (where student locations as noted are sometimes at odds with their testimony), the template for a letter to the mother of [REDACTED] (which supposedly served as the basis for a note from

Respondent to the mother which she testified she never received) and Respondent's PRO (which was found to be incomplete after being admitted into evidence).

By contrast, the District relies on the credibility of its own witnesses, and stresses that in order for me to accept Respondent's version of events, I would have to believe that each and every one of its witnesses lied under oath, and that Respondent was the only person at the trial who told the truth, as Respondent asserted repeatedly. It urges me to see her testimony as wholly incredible, noting that she was the only person with a motive to lie in hopes of saving her job.

In making its case for termination as the appropriate penalty in this case, the District points out that Respondent clearly demonstrated her awareness that conduct such as that charged is improper, including her belief that some of it constitutes child abuse, and that such conduct would warrant termination. It asserts that it has proven that she nonetheless engaged in such conduct, made efforts to hide it, exhibited a lack of remorse and refused to take responsibility for her actions. It urges that there has been an irreparable loss of trust for Respondent on the part of the District and, noting the irreparable harm she has, in its view, caused her students, concludes that there is no reason to believe she would refrain from such conduct if she were ever permitted to return to the classroom. Moreover, the District urges that returning Respondent to the classroom would reward her for her deception in hiding her misconduct, noting that the District was unaware of her conduct until the 2013-14 school year.

The District stresses the nature of Respondent's conduct in seeking termination, maintaining that she was verbally abusive to her students, subjected them to embarrassment, fear and intimidation, rendering many unwilling to participate in class or not even wanting to go to school. Her malice, the District contends, extended to parents who dared to question her abusive behavior, while students begged their parents not to report her misconduct for fear of further reprisals. Citing several previous cases decided under §3020a as well as court cases considering

appeals of such decisions, the District asserts that there is precedent for terminating a tenured teacher who has been found to verbally abuse and harass students, and further notes cases which point out that termination is appropriate to protect students from repetition of the misconduct.

The District also addresses the issue of progressive discipline, noting that while it is a factor to consider in determining penalty, it does not mean that a teacher with no prior disciplinary record cannot be terminated if they are found guilty of misconduct as egregious and offensive as that encountered in this case. Failure to demonstrate remorse, or even acknowledge wrongdoing, can also serve as a basis for termination, argues the District. It emphasizes the numerous opportunities, both before and during this hearing, that Respondent had to accept responsibility for her misconduct, apologize for her indifference to her students' suffering or explain that she had seen the error of her ways, but she repeatedly failed to do so. Rather, stresses the District, she sought to shift the blame to others whenever she could and, in the end, essentially accused every one of the District's 26 witnesses, some of her own witnesses [REDACTED] [REDACTED] of lying. The District believes that Respondent is beyond rehabilitation or retraining, and if returned to the classroom, would continue to victimize students and call it good teaching. It urges me to terminate her employment with the District.

CONTENTIONS OF THE RESPONDENT

Respondent seeks dismissal of these charges on a number of bases, including the vagueness of certain charges; her belief that many of the allegations do not rise to the level of misconduct; the absence, in her view, of essential elements of just cause; what she sees as proven animus of the District witnesses and their lack of credibility; and, with respect to the individual Charges, a failure on the part of the District to meet its burden of proof.

Respondent asserts that certain of the Charges, specifically, Charge One, Specifications 1 through 5 and Charge Four, Specifications 1 through 5, which each assert a course of conduct over an entire school year, fail to provide the specificity required in order to discipline a tenured employee under Education Law §3020a. Respondent argues that despite multiple District witnesses the lack of specificity in these charges has not been cured, resulting in multiple vague allegations which, despite lack of dates and detail, the District insists add up to a pattern. The failure to provide such specifics, maintains Respondent, is prejudicial and stripped her of the very due process §3020a is designed to insure. Moreover, Respondent contends that as a result of the vague nature of the allegations, she was reduced to making general denials which are then mischaracterized by the District as a failure to recognize her deficiencies and inappropriately cited as evidence of her inability to be remediated. It urges that these particular Specifications be dismissed on this ground alone. Certain other Specifications, argues Respondent, do not rise to the level of misconduct, even if proven.⁴

Respondent forcefully argues that fundamental elements of just cause are lacking in this case. She points specifically to an absence of notice of the charged conduct, an opportunity to correct the alleged conduct at issue and the absence of a fair and objective investigation. She reminds me that it is undisputed that there are no disciplinary letters to file, counseling or any other notice of alleged misconduct conveyed to Respondent prior to April 23, 2014. She also asserts that multiple allegations concerning the 2011-12 and 2012-13 school years were issues of which the administration had knowledge at the time but did not, in any way, notify Respondent that her behavior was in question. Similarly, avers Respondent, there was no notice given to Respondent of any alleged misconduct in the 2013-14 school year until the April 23 meeting with Principal Guggino and the subsequent April 29 counseling memorandum, both of which

⁴ Respondent's arguments in this regard, as well as all of her arguments regarding the various Specifications, are incorporated into the discussion of individual Charges and Specifications in the Discussion section below.

addressed incidents which allegedly occurred on April 7, 2014 and a brief summary of issues concerning student [REDACTED]. She emphasizes that the counseling memorandum concluded by saying that “[y]our failure to comply with the above directives may lead to disciplinary pursuant to Education Law section 3020-a, seeking to terminate your employment,” and that Respondent was then immediately removed from her teaching assignment, meaning both that she could not have possibly violated the directives in the counseling memorandum, and that she was given no opportunity to correct her alleged misconduct. Citing an earlier decision written by the undersigned, Respondent stresses the importance of progressive discipline in ensuring that an employee has adequate notice of what is expected of her, and an opportunity to learn from what she has done wrong and given the opportunity to improve and avoid similar conduct in the future. See *Matter of Baptiste*, SED # 19,759 at p. 45, *aff’d* 41 Misc. 3d 1230(A)(1st Dept. 2013). She observes that this is particularly important where, as in this case, all prior observations and annual ratings reflected satisfactory, effective or highly effective performance, reasonably leading a teacher to assume that her performance in the classroom did not place her at risk of discipline.

Respondent also complains about the lack of a full and fair investigation, noting that with only one exception, the District failed to interview the numerous adults who were assigned to Respondent’s classroom for varying periods during the day, based on what she deems to be a preposterous notion that all the alleged misconduct took place only when she was alone in the classroom, despite testimony of its own witnesses to the contrary. Moreover, even if that were the case, argues Respondent, it would have been instructive to question teachers who regularly approached, left and taught in proximity to Respondent’s classroom to determine if they heard anything out of the ordinary. Respondent also stresses that, with the exception of the issues

raised in the April 29 counseling memorandum, the District issued charges seeking to terminate her employment without ever speaking to her about the accusations.

Respondent urges me to consider the relative credibility of Respondent and her witnesses as compared to that of the District witnesses, and to acknowledge what she concludes is obvious animus and bias against her on the part of the District. She maintains that the record demonstrates that the District was predisposed to find fault with Respondent, and that its predisposition influenced the investigation and issuance of charges in the case. She cites the allegedly biased investigation noted above; the hostile timing of the counseling memorandum,

[REDACTED]
[REDACTED]
her belief that rumor and gossip were at play regarding the [REDACTED] charges months before they were actually served upon Respondent; [REDACTED]

[REDACTED] Animus is also shown, argues Respondent, in the very nature of some of the charges themselves, [REDACTED]

[REDACTED] and reaching back to incidents from prior years long since resolved without any finding of wrongdoing. [REDACTED]
[REDACTED]

Moreover, she accuses the District of generating an atmosphere of fear among teachers and improperly influencing student witnesses by pulling them aside to question them or feeding them candy during questioning.

Respondent stresses the absence of what she deems to be key witnesses, most notably the Principal, Laura Guggino, the only person in administration with direct knowledge of Respondent and her teaching practice during the charged years. She asserts that Superintendent

Ruiz' effort to indicate that Guggino was at fault for overlooking issues with Respondent's performance is undercut by the fact that Guggino was promoted by the District in 2013-14 and remains in that new position to this day, not the action that she believes would be taken for someone the District believed "fell down on the job." In addition, she notes the absence of certain students who were the subject of multiple charges against Respondent and who were allegedly victims of her conduct, as well as the failure of Tina Smith to testify about students other than [REDACTED] with whom she had relevant involvement according to Respondent. She asks that I draw an adverse inference in favor of Respondent with respect to all of these missing witnesses and testimony.

Addressing directly the testimony of the student witnesses for the District, Respondent points to what she sees as a record full of inconsistencies and "outright tall tales," noting that the variation among students is not merely the result of normal difference in recall or due to their age but, she insists, demonstrates some other influence at work. She deems it inexplicable that not a single word was said to Respondent or the District by any student about the vast majority of these allegations until after the conclusion of the 2013-14 school year. She points to the numerous pleasurable activities that many students, including the District witnesses, testified were incorporated into Respondent's class, and asserts that their warm behavior and what she sees as outright expressions of love for Respondent is inconsistent with students who are supposedly afraid of their teacher or trying to cover their backs. Her own witnesses confirm her positive interaction with her students, and she casts suspicion on the fact that it was only after she was removed from the classroom that students like [REDACTED] and [REDACTED] had unexplained "epiphanies" about the supposedly true nature of Respondent's teaching practices. She points to student [REDACTED]'s testimony that he never heard anything negative about Respondent from his classmates from her 2013-14 class until the summer of 2014. Respondent also seeks to cast doubt on the testimony of

parents who appeared for the District and testified about their children's fear and reluctance to go to school, noting that not one of them mentioned in any writing to Respondent that they believed she was yelling or behaving in any manner towards their child which was inappropriate. She deems it incredible that these parents, who she says brought the most minor issues to administration with regularity, would remain silent as Respondent was tacitly allowed to terrorize their children. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] She also points out that many of these parents are part of a close group and suggests that they influenced one another regarding their opinion of Respondent. [REDACTED]
[REDACTED]

By contrast, Respondent describes her own witnesses as unimpeachably credible and, despite the fact that the colleagues who testified for her sometimes socialize together, holds them up as caring individuals who would never approve of a teacher's abuse of students regardless of that friendship. Likewise, she characterizes the student testimony on her behalf as unadorned and candid, rejecting the District's attempt to paint them as "teacher's pets." She stresses that her own testimony, including meticulous recollection of her students and their lives, had the ring of truth and demonstrated how deeply she cares for her students. She maintains that she credibly explained the manner in which she ran her classroom, the multiple approaches she took to try and reach students and the manner in which she enforced rules and regulations, all of which she avers is reflected in so many observations and reports from her administrators.

Respondent states that the District's attempt to portray her as a manipulative, myopic tyrant who could admit no wrong is belied by all the testimony in this case, and while she

candidly admits that there are some things she would have done differently (including her meeting with Mrs. [REDACTED] or her response to [REDACTED] regarding his homework), she steadfastly denies wrongdoing and, [REDACTED] asserts her innocence. What the District sees as unwillingness to accept responsibility for misdeeds is based in an assumption of guilt, and Respondent adamantly denies any wrongdoing for which taking responsibility would be required. She urges me to dismiss all the charges and return her to the classroom.

DISCUSSION

Respondent has raised a number of arguments which cut across all of the individual Charges and Specifications, issues of due process, just cause, motive and animus, all of which stand to have a bearing on the integrity of this process and a proper determination of whether Respondent should be subjected to discipline at this time. To the extent, therefore, that these arguments do not lend themselves to being resolved simply within one or more of the Charges, they will be discussed first as an overview to the examination of the individual Specifications which follows.

JUST CAUSE

Respondent argued that certain fundamental elements of just cause are missing in this case, including lack of notice, an opportunity to correct the alleged conduct at issue and the absence of a full and fair investigation. I will begin with the matter of the investigation. Respondent may be correct that the District could have learned more about other teachers' experience in and around Respondent's classroom, but their failure to do so is not fatal to this process. The hearing itself provided the opportunity to fill those gaps in the investigation, and in fact, Respondent presented many just such witnesses and had a full opportunity to promote the argument that their experience in and around Respondent's classroom is probative on these charges. The District's decision not to interview Respondent is a somewhat different matter, but

it should not be forgotten that Respondent was the first person they went to on April 23 when the first two incidents at issue here came to their attention. As the recording which is D35 shows, Respondent evaded, answered questions with questions, was defiant and, ultimately, denied everything with which she was presented. The District may have assumed any further discussions would yield similar results. Whatever the reason for their decision, however, the hearing itself has provided ample opportunity for Respondent to be heard. I see no reason to think that interviewing Respondent earlier would have made any difference in the way any of this has progressed, and she has now received a full and fair hearing into the matters at issue in this proceeding.

The issue of whether Respondent was on notice that the District objected to anything she was doing and, thereafter, gave her an opportunity to improve, is a central matter of concern in this case. It is not a difficult question. There is no evidence, and the District does not argue, that Respondent was ever counseled regarding any practices such as those which give rise to these charges. To the extent that there is any evidence that concern existed about things like yelling at students or causing them to cry, Respondent deflected all such concerns, pointing to a myriad of other factors which might have been causing any given student difficulty and, in the end, no one told her to stop doing anything she was doing prior to the counseling memorandum of April 29, at which point she was promptly removed from the classroom. It is also not difficult, then, to conclude that she never had an opportunity to do anything differently.

The District does argue, however, that the reason Respondent was never put on notice is because it did not know what was going on, that Respondent effectively hid her practices until 2013-14. I am not persuaded that this is necessarily the case, at least not with regard to some general practices. Here, it is necessary to digress for a moment and address a question posed by Respondent – “where’s Laura” – as the absence of Principal Guggino from this trial was, indeed,

notable, and goes directly to the question of what the District knew or didn't know about what was going on in Respondent's classroom. Guggino, who was Respondent's supervisor for all her years in the District, including the charged years, was certainly in the best position to speak about Respondent's performance as a teacher. She no doubt could have spoken about her interactions with parents and students, whether they had raised concerns with her, whether she had any of her own, and if the answer to any of that was yes, whether she ever discussed it with Respondent and if not, why not. The District, however, chose to make its case without her, and Respondent now asks me to draw an adverse inference from her absence. Respondent is asking me to assume that she would not be able to testify as one might expect to support the District's case, but it is actually not necessary for me to draw an adverse inference from her absence in order to reach that conclusion on at least one key point. Superintendent Ruiz explained that when she first received a call from Mrs. [REDACTED] in October 2013 expressing concerns about how her daughter was being treated in Respondent's classroom, Ruiz turned the matter over to Guggino. Ruiz testified that Principal Guggino told her that Respondent had a "reputation for being strict and for yelling." Respondent might complain that this is hearsay, but I consider it reliable because, to the extent that it reveals that Guggino knew, at very least, that Respondent was strict and yelled, it is an admission against interest. It suggests – and there is nothing in the record to the contrary – that Guggino knew about and decided to tolerate certain aspects of Respondent's teaching. If she was strict and yelled, there is no evidence that Guggino did anything to stop that or to inform Respondent that it was, to any extent, unacceptable.

Respondent would have me conclude that the case should end there. If the charges could all be characterized as reflecting what someone might just consider "strict" methods – a word which Respondent also used to describe herself – I might agree. I also might agree if the only behavior at issue here was yelling at students. But there is a great deal more alleged in these

charges, some of which Respondent herself described as child abuse worthy of termination. There is no evidence that Guggino or anyone else was aware of the more serious matters which have been charged here. Respondent herself demonstrated that she was on notice that certain behaviors are per se unacceptable. Therefore, while some of the Charges will be resolved upon an absence of notice, many must be considered on their merits and will not fail for that reason.

The fact that Respondent was removed from the classroom and had no opportunity to change or improve her classroom practices is undisputed. That fact, and its connection to the principles of progressive discipline, is a matter which will be considered on penalty.

RELATIVE CREDIBILITY OF WITNESSES

While there are a host of Charges and Specifications in this case, all of which will be discussed in turn to determine if the District has met its burden of proof, this case first and foremost turns on the relative credibility of the witnesses involved. At its core, Respondent asks me to believe that each of the 26 witnesses who testified for the District either lied, was confused, manipulated or unduly influenced in his or her testimony.

[REDACTED]

She asks me to consider her almost six days of testimony and the supporting testimony of her colleagues and students as the only credible evidence in the case, to discount as either unreliable or outright fabrications the

testimony of all of the District witnesses, and having done so, necessarily find that she has been a victim of an unwarranted and malicious attempt to end her career which is without basis in fact.

Surely Respondent understands the high hurdle she asks me to clear in finding the existence of a conspiracy so well-crafted that each of 26 students, parents and professionals were convinced to create and execute their piece in an overall tale which became the case against her. Some of Respondent's argument suggests that perhaps many were unwitting pawns in the process – the children especially, but also parents whipped into a frenzy by rumor and innuendo. But her argument definitively asserts a malicious intention on the part of the District which, in her telling, conjured these allegations almost out of thin air [REDACTED]

[REDACTED] I have diligently reviewed the record in this case in an effort to see whether that assertion is supportable, mindful of how high the stakes are here. I have carefully considered what I believe to be the most troublesome aspects of the District's case in terms of credibility, particularly the absence of Laura Guggino as a witness at trial, and studied both the inconsistencies in testimony pointed out by Respondent and the supportive testimony which she insists proves her innocence. I have also given due weight to the atmosphere in which these charges arose, their timing and their very nature, as Respondent has urged me to do. Yet I am unable to conclude either that the District had the desire or intention, separate and apart from any real facts, to end Respondent's career, or the ability, means or reason to recruit so many to such a purpose if, in fact, there were no real basis for concern.

The timeline in this case is instructive in this regard. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] it was in April of that year that the District first heard from some students about incidents which caused concern and which were the subject of the April 23 meeting and April 29 counseling memorandum. [REDACTED] the District was presented with allegations about Respondent, [REDACTED] relating to practices in her classroom which, if true, suggested a pattern of inappropriate interactions with her students and, in some cases, verbal abuse. They continued to talk to students and, at some point, expanded the inquiry to earlier years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] It is fair to say that had the District not acted as it did, in this or any other case, it would be rightfully subject to criticism for not doing enough to learn the truth and adequately protect its students. And in fact, Respondent now uses that very failure from the earlier of the charged years to defend herself against the action the District now seeks to take. Respondent criticizes the District both for investigating allegations against her arising during 2013-14 and for failing to do so in earlier years, perhaps taking her at her word, during 2011-12 and 2012-13. In any event, I decline to find fault with the District for vigorously pursuing investigations into serious allegations of misconduct. Again, the process worked as it should. The District did what it felt was necessary to protect its students, and brought the matter through the §3020-a process to determine what, if anything, actually happened. I am unable to find malicious intent or animus behind any of this, and none has been credibly presented to me on this record. As Respondent repeatedly reminded me she had, at least on paper, an outstanding record with the District prior to this time. While I am sure that the District was disappointed or even shocked at the prospect that this long-time teacher may have been responsible for any of the allegations against her, founded or otherwise, this does not lead me to the conclusion that they somehow took matters into their own hands to fabricate a case against her. There is simply no evidence to support such an effort on the part of the District, nor any reason why they would wish to do so.

Animus wasn't the only reason Respondent urged me to consider the District's case unreliable. She pointed to inconsistent testimony by student witnesses, again insisting that they had been manipulated and confused by a District determined to build a case against her. As already explained, I see no evidence of such a vast manipulation by the District, but I have more reason than that to believe the students who came forward at this trial. It was not easy for most

of them to take the witness stand against their teacher. At least one, [REDACTED], considered herself a favored student of Respondent. But each of them, understanding the importance of telling the truth, recounted particularly difficult moments in Respondent's classroom with thoughtfulness and authenticity. No, their stories did not all match exactly, but unlike Respondent, I find this to be totally consistent with an absence of collaboration and contrivance of some agreed-upon story. But one moment of the trial stands out for me. [REDACTED] appeared and testified about being in Respondent's class, and told a story about being humiliated by having his test score, which was low, called out in front of the class as he was criticized for not doing well. [REDACTED] wept while recounting this experience, and I find it impossible to believe that the telling of a fabricated tale would provoke such genuine emotion in a child. I also do not find it inexplicable, as does Respondent, that many of these students said nothing to Respondent or the District until they found themselves in interviews in the spring of 2014. Many of them did report contemporaneously to their parents, and all expressed concern about repercussions should they or their parents speak to Respondent directly. There is also credible evidence that at least one student, [REDACTED] approached Respondent directly in the spring of 2013 to advocate for himself.

Respondent points to the contrary testimony of her student witnesses, one for each of the charged years, and well as adult witnesses who uniformly claimed to never have heard or seen anything which resembled the charged conduct. As to the students, they clearly came to this hearing to help one of their favorite teachers, and I believe they were truthful to the best of their ability. There is no question in my mind, however, that different children can have different experiences of the same class, and a student who is having no difficulties in a class may be oblivious to or have a different view of the class than that of a student who feels he or she is being treated unfairly. Indeed, Respondent herself spoke often about differences between reality and children's perceptions. I do not doubt that there were many positive aspects to Respondent's

classroom and teaching, as evidenced by student witnesses on both sides of the table speaking about things such as Coyle cash, snack time and other activities, but that does not go to prove that the other things alleged in this proceeding did not necessarily occur. I also note that both [REDACTED] and [REDACTED]'s testimony on behalf of Respondent did, in some cases, end up corroborating that of some District witnesses, while the efforts of some of the adult witnesses leaned so heavily towards not being willing to admit the slightest problem in Respondent's classroom that they ended up contradicting Respondent herself, for example, by insisting that they never saw a student cry for any reason. Respondent testified that there were many examples of children crying in class – children do that, she said – only she clarified that it was never in response to her treatment of them. Either these witnesses stretched to avoid saying anything that could be perceived as negative or, as the District has argued, they may not have been in the room at the time certain things happened. Either way, it renders their testimony less reliable.

Respondent also sought to impugn the testimony of parent witnesses by asserting that not one mentioned in any writing to Respondent that they believed she was yelling or behaving in any manner toward their child which was inappropriate. This takes too narrow a view of communications that took place between Respondent and some parents. Many reached out to her, both in writing and through in-person communications, to try and figure out what was wrong, as they were seeing negative attitudes and behaviors towards school by their children that they had never seen before (and, in every case, have not seen since). Several examples exist in the record, including the persistent correspondence from the parent of [REDACTED] during the 2012-13 school year, expressing serious concerns about her child's experience and what might be occurring in the classroom (D19, D21). In the spring of 2013, Guggino passed on concerns from [REDACTED]'s mother that her daughter felt picked on (R69) and, in response, Respondent blamed [REDACTED]'s fear that her mother would not pick her up from school and dismissed the other

concerns, saying that no student was ever threatened, picked on or singled out in any way.⁵ Similarly, in 2013-14, there is an ongoing discussion between and among Respondent, the parent of [REDACTED] and the school psychologist about [REDACTED]'s well-being in Respondent's classroom (D5). Also, the mother of one of the students assigned to Respondent's class in 2013-14, who had heard rumors about Respondent's behavior in the classroom, particularly with respect to yelling at and berating students, undertook to speak to her in an effort to allay those concerns in August 2013 (D9). The parent testified about that conversation, and said that she raised the matters of yelling and berating, and was reassured by Respondent who suggested that she speak to parents of students she had taught in the past. Respondent denies that this parent said anything about such behavior, but I find the parent's testimony to be credible on this point. I also note the testimony of every child who hesitated to report to their parent, and every parent who hesitated to report to administration, for fear that rocking the boat would only make things worse.

At trial, Respondent managed to find a different explanation for what was plaguing every one of these children, and these will be discussed more below, but to say that parents were mute about what may have been going on is an overstatement. Indeed, the extent to which parents accepted explanations offered by Respondent cuts against her argument that everyone was out to get her. There did come a time when some parents believed that Respondent was, in fact, mistreating their children, and some took steps to remove their children from her class. Many, however, told their children to keep their heads down and just to get through it, many citing a fear of retaliation. One might question these parental decisions, but in the face of the clear testimony of the children as to what was occurring, they do not in themselves prove that nothing untoward was going on in the classroom. Moreover, Respondent's assertion that it is not credible to think that there was a "wall of silence," [REDACTED]

⁵ There is no evidence in the record of any follow-up by Guggino or otherwise after this exchange, which occurred about two weeks before the incident at dismissal time which is the subject of Charge Five.

[REDACTED] not only is contradicted by the evidence, but by Respondent's own theory that the parents were talking to and influencing each other to develop negative opinions of Respondent. The record reflects that they *were* talking to each other, because they had concerns based on what they were hearing from their children. That these concerns did not always make it back to Respondent may go to questions regarding the administration's actions, [REDACTED]

Then there is Respondent's own testimony. She offered tremendous detail about how she runs her classroom, the extent to which she knows her students and precise explanations for each and every movement she made during the incidents described in the Charges. She denied almost every word or action that the District attempted to put in her mouth or attribute to her, even when it did not go to prove innocence or guilt on a given charge. The relative credibility of her explanations versus those offered by the students will be dealt with in the individual Specifications below, but as a general matter, her persistent determination not to allow for even the slightest error invited close scrutiny of her voluminous commentary throughout the trial, and that scrutiny brought me to question the validity of much of what she said. Even in the rare instances where she began to admit some failing in her behavior, she retreated and walked back her comments in an effort to insure her admissions did not fall within the rubric of the charged conduct. I understand that she was trying to defend a lifetime of teaching, but in doing so, it appears that she failed to objectively assess what had happened around her in the past two years, other than to see herself as a victim. For these reasons, as well as for other specific reasons which will be discussed in connection with the individual charges below, I have generally found reason to credit the testimony of District witnesses over that of Respondent.

CHARGE I, SPECIFICATIONS 1 THROUGH 5

CHARGE 4, SPECIFICATIONS 1 THROUGH 5

These Charges and Specifications are considered together for two reasons: 1) because they are identical other than that they apply to two different school years; and 2) because Respondent argues that these particular charges should be dismissed on the ground of vagueness.

At the beginning of this proceeding, and again at the end of the District's case, Respondent moved to dismiss Specifications which she deemed were too vague to allow her to mount an adequate defense. Those motions were denied, but in those denials, the District was tasked with establishing a course of conduct to the extent that it was seeking a finding of guilt on otherwise non-specific acts of, i.e. intimidating and/or frightening and/or embarrassing children, yelling, making children cry and making them fearful of coming to school or participating in class.

First, a note on the issue of vagueness. Respondent argued that the specificity called for by §3020a requires dates and detail regarding events sufficient to enable Respondent to mount a meaningful defense against such charges. She asserted that without such specificity, she was reduced to making general denials which are then mischaracterized by the District as a failure to recognize her deficiencies and inappropriately cited as evidence of her inability to be remediated. I do not find that these charges necessarily fail on that basis. Respondent's "general denials" were actually quite specific. She insisted, repeatedly, that she *never* engaged in the type of behavior charged. Throughout days of testimony, she never once – even when faced with very specific charges – admitted doing any more than being stern or firm, reiterating every time she was asked that she simply does not yell at her students, period. When the issue was crying, she was able to distinguish the things that she admitted might make children cry, always explaining that she did not "cause" them to cry, as is charged. She spoke with specificity about the manner

in which she approached discipline in her class, maintaining that it was her consistent practice to speak to students about behavior or performance issues privately, at her desk, thereby eliminating the possibility that they may have been embarrassed or intimidated. I do not find, therefore, that the more general nature of these particular charges in any way prejudiced or prevented Respondent from being responsive to that which was alleged against her.

The next thing to consider is the issue of notice. As explained in the discussion of notice above, there is sufficient evidence in this record to suggest that Principal Guggino was aware that Respondent had a reputation for yelling and being strict⁶, and no evidence that she ever spoke to Respondent about that, expressed concern, counseled her or told her that she would be subject to discipline if she continued. Therefore, a charge of “yelling,” without further explanation that might bring the charge into, for example, the realm of verbal abuse of a type that Respondent knew on her own was unacceptable, cannot be the subject of penalty due to the failure of notice. The District, however, proffered sufficient evidence to establish that Respondent did engage in a course of conduct which included yelling at students, particularly in the 2013-14 school year but also during 2012-13, which must be recognized as unacceptable behavior in the classroom. The students who testified from both years in question were extremely credible. “Yelling” may have meant something different to each of them, but whatever it meant for any individual, it clearly stood out for them as amongst their other teachers and classroom experiences. The children’s parents were able to corroborate by recalling, in many instances, contemporaneous reports from their children regarding Respondent’s behavior. Respondent’s denials were not credible, and the testimony of her colleagues insufficient to allow me to dismiss the repeated assertions by so many different students about this practice. The District established a course of conduct in that

⁶ I am cognizant of the fact that Respondent repeatedly denied ever yelling at her students. She also argued, however, that she was denied notice by pointing to the testimony of Superintendent Ruiz relied on herein and, in doing so, afforded it a degree of credit.

these students all spoke about ongoing incidents of yelling at various students which are not otherwise specified in other charges. Nonetheless, due to the indication on this record that Principal Guggino was aware that Respondent yelled in her classroom, and took no action to correct her, the charge of yelling cannot form the basis for the imposition of penalty at this time. For this reason, Charge One, Specification 2 and Charge Four, Specification 2 are sustained as a result of proof on the merits, but cannot and do not contribute to any portion of the penalty herein due to the issue of notice.

There is no similar reason to believe that Principal Guggino knew or had reason to know about regular acts of intimidation, embarrassment or students crying, the conduct underlying Charge One, Specifications 1 and 3, and Charge Four, Specifications 1 and 3.⁷ That does not necessarily end the conversation about notice, but it changes the nature of the question, which becomes whether the District is absolved from the need to provide notice insofar as there is no proof that it was aware that this was going on in the classroom. With respect to these particular acts, the answer must be yes. While there may be room to disagree about whether certain strategies in the classroom that one might deem “strict” are acceptable, there can be no reasonable disagreement that actions such as intimidating, humiliating or embarrassing students, or causing them to cry (for reasons directly related to a teacher’s treatment of them) are unacceptable, and that no teacher – and especially a veteran teacher – needs to be told so.

The question then becomes whether the District proved a course of conduct with respect to crying in either of the school years in question. I conclude that it has done so, however the result is different for the two school years in question. In 2012-13, the three students who testified, [REDACTED] and [REDACTED] all described numerous children crying on a regular basis in the

⁷ There is an email from [REDACTED]’s mother to Principal Guggino (D16) indicating that her daughter came home crying about “what went on in class today” saying this was not the first time and she wanted to speak to her about it. There is no indication of what else Guggino may have learned thereafter, whether it extended to crying during class, whether a connection was made for her to Respondent’s behavior or what, if anything, Guggino may have done with such information if it was in fact received.

classroom. Respondent argued that the only specific testimony about crying in that year focused on [REDACTED] and [REDACTED], and pointed to [REDACTED]'s testimony that she knew these students to cry in all their classes, and that she never saw them being mistreated by Respondent. But this does not fully account for the testimony of the District's three student witnesses for this year. While [REDACTED] only identified herself and [REDACTED] as students who cried, [REDACTED] identified six students including herself who would cry, and [REDACTED] identified himself and another student. Moreover, even if there are only two students crying (although I believe there were more), the question that must be asked is why. Respondent would have me believe these were just particularly sensitive students who cried at the drop of a hat. Their testimony suggests otherwise.

[REDACTED] said that Respondent's manner, including being loud and yelling, made her scared and nervous. She spoke about other students left in tears after being corrected or reprimanded. She said she didn't want to go to school because she was afraid of being wrong and getting yelled at. Her mother described her as a different girl during her fourth grade year, crying after school and being petrified of bringing in anything that might be wrong or incomplete. More troubling, she said her daughter was saying things that a nine year old shouldn't be saying, including that she was stupid, didn't feel good about herself and that life wasn't worth living. Respondent attributed all of this to [REDACTED] being a sensitive girl, the pressures of being dislocated after Hurricane Sandy, and jealousy about the academic performance of her [REDACTED] claims which her mother firmly denied. [REDACTED] also spoke about Respondent as using a "high tone" and being "mean," leaving her scared, nervous and embarrassed. She testified that Respondent once told her that she had no friends. She recalled both herself and [REDACTED] crying after being yelled at for not knowing an answer. Her mother corroborated this account, recalling when her daughter came home crying hysterically because Respondent had made fun of her for not knowing her multiplication facts. She described her daughter as being very nervous thereafter if she couldn't

figure out a math problem. Respondent testified that her comments about knowing multiplication facts were meant for the whole class and that she had apologized to [REDACTED]. She denied everything else testified to by [REDACTED] and her mother, commenting again on the stresses experienced due to the storm. [REDACTED] also attributed his crying to getting scared when Respondent would yell and treat students badly. His mother testified about her son's demeanor during his school year with Respondent, saying that he got quiet, didn't want to talk, eat or go to school, told her that Respondent yelled a lot, and said things like "mommy, I'm not enough, I'm not good enough, she puts me down, I can't participate, I'm not good, I'm not smart." He asked to be home-schooled or to find another town to live in. Respondent denied any such treatment of [REDACTED], and focused on the help she provided to his family when they were displaced after the storm. As to all three of these witnesses, Respondent maintained that they and their parents lied when they testified, and she noted that often children feel "picked on" when they are corrected by their teacher.

There is no question that Respondent was a strict teacher and that she had a "reputation for yelling" which was corroborated by each of these three students. While she cannot be penalized for yelling, there is no evidence that Guggino knew that, in doing so, she was reducing children to tears on a regular basis. If, in fact, several students had a particular sensitivity to Respondent's style of teaching, to the point where it left them in tears on a somewhat regular basis, then it was incumbent on Respondent to address that in a way that reflects an understanding of her part in it. Her repeated attempts to blame parents, family circumstances and Superstorm Sandy show a determined refusal to consider whether she had something to do with this. The children and parents all concluded that she did, and I credit the recollection of their experiences. As I noted earlier, it is not surprising that another student like [REDACTED], who did not have the same struggles as these students, may not have had a similar experience or taken

particular notice of how her classmates were treated. The students who testified for the District were clear that Respondent's actions towards them were most often in response to a wrong answer or missed homework, circumstances that not all students would find themselves in. I also reiterate that [REDACTED]'s testimony, sincere in wanting to help Respondent, went so far to avoid any hint of wrongdoing that, in some respects, it did not ring completely true, particularly when it conflicted with Respondent's own testimony.⁸ Finally, it goes without saying that once a child has been brought to the point of crying, that child has been embarrassed in front of his or her peers. There is also ample evidence that the tears in question resulted from students feeling intimidated by Respondent's approach to them, particularly when they failed to perform as expected.

I also must take a moment to reflect on Respondent's testimony regarding why and when students cry in the classroom, testimony which was filled with discrepancies. She began by acknowledging that this is something that occurs for various reasons – none of which related in any way to her treatment of any given student -- but then retreated from her own statement, saying that they may well up and express sadness, but not actually cry. She insisted at one point that this only happens when they get a test back or during snack time, perhaps forgetting that moments earlier she had described in some detail how she allows the class to respond when someone cries in the middle of a lesson. And her description of stopping everything when someone cries during a lesson to allow his or her classmates to comfort that student was not mentioned by a single other student called to testify by either side. This was an almost painful effort on Respondent's part to insure that nothing she acknowledged fell within the bounds of the

⁸ I also note that other discrepancies such as [REDACTED]'s assertion that her initial fear of Respondent was based solely on the threat of lunch detention, side by side with Ms. Rogers' assertion that Respondent never gave lunch detention, rendered some of the unwavering support of Respondent's witnesses less reliable.

charged conduct, and in making that effort, ended up impairing her credibility by changing her story more than once.

For all these reasons Charge Four, Specifications 1 and 3 are sustained.

[REDACTED]

Charges One and Four also allege, in their Specifications 4 and 5, that there were consequences to Respondent's conduct, i.e. that it caused one or more students to tell their parents that they did not want to come to school, and that it made them fearful of participating in class. These charges boil down simply to whether the students who testified were credible in their assertions that it was actions of Respondent that made them unwilling to go to school or to participate in class. Respondent had many theories about what may have been troubling each individual student, but each child who testified before me clearly linked these two consequences to the atmosphere in Respondent's classroom and her behavior. Their assertions were bolstered by their parents' testimony that neither before nor since their time in Respondent's class have

⁹ Each of the six students, when asked about which students cried, spoke about the incidents involving [REDACTED] and [REDACTED], all of which are separately charged. There were occasional references to other non-specific incidents, but they are not sufficient to persuade me that this charge is anything other than duplicative in nature.

any of these students ever expressed an ongoing desire not to go to school, or a reluctance to participate in class for fear of being yelled at or embarrassed if they got an answer wrong. They all, however, indicated that this was the case during their fourth grade year in Respondent's class.

Respondent cannot effectively refute assertions of what was in the minds of these students. She tried, but each student and parent vehemently denied every effort Respondent made to shift the blame to family or other circumstances which she theorized were responsible for why one student or other was having a difficult year. These students all declared that they were negatively impacted by Respondent's behavior towards them, and I credit all of their testimony in this regard. Charge One, Specifications 4 and 5, and Charge Four, Specifications 4 and 5, are sustained.

CHARGE ONE, SPECIFICATIONS 6, 7 and 8

These charges relate to an incident which occurred in Respondent's classroom during the spring of 2014, and is one of the incidents which was discussed at the meeting with Guggino on April 23 and mentioned in the counseling memorandum of April 29. It is alleged that when Respondent discovered that the parent signature on student [REDACTED]'s agenda was not authentic, she humiliated him in front of the class (Specification 6), threatened to call the police, in a manner which was audible to other students in the class (Specification 7) and, as a result of these actions, the student became extremely upset and began to cry, which was observed by other students in the class (Specification 8).

In support of these charges, the District presented testimony of six students in Respondent's class. [REDACTED] said that he was sitting at his desk, and [REDACTED] was at Respondent's desk, when suddenly he heard Respondent yelling that "this is illegal and I have to call the cops." He said she took out her phone and pretended to call the police, and described [REDACTED] as "dripping with

tears.” [REDACTED]’s mother corroborated that [REDACTED] had come home and told her about the incident at the time it occurred. Similarly, [REDACTED] testified that she pulled out her phone and said “do you want me to call the cops” and indicated that [REDACTED] could be arrested for what he had done, and that [REDACTED] was “crying hysterically.” [REDACTED]’s mother recounted that [REDACTED] came home and asked her if you can go to jail for signing someone’s name and told her what Respondent had said. [REDACTED] also testified that Respondent threatened to call the cops, and that [REDACTED] cried and was very upset. [REDACTED] said she took out her phone and waved it in the air saying that she could call the cops, that what he had done was illegal and one could go to jail for it. [REDACTED] testified that Respondent pretended to dial the police saying “I’m going to have to call the cops” and that [REDACTED] was crying, although she placed him in his own seat, rather than at Respondent’s desk. Her mother recalled the incident clearly, as [REDACTED] did not want to return to school after lunch on the day it happened. Finally, [REDACTED] remembered Respondent calling [REDACTED] to her desk about the agenda, and [REDACTED] crying. According to his mother, he reported this incident to her at a later time, not when it occurred, because it did not happen to him. Another student, [REDACTED], testifying on Respondent’s behalf, recalled [REDACTED] crying at Respondent’s desk when he got in trouble for writing his Dad’s initials.

The matter was discussed with Respondent at the meeting with Principal Guggino, who advised Respondent that three students, including [REDACTED], had reported the incident to her. At that meeting Respondent acknowledged an interaction with [REDACTED] about his agenda and admitted that she told him that signing someone else’s name was forgery, but adamantly denied threatening to call the police. At trial she recalled confronting [REDACTED] about the agenda, but was careful to say that she had not accused [REDACTED] of being the one to forge the signature, and told him that this would be considered the crime of forgery if committed by an adult. She further testified that she spoke to [REDACTED] quietly at her desk in a whispering voice, that [REDACTED] never cried and did not seem upset when he returned to his seat. When asked about [REDACTED]’s testimony to the contrary, she discredited

her own witness by saying that his testimony on the matter was not true. She testified, as she had told Guggino, that she never said she was going to call the police, nor did she take out her cellphone threatening to do so.

Respondent argued that the failure of the District to call [REDACTED] to testify is a glaring omission and should give rise to an adverse inference. She also pointed to what she deemed to be discrepancies and gaps in the students' stories which she attributes to the "mass hysteria of rumors" which erupted in the classroom after her whispered conversation with [REDACTED]. She urged that additions to and embellishments to the story beyond what appeared in the counseling memorandum, including accusing [REDACTED] of the forgery and threatening to call the police, are evidence that the matter was exaggerated through rumor.

The weight of the evidence supports the District's charge and is sufficient to meet its burden of proof. Each child had a clear recollection of the key elements of what occurred, i.e. that [REDACTED] had forged his father's name, that Respondent had confronted him about it, that she had threatened in some way involving the police and/or jail, and that [REDACTED] cried in response. Many of them reported contemporaneously to their parents. Respondent would have me believe that somehow a whispered conversation turned into hysterical rumors, but does not explain why, if indeed she spoke in a whisper to [REDACTED] as she claims, anyone would have had cause to start such rumors in the first place. According to her, she had a quiet conversation with [REDACTED] and that he seemed fine in response, did not cry, and just returned to his seat. If true, this would be consistent with the way in which she said she always dealt with disciplinary matters, nothing out of the ordinary, and should not have given anyone reason to start or fan hysterical rumors. It is far more likely that the incident occurred exactly as the six District witnesses said it did. I am not dissuaded from this conclusion by the fact that [REDACTED] did not testify. While I do not know the reason that [REDACTED] did not appear at trial, his testimony is not critical to a finding on this charge, as

there were multiple eyewitnesses to the event who did testify. While I do not feel it appropriate to draw an adverse inference here, I will note that even if [REDACTED] had testified and did not tell the same story as the other students, I would have had to weigh his credibility against the others. As it stands, though, there is no conflicting testimony other than that of [REDACTED] who said he did not hear or see anything other than [REDACTED] returning from Respondent's desk teary, and that he heard rumors about what occurred but did not believe them. Respondent frequently questioned whether certain students were seated in a place where they could see certain events, and this may have been the case with [REDACTED] as well. More importantly, though, it is difficult to embrace [REDACTED]'s testimony when, on one key point – i.e. whether [REDACTED] cried as a result of his interaction with Respondent – Respondent herself said that he lied. I do not find his testimony sufficient to refute what six other witnesses saw and heard. Respondent is guilty of the conduct set forth in Charge One, Specifications 6, 7 and 8.

CHARGE ONE, SPECIFICATIONS 9, 10 and 11

These charges relate to what has been referred to as the “apology letter,” one of the matters brought up by Principal Guggino at the April 23 meeting and referred to in the April 29 counseling memorandum, which occurred on the same day as the forgery incident discussed above. The charge includes Respondent becoming upset when a majority of her class failed to complete a homework assignment (Specification 9), requiring members of the class to write an apology letter to her regarding the assignment (Specification 10) and reprimanding students for “making excuses” when they tried to explain that she had been unclear about the assignment (Specification 11).

On the date in question, as a result of confusion regarding a math homework assignment, the majority of the students in Respondent's class did the wrong assignment. There is no dispute

that there was a discussion and that, ultimately, students were asked to write something about what had occurred. It is the nature of both that discussion and the writing which is at issue here.

The District's six student witnesses each spoke about the mistake in the homework assignment and the fact that Respondent made them write about it afterwards. Some were angry because they felt it was not their mistake. There were some discrepancies between and among their accounts in certain details, such as how many students did the wrong assignment, or where they were sent to do the writing, but all agreed that they were required to write something. There is no dispute that they never handed the letters in to Respondent and one, written by [REDACTED], came into evidence at trial (D15). It was [REDACTED]'s mother who brought the letter to the attention of the administration.

Respondent did not deny asking the students to write something, but she refused to admit that it was an "apology letter." Rather, she said that she solicited their ideas about how to prevent such an occurrence from happening in the future. The letter written by [REDACTED] supports both the notion of an apology and a possible solution to whatever it was that caused the mistake to occur. In it she says, "I am sorry I thought I had to do lesson 11.2," but also says she thought the class should get double the homework as a consequence for not doing their homework. Respondent also pointed to the testimony of Victoria Longworth, who said she was in the class at the time and that Respondent did not have the class write an apology letter, but supported the idea that Respondent asked them to reflect on the decision they made not to do the assignment and what they would do differently in the future.

Respondent's testimony about this incident does not withstand scrutiny. When asked about the matter on direct examination, she said that she skipped a section, which was unusual, and that some students did the homework from the skipped section. She said she took responsibility for what had occurred, testifying as follows:

When I saw that I spoke to the students and I immediate [sic] took responsibility. I said I'm taking responsibility, boys and girls, I know what happened. We were just fooling around way too much at the end of the day yesterday when I assigned this assignment. I know we were joking around, having a good time, and . . . that's my fault. There's a time to be serious and a time to have fun. Some of you just did the next page because you thought it was the natural sequence, but we really need to pay attention.

T. 3571.

The first question which occurs is, if in fact she felt this was her mistake, why was it necessary for the children to “brainstorm” as she put it to see how such an occurrence could be prevented in the future? She put it in the context of how they could better “focus,” but the testimony of her own witness, Victoria Longworth, does not support that context. Longworth, who Respondent placed in the room for the entire exchange, said nothing about Respondent taking responsibility. Rather, she explained that the students indicated that the wrong assignment had been written on the board, and then she recounted what happened next:

Well, I believe she asked the students that made the choice not to do their homework, they didn't try to make any other effort to get the correct information or perhaps call a friend to see what that person did or maybe just to try to do something anyway.

T. 2393.

If this wasn't clear enough about where Respondent was actually placing the blame, Longworth explained the writing assignment that followed:

She had the students that didn't do their homework take out their reflection journals. . . . I believe she asked her students to think about the decision that they made and why they chose that decision and what they might do in the future.

T. 2394.

Longworth's description of what occurred is far more corroborative of the students' recollections than it is of Respondent's. These are not the words of someone who happily accepted responsibility for their own mistake, as Respondent insisted she had. Rather, she told these children that they had made a conscious choice not to do the homework, and failed to make some effort to get the correct information – although there is no explanation as to why they would have even thought they had the wrong information in the first place to prompt such an effort. It was only the students who did the wrong assignment who were asked to “reflect,” which is counter to the notion of a class-wide brainstorming session on how to better focus, as is the fact that she never collected the letters or discussed the ideas she was supposedly soliciting. Rather, she stated that her students had done something wrong in *choosing* not to do the correct assignment, she asked them to think about why they made that choice and what they might do differently in the future. If this is not a request to have students take responsibility for what Respondent herself admitted was her own mistake, then I don't know what it is.

It is also disturbing that at the meeting with Principal Guggino, Respondent claimed she had no idea what Guggino was talking about when she mentioned an apology letter or a mistaken math assignment. Yet clearly she knew what had occurred – she testified about it in detail at trial, and at the time of her meeting with Guggino, it had only recently happened. It is possible that Respondent believes that adamantly denying that it was an “apology letter,” or that she referred to it as such, absolves her of responsibility for her actions. Even if she did not use the word “apology,” it does not change the nature of the letter. Both Longworth's testimony and [REDACTED]'s letter itself make it clear what the purpose of the letter was and the fact that Respondent cast the blame for what occurred onto her students.

There is certainly no misconduct if students made a deliberate choice not to do their homework and were asked to reflect on how to avoid that mistake in the future. That is not what happened here. Having testified herself that she was in fact the responsible party, the exercise can be seen as nothing more than an effort to punish students for something they were not, in fact, culpable of. Respondent is guilty of the conduct charged in Charge One, Specifications 9, 10 and 11.

[REDACTED]

CHARGE ONE, SPECIFICATIONS 15, 16 and 17

These charges involve a practice, admittedly engaged in by Respondent, in which students were asked, on a weekly basis, to answer certain questions about Respondent's conduct on what has been referred to by all as a "report card." The charges also allege that the report card [REDACTED] required students to identify themselves by name and was collected by Respondent (Specification 16) [REDACTED]

[REDACTED]

[REDACTED]

There is no question that the report cards were used and that they ask the questions specified. Indeed, Respondent herself introduced many examples of completed report cards as part of her case, in an effort to show that students had a positive opinion of her and no complaints about the way she ran her classroom. The District argues that the report cards were manipulative and coercive in light of [REDACTED] the fact that students were required to identify themselves knowing that the document would be collected and read by Respondent each week. It posits that they were created by Respondent to be used against her own students in the event she was ever confronted about her conduct, as happened at the hearing. Respondent refutes that theory, asserting that the evidence shows that she began using the report cards in October 2013, before she knew that these charges would be brought against her. She insists there is no misconduct in using these report cards, pointing to a project she did years ago as part of her annual evaluation in which a similar report card was proposed and used, and states that the project was well-received by her administrator.

[REDACTED]

[REDACTED]

Despite the fact that I do not find a proven connection between the use of these report cards and the charges which Respondent would eventually face, I do have serious concerns about certain aspects of the cards. Respondent's defense was rooted in the fact that Principal Guggino had approved the use of such cards or student surveys when Respondent proposed using them for her PRO, and then did so, receiving only positive feedback. If the report cards at issue were the same as the ones used during the PRO, I would agree that their use in 2013-14 is defensible. But they differ in one significant way. The PRO mentions repeatedly that the surveys used were to be anonymous.¹¹ The report cards used in 2013-14 called for the students to write their names, and they were collected and kept by Respondent. When asked about this on cross-examination, Respondent insisted that the inclusion of the student's name was an oversight, and deflected blame to a student, [REDACTED], who she claimed typed the form. This is not credible. Including a line

[REDACTED]

¹¹ While the PRO speaks repeatedly about anonymous student surveys, there are forms of both a "survey" and a "report card" attached to the PRO. The survey is strictly anonymous, while the report card notes that putting one's name on the top is optional. Students in Respondent's 2013-14 class did not have that option.

for the student name the first time the form was typed up could be an oversight. Allowing students to continue to turn in these report cards with their names on them week after week for a period of months is not an oversight, it is intentional.

By requiring students to identify themselves on these report cards, and at the same time asking questions which, if answered honestly, might be critical of their teacher, Respondent put her students in an untenable position. It can, indeed, be seen as manipulate or coercive, as the District argued. Each of the students who testified for the District explained the use of the report cards and, when confronted on cross-examination with ones they had written which uniformly stated that Respondent did not yell or embarrass anyone¹², they unanimously confirmed that they only wrote positive things for fear of retribution if they did otherwise. Fourth grade students should not be placed in such a position.

[REDACTED]

[REDACTED]

[REDACTED] I do find requiring students to identify themselves changes the nature of the exercise to the detriment of the students, and is a neglect of duty to them and conduct unbecoming the profession. For these reasons, Respondent is guilty of the conduct charged in Charge One, Specification 16, [REDACTED]

CHARGE ONE, SPECIFICATIONS 18 and 19

These two Specifications charge that Respondent repeatedly attempted to indoctrinate her class to believe that she did not “yell” at them (Specification 18), that what she was doing was “disciplining” them (Specification 19). Five of the six students from her 2013-14 fourth grade class testified that Respondent repeatedly said “I’m not yelling, I’m disciplining.” The students’

¹² There were instances when some students were unable to authenticate all or part of a particular report card because they were unsure if the writing belonged to them. This does not affect my understanding of the use of the cards and the intentions of the students who testified in filling them out.

recollection of the frequency with which they said she made this assertion varied, from “more than once” to “every day.” [REDACTED] testified that he answered the question on the report card about whether the teacher yelled as “no” because she had said she was not yelling, she was disciplining. Even Respondent’s own witness, [REDACTED], recalled her making this statement once.

Respondent denied ever making such a statement. She admitted, however, that she said “I’m not yelling at you,” always calmly, making sure it was known that no one was in trouble. She testified that there was a need to correct children who might sometimes think they were being “yelled” at, when in fact they were merely being criticized or corrected. She continued, however, that she never yelled or used a different tone that could be seen as yelling. She also maintained that she never used the word “disciplining,” but rather explained that there were “consequences” for negative behavior.

I do not credit Respondent’s denials on this charge. First, multiple students, including her own witness, recall her making the statement. Second, these are children who have been in school for a few years already. In all likelihood, they are not new to being criticized or corrected in a classroom. But in describing their experience in Respondent’s classroom, something was different, and by Respondent’s own admission, they were complaining – directly to her – about being yelled at. Why else would she have to respond “I’m not yelling at you” as she admitted doing?¹³ Having admitted the first half of the statement, she strains to avoid admitting the second. She admits saying there are consequences for negative behavior, but not to using the word “discipline.” That is the definition of discipline. Six different children heard her use the word. There is no question, even based on Respondent’s testimony, that there was an interaction with the students about why she was speaking to them in a way that they might believe was

¹³ Respondent attempted to explain that her comment was merely prefatory to some discussion which was critical or corrective, i.e. to get ahead of the notion that students might think they were being yelled at. This is not credible. If a teacher never yells in the classroom, as Respondent insisted she never did, there would be no reason to assume that students would fear they were being yelled at in advance of a constructive discussion about behavior.

specifically recalled Respondent yelling at and getting close to [REDACTED] when he was slow packing up, telling him to "speed up." She said this happened several times a week, and that she perceived that [REDACTED] became scared. She testified that she began to help [REDACTED] out of concern for him. [REDACTED]

Respondent, on the other hand, denied ever yelling at [REDACTED] or frightening him, and she insisted that she never saw him cry. She said he was a good kid who, at trial, said a lot of untrue things. She spoke about how she tried to help [REDACTED] by repeating directions and pairing him with [REDACTED], noting that she thought [REDACTED] loved the help. She continued that she would privately give him a five minute heads up privately, not by yelling, and would never snap her fingers or get close to him. She acknowledged telling him to push in his chair, always doing so lovingly, eliciting a big smile from [REDACTED] in response. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] She also maintained that [REDACTED] was never upset with her, invited her to dinner and his hockey games, and that he always understood when she would speak to him privately to make sure he was okay if he gave her a lower grade on her report card for any reason.

The relationship between [REDACTED] and Respondent is one of the clearer, but by far not the only example of views so diametrically opposed that only one can reflect the truth of what went on in the classroom. It forces one to ask this question: if everything was as calm and loving, all the time, as Respondent claims it was, what basis would any of these children have to, in the first instance, report some of this behavior to their parents during the school year and, in the

Respondent to them on their own at some point during the school year. [REDACTED] in particular, may have taken longer to come to grips with what Respondent was doing, because she felt she was a "favored" student and had a good relationship with Respondent, but eventually she came to see what was happening more clearly. Respondent urges that an invitation to lunch in the Principal's office with District counsel marks a successful effort to unduly influence [REDACTED], but I am not persuaded by her testimony that this is the case.

aftermath, be willing to come to this trial and swear under oath that these things occurred? It would have been necessary for them to craft a story about this behavior from whole cloth, because Respondent offers little in the way of explanation as to how anything she did could have been so egregiously misunderstood [REDACTED]

[REDACTED]: I have endeavored to understand how and why a group of students could, either on their own or under some type of coercion, be so thoroughly convinced to alter the truth that the virtually perfect classroom and teacher behavior testified to by Respondent could become a place of yelling, crying and fear. I cannot find any incentive, certainly not on the part of the students, and if others were somehow incentivized to conspire to create a false narrative about Respondent, do not believe it is possible that they so completely co-opted these students to tell tales which, although not identical, are largely corroborative of one another.

In the case of [REDACTED], there is sufficient evidence to conclude that Respondent yelled at him for being slow in leaving the classroom and for not pushing in his chair, and did so in an intimidating and/or embarrassing fashion. I do not credit Respondent's claims to the contrary.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Respondent is guilty of the conduct charged in Charge One, Specifications 20, 21 and 22, [REDACTED]

CHARGE ONE, SPECIFICATION 24

This Specification charges that Respondent was insensitive to crying students by telling them to stop crying in a dismissive and/or callous manner. Four of the students in this fourth grade class who testified for the District affirmed that Respondent would say "stop crying," tell

them they were disrupting the class, ignore them or say that whatever they were crying about was “no big deal.” Respondent denied such behavior, and went further to explain that when children did sometimes cry, she would let their peers comfort them. There was no testimony from any of the students to support the existence of such a practice, from either the District witnesses or Respondent’s witness, [REDACTED]. Rather, he said that he never saw anyone cry in the classroom other than [REDACTED] during the incident with the forged signature, a claim that is contrary even to Respondent’s own testimony. He also said he could not remember what Respondent’s reaction was to [REDACTED]’s crying.

The weight of the evidence is sufficient to conclude that it is more likely than not that, at least in some cases, Respondent’s reaction to crying students was inappropriate and unprofessional. Charge One, Specification 24 is sustained.

CHARGE ONE, SPECIFICATIONS 25 and 26

These Specifications relate to an interaction between Respondent and student [REDACTED], charging Respondent with being insensitive when [REDACTED] attempted to explain that he was having difficulty with his school work because he was not living at home in the aftermath of Hurricane Sandy (Specification 25), telling him to “stop making excuses” (Specification 26). On this charge, the record contains only [REDACTED]’s word against Respondent’s. He testified that when explaining his circumstances at home, Respondent replied by saying “excuses, excuses, excuses.” He reported these comments to his mother at the time they occurred. Respondent denied the statements attributed to her, and noted that it was inconsistent to what she said was her proven sensitivity to students regarding the storm and its effects. She pointed to [REDACTED]’s testimony regarding a time when [REDACTED] was, according to [REDACTED], yelled at by Respondent but, upon learning that his mother was in the hospital, softened her tone, proof says Respondent that she gave priority to personal and family issues. She could not account for why [REDACTED] and his mother

would claim that she made these statements, other than the general conspiracy theory that perceptions, particularly those of students, had been changed by other parties who were never specifically identified. She also argued that [REDACTED]'s assertion regarding these comments came only after considerable leading on direct examination. A review of that testimony shows that while he was led through a description of the circumstances, his answer that Respondent said he was making excuses was given on his own initiative.

[REDACTED] is a sweet young boy who had a difficult year in Respondent's class. His mother, seeing a change in him, was first to think that it was attributable to the various hardships experienced by [REDACTED] and their family in the wake of Hurricane Sandy. As the year progressed, however, [REDACTED] told her more about Respondent's treatment of him as well as others in the class. She rejected many other theories presented on cross-examination as to why [REDACTED] may have been troubled, including insurance matters and her own health issues.

In essence, then, Respondent asks me to reject these charges on the basis that she always ran a loving and supportive classroom. These assertions, however, have proven not to be credible repeatedly on this record. I therefore credit [REDACTED]'s testimony and find Respondent guilty of the conduct charged in Charge One, Specifications 25 and 26.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CHARGE ONE, SPECIFICATION 29

Respondent is charged with pulling student artwork from the wall and ripping it up in anger on one or more dates during the 2013-14 school year. Respondent had the students create puzzle pieces as a reward system, and would take them up and down depending on whether the class had done something worthy of a reward, or if they had failed to do something they were supposed to do. Five different students testified that on one or more occasions, when poor behavior brought down a puzzle piece, Respondent angrily pulled the artwork off the wall, tore it and/or threw it on the floor or in the garbage. [REDACTED] testified that this behavior frightened him. Respondent explained that the puzzle pieces were affixed with a substance that would sometimes leave a small tear in the paper, but denied the actions testified to by the students. She argues that the student stories contain wild variations which prove that it is a tale embellished over time.

The student recollections on this point are more credible than Respondent's denials. The issue raised is an expression of anger, yet Respondent's defense is that Fun Tac might cause a small tear in the paper. Students did not complain that their puzzle pieces were left with small tears. They complained that they were frightened by Respondent's anger in harshly pulling down the pieces and tearing or disposing of them. That the children have different memories of exactly what happened to the pieces when they came down does not negate their credibility regarding an expression of anger, about which they were each abundantly clear. There is sufficient evidence to conclude that this happened at least once, and that is enough to sustain the charge. It is inappropriate for a teacher to vent her anger, whatever underlies it, in a way that is aggressive enough to frighten a child. Charge One, Specification 29 is sustained.

CHARGE TWO, SPECIFICATIONS 1 through 11

During the 2013-14 school year, [REDACTED] was a student in Respondent's class. There is no dispute that [REDACTED] was a particularly shy and sensitive student, and that she had challenges when it came to participating and being singled out in class. There is also no dispute that these traits had been apparent, to some extent, in prior school years with other teachers. The school psychologist, Tina Smith, was involved with [REDACTED] on both an informal and formal basis as the 2013-14 school year progressed. These charges allege that Respondent failed to properly address and account for [REDACTED]'s personal issues, instead verbally abusing and/or embarrassing and/or ignoring the input and recommendations of the student's parent and/or the school psychologist with regard to how to work more effectively with [REDACTED] (Specifications 1, 3, 4, 6-8, 9-11), all of which it is alleged negatively impacted [REDACTED] (Specification 2, 5).

The District presented evidence through six student witnesses, including [REDACTED], each of their parents and Tina Smith, the school psychologist. The record is clear that [REDACTED] had fears and concerns about Respondent's classroom as early as September 2013. Her mother described her as reluctant to go to school because of all the yelling that went on in the classroom, recalling a night when she cried herself to sleep because she didn't want to go to school the next day. Students observed [REDACTED] becoming upset when she was called on without raising her hand or being asked to speak up. Many of them reported these incidents to their parents contemporaneously. [REDACTED] testified about Respondent's treatment of her, explaining that she continually insisted that she participate and speak more loudly, and said that she tried not to cry because it was embarrassing to do so in front of her classmates. She said she cried every day after school out of fear that, the next day, Respondent would yell or be in a bad mood.

There is ample evidence that [REDACTED]'s mother communicated with the school and, in particular, Tina Smith, from early in the year. By January, [REDACTED] was having regular counseling

sessions with Smith, and the record indicates that these sessions made clear that [REDACTED] was reacting to a fear of Respondent in the classroom. Notably, in December 2013, Smith's notes indicate that [REDACTED], when asked to describe Respondent's voice on a scale of 1 to 5 where 5 is yelling loudly and screaming at somebody, described her voice as a "5+." Smith's testimony made it clear that [REDACTED] was afraid of Respondent.

Respondent's defense is two-pronged. First, she denies ever mistreating [REDACTED]. She explains away all her actions, from yelling at her to speak up (claiming she said something to the effect of "honey, I have old ears and can't hear you") to using a secret signal before calling on her that the other students would be unaware of. She insists that she went out of her way to treat [REDACTED] with compassion and concern, inviting Smith to come into the classroom to observe her on multiple occasions, noting that Smith never reported the type of abusive treatment which is charged herein. Second, she claims that no one ever told her that [REDACTED]'s issues had anything to do with Respondent's treatment of her. In addition, as a general matter, Respondent points out that [REDACTED] had similar issues in years past, which she learned about by inquiring with her prior years' teachers.

As to this general matter, suffice it to say that the record establishes that each of the prior teachers, while acknowledging [REDACTED]'s shyness and sensitivity, all were able to establish trust and rapport with [REDACTED] within a short period of time, and their school year with [REDACTED] proceeded successfully. By contrast, the issues with [REDACTED] continued in 2013-14 up until her removal at her parents' insistence in April 2014, an option which was discussed as early as December 2013.¹⁵ Respondent insisted that [REDACTED] simply wanted to be with her friend who was in the other fourth grade class, but the testimony of [REDACTED] and her mother, as well as that of Smith and her intern,

¹⁵ It is not clear why this did not occur until April 2014. There is little in the record about what may or may not have occurred between January and April 2014, but it is clear that the situation either had not abated or was recurring as of April 2014.

Regina Zaccoli, all effectively refutes this effort by Respondent to deflect responsibility. It is also highly relevant that, according to [REDACTED]'s mother, the day after her class was changed in April 2014, [REDACTED] flourished with her new teacher, and Smith noted that [REDACTED]'s ability to participate in class changed for the better almost immediately. She finished out the year successfully, without any further hesitation to go to school, fears or crying.

The question of whether Respondent was specifically told that [REDACTED] was afraid of her or reacting to her behavior and/or treatment of her in class is an interesting one. Respondent does not dispute that as early as the fall of 2013, [REDACTED]'s mother approached her about not calling on [REDACTED] unless she indicated her desire to be called on. Respondent insists this was about nothing more than placing a lunch order, but [REDACTED]'s mother disputed that, noting that [REDACTED] always went home for lunch. [REDACTED]'s mother also testified that despite asking Respondent to stop calling on her daughter, she continued to do so. Months later, she said, in discussing it again with Respondent, she was told "that's life, teachers are going to call on her." There is also ample evidence in Smith's notes that the mother reported to her that [REDACTED] was afraid of Respondent, but nothing that expressly reflects that she told Respondent this in so many words.¹⁶ However, during a parent-teacher conference in November, at which Smith was present, Smith noted that [REDACTED]'s mother expressed concerns about a mismatch between [REDACTED] and Respondent and voiced a desire to have [REDACTED] transferred to another class. That meeting, however, which is the subject of additional charges, devolved into an acrimonious discussion of curriculum and homework, and it is not clear if Respondent was ever expressly told that, at least as far as [REDACTED] and her mother were concerned, her yelling and aggressive manner were feeding [REDACTED]'s anxieties and making life in the classroom

¹⁶ Smith was the school psychologist, not an administrator. Her charge was to work with [REDACTED] to make her comfortable in the classroom, and her notes reflect introducing strategies to deal with the situation in which [REDACTED] found herself, e.g. fearful of being yelled at. It was not Smith's job to confront Respondent about these things. That responsibility would belong to Principal Guggino. There is nothing in the record, one way or the other, to allow me to reach a conclusion as to whether Guggino ever addressed these issues with Respondent other than Respondent's claim that no one ever spoke to her about these concerns.

for her very uncomfortable. ■■■'s mother, although she did speak to Respondent on more than one occasion, was mindful that ■■■ had urged her not to talk to Respondent for fear of repercussions.

While the record is at best incomplete on the question of whether Respondent was ever told that her treatment of ■■■ was at issue I am not, in the end, persuaded that it matters to any significant extent. Respondent was told, quite specifically, not to do certain things in order to help ■■■ with her anxiety, shyness and sensitivity. She did them anyway. Her repeated efforts to cast blame towards Smith or even the child's mother is disconcerting, and her explanations not credible. For example, she was persistent in her assertions that she was using a secret signal with ■■■, only calling on her when she used the signal. Her hand was not raised because she used the signal, so other students, she maintained, would not know that she had ■■■'s permission to call on her. This makes no sense. First, there is no evidence that ■■■'s problem was with the physical act of raising her hand. The problem was that she did not want to be called on to answer a question other than on her own initiative. If she felt ready to answer a question, there is no reason to think she would not have been fine simply raising her hand. The need for a secret signal is baffling and, notably, was never mentioned by ■■■.¹⁷ But more than that, the students who testified were not talking about Respondent calling on ■■■, without her hand being raised, and ■■■ giving a response without incident. They were talking about ■■■ being upset about being called on. Why would she be upset if she had given the "secret signal" and was ready to answer? No, these students spoke about singling ■■■ out to participate when she did not want to be called on, a circumstance which had been specifically addressed with Respondent by both ■■■'s mother and Smith. I am persuaded that Respondent wanted what she wanted out of ■■■

¹⁷ Smith explained that the signal would have involved using a post-it or letting Respondent know that she wanted to speak privately to the teacher, instead of having to speak up in front of the whole class, because that seemed to be difficult for her. This is not how Respondent claims to have used it.

and either believed her tactics were more effective than those requested by the child's parent and the school psychologist, or was pushing back against the suggestion made at the parent-teacher conference in the fall that there was some failure in the student-teacher connection. Whatever the reason, [REDACTED] suffered as a result.

Respondent argued that [REDACTED]'s testimony does not reveal any credible instances of her being yelled at, and suggests her perceptions were only that, perceptions, based on her own sensitivities. She insists that if she was truly mistreating [REDACTED], Smith would have discerned as much and put a stop to it. [REDACTED]'s testimony is not as benign as Respondent's argument would have one believe. She said that Respondent did not treat her nicely, and that she urged her to speak louder and participate more on a daily basis. She explained that her fear of participating was rooted in her belief that she would be yelled at if she got the wrong answer, a fear fueled by what she described as daily yelling taking place within the classroom generally. She testified that she cried before and after school every day. It is telling that every other teacher who had [REDACTED] in prior years, all of whom identified and were aware of her sensitivities, were able to quickly make her comfortable. To blame Respondent's inability to do so on [REDACTED] herself is unfair, particularly when the evidence shows that she did not take the suggested steps to allow [REDACTED] to attain a level of comfort in the classroom. Smith seems to have done her best to identify the issues and make administration aware of what was going on. That Guggino did nothing may speak more to her failings than to a lack of misconduct on Respondent's part, and there is ample evidence to support a finding of that misconduct, despite Guggino's inaction.

I am persuaded that Respondent behaved inappropriately towards [REDACTED], intimidating and embarrassing her, which is the definition of verbal abuse, and ignoring the input of her parent and school psychologist. Charge Two, Specification 1 is sustained. The record is clear that it was this conduct that made [REDACTED] reluctant to go to school and, eventually, resulted in a transfer out

of Respondent's classroom. Specifications 2 and 5 are sustained. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As to the specific statements alleged in Specification 4, there is ample evidence to support the charges that Respondent made comments which, in sum and substance, brought attention to [REDACTED]'s lack of participation and the volume of her voice (Specifications 4a, 4c, 4d, 4e, 4f, 4g). [REDACTED]

[REDACTED]

Specification 6 speaks only to notification being given to the school psychologist about [REDACTED]'s fears, and while Smith's testimony in this regard bolsters the credibility of the circumstances themselves, this Specification does not itself articulate any misconduct on Respondent's part. Specification 7, which regards Smith's advice to Respondent that she treat [REDACTED] more gently and not call on her unless her hand is raised is undisputed by Respondent, but also does not, in itself, allege misconduct. Likewise, Specifications 8 and 9 are prefatory in nature, describing Respondent's agreement to follow Smith's recommendations and the parent's requests that Respondent treat [REDACTED] gently and not call on her unless she raised her hand. Misconduct is not alleged until Specification 10, where the narrative ends in the allegation that Respondent disregarded the parent's requests, which the District has proven, and told the student's parent that [REDACTED] has to learn that "that's life." [REDACTED]'s mother's testimony was credible on this point, and I credit it over Respondent's denial. Specification 10 is sustained. Specification 11 further details Respondent's continued unwelcome comments, criticism and behavior towards [REDACTED], in disregard for the suggestions of the student's parent and the school psychologist. The

District met its burden regarding Respondent's behavior in this regard, and Specification 11 is sustained.

CHARGE TWO, SPECIFICATIONS 12 through 16

These Specifications involve a meeting which took place in November 2013 among Respondent, school psychologist Tina Smith, and [REDACTED]'s mother. The charges involve the manner in which Respondent spoke to the parent. Of the five Specifications in question, three of them (Specifications 13, 14 and 15) are part of the narrative of events, and while it is important to determine if the facts stated therein were established at trial, they do not, in themselves, assert misconduct on Respondent's part. Those assertions are limited to Specification 12, which alleges that Respondent spoke to the parent in a rude or otherwise inappropriate manner, and Specification 16, which alleges that she was curt and dismissive towards the parent, stating "you want to me to change my curriculum for *your* daughter!"

Specifications 13, 14 and 15 establish the narrative within which this alleged misconduct occurred. They assert that during the meeting, [REDACTED]'s mother attempted to explain to Respondent that her daughter was very shy, was afraid of Respondent and was having trouble functioning in her class (Specification 13). It is further asserted that she went on to explain that [REDACTED] was experiencing extreme anxiety as a result of the amount of homework Respondent was assigning, as well as to Respondent's reactions when a student did not complete a homework assignment (Specification 14). She then asked, according to Specification 15, if Respondent could modify the amount of homework being assigned.

The testimony of [REDACTED]'s mother did not definitively establish that, at the parent-teacher conference in question, that she told Respondent that her child was afraid of Respondent. This is insignificant, however, in terms of the charges, which are about Respondent's reaction to the parent during a discussion about homework. The factual narrative in Specifications 13, 14 and

15 regarding the homework issue is accurate, having been attested to by all the parties present at the meeting. The question of misconduct comes from Respondent's reaction to the parent's request to make some modifications regarding homework, essentially, that there be less of it. Both ■■■'s mother and Tina Smith testified that Respondent's reaction was angry, curt and/or dismissive, and that she said something to the effect of "you want to me to change my academic approach and/or curriculum for your daughter?" There is no question that it occurred. Respondent herself said so, but the manner in which her admission unfolded is telling on the question of her credibility. When first asked on direct examination, she initially pointed to a problem with the parent, stating that she didn't have faith in ■■■'s abilities. Then she said the conversation "got heated" and admitted to being "less congenial" concluding that, in pushing back against the parent, her behavior was "less than she wants of herself." On cross examination, she walked back much of this admission. She insisted that she never lost patience with a parent, that her approach here was simply "more direct." When pressed on what she meant when she said she "got heated," she would only allow that she was "not as congenial as I normally am." Her inability to explain what she meant and her effort to walk back her own testimony is a clear example of the extent to which Respondent exerted herself to mask any possible implication of impropriety, even when she knew she was in the wrong. Nothing she said changed the facts, which are that she acted rudely and unprofessionally towards the parent. Specifications 12 and 16 of Charge Two are sustained.

CHARGE TWO, SPECIFICATION 17

Although this Specification appears to be in the nature of narrative, without directly alleging misconduct on Respondent's part, it does assert that Tina Smith began providing regular counseling sessions to ■■■ in January 2014 "because of the student's fear and anxiety of

Respondent.” To that extent then, the charge is one of impact, i.e. that Respondent’s behavior was such that it drove [REDACTED] to require counseling.

[REDACTED] directly addressed this in her testimony, stating that she started seeing Ms. Smith every week to talk about what was happening in the classroom, meaning “about how [Respondent] was yelling and stuff.” Ms. Smith is the school psychologist, and so it is clear that her role was to work with [REDACTED] on the impact of what was going on for her in the classroom. That Respondent’s “yelling and stuff” caused [REDACTED] to experience fear and anxiety is clear on this record. The testimony of [REDACTED] and her mother, as well as that of Smith, supported by her notes, all establish that [REDACTED] was made anxious and fearful about going to school because of Respondent’s behavior in the classroom.

Respondent would have me believe that the issues [REDACTED] had were “deep-seated,” had been in evidence for years, and had nothing to do with her, other than perhaps the fact that she had a loud and boisterous manner about her. The evidence does not support that conclusion. Not only did [REDACTED] point specifically to Respondent’s yelling and other behavior towards her and the other students in the class as the source of her fear, there was also no evidence whatsoever that [REDACTED]’s own issues, i.e. the fact that she is generally a shy, quiet, sensitive young girl, ever led her to fear school or need to see the school psychologist prior to her placement in Respondent’s class. In fact, the record reflects that her teachers both before and after Respondent had been able to make her comfortable, and at no other time did she require the outreach necessitated during her time in Respondent’s class. Specification 17 is sustained.

CHARGE TWO, SPECIFICATIONS 18 through 23

Perhaps one of the most inexplicable incidents in this case also involved [REDACTED], and it occurred on the same day that Respondent reprimanded [REDACTED] about a forged signature and had students write an apology letter for an incorrect math assignment. [REDACTED] went home for lunch that

day as usual, and although by this point she never really wanted to go back to class, this day was different. She strongly resisted returning to school, and told her mother about what had gone on that morning. She was fearful of returning to class, in part because she was unsure if the police were going to come after the threat she heard Respondent make to [REDACTED] earlier. Her mother arranged for her to return directly to Smith, who would talk with her and see about returning her to class. Smith took [REDACTED], and sent her intern, Regina Zaccoli to Respondent's classroom to advise her that [REDACTED] was with Smith. Respondent told Zaccoli, "I don't know where she is, I will have to mark her absent." Confused, Zaccoli repeated her statement about [REDACTED]'s whereabouts. Respondent made the same statement again. Zaccoli said that, at this time, students were just coming back from lunch and she did not believe class had yet started.

Zaccoli returned to Smith's office and, when Smith was finished talking to [REDACTED], both walked her back to Respondent's classroom, uneasy because of the unusual exchange between Respondent and Zaccoli. Both Smith and Zaccoli testified¹⁸ that Respondent twice said to [REDACTED] "where were you, why didn't you tell me where you were, you have to let me know." Smith checked with Zaccoli who confirmed that she had told Respondent twice where [REDACTED] was. Respondent spoke directly to [REDACTED], without acknowledging either Smith or Zaccoli or the fact that they had taken responsibility for where [REDACTED] was.

Respondent's story which purports to support this behavior is internally inconsistent and incredible on its face. First, she placed Zaccoli's first appearance in her room at 1:00pm, ten minutes after the start of the period, which allowed her to say that she had already sent in the attendance. Thinking that Zaccoli did not understand the attendance procedures, she explained to Zaccoli that she could not mark her present if she was not there, as the Infinite Campus system tracks a student's presence for content areas. In other words, she couldn't mark [REDACTED] present and

¹⁸ Only Smith entered the classroom with [REDACTED], but Zaccoli heard Respondent's remarks from where she remained in the hallway.

have the system think she had been there for twenty minutes of, e.g., math, if in fact she wasn't. Plus, she explained, she had already sent in the attendance electronically.

Respondent continued that Smith came back with [REDACTED] at about 1:20pm, as they were finishing up DEAR time. At other times during the trial, Respondent explained that this was a time when students would "Drop Everything and Read," and it was not a time when she was actively engaged in teaching. When [REDACTED] returned she told her that if she was going to be somewhere else she had to come tell her first, and also that she just needed to know where she was for safety. She acknowledged ignoring Smith and addressing her comments not to [REDACTED], but to the whole class, and then incredibly blamed Smith for taking an abrupt tone with her. She then continued that she repeated to the class that they could go to any appointment they want as long as they let her know, so that she knew where they were. Since Zaccoli had already advised Respondent where [REDACTED] was, she was asked why she felt she needed to re-educate the class about this. Respondent said that she now thinks that the conversation was a mistake, that she and Smith should have excused themselves to the hallway and spoken privately, and she blames both herself and Smith for it, complaining that Smith was usurping her authority in the classroom and that she took an aggressive and abrupt tone with her. She was later asked if there is a procedure for changing an attendance record for a student from absent to late and she said yes, that was done through the nurse, but then said she did not make such a report to the nurse for [REDACTED] on that day.

There are so many problems with this testimony that it is difficult to know where to start. First, none of it makes any sense if Zaccoli arrived at the room when she said she did. Smith's notes reflect the time that Zaccoli went up to the classroom as 12:50pm, and that is what Zaccoli testified to. Respondent said it was later than that in support of her story that she had already marked [REDACTED] absent. Zaccoli, however, said that Respondent told her she would mark [REDACTED] absent

because she did not know where she was, not because it was already done. I find Zaccoli more credible than Respondent on this point, particularly when taken together with the rest of Respondent's story. She explained that Infinite Campus required her to mark a child absent because it tracked content area. But DEAR time is not a content area. She said that any child could go to an appointment as long as she knew. She did know. If [REDACTED] had come and told her herself, would she still have to mark her absent? Then she said it was all about safety. Which is it? Safety? Infinite Campus? Or, as Zaccoli said she told her, because she "didn't know where she was?" And why not correct the entry, if in fact it was already made (which I hasten to say I do not believe), by properly having the nurse change it from "absent" to "late"? There is no explanation, because none of it makes sense. Here is what makes sense. Respondent was at odds with the administration, and was suspicious of Smith. She would not have an intern tell her how to keep her attendance. She made it clear that she would do what she wanted. All of which is bad enough, but she did it by doing the very thing that she had been specifically asked not to do with [REDACTED]— call her out in front of the class, single her out, embarrass her.

Even Respondent's claim of partial responsibility does not ring true. She said that she and Smith should have taken the conversation to the hallway. This, after explaining that she did not even engage Smith in conversation, but rather, took the moment to explain to the class their responsibilities. What did she need to talk to Smith about in the hallway? Respondent felt that Smith was aggressive and abrupt and undermining her in the classroom, casting blame on her and pointing to Smith's behavior as the reason she responded as she did. Blaming Smith, however, is simply another way of Respondent avoiding responsibility. She had, at this point, repeatedly refused to acknowledge the simple fact that [REDACTED] was with Smith and that she had been told so in a timely manner. All she had to say is "got it," or if she had in fact already marked her absent, said "I'll let the nurse know to change it." Period. Instead, she acted out. She let

[REDACTED]

CHARGE FOUR, SPECIFICATION 12

Similar to the 2013-14 school year, Respondent is here charged with displaying indifference to students crying, by telling them to stop, they were distracting or disturbing the class or to go to the back of the class. [REDACTED] and [REDACTED] both testified to this (despite Respondent's assertion that [REDACTED] did not, see T. 1431). This is sufficient to sustain the charge, particularly in light of Respondent's assertion that, in fact, her reaction to children crying would be to stop a lesson and encourage children to comfort each other. There is no evidence of that beyond Respondent's naked assertion. In fact, [REDACTED] described an incident when she herself went over to comfort her friend [REDACTED] who was crying after being yelled at by Respondent, but she in no way suggested that she did so at Respondent's suggestion or urging. Charge Four, Specification 12 is sustained.

CHARGE FIVE, SPECIFICATIONS 1 through 7

These charges stem from an incident which occurred at dismissal time in or about late May or early June of 2013,²⁰ following a conflict which all agree had taken place inside the school between [REDACTED] and another student. The allegations involve Respondent's interaction with [REDACTED] and her mother outside the building sometime thereafter. Respondent adamantly denies any wrongdoing.

According to District witnesses, the conflict which had occurred inside had already been resolved by Ms. Toye, but as students exited the building, Respondent was heard reprimanding [REDACTED] to "grow up," followed by a loud and unprofessional exchange with [REDACTED]'s mother in front of a schoolyard full of parents and children, including calling [REDACTED] a "liar." The charges are supported by the testimony of [REDACTED], her mother and Samantha Yagnis, another mother who was in the area at the time and overheard what occurred. [REDACTED] recalled Respondent telling her to "grow up" and being angry as they stood by the outside door of the school. She said that her mother talked to Respondent, although she asked her not to, and that she was holding onto her mother's leg while they spoke. [REDACTED]'s mother heard Respondent speaking angrily and loudly to her daughter, heard the words "grow up" and said that she called [REDACTED] a liar right in front of her. She described her daughter as "hysterical" and her "eyes filled with tears." She was upset by what had occurred and immediately reported to Principal Guggino. Ms. Yagnis was so concerned by what she witnessed that she drafted an email to Guggino that day, but for personal reasons did not send it. She retrieved it from her draft emails as she heard more about the case which was building against Respondent in spring 2014. The email supports the notion that Respondent was yelling at [REDACTED] in a "very inappropriate manner" which left Yagnis and others "appalled" and concerned that if she behaved "like this in front of her parent and other

²⁰ The lack of specificity on the date is not at issue, as Respondent recalled and acknowledged the incident in question, while disagreeing with the District's characterization of it.

parents, what is she doing in the classroom behind closed doors?" (D17). Yagnisis testified at trial consistent with the substance of her email, although she included more details about what Respondent said, including telling ██████ to "grow up" and calling her a "liar." Respondent sought to cast doubt on Yagnisis' testimony because of the addition of these details, as well as her conclusion that Yagnisis claimed to have heard all of this from a significant distance over the din of 100-150 children dismissing from school.

Guggino sent an email time-stamped 3:45pm the same day which confirms that, by that time, she had received a report from the parent that her daughter had been screamed at and asked Ms. Gerbert, who was present at the time, to call the parent if she had witnessed what occurred, because "[o]therwise it seems as she will take her daughter's word and not listen to [Respondent]'s side." It is not clear why she speaks only about "taking her daughter's word" when the parent herself heard what occurred. Gerbert, in response, wrote to Guggino only that "█████ seemed to be telling mom two stories." Her response did not address Respondent's role in what occurred. Respondent, whose version of these events is diametrically opposed to that of the District witnesses, making ██████'s mother the aggressor and devoid of any of these statements on her part, said she met with the Principal the next day and was told not to worry, that she believed the parent only complained after being influenced by her friends in the parking lot. The District points out that this is highly unlikely since, according to Respondent, the incident ended around 3:20pm, and those friends would have had to find reason to and convince her to lie and complain to the Principal about it in time for the Principal to receive her call, compose and send her email to Respondent and Gerbert by 3:45pm. I agree that this seems unlikely, but note that there is no other evidence in the record about how Guggino handled this or what, if anything, happened afterwards.

Respondent claims that the conflict which had occurred inside was not yet resolved at the time the students were dismissing, and that Toye had asked her to speak to [REDACTED]. She did so, she said, calmly and quietly, without raising her voice, but minutes later [REDACTED]'s mother approached her in an agitated state asking if she had told her daughter to "grow up." Another parent, Maria Cacciatore, testified for Respondent and indicated that although she could not hear what was said, she observed [REDACTED]'s mother being aggressive in a way that she thought was not helping her cause, whatever that might be, while noting Respondent was calm. Respondent also makes much of whether the incident took place between the doors or outside them, but it is unlikely to make a difference – the two are only steps apart, and a loud confrontation, if audible from one spot, would likely be audible from the other. There is insufficient evidence about the noise level at the time of these events to conclude that the witnesses who say they heard what occurred were lying simply by virtue of the fact that it was dismissal time and there were many people around.

Once again, I am asked to conclude that a parent and an uninvolved bystander separately reported an incident which simply did not occur. It is highly relevant that [REDACTED]'s mother called Guggino immediately, and one must ask, if nothing at all had happened, as Respondent insists, why would she do so? Respondent suggested that [REDACTED] had lied to her mother saying that Respondent had told her to grow up, causing the mother to approach Respondent in an agitated state, and even says that the mother later apologized to her for attacking them. There is nothing but Respondent's word to support this. Respondent also says that the conversation ended minutes later with [REDACTED]'s mother saying "no worries." If that was the case, then why did she immediately go to report to Guggino the precise opposite of what Respondent says occurred? Yagnisis, for her part, was so concerned about what she heard that she memorialized the event in writing. Although she did not send it until the case against Respondent was heating up, she

wrote it at the time of the incident²¹. [REDACTED]

[REDACTED] it is a long stretch to assume that people were already conspiring to bring Respondent down by fabricating stories on the spot at this time. It is far more probable that Respondent did what she is charged with. I also reject Respondent's attempts to discredit this charge with variations in details about distance, an approximation which is frequently imprecise, and Maria Cacciatore's testimony, which lacks information about when she first became aware of what was going on. Even [REDACTED] said that at some point Respondent was speaking in an even tone, but that does not mean that she did not earlier scream loud enough for the people who said they heard her to do just that. Finally, on the issue of Respondent's credibility on this point, I note that she testified that the day after this occurred, she and Gerbert brought the matter to Guggino's attention. This is not true, as Guggino's email minutes after the incident occurred indicates that she both already knew and had already communicated to Respondent that she knew on the day of the occurrence.

A word, again, about Laura Guggino. Respondent points to the fact that she was never told she had done anything wrong, in this or any other matter. Here, we know for a fact that Guggino was aware, but it seems that here, as at other times, she supported Respondent in the face of accusations from parents (which I must again note runs counter to Respondent's entire theory that everyone was conspiring against her). Guggino's thinking is not available to me, but I do know that whatever conclusions she may have reached, she did not do so with the benefit of sworn testimony and due process. The matter having now been subjected to both, I conclude that the incident did occur as the District charges.

With the exception of Specification 2, which is only an undisputed statement of fact which is part of the narrative and which alleges no misconduct, all of the Specifications related

²¹ Respondent attempted to cast doubt on the authenticity of Yagnisis' assertion regarding when the email was written and/or its original content. I found Yagnisis to be credible on this point.

to this incident are sustained. These include the fact that Respondent yelled at [REDACTED] to “grow up” (Specification 3), caused her to become upset and cry (Specification 4), confronted her again and called her a liar in front of her mother (Specifications 5 and 6) and did all this publicly in front of other students and parents (Specification 7). These actions, tending as they do to belittle and cause embarrassment to a student, constitute verbal abuse (Specification 1).

CHARGE SIX, SPECIFICATIONS 1 through 11

In perhaps the most contentious incident to make its way into these charges, these Specifications describe a startling conversation between Respondent and the mother of [REDACTED] regarding her inability to get to school on time to pick up [REDACTED] after Math Academy. Although there are some disputes over exactly what occurred, there is also much which is not in dispute. All agree that sometime before the end of Math Academy (which ends at 4pm), [REDACTED] called Respondent on her cell phone to let her know that she was unable to pick up her son on time and would be a few minutes late, because the Department of Labor was at her job and she could not leave. [REDACTED]'s mom testified that Respondent was very upset, told her she did not care and that she had to be there at 4:00. Respondent said she only told the parent that she could not talk because she was teaching, and when she persisted, explained that she was going through her own emergency and told her to contact the office. [REDACTED] testified that she had already tried to call the office and got after hours voicemail, which is why she called Respondent's cell phone to begin with. There is some dispute as to whether there was a second phone call during which Respondent and [REDACTED] spoke²², but all agree that at approximately 4:15pm Respondent called [REDACTED] and reached her voicemail. The recorded message she left is in the record as D24. On it, she tells [REDACTED]'s mother that she must come to get him or send someone else to get him or, within

²² According to [REDACTED] the substance of this call, if it occurred, was essentially the same as the one before and the message left subsequently, i.e. that Respondent could not wait and would be leaving the child at the police station if she did not get there to pick him up. It is not necessary to resolve whether the call took place, and I give some leeway to [REDACTED]'s memory regarding an event during which she was, by her own description, in a panic about getting her son picked up at school.

the next one to two minutes, she would follow protocol and send the child to the Fourth Precinct, and she could pick him up there. [REDACTED] then described a mad and dangerous dash through traffic and, as it turned out, a friend was able to get there to pick up [REDACTED] by about 4:20pm.

Respondent explained that on that particular day she needed to leave school promptly to attend to a family matter, specifically, that her father had suffered a heart attack and was in the hospital, and she needed to pick up her nieces at school. The District did not question this scenario, but while Respondent says she told [REDACTED] she had her own emergency, [REDACTED] said she never mentioned any family circumstances until after the fact at a meeting which Respondent says was convened to discuss the incident.²³ Respondent continued that as soon as Math Academy ended she went looking for the Principal for assistance, since she couldn't stay with [REDACTED]. She described knocking on the hallway door to the Principal's office after leaving [REDACTED] at some distance where she could still see him, and finding Guggino with her son doing homework. She told Guggino about the situation, and claims that it was Guggino who told her to call [REDACTED] and tell her she would leave the child at the Fourth Precinct, and to tell her she was following protocol. According to Respondent, Guggino expressed frustration with [REDACTED] who she described as needy. Respondent felt that Guggino's directive was inappropriate, so she questioned it indicating she did not want to say this to [REDACTED], and said that Guggino insisted saying "make the call." Respondent maintains that the only reason she said what she did on the voicemail is because her Principal directed her to do so, and she did not want to be insubordinate. Respondent explained what had happened to teaching assistant Victoria Longworth who she encountered in the hallway near Guggino's office, and Longworth testified to the story she was told, although she did not hear anything the Principal purportedly said.

²³ Respondent testified that at that meeting she said to [REDACTED] "I told you my father was in the hospital," suggesting again that she had mentioned her own family circumstances at the time of the incident.

Every witness who testified on the subject, including Ruiz, Longworth and Respondent herself knew of no such protocol such as that allegedly invoked by Guggino.

Respondent complains that she was wrongfully charged with misconduct because the District knew she acted on Guggino's instruction, further explaining that the next day, after [REDACTED] [REDACTED] complained to a member of the Board, Guggino assured Respondent that she had taken responsibility for what occurred when asked about it by the Board member. Respondent also describes a handwritten note dashed off by Guggino (R70) which she says was meant to be a draft of a note she wanted Respondent to write offering to meet with [REDACTED]'s parents. Respondent described the draft as the letter "where Guggino was taking responsibility for directing me to make that phone call." The draft letter states, in full, as follows:

Mr & Mrs [REDACTED]
I understand that Mr. [REDACTED] spoke with LG this morning. I am aware that Mrs. [REDACTED] contacted Mrs. Oclera this morning as well about yesterday's event after school. Please let me know if you would like to meet & discuss this further.
VC

Respondent says she rewrote the note using Guggino's draft as a template, but the note which was supposedly sent to [REDACTED]'s parents, offering to meet about what occurred, never made it into the record, and [REDACTED] denied ever getting it. Respondent also testified that, in the note, she offered three different possible meeting dates, and that [REDACTED] sent back notification with her son as to when the meeting would take place, but Respondent did not retain that correspondence either. She did, however, retain the draft from Guggino because, as she testified, Guggino often wrote letters for people and that "it was just a habit of mine to keep and document everything."

However it came about, a meeting eventually occurred which was attended by [REDACTED] his parents and brother, Tina Smith, Gerbert and Respondent. [REDACTED] said that Respondent came in screaming "I'm sorry I had no idea, I had to pick up my nieces" and apologized, telling her for

the first time about her father and the Principal's directives, neither of which were mentioned to her previously. Respondent said that [REDACTED] was upset and dominated the meeting, speaking for almost two hours, compared to two minutes during which she spoke. [REDACTED] also said that she took the occasion to tell Respondent about the many things that had been troubling her son all year, but Respondent denied that she ever did so. [REDACTED] said things were somewhat better for [REDACTED] in the classroom after this meeting, but that the best days were the ones when Respondent was not there.

Respondent vehemently opposes the mere existence of this charge because, she contends, the fact that Guggino directed her to engage in the charged behavior is uncontested. That is not quite true, of course. It is vigorously contested. It stands on the record, however, unrebutted by the testimony of the person who supposedly gave the directive, Laura Guggino. According to Respondent, then, I must accept it as true. The fact, however, that Guggino did not appear to talk about this does not prevent me from scrutinizing the testimony of Respondent and the District witnesses to determine if her assertions are credible. I have done so, and find that they are not.

At the core of my skepticism is Respondent's insistence that she felt leaving the message was wrong, and that she only did so because she did not want to be insubordinate. Yet she also said that she never had any intention of turning the child over to the police and would have stayed with him until someone arrived to get him. If that is true – and as it turned out, it is exactly what she did -- then there was absolutely no reason for her to make such a distressing phone call to a parent for no reason. To do so within earshot of the child – a problem even if she was instructed by the Principal – only compounds the error. Surely the Principal would not have found her insubordinate if she found another solution to the problem. Her story does not ring true. If she found the idea of telling the mother she was sending her child to the police precinct to be so distasteful, and she had no intention of doing so, why say it? [REDACTED] did not recall

stopping by the Principal's office, and Longworth could not corroborate this occurring other than in Respondent's retelling of it, and there are multiple issues with Longworth's testimony in any event. [REDACTED]'s testimony is at odds with Respondent's description of keeping him at a distance while she called his mother, as he credibly testified that he heard her saying that he would be going to the police station, which frightened him. He was similarly credible in attributing statements to Respondent to the effect that she was not his babysitter and made a reference to wasting her family's time, which was corroborated by his mother as something her son reported to her. Moreover, Respondent became known to me as someone who does not hesitate to assign blame away from herself. If she was doing something she found so repugnant at Guggino's direction, why did she not say so on the message to protect herself, or at any other time prior to a meeting which didn't occur until almost a week later? I also do not understand a number of other aspects of her story, such as why she had time to chat with Longworth about what had occurred, even after [REDACTED] had been picked up; why she simply didn't ask Longworth if she had five minutes to spare to wait with [REDACTED] and why there is no evidence that she made so much as one phone call to her nieces to say she might be five minutes late. This was not a question of hours – it was a question of mere minutes. Furthermore, the story about Guggino taking responsibility for what occurred is not borne out by any of the evidence other than Respondent's word. The letter which she claims as evidence of Guggino taking responsibility does no such thing.

I do not know why Guggino was not called to rebut this story, and I am asked to presume she would not have been able to. However, in the face of so much uncertainty about its veracity, independent of speculation about what Guggino may have said if asked, I am not persuaded that it is more likely than not that this occurred the way Respondent said it did. I find it far more likely that Respondent, frustrated by the circumstances, made a desperate effort to get [REDACTED]'s mom

there to pick him up by threatening the police station. I do not even believe that she had any intention of bringing him there, but the tactic of trying to compel [REDACTED]'s mom by frightening both her and her son is unacceptable.

Specifications 1, 2, 4, 6 and 9 are part of the narrative and do not, in themselves, allege misconduct. The misconduct here, which amounts to unprofessional conduct, is set forth in Specifications 3, 7 and 8, which are sustained. Specification 5 is sustained to the extent that it charges that Respondent's actions caused [REDACTED]'s mother to become upset and alarmed, which is proven. [REDACTED]

[REDACTED] It is undisputed that she made the comments at issue, and her defense raises too many questions to be considered reliable.

CHARGE SEVEN, SPECIFICATIONS 1 and 2

Charge Seven goes to Respondent's interactions with a student in her 2011-12 fourth grade class, [REDACTED], and his mother. Specifications 1 and 2 focus on Respondent's behavior towards [REDACTED] charging that she engaged in a course of conduct in which she treated him in an abusive and/or degrading and/or disrespectful manner (Specification 1), including verbal abuse, bringing her face close to his, and saying, in sum and substance, "what's wrong with you," [REDACTED] (Specification 2).

The District's case was supported by the testimony of both [REDACTED] and his mother. [REDACTED] testified about his personal experience in the classroom, saying that he was scared a lot, that

Respondent yelled, called him names, and would get in his face and ask him "what's wrong with you" [REDACTED]. He said that she yelled at him on average of twice a day "at the top of her lungs" if he didn't do his homework or didn't know something. He said that he hated school and did not want to go. He also explained that eventually he told his mother about what was happening and, thereafter, also told Tina Smith and Principal Guggino.

[REDACTED]'s mother corroborated his testimony. She explained that, in contrast to his love of school prior to the fourth grade, [REDACTED] did not want to go to school while assigned to Respondent's class, and told her that he was being harassed in the classroom, called names, yelled at on an almost daily basis, frightened and embarrassed. She testified that [REDACTED] told her about statements made by Respondent such as "what's wrong with you" [REDACTED].

At first she told her son to respect his teacher, and even changed his medications at one point thinking that he was the problem. Eventually though, she came to be convinced that the problem was Respondent, and both before and after December 2011, she went to both the Principal and Tina Smith to complain. She said that the Principal went into the classroom to observe, and reported back that she did not see anything inappropriate occurring. She also said that she spoke to Respondent about her concerns directly on one occasion.

Respondent vehemently denied all of these allegations. As she had with all prior years and students, she detailed the manner in which she dealt with what she admitted was consistently disruptive behavior on [REDACTED]'s part, which included making eye contact, complimenting other student's correct behavior and, when all else was exhausted, asking him to "please sit down."²⁴ She also said she may have called him to her desk to speak privately on one occasion, and once took him to the principal's office. She said that although he disrupted the class almost daily, she

²⁴ Respondent argued that an observation which appears at R51, p. 16 shows that administration had previously offered a favorable comment on her approach to misbehavior through raising awareness progressively and with proximity. I do not see that reflected on the page cited by Respondent, but note that the question here is not whether such an approach would be commendable, but rather, whether it was actually employed in the case of [REDACTED].

never got frustrated, annoyed or angry with him, that she just felt sad for him. A student testifying on Respondent's behalf, [REDACTED] testified that she never yelled at [REDACTED] and that she never saw her treat him inappropriately. She also testified, however, that Respondent did seem annoyed and angry with [REDACTED] at times, and would raise her voice and speak sternly to him, all of which Respondent said was inaccurate. She suggested that the discrepancy was due to [REDACTED]'s misperceptions.

Respondent explained that during that school year (including prior to the charged period which begins in December 2011) she took part in at least ten meetings with her co-teacher Allison Gerbert, school psychologist Tina Smith, Principal Guggino and [REDACTED]'s mother to discuss his issues. She maintained that in all of these meetings, [REDACTED]'s mother was aggressive, erratic and abrupt, often cursing and crying. She attributed statements to Principal Guggino regarding the mother's mental stability, and said that she once asked Guggino if perhaps there should be a report to Child Protective Services, a suggestion which she said made Guggino furious.²⁵ She claimed that the parent never complained about Respondent's treatment of her son at any of these meetings. It is noteworthy, however, that notes of Tina Smith dated January 11, 2012 memorializing a phone call with the parent shows that the "mother continued to express concerns re: [Respondent], and reflect that she recommended to the parent that she speak directly to the teacher "before they go to the team meeting." [REDACTED]'s mother testified that she did, at one point, speak directly to Respondent, although the timing of that is unclear on the record.

The meeting referred to in Smith's notes took place early the next day, and her notes of that meeting are also part of the record. It is clear both from Respondent's testimony and the

²⁵ Guggino is an elusive figure in this proceeding, and much was attributed to her by Respondent in her absence. Although I have been asked to draw adverse inferences by her absence, it is difficult to know or assume what she might have said about any number of things, as the description of her actions as presented by Respondent were often at odds. As an example, it seems peculiar to me that a person who becomes furious at the suggestion of putting a parent in the crosshairs of CPS would also cavalierly suggest that a student's mother be subjected to stress and anxiety at the thought that her child was about to be taken to the police station because she was running late to pick him up, as Respondent claimed happened with [REDACTED] in 2013-14.

email regarding the meeting that Respondent was not in attendance, and she said she was not invited. Smith's notes were introduced by the District, but Smith was not questioned about them during her testimony. They reflect discussion about the issue of a 504 test accommodation for [REDACTED], his anxiety as well as his mother's anxiety, and a plan which included not requiring him to worry about homework. The notes also memorialize discussion about [REDACTED]'s fear of getting in trouble if he missed or handed in incomplete homework, and his feeling that his teacher yells at him. Later that day, Respondent met with Guggino, Gerbert and possibly Smith²⁶ to discuss the earlier conversation with [REDACTED]. Her notes of that meeting appear on the second page of R66, and suggest that Guggino placed blame on the parent ("L.G. states 'she let mom have it'") and told the teachers to keep doing what they've been doing. It makes no mention of any concerns [REDACTED] may have had about being yelled at or getting in trouble. She continued to insist that no one ever spoke a word to her about her behavior towards [REDACTED].²⁷ She denied ever being advised that she had been accused of engaging in any of the charged conduct.

There are two questions to consider on these Specifications. One is whether the charged conduct occurred, which I conclude it did. The second is whether Guggino's failure to act somehow prohibits me from now doing so. I conclude it does not.

These charges come down to a simple credibility assessment. It is [REDACTED]'s word against Respondent's. [REDACTED]'s testimony is corroborated by his mother, to whom he reported contemporaneously. It is also supported by Smith's notes which, although hearsay, are corroborative of [REDACTED]'s claims. Respondent's testimony, by contrast, is corroborated by no one. Even her own witness, [REDACTED] disputed the accuracy of Respondent's characterization of the manner in which she treated [REDACTED]. Although [REDACTED] did not testify to the more abusive nature of the

²⁶ Respondent felt strongly, but was not certain, that Smith was there, and no one else testified about the meeting.

²⁷ While I have no reason to doubt [REDACTED]'s testimony that she spoke to Respondent at some point, there is no similar direct testimony that anyone from administration did so, and even if Respondent was willing to admit hearing a complaint from the parent, it would have no doubt been influenced by her negative opinion of her as she repeatedly testified to at the hearing.

interaction which [REDACTED] said took place, it is significant that she could not vouch for Respondent's insistence that she never did more than calmly tell [REDACTED] to "please sit down." Respondent, rather than acknowledge even the slightest frustration with a student who was a constant disruption to her class, insists not only that both [REDACTED] and her own witness lied, but seeks to cast blame on [REDACTED]'s mother through a long and contentious effort to characterize her as mentally unstable and the cause of all her son's anxieties. As she did in both 2012-13 and 2013-14, she has again pointed the finger at a parent and home circumstances to deflect any blame from herself.

[REDACTED] presented as a calm and credible witness. The only evidence in this record of her supposed instability is Respondent's word, and her claim that Guggino felt the same way. It is not for me to reach a conclusion about this parent's mental state, but rather, to determine if Respondent's assertions in that regard cast enough doubt on the narrative put forth by [REDACTED] and his mother to discredit it. I do not find that they do. [REDACTED] was very clear about his experience in the classroom. If Respondent treated [REDACTED] abusively, then even if other circumstances at home contributed to his anxieties, it does not excuse Respondent's misconduct. Moreover, if Respondent is correct that Guggino placed blame on the parent without calling Respondent to answer for any of her own conduct, she did so without benefit of an inquiry such as this, subject to due process and under penalties of perjury. If she did not do her job, it does not mean that I cannot or should not do mine. Charge Seven, Specifications 1 and 2(a) are sustained. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CHARGE SEVEN, SPECIFICATION 3

This charge involves a particular encounter between Respondent and [REDACTED]'s mother at a Field Day event in June 2012. [REDACTED] alleges that Respondent raised her voice and spoke to her rudely and disrespectfully when she asked her about circumstances regarding [REDACTED]'s behavior during the Field Day activities. Respondent asserts that it was [REDACTED], not her, who was aggressive and rude. She denies the allegations.

Once again there are two diametrically opposed stories and I must credit one over the other. First, it bears noting that [REDACTED] acknowledged two things – that she was the one to approach Respondent, and that she herself was upset and angry during the encounter. She claims, however, that Respondent started yelling at her, saying she didn't like her tone, and yelled at her like she was a child. Respondent countered that she remained calm because [REDACTED] could not be reasoned with. The District did not present any other eyewitnesses to this event, but teacher aide Eileen Rogers was present and testified for Respondent. She said that [REDACTED] was on a tirade but she could not hear what she said, and that all she recalls Respondent doing was backing away from [REDACTED]

Rogers' credibility is a bit of an issue. Like many of the teachers who testified for Respondent, she tried so hard to help her colleague that she ended up contradicting her, for example, in saying that she could recall no difficulties with [REDACTED] other than the fact that he didn't do his homework most days. This does not reflect Respondent's admission that he disrupted the class almost every day. But I have no reason to think that she in any way colored the facts regarding Field Day. I do question, however, whether her observations resolve the issue before me. Respondent said that [REDACTED] approached her, very upset, wanting to know what was going

on, whether her son was participating and if something had happened.²⁸ She described her as erratic, loud, angry, rude and abrupt. After calmly talking to her, according to Respondent, [REDACTED] began to walk away but then turned back and, pointing to the ground, insisted that Respondent come to her so they could talk. Respondent continued that she told [REDACTED] they could not talk at that time, and testified that [REDACTED] said she had to talk “in order to keep it together.” Respondent repeated “I understand” to [REDACTED], calmly, in an effort to settle her down, but said that eventually [REDACTED] just walked away. Rogers testified only that [REDACTED] was on a tirade, that the tirade was directed at Respondent, that she did not hear Respondent say anything to [REDACTED], and that Respondent was backing away because [REDACTED] was screaming. On cross-examination she acknowledged that she could not hear what [REDACTED] was saying because there were too many people around. Rogers’ account is notable in several respects. She claims to know that the tirade was directed at Respondent rather than someone else, but reaches that conclusion although she was unable to hear what was being said. Perhaps she drew that conclusion because it was Respondent she was interacting with. But then she fails to corroborate Respondent on two important points – she says nothing about [REDACTED] pointing to the ground and insisting Respondent come to her as Respondent described, and she has Respondent backing away from [REDACTED], something Respondent never said as she described [REDACTED] walking away from her.

Moreover, [REDACTED] never claimed that Respondent was the only one who was upset. She owned her anger and upset, but insisted that Respondent’s reaction to her was demeaning and

²⁸ [REDACTED] had inappropriately dunked himself into a bucket of water being used for one of the games and gotten wet. There was a great deal of testimony about who spoke to him about his actions, what was said, and whether he was permitted back in the building afterwards. Although Respondent endeavored to distance herself from whatever the adult interaction was with [REDACTED] it is irrelevant to the charge regarding her behavior towards his mother. The charge states that Respondent’s behavior towards [REDACTED] was in response to [REDACTED] questioning her as to why she would not let the student re-enter the building. [REDACTED] was clearly uncertain about what had happened with her son and was raising a question about it. Whether it was Respondent or someone else who had interacted with [REDACTED] beforehand does not matter. [REDACTED] was clearly upset and approached Respondent. It is what happened thereafter that is at issue.

To summarize, the following charges have been sustained and are susceptible to penalty²⁹:

1. Respondent engaged in a course of conduct in which she humiliated and/or intimidated her students, and caused students to cry during the 2012-13 school year.
2. During the 2013-14 school year, Respondent frightened a child and his classmates by telling him his actions constituted a crime and threatening to call the police.
3. During the 2013-14 school year, Respondent required students to take responsibility and apologize to her for an error she admitted was her own fault.
4. During the 2013-14 school year, Respondent required students to assess her performance in a weekly "report card" that called for them to declare, among other things, whether or not they or others had been yelled at or embarrassed by the teacher or if she had respected them, and she collected these report cards which identified students by name.
5. During the 2013-14 school year, Respondent conditioned students to accept her treatment of them by telling them she was "not yelling, she was disciplining" them.
6. During the 2013-14 school year, Respondent intimidated and embarrassed a student by telling him he was too slow in leaving the classroom and for not pushing in his chair.
7. During both the 2012-13 and 2013-14 school years, Respondent was insensitive and unprofessional with students when she told them to "stop crying" because they were disrupting the class.
8. During the 2013-14 school year, Respondent was unprofessional and frightened students when she displayed her anger to the class by ripping down artwork from the wall.
9. Respondent verbally abused a student in her 2013-14 classroom by ignoring the advice of the school psychologist and the request of the parent to treat the child, who was extremely shy and sensitive, in a manner consistent with her needs, and instead pressing the student to participate when she did not want to and to speak more loudly, calling attention to her unnecessarily and causing her discomfort, fear and embarrassment.
10. During the 2013-14 school year, Respondent acted unprofessionally towards the school psychologist when she refused to accept her explanation that a student had been with her and should not be marked absent and caused that student, who was particularly shy and sensitive, to be embarrassed by being called out in front of the class although she had done nothing wrong.
11. During the 2013-14 school year, Respondent threw a notebook back at a student when she was not satisfied with the student's work.
12. During the 2012-13 school year, Respondent acted unprofessionally towards a parent and subjected a student to humiliation by telling her to "grow up" and calling her a "liar" in front of other students and parents, and by arguing with the student's parent in public.
13. During the 2012-13 school year, Respondent acted unprofessionally by telling a student's parent that her child would be sent to the police precinct if she did not arrive

²⁹ As previously discussed, there is ample evidence that Respondent engaged in a course of conduct of yelling at her students, but this is not susceptible to penalty for reasons of notice as explained above.

to pick him up, and did so within the hearing of the child who was frightened as a result.

14. Respondent consistently treated a male student in her 2011-12 class in a degrading or disrespectful manner.
15. In the spring of the 2011-12 school year, Respondent publicly argued with a parent and acted in a demeaning manner towards her during a Field Day event surrounded by teachers, students and parents.

These incidents reflect an ongoing pattern of verbally abusive behavior that, whether intended to or not, humiliated, demeaned, frightened and embarrassed a significant number of students in Respondent's charge. While some of this conduct occurred in the 2011-12 school year, and more in 2012-13, there is no question that the vast majority of it occurred during the 2013-14 school year. It may be because the atmosphere in Respondent's classroom was very different during the earlier years, as she had a co-teacher and many other adults in and out of the room, many of whom were tasked with dealing the more problematic students. Nonetheless, her inclination to treat certain students in a way which left them crying or feeling frightened, demeaned or embarrassed clearly ramped up during the 2013-14 school year.

It was no doubt a difficult year for Respondent. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] But while I can understand the circumstances in which these events took place, I cannot excuse the fact that Respondent took her feelings, frustration and anger out on her students. There is never a good reason for creating an atmosphere of intimidation and fear in one's classroom, even if it is not experienced that way by everyone in the room. For one child to be treated this way is too much, and for six or more to have a consistent experience so negative that they did not want to go to school on a regular basis is inexcusable. And although the behavior was more prevalent in 2013-14, it was certainly in evidence prior to that. Respondent

had crossed the line before in being a strict enforcer of discipline in her classroom. But whether the increase in this behavior in 2013-14 was due to the absence of other adults [REDACTED]

[REDACTED] this record leaves little doubt that students suffered.

To make matters worse, Respondent refuses to acknowledge the slightest wrongdoing. She refuses to engage in any self-reflection which would allow her to objectively assess her behavior and chart a corrective course. She sat in the hearing while children cried, two years after the fact, as they recounted her treatment of them, and when asked about it could only say that they either lied or were confused through manipulation to say these things about her. Not once did she express concern about what they said, about the experience they claim to have endured. Not once did she consider that perhaps it was *her* perceptions, and not everyone else's, that were askew.

There has been no progressive discipline of the Respondent because, as the District points out, they were unaware of any of this until children started to talk during interviews [REDACTED]

[REDACTED] Respondent was called to respond to the first allegations by Principal Guggino on April 23, 2014. The recording of that meeting leaves no doubt that, from those very first allegations, Respondent intended to take a defensive posture, deny everything and fight back. [REDACTED]

[REDACTED] But by denying any knowledge of things that we now know she was aware of – in particular, the mistaken math assignment about which she claimed to know nothing when asked by Guggino but, at trial, was able to speak about in detail – she showed that she was adopting a strategy against the oncoming charges, and she has stuck to that strategy unflinchingly straight through this trial. Her blanket denials and loquacious explanations only further revealed that she was

trying too hard to defend herself, perhaps because she chose to defend her entire career, rather than just the charges at issue.

In arguing that the principles of progressive discipline do not permit me to impose a penalty of termination, Respondent cited a case which I authored and which was upheld by the Appellate Division, First Department. In it, I stated the following:

The purpose of progressive discipline is to ensure an employee has adequate notice of what is expected of him, and if he errs he is so advised and given the opportunity to improve, and that he's afforded an opportunity to learn and understand what he has done wrong in order to avoid similar conduct in the future.

Matter of Baptiste, SED # 19,759 at 45 (Brogan, 2013), *aff'd*, 41 Misc. 3d 1230(A)(1st Dept. 2013).

In *Baptiste* I concluded that these purposes had been achieved because the teacher had been given prior notice and training, and the 1st Department concluded that “the hearing officer considered the principles of progressive discipline but determined that petitioner could not be returned to the classroom and that additional training would be ineffective.” Respondent argues that this is far different from this case, where notice is, she says, entirely lacking. *Baptiste* was, indeed, a very different case. It involved inappropriate comments by a male teacher to female students, and the training in question was done by the Office of Equal Opportunity in an effort to show the teacher why his behavior was objectionable. The Respondent in this case was abundantly clear when asked that she knew the behavior of which she was accused was wrong and unacceptable. She expressly stated that a person engaging in some of the charged behavior could be guilty of child abuse. She denied engaging in the acts, but she never denied knowing they were wrong, and therefore lack of notice or need for training is not an issue. Further, there were other factors considered in *Baptiste*, including the respondent's complete inability and

unwillingness to see why his behavior was inappropriate. On that point, the two cases are very much alike.

To the extent she ran a strict classroom which included yelling at students (and I am not going to parse words here as Respondent urges me to, so I will say this includes any behavior which would lead a child to believe that he or she was being yelled at), it appears this was known to her Principal to some degree and tolerated. If this was the only issue in this case, Respondent's argument would carry the day. She would now be put on notice that this is not an acceptable way to conduct one's class, and given a chance to alter her methods. But that is not the full extent of what happened here, not by some distance. Respondent's conduct left some of her students in tears, fearful of attending school, of participating in class. When she singled out certain children for underperforming, or publicly chastised a student known to be vulnerable, she humiliated the students she is charged with nurturing. When she threatened to involve the police with both [REDACTED] and [REDACTED], she instilled fear that a fourth grader should not have to experience at the hands of his teacher. And when she manipulated her students by explaining away and attempting to normalize her behavior, and by having them grade her on questions that should not even be an issue in the classroom, such as whether my teacher yelled at or embarrassed me this week, she abused the trust that should exist between teacher and student. There are certain kinds of misconduct where immediate termination can appropriately be considered without progressive discipline. The nature of the abusive behavior here, coupled with the number of incidents, makes this such a case.

The question of whether Laura Guggino knew about any or all of these other matters and, if so, why she chose to do nothing are questions that remain unanswered. Either she was fully aware and turned a blind eye, knew nothing, or accepted Respondent's explanations too readily without proper investigation. I know nothing of her process or motives, and there are far too

many possibilities to draw any inferences. I decline to speculate as to why she did not testify, only to say that this would have been an easier case if she had. But if, as more than one witness believed, she fell down on the job, I am not similarly required to abdicate my own responsibilities, and I must deal with the facts as they were presented to me. Respondent must be held accountable for the things she did and which she knows, without need for any explicit notice, are wrong.

The inquiry does not end there however. In considering termination of any tenured teacher, it is imperative to ask if there is reason to believe that this person will do things differently if returned to the classroom. Termination is the ultimate penalty, and if there is hope that the teacher could or would change their ways in the future, they should be given the chance to do so. On this point, there are many cases decided under §3020a, both by arbitrators and the courts, that conclude that unwillingness to accept responsibility or show remorse is sufficient reason to answer this question in the negative. See, e.g. *Matter of Chambers*, SED #4213 (Berger, 2003); *Robinson v. NYC DOE*, 943 N.Y.S. 2d 794 (Sup. Ct., N.Y. Cty. 2011); *Cipollaro v. NYC DOE*, 922 N.Y.S.2d 23 (App. Div., 1st Dept, 2011); *Ajeleje v. NYC DOE*, 112 A.D. 3d 425 (1st Dept, 2013). Cases also support the proposition that termination can be appropriate even where a teacher has a prior, unblemished record.

I have searched for evidence on this record that Respondent would endeavor to make changes in the future to avoid ever again having the negative impact on her students which was on display at this hearing, but have not found it. The latter part of the 2012-13 school year provides some insight in this regard. In the meeting following the Math Academy incident, [REDACTED] testified that she took the opportunity to tell Respondent everything that [REDACTED] had been complaining about regarding her treatment of him and her behavior in the classroom throughout the year. Respondent denies that any of this was said, but I credit [REDACTED] over Respondent's

insistence that she spent 95% of a two hour meeting complaining only that there were no procedures in place for watching a student if a parent could not pick him up on time. [REDACTED] said that Respondent's treatment of her son did improve somewhat after this meeting, noting however that the best days were those on which Respondent was not present. But whatever impact it may have had in the short run, the lesson certainly did not hold during the 2013-14 school year, when her inappropriate behavior was even more pronounced. She defends herself, in part, by denying that anyone ever told her she was doing anything which they considered to be problematic. I find that not to be true, and instead, see that despite being told, she continued to run her classroom as she saw fit.

Respondent's repeated insistence that she has done nothing wrong, ever, makes it impossible for me to look favorably upon her future prospects should I return her to the classroom. She consistently described her demeanor as always calm and sweet, kind and loving, never flustered, never frustrated, never angry. It is not believable, not in the face of so much testimony to the contrary, and not when considering normal human reactions to difficult situations. During the hearing the court reporter, next to whom Respondent was seated, dozed off, and Respondent banged on the table so hard in front of him that it alarmed me. People react to things, but Respondent chose to paint a picture of herself as someone who, in the face of everything that was going on, reacted to nothing [REDACTED]

[REDACTED]

[REDACTED] Nothing in this record convinces me that this is true. Even if I believed that she was not intentionally misleading about these events but rather, despite all the evidence to the contrary, genuinely believed she did nothing wrong, my belief that there is little likelihood that she would change her ways would only be reinforced. She is either playing with the truth intentionally, or

is unwilling or unable to see reality and, in either case, is unable to appreciate the need for change. The prospects for reform are remote.

For these reasons, I see no alternative but to terminate Respondent's employment with the District. To do otherwise would return her to teaching under circumstances which, after the issuance of this decision, would be at least as trying and negative for her as those which existed in April 2014 and which prompted the worst of the behavior with which she has been found guilty herein. Without an acknowledgement from her that she may have been affected by these circumstances, and a commitment to separate her personal misfortunes from her treatment of her students in the future, I cannot return her to the classroom. No such acknowledgements or commitments were forthcoming, as Respondent held firmly to her position that she did nothing wrong.

In speaking about her disciplinary approach to students, Respondent concluded that "unless a person can identify what it is that is being addressed, they can't take corrective measures" (T. 3611). She continued to make the point that if someone does not understand they did something wrong, they will have difficulty hearing or taking advice further. Respondent does not understand that she did anything wrong. She cannot put herself in the shoes of her students and see what they saw. Instead, she blames them, their parents, her Principal and a well-crafted conspiracy designed to end her career, but the weight of the evidence in this case does not lead me to similarly direct blame. As a result, I am unable to conclude that she would be able or willing to take any corrective measures in the future.

The record reflects a great deal of positive information about how Respondent taught over the years, much of which I found impressive from an academic standpoint. I believe she is passionate about teaching and believe, in her heart, she cares about her students, which makes

this result all the more unfortunate. Nonetheless, for all the reasons stated herein, I find termination to be the only appropriate remedy.

CONCLUSION

By reason of the foregoing, I hereby issue the following

AWARD

1. The following Specifications are prefatory or narrative in nature and do not require a finding on the part of the Hearing Officer: Charge One, Specification 12; Charge Two, Specifications 6, 7, 8, 9, 13, 14, 15, 18, 19, 20 and 22; Charge Five, Specification 2; and Charge Six, Specifications 1, 2, 4, 6 and 9.
2. Respondent is guilty of conduct charged in the following: Charge One, Specifications 4, 5, 6, 7, 8, 9, 10, 11, 16, 18, 19, 20, 21, 22, 24, 25, 26 and 29; Charge Two, Specifications 1, 2, 5, 4(a), 4(c), 4(d), 4(e), 4(f), 4(g), 10, 11, 12, 16, 17, 21 and 23; Charge Four, Specification 1, 3, 4, 5, 7 and 12; Charge Five, Specifications 1, 3, 4, 5, 6 and 7; Charge Six, Specifications 3, 5 (in part), 7 and 8; and Charge Seven, Specifications 1, 2(a) and 3.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Respondent is found to have engaged in the behavior set forth in Charge One, Specification 2 and Charge Four, Specification 2, but may not be penalized for said behavior due to an absence of notice.

[REDACTED]

6. As a penalty for the misconduct found in paragraph 2 above, Respondent's employment with the District is terminated.

Dated: January 19, 2017

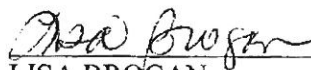


LISA BROGAN, Hearing Officer

AFFIRMATION

I, Lisa Brogan, do hereby affirm upon my oath as Hearing Officer, that I am the individual described in and who executed this instrument, which is my Opinion and Award.

Dated: January 19, 2017


LISA BROGAN

APPENDIX A

STATEMENT OF CHARGES



EAST ROCKAWAY UNION FREE SCHOOL DISTRICT
STATE OF NEW YORK

-----X
In the Matter of the Proceedings Against

STAVROULA GRETES-COYLE

**STATEMENT
OF CHARGES**

Pursuant to the provisions of New York Education Law §3020-a.
-----X

PLEASE BE ADVISED that pursuant to Education Law, §§3012, 3020 and 3020-a, Lisa J. Ruiz, Superintendent of Schools of the East Rockaway Union Free School District ("District") and Laura A. Guggino, Director of Pupil Personnel charge STAVROULA GRETES-COYLE ("Respondent") with conduct which constitutes **JUST CAUSE** for her dismissal.

1. During the 2011-2012 and 2012-2013 school years, Dr. Roseanne C. Melucci was the District's Superintendent of Schools.
2. Beginning with the 2013-2014 school year, Lisa Ruiz has been and continues to be the District's Superintendent of Schools.
3. At all times relevant to this proceeding, Respondent was and continues to be a teacher in the District, enjoying the benefits of tenure in the Elementary Education tenure area.
4. At all times relevant to this proceeding, Respondent was assigned to Rhame Avenue Elementary School as a fourth grade teacher.
5. During the 2011-2012 and 2012-2013 school years, Respondent was under the general Supervision of then-Superintendent Melucci.
6. Beginning with the 2013-2014 school, Respondent has been and continues to be under the general supervision of Superintendent Ruiz.
7. At all times relevant to this proceeding, Respondent was under the immediate supervision of Laura Guggino, then-Principal of Rhame Avenue Elementary School.

Respondent is hereby charged with misconduct constituting conduct unbecoming a professional, insubordination and neglect of duty, which separately and together constitute Just Cause for disciplinary action as follows:

CHARGE ONE:
RESPONDENT IS GUILTY OF MISCONDUCT CONSTITUTING JUST CAUSE, AS
FOLLOWS:

[REDACTED]

[REDACTED]

[REDACTED]

Specification 2: Throughout the 2013-2014 school year, Respondent engaged in a course of conduct in which she regularly yelled at individual students in her fourth grade class, and/or at the class as a whole.

[REDACTED]

[REDACTED]

Specification 4: Respondent's conduct, as described in Specifications 1 and 2, caused one or more students to tell their parent or guardian that they did not want to come to school, and/or to request that their parent or guardian keep them home from school.

Specification 5: Respondent's conduct, as described in Specifications 1 and 2, caused one or more students to be fearful of participating in class.

Specification 6: On an undetermined date in April 2014, during class, Respondent humiliated a male student in her fourth grade class, after she discovered that the student had signed his father's name to his homework assignment.

Specification 7: After learning of the student's actions described in Specification 6, Respondent

threatened to call the police, in a manner which was audible to one or more other students in the class.

Specification 8: As a result of Respondent's conduct described in Specifications 6 and 7, the student became extremely upset and began to cry, which was observed by one or more other students in the class.

Specification 9: On an undetermined date during the Winter or Spring of the 2013-2014 school year, Respondent became upset when the majority of her fourth grade class failed to complete a homework assignment.

Specification 10: Following the event referred to in Specification 9, Respondent required each member of the class to write a letter of apology, addressed to her, regarding the homework assignment.

Specification 11: Following the events referred to in Specification 10, when one or more students attempted to explain to Respondent that she had been unclear about the assignment, Respondent reprimanded them, telling them, in words or substance, to stop "making excuses."

Specification 12: On an undetermined date during the Fall of 2013, during class, Respondent learned that a male student from her fourth grade class had lied to her.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Specification 16: The report card referred to in Specification 15 required students to identify themselves by name, and was collected by Respondent.

[REDACTED]

Specification 18: Throughout the 2013-2014 school year, Respondent repeatedly attempted to indoctrinate her fourth grade class to believe that she did not “yell” at them, despite the fact that she regularly did so.

Specification 19: Throughout the 2013-2014 school year, Respondent repeatedly attempted to indoctrinate her fourth grade class to believe that what was really “yelling” was actually only “discipline.”

Specification 20: Throughout the course of the 2013-2014 school year, Respondent engaged in a series of acts involving a male student in her fourth grade class, in which she verbally abused and/or intimidated and/or embarrassed the student.

Specification 21: Throughout the course of the 2013-2014 school year, Respondent regularly

yelled at the student referred to in Specification 20 for being too slow in leaving the classroom.

Specification 22: Throughout the course of the 2013-2014 school year, Respondent regularly yelled at the student referred to in Specification 20 for not pushing in his chair.

[REDACTED]

Specification 24: On multiple occasions during the 2013-2014 school year, Respondent told students from her fourth grade class who were crying, to stop crying and/or that they were disrupting the class.

Specification 25: On an undetermined date during the 2013-2014 school year, Respondent was insensitive to a student from her fourth grade class, when the student attempted to explain to Respondent that he was having difficulty with his school work because he was not living in his own home, as a result of the effects of Hurricane Sandy.

Specification 26: Following the student's statement referred to in Specification 25, Respondent told the student, in words or substance, "Stop making excuses."

[REDACTED]

Specification 29: On one or more dates during the 2013-2014 school year, after becoming angry during class, Respondent pulled down student artwork which was displayed on the classroom

wall, and then ripped up the artwork.

CHARGE TWO:
RESPONDENT IS GUILTY OF MISCONDUCT CONSTITUTING JUST CAUSE, AS
FOLLOWS:

Specification 1: Throughout the 2013-2014 school year, Respondent engaged in a course of conduct towards a female student in her fourth grade class, who was extremely shy, in which she verbally abused and/or intimidated and/or embarrassed the student; and/or ignored the input of the student's parent with respect to how to work more effectively with the student; and/or ignored the recommendations of the school psychologist with regard to how to work more effectively with the student.

Specification 2: As a result of Respondent's conduct described in Specification 1, the student cried on multiple occasions, in class and at home, asked her parent on multiple occasions to keep her home from school, was kept home from school on one or more dates by her parent, and was eventually transferred out of Respondent's classroom to another teacher.

[REDACTED]

[REDACTED]

[REDACTED]

Specification 4: Throughout the 2013-2014 school year, Respondent made multiple comments to the student referred to in Specification 1, that could be heard by other students, in which she criticized the student for being shy. The comments, in words or substance, included:

- a. *"I can't hear you!"*
- b. *Telling the student that she was "getting annoying."*
- c. *"Why are you not participating!"*

- d. *Criticizing the student for speaking too softly.*
- e. *"Why don't you ever talk?"*
- f. *"If you want to be in this class, why don't you participate?"*
- g. *"Come on, speak up!"*

Specification 5: Respondent's conduct, as described in Specifications 1 through 4, negatively affected the student referred to in Specification 1 to such a degree that the student was transferred to another teacher's classroom.

Specification 6: In September, 2013, the school psychologist was advised by the parent of the student referred to in Specification 1 that the student was extremely shy and anxious, and that the student was afraid of Respondent.

Specification 7: In October, 2013, the school psychologist advised Respondent that the student referred to in Specification 1 was having difficulties functioning in her class, and suggested to Respondent that she treat the student more gently, and that she not call on the student unless the student raised her hand.

Specification 8: Following the events described in Specifications 6 and 7, Respondent advised the school psychologist that she would follow her recommendations.

Specification 9: On an undetermined date in October, 2013, during a conversation with Respondent, the parent of the student referred to in Specification 1 requested that Respondent be sensitive to her daughter's shyness by treating her more gently, and not calling on her in class unless she raised her hand.

Specification 10: Following the event described in Specification 9, Respondent disregarded the parent's requests, and told the student's parent, in words or substance, that the student "has to learn that that's life."

Specification 11: Following the events described in Specifications 6 through 10, Respondent disregarded the suggestions of the school psychologist and the student's parent, and continued to yell at the student, and/or make comments to the student in which she criticized the student for being too quiet, and/or continued to call on the student when the student did not raise her hand.

Specification 12: During a parent/teacher conference on or about November 6, 2013, which was also attended by the school psychologist, Respondent spoke to the parent of the student referred to in Specification 1 in a rude and otherwise inappropriate manner.

Specification 13: During the meeting referred to in Specification 12, the student's parent attempted to explain to Respondent that her daughter was very shy, was afraid of Respondent, and was having trouble functioning in Respondent's classroom.

Specification 14: During the meeting referred to in Specification 12, the student's parent attempted to explain to Respondent that her daughter was experiencing extreme anxiety as a result of the amount of homework that Respondent was assigning to the class, and particularly with regard to Respondent's reactions when a student, or students, did not complete a homework assignment.

Specification 15: During the meeting referred to in Specification 12, the student's parent inquired as to whether Respondent could modify the amount of homework being assigned.

Specification 16: After the student's parent made the inquiry referred to in Specification 15, Respondent became curt and dismissive towards the student's parent, and stated, "**You want me to change my curriculum for *your* daughter!**"

Specification 17: In January, 2014, the school psychologist began to provide counseling sessions for the student referred to in Specification 1, because of the student's fear and anxiety of Respondent.

Specification 18: On or about April 7, 2014, the student referred to in Specification 1 went home for lunch, and refused to come back to school, due to her fear of Respondent.

Specification 19: On or about April 7, 2014, following the event described in Specification 18, the student returned to school for the limited purpose of meeting with the school psychologist.

Specification 20: Following the events described in Specifications 18 and 19, the school psychologist's intern went to Respondent's classroom, and advised Respondent that the student was with the school psychologist.

Specification 21: Shortly after the events described in Specifications 18 through 20, the school psychologist escorted the student back to Respondent's classroom, at which time Respondent ignored the presence of the school psychologist, and despite having been informed of the student's whereabouts, addressed the student directly in front of the rest of the class, stating, in words or substance, "You have to let me know where you are, so I don't mark you absent."

Specification 22: Immediately following the event described in Specification 21, the school psychologist advised Respondent that the student had been with her, and reminded Respondent that her intern had told Respondent where the student had been.

Specification 23: Immediately following the event described in Specification 22, Respondent continued to ignore the school psychologist, and addressed the student directly a second time, in front of the rest of the class, stating, in words or substance, "You have to let me know where you are, so I don't mark you absent."

[REDACTED]

while on the premises of Rhame Avenue Elementary School, Respondent subjected a female student from her fourth grade class to verbal abuse, in front of the student's mother and other members of the school community.

Specification 2: On the date referred to in Specification 1, during the school day, the student referred to in Specification 1 was involved in a conflict with another student, which was resolved by a staff member other than Respondent.

Specification 3: On the date referred to in Specification 1, Respondent confronted the student about the incident that had already been resolved, and yelled at her, stating in words or substance, that the student needed to, "Grow up!"

Specification 4: The Respondent's conduct described in Specification 3 caused the student to become upset, and the student began to cry.

Specification 5: Immediately following the events described in Specifications 3 and 4, the student was standing outside of the entrance to the Rhame Avenue Elementary School, with her mother, when Respondent confronted the student again.

Specification 6: At the time and place referred to in Specification 5, Respondent screamed various comments at the student, and called her a "liar."

Specification 7: The events described in Specifications 5 and 6 occurred within the hearing and view of the student's mother, other parents, and other students.

CHARGE SIX:

RESPONDENT IS GUILTY OF MISCONDUCT CONSTITUTING JUST CAUSE, AS FOLLOWS:

Specification 1: On an undetermined date during the 2012-2013 school year, Respondent was supervising an after-school program at Rhame Avenue Elementary School, which was attended by a male student from her fourth grade class.

Specification 2: Prior to the end of the program, the mother of the student referred to in Specification 1 contacted Respondent by phone to inform Respondent that she would be late in arriving at the school to pick up her son.

Specification 3: Shortly after the event described in specification 2, Respondent called the student's mother, and left a message on her cell phone voicemail in which she advised the student's mother that if she did not arrive "right now," that the police would be called, and that her son would be placed in the custody of the police.

Specification 4: In the message referred to in Specification 3, Respondent advised the student's mother that she would be following "protocol" by calling the police.

Specification 5: Respondent's conduct described in Specifications 1 through 4 caused the student's mother to become upset and alarmed; [REDACTED]

Specification 6: The District has no "protocol" which, under the circumstances that existed during the events described in Specifications 1 through 3, would have required Respondent to call the police, and turn custody of the student over to the police.

Specification 7: The message referred to in Specifications 3 and 4 was made in the presence of the student, causing the student to become alarmed, upset, and fearful.

Specification 8: Following the events described in Specifications 1 through 7, while waiting for the student's mother to arrive, Respondent made multiple inappropriate comments to the student, which included, in words or substance:

- a. *"I'm not your babysitter."*
- b. *"Your mother is wasting my family time."*

Specification 9: On an undetermined date, following the events described in Specifications 1

through 8, Respondent met with the student's mother at Rhame Avenue Elementary school.

[REDACTED]

CHARGE SEVEN:
RESPONDENT IS GUILTY OF MISCONDUCT CONSTITUTING JUST CAUSE, AS
FOLLOWS:

Specification 1: Between the months of December, 2011 and June, 2012, Respondent engaged in a course of conduct in which she treated a male student in her fourth grade class in an abusive, and/or degrading, and/or disrespectful manner.

Specification 2: Between the months of December, 2011 and June, 2012, Respondent subjected the student referred to in Specification 1 to verbal abuse, at times bringing her face close to the student's face, and saying, in words or substance:

a. *"What's wrong with you!"*

[REDACTED]

Specification 3: On or about June 15, 2012, following the completion of the Rhame Avenue Elementary School's "Field Day" activities, Respondent raised her voice, and spoke to the parent of the student referred to in Specification 1 in a rude and disrespectful manner, when the parent questioned Respondent as to why she would not let the student re-enter the school building.

[REDACTED]

[REDACTED]

[REDACTED]

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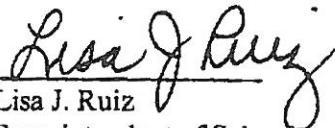
[REDACTED]

[REDACTED]


Accordingly, there is just cause to discipline Respondent.

The maximum penalty which will be imposed if Respondent fails to request a hearing or which will be sought if, after a hearing, Respondent is found guilty, is dismissal.

Dated: East Rockaway, New York
December 16, 2014



Lisa J. Ruiz
Superintendent of Schools
Charging Party



Laura A. Guggino
Director of Pupil Personnel
Charging Party