

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

GRAFTON SCHOOL DISTRICT

-and-

GRAFTON TEACHERS ASSOCIATION,

ARB-21-8570

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

James P. Hoban, Esq. - Representing Grafton School District

Mark A. Hickernell, Esq. - Representing Grafton Teachers Association

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

**AWARD**

The District did not have just cause to issue the reprimand dated March 3, 2021 to Michael Dowdle. The District is hereby ordered to remove the letter of reprimand dated March 3, 2021 from Dowdle's personnel file. The District shall also remove the investigation report and any and all references to the report and reprimand, and may not reference them in any manner moving forward.



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Timothy Hatfield, Esq.  
Arbitrator  
May 19, 2022

### **INTRODUCTION**

On April 5, 2021, the Grafton Teachers Association (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web Ex on September 16, 2021.

The parties filed briefs on October 25, 2021.

### **THE ISSUE**

Did the Grafton School District have just cause to issue the reprimand dated March 3, 2021 to Michael Dowdle? If not, what shall be the remedy?

### **RELEVANT CONTRACT LANGUAGE**

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

#### **Article I Rights (In Part)**

#### **Committee Rights Preserved**

Except as expressly provided otherwise in the Agreement, the School District will not be limited in any way in the exercise of the functions of management and retains and reserves the right to exercise, without bargaining with the Association, all the powers, authority and prerogatives of management, including, but not limited to, the following:

1. To direct and conduct the educational affairs of the Grafton School District (the "District") and its schools;
2. To direct, supervise, and evaluate employees; ...
13. To demote, suspend, discipline and discharge, subject to Chapter 71 and just cause for teachers with professional status;  
...

17. To make and enforce rules and regulations; ...

The exercise of the rights contained herein shall not be a matter subject to grievance or arbitration under Article X except to the extent that such rights are expressly limited by specific provisions of this Agreement.

Article X Grievance Procedure (In Part)

A grievance is a claim by any teacher or group of teachers or the Association itself that there has been a violation, misinterpretation, or a misapplication of the terms of this Agreement. However, a grievance must be filed within thirty (30) calendar days from the occurrence of the event or series of events which gives rise to such grievances or the right to granted herein. Neither party will be permitted to assert any grounds before the arbitrator which were not previously disclosed to the other party. The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from the agreement between parties. The arbitrator shall not render a decision contrary to state or federal law. The arbitrator shall decide any and all disciplinary cases based upon the preponderance of the evidence standard of proof. ...

If the grievance is not resolved within eleven (11) calendar days following the presentation of the grievance to the School Committee or Superintendent, as applicable, the Association may submit the grievance to the Massachusetts Department of Labor Relations. The arbitrator's decision will be in writing and will set forth his/her findings, reasoning, and conclusions. The arbitrator will be without power to add to, subtract from, or modify in any way the provisions of this Agreement. The decision of the arbitrator, subject to law, shall be final and binding upon both parties. The cost of arbitration shall be borne equally by the School District and the Association, including per diem expenses and subsistence expenses.

**FACTS**

The Grafton School District (District or Employer) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this

arbitration. The grievant, Michael Dowdle (Dowdle / grievant) is a teacher with professional teacher status for the District.

On December 22, 2020, Dowdle was teaching his AP Psychology class which touched on the opioid epidemic in Worcester. Towards the end of the class, as the discussion centered on Worcester, a student brought up Worcester Academy. The student mentioned that she thought about attending Worcester Academy but was concerned about her safety. Dowdle told her that she would be physically safe at the school as security on campus was effective. Dowdle shared that his daughter, while physically safe at the school, had been bullied and had to leave the school mid-year. At the end of class, another student mentioned that she had a friend (the Worcester Academy student) and neighbor who attended Worcester Academy. Dowdle asked the student's name and mentioned that she lived in a nice neighborhood as his daughter had been to the Worcester Academy student's house once.

On December 23, 2020, the mother of the Worcester Academy student filed a complaint with Principal Pignataro (Pignataro) about Dowdle. Apparently, one of the students reported to the Worcester Academy student that her name had been mentioned the previous day in Dowdle's classroom. The mother's complaint included allegations of what she thought Dowdle said about her daughter. These allegations of specific comments were ultimately found to be unsupported after investigation by Assistant Principal Carney (Carney).

On January 7, 2021, Pignataro appointed Carney to investigate the complaint. Carney interviewed the two students involved in the conversation and Dowdle. At the end of the investigation Carney concluded that:

Based on the findings of fact, I find the evidence does not support the allegations that Mr. Dowdle made specific statements about [Worcester Academy student] as alleged in the complaint. However, the evidence does substantiate that Grafton High School students were led by Mr. Dowdle to believe that [Redacted's] daughter was involved in the bullying of Mr. Dowdle's daughter and his comments created a negative impression of [Redacted's] daughter.

On March 3, 2021, Pignataro issued Dowdle a written reprimand stating:

This letter serves as a formal written reprimand for your inappropriate interactions with students during your AP Psychology class on or about December 22, 2020. During the class, you engaged in a conversation with students about the culture of Worcester Academy and the conversation led to you and some students making a connection about a student you commonly know who attends Worcester Academy. Your comments during that conversation suggested the Worcester Academy student may have been involved in some way in the bullying of your daughter when she attended Worcester Academy and created a negative impression of the Worcester Academy student being discussed.

Your behavior described above is inappropriate, unprofessional and constitutes conduct unbecoming a teacher. Faculty should never start, participate in or promote a conversation with students involving gossip. As a seasoned educator, it is your job to discourage gossip-not fuel it. It is unethical and unprofessional to speak negatively of any child, particularly to other children. ...

On March 9, 2021, a grievance was filed on Dowdle's behalf that was denied at all steps of the grievance procedure and resulted in the instant arbitration.

**POSITIONS OF THE PARTIES****THE EMPLOYER**

It is well established that the burden of proof for just cause in a discipline case falls on the employer. Here, the collective bargaining agreement expressly provides that “that arbitrator shall decide any and all disciplinary cases based upon the preponderance of the evidence standard of proof.”

To meet the just cause standard, the employer must show: 1) the employee is on notice of a rule or policy, the infraction of which may result in discipline; 2) the employee committed an infraction of the rule or policy; and 3) the amount of discipline issued is in keeping with the seriousness of the offense.<sup>1</sup>

Here, there is no dispute that the Grafton High School Code of Conduct is applicable to students, parents and staff or that Dowdle was on notice of the requirements of the Code of Conduct. As a teacher with more than twenty years’ experience, Dowdle was well aware that he should never say anything which tends to embarrass, disparage or show any student in a negative light, particularly in conversation with other students.

The Code of Conduct expressly requires all staff to show respect for each child, to provide a safe and respectful learning environment, to provide an environment that promotes self-esteem, to treat students fairly, to not engage in bullying behaviors, and to not expose any member of the Grafton High School Community to embarrassment, disparagement or exploitation in any way. Despite these expectations, Dowdle made statements in a conversation with two students

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<sup>1</sup> See Elkouri & Elkouri, How Arbitration Works at 905, 931-32 (5<sup>th</sup> ed. 1997).

which lead those students to believe that a Worcester Academy Student had been involved in the bullying of Dowdle's daughter. Thus, Dowdle's comments tended to embarrass and disparage the Worcester Academy Student, as evidenced by her mother's complaint.

Dowdle does not dispute that he discussed all of the subjects identified in the parental complaint. He discussed the bullying of his daughter at Worcester Academy, and he identified the Worcester Academy student by name and mentioned that his daughter was first in her class at Worcester Academy, using the term valedictorian to refer to her in that context. Finally, Dowdle mentioned the vaping incident at Worcester Academy and the termination of the teacher involved. Thus, as found by Carney, Dowdle admitted that he discussed each topic identified in the parent complaint.

When student #2 was asked whether Dowdle said the Worcester Academy student bullied his daughter, Student #2 said "no, not really but you sensed that something went on". Student #2 went on to say that "Mr. Dowdle did not say yes, but he did not say no." Thus Student #2 indicated that Dowdle's statements and innuendo led her to believe that the Worcester Academy student was involved in the bullying of his daughter. While Dowdle may dispute certain specific statements attributed to him in the parental complaint, he has admitted discussing each of the topics and that discussion tended to disparage and reflect negatively on the Worcester Academy student, this is a violation of an established standard.

Similarly, Dowdle's comments led Student # 1 to believe that the Worcester Academy student was involved in the bullying of his daughter as evidenced by

Student # 1's reaching out to her friend the same day to report the conversation. Additionally, Dowdle told her that his daughter went to the Worcester Academy student's house and "let's just say she never wanted to go back." That statement in and of itself is a violation of the Code of Conduct as it tends to disparage the Worcester Academy student and put her in a negative light.

Thus, the District had ample grounds to conclude that Dowdle had an improper conversation with students. This conduct violated accepted standards, including the Code of Conduct, and was in fact, "inappropriate, unprofessional and constitue[d] conduct unbecoming a teacher." As such, there was ample basis for discipline and the accepted standard was met. In light of Dowdle's prior disciplinary history, a formal written reprimand was an appropriate level of discipline and was intended to discourage similar conduct in the future.

### Conclusion

For all the reasons stated above, the District has proven, by a preponderance of the evidence, that it had just cause to issue a written reprimand to Dowdle and requests that the Arbitrator uphold the District's action and deny the grievance.

### **THE UNION**

The District has failed to prove its allegations, under the preponderance of the evidence standard required by the collective bargaining agreement. To the contrary, Dowdle engaged with his students positively when they connected his lesson with their own experiences.



In order to satisfy its burden of proof, the Employer must present credible evidence supporting its allegations. Hearsay is due little weight, particularly when uncorroborated. In this case, the Employer has relied entirely on uncorroborated hearsay, having called to the stand neither Pignataro, nor any students in Dowdle's class, much less the complaining mother or her Worcester Academy student daughter.

#### Conduct Unbecoming Charge Must be Dismissed

One of the grounds cited by the Employer in the reprimand is conduct unbecoming a teacher. While the charge may seem vague on its face, it is the most serious allegation that can be made against an educator. This charge generally applies when a teacher has harmed students, put students in danger, or through other serious misconduct so tarnished his reputation that he cannot effectively continue as an educator. Here, even crediting all of the hearsay allegations against Dowdle, he is guilty of no more than a minor infraction that had no effect on his students, his classroom, or the school district. The Arbitrator should not permit the Employer to use conduct unbecoming as a catch-all allegation for conduct that displeases it, but should dismiss this charge.

#### Dowdle Was Neither Unprofessional Nor Inappropriate

No eyewitness, not even the students who were interviewed, supported a version of events in which Dowdle acted inappropriately or unprofessional. At the hearing, the only specific instance of inappropriate conduct that the Employer's witness could identify was that Dowdle interjected himself in a conversation between two of his students. Dowdle, however, credibly testified that this is not

how the conversation unfolded. Rather, one of his students raised a concern related to their class discussion, and he supported the student's decision to attend Grafton High School without specifically referring to anyone but his own daughter. To the extent that he mentioned the Worcester Academy student at all, he made a positive connection to her, i.e., that she lived in a nice neighborhood and his daughter had attended a pool party at her house. No reasonable interpretation of this comment could lead to the conclusion that the Worcester Academy student and his daughter were anything but friendly. Carney's finding to the contrary are unfounded.

#### Dowdle Complied with the Code of Conduct

Pignataro did not refer to the Code of Conduct in his disciplinary notice, so the Arbitrator should not consider allegations suggesting that Dowdle was in violation of that Code.<sup>2</sup> Assuming *arguendo* that the Arbitrator does consider the Code, he should find that Dowdle did not violate the Code. Rather, there are several provisions of the Code that Dowdle actively promoted and complied with, including “[s]how respect for each child.” “[p]rovide an environment that will promote self-esteem,” and “[r]espect the rights of individuals.”

#### Conclusion

For all the reasons set forth above, the Arbitrator should sustain the grievance. As a remedy, the Union asks for an order directing the Employer to

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<sup>2</sup> See Agreement at 7 (“Neither party will be permitted to assert any grounds before the arbitrator which were not previously disclosed to the other party.”) The Arbitrator need not even determine whether the Grafton High School handbook, which contains the Code of Conduct, applies to individuals who are not part of the Grafton Public Schools community.

remove the reprimand and related investigation report, and any reference thereto from Dowdle's personnel records.

### **OPINION**

The issues before me is: Did the Grafton School District have just cause to issue the reprimand dated March 3, 2021 to Michael Dowdle? If not, what shall be the remedy?

For all the reasons stated below, the District did not have just cause to issue the reprimand dated March 3, 2021 to Michael Dowdle.

The arbitrator's authority in this matter is outlined in the collective bargaining agreement. Specifically, Article X states:

[n]either party will be permitted to assert any grounds before the arbitrator which were not previously disclosed to the other party. The arbitrator shall be limited to the issues submitted and shall consider nothing else. The arbitrator can add nothing to nor subtract anything from the agreement between parties. The arbitrator shall not render a decision contrary to state or federal law. The arbitrator shall decide any and all disciplinary cases based upon the preponderance of the evidence standard of proof.

Working under the provisions provided to me by the parties in the collective bargaining agreement, I must first address the issue of the Code of Conduct. The Union argues that the District failed to raise the issue of a violation of the Code of Conduct prior to the arbitration and as such is not permitted to argue at arbitration that Dowdle violated the Code on the date in question.

After a review of the evidence provided, I conclude that the District failed to raise the issue of any potential Code of Conduct violation prior to

the arbitration. Neither the Investigation Report, nor the Letter of Reprimand cite to any violation of the Code of Conduct. Additionally, none of the grievance step responses from the District reference the Code of Conduct. As such, I am unable, under the conditions set forth in the collective bargaining agreement, to consider any argument presented by the District that the actions of Dowdle on the date in question violated the Code of Conduct, and served as a basis for the reprimand.

The parties have also agreed that the standard by which I must decide this matter is the preponderance of the evidence standard as articulated in Article X. I have reviewed the evidence and exhibits submitted and decided the merits of this case using that standard.

In this case, it is the District's burden to prove that by a preponderance of the evidence, it had just cause to issue a reprimand to Dowdle. The District failed to provide any firsthand testimony of the conversation in question. Neither of the students interviewed after the complaint testified at the hearing. Additionally, Pignataro, the actual decision maker responsible for the discipline, did not testify. The District, instead, relied exclusively on hearsay testimony.

The District's case relied on Carney's investigation report, which concluded that the allegations against Dowdle making the specific statements alleged in the parent complaint were unsupported by the evidence. Carney's sole finding was that students were allegedly led to believe that the Worcester Academy student was involved in bullying Dowdle's daughter. Ultimately, the District is unable to meet its burden in this area without any direct evidence or testimony of participants

or the discipline decisionmaker. The only direct evidence presented to me was the un rebutted testimony of Dowdle that contradicted much of Carney's findings.

Finally, the majority of the District's argument centered on Dowdle's actions violating the Code of Conduct. As mentioned above, all arguments that the Code was violated are procedurally ineligible to be consider as a basis for the reprimand. As such, the District has failed to meet its burden to prove by a preponderance of the evidence that it had just cause to issue Dowdle a reprimand.

For all the reasons stated above, the District did not have just cause to issue the reprimand dated March 3, 2021 to Michael Dowdle.

### **AWARD**

The District did not have just cause to issue the reprimand dated March 3, 2021 to Michael Dowdle. The District is hereby ordered to remove the letter of reprimand dated March 3, 2021 from Dowdle's personnel file. The District shall also remove the investigation report and any and all references to the report and reprimand, and may not reference them in any manner moving forward.



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Timothy Hatfield, Esq.  
Arbitrator  
May 19, 2022