

IN THE MATTER OF THE ARBITRATION
BETWEEN

EUGENE EDUCATION ASSOCIATION.
OACE/OEA

and

EUGENE SCHOOL DISTRICT 4J

)
)
) OPINION
) AND
) AWARD
)
)
)

Grievant: Irene Alderman

Janet L. Gaunt
Arbitrator

April 29, 2011

For the Association:

Elizabeth A. McKanna, Esq.
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Portland, OR 97209

For the District:

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Witnesses

1. Mary Youngblood-Lee, Teacher, Sheldon High School
 2. Herb Hahn, Teacher, Sheldon High School
 3. Michael Voss, Counselor, Sheldon High School
 4. Dr. Bob Bolden, Principal, Sheldon High School
 5. M.E., Sheldon High School graduate*
 6. W.C., Sheldon High School graduate
 7. Mark Watson, Assistant Principal, Sheldon High School
 8. Cindy Best, Head Secretary, Sheldon High School
 9. Jeralynn Beghetto, HR Administrator for School Services K-12
 10. Christine Nesbit, Associate Director of Human Resources for Labor Relations
 11. Stan Washburn, Teacher, Sheldon High School
 12. Pam Crisalli, Teacher, Sheldon High School and Monroe Middle School
 13. Charley Cisco, Special Ed Teacher, Sheldon High School
 14. Deborah Eberle, retired Teacher, Sheldon High School
 15. Fran Christi, Director, Sheldon Academy
 16. Irene Alderman, Grievant
 17. Bill Temple, Teacher, Sheldon High School
 18. Hans Volwerk, Teacher, Sheldon High School
 19. John Lindsley, retired Assistant Principal, Sheldon High School
 20. Gene Morgan, former Social Studies Teacher at Sheldon High School
 21. Jeff Jackson, OEA/EEA Representative
- * Initials used for students pursuant to confidentiality agreement adopted at hearing.

Exhibits

District

1. Collective Bargaining Agreement between The Eugene Education Association and Eugene School District No. 4J, Lane County, Oregon (2010-2013)
2. TSPC Standards for Competent & Ethical Performance
3. Standards of Performance for 4J Teachers
4. Opinion and Award by Arbitrator David Jensen (3/8/79)
5. Alderman Letter of Reprimand (12/8/09)
6. Email chain re: October 21st Team meeting (10/16 -22/2009)
7. Alderman email to Bolden (10/23/09)
8. Email chain re: Project Days (9/14-18, 2009)
9. Email chain re: Department meeting (4/29-5/4, 2009)
10. Bolden email to Alderman (5/7/09)
11. Youngblood-Lee email to Alderman (5/8/09)
12. Alderman email to Youngblood-Lee and Bolden (5/8/09)
13. Emails re: Meeting on September 9, 2009 (9/2/09 and 9/4/09)
14. Meeting Notes (9/8/09)
15. Letter of Direction to Alderman (10/22/09)
16. Alderman email to Youngblood-Lee (11/10/09)

17. Bolden email to Nesbit (11/10/09)
18. Independent Study Contracts
19. Class Schedule for M.E.
20. Emails between M. Voss and C. Nesbit (1/15/10 and 1/19/10)
21. Watson memo re Independent Study (11/25/09)
22. Notes of November 30, 2009 meeting
23. Sheldon High School Project Days Rules
24. Emails re: Project Day scheduling (11/10/09, 12/9/09 and 12/10/09)
25. Hahn notes of confrontation with Alderman (undated)
26. Bolden Letter of Concern to Alderman (4/11/06)
27. Documents re: other teacher discipline (2002-2010)
28. Bolden memo to L. Moses (June 2009)
29. Emails between Bolden and Nesbit (11/10/09 and 11/19/09)
30. EEA Grievance re: Alderman Letter of Reprimand (2/3/10)
31. EEA Grievance re: Alderman Transfer to Sheldon Academy (6/28/10)
32. Bolden email to Moses (6/9/10) and to Beghetto (6/12/10)
33. Jud Landis emails re: Alderman and Youngblood-Lee criticism of each other (5/20/09 and 5/27/09)
34. Diagram of Sheldon High School site
35. Composition of Sheldon HS Social Studies Department (2007-08, 2009-10, 2010-11)
36. Meeting Notes (8/18/09)
37. Emails between Larry Brown and Alderman (4/29/09 and 5/2/09)
38. Emails re: Department Day (11/20/09)

Association

1. EEA Grievance (2/3/10) with attached CBA text.
2. [Same as D-31]
3. Collective Bargaining Agreement between The Eugene Education Association and Eugene School District No. 4J, Lane County, Oregon (2007-2013)
4. Alderman CV
5. [Same as D-26]
6. Emails between Alderman and Bolden (9/11/03 and 9/18/03)
7. Work Equity Settlement Agreement (1/9/04)
8. Senate Minutes (5/11/05)
9. Emails re: Department Project Day (3/19/07)
10. Emails re: picking offices (5/18/07)
11. Emails re: Social Studies Department meeting with Bolden (4/13/09 and 4/14/09)
12. Alderman email to Bolden re: Social Studies Mock Election (10/21/08)
13. Emails re: Women's History Day (3/19/09)
14. Graph of Survey Results (undated)
15. L. Brown description of Alderman phone message to L. Moses (4/27/09)
16. Volwerk email to Moses re Sheldon staffing plan and FTE cuts (4/30/09)
17. [Same as D-37]

18. L. Moses email to Volwerk re: staffing cuts (5/8/09)
19. L. Moses email to Alderman re: staffing cuts (5/8/09)
20. L. Moses email to Nanci McChesney re: staffing cuts (5/8/09)
21. Staff Meeting Minutes (6/3/09)
22. School Board Meeting Minutes (6/3/09) w/attachments
23. [Same as D-28]
24. Bolden email to L. Moses and others re: SHS Administration response to public criticism (6/17/09)
25. Notes of School Board Meeting (9/16/09)
26. [Same as D-9]
27. [Same as D-10]
28. [Same as D-12]
29. Alderman email to Bolden and Watson (5/12/09)
30. Alderman email to Bolden w/attachments (5/18/09)
31. Emails re: Meeting Minutes and Projected Class numbers (5/26/09)
32. Emails re: APUSH meeting (6/2/09)
33. [Same as D-18]
34. Emails re: custodial cleaning of Alderman's room (6/15-17/2009)
35. Sheldon High School Curriculum Handbook (2009-2010)
36. Email re: August 12th Meeting (8/7/09)
37. Email re: Alderman request for meeting with Bolden (9/2/09)
38. [Same as D-15]
39. [Same as D-14]
40. Alderman Team Meeting Notes (undated)
41. Nesbit notes of phone call with Watson (9/10/09)
42. Emails re: Project Day Scheduling (9/15-9/18/09)
43. Youngblood-Lee email to Department re: Proposed Project Days (9/18/09)
44. Emails re: Project Day Scheduling (9/18/09)
45. Emails re: timing of Team Meeting (10/21/09)
46. Bolden email to Alderman re: reason for missing team meeting (10/22/09)
47. Alderman email to Bolden re: reason for missing team meeting (10/23/09)
48. [Same as D-16]
49. Youngblood-Lee email to Alderman re: Social Studies Minutes/Meeting (11/10/09)
50. Alderman email re: Project Day (12/9/09)
51. Emails re: Alderman Letter of Direction (11/10/09 and 11/19/09)
52. Bolden email to Nesbit w/revised Reprimand (11/25/09)
53. [Not Offered]
54. Emails re: Meeting on November 25, 2009 (11/23/09 and 11/24/09)
55. Emails re: Meeting Scheduled for November 25, 2009 (11/24/09)
56. McKanna email re: draft Unfair Labor Practice Complaint (12/3/09)
57. Tentative Agenda for Project/Equity Issue Meeting (12/8/09)
58. [Same as D-5]
59. Emails re: Suspension of Grievance Time Limits (1/10/10 and 1/15/10)
60. Emails re: Election of Social Studies Senator (5/19/10 and 5/20/10)
61. Bolden email to Senators (5/20/09)

62. Alderman email re: Social Studies Senator (5/19/10)
63. Bolden email to Alderman re: recent Statements (5/20/10)
64. Alderman email response to Bolden (5/25/10)
65. Youngblood-Lee email re: Public Criticism of Unit Members (5/27/10)
66. Paul Duchin email re: Public Criticism (5/28/10)
67. [Same as D-32]
68. Emails re: Year End Comments (6/16/10)
69. School Board Meeting Minutes (6/16/10)
70. Letter to Eugene Register-Guard (6/12/10)
71. Article in Eugene Register Guard (6/17/10)
72. Letter to Eugene Register Guard (6/19/10)
73. Jeff Jackson emails re: Informal Level meeting (June 2010)
74. Bolden email to McKanna (6/22/10)
75. Emails re: submission of formal Grievance (6/25/10 and 6/28/10)
76. MSNBC article re: Bill Gates' Latest Mission (7/21/10)
77. Emails re: Alderman schedule for 2010-11 (August 2010)
78. Emails re: Status of Alderman's schedule (8/6/10)
79. Emails re: Alderman's final schedule (8/30/10 and 8/31/10)
80. Emails re: Alderman schedule (9/1/10)
81. Emails re: Alderman schedule (8/9/10)
82. Academic Help & Support description
83. Alderman Class Numbers (2009-2010, 2010-2011)
84. Sheldon High School / Sheldon Academy students/per class (2010-2011)
85. Bolden letter to SHS Teacher re: public criticism (6/18/06)
86. Student Course Requests (April 2010)
87. Superintendent Russell memo re: Teacher Workload (8/31/09)
88. Courses taught/developed by Alderman (1994-2010)
89. Senate Minutes (4/15/09)
90. Complaint Procedures (Board Policy G1160)
91. Retaliation (Board Policy G1170)
92. Respectful Workplace (Board Policy G2120)
93. [Not offered]
94. Senate Minutes (5/12/10)
95. High School Calendar (2009-2010)
96. Emails re: October Team Meeting (10/16-19/09)
97. Draft Senate Minutes (6/23/08)
98. Senate and Site Council Minutes (various dates)
99. Notes of conversation with Herb Hahn (12/01/09)
100. Connie Minihan email to Watson (5/3/10)
101. Emails re: Alderman Schedule (9/1/10)
102. Team Meeting Notes (October 2009)
103. Emails re: Parent Meeting (10/19-22/10)
104. Alderman email re: Project Day (11/20/09)
105. Team Meeting Notes (April 2010)
106. Jeff Jackson notes of Meeting (9/8/09)

PROCEEDINGS

The Eugene Education Association ("EEA" or "Association") initiated this arbitration on behalf of Ms. Irene Alderman ("Grievant") pursuant to the terms of a Collective Bargaining Agreement ("Agreement" or "CBA") with the Eugene School District ("District"). At issue is a reprimand issued in December 2009 and the Grievant's reassignment to Sheldon Academy in June, 2010.

The Arbitrator was selected by mutual agreement, and a hearing was held in Eugene, Oregon on January 19-21, 2011. The OEA was represented by Elizabeth A. McKanna of McKanna Bishop Joffe & Arms, LLP. Mr. Joe B. Richards of Lucaas Cobb represented the Employer. The parties stipulated that the Arbitrator had jurisdiction to render a final and binding decision regarding the issues presented.

At the hearing, the parties sides had an opportunity to make opening statements, submit documentary evidence, examine and cross-examine witnesses (who testified under oath), and argue the issues in dispute. The proceedings were transcribed by a court reported and a transcript provided for the Arbitrator's use. The parties presented their closing argument in the form of posthearing briefs, which were received on March 21, 2011. Pursuant to the parties' agreement, this decision was due by April 29, 2011.

STATEMENT OF THE ISSUES

The parties did not agree upon a statement of the issues, and left that to the Arbitrator to resolve. Having considered their respective contentions, I find the submitted issues are appropriately framed as follows:

1. Did the Letter of Reprimand issued on December 8, 2009 violate Article 12.6 of the Collective Bargaining Agreement?
2. Did the Letter of Reprimand constitute an inequitable or unfair application of administration rules and regulations and written School Board policy related to harassment, discrimination, retaliation and/or a respectful workplace?
3. Did the Grievant's assignment to teach at the Sheldon Academy violate Articles 3.4.8 and/or 11.5.1 of the Collective Bargaining Agreement?
4. If any violation occurred, what is an appropriate remedy?

RELEVANT FACTS

Eugene School District No. 4J provides K-12 education to over 16,000 students residing in the Oregon's southern Willamette Valley. Among its various schools, the District has four (4) comprehensive high schools (Churchill High School, North Eugene High School, South Eugene High School, and Sheldon High School). There are also three small alternative high schools. The Eugene Education Association represents the District's certified personnel. This case arises under a Collective Bargaining Agreement ("CBA" or "Agreement") in effect

from July 1, 2007 through June 30, 2010. Ex. A-3.¹ A successor contract took effect on July 1, 2010. Ex. D-1.

Since 2002, Dr. Robert Bolden has been Principal of the Sheldon High School ("Sheldon"). Sheldon serves approximately 1600 students and has roughly 70 certificated staff. Responsibility for overseeing the approximately 10 departments at Sheldon is split between two Assistant principals. Most recently, Mark Watson and Mike Johnson have been those Assistant Principals. Since his arrival in 2005, Mr. Watson has overseen the Social Studies Department, which provides classes in history, government, geography, and economics.

The Sheldon Social Studies Department

The Sheldon Social Studies Department ("Department") has varied in size over the years but had a core group of four full-time teachers. The most senior member of the Department is Stan Washburn, who has taught at Sheldon since 1989. Ms. Alderman has been one of the full-time Social Studies teachers since 1994. Mary Youngblood-Lee,² joined the Department in 1997, and Herb Hahn has been a Sheldon Social Studies teacher since 1998.

¹ Exhibits are identified as District ("Ex. D-___") or Association ("Ex. A-___"). Witnesses are generally identified by last name. References to exhibits or testimony are intended to be illustrative, not all-inclusive, of evidence in the record that supports a particular statement.

² Ms. Youngblood-Lee is referred to as "Mary Colbert" in some exhibits.

Starting quite a few years ago, various conflicts occurred between members of the Department. Over time, these conflicts led to a significant rift. By the Fall of 2003, Ms. Alderman was complaining to Dr. Bolden about a hostile work environment. When Bolden met with Youngblood-Lee, Hahn and Washburn individually to discuss the Grievant's allegation, and they all denied inappropriate behavior toward her. Dr. Bolden's response was to inform the Grievant and her colleagues of his expectation that the team would engage in open respectful communication and professional conduct. If a pattern of harassment continued, Bolden advised the Grievant to let him know so he could take action to address that. Ex. A-6.

In response to some of the Grievant's expressed concerns, the Department adopted some group agreements. These were described in a September 18, 2003 email from Dr. Bolden:

1. Regular scheduled meetings will be on the 3rd Wednesday of the month during common time.
2. The group will provide a timely notice relative to special emergency meetings should they become necessary.
3. Decisions will be made by consensus. If a decision cannot be made by concensus then majority vote will decide.
4. Budget Administration will be facilitated by Herb Hahn this year with the following understanding:
 - a. Each team member will receive a portion of the supply budget according to their FTE.

- b. The team will identify a day certain that all supply funds have to be spent or those unspent funds will go to a general department pool.
 - c. Other funds i.e. equipment etc. will be spent per group decision making model.
 - d. Team members have the option of pooling their moneys to make special purchases.
 - e. Each department is allocated moneys for that department and is expected to use those funds for that department.
- 5. Team agenda's will be e-mailed and a hard copy in boxes by the end of the school day on the Monday prior to the team meeting on the 3rd Wednesday of the month.
 - 6. Senate information will be shared with the team by the end of the school day on the Friday after the Senate meeting on that Wednesday.

Ex. A-6. Despite the adoption of these express agreements, conflict within the Department continued.

A 2006 Letter of Concern

In April 2006, during a staff meeting, Alderman brought up equity concerns that related to the District's International High School. A perceived workload inequity between comprehensive high school teachers and those at the International High School had long been a concern for the Grievant and others in the District. Teachers at the comprehensive high schools were felt to have significantly more student contact time, at least in part because of reduced enrollment of IEP and Section 504 students in the International High School. In August

2002, the EEA filed a group grievance that was ultimately settled in January 2004 (“Work Equity Grievance”). A-7.³

Dr. Bolden took issue with Ms. Alderman making assertions and claims regarding “sensitive and controversial” issues to the entire staff before following what he described as “the appropriate protocol of bringing your concerns to administration.” In his letter of concern issued April 11, 2006, Dr. Bolden went on to state:

The protocol for addressing this issue should have been to inform and/or meet with the principal and not taking it to the staff at large.

. . . I found your actions to be very uncomfortable and awkward for administration. Additionally, I view the manner in which you presented as unprofessional and blindsiding. That kind of behavior will not be tolerated in the future and any reoccurrence will result in disciplinary action.

Ex. A-5. In a meeting with Dr. Bolden, Ms. Alderman contended she had done nothing wrong and believed the criticism was unfair. The letter was kept in Dr. Bolden’s building file, not placed in the Grievant’s personnel file. It was not formal discipline that could be grieved.

³ The settlement established a procedure for reporting IEP and Section 504 student enrollment figures in each school. It also required development of a process by which comprehensive high school teachers could apply for the right to teach “project courses” comparable to those allowed at the International High School. A project course is a credit courses in which teacher-guided, but otherwise independent, project-based learning may be the principal mode of instruction. *Id.*, p.2.

An Altercation Between Alderman and Hahn

At some point during the 2007-2008 school year, Ms. Alderman angrily approached Herb Hahn as he was having lunch with Stan Washburn. In a memo Hahn later sent to Assistant Principal Watson, he described the Grievant as saying Hahn did not want to teach kids and was not qualified to teach Advanced Placement ("AP" courses). Hahn taught AP US History ("APUSH"), and the angry confrontation was apparently triggered by the fact that Hahn was trying to reduce the number of students being enrolled for his APUSH class. Hahn complained to Watson in writing about being "targeted for . . . vitriol." Ex. D-25. Watson apparently urged the staff to settle their differences within the department but the relationship between Hahn and Alderman appears to have never recovered.

Budget Cutbacks / FTE Reductions

In the winter/early spring of 2009, the District was projecting a budget shortfall of millions of dollars and developing a budget that would involve FTE reductions. Each building administration was allocated a certain amount of the District's overall budget and it was up to the principal to decide how those funds would be allocated within the building. In one or more personal conversations with Dr. Bolden, the Grievant expressed the view that FTE (full time equivalent) staffing for Social Studies and other core subjects was being cut too much. In late April 2009, Bolden had a lunch meeting with Department members at which displeasure with proposed cuts was discussed. Ms. Alderman contends that at

the end of this meeting, Dr. Bolden said that if she was still unhappy with proposed cuts, the person to talk to at the District office was Laurie Moses. Ms. Moses is Director of High School Services, and Bolden's immediate supervisor.

On April 27, 2009, the Grievant left a message for Moses, saying Dr. Bolden had suggested she and other Sheldon teachers meet with Moses to discuss their concerns over how Sheldon funding/budget cuts were being prioritized. The message left with Moses' assistant indicated that the teachers were concerned about a lack of protection for the comprehensive program at Sheldon compared to the level of support for the IHS program. Ex. A15. When Moses asked for data that supported that contention, the Grievant sent an email response on May 2, 2009 that showed a significant increase between 2008 and 2009 in the number of students enrolled in Social Studies classes. In that email, Ms. Alderman asserted:

The administration did not bring stakeholders into the decision making process and has not offered an explanation of their decision. The Social Studies department was directed to Laurie Moses' office if it had a problem.

In addition to these cuts, the Social Studies and English departments were criticized for "recruiting" too many students into the honors classes. We were informed that we would NOT be receiving the FTE for the additional 30 students but it would be going into the IHS program. This appears to be the case since the IHS program has 7u3 students enrolled in their 2009 9th grade class and will be staffed for 90 students. Would the Sheldon comprehensive program be equally penalized if the students were all on an IEP? The incoming ISH class has only 2 IEP students registered as of 5/1/2009. How is the Sheldon staff expected to offer rigorous classes for all students and

address the achievement gap without equitable funding and equal protection?

Ex. D-37. The Grievant sent a copy of this email to other concerned teachers, but not to Dr. Bolden.

Dr. Bolden met with Moses on or about May 8, 2009 to discuss the staffing concerns that had been raised by the Grievant as well as Hans Volwerk, Barbara Faunce, and Nancy McChesney. Moses showed Bolden copies of the correspondence she had received and indicated that she would direct the concerned teachers to work with their building principal. That afternoon, Moses sent Alderman an email thanking the Grievant for sharing her thoughts and suggesting she contact Dr. Bolden directly since he is the administrator responsible for making the ultimate staffing decision at Sheldon. Ex. A-19. A similar email was sent to Volwerk and McChesney.

On the morning of June 3, 2009, Dr. Bolden conducted a meeting of the Sheldon staff at which he gave an "update" about the staffing situation and indicated that 18 Sheldon positions were being impacted at that point. Ex. A21, p.2. Minutes of that meeting do not provide any detailed description of the specific discussion that occurred. At a meeting that evening, the District's Board of Directors ("School Board" or "Board") conducted a regular meeting that included a public hearing on the 2009-2010 approved budget. Ms. Alderman spoke at that session, not as a designated EEA representative but on behalf of herself and

similarly concerned teachers. Minutes of the Board meeting, describe the Grievant making comments that included the following:

. . . [Ms. Alderman] expressed her belief that Sheldon High School's budget was developed in violation of district-wide goals. She provided a written account of her comments to board members. She reviewed the district goals: increase achievement for all students, close the achievement gap, protect curriculum, engage stakeholder's, stewardship of the district's resources and educational equity. She stated that these goals were being violated within the Sheldon high School budget process because core subject resources were being disproportionately cut. . . . She pointed out that the community had yet to see a written budget from Sheldon High School, even though it was requested, as were justifications for budget decision, which were also not provided. . . . She outlined requests for the school board: Require Sheldon High School administration to provide justifications for the cuts in FTE in core curriculum that occurred as the number of students in core subject classes had increased while non-core areas were relatively unaffected; and publish the district-wide budget.

Ex. A22, p.4. Dr. Bolden did not attend the Board meeting and had not been told of the Grievant's intent to make these remarks. On June 9, 2009, Bolden was honored as Oregon Principal of the Year for 2009 at the Annual Confederation of Oregon School Administrators (COSA) conference. Ex. A-25.

The day after the Board meeting, Moses advised Bolden of the complaints lodged with the Board and scheduled a meeting with Bolden along with two Assistant Superintendents and the Director of Human Resources. Moses sent Dr. Bolden a copy of the documents Alderman had presented to the Board, but told him not to discuss that with the teachers until after she met with him.

Class Scheduling For 2009-2010

In the spring of each school year, members of the various Sheldon departments met to develop the following year's class schedule. This is one of the most important meetings of the year because it is where members of the department decide which classes will be offered and who will teach them. The department's recommendations are subject to approval by building administration and are submitted to Assistant Principal Mark Watson, who develops the Master Schedule.

Mary Youngblood-Lee was in the second year of a two year term as Department Senator.⁴ Youngblood-Lee initially thought there was more time to submit scheduling recommendation to Assistant Principal Mark Watson. Upon learning that the deadline was much sooner, Youngblood-Lee sent an email to members of the team at 10:25 a.m. on Thursday, April 30, 2009. The email read, in relevant part: “. . . we need to have a meeting to create our schedules asap. Can we meet Monday at 7:45 in my room to get a basic schedule created.” Ex. A-26. The Grievant did not respond to that email, but others in the department indicated they could attend.

When the rest of the Social Studies team met that Monday morning, the Grievant did not appear. Ms. Alderman says she was at the school in her

⁴ Members of the each department elect a “Senator,” who serves as liaison to Sheldon administration and attends Senate meetings.

classroom, but members of the Department looked out a window at where she parks and did not see the Grievant's car. No one went to look for Alderman in her classroom. Later that morning, the Grievant spoke with a Department member and learned that the meeting had occurred. Approximately 10 a.m., she sent Youngblood-Lee an email apology for missing the meeting. The Grievant said she did not "get to" her emails the last few days and asked if she could review decisions made at the meeting before they were submitted to Mr. Watson. Ex. A-26. According to the Grievant, she never received a response. Youngblood-Lee says the Department's recommendations had already been submitted to Watson.

Because Dr. Bolden was planning some reduction in the Social Studies FTE's, one decision made by those attending the special meeting on May 4th was to offer only one session of the AP US History class ("APUSH") taught by Herb Hahn. Alderman was very concerned about seniors who would not be able to take that course, as well as capable underclassmen who might want to do so. She therefore contacted Dr. Bolden to complain about the process followed in making the APUSH determination. Alderman ended an email sent to him on May 7, 2009 by stating:

I have just spoken to 5 sophomores that were rejected from the class. *Why? Does Mary dislike them?* I have taught all the sophomore humanities students this year. Why wouldn't I be consulted regarding appropriate placements. Isn't the administration concerned about transparency and process?

Ex. A-28 (emphasis added by italics). A copy of this email was sent to Youngblood-Lee, who was offended by the suggestion she disliked students and took issue with Ms. Alderman's process complaints. Ex. A-28. In a response emailed back to Bolden and members of the department, Youngblood-Lee said the APUSH decision arose from not having "the FTE to allow everyone access to this class." Ex. D-11. She complained about the Grievant's "baseless accusation" that Youngblood-Lee disliked students, and made her own accusation regarding Alderman's conduct:

. . . bad-mouthing Herb or myself with students, parents and other staff members is inappropriate and very unprofessional. If there is any "loss of confidence in the program" it is engineered by individuals who manipulate students and parents for their own purposes.

Ex. D-11.

Alderman denied the conduct alleged by Youngblood-Lee, but did acknowledge "grave and abiding disagreements in the department." Ex. D-12. In a subsequent email, she asked Bolden to call a meeting with all "stakeholders" to discuss the issue of access to the APUSH courses. Ex. A-20. On May 18, 2009, Bolden responded that any such meeting would be more appropriate after the budget and staffing determination were completed. Ex. A-32. For reasons that are in dispute, that meeting never did get scheduled.

A Custodial Cleaning Issue

Around June 10, 2009, the Grievant headed out of state to grade AP exams for the College Board, and had a substitute teaching her classes. In an email issued to all Sheldon staff on June 15, 2009, Mark Watson advised that teachers would need to have all valuables removed from their classrooms by June 19, 2009 because of custodial cleaning. Ex. A-34. That night, Ms. Alderman emailed Watson advising him that she was in Colorado grading AP exams, returned on Friday, June 20th, and asking if the custodians could wait until the following Monday to clean her room. Id.

The next day, Watson told the Grievant that he would not slow the progress of the custodial crew, but it was possible they would not make it to her room before Monday, June 23rd. In her response, Ms. Alderman said she did not think delaying the custodial crew was too much to ask, since she could not prepare her classroom before leaving. She went on to state:

Is this payment for going to the school board? Are you making my life at Sheldon a little more unpleasant each week? If you really don't think the custodians will get to my class by Friday, what's the harm in asking them not to? . . . I spoke to the custodian staff before I left and they said it wouldn't be a big deal to wait but I would have to go through you."

Ex. 34 (emphasis added by italics). Watson objected to this response as unprofessional and asserted that the Grievant was not being treated any differently than anyone else. He repeated that the custodians might not get to her

room before Monday and asserted: "The custodial crew has a time line and they must perform their duties." Id. After another email in which Ms. Alderman asked if anyone else was in her position where because of her location she could not protect school or personal material from theft, Watson replied that he had verified the custodial crew would not get to her room until after Monday.

Discipline Proposed for Speaking at the Board Meeting

Roughly two hours after Watson sent his email about the custodial cleaning issue, Dr. Bolden sent Laurie Moses a twelve page response to the Grievant's remarks/materials submitted at the June 3, 2009 School Board meeting. Referring to "Ms. Alderman and her publicly criticizing colleagues," Dr. Bolden said he had been blindsided by the public criticism at the Board meeting, which he felt was a blatant violation of Board Policy, District protocol, and Article 12.9.2 of the EEA Collective Bargaining Agreement. Dr. Bolden heatedly voiced his displeasure and recommended disciplinary action:

The public criticism was designed to specifically undermine administrations' authority. The inappropriate actions of teacher's who fail to follow appropriate procedures and who then publicly criticize their administrator's and immediate supervisors cannot be tolerated. If we ignore this or put off dealing with this, we are inhibiting a building principal's designated responsibility to be the ultimate decision maker in sensitive staffing decisions. It would be perceived as a model for teachers to object to decisions by their administrators and district officials. In addition, our inaction would be interpreted as a sign of weakness and a lack of leadership and authority.

* * * *

Sheldon administration is recommending the following:

- A public retraction at a public board meeting by Ms. Alderman and the co-public critics.
- Disciplinary action taken against Ms. Alderman, Hans Volwerk, Barbara Faunce and the soon to be identified other public criticizer.⁵
* * * *
- Without question, Ms. Alderman's inappropriate behaviors requires the following:
 - A. A formal letter of reprimand for the June 3, 2009 public criticism to be placed in Ms. Alderman's personnel file unsealed, without an expiration date and irremovable. (As stated for disciplinary action in a previous warning on April 11, 2006.)
 - B. Ms. Alderman is to be suspended without pay for one week and transferred involuntarily to another building.
 - C. A copy of a letter of concern in Ms. Alderman's building file dated April 11, 2006, that was issued to Ms. Alderman because of a similar incident that occurred on April 4, 2006, to be placed in her personnel file unsealed, without an expiration date and irremovable.

Ex. D-28, A-24). Christine Nesbit is the District's Associate Director of Human Relations for Labor Relations. In a subsequent meeting with Dr. Bolden, Nesbit told him that comments made to the School Board was protected speech for which Alderman could not be disciplined. Accordingly, no action was taken on Dr. Bolden's recommendation.

An Announced Class Switch

Among staffing changes that resulted for the 2009-2010 school year, Bill Temple was going to start teaching Social Studies courses at Sheldon. Temple

⁵ Deborah Eberle testified at the arbitration that she was the un-identified teacher mentioned in Bolden's memo. Tr. 601.

and the Grievant attended the same church and had various contact over the years. Towards the end of August, 2009, Temple and Alderman met for coffee to discuss Sheldon and the Social Studies Department. When Temple mentioned that he did not know what classes he would be teaching, Alderman suggested they stop by the school so she could give him a tour and he could pick up his schedule. When they did so, Temple learned he was assigned to teach: Geography (a freshman level class), Government (a senior level class), and Honors Ancient Civilization. The Grievant was scheduled to teach multiple periods of Economics and AP European History.

Mr. Temple was a nationally recognized instructor in Economics, and Alderman was aware of his particular expertise with that subject area. Alderman had helped create and previously taught the Honors Ancient Civilization class, which was scheduled for the same period that the Grievant had one of her Economics classes. After Temple mentioned that he had not taken any history classes in college, the Grievant offered to swap classes with Temple, *i.e.*, have him teach Economics and she would teach the Honors Ancient Civilization class. Mr. Temple accepted the offer, believing it made a lot of sense in terms of what was best for students.

Mark Watson is in charge of developing the Sheldon Master Schedule, which is a time consuming process. By the start of the school year, the Master Schedule had been finalized, students had been assigned to the various classes, and the

schedules had been sent out to parents. After agreeing to swap classes, neither Temple nor Alderman contacted Watson to mention they would like to trade classes. At a staff retreat held on September 1, 2009, Sheldon teachers customarily introduce themselves to the other building staff. When Mr. Temple did so, he stated that he would be teaching Economics. Alderman stated she would be teaching the Honors Ancient Civilization class. That caught the attention of other Department members, who were unaware of any such change and felt it circumvented decisions that had been made at the scheduling meeting held back on May 4, 2009.

The afternoon of the staff retreat, Youngblood-Lee advised Mark Watson that she and other members of the Department knew nothing about the class swap and objected to it. Watson questioned Bill Temple about how the trade had occurred, but did not involve Alderman in that discussion. After learning from Temple that Watson was questioning her conduct, the Grievant sent Dr. Bolden an email requesting he schedule a meeting with Alderman and EEA Representative Jeff Jackson to discuss the issue. On Friday, September 4, 2009, that requested meeting was scheduled for 2:30 p.m. the following Tuesday, September 8th. Ex. D-13.

The first regular Department meeting was held the morning of September 8th. Dr. Bolden and Mark Watson attended, and Alderman asked Pam Crisalli to be present for union support. Crisalli is not a designated union representative

and others objected to her presence, so Crisalli did not remain. During the meeting, other members of the Department voiced their objection to the class trade, and Dr. Bolden emphasized that the final decision regarding who teaches various classes is made by building administration after review of department recommendations. The Grievant and Mr. Temple explained why they thought the trade made sense, but ultimately Dr. Bolden decided that the trade should not be made.

That afternoon after school ended, Dr. Bolden conducted the meeting Alderman had previously requested. EEA Representative Jeff Jackson, Head Secretary Cindy Best, and Pam Crisalli were also in attendance. At the outset of the meeting, Dr. Bolden questioned whether Crisalli (who was not unofficial union representative) should be attending a meeting that could lead to discipline. However, Crisalli was allowed to remain. Ms. Alderman indicated that she was not satisfied with the result of the Department meeting held earlier that day and wanted to discuss the issue further. There was a lengthy discussion of how the trade idea had come about, and educational reasons for it.

Dr. Bolden said if the Grievant and Mr. Temple had approached Mr. Watson about their idea, there might have been a different outcome. However, he continued to disallow the trade because the Grievant had announced it publicly before the trade was discussed it with the administrator in charge of the master schedule or anyone else in the department. Ex. A39. During the meeting, Ms.

Alderman complained about statements that had been made by Mark Watson and sought his removal as supervisor of the Department. Dr. Bolden denied that request and took under advisement the Grievant's formal request that she be evaluated by someone other than Watson. The Grievant was not on cycle for an evaluation that year, so no decision regarding her request was made at this time.

On October 22, 2009, Dr. Bolden issued Ms. Alderman a Letter of Direction regarding the class switch. The letter said he concluded she had improperly attempted to do so without approval from Assistant Principal Watson, and Bolden set forth the following expectation:

- Work with your team regarding recommendations for teaching assignments.
- Process your recommendations with your team and have your Senator represent your request at Senate for final consideration by administration.
- If you would like to change your assignment make a request to the administrator in charge of the master schedule for consideration.

. . . . Not meeting these expectations in the future will lead to discipline.

Ex. D-15.

APUSH Independent Study

Over the years the Grievant has agreed to take some individual students on for independent study in various subjects. Independent study courses are taught on a volunteer basis by teachers. There is no compensation for doing so. Sheldon has an Independent Study Contract that must be completed by the requesting

student, signed by the student and his/her parent, signed by the teacher willing to supervise the independent study, and then signed by a building administrator. Ex. D-18. Head Secretary Cindy Best had authority to use a stamp with Mark Watson's signature to signify administration approval.

For the 2009-2010 school year, the only scheduled APUSH class was being taught by Herb Hahn. Alderman has taught that course in the past, and was approached by some students who could not attend the course offered by Hahn, She agreed to let them take APUSH with her as an independent study.⁶ One student (M.E.) actually enrolled in Hahn's class but was concerned about her overall workload.⁷ Alderman was M.E.'s advisor. After hearing that others students were taking the class as independent study with Alderman, M.E. asked if she could also take APUSH IS. The Grievant agreed.

Michael Voss is a counselor at Sheldon. During the 2009-2010 school year, he was serving as AP Coordinator for the first time.⁸ Early in the school year, Ms. Alderman took M.E.'s independent study contract to Voss's office and indicated that she had additional contracts coming from 3-4 other students. Alderman wanted to be sure that an APUSH IS course would be approved by the College

⁶ At the request of his parents, Alderman had already accepted another student in the spring of 2009.

⁷ By agreement at the hearing, students are identified by initials, not full names.

⁸ Tia Dube had previously filled that role.

Board. Voss had not handled these IS contracts before and was concerns about whether AP courses could be taken as independent study. When Voss suggested that perhaps he should check with Mark Watson, the Grievant said something to the effect that Voss did not need to take the contract back to Watson because he had already approved it. Alderman said she just wanted to be sure there were no problems with the College Board, and added that the administration was not happy with her right then. Ex. D-20.

Voss did decide to talk with Watson, who had previously been told that the Grievant had taken a student out of Hahn's class. His conversation with Voss, left Watson with the impression that Alderman was recruiting students, but he did not discuss the matter directly with the Grievant. Instead, he reported the matter to Dr. Bolden, who ultimately approved the independent study courses as did the AP College Board.

A Missed Department Meeting

The Social Studies Department had regular monthly meetings that were scheduled by the Department senator. One of the "group agreements" adopted by members of the Department in 2003 had been that regular scheduled meetings would be held the 3rd Wednesday of each month during common time. Ex. A-6. The meeting for October 2009 was scheduled for October 21st, but Youngblood-Lee was having some health problems. In an email to team members on Friday,

October 16th, Youngblood-Lee advised that a doctor's appointment had been moved up to the morning of the scheduled team meeting and proposed changing the meeting to Tuesday, Thursday, Friday morning or Thursday afternoon when there was going to be a two hour break. Ex. D-6.

The Grievant objected to changing the meeting, said all her other mornings were full, and suggested Youngblood-Lee change her medical appointment instead. Youngblood-Lee responded that the appointment was with a specialist and was moved up because her doctor felt she needed to be seen sooner. Saying her health had to be the first priority, Youngblood-Lee offered to give her notes to Alderman and let her run the meeting if it was so important to stick with the original schedule. After Herb Hahn and Stan Washburn indicated that they preferred to have the meeting on Thursday morning, October 22nd, Alderman insisted she could not attend a meeting on any day other than October 21st. Ultimately, Youngblood-Lee said that on Wednesday morning, she would leave her notes for the meeting on her desk but would be present Thursday morning to have a meeting with those who chose to come.

In an email sent to Youngblood-Lee and Dr. Bolden the morning of October 21st, Alderman said she had found no senate notes or agenda for the team meeting on Youngblood-Lee's desk, and wanted an equal opportunity to participate in faculty decisions. Alderman asked that Youngblood-Lee schedule a meeting with

administration to discuss the issue. Ex. D-6, p.2. In subsequent replies that same day, Youngblood-Lee said everything had been on her desk in a team notebook, that she, Hahn, Washburn and Temple would be having the team meeting the next morning ,and would provide written notes of the meeting to the Grievant after that. Youngblood-Lee agreed with Alderman that team meetings should normally be held on the pre-established dates, but stated: “. . . every other member of our department understands that medical issues take priority over neurotic needs to maintain strict schedule.” Ex. A-45; D-6. Late in the day, the Grievant responded: “I have an IEP meeting Thursday and will not be able to be at tomorrow’s meeting.” Ex. D-6. Alderman expressed concern about getting a project period proposal approved before the next Senate meeting and said she had planned on presenting that proposal at the meeting that was supposed to be held today.

Dr. Bolden had previously been trying to set up a meeting with the Grievant and a student’s parent. He recalled being told by Alderman that she was not available Thursday morning because she would be working with a student that had an I.E.P. There is a recognized distinction between that kind of meeting and legally required I.E.P. meetings that involve multiple parties (the student, parents, a special ed teacher, and the general education teacher). The afternoon of October 22nd, Bolden asked the Grievant to clarify just which type of meeting it was that

prevented her from attending the rescheduled team meeting. Ex. D-6. The next day, Ms. Alderman responded that she was referring to a meeting she had scheduled with a an IEP student and his mother and had been using the term “IEP meeting” to refer to that. Ex. D-7.

The rescheduled October meeting remained a sore point between the Grievant and Youngblood-Lee. On November 10, 2009, Alderman copied Bolden in on an email she sent to Youngblood-Lee regarding notes for the “unscheduled” October meeting. Alderman alleged the department and administration was contractually required to adhere to the meeting schedule. Ex. D-16. Youngblood-Lee responded later that same day by describing Alderman’s refusal to meet at any other time as “insensitive and cold.” Ex. D-17. That afternoon, Bolden met with Youngblood-Lee and Hahn who expressed concern that the Grievant was negatively impacting department morale. Bolden forwarded copies of emails exchanged within the department along with a draft letter of direction and sought Nesbit’s input. Id.

Department Project Day

After the Work Equity settlement was reached in 2004, Sheldon and other comprehensive high schools began setting aside certain days called “Project Days” (also known as “Department Day”). These designated days allowed department members to meet as a group for the purpose of conducting curriculum develop-

ment, and planning departmental business. At the outset of the 2009-2010 school year, Sheldon administration issued written guidelines for the Project Days. Those guidelines specified that Project Days were to be scheduled by September 18, 2009 on Mondays or Fridays only, only one department could have a Project Day on any particular date, and prior approval was needed from administration. On a Project Day, students do not meet in that department's classes. Ex. D-23.

The Social Studies Department initially scheduled a Project Day on December 4, 2009. By November 10, 2009, the Project Day had been rescheduled for November 30, 2009. Ex. D-24. Planned agenda items included: a curriculum handbook, group agreements, and class schedules. The Grievant was concerned about having no classes for students the Monday after they had just been off for Thanksgiving break. She voiced those concerns at a staff meeting on November 18, 2009, and Bill Temple told her he would talk with administration and other staff members to see if the Project Day could be changed. By the time he checked with other team members, they had already handed out notices to their students indicating that November 30th would be a non-class day, so on November 24th Temple advised the Grievant that Project Day would remain scheduled for November 30th. The Grievant met with the rest of her team that day at an off site location but she did not stay for the entire meeting. When the group broke for

lunch, Ms. Alderman returned to Sheldon in order to teach her 3rd period class.

An Investigatory Meeting

After school ended on November 30th, Dr. Bolden conducted an investigatory meeting with Alderman and EEA Representative Jeff Jackson. Mark Watson was also present. The Grievant had received notice of the meeting from Cindy Best, who came to Ms. Alderman's classroom. Class had not yet started, but students were present when Best told Alderman that Dr. Bolden wanted to meet and Alderman would need EEA representation because the meeting was disciplinary. Ms. Alderman was not given notice of what Dr. Bolden wanted to discuss. Ex. A-54.

During the investigatory meeting, Dr. Bolden asked about numerous events, including the reason Ms. Alderman had given for missing the October 22nd team meeting; comments the Grievant was alleged to have made to students; emails that had been exchanged between Alderman and members of the team; the independent study she had agreed to conduct with M.E; and an email the Grievant had sent to the entire Sheldon staff about how much FTE was allocated for instructional FTE. Ex. D-22. Jackson and Alderman voiced concern about the embarrassing way that notice of the meeting had been communicated, and complained that it appeared Dr. Bolden was unfairly picking on Alderman. That night, Jackson notified Nesbit that the Association would be filing an Unfair Labor

Practice complaint against the District and Bolden based on what it felt was retaliatory conduct for Alderman's speaking out to the Board in June 2009. A draft of that complaint was sent to Nesbit on December 3, 2009. Ex. A-56.

The Letter of Reprimand

On December 8, 2009, Dr. Bolden issued Ms. Alderman a Letter of Reprimand which alleged that the Grievant had "deliberately and purposely misled [her] Team regarding [her] flexibility, availability, and willingness to meet." Ex. D-5. In the reprimand that was six pages long, Bolden said the Grievant's unwillingness to attend the rescheduled meeting on October 22nd and "dishonesty about the reason" was part of a larger pattern of behavior.

Both before and after this particular incident, you have repeatedly failed to work cooperatively with your team; you have circumvented protocol and group agreements; and you have made misleading statements.

Id. The reprimand described various instances of alleged lack of collegiality and set forth Dr. Bolden's expectation that Alderman would work more cooperatively with her team.

The evening after receiving this reprimand, Ms. Alderman sent an email to Department members (with a copy to Mark Watson) saying she had reviewed minutes from the Department Day meeting and would like to discuss three issues further with the group: (1) having junior only APUSH; (2) no sophomores in APUSH; and (3) gate keeping for Honors. Alderman also stated: "I was disap-

pointed that the department was forced to change the meeting date at the last minute. I would have liked to participate in the afternoon discussions.” Ex. D-24. In a response sent the next day, Herb Hahn noted that the date of Project Day had been agreed upon at the November 18th Department meeting that Alderman attended, and that “it was . . . your choice to return to school to teach your 3rd period on our project day.” Ex. D-24.

The First Grievance

On or about December 21, 2009, the EEA formally filed an Unfair Labor Practice Complaint (“ULP”) with the Oregon Employment Relations Board (“ERB”). The Association suggested the time limit for filing a grievance over the Letter of Reprimand be delayed until the ULP was resolved, but the District would not agree, so on February 3, 2010 a grievance was also filed (“LOR Grievance”). The grievance alleged the District lacked just cause to issue a reprimand. The Association also asserted that the reprimand constituted an effort to interfere with the exercise of protected rights under the labor contract and the Public Employees Collective Bargaining Act (“PECBA”). The grievance sought rescission of the Letter of Reprimand, reconsideration of Ms. Alderman’s request for a change in immediate supervisor; and use of a neutral mediator to attempt resolution of underlying communication and relationship issues in the Department as well as the Sheldon building. Ex. A-1.

Election of A Department Senator

While this initial grievance was pending, a dispute arose in the Department over who would serve the next term as senator. Senators serve two year terms, and Youngblood-Lee's 2008-2010 term was ending. The Grievant had served as senator from 2006-2008, immediately prior to Youngblood-Lee. Because of the leadership opportunity and monetary stipend involved, it was customary to rotate the Senator position through members of a department,⁹ but neither Herb Hahn nor Stan Washburn wanted to serve. Bill Temple was asked to volunteer but he refused because he felt the group was too dysfunctional. If Youngblood-Lee was the only alternative, Alderman said she was interested in serving, but by a 4-1 vote, Youngblood-Lee was re-elected to a new term.

Alderman took the issue of Youngblood-Lee's election to Sheldon administration. At a Senate meeting held on May 12, 2010, Dr. Bolden reported that there had been disagreement in the Social Studies Department over the choice for Senator but he was upholding the majority vote for Youngblood-Lee. Bolden tabled review of the Senate Bylaws until the June meeting. Ex. A-94. When the Department held its regular monthly meeting the following week, the Grievant asserted others had voiced displeasure with the Department's vote for

⁹ Senate Bylaw #12 states: "Serve a term of two years. In the absence of another available candidate within a department, the representative's tenure may be extended. The intent is to give all staff members the opportunity to serve on the faculty senate." Ex. A-60.

Senate representative. Later that day, May 19, 2010, Youngblood-Lee sent an email to all Senators in which she stated: "Irene Alderman brought it to my attention today that the Senator from each department has come to her and was displeased with out department vote for Senate representative." Ex. A-60. Youngblood-Lee quoted from Senate Bylaw #12 and said the only member of the Department who had not previously served as Senator did not want to do so. A copy of this email had not been sent to the Grievant, but one of the other senators forwarded her a copy.

Feeling she had been misquoted, Ms. Alderman issued a response to all senators taking issue with statements that Youngblood-Lee had made in the earlier email. Among other assertions, the Grievant stated:

Mary seeks to persuade you that she has a right under the Bylaws to serve a second consecutive term as Senator for the Social Studies Department even if there is another available candidate in the department. Mary's argument is clearly a misinterpretation of the Bylaws. Indeed, the Bylaws are not even ambiguous, as Dr. Bolden indicated.

* * * *

Mary contends that paragraph 12 may be disregarded where, as here, all members of the department who wish to serve have already served in the Senate. That is an unnatural interpretation, for it would mean that if everyone has served one term, then one member may serve indefinitely. Would a 30-year teacher then have a right to serve only once?

* * * *

Ex. A60, pp.1-2.

In an email sent to Ms. Alderman on May 20, 2009, Youngblood-Lee contended she had accurately quoted the Grievant in earlier emails and stated in relevant part:

You twisting words to accommodate your agenda and purposely misrepresenting other teachers statements is unprofessional and taints the entire department. . . . Your understanding of the bylaws is clearly not the interpretation of the rest of the department which is why the issue was brought to the administration and Senate. One would think that would be sufficient.

Ex. A-60, p.1. A copy of this email was sent to all senators, as well as at least one staff member (Fran Christie) who was not a senator. Tr. 623.

After being told that Youngblood-Lee and Alderman were copying emails to numerous Sheldon staff that were heavily critical of each other, Jud Landis (the EEA Building Representative for Sheldon) advised both women that criticizing unit members in a public forum was a violation of the CBA and should stop. Ex. D-33, p.3. In a response sent to Association officers, Bolden and Watson (but not to the Grievant), Youngblood-Lee was even more critical of Ms. Alderman, stating:

Irene Alderman told a blatant lie during our team meeting. Since this is not the first time she has lied to the department about what other teachers have said, I sent out an email to Senate members only; as that is who she was misrepresenting. I said exactly what she said in our meeting and then clarified what happened regarding our vote for senator. Almost every Senator replied confirming our suspicions. Mrs. Alderman then wrote a lengthy email to Senators and other staff members personally, attacking me for decisions our department made as a whole. This is not the first time Mrs. Alderman has personally attacked a member of our department, but we would like it to be the last. Any time Mrs. Alderman does not get what she wants our

department is threatened with a grievance or told that she is going to involve the administration. We cannot work in this hostile environment any longer.

The on-going harassment, instability, bullying and un-truths from Mrs. Alderman won't be tolerated anymore. This has been an issue for 13 years and nothing has even been done about it. Mrs. Alderman has been allowed to create the appearance of dysfunction and chaos which has tainted our department, all of its members and this school for far too long. The district, building and union have tolerated this atmosphere ultimately disregarding the rest of our departments rights. We are now asking that our rights as bargaining members be protected. Can one of you please advise us as to the appropriate course of action?

Ex. A-65. In a response to Youngblood-Lee, Bolden and others on May 28, 2010, EEA Co-President Paul Duchin said public criticism was only exacerbating an already difficult situation and public interchanges should be brought to a halt. Duchin asked Youngblood-Lee to specifically explain why she felt the EEA was not protecting the rights of Sheldon bargaining unit members, and suggested Youngblood-Lee and her colleagues seek other methods to problem solve. He indicated that the Association was ready to provide assistance to mediate the dispute. Ex. A-66.

Assignment to Sheldon Academy

On the Sheldon campus is a building that houses Sheldon Academy ("Academy"). The Academy is a learning center for students who need skill development and those who need to make up credits. It is not an alternative school, but uses alternative ways to reach students in its program. The Academy

provides an alternative curriculum and allows more focused instruction. Its goal is to move students back to the comprehensive program. Fran Christie helped create the Academy program ten years ago and is the Academy Director.

On June 1, 2010, Dr. Bolden stopped by the Grievant's classroom with Assistant Principal Mike Johnson and informed Alderman that for the 2010-2011 school year, she would be teaching Social Studies in the Sheldon Academy program. There was no Association representative present, and no written reasons for the involuntary assignment were provided. The Grievant only recalls being told orally that it was for her own good and perhaps for the good of the Department.

In a subsequent explanation requested by Laurie Moses, Dr. Bolden described "some of the reasoning behind the decisions to not offer AP European History next year and Ms. Alderman's assignment to Sheldon Academy:"

- AP Euro has been rotated every other year in the past, just as AP Chemistry.
- Mainly because of budget constraints and partially because of the lack of student signup for AP Euro without recruiting, AP Euro will not be offered next year.
- AP Euro may be offered on an every other year bases [sic] provided budgetary, personnel and program considerations logically allow the class to be taught.
- We are implementing a new AP Physics Class next year.
- AP US History will continue to be offered next year.
- Ms. Alderman is not being removed from her teaching position next year. She will continue to teach Social Studies in the Sheldon Academy.
- Ms. Alderman will be joining other highly qualified teachers in Sheldon Academy to provide a laser light focus on closing the

achievement gap, making A.Y.P., addressing the graduation rate, dropout rate and credit recovery.

- Another teacher is also being partially assigned to Sheldon Academy for the reasons mentioned in the previous bullet. (Kate Tierney, Language Arts Teacher)
- Ms. Alderman is having conflict with the majority of the members in the Social Studies Department. She has indicated that she needs department mediation to be able to work with her department colleagues.
- The majority of Ms. Alderman's Social Studies Department members have complained to administration, Ms. Alderman and a teacher has represented the majority of Social Studies members to the teachers association about the harassing and disruptive behaviors that are being exhibited toward them by Ms. Alderman.
- I have determined that Ms. Alderman would benefit from and needs a fresh start with another department to be successful.
- Sheldon Academy department members have already been working collaboratively and successfully with Ms. Alderman on a variety of student cases and issues for some time.
- It appears that Ms. Alderman has a positive working relationship with many of the Academy faculty.
- The move will give the Academy an opportunity to provide a great working condition for Ms. Alderman and would benefit from her teaching.
- The move will give the Social Studies Department the opportunity to heal and to become more effective and capable of moving the district's agenda forward.
- Ms. Alderman has requested that Mark Watson not be her supervisor. Mr. Watson will not supervise Sheldon Academy next year.
- Mike Johnson will supervise the Sheldon Academy and Ms. Alderman next year.

Ex. D-32. In a later email to Jeralynn Beghetto, Dr. Bolden said an additional factor was the fact that Sheldon Academy was losing the teaching services of two teachers whose contracts were not being renewed for the next school year. Id.

The Second Grievance

The Association filed a second grievance on June 28, 2010, challenging Ms. Alderman's assignment to Sheldon Academy, which the EEA regarded as an involuntary transfer that violated Articles 2.1, 3.4.8 and 11.5 of the CBA ("Academy grievance"). The grievance also alleged that the assignment had been motivated by retaliation against Alderman for filing the earlier LOR grievance and the ULP Complaint. The Academy grievance sought: return of Ms. Alderman to her regular assignment in the Social Studies Department; removal of any unsubstantiated and inaccurate or slanted criticisms and comments from her file or other record; allowing Alderman to serve as a Senator based on her expressed interest and past practice; use of a neutral mediator/facilitator to attempt resolution of some of the underlying communication and relationship issues in the Department and Sheldon; as well as an administration commitment to provide adequate leadership to maintain professional communication within the Department and Sheldon as a whole. Ex. A-2. Efforts to resolve this new grievance and the earlier one were unsuccessful so the parties agreed to consolidate both grievances and proceed to arbitration.

RELEVANT CONTRACT LANGUAGE

ARTICLE 2 - STATUS OF AGREEMENT

2.1 AGREEMENT HAS PRECEDENCE:

This Agreement shall modify, replace, or add to any policies, rules, regulations, procedures or practices of the District which shall be contrary to or inconsistent with its terms. The provisions of this Agreement shall be incorporated into and become part of the established policies, rules, regulations, practices, and procedure of the District. All existing personnel policies, dealing with mandatory subjects of bargaining, not modified or inconsistent with this Agreement, are hereby incorporated and made a part of this Agreement. The rights granted to unit members in this contract shall be deemed to be in addition to those provided by federal law, by Oregon state law, or administrative regulations. In the event of a violation, only mandatory bargainable policies, rules, regulations, procedures, or practices of the District may be grieved in binding arbitration under this contractual provision.

ARTICLE 3 - GRIEVANCE PROCEDURE

* * * *

3.2 DEFINITIONS:

3.2.1 GRIEVANCE: a "grievance" is a claim based on an event or condition which affects the conditions or circumstances under which a unit member works, alleged caused by inequitable or unfair application of established administration rules and regulations, written School Board policies, or the interpretation, application or violation of provisions of this Agreement. Disputes involving either attempts to change the collective bargaining agreement or representation disputes arising under ORS 243.682; 243.686; or 243.692 are not grievable under this provision.

3.3.6 LEVEL THREE - ARBITRATION

* * * *

- b. The arbitrator so selected shall hold hearings promptly and shall issue his/her decision not later than thirty (3) days from . . . the date that the final statements and briefs on the issues are submitted to him/her. The arbitrator's decision shall be in writing and shall set forth his/her findings of fact, reasonings, and conclusions on the issues submitted. The arbitrator shall be without power or authority to make any decision which requires the commission of an act prohibited by law or which is violative of the terms of this Agreement. The decision of the arbitrator shall be submitted to the Board and the Association and shall be final and binding on the parties.

* * * *

3.4 MISCELLANEOUS:

* * * *

- 3.4.8 REPRISALS: No reprisal of any kind shall be taken by the District or any member of the administration against any party in interest, any representative, any member of the Association, or any other participant in the grievance procedure by reason of such participation. . .

ARTICLE 10 - WORK SCHEDULE

* * * *

- 10.1.3 OTHER MEETINGS: Department, Team, . . . and other professional meetings shall be scheduled (including beginning and ending times) as needed by participating unit members in collaboration with the building principal. Unit members will not normally be required to participate in these additional meetings on more than one day each week. On that day, it is not the intent of this Section to require unit members to work beyond an eight (8) hour day. Other meetings will not be scheduled during grading days, grading and conference days, and progress report days as designated on the adopted school year calendar. . . . The intent of this Section is not to preclude individuals or team members from voluntarily meeting/planning together on the aforementioned days or

preparation time. During such informal voluntary meetings, decisions affecting unit members will not be made.

ARTICLE 11 - POSTING, DISPLACEMENT, AND TRANSFER

* * * *

11.5 INVOLUNTARY TRANSFER

- 11.5.1 An involuntary transfer will be made only after a meeting between the transferee, the administrator recommending the transfer, and a witness of the unit member's choice, at which time the specific reason(s) for the transfer will be presented in writing.
- 11.5.2 Notice of involuntary transfer shall be given as soon as the decision to transfer is made by the District.
- 11.5.3 A unit member's involuntary transfer from one building to another shall only be made after all possibilities of a voluntary transfer as described in sections 11.1 and 11.4 have been exhausted, except when the member is transferred involuntarily for unsatisfactory performance, then sections 11.5.1, 11.5.2, and 11.5.4 do not apply.
- 11.5.4 Any contract unit member who is in a position to which he/she was involuntarily transferred during the past school year shall be given first preference for any vacancy posted on or before June 1 for which he/she applies and meets the posted position requirements. Provisions of this paragraph shall not apply in those circumstances where a unit member is applying to transfer to the building from which he/she was involuntarily transferred.

ARTICLE 12 - RIGHTS OF PROFESSIONAL UNIT MEMBERS

* * * *

12.6 JUST CAUSE

- 12.6.1 No unit member shall be reprimanded in writing, suspended without pay, or reduced in rank or compensation without just cause.

12.9 CRITICISM OF UNIT MEMBERS:

- 12.9.1 Any criticism by a supervisor, administrator, . . . of a unit member and his/her job performance shall be made in confidence to the unit member and not in the presence of students, other unit members, or parents.
- 12.9.2 The Association agrees to urge its membership to apply the same standard to unit member criticism of the Superintendent, District administrators, . . . and fellow unit members. The intent of this clause is not to stifle the evaluation process or to hinder the resolution of classroom problems.

RELEVANT DISTRICT POLICIES

BOARD POLICY G1160 - Complaint Procedures

Harassment, discrimination and retaliation against district staff and students are strictly prohibited by school board policy. Employees who believe this policy has been violated must report it promptly to their building administrator, the Director of Human Resources . . . of the Superintendent's office

BOARD POLICY G1170 - Retaliation

Any intimidation, coercion, discrimination or retaliation against an individual who files a complaint or who testifies, assists, or participates in any manner in any investigation will not be tolerated. Employees should report retaliation immediately, using any of the avenues for making a complaint described above. Complaints will be investigated according to the District's investigation procedure. Corrective action, including discipline or termination, will be taken where appropriate.

BOARD POLICY G2120 - Respectful Workplace

The District is committed to workforce diversity and having a positive and professional workplace for all who work here. The District will take all necessary

steps to ensure that the work environment remains productive for everyone. It is the responsibility of all employees and agents of the District to treat each other with courtesy, consideration, and respect. The District does not tolerate: (1) any forms of harassment, or offensive or discourteous behavior; (2) demeaning statements, threats, or intimidation; (3) unprofessional and discourteous actions; or (4) any behavior that creates or fosters an unwelcome or abusive work environment.

Employees who feel they have been subjected to disrespectful communication or treatment by other District employees, volunteers, or the public should report it to their supervisor or their administrator.

STANDARDS OF PERFORMANCE FOR 4J TEACHERS

* * * *

The Standards of Performance for 4J teachers are listed below. Such standards do not preclude application of Standards for Competent and Ethical Performance of Oregon Educators as defined by the Teacher Standards and Practices Commission (see reverse). Failure to meet the standards of performance may result in a formal Plan of Assistance.

STANDARDS OF PERFORMANCE

* * * *

PROCEDURES

1. The teacher observes the rules, regulations, and procedures of the school and the district.

* * * *

HUMAN RELATIONS AND COMMUNICATION

1. The teacher maintains a constructive working relationship with students, staff, parents, and patrons.
2. The teacher demonstrates skill in communicating about educational matters with students, staff, parents, and patrons.

* * * *

OPINION

This case arises from conflict within the Social Studies Department that dates back many years. While recognizing that others were involved, the District contends that the Grievant had become the main disruptive and dysfunctional force in the Department. The Association contends that because of protected activity, Ms. Alderman has been unfairly targeted for adverse actions that violated various provisions of the labor contract. The chronological sequence of events has been described in some detail earlier in this decision because how things evolved over time has been an important consideration when evaluating the actions of Dr. Bolden, the Grievant, and others.

I. THE DISTRICT LACKED JUST CAUSE FOR THE LETTER OF REPRIMAND.

In Article 12.6.1 of the CBA, the District and Association have agreed that “just cause” is required for reprimands or suspensions. What constitutes “just cause” has not been defined in the labor contract. Like any other contractual term or condition, that phrase is subject to interpretation. There is, however, an accepted standard that has evolved in labor-management jurisprudence. Described in very general terms, the applicable standard is one of reasonableness:

. . . whether a reasonable [person] taking into account all relevant circumstances would find sufficient justification in the conduct of the employee to warrant discharge [or discipline].

RCA Communications, Inc., 29 LA 567, 571 (Harris, 1961); Riley Stoker Corp., 7 LA 764, 767 (Platt, 1947). More specifically, the “just cause” standard requires an initial determination of whether an accused employee is in fact guilty of alleged misconduct and whether fundamental due process rights were complied with. If alleged misconduct is proven, another consideration - unless contractually precluded - is whether the severity of the disciplinary action is reasonably related to the seriousness of the offense and the employee’s prior record.

Arbitrator Carroll Daugherty has articulated some specific guidelines for applying the just cause standard. Enterprise Wire Co., 46 LA 356, 362 (1966). Daugherty’s seven tests were utilized in the District’s brief, but they have been subject to valid criticism. *See, e.g.*, Dunsford, “Arbitral Discretion: The Tests of Just Cause”, Proceedings of the 42nd Annual Meeting of the National Academy of Arbitrators, 23-50 (BNA 1990). When the parties to a collective bargaining agreement specifically incorporate Daugherty's seven tests, this Arbitrator will certainly apply them. In the absence of express reference, my approach is to view the tests as a guideline worth considering but not to be mechanically applied. As Arbitrator Daugherty himself noted, the test is not designed to be applied with slide rule precision. The application of various questions may or may not be appropriate in a particular case depending on the facts involved.

It is by now axiomatic that the burden of proving “just cause” rests with the employer. The quantum of proof most often applicable in labor arbitrations is a

preponderance of the evidence, but for some types of misconduct a higher burden of proof is deemed reasonable. For example, where dishonesty is alleged, I agree that clear and convincing evidence should be required. However, when there is no alleged crime or moral turpitude involved in conduct alleged to be a valid basis for disciplinary action, the quantum of proof I have required is a preponderance of the evidence. The burden of proving an affirmative defense like mitigating circumstances or disparate treatment rests with the Association. *See, e.g.*, T. St. Antoine (ed.), The Common Law of the Workplace: The Views of Arbitrators, 177 (BNA 1998).

A. THE DISTRICT PROVIDED SOME BUT NOT ALL OF THE ALLEGED MISCONDUCT.

The Letter of Reprimand issued by Dr. Bolden is six pages long and describes a litany of incidents. The Association takes issue with the accusatory nature of the letter, with inaccurate statements of fact it allegedly contains, and contends the letter was intended to intimidate Ms. Alderman from engaging in further protected activities. Some of Dr. Bolden's accusations were not sufficiently proven, or do not suffice as grounds for disciplinary action. The record is also convincing, that the Grievant did engage in some conduct with which Dr. Bolden have legitimate reason to take issue.

1. Missed Meeting on October 22, 2009.

While it goes on to reference other behavior, Dr. Bolden described the Letter of Reprimand as having been triggered by a Department meeting that Alderman

did not attend in October 2009. Teachers occasionally miss department meetings, and they do not typically receive any formal discipline for doing so. Dr. Bolden testified that it was not the fact that Ms. Alderman failed to attend the meeting that caused disciplinary action, but rather his conclusion that the Grievant had offered a dishonest reason for doing so. Tr. 320-321. He had far too little reason to make that allegation.

The regular monthly meeting of the Department in October 2009 had been scheduled to occur on Wednesday, October 21st. On October 16th, Youngblood-Lee proposed changing the meeting to the following morning because of a conflict she had developed. There is no dispute that the meeting was rescheduled with relatively short notice, and also no dispute that the Grievant chose not to attend that meeting. The Grievant contends she did so because of a previously scheduled meeting with an IEP student and his mother for Thursday morning, October 22nd and did not want to change that appointment.

Special Ed teacher Charley Cisco described the difficulty of scheduling meetings with parents and the need to work around those parents' schedules. Tr. 582-583. During his testimony, Dr. Bolden acknowledged that people do have legitimate reasons for missing department meetings. Discipline does not normally ensue, and Alderman had no prior notice that a prescheduled parent meeting was insufficient justification. It was clear from Dr. Bolden's testimony that the reason he resorted to formal disciplinary action was his presumption that Alderman

wanted to skip the meeting in order to avoid having her team review a project period proposal of hers, and that she was simply using an “IEP meeting” as a pretext. This is an example of how Dr. Bolden too readily jumped to unwarranted conclusions.

The Department had to approve a proposed project period for the following school year before Ms. Alderman could take her proposal to the Senate. Dr. Bolden testified that he felt the Grievant was trying to circumvent that process, but in reality it gave her particular reason for wanting to attend. At the arbitration, Dr. Bolden was never able to satisfactorily explain why the need for prior Department approval would instead motivate Ms. Alderman to skip the meeting. Doing so would simply delay getting her proposal to the Senate, and ultimately that proposed project period was approved by both the Social Studies Department and the Senate.

Dr. Bolden also too readily accused the Grievant of “deliberately” misleading team members when stating that she would miss the rescheduled Department meeting because she had “an IEP meeting.” This Arbitrator does understand that the term “IEP meeting” is commonly used to refer to a meeting that is legally required and involves additional participants besides parents and the IEP student. However, general education teachers sometimes use “IEP meeting” as a shorthand reference to meetings with just an IEP student and

parent(s). Charley Cisco is a Special Education teacher at Sheldon and he testified this “happens more often than not.” Tr. 591.

One of the Grievant's colleagues testified he might also have referred to a meeting with just student and parent(s) as an IEP meeting even though it was not the legally required meeting with a broader array of participants. Tr. 765-66 (Temple). Alderman acknowledges she did not use “IEP meeting” in its formal sense, but contends she was not trying to hide anything. The issue is not whether she misspoke, but whether her inaccuracy was deliberate with a specific intent to mislead her team. Dr. Bolden is essentially alleging dishonesty, and there is far too little evidence in the record to support that inference.

Dr. Bolden also faulted the Grievant for saying she could not meet any other time the week in question. Expecting Alderman to give greater priority to meetings with her colleagues is a reasonable expectation, but in this instance the meeting was being rescheduled at a period of time when the Grievant had extra stressors to deal with. Her father was seriously ill, and passed away just three weeks later. Time spent dealing with his care reduced the time she had available to cope with instructional demands and interaction with her colleagues. A reasonable administrator would make allowance for these circumstances. I therefore find that missing the October 22nd meeting provided no basis for disciplinary action.

The rest of the Letter of Reprimand addressed incidents that Dr. Bolden felt amounted to a lack of collegiality toward the Grievant's team members. Some of the incidents he described would not provide grounds for discipline when viewed in isolation, but did provide Dr. Bolden with a reasonable basis for concern about a pattern of discourteous behavior.

2. May 4, 2009 Missed Meeting.

In the Spring of 2009, Youngblood-Lee scheduled a special meeting for the morning of May 4, 2009 to discuss the Department's recommendation regarding next year's course schedule. This is one of the Department's most important meetings each year, and when Youngblood-Lee learned that Sheldon administration was setting an earlier deadline than she had previously understood, the necessity for a special meeting clearly existed. Pursuant to one of the Department's established group agreements, "timely" notice was required for special emergency meetings if they became necessary. Ex. A-6, #2. Although notice of the meeting was short, it was as timely as possible. Youngblood-Lee's email regarding the need to meet at 7:45 a.m. on Monday morning was sent at 10:25 a.m. the prior Thursday morning. That was enough time to be seen if the Grievant had been checking her email conscientiously.

Ms. Alderman contends she had a very busy week and weekend, and simply overlooked Youngblood-Lee's email so she inadvertently missed the meeting

that Monday morning.¹⁰ Alderman contends she was in her classroom at the time of the meeting, and her team members testified that none of them went looking for her. According to some, they looked out a window at the parking lot and did not see the Grievant's car where she normally parks so they apparently assumed she was not yet on campus.

Ms. Alderman's own testimony lent support to the possibility that her car was in fact missing from the school lot. The Grievant mentioned how she loses use of her car when a son comes home. Although she does not recall being dropped off at school that day, it certainly seems possible that she was. There was limited time to discuss the Department class schedule, so when they did not see the Grievant's car, I can understand why Department members present at the meeting felt they needed to proceed without searching further.

The Association notes that Dr. Bolden took no action regarding this missed meeting until seven months later. However, it was not the fact that she missed the May 4th meeting that triggered Dr. Bolden's subsequent criticism; it was the Grievant's subsequent attempt to undermine decisions made at a meeting she missed due to her own negligence. It is not uncommon for a supervisor to delay any action until earlier conduct is followed by additional behavior that, when

¹⁰ In the days leading into the weekend, Alderman was preparing students for their AP exams, a son she had not seen for over a year arrived home for a visit, and that Sunday Alderman rec'd both a surprise 50th BD party and another party held by her AP students.

viewed in combination with the earlier behavior, generates more cause for concern.

3. “Dislike kids” Email.

Ms. Alderman was displeased by the Department decision to limit student access to the APUSH class, and subsequently asked for a meeting with stakeholders (counselors, scheduling, and administration) to review the decision. When some upset sophomores came to her classroom, the Grievant sent them to Youngblood-Lee to see if they could get into the APUSH class, and in an email to Dr. Bolden, Ms. Alderman stated: “I have just spoken to 5 sophomores that were rejected from the class. Why? Does Mary dislike them?” Ex. D-11. The Association contends this was just a rhetorical question, taken out of context. I disagree. Alderman’s comment is not one the average reader would view as rhetorical, and Youngblood-Lee understandably took offense. It is certainly not the kind of comment that fosters department collegiality.¹¹

¹¹ The APUSH class was taught by Herb Hahn, not by Youngblood-Lee, and the decision to limit the class was being driven by FTE considerations. Reasonable people can differ regarding concerns Ms. Alderman had, but a majority of the Department had met and made a decision. Dr. Bolden was willing, at one point, to schedule a meeting to discuss the issue further. I reject the suggestion that he failed to do so due to animus after Alderman was critical of Sheldon administration at the June 2009 School Board meeting. In an email sent on June 2, 2009, Dr. Bolden clearly directed the Grievant to work through Cindy Best to get the meeting scheduled, yet according to Alderman she simply told Bolden at some unspecified point in time that Best knew her schedule. If getting the meeting scheduled remained important to the Grievant, it was her responsibility to follow up with Ms. Best. There is no evidence that Alderman did so.

4. Announcing A Change in Assignment.

Dr. Bolden also had justifiable concern about the manner in which Ms. Alderman publicly announced a class switch that had not been discussed with the Department or received administration approval. There was nothing nefarious about the fact that the Grievant and Bill Temple discussed a switch of classes offered at the same period. As Dr. Bolden acknowledged during his testimony, the issue was not whether making the switch was a good idea, it was the lack of prior administration approval.

Mark Watson is the administrator who puts together the Master Schedule of classes. The Department had previously made its recommendation regarding which classes would be taught by which Social Studies teacher. That recommendation had been approved and incorporated into the Master Schedule, which had already been sent out to parents. By their own admission, Temple and Alderman announced a departure from the Master Schedule when introducing themselves at the staff retreat before school started. The Grievant contends she planned to propose the trade to Sheldon administration and did not anticipate opposition. I find that assertion rather disingenuous.

There is no written building protocol saying teachers cannot simply switch classes by agreement, but numerous witnesses confirmed that Mr. Watson had made clear that final approval rests with administration. Ms. Alderman's awareness of this was evidenced during her testimony. The Grievant acknowl-

edged that a class cannot be switched without having an administrator access the ESIS system. Tr. 719.

In the days between her discussion with Temple and the staff retreat, the Grievant made no effort to contact Sheldon administration about the idea of switching classes. She did not try to talk to either Dr. Bolden or Mark Watson at the retreat before announcing which classes she would be teaching. The Grievant contends prior Department approval was not necessary, and seems to feel she could reasonably expect administrative approval after the fact. I disagree.

The record indicates the Department had not adopted any group agreements that addressed the issue of trading classes. Alderman described how she had made similar switches in the past without consulting the rest of the Department.¹² The Grievant thus had no prior notice that approval of the Department was required, and cannot be said to have violated any group agreement. However, it is apparent from the record that the class schedule has been a very sensitive matter in the Social Studies Department. Hearing the Grievant describe a change in class assignments that deviated from the schedule that the Department had recommended in the Spring of 2009 understandably upset the other team members. As a matter of courtesy, Department members should have been advised before other Sheldon staff were. I find it hard to believe

¹² Herb Hahn testified the Department did not have an official policy regarding whether scheduling changes had to be cleared with the Department or not. Tr. 131-32.

the Grievant did not realize that failing to do so would upset the other team members or show a lack of collegiality.

The Grievant clearly knew final approval rested with Sheldon administration, yet she made a public announcement before ever discussing the switch with Watson. Teachers do not usually specify what classes they will be teaching when introducing themselves at the staff retreat. Like Mr. Watson, I find it significant that the Grievant made a point of doing so. It is not at all surprising that this course of conduct antagonized Watson as well as other Department members.

In Mid October, 2009, Dr. Bolden decided to address the class switch issue through a Letter of Direction, which did not represent formal disciplinary action. Such letters are kept in the administrator's building file and not placed in a teacher's personnel file. They serve as a form of counseling and document the fact that notice of expectations has been provided. The Letter of Direction stated that the Grievant had improperly attempted to switch an assigned class without approval from Assistant Principal Watson. Ex. D-15. I have considered EEA criticism of the administration's investigation, but prior to issuing the Letter of Direction, Dr. Bolden did meet with the Grievant and heard her version of events. The Letter of Direction is based upon facts that were clearly established: the Grievant's announcement of a class switch at a staff retreat without prior approval of the administrator in charge of the master schedule.

Dr. Bolden directed the Grievant to satisfy three requirements in the future. Two of them were clearly reasonable, *i.e.*, working with her team regarding recommendations for teaching assignments; and making request to the administrator in charge of the master schedule if she wanted to change an assignment. So is the part of a third expectation in which Dr. Bolden directed the Grievant to process recommendations for teaching assignments with her team. Even if there had not been an “official” requirement to do so in the past, that is a reasonable policy to adopt for the future in order to minimize Department discord. However, Dr. Bolden also imposed a requirement that the Grievant have her senator take a requested change in assignment to the Senate. This is not the kind of issue that has been taken to the Senate in the past and there seems no valid basis for requiring this step so long as a proposed change is called to the attention of the Department involved and receives the administration’s prior approval.

Once he decided to address the attempted class switch with a Letter of Direction, that misconduct cannot serve as an *independent* basis for later issuing a Letter of Reprimand. It can, however, be referenced if the Grievant continued to engage in conduct that blind-sided members of her Department and ignored established building protocol.

5. APUSH Independent Study.

Shortly after the class trade controversy, members of the Department learned that the Grievant was accepting students for independent study in AP US

History. APUSH was not a class the Grievant was assigned to teach; it was being taught by Herb Hahn. In the Letter of Reprimand, Dr. Bolden described a number of concerns:

- an apparent lack of notice to others in the Department that Alderman was enrolling students in independent study for APUSH;
- asking Counselor Michael Voss not to say anything to administration about what she was doing;
- dishonesty regarding what she requested of Voss;
- failure to follow department protocol regarding independent study.

The record does provide grounds for the first concern, but the additional three assertions were not justified.

Mrs. Alderman testified that in the Spring of 2009, before there was any Department decision to offer only one APUSH class the following school year, she was contacted by a student (J.C.) and agreed to accept him for APUSH IS at the request of his parents. After the Department decided there would be only one APUSH class the following school year, the Grievant says she was contacted by some additional student who were taking a calculus class that would conflict with Mr. Hahn's course time. She agreed to accept those students for APUSH IS too. Alderman did not advise her colleagues of this.

Student M.E was enrolled in Hahn's APUSH class in August, 2009 and did not have a scheduling conflict, but her parents were concerned that M.E.'s class

load was too heavy. M.E. had heard that the Grievant was willing to do APUSH IS with other students, so she approached Alderman and asked to take APUSH as independent study too. According to the Grievant's recollection, M.E. said she could not fit APUSH into her schedule, so Ms. Alderman agreed to take her on as an IS student. The Grievant made no mention of this to Mr. Hahn, who was teaching the class that M.E. would be dropping.

Since M.E. had been shown as enrolled in his class, Hahn inquired into her absence and learned from Sheldon Scheduling office that M.E. was taking the course as independent study with the Grievant. Youngblood-Lee found out only because she heard some students talking about what M.E. was doing. Youngblood-Lee and Hahn have both had independent study students in the past, but infrequently, and they felt that independent study should not be offered to students who could enroll in a regular course offering. They were also apparently not aware of the extent to which the Grievant had accepted independent study IS students for a number of different AP classes over the years.

The District contends the Department had a protocol of not enrolling a student in a class that is already on the Master schedule unless the student has another conflict that prevents him/her from taking the class. If there was any such understanding within the Department, it was never documented in writing and does not appear to have been officially adopted or uniformly accepted. There is no evidence that any specific discussion had occurred at Department meetings

regarding whether the teaching of an AP course as independent study was acceptable or what criteria would be utilized for accepting students. It appears instead to have been left to an individual teacher's discretion since accepting independent study students involves a strictly voluntary commitment by the teacher. There is no additional compensation for the time involved.

Students seeking independent study must obtain various signatures on a form that is submitted to Sheldon administration for final approval. All the necessary signatures were obtained in M.E.'s case. Mr. Watson did not personally see the form for M.E., but pursuant to the normal process being followed at that time, any student wanting to do an independent study would obtain parent and teacher signatures on the IS contract. Connie Minihan had been authorized to use a stamp of Mr. Watson's signature to indicate administration approval. The Grievant had no notice that she was expected to bring IS forms to Watson and seek his personal approval.

Alderman did have a conversation with Counselor Michael Voss, who recalls the Grievant coming to his office and indicating that she had one APUSH IS contract in hand and three or four other students who were interested. Voss was serving as AP Coordinator for the first time during the 2009-2010 school year and did not know whether colleges would accept AP courses taken through independent study. When the Grievant showed Voss the IS contract for M.E. with Watson's stamped signature, Voss questioned whether he should make sure

Watson knew what he was signing. Voss recalls Alderman saying something to the effect that Voss did not need to take the contract back to Watson; that she just wanted to make sure there were no issues with the College Board.

Dr. Bolden later concluded that the Grievant had been asking Voss not to tell administration about enrolling M.E. When Alderman denied trying to hide anything, Dr. Bolden concluded she had been dishonest about her conversations with Voss. As noted earlier in this decision, assertions of dishonesty require clear and convincing evidence. In this case, the District's evidence falls far short of that.

The Grievant denies telling Voss to hide the IS contract from administration, but acknowledges saying Voss did not need to go to administration because the form had been approved. When telling Voss that there was no need to take the form to Mark Watson, the Grievant apparently did say that Sheldon administration was not very happy with her at that point. That remark may have led Watson and Dr. Bolden to believe she wanted to keep them in the dark. However, that is not the only reasonable inference that can be drawn. The Grievant's focus was clearly on making sure APUSH IS would be accepted by colleges the students were going to apply to, so it is understandable she would be urging Voss to focus on feedback from the College Board and skip a step she felt had already been completed. At the arbitration, Mr. Voss said he did not feel the Grievant was trying to hide anything from the administration. Instead, he felt her

comments just indicated that she was in a rush and was telling him not to waste time involving Watson. Tr. 195.

Ms. Alderman had been very critical of the Department decision to offer only one APUSH class, and knew it was a sensitive issue with her colleagues. They understandably felt blind-sided when students and staff outside the department were aware of the Grievant's decision to offer APUSH IS to numerous students before members of the Department had been informed. Mrs. Alderman may have been correct in believing there was no established protocol requiring Department approval of her decision to accept IS students, but as a matter of professional courtesy, she should not have left other social studies teachers in the dark, especially since there are legitimate issues it might have been beneficial to discuss.¹³ The Grievant's handling of APUSH IS can be criticized on this basis, but not on the grounds that she lied or was trying to hide her actions from Sheldon administration. There is a difference between saying there is no need to do something versus asking that something be kept hidden. The District has failed to fairly consider that distinction. I conclude that Alderman did not lie to Dr. Bolden about her comments to Mr. Voss, and was not asking Voss to keep M.E.'s IS contract hidden from the administration.

¹³ Other Department members worried whether accepting IS students who did not have a scheduling conflict would undermine an offered class, for example by letting students opt for a teacher they simply preferred or allow receipt of the same credit with no seat time or the same workload.

6. Sarcastic Email in November 2009.

In an email about the Department meeting that had been moved in October, Alderman sent Youngblood-Lee an email that said: “Mary, thanks for the notes from the *unscheduled* October meeting.” Ex. D-16 (emphasis added in italics). In the Letter of Reprimand, Dr. Bolden characterized this email as sarcastic, “incendiary,” and taunting. Since the October meeting was rescheduled, not unscheduled, I too read the email as sarcastic. However, characterizing it as “incendiary” is a gross overstatement, and provides another example of where Dr. Bolden seems to have treated something as more egregious than it really was.

7. Holding class on Department Project Day.

At the outset of the 2009-2010 school year, Sheldon administration had issued a building protocol regarding Project Days scheduled by each department. That protocol specified that on a Project Day, “students do not meet in class.” They are instead encouraged to use the time for independent study in the school library, computer labs or cafeteria and may be given an independent assignment to complete. Ex. D-23. Ms. Alderman was aware of this rule, yet she chose to leave her Department’s Project Day on November 30, 2009 and teach her third period AP class.

The Project Day at issue was rescheduled from December 4, 2009 to November 30, 2009 at a regular Department meeting that the Grievant attended on November 18, 2009. The rescheduled date fell at a very bad time for the

Grievant's AP European History class, so she decided not to cancel that class on November 30th. Ms. Alderman's father had passed away on or about November 11, 2009, and Ms. Youngblood-Lee was hospitalized for a serious illness, so there were certainly arguments that could be made for trying to schedule the Department Project Day on a different date. The Grievant also thought cancelling classes right after students had been off for the Thanksgiving recess was a bad idea. However, administration approval was needed for any change to the date and that approval was not forthcoming so by Tuesday, November 24th, so the Grievant knew that the Project Day remained scheduled for the following Monday.

The Association faults the other members of the Department for not seeking to accommodate Alderman's class concerns by recessing their meeting during the period the Grievant wanted to teach her third period class, and then resuming the meeting during the fourth period of the day. The staff meeting was being held away from the Sheldon campus. Once the meeting ended, Department members were free to either return to the school or head home for the day. I find no fault in members wanting to complete their meeting without interruptions rather than hang around while the Grievant chose to teach a class in direct defiance of applicable Project Day rules.

One of the group agreements adopted by the Department in 2003 was that majority vote would control when decisions could not be made by consensus. Having the Project Day on November 30, 2009 was not the Grievant's choice but

it was a decision supported by a majority of the Department. I fully understand Alderman's concerns about the impact of this meeting on her class curriculum. However, having agreed to set aside Project Days, Sheldon administration can reasonably insist that they be devoted to the specified purpose.

The whole point is for a department to have time together without teaching duties in order to discuss matters that impact the department's instructional program. It is a time to foster better communication, and if any Sheldon department needed that it was the Social Studies Department! The record indicates that by not keeping her colleagues apprised of what she was doing, Ms. Alderman had certainly contributed to misunderstandings and dissension within the Department. In light of that prior history, I can readily understand Dr. Bolden's reaction when he learned that the Grievant had chosen to disregard building protocol and teach a class rather than fully participate in the scheduled day for department planning. Contrary to the Association's contention, Ms. Alderman's conduct regarding the November 30, 2009 Project Day did violate a clear rule and constituted misconduct with which Dr. Bolden could justifiably take issue.

8. Rude behavior and unprofessional comments with students.

In the Letter of Reprimand, Dr. Bolden expressed concern not just with behavior vis-a-vis other Department staff, but also comments made to students that he felt served to undermine other members of the department. One such

comment was allegedly made when the Grievant was asked by a student if there would be class on November 30th, and responded that she did not want to talk about that. During her testimony, the Grievant acknowledged making that kind of response, but contends she did so at a time when she was waiting to hear if the Project Day was going to be postponed. Tr. 832.

Department emails indicate that Bill Temple was going to talk with Mark Watson on Monday, November 23rd, about whether the Project Day date could be changed. Alderman did not learn until Tuesday, November 24th, that a change in the date was not going to occur, and she would need to give out notice to her students as others in the Department were doing. The District did not establish that the remark in question occurred prior to this time, so I find nothing unprofessional in the Grievant's decision to delay a response about whether class would be held until she was sure of the answer.

Mrs. Alderman is also alleged to have later stated to her class that moving the Project Day to November 30, 2009 was a "PR nightmare, and "irresponsible." The Grievant contends she just made this comment at a staff meeting, and not to students. However, when he questioned Alderman about this remark at an investigatory meeting on November 30th, Dr. Bolden understood the Grievant to have admitted making the remark to students. Tr. 229. Ms. Alderman denies doing so, but notes taken at that meeting by Mark Watson do corroborate Dr. Bolden's assertion. Ex. D-22, p.4. The Association contends the notes are either

in error or the Grievant misspoke, but EEA Representative Jeff Jackson also attended the investigatory meeting. Jackson did not like how the meeting was conducted, and felt Watson should not have been present, but during his testimony, Jackson did not take issue with the accuracy of things actually recorded in Watson's notes, or with Dr. Bolden's recollection of the Grievant's response. The record is persuasive that Ms. Alderman, perhaps in a moment of frustration, did make a derogatory comment about proceeding with Project Day on November 30th, and Dr. Bolden could justifiably consider that remark to be unprofessional.

By all accounts, Ms. Alderman is an outstanding teacher. Numerous witnesses at the hearing attested to that as did Dr. Bolden, who acknowledged she is an excellent instructor. Youngblood-Lee described the Grievant as one of the best teachers at Sheldon, even though there is clearly no love lost between them. While her exemplary teaching ability and commitment to students is undisputed, Ms. Alderman seems to feel that *her* judgment regarding the best interests of students should always prevail over contrary Department decisions. She is incorrect.

Addressing the needs of one's students is not the only hallmark of a good teacher. The characteristics of a "competent educator" set forth in Oregon Administrative Rules includes the ability to work effectively with building staff, as well as a willingness to be flexible in cooperatively working with others. ORS 584-

020-0030. The District own standards of performance likewise include an expectation that teachers will observe adopted school procedures, and maintain a constructive working relationship with one's team. Ex. D-2.

As Ms. Nesbitt correctly noted during her testimony, "being a great teacher doesn't excuse you [from the expectation of collegiality]." Tr. 481. Mrs. Alderman was clearly quite collegial with many Sheldon certificated staff, but she was also repeatedly engaging in behavior that had the effect of rubbing salt on open wounds within the Department and disrespecting decisions made by the majority. The record does support Dr. Bolden's concern that Ms. Alderman was engaging in a pattern of conduct that evidenced a lack of collegiality and undermined members of the Department. Deciding not to inform colleagues about actions that involved Department courses, sending insulting emails or making unprofessional comments to students are all intentional acts which justifiably caused Dr. Bolden to feel the Grievant was blind-siding and undermining at least some members of the Department.

B. DR. BOLDEN HAD A RETALIATORY MOTIVE FOR ISSUING THE LETTER OF REPRIMAND.

Issuing another Letter of Direction would clearly have been reasonable, and that is what Dr. Bolden initially intended. He resorted instead to a Letter of Reprimand, which is formal disciplinary action. The Association contends he did so in an act of intimidation and retaliation. Three different School Board policies

prohibit retaliation against District staff. Board Policy G1160 sets forth a general prohibition against harassment, discrimination and retaliation. Policy G1170 prohibits retaliation for filing a complaint, and Policy G2120 prohibits actions that undermine the maintenance of a respectful workplace. Most collective bargaining agreements prohibit discrimination because of protected activity. One such clause appears in Section 3.4.8 of the EEA contract, which prohibits reprisal for a unit member's participation in the grievance procedure. Even absent such a clause, the just cause provision is interpreted by arbitrators as prohibiting discharge or discipline motivated by an employee's exercise of protected rights. *See, e.g., Dow Jones & Co., Inc.*, 70 LA 375 (Kornblum, 1978). Discrimination in reprisal for the exercise of collective bargaining rights is also prohibited by Oregon Law. ORS 243.672.

The Association presented a prima facie cases of retaliation through evidence that the Grievant engaged in protected activity, then suffered adverse employment action, under circumstances that support an inference of a causal connection.¹⁴ The Grievant played a lead role in the Work Equity grievance. In the Fall of 2009, she was seeking to enforce its settlement. These actions were clearly protected activity, as were the Grievant's remarks at the June 2009 School

¹⁴ Use of the phrase "adverse action" is not intended to be co-extensive with rulings of the Oregon Employment Relations Board ("ERB") that enforces ORS 243.672. Portland Assn. Of Teachers v. Multnomah School District No. 1, 171 Or. App. 616, 624 (2000). I am mindful of ERB precedent, but am applying contract language that provides its own particular protection.

Board meeting. Immediately after those remarks, Dr. Bolden proposed adverse employment action that was specifically based upon that School Board appearance. The proposed action was not carried out at the time, but Dr. Bolden later implemented adverse action that effectively achieved much of what he had been proposing in June 2009. When an employer has threatened discriminatory action based on protected activity, carrying out such action is presumed to be discriminatory unless the employer can present a strong showing of a legitimate business reason. Tigard Police Officers Assn v. City of Tigard, 8 PECBR 7989, 8000-01 (1985). Because of his aborted earlier attempt to punish the Grievant for protected activity, Dr. Bolden's later adverse actions certainly merit close scrutiny.

I therefore turn to consideration of why Dr. Bolden later issued the Letter of Reprimand. If all of his reasons were lawful, there would be no retaliation in breach of the labor contract or applicable law. If there were both lawful and unlawful reasons, the case becomes what is known as a "mixed motive" case. Mixed motive cases require a final determination of whether adverse action would have occurred even if the protected activity had not occurred. *See, e.g., Gresham-Barlow Education Assn. v. Gresham-Barlow School District*, 23 PECBR 23/190, 194 (2009).

Supervisors rarely admit to having a retaliatory intent. A discriminatory motive is thus rarely provable by direct evidence. Instead, one has to draw conclusions from the circumstances surrounding actions at issue. Having

considered those circumstances, I am convinced this is a dual motive case, *i.e.*, one where Dr. Bolden had some legitimate reasons for the Letter of Reprimand, but also harbored animus against Ms. Alderman for protected activities in which she had engaged.

Dr. Bolden's assertion at the arbitration that the Grievant's remarks to the School Board did not anger him was simply not credible.¹⁵ The record is replete with evidence that Dr. Bolden does not take public criticism well. The extent of Bolden's anger is evident from the text of his June 17, 2009 memo to Laurie Moses and the extensive discipline that he was proposing. Bolden was so upset by the public criticism that he proposed discipline even for other Sheldon staff like Hans Volwerk, who was present at the Board meeting but did not speak.

I can readily understand why Dr. Bolden felt blind-sided by the Grievant's course of action, especially since it occurred right at a time when he was receiving a prestigious award. In a Letter of Concern issued in 2006, Dr. Bolden had warned Alderman not to make claims about controversial issues to the entire building staff before bringing her concerns to building administration. During the spring of 2009, the Grievant had raised general concerns with Dr. Bolden about Sheldon staffing allocations, but she does not appear to have given him a chance to address some of the specific assertions she subsequently made to the Board.

¹⁵ Ms. Alderman was likewise unpersuasive when contending she was simply trying to raise issues and not trying to embarrass Dr. Bolden.

When Alderman sought to meet with Bolden's supervisor, Laurie Moses, she did not copy Bolden in on a document sent to Moses' office. Neither did she talk further with Dr. Bolden as Moses ultimately suggested. The morning of the Board meeting, Dr. Bolden gave a budget update to the entire Sheldon staff. Mrs. Alderman did not tell Bolden that she planned to address the Board that evening, and did not show Dr. Bolden materials she planned to submit to that Board. Bolden learned of criticism leveled by the Grievant against Sheldon administration only when his supervisor called the next day. Any administrator would likely be angered by this course of action but that does not justify subsequent retaliation due to that anger.

After being told that adverse action could not be taken because speaking to the School Board was considered protected activity, Dr. Bolden contends he did not remain angry or let his displeasure impact subsequent decisions regarding the Grievant. Dr. Bolden may have convinced himself of that assertion, but I find the record persuasive that animus continued to impact Dr. Bolden's course of action with the Grievant in ways evidenced by the following behavior:

- interpreting events in the most negative way possible, instead of giving Alderman the benefit of the doubt that other Sheldon staff seemed to receive;
- alleging violation of Department protocols based upon weak evidence that they existed;
- criticizing the Grievant for allegedly unprofessional emails, while taking no action with another Department member who likewise sent unprofessional emails;

- imposing requirements on the Grievant that were not expected of others.

Examples of the above conduct have already been discussed herein, so I will further explain just one example.

A well established requirement of just cause is that an employer must apply its rules and penalties even-handedly without discrimination. Failing to do so constitutes disparate treatment. This does not mean the exact same treatment must be mechanically applied to all employees. What is required is a reasonable basis for an employer's differing response. With that in mind, I can find no reasonable basis for using unprofessional emails as a basis for *formal* disciplinary action against the Grievant, when the record indicates Dr. Bolden was well aware of and seemingly ignored equally unprofessional emails sent in even greater number by another member of the same Department.

After receiving the Grievant's email about disliking kids, Youngblood-Lee was understandably angry. In response, Youngblood-Lee leveled accusations of her own, *e.g.*, that Alderman was "bad-mouthing" other Department staff, and "manipulating" students and parents. Ex. D-11. In later messages to Alderman and others, Youngblood-Lee described the Grievant as having "neurotic needs to maintain a strict schedule," as being "insensitive and cold," as "twisting words to accommodate [Alderman's] agenda and purposely misrepresenting other teachers statements," and making a "blatant lie." Exs. A-45; A-49; A-61; and A-65. The

“twisting words” message was sent to all Sheldon senators and at least one non-senator from outside the Department. Fran Christi testified that in 35 years as a teacher, she had not seen that vitriolic a message disseminated about a co-worker. Yet, Youngblood-Lee testified that she never received any counseling from Dr. Bolden about the messages she had sent to or about Ms. Alderman, nor about a need to be more collegial in general. Tr. 117. Dr. Bolden did not convincingly describe any counseling or disciplinary action.

Animus against the Grievant can also be inferred from the questionable manner in which Mark Watson responded to a reasonable request from Ms. Alderman. Watson initially denied but then acknowledged he was aware of the angry memo Dr. Bolden sent in response to the Grievant's School Board comments. Watson's subsequent and subsequent handling of a custodial issue certainly provides reason to wonder whether the Grievant was being treated less favorably because she had been critical of Sheldon administration.

When issuing an email about having classrooms ready for custodial cleaning, Mr. Watson contends he was simply treating the Grievant the same as other staff. That was true when email was initially sent, but no one else was shown to be out of town and unable to prepare their classroom when Watson sent his email. After Alderman explained that she was out of town grading AP exams and would not return before the deadline for having the classroom ready, Watson seemed surprisingly unwilling to make an accommodation the Grievant was

requesting, *i.e.*, to ask the custodians if they could clean her room last. Watson did not do so until after the Grievant specifically questioned whether the inflexibility she was encountering was related to her School Board comments. Dr. Bolden's reaction to this is very telling. Bolden subsequently told Alderman that he had contemplated discipline because she questioned whether retaliation was occurring. I find that reaction indicative of Bolden's residual anger.

I also find significant a remark that Watson made during a September 10, 2009 phone call with Christine Nesbit. In the course of describing a meeting held a few days earlier where Pam Crisalli was initially present, Watson stated that Crisalli was a "buddy of Irene's. One of four that want to stir the pot. Want to wipe out Bob." Ex. A-41; Tr. 506:14-25. Reference to "four" that want to get rid of Dr. Bolden is clearly a reference to the Grievant and three other individuals that Dr. Bolden sought to have disciplined for their appearance at the School Board meeting. Watson denies making this statement that Nesbit wrote down in note she was taking during their phone conversation. I find Nesbit's contemporaneous notes are likely more accurate than Watson's denial.

Evidence of animus can be further inferred from the manner in which Dr. Bolden chose to notify Alderman that he was contemplating disciplinary action. Article 12.9.1 of the CBA states:

Any criticism by a supervisor, administrator, . . . of a unit member and his/her job performance shall be made in confidence to the unit member and not in the presence of students, other unit members, or parents."

Dr. Bolden is well aware of this provision. Yet when Bolden decided to hold an investigatory meeting with the Grievant on November 30, 2009, he did not utilize a private email message to notify her. He instructed Head Secretary Cindy Best to deliver the message.

Best came to the Grievant's classroom where students were present and told Alderman that Dr. Bolden wanted to schedule a meeting that was disciplinary. Tr. 449-450. Whether students actually heard what Best said is not the point. The possibility that they might have done so was clearly embarrassing for Alderman, and was entirely avoidable. Dr. Bolden testified that he did not direct Ms. Best to communicate with the Grievant in the fashion she did, but it was Bolden who asked Best to deliver the message when he could have sent a private email message.

I have considered the fact that Dr. Bolden decided to issue a Letter of Reprimand only after being advised that the EEA intended to file a ULP Complaint. I do not draw any inference of retaliation from that timing, because even before notice of the ULP, Dr. Bolden had scheduled an investigatory meeting that he indicated could lead to discipline. It is not the timing of the Letter of Reprimand, but rather its harsh tone and the scope of what it covered that I find indicative of a retaliatory intent. Because it was based in part on unproven accusations and impacted, at least in part, by a retaliatory motive, I conclude the District lacked just cause for the Letter of Reprimand that Dr. Bolden issued in December, 2009.

I also find the Letter of Reprimand constituted an inequitable or unfair application of administration rules and regulations and written School Board policy related to harassment, discrimination, retaliation and/or a respectful workplace. The LOR grievance is therefore sustained. As an appropriate remedy, rescission of the Letter of Reprimand dated December 8, 2009 is clearly warranted. That notice of disciplinary action should be removed from Ms. Alderman's personnel record, and destroyed so it has no further effect. Additional relief sought by the EEA is not appropriate for reasons discussed in connection with the Sheldon Academy grievance.

II. THE GRIEVANT'S ASSIGNMENT TO TEACH IN THE SHELDON ACADEMY PROGRAM DID VIOLATE THE CBA.

The second grievance filed by the Association takes issue with Mrs. Alderman's removal from the Social Studies Department and her assignment to Sheldon Academy next year. The Association contends this constitutes an involuntary transfer governed by the provisions of Article 11.5 and conducted in breach of procedural requirements set forth therein. The Association also contends the "transfer" had a retaliatory motive and thus violated Section 3.4.8 of the CBA, which prohibits reprisals for participating in grievances. I sustain the second allegation, but not the first.

A. ARTICLE 11.5 WAS NOT APPLICABLE AND THUS NOT VIOLATED.

Article 11.5.1 of the CBA sets forth certain preconditions for an “involuntary transfer.”

An involuntary transfer will be made only after a meeting between the transferee, the administrator recommending the transfer, and *a witness of the unit member's choice*, at which time the specific *reason(s) for the transfer* will be presented *in writing*.

Ex. A-3 (emphasis added in italics). The Grievant's assignment to Sheldon Academy program was clearly involuntary, and there is also no dispute that when advised of the change to her teaching assignment, Alderman was neither accompanied by a witness of her choice, nor presented with written reasons for the change in assignment.

The parties' disagreement centers on whether a change in teaching assignment within the same school and campus amounts to a “transfer” for purposes of Article 11. For an issue of contract interpretation, the Association bears the burden of proving that its interpretation is correct. *See, e.g., SMG-Van Andel Arena*, 111 LA 185, 190 (Brodsky, 1998). An arbitrator's failure to follow clear and unambiguous language in a collective bargaining agreement is one of the

limited grounds upon which an arbitration decision may be overturned by the courts.¹⁶ My first consideration is thus whether an ambiguity exists.¹⁷

Courts and arbitrators once considered only the express terms of a contract to decide whether an ambiguity exists (the "plain meaning rule"). The "context rule" now seems the preferred approach; one which this Arbitrator has adopted.

The context rule holds that any determination of meaning or ambiguity should be made after considering relevant evidence of the situation and relations of the parties, the subject matter of the transaction, and the course of dealing between the parties.

Language does not become ambiguous merely because parties disagree over the meaning of a phrase or contract provision. The question of whether relevant language is ambiguous turns on the particular facts of each case. An arbitrator must decide whether, judged in context, a single, obvious and reasonable meaning appears on the face of disputed language. A party's offered interpretation may not ultimately be found to best reflect the negotiated intent of contract language, but if plausible contentions can be made for conflicting interpretations, then an ambiguity will be said to exist.

¹⁶ "An unambiguous contract must be enforced according to its terms." Pioneer Resources, LLC v. D.R. Johnson Lumber Co., 187 Or App 341, 361 (2003).

¹⁷ "A contract provision is ambiguous if it is capable of more than one sensible and reasonable interpretation." 187 Or. App. at 361. "A contract is ambiguous if it can reasonably be given more than one plausible interpretation." Portland Firefighters Association, Local 43 v. City of Portland, 181 Or.App. 85, 91, 45 P.3d 162 *rev. den.* 334 Or. 491 (2002).

In this case, both sides have offered a plausible way of interpreting Article 11.5 because Sheldon Academy is not a separate stand alone high school. It is a building on the Sheldon High School campus that is considered part of the Sheldon program.¹⁸ The Academy is funded from regular Sheldon funds, its staffing is part of the Sheldon FTE allotment, and Academy students earn a Sheldon diploma.

Association Representative Jeff Jackson testified that in his view a transfer covered by Article 11.5 arises with any kind of reassignment between buildings (or departments) on the same campus. Article 11.5.3 refers to an involuntary transfer “from one building to another.” Article 11.6 describes a “Voluntary Transfer Review Committee” and talks of voluntarily transfers “between buildings and departments.” Those provisions do provide some basis for Mr. Jackson’s contention.

The District contends that for purposes of Article 11.5, assignments between programs in the same school on the same campus have not been considered a “transfer.” Jeralyn Beghetto has been a District employee since August 2002. For the last 4-1/2 years, she has held the position of HR Administrator for School Services K-12. In that position, Ms. Beghetto has been involved in applying Article 11.5 and reviewing teaching assignments. Ms.

¹⁸ Sheldon also has other free standing portable buildings on its campus where classes are taught, *e.g.* portable classrooms for Math, Health and Special Ed classes.

Beghetto testified that the move to Sheldon Academy was considered an assignment change by the District, not a transfer, because the Academy is on the same campus and part of the Sheldon program. Under the District's interpretation, a transfer can arise between buildings and departments, but only when the teaching assignment is not within the same school. That is also plausible way of applying the word "transfer" for purposes of Article 11.5.

When an ambiguity is found to exist regarding the application of contract language, an arbitrator tries to discern the parties' likely intent when negotiating the language at issue. Various rules of construction are sometimes used in this endeavor, but they are not inflexibly applied. They are merely tools to search out the parties' most evident intent at the time of contracting. Determination of that intent is judged by considering the contract as a whole, the subject matter and objective of the provisions at issue, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of the interpretations advocated by the parties.

In the present case, neither side offered evidence of prior negotiating history. I have only the language appearing in the labor contract and the parties' prior course of dealing from which to draw inferences. That course of dealing persuades this Arbitrator to accept the District's interpretation. Ms. Beghetto described how teaching assignments frequently change from year to year without being considered involuntary transfers. For example, a regular classroom teacher

might be assigned to serve as a learning coordinator or staff development specialist at the same site, or a long time fifth grade teacher might be reassigned to teach kindergarten when there are too many teachers at the fifth grade level.

So long as an assignment has kept a teacher on the same campus teaching within the same program, Ms. Beghetto said there has never been a grievance contending that Article 11.5 applied. Tr. 464. Mr. Jackson conceded that was true as far as he knows. Tr. 904. If the intended scope of Article 11.5 was to be as broad as the EEA claims, it is hard to believe there would have been no prior grievance.

It may be true that a reassignment more “typically” occurs within the same department, such as when a Social Studies teacher is assigned to teach other courses. That does not automatically mean a reassignment cannot also encompass teaching courses within another included department on the same campus. Ms. Alderman’s assignment continued to involve the teaching of Social Studies classes on the Sheldon campus, so I conclude it did not amount to a “transfer” within the intended scope of Article 11.5. Accordingly, the provisions of Article 11.5.1 did not apply and were not violated when Alderman was assigned to Sheldon Academy for the 2010-2011 school year.

B. DR. BOLDEN HAD A RETALIATORY MOTIVE FOR THE REASSIGNMENT DECISION.

While I am persuaded that Article 11.5 is not applicable to the Sheldon Academy assignment, it is undisputed that changing a teacher’s assignment for

retaliatory reasons is prohibited by the labor contract. Tr. 465. Article 3.4.8 specifically prohibits reprisals by any District administrator against a bargaining unit member because of participation in grievance proceedings. As discussed earlier in this decision, the record is clear that Ms. Alderman participated in various protected activity including the filing of a grievance over her Letter of Reprimand. The sequence of events herein suffices to infer a causal connection between that activity and the decision to remove her from the Department. As with the Letter of Reprimand, this is another instance where I conclude the challenged action was based on both a legitimate justification, and also influenced by a retaliatory motive.

Normally, it would be hard to accept any justification for involuntarily forcing a teacher as skilled as the Grievant out of his/her regular assignment for other than budget reasons. In addition to her exemplary skill with students, Alderman was the second most senior teacher in the Department and the only one who had taught all the Social Studies courses that have been offered. However, the record is also convincing that Dr. Bolden was faced with longstanding conflict that at least most recently was attributable more to the Grievant's conduct than to that of others in the Department.

Testimony by all the full-time members of the Department left this Arbitrator convinced that a complete lack of trust has developed between one faction in the Department (Youngblood-Lee, Herb Hahn, and Stan Washburn) and

the Grievant. Gene Morgan confirmed that significant conflict continued the entire time he was there. Bill Temple testified that the Department had become so dysfunctional, he declined to serve as senator.

Mr. Morgan described an attitude conflict he felt existed within the Department, and was sympathetic to the situation in which the Grievant found herself. So am I. Ms. Alderman was certainly not the only one contributing to the discord. More courtesy and flexibility should have been offered by others, but the record does provide legitimate reason why Dr. Bolden concluded the Grievant's behavior was undermining Department collegiality the most. She was the one shown to have repeatedly engaged in unilateral action without informing the rest of the Department, and she was the one shown to have repeatedly violated administration directives. Consequently, I cannot agree with the Association's contention that there was no evidence of greater wrongdoing on the Grievant's part than on the part of her co-workers.

I have considered whether Dr. Bolden acted unreasonably in rejecting the Grievant's requests for outside intervention by a mediator or facilitator. Mediation has been utilized at Sheldon on at least one prior occasion.¹⁹ Over the past 30 years, I have mediated labor-management disputes and know how effective mediation can be. However, it is not a cure all and not effective in every situation.

¹⁹ An instance described by Gene Morgan at the hearing did not involve the Social Studies Department.

The record is persuasive that the District did consider whether mediation might be beneficial. I credit Ms. Nesbit's explanation of why she and Dr. Bolden felt mediation would not prove effective.

I did think there might be some merit to mediation but only after there was an acceptance of responsibility on Irene's part. And I wasn't seeing that. And I felt that was fairly foundational. . . . if some of these behaviors would stop 90% of our problem would go away. . . . If you're not taking the first step in terms of accepting some of your own behaviors I don't think mediation will be successful.

I later . . . had cause to reconsider that decision . . . and I did so. And at that point interviewed . . . the other teachers in the department about the allegations raised in the ULP and I really, for the first time, recognized the depth of the problem, the divide. I honestly, until talking with them, I think I didn't quite even realize the depth of it. And I truly felt that it would not work at that point in time.

Tr. 512-513.

In an email he copied to Dr. Bolden, EEA Building Representative Jud Landis acknowledged there was "extreme conflict" within the Social Studies Department; one he thought would not be resolved by outside intervention unless most decision-making was ceded to the outside mediator/facilitator. Ex. D-33, p.1. I cannot fault Dr. Bolden for feeling that was an impractical course of action. If the Association felt mediation might successfully resolve the continuing conflict between its members, it was free to provide that service. Instead, the Association seeks to impose that obligation (and its attendant cost) only on the District.

Given the District's financial situation, this was not a period of time when the District had nothing to lose by trying. There comes a point when the District cannot keep devoting a disproportionate amount of time and resources to just one department. At a time when teachers were being laid off, and remaining staff and administrators were making financial sacrifices, the cost of trying mediation could reasonably be weighed against the perceived likelihood of a successful outcome. I too left the hearing with a belief that mediation was not likely to be a success, so I am unwilling to rule that the District unreasonably rejected that course of action.

Dr. Bolden's decision that removing Grievant from the Department would best reduce the extent of discord is not what I find suspect. It is his failure to first explore whether a voluntary transfer to one of the other comprehensive high schools could be agreed upon before resorting to a reassignment having such a negative impact on both Alderman and the Academy program. The Grievant's assignment to Sheldon Academy still involved teaching some social studies courses, but it meant a dramatic change in the nature of the classes Alderman would teach.

The Academy grew out of a structured study hall (which remains part of the program), and is designed for two types of students: (1) those troubled and at risk, who are barely making it, and (2) crisis students failing academically. The Academy provides an alternative curriculum and allows more focused instruction,

with the goal of moving students back to the comprehensive Sheldon program. Dr. Bolden testified that he felt the Grievant would do an excellent job with the type of students enrolled in the Academy. I'm sure she probably has, but the assignment has meant the Grievant no longer teaches Honors and AP classes and instead spends one of her four periods supervising study hall. Another one of those four periods is devoted to independent study with just a handful of students.

As a regular teacher in the Social Studies Department, the Grievant had been working with 250-300 students a year. Reassigning Alderman to Sheldon Academy dramatically reduced the number of students she would be teaching and who would benefit from her instructional skill. Ex. A-83. John Lindsley is a retired Sheldon Assistant Principal, who helped design the Sheldon Academy program and is very familiar with the Grievant's ability. Mr. Lindsley testified that the Grievant is very underutilized in the Academy, and the record fully supports that conclusion.

Moving Alderman to the Academy also had a very detrimental impact on one of the courses offered there. The History and Literature through Film course had previously been taught by someone who was dual credited in both Social Studies and Language Arts, which meant the course qualified for social studies *or* language arts credit. Having this dual credit flexibility allowed students to satisfy whichever credit they needed, a valuable benefit for the Academy program.

The prior History and Literature through Film instructor preferred to remain in the Academy but was replaced by Alderman, who is not licensed in Language Arts. As a result, students can no longer receive a language arts credit for the course. The dual credit advantage of the course has thus been lost. Dr. Bolden was either oblivious to this impact, or did not care.

I find it especially disturbing that before assigning the Grievant to Sheldon Academy, Dr. Bolden never discussed the potential impact of that change with the Academy Director Fran Christi. Ms. Christi testified that in the past, the Academy has always posted positions to fill specific needs. A full-time teacher of a core subject area has never been involuntarily transferred to teach there, and Christi was shocked when Bolden simply informed her of his decision without prior discussion.

Dr. Bolden seems to have decided to mandate the change simply because he had the authority to do so. If the Grievant had refused to agree to a voluntary move, then one could more readily conclude Dr. Bolden had no choice. However, I believe an administrator lacking retaliatory intent would have first tried to discuss a voluntary change, before simply imposing an involuntary reassignment that he knew would have such a negative impact on both the Grievant and the Sheldon programs.

The reasons just described should suffice to explain why I have become convinced a retaliatory intent played a role in the Grievant's reassignment. The

assignment thus violated Article 3.4.8. The more difficult issue has been how to appropriately remedy that violation. When no remedy is specified in a collective bargaining agreement, an arbitrator has inherent and broad authority to determine what is appropriate.

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution to the problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.

Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 597 (1960). This is the kind of case where the parties seem in the best position to first identify an appropriate remedy because they, not the Arbitrator, know what options might be available for the next school year.

I am convinced that directing the Grievant's return to her former position in the Sheldon Social Studies Department will simply result in continuing conflict so long as existing members of the Department and the current building administration remain unchanged. For the reasons previously discussed, I also conclude that mandated mediation is likely to be ineffective. The remedy that seems most appropriate is to direct the course of action I believe a reasonable administrator would have followed if unaffected by a retaliatory motive. The parties will be directed to confer and seek ways to provide Ms. Alderman with the option of moving to a regular Social Studies assignment in one of the other District comprehensive high school should she prefer doing so for the next school

year. The Arbitrator retains jurisdiction to direct an alternative remedy if the parties cannot agree upon one.

AWARD

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the foregoing Opinion, it is awarded that:

1. The District lacked just cause for the Letter of Reprimand issued on December 8, 2009, which therefore violated Article 12.6 of the Collective Bargaining Agreement.
2. That Letter of Reprimand also constituted an inequitable or unfair application of administration rules and regulations and written School Board policy related to harassment, discrimination, retaliation and/or a respectful workplace.
3. The Grievant's assignment to teach at the Sheldon Academy violated Articles 3.4.8 but not 11.5.1 of the Collective Bargaining Agreement.
4. As an appropriate remedy for the proven contract violations, the District is directed to:
 - (a) Remove the December 8, 2009 Letter of Reprimand from the Grievant's personnel file, shred it, and ensure it has no further effect.
 - (b) Cooperate with the Association and Mrs. Alderman in trying to identify a regular social studies position in one of the other District high schools (perhaps through a voluntary trade of positions) that can be offered to the Grievant if she prefers not to teach in Sheldon Academy during the 2011-2012 school year.

- (c) Pursuant to the parties' agreement at the hearing, the Arbitrator reserves jurisdiction to resolve any disputes over compliance with this Opinion and Award, and to direct an alternative remedy if the parties cannot agree upon one.

Dated this 29th day of April, 2011 by



Janet L. Gaunt