

American Arbitration Association

In the Matter of Arbitration between Delinda Dykes Complainant and Amherst -Pelham Regional School District Respondent	Case #01-24-0000-4383
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Before: Eileen A. Cenci, Arbitrator

APPEARANCES:

For the Complainant: James A. Shaw, Esq
Nico Marulli

For the School District: Marc L Terry
Massiel L. Sanchez

Place of Hearing: Amherst, MA

Dates of Hearing: February 11, 12 and March 14, 2025

AWARD:

The Complainant, Delinda Dykes, was dismissed from her employment in violation of G.L. c. 71 §42. The District is hereby ordered to rescind the termination of Delinda Dykes, to immediately reinstate her to her position and to restore all wages and benefits she would have received but for the wrongful termination, less interim earnings.

Date of Award: July 7, 2025

Eileen A Cenci

Eileen A. Cenci

OPINION

STATEMENT OF PROCEEDINGS:

This is a statutory dismissal arbitration pursuant to G.L. c. 71 §42. A hearing in this matter was held before me on February 11, February 12 and March 14, 2025 in Amherst MA. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument and to examine and cross examine witnesses.

The School District called former Superintendent Michael Morris, former Interim Superintendent Douglas Slaughter, Rodney Madison, Letha Gayle-Brissett, Emily Barry, Luis Gomba, Sonia Molina, Sarah Fefer and Jey Klug as witnesses. The Complainant called Delinda Dykes and Angelique Crichlow, as witnesses. At the close of the hearing the parties agreed to file briefs on May 2, 2025. The parties subsequently agreed to an extension until May 19, 2025. Briefs were submitted and the record was closed on that date. The parties agreed to the arbitrator's request for an extension until July 7, 2025 to issue the decision.

ISSUE:

The parties did not agree to the issue statement. The School District proposed:

Did the District violate G.L. c. 71§42 when it dismissed Delinda Dykes on or about December 12, 2023?

If so, what shall be the remedy?

The Complainant proposed:

Did the Employer satisfy its obligations under G.L. c. 71 §42 when it dismissed Delinda Dykes on or about December 12, 2023?

If so, what shall be the remedy?

I have adopted the issue Statement proposed by the District. The issue is therefore:

Did the District violate G.L. c. 71§42 when it dismissed Delinda Dykes on or about December 12, 2023?

If so, what shall be the remedy?

FACTS:

Introduction

This case involved the dismissal pursuant to G.L. c. 71 §42 of Delinda Dykes (Complainant), who was employed as a guidance counselor at the Amherst Regional Middle School (ARMS) from 2021 to 2023. Ms. Dykes filed a Petition for Arbitration dated December 21, 2023, with the Commissioner pursuant to G.L. c. 71 §42, and the Commissioner forwarded to the parties a list of three arbitrators provided by the American Arbitration Association. The undersigned was selected as neutral arbitrator.

The Amherst-Pelham Regional School District operates the middle school, and a high school. The Town of Amherst also has three elementary schools, and the Town of Pelham has one.

The Complainant's Background and Employment at ARMS

Delinda Dykes is a graduate of Cambridge College, with a degree in psychology. She worked as a substance abuse correctional counselor in the Hampden County Sheriff's office for ten years, then worked as a social worker at the Department of Social Services. In that role she helped children in foster care reunite with their parents. Ms. Dykes first worked in the public schools in Springfield, MA, where she was employed as a civility teacher and later an adjustment counselor. She also worked in the Holyoke Schools as a culture and climate director, then at Hoosac Valley Elementary School as Dean of Students before being initially employed by the Amherst-Pelham Regional School District in August 2021.

As a guidance counselor at ARMS, the Complainant primarily served the seventh-grade population. She also served as faculty advisor for the ALANA (African, Latina, Asian and Native American) organization, which met at least weekly and held events. She served on the Superintendent's Cabinet for ALANA and worked with women of color and youth cabinet members on a district-wide basis. She worked on the Sixth Grade Step-Up program, which assisted students transitioning to the middle school, and in that capacity helped develop an Intake form that asked students for their pronouns, so that they could be addressed correctly from the time they entered the school. Ms. Dykes was awarded Professional Teacher Status (PTS) after a

little over a year of employment with the District, although such status is typically awarded after three years. She was also named Interim Principal on two occasions when the principal was on leave.

Just before to the beginning of the 2021-2022 school year, her first at ARMS, Ms. Dykes became ill with Covid. She was out of work on medical leave for several weeks in September and early October 2021. When she returned to work, she was asked to follow up with the parent of Student A, a transgender seventh grade student who was experiencing bullying and misgendering at ARMS. Student A's mother, [REDACTED] had written to the school about their problems. During her first telephone call with the parent on October 7, 2021, the Complainant misgendered Student A and was corrected by the parent. Ms. Dykes sent a follow-up e-mail to the mother, school principal and other staff including Patrick Hunter the same day. In her e-mail, Ms. Dykes initially referred to Student A correctly, using they/them pronouns, but again misgendered the student in the same e-mail, referring to "her". She also wrote, "Mom, thank you for advocating for (Student A) and letting us know how they are feeling. As I stated this is a process for All and even I get stumbled up at times. So let's practice Grace. I appreciate the district and it's (sic) stand for equity and equality."

Patrick Hunter was one of the people who received Ms. Dykes October 7, 2021 e-mail, and he responded saying, "Thanks for the follow up. Please note that [A] uses they/them pronouns, not she/her. He then offered to follow up with another staff member "to work our logistics for offering support." When reminded that she had again used incorrect pronouns in her e-mail, the Complainant replied in another e-mail to all at 9:06 p.m. the same day, "Note it also please understand that it will take some folks like me a little while to get it right it does not mean that I am trying to disrespect the child or his or her they were them their identity. I was at work until 6:30 pm. typing to inform everyone of this information. Thank you." She included three heart emojis at the end of the e-mail.

In November 2021, about a month after her first interaction with Student A and their family, the Complainant participated as an interventionist in the "Happiness Project" at ARMS. She attended training before participating in the project. The program was a research project conducted by the University of Massachusetts at the middle school. The project was headed by Dr. Sarah Fefer and co-facilitated by Dr. Emily Barry, who was a post-doctoral research fellow at

the time. It was a wellbeing promotion program that involved a small group, positive counselling intervention designed to increase students' overall well-being. The first meeting of the group in the fall of 2021 was held on November 1, 2021 and the group consisted of six students. The program was designed to consist of ten core sessions with three or four booster sessions, with each session being about forty minutes long. Ms. Dykes actually participated in only three of the sessions and was very late for the second one of those, missing most of it. Emily Barry testified that Ms. Dykes misgendered Student A and Student B at the first meeting. Both students used they/them pronouns. Student A was wearing a hat with a pin that had "they/them" written on it during that session. They restated their pronouns and Ms. Dykes said that she was sorry and adjusted her language going forward. Ms. Dykes also confused the names of the two transgender students at the first session, although there were fewer than the usual six present at the meeting.

After the first session Dr Barry and Ms. Dykes debriefed, and Dr. Barry suggested that one strategy for avoiding misgendering in the future would be to use students' names and avoid pronoun use. Ms. Dykes replied that it was difficult to keep the information straight at times, and that she would try to use the student's names moving forward.

Student A sent an e-mail to Ms. Dykes at 5:15 p.m. on the day of the first meeting, saying that they felt really uncomfortable when she misgendered them. Ms. Dykes responded by e-mail the same day. She apologized and told Student A they were absolutely correct. She also said that was something she and Dr. Barry had discussed after the meeting. She went on to write, "please note this point: I asked everyone what would make them feel safe in the group you had every opportunity to mention this. Our goal is to make sure everyone feels safe and supported. Remember if a teacher or group facilitator ask you what will make you feel safe then say it then. You will feel much better and reach your happy place."

Student A's mother sent an e-mail to Ms. Dykes the following day and stated that Student A had come home upset about being repeatedly misgendered during the Happiness Project, and that their name had been repeatedly mixed up with that of the other non-binary student in the group. After she encouraged Student A to talk to Ms. Dykes and they did so, they were both upset by her response, which they characterized as a suggestion that Student A should have told her up front what name and pronoun would make them feel most comfortable in the group. Student A's mother wrote that it was completely inappropriate to blame the child for not educating the teacher about

how to treat them appropriately. She also pointed out that Student A had been wearing two they/them pronoun pins in school that day.

After receiving the mother's e-mail Ms. Dykes called Ms. [REDACTED]. She also asked to speak to Student A, and Ms. [REDACTED] allowed it. Dykes followed up with an e-mail to Ms. [REDACTED] to thank her for taking the call and allowing her to speak to Student A. She wrote in the e-mail that she had been "truly saddened" by the way her actions made A feel so she had decided to call. She further commented, "I trust my call made [A's] day as a email just would not do." In his Title IX investigation report, Mr. Mitnick found "...that a reasonable person would construe Dykes' comment...to be rather arrogant."

Dr. Barry told Dr Fefer about the misgendering in the first session, so that it could be addressed in a coaching session, and Dr. Fefer did bring it up during coaching. They planned to re-review group norms at the start of the next session, then redo introductions using names and pronouns for each student and leader. Dr. Barry and Dr. Fefer agreed that it would be best if Ms. Dykes did not continue as co-leader in light of what had happened, and the Complainant was not further involved in the Happiness Project.

After she ended her participation with the Happiness Project, Ms. Dykes continued to work with Student A to address ongoing bullying. When allegations of bullying A came to light in January 2022, Ms. Dykes wrote the team, stating that this should not be happening to A or anyone, and that it was the goal to make ARMS a safe haven for all. She also continued to work with Student B, who was a member of the ALANA group.

Ms. Dykes worked to support students who felt bullied or overwhelmed by creating a "safe zone" where they could go. She also created a document listing resources for ALANA students, including therapy for queer people of color. When students in her ALANA group wanted a parade, she bought tutus for them, and wore one herself to a lunch where they danced, trying to make the cafeterias a safe zone for students.

On January 17, 2022 Ms. [REDACTED] thanked Ms. Dykes and told her she had been very helpful in addressing a problem with Student A, and said they all appreciated it very much. In a September 27, 2022 e-mail to Dr. Marta Guevara, Ms. [REDACTED] expressed support for Ms. Dykes, writing, "Both my husband and I feel like Ms. D has tried very hard to be helpful, even if she missed the mark several times. We certainly wouldn't want this to negatively affect her career."

Title IX investigation and Events Leading to Ms. Dykes' Dismissal

On March 14, 2023 Ms. [REDACTED] contacted then-Superintendent Michael Morris to advise him that Student A's situation had not improved, and on April 14, 2023 she asked the school system to open a Title IX investigation. She then filed a Title IX complaint on April 26, 2023. In it she stated, with respect to Student A, "[I]t was their interactions with adults and Ms. Dykes (the ARMS guidance counselor) in particular that (Student A) returns to over and over again as profoundly damaging." The Title IX complaint and investigation involved allegations against numerous staff members, in addition to those specifically pertaining to Ms. Dykes.

Then-superintendent Michael Morris decided that the matter should be referred to an independent third party for investigation, and hired Attorney Edward Mitnick of *Just Training Solutions*, who was experienced in this type of work and had previously been employed by the Massachusetts Commission Against Discrimination (MCAD). The scope of the investigation, insofar as it pertained to Delinda Dykes, focused on whether she had engaged in conduct in violation of ARMS' Title IX policy. The Superintendent also asked the investigator to look into other allegations of inappropriate and offensive behavior by Delinda Dykes in violation of ARMS policies separate and distinct from Title IX allegations.

On May 9, 2023, shortly after the Title IX investigation had begun, the Amherst-Pelham Regional High School student newspaper, *The Graphic*, published an article concerning the problems LGBTQIA+ students were encountering at the middle school. It was entitled "It's Life or Death: failure to protect trans kids at ARMS is a systemic problem." The article alleged, in its first paragraph that,

Over the last two years, Amherst Regional Middle School students, parents, and staff members voiced concerns to the district leadership about adjustment counselor Hector Santos and current eighth-grade guidance counselor Delinda Dykes, noting that the two routinely misgendered and deadnamed transgender students and staff, invoked anti-LGBTQ prayer at school, allowed religion to overflow into conversations with students and staff, and failed to provide support to students who were facing gender-based bullying or intimidation at school. Santos also posted religiously worded anti-LGBTQ material on a public Facebook page.

The article stated that numerous complaints had been made by students, parents and other educators to the ARMS principal, the Director of Specials Education and the Director of Student

and Family Engagement, who reported many of them to Superintendent Morris.¹ The *Graphic* article noted that staff complaints against other staff members had to be filed with Assistant Superintendent of Diversity, Equity, and Human Resources Doreen Cunningham, and that she had personal ties with Santos and Dykes. According to the article, many educators feared retribution if they filed complaints with Ms. Cunningham, and dropped their complaints rather than file.

The article led to a community uproar about the way gay, bisexual and trans students were being treated in the middle school. Shortly after the article appeared in the student paper, Superintendent Morris went on a medical leave for two months. He resigned from his position in August 2023 because, after his return from medical leave, he concluded that he had lost the confidence of the community.

The Amherst-Pelham Teachers Association passed a vote of no confidence in the current administration following the allegations. An emergency school committee meeting inviting public comment was held on May 16, 2023, following publication of the article in the *Graphic*. Superintendent Morris was on medical leave at the time, and did not attend the meeting. Dennis Slaughter had taken over as Acting Superintendent but was also unable to attend the meeting. He watched a livestream of it. Parts of the video of the May 16, 2023, school committee meeting were played during the arbitration hearing.²

It is fair to characterize many of the comments made by those who attended the May 16, 2023, meeting as angry, outraged, and extremely emotional. Parents of LGBTQIA+ students were extremely disturbed about the way their children had been treated, and by an administration which they perceived had allowed the situation to continue. A number of people publicly called for Superintendent Morris, Doreen Cunningham and Delinda Dykes, among others, to be fired immediately. The situation garnered additional local news coverage and more widespread coverage, including in the *Boston Globe* and other publications.

In May 2023, after the middle school nurse shared additional concerns about Ms. Dykes with Superintendent Morris, he placed her on leave.

¹ At arbitration, Superintendent Morris denied having been made aware of any complaints against staff members, including Ms. Dykes, prior to March 14, 2023.

² A link to the full video recording was also made available to the arbitrator and the arbitrator viewed it.

The Title IX investigation continued through the summer of 2023. Investigator Mitnick spoke to 83 persons in the course of his investigation, and interviewed 40 witnesses who provided information with respect to the allegations against Delinda Dykes. On September 7, 2023 Attorney Mitnick issued a 65-page report of his investigation. He concluded that:

Sufficient credible evidence exists to support the allegation that Delinda Dykes engaged in offensive conduct in violation of ARM's Title IX Policy. In particular, I conclude Dykes engaged in severe, pervasive, and objectively offensive unwelcome conduct by repeatedly misgendering students as well as making offensive and inappropriate comments related to gender and sexual orientation.

His conclusion was based upon evidence that Ms. Dykes had repeatedly misgendered students and had engaged in an inappropriate conversation in which she made sexist comments on April 13, 2023. It also cited a May 2023 incident when Dykes removed nail polish from Rodney Madison's nails. Some of the other allegations that had been made public, such as engaging in prayer meetings or mixing religion into the school day, were not substantiated.

ARMS principal Talib Sadiq issued a Notice of Intent to Dismiss to the Complainant on November 13, 2023, based upon the following findings:

1. You repeatedly misgendered students although having been corrected on numerous occasions.
2. You made inappropriate comments related to gender and sexual orientation.

The Notice alleged that the Complainant's actions had violated Policy AC, Policy ACC and the District's Boundaries document, and had amounted to conduct unbecoming a teacher. It further stated that conclusion having been reached "...as a result of the Title IX Investigation report written conducted [sic] by Edward R. Mitnick, Esq. of Just Training Solutions, LLC." The full Title IX report was provided to the Complainant as support for the dismissal.

As permitted by the statute, Ms. Dykes requested a meeting to discuss the dismissal. It was

held on December 4, 2023 with Principal Sadiq.³ At that meeting, Counsel for the District and for Ms. Dykes made presentations. Following that meeting, Principal Sadiq issued a Notice of Dismissal dated December 12, 2023.

In addition to petitioning for arbitration following her dismissal, Ms. Dykes filed a charge of discrimination with the Massachusetts Commission Against Discrimination (MCAD) alleging that she was dismissed based upon racial and religious discrimination. In response to that charge, Interim Superintendent Slaughter signed a document under oath stating that the dismissal had been based upon the findings of the Mitnick reports, which included a non-Title IX report as well as the Title IX report. The non-Title IX report included allegations that were not included in the Title IX report. Ms. Dykes was provided only a copy of the Title IX report as supporting documentation for her dismissal.

Douglas Slaughter testified at arbitration that he based his decision to support the Complainant's dismissal on his review of the Letter of Termination, the Title IX report, and school policies. He testified that he had been mistaken when he wrote in the MCAD response that he had reviewed more than one report. He had seen multiple newspaper articles in local newspapers and in the *Boston Globe* prior to supporting the dismissal. He did not rely upon the *Graphic* article in making his decision. He had also received comments from middle school staff about misgendering by Ms. Dykes. With respect to the second ground for dismissal, Acting Superintendent Slaughter relied upon the section of the Title IX report that referenced the complaint made by Jey Klug. He did not speak to Mr. Klug directly about that incident, and did not personally speak to any student who alleged they had been misgendered by Ms. Dykes. He believed strongly that Ms. Dykes could not return to employment, based upon the strong community reaction the Title IX report. He did not believe she could not be effective in her role as counselor with the LGBTQIA+ students who would be part of her caseload.

In the Title IX report, the Interim Superintendent considered the things that had been

³ It is unclear whether Interim Superintendent Slaughter, who supported Principal Sadiq's decision to issue a Notice of Removal, attended the December 4, 2023 meeting. He initially testified at arbitration that he recalled having been at the meeting. He could not, however, recall details of the meeting, including whether Ms. Dykes had spoken personally or through an attorney, and acknowledged that his memory was very vague. Ms. Dykes testified that he was not at the meeting.

substantiated and that violated the school policies and boundary list. He found that Ms. Dykes had violated policies by clearly, consistently and persistently misgendering students, and by making a comment of a sexual nature to a student. When questioned about which comment of a sexual nature he considered, he identified one reported by Jey Klug. He considered the impact on students, including the risk to middle school students of suicide and self-harm from misgendering. He believed Ms. Dykes could not return to the school based upon the violations and the community reaction.

Rodney Madison, a paraprofessional at ARMS, testified at arbitration. He was an art teacher until January 2022, when he transitioned to a paraprofessional position because of a certification issue. One of his best art students, whose father was the principal of the middle school at the time, came to the art room before class started one day and told him they had just come out as gay to their father the previous day. No other students were present at the time this conversation took place. Mr. Madison had lunch duty the same day, and sat at a table with that student and some others. They asked if they could paint his hands. He agreed to have both hands painted because he wanted to show support to his student, and they painted his nails a rainbow of colors.

That day or the next, Mr. Madison went to Ms. Dykes office on an unrelated matter, and she asked him why he had nail polish on his hands. He testified that she grabbed his hand and took out the polish remover she had in her desk and removed the polish, telling him that the kids were confused enough as it was, and that they looked up to him. He allowed her to remove the polish, calling it a “nonissue” to him whether he had the polish on or off. He further testified that he referred to the student who had painted his nails as “them” and Ms. Dykes responded that it was “he.” The incident had occurred prior to January 2022 since Mr. Madison was still an art teacher at the time.

Ms. Dykes did not recall the incident by the time it was brought to her attention, but testified that she did not keep nail polish in her desk.

Luis Gomba was an eighth grade guidance counselor at ARMS who testified at arbitration. He heard Ms. Dykes misgender a student in a meeting, and when the psychologist corrected her, there was somewhat of a disagreement about what the student liked to be called. There were no students present at the meeting. Mr. Gomba could not remember the names of any students Ms. Dykes misgendered. He testified that when corrected by others about misgendering, Ms. Dykes would say she would say she’d fix the problem, but never did. He once spoke to her about a student

who had come to him, and told her the student's preferred pronouns. She may have brought up what the name was in Power School, which was the student information system. She said something like, "What if this student wants to be called potato sack, then we call them potato sack?" He testified that other teachers also misgendered students but corrected themselves. The Title IX report neither substantiates nor unsubstantiates Mr. Gomba's allegations. Ms. Dykes denies that she ever made the "potato sack" comment.

Letha Gayle-Brissett was employed as Dean of Students at the Middle School beginning in August 2024. Prior to that time, she had been the Restorative Justice Coordinator. She testified at arbitration that she had conversations with Ms. Dykes in which in Complainant misgendered students, but that it only occurred on one occasion in the presence of students. Ms. Gayle-Brissett would correct Ms. Dykes when she misgendered students, and Ms. Dykes would respond that she was old, she was learning and she was trying. Ms. Gayle-Brissett also witnessed other staff members misgender students.

On one occasion Ms. Dykes had a group of approximately five or six students come to the guidance office after an incident in the cafeteria that involved throwing food. Ms. Dykes summoned Ms. Gayle-Brissett to the guidance office and she went there. She heard Ms. Dykes ask a student, "what's his name over there?" and the student responded, "No he uses they/them". Ms. Gayle-Brissett did not recall the name of the student who was misgendered and the incident was not specifically mentioned in the Title IX report by Ed Mitnick, though she was interviewed as part of the Title IX investigation.

Another staff member, Guidance Counselor Sonia Molina, was also present in the guidance office with Ms. Gayle-Brissett when the group of students from the cafeteria were there. She did not really understand what was going on, but Ms. Dykes began to take students out into the hall one by one. At one point, she came into the room and said, "what's his name, I need him next". When another student said, "they go by they/them" Ms. Dykes, according to Ms. Molina, responded, "Yeah, tell him I need him to come out right now and come with me." Ms. Molina recalled Ms. Dykes misgendering students on other occasions. When corrected, she would acknowledge the misgendering, but then revert to doing it.

Jey Klug, who worked as a paraprofessional during the 2022-23 school year, testified at arbitration that in April 2023 one of his students (Student D) had been fighting with a friend over

a girl he had previously dated. Mr. Klug brought the student to Ms. Dykes office because she was Student D's guidance counselor. He testified that Ms. Dykes advised D to tell his friend, "hands off...that's yours." Ms. Dykes went on to say that she was going to be vulgar and keep it real, then told the student that some guys like to pass girls around among their friends, and some girls like making guys fight over them. Mr. Klug testified that he did not respond at the time Ms. Dykes made the comments. An intern was also present, and did not disagree with Ms. Dykes. Mr. Klug and the student remained in Ms. Dykes' office, along with the intern, for five or more minutes after the comments were made. After they left Dykes' office, Klug testified that he told the student that what Ms. Dykes had told him wasn't necessarily the best advice. Ms. Dykes denied ever making the comments Mr. Klug reported.

Mr. Klug reported the incident about a week later in writing to Principal Diego Sharon in an email dated April 13, 2023. There is no evidence that Mr. Sharon replied to Mr. Klug or contacted Ms. Dykes about the incident. On July 19, 2023 Principal Sharon forwarded the e-mail to Ed Mitnick with a note, "Sorry for the delay." Principal Sharon did not testify at arbitration and never discussed the issue with Ms. Dykes. Ms. Dykes denied at arbitration that she ever made the comment, and testified that she would never use such language.

STATUTES AND POLICIES

General Laws chapter 71, Section 42:

A principal may dismiss or demote any teacher or other person assigned full-time to the school, subject to the review and approval of the superintendent; and subject to the provisions of this section, the superintendent may dismiss any employee of the school district. In the case of an employee whose duties require him to be assigned to more than one school, and in the case of teachers who teach in more than one school, those persons shall be considered to be under the supervision of the superintendent for all decisions relating to dismissal or demotion for cause.

A teacher who has been teaching in a school system for at least ninety calendar days shall not be dismissed unless he has been furnished with written notice of intent to dismiss and with an explanation of the grounds for the dismissal in sufficient detail to permit the teacher to respond and documents relating to the grounds for dismissal, and, if he so requests, has been given a reasonable opportunity within ten school days after receiving such written notice to review the decision with the principal or superintendent, as the case may be, and to present information pertaining to the basis for the decision and to the teacher's status. The teacher receiving such notice may be represented by an attorney or other representative at such a meeting with the

principal or superintendent. Teachers without professional teacher status shall otherwise be deemed employees at will.

A teacher with professional teacher status, pursuant to section forty-one, shall not be dismissed except for inefficiency, incompetency, incapacity, conduct unbecoming a teacher, insubordination or failure on the part of the teacher to satisfy teacher performance standards developed pursuant to section thirty-eight of this chapter or other just cause.

A teacher with professional teacher status may seek review of a dismissal decision within thirty days after receiving notice of his dismissal by filing a petition for arbitration with the commissioner. The commissioner shall forward to the parties a list of three arbitrators provided by the American Arbitration Association. Each person on the list shall be accredited by the National Academy of Arbitrators. The parties each shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from amongst the three. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association to be consistent with the provisions of this section. The parties each shall have the right to strike one of the three arbitrators' names if they are unable to agree upon a single arbitrator from amongst the three. The board of education shall determine the process for selecting arbitrators for the pool. The fee for the arbitration shall be split equally between the two parties involved in the arbitration.

At the arbitral hearing, the teacher and the school district may be represented by an attorney or other representative, present evidence, and call witnesses and the school district shall have the burden of proof. In determining whether the district has proven grounds for dismissal consistent with this section, the arbitrator shall consider the best interests of the pupils in the district and the need for elevation of performance standards.

The arbitrator's decision shall be issued within one month from the completion of the arbitral hearing, unless all parties involved agree otherwise, and shall contain a detailed statement of the reasons for the decision. Upon a finding that the dismissal was improper under the standards set forth in this section, the arbitrator may award back pay, benefits, reinstatement, and any other appropriate non-financial relief or any combination thereof. Under no circumstances shall the arbitrator award punitive, consequential, or nominal damages, or compensatory damages other than back pay, benefits or reinstatement. In the event the teacher is reinstated, the period between the dismissal and reinstatement shall be considered to be time served for purposes of employment. The arbitral decision shall be subject to judicial review as provided in chapter one hundred and fifty C. With the exception of other remedies provided by statute, the remedies provided hereunder shall be the exclusive remedies available to teachers for wrongful termination. The rules governing this arbitration procedure shall be the rules of the American Arbitration Association as pertains to arbitration...

Policy ACA: NONDISCRIMINATION ON THE BASIS OF GENDER, GENDER IDENTITY, OR SEXUAL ORIENTATION

The School Committees, in accordance with Title IX of the Education Amendments of 1972,

declare that the school system does not and will not discriminate on the basis of gender, gender identity, or sexual orientation in the educational programs and activities of the public schools. This policy will extend not only to students with regard to educational opportunities, but also to employees with regard to employment opportunities.

The School Committees will continue to ensure fair and equitable educational and employment opportunities without regard to gender, gender identity, or sexual orientation, to all of their students and employees.

The Committees will direct the Superintendent to designate an individual to act as the school system's Title IX compliance officer. All students and employees will be notified of the name and office address and telephone number of the compliance officer.

Policy AC: COMMITMENT TO NONDISCRIMINATION AND EDUCATIONAL EQUITY

The Amherst School District, Pelham School District, and Amherst-Pelham Regional School District have a commitment to nondiscrimination and have the responsibility under Federal and Massachusetts General Laws to overcome, insofar as possible, any barriers that prevent children from receiving an equitable education. All decisions made within the school system must consider the potential benefits or adverse consequences that those decisions might have on human relations in all segments of society. This commitment to the community is affirmed in the following statements of school committees intent to:

- Promote the rights and responsibilities of all individuals as set forth in the state and federal constitutions, pertinent legislation, and applicable judicial interpretations.
- Provide positive experiences in human values for children and youth and adults, all of whom have differing personal characteristics and abilities, family composition and who come from various socioeconomic, racial ethnic, and first-language groups.
- Work toward a more integrated society and to enlist the support of individuals as well as groups and agencies, both private and governmental, in such an effort.
- Use designated procedures to resolve the grievances of all individuals and groups.
- Routinely review the policies and practices of this school system in order to achieve to the greatest extent possible the objectives of this statement.

The School Committees' policy of nondiscrimination extends to students, staff, and the general public with whom it does business. The Amherst-Pelham Regional District, the Amherst Public Schools, and the Pelham Elementary School do not discriminate on the basis of race, national origin, age, religion, gender, gender identity, sexual orientation, economic status, political party,

or disability in admission to, access to, employment in, or treatment by its programs and activities .

STAFF BOUNDARIES

Essential Reminders about Employment Expectations While Working with Students and Others
2022-2023

GENERAL

- Interrupt and report actions and comments that are racist, sexist, hate-filled or discriminatory in any way. Confront put downs and bullying no matter how subtle or “minor” and-report it – it could be part of a pattern about which you are not aware.
- Respect the privacy of others and the confidentiality of information gained in the course of professional practice, unless a legal imperative requires disclosure or there is a legitimate concern for the wellbeing of an individual. Outside of those who “need to know” it is gossip or potentially a violation of privacy. **THIS IS ESPECIALLY IMPORTANT DURING THESE UNPRECEDENTED TIMES!**
- Pay attention to your social media post and pictures. Your students, colleagues, and other stakeholders may find them offensive or inappropriate. They may also decide to share the information with your supervisor or administrator for further investigation.

STUDENT PHYSICAL, SOCIAL & MENTAL HEALTH AWARENESS

- Report any comment from anyone including students that is or could be deemed racist, hate-filled, or inflammatory – even if it is a one-word mistake that is dealt with – to an administrator.

PROFESSIONAL RELATIONSHIPS WITH STUDENTS

- Use appropriate verbal praise and positive reinforcement.
- Do not use inappropriate or hurtful comments to staff, students or any stakeholder. Do not state anything that could resemble a sexually provocative or degrading comment. Do not tell risqué jokes. Do not bully anyone. Do not embarrass or disparage students, caregivers or colleagues.
- All aspects of the educational program are open to observation by administration, staff, parents/guardians, or the general public.

CLASSROOM SPECIFICS

- Classrooms are captive audiences. Adults should not use the classroom as a soap box.
- Be committed to equality and inclusion and to respecting and valuing diversity. Don’t make assumptions or microaggressions to colleagues, students, caregivers or stakeholders.
- Do not assume that BIPOCs or any protected class of individuals want to engage in discussions around sensitive topics.

PROFESSIONAL RELATIONSHIPS WITH ADULTS

- A hostile work environment exists when one's behavior within a workplace creates an environment that is difficult or uncomfortable for another person to work in; do not participate in

any activity that can create such an environment for staff members.

- It is not advisable to have an ongoing conversation about sensitive subjects with heightened emotions on email. If you receive an angry email from an individual do not respond in kind.
- Be caring, fair and committed to the best interests of the pupils/students entrusted to your care, seek to motivate, inspire and celebrate effort and success.

This list is not exhaustive of all the things to consider when interacting with our students, families, staff and community. Above all else let respect and kindness guide your motives, actions and interactions.

POSITIONS OF THE PARTIES:

Complainant

The Complainant was dismissed for allegedly engaging in “conduct unbecoming a teacher” as defined in G.L. c. 71 §42, and has challenged that decision through statutory arbitration. The District has the burden of proving that it had grounds for dismissal consistent with that section. In making that determination, the arbitrator, according to the statute, “shall consider the best interests of the pupils in the district and the need for elevation of performance standards” G.L. c. 71 §42.

Conduct Unbecoming a Teacher requires proof of “serious misconduct”, which is more than “minor misconduct” or “trivial misconduct”. *School Committee of Beverly v. Geller*, 435 Mass 223 (2001); *Superintendent-Director of Assabet Valley Regional Vocational School District v. Speicher*, 469 Mass. 633 (2014). Where an arbitrator determines that conduct does not rise to the level of conduct unbecoming a teacher, or that the school has used that label as a pretext for dismissing the teacher on unauthorized bases, the arbitrator is empowered to vacate the punishment imposed by the school district. *School Committee of Lexington v. Zagaeski*, 469 Mass. 104 (2014).

The incidents cited by the School District of student misgendering by Ms. Dykes occurred eighteen months before Ms. Dykes was placed on leave. They did not rise to the level of conduct unbecoming a teacher, and instead showed a responsible educator navigating the challenges of adapting to the relatively new phenomenon of using nonbinary pronouns correctly and appropriately. In addition, the School District used the term “conduct unbecoming” as a pretext to dismiss the Complainant following the political firestorm that erupted following the article in the *Graphic*.

The process was also flawed because Ms. Dykes was not placed on adequate notice of the

specific basis for her termination. The grounds given for her termination were only that she repeatedly misgendered students and made inappropriate comments related to gender and sexual orientation. The facts cited in support of those conclusions were the entire, 65-page Title IX report, which included interview with 83 witnesses, and numerous allegations that were not substantiated. The exact grounds for her termination were not spelled out to Ms. Dykes.

While the District claims the principal relied upon the Title IX report in making the decision to dismiss, the arbitrator must decide on the basis of the evidence introduced at arbitration. The Title IX report was not introduced at arbitration for the truth of the matters contained therein. The actual evidence introduced at arbitration showed the grievant to be a caring social worker who tried to eliminate bullying and tried to help LGBTQ+ students and students of color at arms.

The evidence at arbitration showed that Ms. Dykes accidentally misgendered Student A twice and Student B once. Both occurred at the beginning of her employment at ARMS in 2021. Ms. Dykes apologized to the misgendered students from the Happiness Project and adjusted her language going forward, according to Dr. Barry. When informed in an e-mail by the mother of Student A that they were very upset about the misgendering, Ms. Dykes called the parents the same day and apologized. She asked, during the same phone call, to speak directly to Student A and apologized to them personally. After that time, she continued to successfully support them.

Former Superintendent Morris acknowledged that it was not uncommon for ARMS staff to accidentally misgender students, and the school expected that staff who did so would apologize, acknowledge the mistake, and repair any damage with the student. That is exactly what Ms. Dykes did with students A and B. Ms. Dykes was unaware of any further complaints from either Student A or Student B after her early-career missteps at a Happiness Project meeting. Several months after the Happiness Project, Student A sent an e-mail to several staff members to ask for help with bullying, and included Ms. Dykes on that e-mail. She responded that it was her “goal to make ARMS a safe haven for all” and offered to check with Student A’s team to see what had been done to date. She later left a message for Student A’s parents to update them, and they e-mailed her back to thank her of all she had done for Student A. Both parents also stated that they would encourage Student A to reach out to Ms. Dykes for help. Student A participated in the Kindness Lunches and ALANA activities Ms. Dykes hosted at ARMS after the misgendering incident, and Ms. Dykes was not notified of any further dissatisfaction with their interactions.

Students A and B were the only students specifically identified by any witness as having been misgendered by the Complainant. Three other witnesses testified that the Complainant repeatedly misgendered students but did not identify a single instance in which she did so in front of students. The allegations pertaining to misgendering other students were vague and general, and did not name or identify the students in question. After each of the incidents where she misgendered students in their presence, Ms. Dykes apologized and corrected herself. There is absolutely no evidence that she intended to harm or disrespect students, and she continued to work successfully with the students she had misgendered.

The testimony of Ms. Gayle-Brissett and Ms. Molina regarding the misgendering of a student in the guidance office during the meeting when five or six students had been brought there from the cafeteria was not referenced in the Title IX report that the School District relied upon as the basis for dismissal. The Complainant was never made aware of the incident prior to arbitration.

The testimony of other witnesses presented by the School District who claimed Ms. Dykes had misgendered students was vague and unreliable. There was no evidence of contemporaneous complaints or documentation of the alleged misgendering. Nor is there evidence that any other staff member was ever disciplined for misgendering students, though it is admitted that others did so.

Jey Klug's testimony is not credible. It defies belief that he would have listened to Ms. Dykes make inappropriate and sexist comments to a student without contradicting or disagreeing with those comments immediately, and that he would then remain in her office for 5-10 more minutes engaging in polite conversation. Although Mr. Klug testified that he reported the matter to the principal the same day it happened, his e-mail is dated days later, after the Title IX complaint was filed. Ms. Dykes' testimony that the allegation is completely false is far more credible than the evidence provided by the School District.

Terminating Ms. Dykes was not in the best interest of pupils. She had a positive impact on the students at ARMS and worked to support students of color, LBGTQIA+ student and those who experienced bullying. She led the ARMS ALANA group, which included students of color and their allies. She also supported LBGTQIA + students by, for example, creating an intake document for incoming students that included a section for the students' preferred pronouns. She directed students to use gender-neutral terms during the morning announcements, so that every

student would feel included. She researched gender neutral terms and included her own rainbow colored tutus for the students and staff, including herself, who participated.

She also worked to support students who were being bullied. She created “kindness lunches” which served as a safe zone in the cafeteria for students who were being bullied, and set up a “safe zone” in the guidance office.

The evidence of her service toward marginalized students should give the arbitrator pause as to the credibility of much of the evidence against her. There is no reason, for example, to believe she intentionally used incorrect pronouns, when she always said she was trying, and put her own pronouns in her signature.

The school improperly based its decision to terminate Ms. Dykes on the community outrage that followed *The Graphic* article. That article contained falsehoods, including the allegation that Ms. Dykes participated in a prayer circle and asked during it to “bind that LGBTQ demon what wants to confuse our children. The article also contained the inflammatory accusation that Ms. Dykes handed out “chocolate crosses” to students at ARMS, painting her as a religious zealot. These allegations were not substantiated by Attorney Mitnick’s investigation. The community outrage built during the time Mr. Mitnick was conducting his investigation, causing Superintendent Morris to go on sick leave and then resign. There was a long, emotional school committee meeting on May 16, at which speakers called for Ms. Dykes immediate dismissal and alleged that she had violated the separation of church and state. Many letters to the school committee from outraged citizens were read aloud at the meeting. Those named in the *Graphic* article also received inflammatory e-mails during that time period. Superintendent Slaughter testified that his decision to support Ms. Dykes’ termination was based on his assessment that the community environment was such that it would not have been possible to return her from leave. Angry communities that have rushed to judgment should not, however, make employment decisions in public schools.

The School failed to meet its obligations under G.L. c. 71§42. It had an affirmative obligation to properly place Ms. Dykes on notice of the basis for her proposed termination. The statute requires that the employer provide the employee with a notice of intent to dismiss, which must include “...written notice of intent to dismiss and with an explanation of the grounds for the dismissal in sufficient detail to permit the teacher to respond and documents relating to the grounds

for dismissal.” The intent to dismiss letter the grievant received was vague in nature and provided only a threadbare explanation of the reasons for her dismissal. It stated that she “repeatedly misgendered” without provided specifics as to who she misgendered, or when or where it happened. The notice also stated that Ms. Dykes had “made inappropriate comments related to gender and sexual orientation.” The comments in question were not identified. The letter instead notified Ms. Dykes that the factual basis of the findings were detailed in the enclosed Title IX investigation reports authored by Edward Mitnick. In that 65-page report, Attorney Mitnick credited some allegations, refused to credit others, and neither credited nor discredited others. For example, Mr. Mitnick neither credited nor refused to credit Mr. Gomba’s statement that Ms. Dykes said, “So if the student wanted me to call them ‘potato sack’ then I should refer to them as ‘potato sack’”? It is therefore unclear whether the alleged statement was relied upon in the dismissal. The lack of arbitration testimony by Talib Sadiq, the principal who made the decision to terminate the grievant, compounded the problem of identifying the basis for the dismissal. It is unclear, based upon the record, which claims Principal Sadiq credited, which allegations he believed and which he did not, whether he assumed uncredited statement to be true, or which allegations he took most seriously. For example, there were allegations in the Title IX report that Ms. Dykes misgendered Students C and E. However, the District presented no evidence at arbitration regarding either student.

The matter is further confused because Principal Sadiq stated under oath in a proceeding before the Massachusetts Commission Against Discrimination

For the reasons stated above, Ms. Dykes requests that the arbitrator make a finding pursuant to G.L. c.71§42 that the dismissal was improper under the standards set forth in the section. The arbitrator should order reinstatement, back pay and benefits, and order that Ms. Dykes be made whole in every way.

Respondent

The District did not violate G.L. c. 71, §42 when it dismissed Ms. Dykes for violating Policy AC (Nondiscrimination), Policy ACC (Harassment Prevention and Standards of Conduct), Staff Boundaries, and for engaging in conduct unbecoming a teacher. Ms. Dykes violated each of the cited policies and engaged in conduct unbecoming a teacher.

Under §42, the arbitrator's authority is limited to a determination of whether the District met its burden of proving the teacher committed the conduct alleged and whether the conduct was not a pretext of so minor an offense so as not to constitute conduct unbecoming a teacher. *School Committee of Lexington v. Zagaeski*, 469 Mass. 104, 115-18 (2014); *Superintendent-Director of Assabet Valley Regional Vocational School District v. Speichler*, 469 Mass. 633, 640 (2014) (citing *Zagaeski*, 469 Mass. at 115-17). “[A] school district may dismiss a teacher for conduct that jeopardizes the well-being of students or the proper functioning of the school community, including “conduct unbecoming a teacher...” *Zagaeski*, 469 Mass. At 121. Furthermore, in determining whether the district has proven grounds for dismissal consistent with Section 42, the arbitrator shall consider the best interest of the pupils in the district. G.L. c. 71, § 42. That test has also been met in this case since Ms. Dykes' egregious misconduct fundamentally disqualified her from serving as a Guidance Counselor, whose role included supporting LGBTIA+ students.

Ms. Dykes does not dispute that she misgendered students and that doing so is improper but denies that she did so intentionally. She also denies making inappropriate comments to regarding gender and sexual orientation. The evidence does not support her position, however.

The evidence suggests that Ms. Dykes' conduct must have been intentional, since she misgendered students so frequently, even after being corrected. For example, she misgendered Student A during the Happiness Project, even though he was wearing visible they/them pins, and even though his mother had brought the same issue to her attention a few weeks earlier. Even if Ms. Dykes did not intentionally misgender students, however, she did so repeatedly, and without regard for the impact such misgendering had on them. Her comments to Mr. Madison and Mr. Gomba demonstrate the intentional nature of her misgendering. She told Mr. Madison that the students were confused enough already, implying that he was confusing them more by allowing them to paint his nails. She also told Mr. Gomba she'd have to call a student “potato sack” if that's what they wanted to be called.

The District is not required to prove that Ms. Dykes misgendered students intentionally in order to show that by repeating that behavior she violated school policies and engaged in conduct unbecoming a teacher. As a counselor, Ms. Dykes was well aware that LGBTQIA+ students are at higher risk for suicide and need additional support. Whether her repeated misgendering was

done intentionally or simply in disregard of her professional responsibilities, her behavior constituted conduct unbecoming a teacher in addition to violations of school policies.

Ms. Dykes also made inappropriate comments to students related to gender and sexual orientation. She told an eighth grade student that some girls get a rise over making men fight over them, and some guys like to pass girls around among their friends. She also told the same student to tell his friend, “hands off, that’s yours” as if the female student was property. It was also inappropriate for her to tell a colleague that students were confused enough already without his letting them paint his nails. The testimony that she made these comments was credible and convincing, despite her denials. Each witness’ testimony was consistent with what they told Attorney Mitnick during his investigation, and neither had any motive to fabricate such testimony against Ms. Dykes.

The termination of Ms. Dykes’ employment is consistent with the best interest of the pupils. She clearly violated school policies and also engaged in conduct unbecoming a teacher. In *Zagaeski*, the Supreme Judicial Court found that a teacher who told a sexually inappropriate joke engaged in conduct unbecoming a teacher and held the arbitrator exceeded the scope of their authority by overturning the district’s decision to terminate the employee. *Id.* Public school teachers, including counselors, hold a position of special public trust and students must be able to trust that they will be safe in their presence, the creation of a hostile learning environment can be detrimental to the well-being of students because it may unreasonably interfere with their education. See *id.* at 118-19. Schools are permitted to dismiss staff for conduct that jeopardizes the well-being of students or the proper functioning of the school community. *Zagaeski*, 469 Mass. At 121.

In *MacRae v. Mattos*, the First Circuit affirmed a summary judgment entered by the District Court finding that a school did not violate a teacher’s First Amendment right when it terminated her after she posted racist, anti-LGBTQIA+ content on social meeting. The plaintiff in that case was a teacher at Hanover High School and a member of the Bourne School Committee. She was hired as a teacher in Hanover after having made the six posts in question, but the Town was not aware of those posts at the time she was hired. When the issue was covered by the media on Cape Cod, however, Hanover High School learned of the posts and terminated the teacher because “continuing her employment in light of her social media posts would have a significant negative

impact on student learning.” *Id.* at 126. The First Circuit found that because of MacRae’s student-facing role the school committee was appropriately concerned about the negative impact and disruption her conduct would have had on students, particularly those who were LGBtQIA+, in light of the media attention to the matter. The Court concluded that MacRae would have been unable to foster a safe comfortable and accepting environment, which would result in disruption to the learning environment.

In the current case, there has already been community disruption as a result of Ms. Dykes’ conduct, as reported in the *Graphic* article. Although one of the allegations was not substantiated by Mr. Mitnick’s investigation, the community outrage grew from not just that one comment, but many additional ones that were substantiated. Ms. Dykes is unable to foster a safe, supportive and accepting environment at ARMS with at least a portion of her caseload and is therefore unable to do her job.

Ms. Dykes violated several school policies and engaged in conduct unbecoming a teacher. The arbitrator must conclude that the District did not violate G.L. c. 71 §42 when it dismissed her from her employment.

ANAYLSIS AND DISCUSSION:

Introduction

It must be noted at the outset of this opinion that a great deal of information about Ms. Dykes and other ARMS employees, involving their treatment of LBGTQIA+ students, has become public since 2023. This occurred through comments made at public meetings and in social media, in letters and e-mails, and undoubtedly to some extent through other discussions in the community. The Title IX investigation report completed by Attorney Edward Mitnick has also been made public, and was entered into evidence at arbitration. That report was not admitted at arbitration for the truth of the matters contained therein, but because it was provided to Ms. Dykes as documentation supporting her dismissal. In reaching her decision as to whether Ms. Dykes was dismissed in compliance with G.L. c. 71 §42, the arbitrator is strictly limited to analyzing the evidence presented at arbitration. The testimony of witnesses who spoke to Investigator Mitnick, but did not testify at arbitration, is therefore not evidence in the current proceeding. Similarly,

only documents introduced into evidence at arbitration, have been considered.

The arbitrator has carefully considered the evidence presented at arbitration, as well as the arguments of both parties and has based her decision solely on whether the record at arbitration supports the Complainant's dismissal under G.L. c. 71 §42. Flaws in the process lead me to the conclusion that the School District has not proved policy violations or conduct unbecoming a teacher, leading to the conclusion that Ms. Dykes was dismissed in violation of G.L. c. 71§42. The reasoning leading to that conclusion is set forth below:

Ms. Dykes Did Not Receive Adequate Notice or Due Process Under G.L. c. 71 §42

The statute requires that a teacher facing dismissal be provided with written notice of intent to dismiss and with an explanation of the grounds for the dismissal in sufficient detail to permit the teacher to respond and documents relating to the grounds for dismissal.⁴ Written notice was provided in this case, and listed two grounds for dismissal:

1. You repeatedly misgendered students although having been corrected on numerous occasions.
2. You made inappropriate comments related to gender and sexual orientation.

The names of individuals who were misgendered and the names of those who heard the misgendering or inappropriate comments were not provided with the Notice of Intent to Dismiss. Nor were the times, dates and locations where the conduct that led to the dismissal had occurred. Instead, the entire 65-page Title IX report was attached as supporting evidence. That report was extensive and included a great deal of material that was beyond the information presented at arbitration in support of the dismissal, including charges against Ms. Dykes that were not supported by the Investigation. Based upon the lack of specificity in the Notice of Intent to Dismiss and Dismissal Notice, it would have been difficult for Ms. Dykes to know the exact reasons for her dismissal.

After Notice of Intent to Dismiss was issued, Ms. Dykes requested a meeting to discuss the charges, and one was held on December 4, 2023. Attorneys for both parties made presentations at

⁴ The employment of guidance counselors, as well as teachers, is governed by G.L. c. 71 §42.

the meeting, and this perhaps clarified the exact charges against Ms. Dykes. There is no record of that meeting, however, and the Notice of Dismissal, which Principal Sadiq issued after the December 4 meeting, provided no further detail.

Further complicating the matter, Principal Sadiq, who made the decision to dismiss Ms. Dykes, did not testify at arbitration. It is not, therefore, clear which incidents or allegations Principal Sadiq relied upon in finding policy violations and conduct unbecoming a teacher. Interim Superintendent Slaughter, who supported the dismissal decision, may not have attended the December 4, 2023 meeting in Principal Sadiq's office to discuss the termination. If he did attend, he remembered almost nothing of the meeting. It seems likely that he never met with Ms. Dykes or heard a presentation on her behalf prior to supporting her dismissal.

The process was further flawed because many of the complaints about Ms. Dykes that came to light in the school newspaper article, at public school committee meetings and in the course of the Title IX investigation, had not previously been brought to her attention as ongoing problems. Ms. Dykes was aware that she had misgendered Students A and B in 2021 but had no reason to believe those students and families considered it an ongoing problem. She had e-mailed and spoken to both Student A and their parents, expressing her intention to do better. There is no evidence that Student A and their mother had expressed continuing concern about the misgendering that had occurred a few years earlier, or that they felt uncomfortable with her. Student B had continued to participate in her ALANA group. Ms. Dykes had, from her perspective, continued to work successfully with Student A and other LGBTQIA+ students. No supervisor or administrator had discussed concerns about misgendering students with her, and she had never been retrained or disciplined for repeated misgendering, which has been identified as one of the grounds for dismissal.

The Complainant heard about some allegations for the first time months or years after they had occurred. The incident described by Rodney Madison, where he claimed Ms. Dykes removed nail polish from his fingers, had occurred over a year before it was brought to her attention. She was unaware of the complaint that she had made an inappropriate sexual comment to a student for months after it allegedly occurred.

The incident described by Ms. Gayle-Brissett and Ms. Molina at arbitration, in which they testified that Ms. Dykes misgendered students she was speaking to following an incident in the

cafeteria, had never been brought to the Complainant's attention prior to the arbitration hearing. It was not included in the Title IX report, which was the only document provided to Ms. Dykes in support of the charges against her. Since Ms. Dykes received not only inadequate notice of that charge, but no notice at all prior to arbitration, the arbitrator has not considered it.

The District has not met its burden of Proving that the Complainant Violated District Policies or Engaged in Conduct Unbecoming a Teacher

The District put forth two grounds that it claimed violated school policies and constituted conduct unbecoming a teacher:

Repeatedly misgendering Students Despite Being Corrected

The policies cited in the Notice of Intent to Dismiss do not specifically identify misgendering as a form of discrimination. The Complainant was nonetheless aware that all staff members were expected to use students' preferred names and pronouns. She clearly made mistakes, particularly in two documented cases in the fall of 2021 when she was a new teacher in the system. Ms. Dykes apologized to the students and parents and vowed to do better. She was not aware of ongoing problems with those parents or students.

Some staff members testified, without much specificity, that they had heard Ms. Dykes misgender students at meetings, or in situations, where other adults were present. They testified that they sometimes brought the misgendering to her attention, and that Ms. Dykes would indicate that this was new to her and would take some time, but that she was trying to do better.

Though a few witnesses testified at arbitration that Ms. Dykes misgendered students more often than other teachers, and failed to improve even after promising to try, there is no real evidence supporting the conclusion that Ms. Dykes did worse than other staff members. There is some anecdotal evidence provided by a few witnesses, but no documented evidence that Ms. Dykes misgendered with unusual frequency. Certainly, she was never placed on notice by anyone at the school that she was misgendering students at an unacceptable level prior to being placed on leave in May 2023. She was never counselled, retrained or disciplined. She was never notified, either orally or in writing, that her misgendering of students violated school policies or was considered conduct unbecoming a teacher. Though some witnesses testified they forwarded

complaints to Superintendent Morris, he denied ever receiving them prior to being notified in March 2023 that a Title IX complaint was being filed.

Making Inappropriate Comments Related to Gender and Sexual Orientation

Ms. Dykes was not aware, prior to the Title IX investigation and subsequent Notice of Intent to Dismiss, that anyone alleged she had made a sexually inappropriate comment to a student. Because Principal Saliq, who made the decision to dismiss, did not testify, it is not entirely clear which comments that were discussed in the Title IX report he considered inappropriate.

Interim Superintendent Slaughter testified that he considered Mr. Madison's account that Ms. Dykes removed nail polish that a gay student had painted on his fingers. This interaction had occurred over a year earlier, and Ms. Dykes denied it. Even if she said something of the nature reported, however, it was not a comment made to a student. I do not find that it violated a school policy pertaining to discrimination on the basis of sexual orientation or gender identity, or violated the school boundaries document. Nor do I find that it amounted to conduct unbecoming a teacher, where it was an interaction between two adults and did not involve students in any way.

It is unclear whether the comment that she would have to call a student "potato sack" was considered as an inappropriate comment related to gender or sexual orientation under the second grounds for dismissal. Ms. Dykes also denies ever asking if she had to call a student "potato sack" if that's what they wanted to be called. The allegation was not reported at the time, and should have been if the comment amounted to a policy violation or conduct unbecoming a teacher. The exact nature and context of any comment Ms. Dykes may have made cannot be determined years later. I do not find that the comment, even if made, amounted to discrimination in violation of school policies or conduct unbecoming a teacher where it was said in the presence of another adult, and not students.

Interim Superintendent Slaughter supported the second charge against Ms. Dykes primarily on the basis of the comment reported by Jay Klug, who testified that Ms. Dykes told a male student "that's yours" referring to a female student, and further told the student that some boys like to pass girls around among their friends, and some girls like to get boys to fight over them. I find that the allegation has not been proved. Ms. Dykes completely denies the comment, which was brought to her attention for the first time months after it was allegedly made. The testimony that Jey Klug

would have remained in Ms. Dykes office with the student and an intern for five to ten minutes after Ms. Dykes had made the comment in question raises some question about the accuracy of his memory, since it seems a long time to engage in small talk after hearing a comment of that nature. Mr. Klug did not tell Ms. Dykes he found the comment inappropriate, and there was no corroborating testimony from the intern, the student or a parent as to what Ms. Dykes said.

Mr. Klug did file a report of the incident about a week later, on April 13, 2023, with then-Principal Diego Sharon. Principal Sharon, however, did not follow up with Ms. Dykes and apparently took no action on the complaint prior to forwarding the e-mail to Ed Mitnick on July 12, 2023 with a note, “Sorry for the delay. Diego.” He does not appear to have considered it a policy violation or conduct unbecoming a teacher, as he did not address it in any way before Mr. Mitnick requested it in the course of the Title IX investigation.

For the reasons stated above, I find that the District did not prove violations of school policies or that the Complainant engaged in conduct unbecoming a teacher.

Returning Ms. Dykes to her former position is consistent with the best interests of the students

As required by statute, I have also considered whether returning Ms. Dykes to her former position is in the best interest of pupils. It is true that the community was outraged by the allegations made against Ms. Dykes, as well as other school employees, in the student newspaper, in other newspapers and at school committee meetings in the spring of 2023. The Title IX report, when it was released in September 2023, did not substantiate all those initial allegations. Moreover, not all the allegations substantiated in the Title IX report have been proved at arbitration. Much of the initial community outrage against at least some staff members may well have dissipated as the additional facts have come to light. Moreover, not all the outrage associated with the initial allegations was directed toward Ms. Dykes. The issues that brought about intense community concern were widespread and involved the culture of the middle school and the actions of numerous staff members. It is only the proven allegations against Ms. Dykes, which have been considered in the current arbitration proceeding, and it is only her conduct that should be of concern to the community if she is returned to her previous employment.

There is substantial evidence that Ms. Dykes cared about the LGBTQ+ students assigned to her, and worked to improve their school experience, despite some misgendering and missteps in communication. She served as faculty advisor for the ALANA, and she worked with that group and others to create an inclusive environment, including organizing Kindness Lunches for students who might feel marginalized. She created a safe space for children who felt bullied or overwhelmed, where they could come and get away from things that were troubling them for awhile. She also worked on the Sixth Grade Step-Up program, which assisted students transitioning to the middle school. In that capacity she helped develop an Intake form that asked students for their pronouns, so that they could be addressed by their preferred pronouns from the start of their middle school experience. Even the parents of Student A, who filed the Title IX complaint, thanked Ms. Dykes for her efforts to help their child, and stated that they would not want the entire matter to ruin her career. Given the vast gulf between the accusations against Ms. Dykes, and the actual evidence presented at arbitration, I am unable to conclude that she would be unable, with proper supervision, to work effectively in the best interests of all students in the Amherst-Pelham School District.

CONCLUSION

For the reasons set forth above, I conclude that Delinda Dykes was dismissed from her employment in violation of G.L. C. 71 §42.