
Arbitration and Legal Update

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REVIEW - M.G.L. c. 71, §42

Ninety-Day Teachers

- 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,
... may be represented by an attorney or other representative

M.G.L. c. 71, §42 (cont.)

Additional Provisions for PTS Teachers only

- A teacher with professional teacher status, ...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 ...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 Judicial Landscape - Intersection with CBA

- *Groton Dunstable Regional School District v. Groton Dunstable Educators Association*, 87 Mass. App. Ct. 621 (July 20, 2015) (Appeals Court of Massachusetts)
 - MGL c. 71, s. 42 provides the exclusive procedure for review of teacher dismissals.

The Judicial Landscape - Intersection with CBA

- *Spencer-East Brookfield Regional School District vs. Spencer-East Brookfield Teachers' Association* Mass. App. Ct. No. 17-P-103 (June 4, 2018)
 - Appeals Court upheld a Superior Court's stay of the grievance arbitration stating that the "the source, authority, and scope of arbitration for terminated teachers derive from G. L. c. 71, § 42, not from contract -- regardless of the existence of terms of a collective bargaining agreement."
 - Following dismissal of a teacher within the first 90 days of employment, Association filed a grievance and sought arbitration claiming that the teacher had not received the supports and process set forth in the contractual "Educator Evaluation Process."

Spencer-East Brookfield. cont

Association argued that the statute does not preclude "arbitration of violations of negotiated evaluation procedures and other contract rights when a district non-renews or dismisses a teacher" and cited *School Comm. of Hull v. Hull Teachers Assn., MTA/NEA*, 69 Mass. App. Ct. 860 (2007), (nonrenewed teacher reinstated by arbitrator under the CBA due to Committee's failure to follow the evaluation procedures set forth in the CBA.)

Spencer-East Brookfield, cont.

Court distinguished the instant case stating:

- The teacher in Hull, while without PTS, had worked more than 90 days and thus had certain statutory due process rights conferred by G. L. c. 71, § 42,

Judicial Landscape – Standard

School Committee of Beverly v. Geller, 435 Mass. 223 (2001)

- Supreme Judicial Court (SJC) overturned decision of the arbitrator reinstating a 20-year teacher who “forcibly pushed, shoved, jabbed, dragged, knocked down or slammed in to locker three different sixth grade students”.
- Of seven justices, three held that the Arbitrator's use of the the terms “totally inappropriate” unacceptable” and “conduct that cannot be condoned” to indicate “serious misconduct” that fit within the realm of “conduct unbecoming.” Once proved, the Arbitrator could not substitute his judgment for that of school officials.
- Creating a plurality opinion, one justice concurred in the result, but based his decision on well-defined public policy protecting student from physical abuse.

Judicial Landscape - Standard

Lexington v. Zagaeski, 469 Mass. 104 (2014)

Supreme Judicial Court (SJC) reversed the decision of Arbitrator and held that an arbitrator lacks the statutory authority under the current section 42 to reinstate a teacher once the arbitrator finds “facts amounting to conduct unbecoming a teacher.” (in this case sexual harassment – comments re: grades for sex);

Lexington v. Zagaeski (cont.)

- “The purpose of the Reform Act was not to enhance the employment rights of public school teachers. Rather, the stated purposes of the Reform Act express a concern for the increased accountability of educators and the improvement of the quality of education provided in the public schools.”

Lexington v. Zagaeski (cont.)

- Section 42 calls on the arbitrator to consider "best interests of the pupils in the district and the need for elevation of performance standards." However, this cannot be used by "an arbitrator to draw on a teacher's past performance to override a dismissal decision based on a teacher's conduct having threatened the safety and welfare of his or her students."

Application of §42 by Arbitrators

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

March 6, 2023

- Teacher dismissal case under MGL c. 71 s. 42
- Teacher held his teaching position for approximately four years prior to the dismissal hearing
- Had been employed as an educator for approximately 24 years
- Was a coach for various teams
- Case involved him in his role as a coach in a league where the complaining student was a student from another district that he coached from when she was 12 years old in 2015 to 16 years old in 2019.
- Alleged abuse was reported in February 2021.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

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- Student was cut from the Team by the time she reported the incident and was on another team in the league.
- New coach noticed that the student appeared nervous around the teacher and asked the student why she was nervous and she reported that he sexually abused her when he was her coach.
- New coach reported it to DCF.
- DCF referred the matter to the police who conducted a SAIN interview.
- Student reported during her SAIN interview that the teacher touched her inappropriately while driving her to practice; touched her inappropriately at practice and during games; and groped her from behind while unloading sports equipment from his car.

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- Student reported that all of this happened in during middle school (2015-2017).
- District was made aware of the abuse allegation and placed the teacher on paid administrative leave in February 2021.
- Teacher declined to be interviewed by the police, but denied all the allegations through his attorney.
- DCF supported the allegations of abuse in March 2021
- The Teacher appealed the DCF finding and the DCF Hearing Officer reversed the decision to support the 51A abuse allegation.
- The District began its investigation into the matter in June 2021 while the appeal was pending with DCF.
- The DCF Hearing Officer's recommendation was forwarded on to the Commissioner who declined to reduce the original findings on October 28, 2021.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

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- The police also investigated the allegations; however the Middlesex DA's office declined to press charges and the HR Director testified that they were informed that the DA did not think the student would be a good witness.
- The Teacher petitioned the finding by DCF to Superior Court and the decision was rendered on November 10, 2022 (while the arbitration was pending), that remanded the matter back to DCF for further investigation. The court found that the DCF finding was not supported by substantial evidence because it failed to view the allegations in light of the surrounding circumstances and the credibility of the persons providing information.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

March 6, 2023

- The District conducted its own investigation led by the HR Director and an attorney from the firm that represents the district.
- The District interviewed the student, her parent and other students, teachers and coaches as a part of the investigation
- The teacher, on advice of counsel, declined to be interviewed. The teacher also requested that they interview other parents of players in the league, the director of the league, two former players and the teacher's wife.
- The student reported in her interview that she was cut from the team because she had engaged in a same sex relationship with a teammate and that the teacher and her mother had a call about this and the teacher reportedly told the mother that this relationship was an issue.

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- In contract, coaches, teammates and other parents reported that the Student had been cut from the team because she seemed to have lost her love of the sport and her performance declined. The report by the district found that the reason for her leaving the team “could not be established.”
- The District’s investigation reported that the Student’s claims were consistent to what she reported in the SAIN interview and that she also told them that after practice, the teacher would take her to dinner and drive her around and that she would not return home until 10 p.m.
- The District interviewed the Student’s girlfriend who said that the Teacher and the Student had an “unprofessional” relationship with the Student treating the Teacher like a father and then abandoning her when he kicked her off the team.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

March 6, 2023

- The Girlfriend also reported that the Student sobbed in her arms for hours as she discussed her removal from the team.
- Girlfriend reported that she never saw the Teacher engage in sexually inappropriate behavior with the Student.

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The District's Report:

- Supported an adverse credibility determination related to the Teacher because he refused to participate in the investigation even when aware that there would be no criminal charges.
- Found favorable credibility with the Student as there was consistency with her statements provided to the new coach, DCF and the District's investigation
- Report concluded that it could not come to a factual determination as to whether the Teacher sexually abused the student. Noted the account was consistent, but vague.
- Notice of Intent to Dismiss cited the District's report as basis.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

March 6, 2023

- Student testified at hearing about instances of the Teacher touching her and why she was cut from the Team. She did not agree that it was due to performance and she said she was not upset.
- There was a text message from her to the Teacher asking to try out and acknowledged that the previous year that she wasn't a team player and her attitude was not right, but she wanted to try out.
- Superintendent testified at hearing that the finding by DCF against a teacher must be viewed as a disqualification from any job within the public schools, but especially a finding with sexual abuse.
- Superintendent testified that they had nothing to undermine the findings by DCF and went forward with the notice of intent.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

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- The Teacher called witnesses on his behalf:
 - assistant coach for the past five years, been at almost all practices/games, never witnessed any inappropriate behavior
 - another coach that had coached with him for six years and had never seen any inappropriate behavior.
 - parent who had attended most of the practices and games over the past eight years and never saw any inappropriate behavior.
 - director of the league who often watched practices. Described the Teacher as a phenomenal coach and also testified that he never saw the Teacher at a game or practice without his daughter who was a teammate of the Student. Director also testified to the competitive nature of the team—300 players try out for 150-200 spots. Director was also aware of why the student was removed from the team and it was due to performance.

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- Two other Parents and a coach testified. Both testified that they never witnessed any inappropriate behavior—one parent noting that the Teacher was “uptight and careful” when working with the kids. All three also testified to the competitive nature of the league and that the Student’s performance declined. One parent going so far as to say there was suspected drug/alcohol use by the Student.

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Teacher was last to testify.

- Acknowledged that Student was a good athlete when she started on this team.
- He would often give her rides to practices and games when parents could not, but insisted his daughter always with him
- Denied ever touching her as she described
- Acknowledged that she most likely did assist with removing things from his car, but that he never touched her.
- Also noted that she would have never been in the front seat of his car and could have never touched her like she alleged.
- Testified that her performance declined
- Said he never had an issue with Student being in a same sex relationship—he noted that his daughter identifies as LGBTQ and he has the pride flag in his classroom.

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- He testified to the fact that his then attorneys did not allow him to speak to police, DCF and the district.
- Testified that he has still not been able to work because his license is still flagged due to DCF issues
- Was very emotional and said this had ruined his life and his family's.

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- Findings:
 - The parties agree that this case rests on credibility
 - Arbitrator notes the “me too” movement has appropriately encouraged great caution in determining that the alleged victim concocted or exaggerated allegations and that DCF and the District were mindful of that when reaching their conclusions.
 - Arbitrator found that the District did not meet their burden in establishing that the Teacher engaged in sexual abuse against the Student.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

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- Arbitrator noted this this was a de novo review (when deciding an issue without deference to previous court/agency decision)
- Was assessing this under *just cause* standard and that is a higher standard than the “*reasonable cause to believe*” standard used by DCF. Under just cause, District must establish that it was at least more likely than not that the Teacher sexually abused the Student.
- Arbitrator found that the District did not meet that standard.
- Arbitrator found that the Student’s testimony was not credible.

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Arbitrator noted the following issues with Student's credibility:

- Teacher's denial of any wrongdoing was corroborated by virtually all witnesses;
- Student did not mention abuse to anyone at all until several years later;
- Student description of the events has been inconsistent—even at arbitration
- There was motivation to retaliate against the Teacher after having been cut from the team.

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- Arbitrator noted that while the District was frustrated that the Teacher would not make any statements on his own behalf; there was evidence from witnesses that the District interviewed to give them pause about Student's credibility as the witnesses did not support the Student's claims about touching her during practice, being alone with her in the car, and her reasons for being cut from the team.
- Arbitrator found that the District over relied on DCF findings/investigation and the Teacher's refusal to speak on this own behalf.

Case No. 01-22-0000-9453 (*Arbitrator Sarah Kerr Garrity*)

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- The Remedy:
 - Arbitrator ordered reinstatement with back pay to make whole
 - District argued that it still cannot reinstate him because of the DCF finding and the impact on his licensure.
 - Arbitrator found that the claimant is entitled to back pay and lost benefits from date of termination to the date of compliance with this award and left the matter open for 90 days while they awaited reinstatement of his license from DESE.

Boston Public Schools,
Case No: 01-21-0017-0083 (Arbitrator: Beth Anne Wolfson)
August 17, 2023

- Educator Evaluation Teacher dismissal case
- Took place over seven days
- Involved a teacher who had been employed by BPS for 22 years.
- Teacher taught ELP, reading, writing, math and phonics. Held a Elem. 1-6 license, moderate Dx. K-6 and SEI endorsement
- Holmes Innovation School in BPS, started co-teaching 1st grade in 2014-2015 SY.
- In 2015-2016 she was placed with a co-teacher who was on an improvement plan. At end of 2017-2018, the co-teacher was informed that she was to be dismissed

Boston Public Schools,
Case No: 01-21-0017-0083 (Arbitrator: Beth Anne Wolfson)
August 17, 2023

Evaluation Plans for Teacher:

- 2014-2016: 2 year, self directed
- 2016-2017: Directed growth plan
- April 2017-November 2017: Improvement Plan
- December 2017-April 2018: Directed growth Plan
- 2/21/18-6/22/18: Improvement plan
- August 2018: Placed on paid administrative leave pending outcome of review of dismissal letter
- August 2019: Notice of Intent to Dismiss
- November 2019: Dismissal hearing
- August 31, 2021: terminated effective September 10, 2021

Boston Public Schools,
Case No: 01-21-0017-0083 (Arbitrator: Beth Anne Wolfson)
August 17, 2023

- There were many observations that the Arbitrator focused on—and many issues with the observations.
 - The observations of the Teacher and her co-teacher were mostly identical and you could not tell who was doing what during the class—i.e. who was taking the lead
 - One observation was not even of the Teacher and her class. She had pointed that out and asked that it be removed and it was not.
 - Timing of announced observations—once instance came 50 minutes late; another came 30 minutes early.

Boston Public Schools,
Case No: 01-21-0017-0083 (Arbitrator: Beth Anne Wolfson)
August 17, 2023

Arbitrator found that:

- the evaluation process was “replete with procedural irregularities that rendered it unfair.”
- That while the evaluator was trained in evaluating teachers, not trained in evaluating co-teachers.
- Announced observations are supposed to align with what is expected to be observed with the lesson and the timing by the evaluator did not achieve that.
- “it is not just the number of Observations required by the CBA that is important, but the quality of those observations and the accuracy of the written observation evidence and feedback forms that were relied upon...”
- Ordered reinstatement, made whole with wages and payment for out of pocket insurance costs.

Gardner Public Schools

Case No: 01-23-0003-1675 (Arbitrator Elizabeth Neumeier)

December 11, 2023

- Dismissal of PTS Physical Education Teacher
- Had been teaching in the district for approximately 20 years and taught previously in a neighboring town for five years.
- Allegation of putting hands on a student and pushing him against a wall.
- District moved to dismiss him for conduct unbecoming an teacher noting that his actions were in violation of the policy on student restraint.
- The actions were on video as this was in the school gym

Gardner Public Schools

Case No: 01-23-0003-1675 (Arbitrator Elizabeth Neumeier)

December 11, 2023

- Teacher argued the following against his dismissal:
 - Long tenure in district
 - No previous discipline
 - Class was very challenging group of kids and the student involved was very challenging
 - Did not attempt to conceal the incident (sent an email approximately two hours after the incident)
 - Student not physically harmed
 - Intervention was an escort; not a restraint.
 - Training modules on restraint lacked clarity and were incomplete.

Gardner Public Schools

Case No: 01-23-0003-1675 (Arbitrator Elizabeth Neumeier)

December 11, 2023

- Teacher argued that under *Zagaeski* that an arbitrator cannot reduce the quantum of discipline for teacher who has concededly engaged in conduct unbecoming in a material way, but that it does not foreclose arbitrators from exercising their independent judgment over whether the alleged misconduct actually does constitute conduct unbecoming.
- Teacher cited the *Kosel v. Springfield PS* case with Arbitrator Mayberry finding that conduct that is inappropriate and actionable, but does not rise to the level of conduct unbecoming may merit discipline short of termination and the arbitrator is empowered to issue such lesser discipline.

Gardner Public Schools

Case No: 01-23-0003-1675 (Arbitrator Elizabeth Neumeier)

December 11, 2023

- District argued that the arbitrator's authority is limited to determining whether the district met its burden of proving the teacher committed the conduct alleged.
- District also argued that the teacher was aware of the laws and policy regarding restraint of students as he took the training every year.

Gardner Public Schools

Case No: 01-23-0003-1675 (Arbitrator Elizabeth Neumeier)

December 11, 2023

- Arbitrator found that the Teacher did not follow the training or policy re: restraint of students.
- Arbitrator noted that the Statute directs arbitrators to consider the best interests of the students and the need to elevate the performance standards.
- Found that the District carried its burden and that having the Teacher in charge of a class is not in the best interests of the pupils in that he did not create a safe learning environment for learning.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- Dismissal case involving a social studies teacher
- Taught in the district for 17 years.
- Allegation that while on a field trip, he grabbed a student by the hood of the jacket/sweatshirt and this choked the student.
- Student (Student A) was a new student (-6 months) who was limited English proficiency.
- Another student, Student B witnessed the interaction and reported it to a teacher who then reported it to the Principal.
- Student B also reported that the Complainant said to her when he saw her there: “Don’t report me.”
- There were four teachers, two paraprofessionals and numerous parent volunteers on the trip.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- The teacher (Teacher 1) who reported it to the principal wrote in her email to the principal that she did not see this happen, but spoke to another teacher (Teacher 2) who was closer to the Teacher and she reported that she didn't see it happen, but she her the Complainant say “don't report me.”
- Teacher 1 also reported that she was concerned that Student B witnessed this incident as Student B is sensitive to things.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- Principal interviewed Student A and B together. Both students reported similarly that the Complainant had grabbed Student A by the hood, pulled him back.
- Student A was asked if this hurt him and he reported “a little.”
- Principal goes to place the Complainant on paid admin. leave and he began to talk to the Principal. The Principal advised him to wait until he had union representation. On their way to the Principal’s office, the Complainant again started talking and said that Student A was being physical with the other kids and that is why he “grabbed” him. Principal stopped him again from speaking, but put this interaction into the investigation notes.
- Another student who was with Student B was interviewed and reported that they witnessed the Complainant grab Student A by the hood and that Student A was coughing after.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- During the investigatory interview, the Complainant stated that the other kids were complaining about Student A and told the Complainant to “arrest him and put him in handcuffs” and that they will not report him for doing it. Complainant said that he was clear with the students that teachers can’t arrest students and can’t put hands on students.
- When asked if he put hands on the Student A, Complainant said no.
- Following this, the Principal met with another Student to ask if Student A was bothering them or if they made any of those statements to the Complainant. The student was clear that Student A was not bothering them and they did not say anything to the Complainant about it.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- December 2, 2022, the notice of intent to dismiss was issued and noted the following concerns with past issues:
 - Written reprimand April 2022 for publicly shaming and yelling at a student.
 - Bullying report from January 2022 where the investigation found that he had bullied students
 - Incident in October 2021 where the Complainant had 40 kids stay during their lunch period to retake a quiz leaving the kids without lunch that day in violation of the wellness policy.
 - June 2017, written warning for leaving kids behind in the class when they were supposed to be on a fieldtrip to Townhall with the rest of the class. Did it once in the morning and once in the afternoon.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- During the dismissal hearing, the Complainant did admit to making the “don’t report me” statement, but says it was taken out of context.
- Continued to deny any physical touch at both the investigatory interview and dismissal hearing even though he told the Principal when handed the letter that he “grabbed” the student.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- At the arbitration, the Complainant tried to make the argument that the investigation was not thorough because they did not interview all students and staff; they did not try to obtain video footage; and they impeded people from speaking to the Complainant's private investigator.
- Arbitrator stated the following regarding the investigation: “under just cause standard, an employer is required to conduct any investigation before taking disciplinary action and the investigation must be fair and objective.”
- The Arbitrator noted that the District could have interviewed more people, but that it did not have to, nor did the District need to determine whether video footage was available. There was also no evidence put forward that there were other people who witnessed the incident.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- With respect to the interference claim, the Arbitrator stated that there was no evidence that the Employer prohibited people from speaking with the PI. The District received emails from the Parents of the students interviewed and staff asking what to do about the PI. The District was clear that they were under no obligation to talk to the PI and directed staff to go to the Union with any questions as they represent both the teacher witnesses and the Complainant involved in the incident.

Brookline Public Schools

Case No: 01-23-0000-6963 (Arbitrator: Mary Ellen Shea)

December 18, 2023

- The Arbitrator found that the Student witnesses were credible.
- Noted that the Complainant was not credible as he was not clear during his testimony if he actually did put hands on Student A.
- Arbitrator found that there was no question that he puts hands on Student A and pulled his hood and that this is a violation of the prohibition against corporal punishment and contrary to the general understanding that teachers do not place hands on students.
- The Arbitrator also found that he was not truthful in the investigation into this incident.
- Found that there was sufficient evidence under the Just Cause standard to dismiss the Complainant.

Springfield Public Schools

Case No. 01-20-0002-8046

(Arbitrator: Will Evans) October 23, 2023

- Fifteen (15) day suspension case under MGL c. 71 s. 42D.
- Two day hearing. District called Principal, Asst. Principal, and Operations Manager. Employee called the Teacher and Union member.
- Petitioner is a licensed school counselor that had been employed by Springfield PS for 25 years.
- Petitioner works in a Middle School where 97% of the kids live below the poverty line.
- Petitioner would regularly be at the front of the school at the entry screening area to survey kids coming in for any social emotional issues and would sometimes perform

Springfield Public Schools

Case No. 01-20-0002-8046

(Arbitrator: Will Evans) October 23, 2023

- On March 11, 2022, Student A was randomly selected to go through the security screening and an alarm went off. Student A asked to go to the Petitioner's office rather than empty her pockets.
- The Operations Manager and the Asst. Principal took her to the Petitioner's office and she then reported the following:
 - She had an arrangement with the Petitioner that she would leave her knife in the seat cushion of a chair in the petitioner's office and then at the end of the day, she would go and get her knife.

Springfield Public Schools

Case No. 01-20-0002-8046

(Arbitrator: Will Evans) October 23, 2023

- The Asst. Principal then asked the Petitioner if this was true and she said that it was true and that it was at the request of Student A's mother that the Petitioner allowed Student A to bring the knife to school, store it in her office, and then get it at the end of the day.
- Mother requested this because she said her daughter needed it for protection.
- The administration confirmed this with the Parent and then informed the Parent that they would need to file a 51A because this action was endangering the safety of the child as she was more likely to be harmed by carrying a knife.

Springfield Public Schools

Case No. 01-20-0002-8046

(Arbitrator: Will Evans) October 23, 2023

- At the investigatory meeting the Petitioner did not question the District's version of the events and admitted that this arrangement had been going on since November and it was a way to get the student to attend school.
- Petitioner also said that she was "usually" there when the student would get the knife at the end of the day and admitted that her office was not locked.
- Petitioner also claimed that there was precedent for a kid to have this kind of arrangement with a security officer.
- Petitioner was originally given a 30 day intent to suspension notice.

Springfield Public Schools

Case No. 01-20-0002-8046

(Arbitrator: Will Evans) October 23, 2023

- The Petitioner tried to argue that under *Zagaeski*, if an employer has failed to prove its stated grounds, that the discipline must be dismissed and asked the arbitrator to overturn whatever portion of the suspension that he finds the district failed to prove.
- Petitioner argued that (1) she did apologize; (2) she did not deliberately withhold information from administration, (3) she was acting in the best interest of the student, and (4) she did not violate the code of conduct because that applies to student conduct.

Springfield Public Schools

Case No. 01-20-0002-8046

(Arbitrator: Will Evans) October 23, 2023

- Arbitrator found that there was just cause for the suspension.
- Noted that the facts are largely not in dispute, and both sides agree that the role of the arbitrator is to find when the district sustained its burden of proving that the teacher committed the conduct alleged and whether it is serious enough to meet an enumerated ground for just cause.
- Found that the Employer proved that Petitioner engaged in conduct unbecoming by aiding a middle school student in concealing a weapon her in office on a day basis from November to March; by intentionally withholding this information from administration; and by engaging in conduct not in the best interest of the pupils.

Springfield Public Schools

Case No. 01-20-0002-8046

(Arbitrator: Will Evans) October 23, 2023

- Arbitrator noted that she knew that kids were prohibiting from bringing weapons to school as she regularly supervised the metal detector screenings!
- Arbitrator also noted that the Petitioner had a strained relationship with the Principal and Asst. Principal leading the Arbitrator to believe that it was more probable that she was withholding this information from them as she did not want to discuss it with them.
- Finally, the Arbitrator rightfully noted that her withholding this information from others prevented the district from the opportunity to have input on other ways to protect/support the student (i.e. transportation to and from school).

This and that...

Independent contractors:

- Department of Labor issues final rule on Independent Contractors Classification under FLSA.
- New rule took effect March 11, 2024 and replaces 2021 rule with new 6 factor test.
- The new 6 factor test does not adopt the ABC test and ***does not impact MA because MA uses the ABC test.***
- The best resource on this issue with the AG advisory:

<https://www.mass.gov/doc/attorney-generals-advisory-on-the-independent-contractor-law/download>

Independent Contractors cont.

ABC or Three Prong Test:

1. Freedom from Control—services performed that are free from the employers control or direction; however not so entirely free from direction or control of outside forces
2. Services Outside of the Usual Course of Employer's Business—yet if worker is performing services that are a part of an independent, separate, and distinct business from that of the employer, prong two is no implicated.
3. Independent Trade, Occupation, Profession or Business—whether the employee is wearing the hat of the employer or wearing the hat of their own independent enterprise.

DOL Letter Re: Longevity and Hourly Workers

- FLSA 2020-3:
- City paid longevity of \$2 per month to hourly workers. DOL said that because this was required under a city resolution, that this amount needed to be factored in to the employee's regular rate for purposes of overtime.
- https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2020_03_26_03_FLSA.pdf