

BEFORE THE ARBITRATOR

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In the Matter of the Arbitration of a Dispute Between

**OCONTO SCHOOL DISTRICT**

and

**OCONTO EDUCATION ASSOCIATION**

Case 30  
No. 60326  
MA-11581

(Allen Grievance)

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Appearances:

**Mr. James A. Blank**, Executive Director, United Northeast Educators, 1136 North Military Avenue, Green Bay, WI 54303, on behalf of the Association.

Godfrey & Kahn, S.C., by **Attorney John Haase**, 333 Main Street, Suite 600, P.O. Box 13067, Green Bay, WI 54307-3067, on behalf of the District.

**ARBITRATION AWARD**

According to the terms of the 1999-2000 collective bargaining agreement between Oconto Unified School District (District) and Oconto Education Association (Association), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to hear and resolve a dispute between them regarding whether the District violated the labor agreement by transferring Lisa Miller-Allen from the High School Guidance Department to an elementary school position. Hearing herein was originally scheduled for November 1, 2001, but was postponed to November 29, 2001, and then postponed to December 18, 2001. Hearing was held on December 18, 2001, and completed on January 4, 2002. A stenographic transcript of the proceedings was made and received by January 18, 2002. The parties agreed to send their initial briefs directly to each other with a copy to the Arbitrator postmarked March 22, 2002. The parties reserved the right to file reply briefs, which were filed with the undersigned on May 22, 2002, whereupon the record herein was closed.

**To maximize the ability of the parties we serve to utilize the Internet and computer software to research decisions and arbitration awards issued by the Commission and its staff, footnote text is found in the body of this decision.**

### **ISSUES**

The parties were unable to stipulate to the issues for determination in this case. However, the parties agreed that the undersigned could frame the issues based upon the relevant evidence and argument in this case as well as the parties' suggested issues. The District suggested the following issues:

Did the District violate the bargaining agreement when it transferred Ms. Allen from the position of Guidance Counselor to the position of Title I Coordinator? If so, what is the appropriate remedy?

The Association suggested the following issues for determination:

Did the District have just cause when it disciplined the Grievant by transferring her from a High School Guidance Counselor position to the elementary school position of Title I Counselor/Teacher/Parent Involvement Coordinator? If not, what is the appropriate remedy?

Based upon the relevant evidence and argument in this case as well as the parties' suggested issues, I find that Association's issues reasonably state the dispute between the parties and they shall be determined herein.

### **RELEVANT CONTRACT PROVISIONS**

#### **ARTICLE IV. MANAGEMENT RIGHTS**

1. It is recognized that the Board has and will continue to retain the rights and responsibilities to operate and manage the school system and its programs, facilities, properties, and activities of its employees.
2. Without limiting the generality of the foregoing (paragraph 1) it is expressly recognized that the Board's operational and managerial responsibility includes:

- The right to determine location of the schools and other facilities of the school system, including the right to establish new facilities and to relocate or close old facilities.
- The determination of the financial policies of the District, including the general accounting procedures, inventory of supplies and equipment procedures, and public relations.
- The determination of the management, supervisory or administrative organization of each school or facility in the system and the selection of employees for promotions to supervisory, management or administrative positions.
- The maintenance of discipline and control and use of the school system property and facilities.
- The determination of safety, health and property and facilities.
- The determination of safety, health and property protection measures where legal responsibility of the Board or other governmental unit is involved.
- The right to enforce the rules and regulations now in effect and to establish new rules and regulations from time to time not in conflict with this Agreement, and not in conflict with the legal rights of the Association and/or the legal rights of the individual teacher.
- The direction, arrangement, assignment, and allocation of all the working forces in the system, including the right to hire, suspend, discharge or discipline, or transfer employees within the limits of Board policy, this Agreement, and the laws.
- The creation, combination, and modification of any teaching position deemed advisable by the Board.
- The determination of the size of the working force and the determination of policies affecting the selection of employees.
- The determination of the layout and the equipment to be used and the right to plan, direct, and control school activities.
- The right to schedule classes and assign work loads; and to select textbooks, teaching aids and materials.

3. Nothing in this Agreement shall limit in any way the District's contracting or subcontracting of work or shall require the District to continue in existence any of its present programs in its present form and/or location or on any other basis,

4. The foregoing enumeration's of the functions of the Board shall not be considered to exclude other functions of the Board not specifically set forth; the Board retaining all functions and rights to act not specifically nullified by this Agreement.

**ARTICLE X. DISCIPLINE**

1. The initial two years of employment is considered as a probation period. The Board will have sole discretion on contract renewal during the two-year probationary period. Teachers nonrenewed during the probationary period shall not have access to the grievance procedure. The Board may extend the probationary period by one year, not to exceed three years total, by giving the teacher written notice of this extension at the time contracts are issued. During the extension, nonrenewal may not be arbitrary or capricious.
2. A teacher who has completed three years of service in the District may be disciplined, suspended, nonrenewed or discharged by the Board but not without just cause.
3. The superintendent may discipline and/or suspend any teacher and the Board may dismiss any teacher for incompetency, neglect of duty, immorality, misconduct and refusal to obey rules and regulations of the Board and its chief administrative staff.

**ARTICLE XXX. EXTRACURRICULAR PAYMENTS**

**HIGH SCHOOL**

**OTHER ACTIVITIES**

**Head Coaches:**

Football	10%	1
Basketball	10%	2
Wrestling	10%	1
Baseball	8%	1
Track	8%	2
Golf	7%	2
Cross Country	7%	1
Volleyball	8%	1
Softball	8%	1

**High School:**

Forensics-Head	3%	1
Forensics-Assistant	2%	2
Dramatics	3%	2
Yearbook	7%	1
Instrumental	7%	1
Student Council	2%	1
Class Advisor	1%	3
11th Grade Advisor	1.5%	1
Cheerleading	3.5%	1

<b><u>Assistant Coaches:</u></b>			Asst. Cheerleading	3%	1
Football	6.5%	5	Hi-Q	2%	1
Basketball	6.5%	3	National Honor	1%	1
Wrestling	6.5%	1	Vocal Music	2%	1
Track	6%	2	Math Team	3%	1
Baseball	6%	2	Math Team Assistant	2%	1
Volleyball	6%	2	Pom Pon	3%	1
Softball	6%	2			

**OTHER ACTIVITIES**

**MIDDLE SCHOOL**

<b><u>Coaches:</u></b>			<b><u>Middle School:</u></b>		
Football	5%	5	Instrumental	3.5%	1
Basketball	5.5%	4	Student Council	2%	1
Wrestling	5%	1	Cheerleader	2%	1
Volleyball	4%	3	Yearbook	3%	1
Intramurals	2.5%	4	Middle School Chorus	1%	1
Track	3%	3	Odyssey of the Mind	2%	1
			O.M. – Assistant	1%	1
			Auxiliary Instrumental	1.5%	1
			Auxiliary Chorus	0.5%	1

OEA members who are employed in an extra-duty position shall receive an extra 1% of the positions base salary for each year that they have worked in that position or another position within that activity. This shall be retroactive to the date of employment.

When any part of this article is being negotiated for change, the entire article is open for consideration of change.

All above listed payments will be in one lump sum payable after the season or activity. The check will be issued when all required season ending or activity ending duties are completed.

**ARTICLE XXXIII. OTHER SALARY ADJUSTMENTS**

Guidance Directors (for additional summer work)	
High School	\$253
K-8	\$210

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**DISTRICT POLICY**

Section 4.06 GUIDANCE PROGRAM (Revised 8-15-94)

- I. The School District shall maintain a guidance and counseling program which will serve all students and help them with emotional, educational, career, civic and social development. The program shall be developmental in nature. Its success shall not be attributed to any one person.
  
- II. The guidance and counseling services shall exist to help improve the learning climate by involving students, parents, staff and community members who can influence the educational, personal and career development of students. Counselors shall assist all students to develop a more realistic and adequate concept of themselves through individual or group contact over a period of time. Counselors shall help all students develop a knowledge of self as it applies to personal, educational and career decisions. Further, the guidance and counseling program shall help prepare individuals to live effective lives and to engage in meaningful, satisfying, paid and/or unpaid work in harmony with themselves, with others and with their environment.
  
- III. The specific goals of the guidance and counseling program shall be to:
  - A. Help students in developing a knowledge of self including aptitudes, abilities, needs, values, interests, strengths, limitations and self-worth.
  - B. Assist students with emotional growth, including family relationships and the understanding of others.
  - C. Assist students in the development of social skills and civic responsibilities.
  - D. Assist students with problem-solving, decision-making and coping skills.
  - E. Help students with educational development including basic skills.
  - F. Form partnerships between school and community designed to assist students in their career development.
  - G. Assist staff as resource consultant in student/teacher relationships, behavior management, student evaluation and parent contacts.

H. Provide assistance to students and families during crisis situations.

I. Offer guidance services and information to the local community.

IV. The School District shall not discriminate in the methods, practices and materials used for counseling, testing or evaluating students on the basis of sex, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, physical, mental, emotional or learning disability or handicap. Discrimination complaints shall be processed in accordance with established procedures.

II. Educational Guidance Duties.

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H. Provide members of the faculty with Student Progress Report forms. Copies are sent to parents of all students. This is done midway in each marking period.

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Section 6.15 DIPLOMAS (Revised 9-20-93)

I. The number of credits required for a high school diploma shall be reviewed annually at the January Board meeting and shall meet all state regulations.

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III. Those who secure at least eleven academic credits from Oconto High School, who secure all of the remaining necessary credits through the successful completion of approved correspondence courses, and who pass a comprehensive examination administered by the local school, will be granted a diploma.

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Section 6.22 STUDENT RECORDS (Revised 9-20-93)

I. General – Student records are maintained in the interest of the student to assist the school in providing appropriate educational experiences.

II. Definitions

- A. Student records – include all records relating to an individual student other than notes or records maintained for personal use by teachers or other certified personnel which are not available to others, and records necessary for and available only to persons involved in psychological treatment of a student.
- B. Progress records – maintained by the school include a statement of courses taken by the student, the student’s grades, the student’s extra-curricular activities and the student’s attendance.

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### **BACKGROUND**

The Grievant, Lisa Miller-Allen (hereafter Allen), was employed by the District from 1989 forward, as the head of the High School Guidance Department (HSGD) until her transfer from the HSGD to a position at the elementary school on June 29, 2001. As of June, 2001, Allen was a certified guidance counselor with 20 credits beyond a Masters Degree. Prior to June 29, 2001, Allen had never been disciplined by the District for any reason. Allen always received good evaluations during her tenure at the District prior to her transfer. When Allen was hired as the HSGD Head, Principal Elliott (who retired during the Summer of 2000) directed Allen to make the guidance office at the High School more accessible, a more student-friendly place. There is no evidence to show that Allen did not accomplish Elliott’s directive prior to June 29, 2001. Elliott did not testify in this case.

At the time Allen was hired in the HSGD in 1989, another counselor, Mr. Tanski (hereafter Tanski), had been working in the HSGD for many years. Given this, Allen and Tanski merely split all guidance department duties — Tanski took the oversight of the at-risk and learning laboratory programs as well as counseling of one-half of the High School students. Allen took the remaining one-half of High School students for purposes of counseling and the remainder of the HSGD duties. The District also employed a HSGD secretary, Sandra Stellmacher, until her transfer to a position at the elementary school, effective June 29, 2001. It should be noted that Allen did not receive any extra pay for acting as the Department Head of the HSGD.

Prior to June 29, 2001, all employees assigned to the HSGD could enter and change information on student transcripts when requested by a teacher or administrator. Board policy has never required prior approval by a counselor, principal or the superintendent or any other administrator in order to add information or change information on a student’s transcript. Nor were there any rules created by the HSGD regarding such formal approval.



It is undisputed for many years and continuing through the 2000-01 school year, the District's Special Education Department (SED) regularly assigned credits to special education students without prior approval from District administration or the HSGD; that the SED also changed graduation requirements for its students based on their ability and Individual Education Plans (IEP's) without notifying the HSGD; and that the SED created courses for its students which were never listed on the District's course curriculum list, all without prior approval from anyone in District management or from the HSGD. Also, the HSGD was never given copies of SED students' IEP's and HSGD personnel did not attend "M" Team meetings regarding SED students.

Since prior to Allen's tenure as HSGD Head, the HSGD had a policy of performing a final senior credit check early each Fall. During this check, the counselor for the District meets with each senior student and goes over a check list, as well as the senior student's transcript, to count the credits that the student has earned, to determine credits the student still needs to earn senior year in order to graduate and to discuss with each senior student graduation requirements, how the senior can earn the credits needed to graduate or if the senior student could not earn enough credits to graduate on time, what plans could be made for the following year or for summer school. If the senior was applying to colleges or technical schools, the HSGD counselor would also discuss whether the senior had taken the ACT, whether his/her applications were in on time, whether the senior intended to apply for financial aid and answer any questions the senior student had regarding the application process. HSGD counselors have always counted and totaled senior credits by hand, by looking at each student's full transcript for all years he/she has attended at the District. Prior to June 29, 2001, the District computer system was not set up to default to the credit summary - graduation requirements (CS-GR) and as a result, HSGD staff did not typically see a student's CS-GR when looking at student transcripts on the computer.

State of Wisconsin, Department of Public Instruction (DPI), requires all students who graduate from High School to earn at least 24 credits; that they take 4 credits of English, 1 credit of Algebra, 1 credit of Biology, ½ credit of Civics and ½ credit of Math, as well as 1 ½ credits of Physical Education. 1/ Under DPI procedures, the SED in each school district can adapt the Special Education student's course load and its content in order to graduate special education students with less than the above-listed requirements. For example, Special Education students are often not required by their IEP's to take Algebra and Biology, which are required for regular education students. Rather, Special Education students can take courses in lieu of Algebra and Biology, which classes are offered by Special Education teachers and are adapted to the student's abilities and needs. These substitute classes will then meet State requirements for SED students. It should be noted that Special Education students cannot be legally designated as such on their transcripts or in documentation of the District.

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1/ *Oconto Schools also require ½ credit of Computer Science for graduation.*

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## FACTS

During the 2000-01 school year, Allen discovered that she was pregnant with twins. Allen arranged to take pregnancy leave beginning March 29, 2001, through the end of the 2000-01 school year. During in-service days at the beginning of the 2000-01 school year, Allen's HSGD colleague, Mr. Tanski, fell in the Library and was taken to the hospital. Tanski had surgery and was then on sick leave for the first quarter of the school year. For most of the second quarter, Tanski was either out on sick leave or he worked part-time, trying to ease back into his HSGD duties on a full-time basis. Tanski was not back at the HSGD on a full-time basis until after the Winter break in 2000. The District did not replace Tanski while he was on leave, and Allen (with the help of HSGD secretary Stellmacher) simply took on all of Tanski's duties in the HSGD, as well as her own during Tanski's absence and while he was part-time.

In the Fall of 2000, Allen met with Special Education student, S.F. 2/ and went over his senior checklist sheet. Allen counted all of S.F.'s credits and found that as of that date, he had earned 16 ½ credits, that he was scheduled to take 3 ½ credits the first semester for a subtotal of 20 credits and that he would have to take 4 credits the second semester to receive a total of 24 credits, enough to graduate. Allen indicated on his senior checklist that S.F. would need to pass all of his English, Social Studies, Computer Science and Physical Education classes in order to graduate. The senior checklist sheet also contains other types of information but Allen did not fill out that portion of the sheet for S.F. However, these sections of the checklist concerning concentration of courses, plans for next year, financial aid, ACT or SAT and co-curricular activities did not need to be filled out for S.F., as S.F. was a Special Education student who would not, for example, take the ACT test, apply for financial aid, have course concentration issues or be involved in co-curriculars. 3/

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2/ *Student initials are being used herein to mask their identity.*

3/ *S.F.'s senior checklist sheet showed that he needed 1 ½ credits of English, ½ credit of Social Studies, ½ credit of Computer Science and ½ credit of Physical Education in order to graduate on time in May of 2001.*

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HSGD secretary Stellmacher and HSGD counselor Tanski worked together on the graduation list at the end of the 2000-01 school year as Allen was then on pregnancy leave. Tanski was responsible to verify all senior student grades and credits in the last quarter of the 2000-01 school year for graduation eligibility. This list contained the names of students who would be graduating on May 20, 2001. One of the students that was listed to graduate on May 20, 2001, was S.F. After May 20<sup>th</sup>, Stellmacher apparently heard that S.F. had graduated on May 20<sup>th</sup> and she asked Tanski if S.F. had had enough credits to graduate. Tanski responded that Stellmacher should talk to S.F.'s Special Education teacher, Mr. Young, and do whatever he told her regarding the matter.

Thereafter, Stellmacher sent Mr. Young an e-mail dated May 30, 2001, in which she asked whether S.F. had enough credits to graduate or whether he was coming back to school in 2001-02 to finish. Apparently, that same day, Mr. Young came to the HSGD and spoke with Stellmacher about S.F. Young instructed Stellmacher to change S.F.'s transcript to show that he had 4 credits of work study in the final semester of his senior year (instead of the 1 or ½ credits he had received in previous semesters), to add 1 credit in Prep Writing II, 1 credit in Keyboarding II, as well as 1 credit in Independent Study Current Events. Young listed himself as the teacher responsible for the Work Study course, the Keyboarding and the Current Events courses, while he listed Teacher Sowle as the responsible teacher for the Prep Writing II course. Young directed Stellmacher to make those changes in S.F.'s transcript and she did so. At this time, Allen was still on maternity leave and Tanski was in charge of the HSGD. Stellmacher did not contact Allen regarding this matter. After May 30, 2001, Stellmacher called Allen to indicate that she had been interrogated by Superintendent Dickert regarding the S.F. situation.

Thereafter, Dickert also interrogated Allen regarding her knowledge of the circumstances surrounding S.F.'s having graduated credit deficient. During his investigation, Dickert pulled over 36 transcripts of students which he asserted were incorrect and he questioned Allen regarding them as well as regarding HSGD policy. No evidence was offered herein that Dickert interrogated Tanski regarding the S.F. situation. Also, Dickert did not question retired High School Principal Elliott regarding the S.F. situation or his investigation of HSGD records.

On June 29, 2001, after having sought authority from the Board of Education and received it, Dickert issued Allen the following letter of reprimand:

. . .

In my investigation of record keeping over the past several years by the guidance department, I shared with you the transcripts of students that have not met the Board of Education's graduation requirements. These records are in shambles. The District has spent a tremendous amount of money to train you and the rest of your department in the proper coding of classes and recording of records. Yet, I can continue to see no progress in the integrity of student records. Students have received diplomas while their transcripts continue to show deficits in either number of credits achieved or specific requirements met.

As guidance counselor and department chair it was imperative to maintain the student records as per District requirements and procedures. Those requirements and procedures have been ignored or eroded. In one specific case recently your secretary played a role in entering registration of a student, S.F. into three classes on May 30, 2001. This was to create classes that the student did not take. This was after the student graduated on May 20, 2001. During that same time, she

changed his work study credit from 2.5 credits to 4.0 credits. All of this was completed without checking with her immediate supervisor, but instead taking directives from a teacher whom [sic] did not have that authority. In other change of records also investigated, she did not have her superior's signed verification to make those changes.

One of your essential duties is to maintain student records. Your action has jeopardized the integrity of those student records and falsified the records. In the future you are to follow all established District procedures and practices regarding student records to guarantee that students have met the graduation requirement established by the Board of Education. You will also not allow any secretary assigned to you the authority to make changes in student records without verifying it in writing from you.

This letter will be placed in your file. After three years you can petition the Board of Education to remove the letter from your file citing three years of vigilance in following District procedures and practices in all aspects of your assignment.

Also, on June 29, 2001, Superintendent Dickert issued Allen the following notice of her reassignment 4/:

. . .

As per Board of Education action at their Special Meeting on June 28, 2001, you have been reassigned for the 2001-02 school year to the position of Title I Counselor and Teacher. You will report to the Elementary School. Mrs. Nancy Burns will be your immediate supervisor. Your job description will be approved by the Board of Education at a future meeting. Mrs. Burns, Mrs. Pulver, and Interim Superintendent Dr. Cavanaugh will play a major role in creating that job description. It will include the coordination of the OES & OHS Parent Involvement Program, the coordination of and teaching in the OHS Credit Deficient Student Program, as well as many other duties.

If you have any further questions regarding this reassignment, please contact Dr. Cavanaugh.

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*4/ Stellmacher was also given a written reprimand and reassigned to the elementary school following this incident. Stellmacher is not a member of the teacher bargaining unit and is therefore not covered by the effective labor agreement. No evidence was offered herein to show that Tanski was disciplined in any manner for whatever part he may have played in the graduation of S.F.*

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Allen timely filed a grievance regarding Dickert's written reprimand and his reassignment of her, citing a violation of Article X and alleging that the written reprimand and reassignment constituted discipline without just cause. Allen sought expungement of the reprimand from her personnel file and that she be returned to her former position at the HSGD effective August 27, 2001. The Board of Education held a hearing regarding Allen's grievance and on August 22, 2001, it issued the following letter thereon:

. . .

Following deliberation after your appearance, the Board reached a decision on the matter of your grievance. The Board voted to purge the letter of reprimand from your personnel file. However, the second remedy you sought, reinstatement to your former position as counselor at Oconto High School was denied, thus your new assignment stands as directed.

. . .

Following the Board's above-quoted letter, the transfer portion of the grievance was brought forward for arbitration before the undersigned.

In his testimony herein, Dickert stated that he was concerned for the "leadership" of the (Guidance) Department, "that Mrs. Allen was not suited to be the Department Chair of that area" and that it was on this basis that he recommended the Board transfer her to an elementary school position. Dickert stated that the HSGD had continuously fought the District's decision to change to the software program SASI-xp from Skyward. Dickert stated that Allen knew that she was expected to show accurate credit summaries - graduation requirements (CS-GR) on all transcripts within one year of having received the training thereon in SASI-xp. Dickert stated that the CS-GR's had been a problem for the last four years that he had been District Administrator and that the problems were not fixed when he quit his position as Superintendent to take another position in June of 2001. Dickert stated that he "continuously insisted that Board of Education goals and requirements were not being met" by the HSGD. Dickert stated that he held Allen responsible even though she was on pregnancy leave both before, during and after the 2001 graduation, because he believed she should not have allowed transcripts to be changed without her or Mr. Tanski's signature. Dickert stated that he believed Allen was responsible to coordinate graduation ceremonies despite her pregnancy leave, because Allen was in regular contact with HSGD secretary Stellmacher by telephone during her leave. 5/

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*5/ Stellmacher and Allen testified that Allen was not involved in any way in coordinating graduation ceremonies in May of 2001, due to Allen's pregnancy leave. Stellmacher stated that it was Tanski who was responsible for coordinating all graduation ceremonies in the year 2001, with her help. Stellmacher stated that she was not responsible for, nor did she in fact verify graduation credits.*

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Dickert stated that he believed that the HSGD needed new leadership in the year 2001-02 because of the S.F. incident. Dickert stated that “this had been a pattern as we looked back;” that his investigation revealed that another student had taken the same class more than once and received credits therefor; that some special education students’ transcripts showed that they had taken courses which did not exist in the District’s course list, that they had been given excessive credits for work study, or that they had had their grades changed; and that other students were short credits or had not taken courses for which they were given credit on their CS-GR’s. Dickert stated that S.F.’s senior checklist sheet had not been completely filled out by Allen in the Fall of 2000 and that he was “not pleased with the procedures” used in the HSGD. Dickert asserted that “we discovered” the S.F. situation 6/ after S.F. had graduated on May 20, 2001, and that he (Dickert) then investigated the matter by checking student transcripts for the three prior years. It was on the basis of his investigation and questioning of both Stellmacher and Allen, regarding the circumstances surrounding S.F.’s graduation, that Dickert stated he recommended that both Allen and Stellmacher be reprimanded and transferred. It is undisputed that following her reassignment/transfer, the District changed the HSGD door locks and Allen was denied access to all HSGD information and computers.

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*6/ The record clearly showed that Stellmacher discovered the S.F. situation, not Dickert.*

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Teachers Green and Reuchel also testified herein. Green and Reuchel stated that as a matter of practice, they had allowed their students to essentially make-up work in classes the students had failed during the semester before, either by taking the course in summer school and retaking the test or by completing certain work. Green and Reuchel stated that they then changed the students’ grades with the District after the fact. Teacher Green stated that she tried to make sure that she changed the grade with the District in the same year as the student originally failed the class. Teacher Reuchel stated that in order to change a grade, he believed that a final okay was necessary from the administration and that the teacher had to approve the grade change on a form submitted to the principal. 7/ In addition, teacher Green stated that she was involved in changing the grade of student A.L. 8/ from an F to a D- in 2000. To accomplish this, Green stated that student A.L. took the course again in summer school and retook Green’s test in Human Biology. Green stated that many of her students have had to re-take her test in Human Biology as it is a difficult course. Finally, Green stated that off and on since 1999, she has had students disappear on the attendance roster on her District computer. Green stated that she has had trouble dealing with Technology Director Kathy Richter and that Richter has blamed the HSGD for errors that have appeared in Green’s records kept on her computer at school.

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*7/ Secretary Stellmacher stated that it was not an HSGD or Board policy that a grade change had to be approved by an administrator prior to June, 2001.*

*8/ A.L. is one of the students whose transcripts Dickert pulled during his investigation of the S.F. incident.*

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Teacher Reuchel stated herein that student J.B. (another case raised by Dickert in his investigation) took Modern Communications several times with the approval of retired Principal Elliott and the tacit approval Superintendent Dickert, as J.B. was extremely gifted in producing videos for cable TV. Reuchel, who was the teacher in the Modern Communications area at the time, believed that J.B. took and re-took this course with full District approval, as J.B. was heavily involved in producing cable TV programs for the District. Reuchel also stated that he had had trouble with the computer programming at the District. For example, the wrong grades were printed on progress reports; his class attendance was not tracked on the computer properly; students were, from time to time, dropped from his classes when they were actually attending; and the wrong number of students was shown for classes that he taught from time to time. Reuchel also stated that he taught courses that were not listed on the District's course list, including Independent Study Geography, which Principal Elliott had approved.

Secretary Stellmacher stated herein that she found Technology Coordinator Richter often rude and unresponsive to inquiries regarding disappearing grades, among other things. Stellmacher stated that prior to June 29, 2001, she had never been disciplined by the District. Stellmacher stated that she did not believe that HSGD records were in shambles or that Board policies had been ignored or eroded by HSGD staff prior to June 29, 2001. Effective at the end of 2001, the Board of Education altered its grade changing policy to require that a teacher make a grade change and get it approved by the principal and then have the data exported on the computer to Technology Coordinator Richter for Richter to change the grade. Stellmacher stated that this had not been the policy of the Board prior to June 29, 2001.

### **POSITIONS OF THE PARTIES**

#### **The District**

The District urged that the Association has the burden of proof in this case to show that Allen's transfer was, in fact, disciplinary and that it violated the Management Rights clause. In this regard, the District noted that the transfer of employees is traditionally a management function, reserved to the employer unless the employer abuses its discretion in transferring employees. Evidence of such abuse must be proffered by the labor organization.

The School District argued that it has express and reserved rights to transfer employees under the labor agreement. The District noted that the Association cited only Article X, Discipline, as having been violated in this case. However, the District noted that there is no

limitations on its right to transfer employees in the labor agreement. Here, the Grievant was transferred because of her inability to establish policies and procedures to ensure that students had accurate credit histories and graduation requirement summaries on their transcripts. The District observed that Allen's conduct contributed to a situation where student records were falsified, classes were added to transcripts which had not been taken by students, extra credits were given to the students and some classes were taken twice for additional credits by one or more students.

In this case, the Association cannot argue that the Grievant was not given a full opportunity to correct her conduct in the guidance department, over a four-year period. The District noted that Allen was trained and had met with the Superintendent several times regarding the requirement of displaying accurate CS-GR's on all student transcripts. Thus, the District urged that the Grievant should have been terminated for her activities, although the District decided not to do so in fairness to Allen. In addition, the District noted that it can transfer employees for efficiency reasons under the labor agreement, and this was in fact what was done in Allen's case, requiring a conclusion that the District's actions regarding Allen were specifically allowed and supported by contract provisions.

The District argued that its transfer of Allen was not disciplinary. In this regard, the District noted that Allen lost no pay or benefits, no seniority and no job functions by means of being transferred to the elementary school, where she had similar duties which she was capable of performing. Even if the transfer were found to be disciplinary, the District urged it had just cause to transfer Allen due to her poor leadership in the guidance department. In this regard, the District noted that during the last three-year period when Allen was in charge of the guidance department, 46 students had CS-GR's on their transcripts which contained errors; that Allen admitted herein that one student graduated who did not have sufficient credits to do so; that Allen created no policies to assure that falsification of or changes to transcripts would not be made, contrary to accepted District procedures in this area.

Thus, the District urged that Allen failed "despite repeated warnings" to improve her performance in the guidance department. The District noted that Superintendent Dickert had discussed the Grievant's poor performance with her "more than once" over the past four years; that the District gave Allen special training to assure the accuracy of student transcripts, and therefore, that Allen received full due process prior to her transfer because of poor leadership in the guidance department. As Allen demonstrated a repeated inability to do her job, the District urged that her transfer could be deemed non-disciplinary under arbitration case law, in any event. Thus, the District urged that the grievance be denied and dismissed in its entirety.

### **The Association**

The Association argued that the reassignment/transfer of Allen constituted discipline. In this regard, the Association noted that the decision to transfer/reassign Allen was reached on the same day as the decision to issue her a written warning. In addition, there would have



been no reason to transfer/reassign Allen absent the disciplinary concerns the District voiced in its written warning letter to Allen. It was significant that Allen had never previously been disciplined or warned during her 12-year tenure in the guidance department; that Superintendent Dickert admitted that Allen was a good guidance counselor and that he had had no problems with her work before the 2001-2002 school year (Tr. 56-57, 60). Furthermore, the Association noted that the District has never before transferred another employee in a similar situation, essentially due to what was discovered during an investigation (Tr. 63).

Although Dickert tried to separate the transfer and the written warning so that the transfer would be covered by the Management Rights clause and not by a just cause standard, the Association noted that Dickert stated herein that he transferred Allen because she allowed the guidance department secretary to change grades. As reported in the local newspaper and by Allen's own testimony, the Arbitrator should conclude that the transfer/reassignment of Allen was in fact disciplinary. Indeed, no other conclusion could be reached given the facts as Allen testified, that the District would not allow her into the guidance department office after her transfer, that the locks were changed on the guidance department doors and that she was denied computer access to guidance department information after the transfer/reassignment. In these circumstances, the Association urged the Arbitrator to find that the transfer was disciplinary and to subject it to the just cause standard of the contract.

Therefore, the Association urged that there was no just cause for the transfer/reassignment of Allen, noting that some of the most basic elements of just cause are missing in the District's decision-making process prior to its determination to transfer/reassign Allen. In this regard, the Association noted that no documents were submitted to show that Allen had been requested to include the CS-GR's on all transcripts by any supervisor in the District prior to her taking pregnancy leave in 2001; that the District had no policy in place requiring CS-GR's to appear on all transcripts; and that there are no indications on this record that Allen was ever told what if any consequences would flow from a failure to include the CS-GR's on all transcripts. In addition, the Association contended that the discipline Allen received was not reasonably related to the allegations against her or to her past work record and that the District failed to take into account that Allen was on pregnancy leave at the time the problems regarding S.F.'s graduation arose.

Furthermore, the Association argued that Dickert's investigation of the alleged transcript discrepancies had been deficient, hurried and unfair. In this regard, the Association noted that Dickert became aware of the problem with S.F.'s transcript in late May, 2001, when Ms. Richter showed Dickert an e-mail she had received from teacher Young; Dickert then had Richter pull all student transcripts with CS-GR's on them for the past three years. Thereafter, in mid-June, Dickert quickly interrogated Allen and other witnesses because Dickert was scheduled to leave the District for another position in Kohler, Wisconsin, on July 1, but that Dickert failed to question Elliott and Tanski.

In regard to the accuracy of the transcripts, the Association argued that 38 of 43 of these transcripts were not credit deficient for graduation. Three of the problem transcripts of the 43 were students who graduated in 2000-01 so that Mr. Tanski, the guidance counselor present at the end of the 2000-01 school year when Allen was on pregnancy leave, should have been responsible for what happened to those students (S.M., K.W. and M.H.). In regard to three other transcripts, Allen explained that two of these evidenced the disappearing changed grade problem, which was due to extra summer work done by the students but which did not become permanently recorded in the computer because of computer problems (A.L. and J.M.). In regard to the several Modern Communications classes that D.B. had taken, the Association noted that the evidence showed that all of those classes had been previously approved by the building principal.

Therefore, in these circumstances, the Association argued that it was “outrageous” to blame Allen for alleged discrepancies on student transcripts during the past three years when many of these did not, in fact, involve any discrepancies, and because the District had no clear policies regarding the treatment of SED students and CS-GR’s. The Association observed that the District also had no policy prohibiting the HSGD secretary from doing as Stellmacher had done at Mr. Young’s instruction. Indeed, the HSGD had a practice of trusting Special Education teachers as professionals to change their students’ transcripts and the Board had no policy requiring that grade changes be approved by the District Administrator, principal or a counselor.

In addition, the Association pointed out that Allen and Tanski were never trained on the computer to complete the CS-GR’s on student transcripts; and that there was no evidence to show that Allen was involved in the 2001 graduation ceremonies. Because the HSGD did not use or rely on the CS-GR’s to determine senior students’ eligibility to graduate, the fact that the CS-GR’s were not always accurate was not a problem. There were also inherent problems in assuring the accuracy of the CS-GR’s for Special Education students because they are subject to different graduation requirements (that can vary for each special education student based on their IEP’s) which the SASI-xp software could not properly address. Furthermore, no evidence was offered to show that the District considered Allen’s past work record in determining the penalty to apply to her.

The Association also argued that the discipline that Allen received was too severe for the activity she engaged in. In this regard, the Association noted that Allen had never been disciplined before and had outstanding annual evaluations in the District. Given the fact that Allen was not even present when the difficulties arose regarding 2000-01 student transcripts, the Association argued that she should be returned to her High School guidance department position at the start of the 2002-03 school year and that her file be expunged of any reference to the discipline or transfer of Allen. 9/

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*9/ Although at the hearing, the Association argued that Allen was not allowed to work in the summer in the guidance department as had been the case in past years, it did not mention this in its initial brief in this case.*

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## Reply Briefs

### The District

The District argued that the Association omitted several material facts necessary to properly determine this case in its initial brief. In this regard, the District noted that Allen was responsible to assure (pursuant to District policy) that CS-GR's were complete and that students met the requirements of graduation before they graduated; that Allen should have created rules to implement this District policy; that Allen's lack of leadership resulted in 50 students' transcripts being inaccurate and at least one student graduating without sufficient credits. The District further noted that the Association attempted to shift the blame from Allen to the District and that this was unfair. In this regard, the District noted that Allen had been made aware of problems with the CS-GR's four years prior to her transfer; that she had been trained at District expense to assure that student transcripts were accurate regarding CS-GR's; that she had been offered assistance by various people in getting the credit summaries portion of the transcripts corrected; and that she had attended at least one meeting with the Superintendent and another employee in November of 2000 designed to get the errors corrected. Despite all of this, the District noted that Allen failed to accomplish what she had been directed to do by the District.

In addition, the District urged that Dickert's investigation was neither hasty nor was there any evidence that Dickert was "out to get" Allen or that he failed to listen to Allen's side of the story. The District argued that the Management Rights clause of the labor agreement allows it to transfer employees without just cause, noting that the section regarding just cause does not list transfers as disciplinary in nature. Thus, the grievance constituted an attempt to rewrite the contract, in the District's view.

In regard to its allegation that Allen's transfer was disciplinary, the District noted that the Association cited no cases in support of this assertion. Rather, the Association relied on Allen's reprimand around the time of the transfer which listed some of the same reasons for transfer as for her receipt of the written warning. As Allen suffered no loss of wages, benefits, tenure seniority and received a job with similar duties, and because other teachers have been transferred to further the District's programs (Tr. 62), the District urged that Allen's transfer cannot constitute discipline. 10/

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*10/ However, in its brief, the District essentially admitted that the type of transfer involved herein has never been done by the District prior to Allen's case.*

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In any event, the District urged that it had just cause to transfer Allen. On this point, the District noted that Allen was present at two meetings where she was given notice of her deficiencies regarding student transcripts and wherein the Superintendent told her what he

expected her to do to remediate the situation; that over the following seven months, Allen failed to do as she had been directed. Therefore, Allen's transfer was reasonably related to school efficiency, as it was based on Dickert's finding (through his fair and objective investigation) that Allen had violated District policy and rules and the discipline was reasonably related to the seriousness of Allen's offense. For these reasons, the District urged that the grievance be denied and dismissed.

### **The Association**

The Association urged that the investigation had been hasty and incomplete; that Dickert did not bother to interview either Tanski, Elliot or teacher Reuchel or any of the students or parents who were involved in the alleged inaccurate transcript situation; and that the District failed to allow Allen to check over the alleged discrepancies the District had found on student transcripts. Thus, the Association urged that Dickert had made up his mind before he heard Allen's side of the story and before he investigated the situation that Allen should be disciplined. Indeed, as S.F.'s transcript was the only one that definitively showed a discrepancy, the Association noted the unfairness of disciplining Allen by warning and transferring her while she was on maternity leave and not involved in S.F.'s final graduation check.

The Association urged that it had met its burden of proof in this case; that the cases cited by the District are either irrelevant or inapposite or favor the Association's case. In addition, the contract limits the District's right to discipline employees and in any event, the District clearly abused its management discretion in handling the discipline of Allen. The Association noted that the District submitted no evidence to show that the transfer of the Grievant was based on student needs. The Association noted that SASI-xp program had only been in place for three school years (not four), as the District claimed when Allen left on maternity leave in March of 2001. The Association noted that the record clearly showed that Allen was concerned about assuring that transcripts were accurate through the e-mails and admissions of Ms. Richter on the record on this case.

The Association then questioned Richter's credibility and reliability as a witness, asserting that she had changed her testimony during the instant hearing. In this regard, the Association noted that Richter stated, and then later denied, that faxes from Marcia Brenner Associates (the District's computer consultants) had been received showing transcripts with CS-GR's; that Richter initially stated that Allen had been trained in the computer grading program but later recalled that Allen had a conflict on the training date and did not attend it; that Richter initially denied and then admitted that she had sole access to Marcia Brenner Associates during the 2000-01 school year; that Richter originally stated that she did not refuse to meet with Allen, but later stated that she had refused to meet with Allen during the Fall of 2000 if the meeting would result in an attack on Richter. All of the above evidence showed, in the Association's view, that Richter blamed others for problems that were inherent in the software and that she failed to support District employees when they were using the SASI-xp software (which has had a history of many problems).

The Association urged that Allen's transfer was disciplinary. In this regard, the Association noted that Allen had no contact with Secretary Stellmacher who made the changes on S.F.'s transcript and that Dickert actually transferred Allen because Stellmacher, had changed the student's transcript at the direction of a Special Education teacher. Furthermore, in her new job, Allen has no contact with students, does not counsel them and her job at the elementary school should be considered a demotion. Finally, the Association urged that one case of graduation without proper credits out of approximately 1200 over Allen's counseling career does not constitute just cause case for her transfer, especially in light of the lack of due process given Allen here.

The Association urged that the transfer was disciplinary and as such, the application of an arbitrary and capricious standard in this case would not be appropriate. Allen's job performance over 12 years, her excellent evaluations and the fact that she had never before received any discipline, showed that the District was too severe in its punishment of her. 11/ The Association urged that the grievance be sustained.

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*11/ The Association urged that Allen's evaluations demonstrate that she was a good leader, as stated by both of her prior principals.*

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## DISCUSSION

The initial question in this case is whether the District's decision to transfer/reassign Allen to the elementary school constituted discipline. Under the circumstances of this case, the undersigned believes it is clear that the District disciplined Allen by transferring her to the elementary school. In this regard, I note that the District issued Allen a warning letter on the same date that it transferred/reassigned her to the elementary school position. Significantly, HSGD Secretary Stellmacher was also given a written reprimand and reassigned to the District's elementary school at the same time as Allen, based on the same incident.

In addition, former-Superintendent Dickert's testimony regarding why he recommended that the Board warn and transfer Allen revealed that Dickert intended to discipline Allen by transferring her. In this regard, I note that Dickert failed to separate his reasons for warning Allen from his reasons for transferring her. An analysis of the District's June 29<sup>th</sup> letter warning Allen showed that the reasons for warning Allen were essentially the same as Dickert's reasons for transferring her. The June 29<sup>th</sup> warning letter listed the reasons for warning Allen as follows:

1. Transcripts "have not met the Board's graduation requirements;"
2. "Records are in a shambles;"
3. Records were not kept "per District requirements and procedures;"

4. The District trained Allen to code and make records on the computer, yet the District saw “no progress in the integrity of student records;”
5. Students received diplomas who were credit deficient “in either number of credits received or specific requirements met;”
6. As guidance counselor and guidance chair, Allen allowed a secretary to change grades, create classes and change work study credits;
7. The District’s requirements and procedures “have been ignored or eroded;” and
8. “Your actions have jeopardized the integrity of those student records and falsified the records.”

The warning letter instructed Allen to “follow all established District procedures and practices regarding student records” in order to guarantee that students have met “Board graduation requirements” and that Allen should prohibit the HSGD secretary from changing student records without verifying same in writing to Allen.

In his testimony, Dickert gave the following reasons for transferring Allen:

1. Lack of leadership; Allen was not suited to chair the HSGD (Tr. 21);
2. A student graduated credit deficient (S.F. situation) (Tr. 22);
3. Other students have previously been given credit for courses not taken; at least one student (D.B.) had taken the same class twice for credit; other students were a credit short or had taken courses not listed in the District’s curriculum (Tr. 22);
4. Lack of CS-GR’s stated on student transcripts and Allen fought the District’s efforts to get these CS-GR’s onto all student transcripts (Tr. 23);
5. S.F.’s senior credit checklist was incomplete (Tr. 24);
6. It should never have been acceptable for the HSGD secretary to change credits, etc., as Stellmacher did (Tr. 30);
7. Allen handled graduation in 2001 and was responsible for it (Tr. 30);
8. Allen had resisted software changes (Tr. 31-32);
9. HSGD records were in a “shambles,” three years of transcripts showed errors and problems (Tr. 33);
10. There was no verification of special education students IEP’s when their transcripts were changed (Tr. 41-43);
11. Dickert expected CS-GR’s to be shown correctly on all student transcripts one year after his son’s graduation in the year 2000 and he trained HSGD employees to do so (Tr. 25, 27-28).

It is clear that all of the reasons listed by the District either in writing or as stated by former-Superintendent Dickert in his testimony, grew out of the District’s investigation of the graduation of student S.F. on May 20, 2001. Furthermore, it is undisputed on this record that the District locked Allen out of the HSGD and that she was denied access to guidance

department information and computers after her transfer/reassignment. These kinds of actions are normally taken when an employee is disciplined – discharged or demoted – not when the employee is transferred, as in Allen’s case.

In addition, Allen’s position at the elementary school was so dissimilar from that she held at the HSGD that it could be deemed a demotion. In this regard, I note that the evidence was undisputed that Allen no longer counsels students in her elementary position; that she performs no services at the high school; and that she is required to perform playground and other student supervisory duties in her elementary position. It is clear that Allen has suffered a loss of status by her transfer from the high school to the elementary school, as evidenced by the testimony of all witnesses in this case.

Although the contract is silent regarding demotion, it addresses discipline at Article X and in Article IV, Management Rights. Notably, the labor agreement indicates that the District must have just cause to discipline non-probationary teachers, and that the District has the right to “discipline, or transfer employees within the limits of Board policy, this Agreement, and the laws.” The evidence in this case also showed that Allen’s evaluations at the District have been good ones, that she received no prior discipline, either oral or written, and Superintendent Dickert admitted herein that Allen was a good guidance counselor. In all of these circumstances, and given the explicit language of the labor agreement, it is reasonable to conclude that the District’s transfer of Allen was disciplinary and that it was intended to be disciplinary, as it had many more of the earmarks of a disciplinary demotion, rather than a lateral transfer.

Having found that the District’s transfer of Allen constituted discipline, the next issue before me is whether the District had just cause to transfer Allen based upon the conduct the District alleges she engaged in during the 2000-01 school year. As noted above, the District’s reasons for transferring Allen can be found in the June 29<sup>th</sup> warning and in Dickert’s testimony herein.

After analyzing each of Dickert’s reasons for transferring Allen, as well as the extensive transcript and exhibits herein, I find that the District did not have just cause to discipline Allen by transferring her. Concerning the S.F. situation, Allen performed the Fall 2000 credit check for S.F. and found that if he had successfully completed all credits he was scheduled to take in 2000-01, he could have graduated on May 20<sup>th</sup>. Therefore, Allen did not need to take any further action regarding S.F. at the time of his Fall senior credit check. The fact that Allen failed to complete S.F.’s senior checklist in the Fall is insignificant, in my view, as S.F. was a special education student for whom portions of that senior checklist would not be relevant (i.e., concentration of courses, plans for college, financial aide, ACT or SAT and co-curricular activities).

Furthermore, it is clear that Guidance Counselor Tanski would have been responsible to re-check S.F.’s credits in the last quarter of 2000-01 before his name could be listed on the 2000-01 graduation list, according to HSGD practice, in Allen’s absence. It is also significant

that Guidance Counselor Tanski (not Allen) directed HSGD secretary Stellmacher to do whatever S.F.'s Special Education Teacher, Mr. Young, told her to do regarding S.F.'s transcript after S.F. had been graduated on May 20, 2001. Finally, it is undisputed on this record that Allen had no contact with the HSGD regarding work-related activities until after the May 20, 2001, graduation ceremony and that Allen played no part in preparing the list of graduates used by the District for graduation ceremonies that year.

In the Arbitrator's view, Allen and Teacher Reuchel provided a satisfactory explanation why student D.B. was allowed to take several Modern Communications classes, all for credit. Reuchel clearly stated that all of D.B.'s Modern Communications classes were approved by Principal Elliott. As the District failed to question Dickert on this point regarding his part, if any therein, and as it failed to call former Principal Elliott to refute this evidence, Allen and Reuchel's testimony must be credited on this point. The same is true of evidence proffered by the Association regarding students being allowed to take courses not listed in the District's curriculum. Union witness Reuchel stated without contradiction that such courses could be (and were) designed and taken by students with the principal's approval. Allen essentially confirmed this. Again, the District failed to call former Principal Elliott on this point.

Regarding the 36 students the District identified as credit deficient in the District's investigation of the HSGD, Allen satisfactorily explained herein that many of these students were not in fact credit deficient, due in part to the limitation and lack of reliability of the District's software and the CS-GR's. For example, regarding student M.H. (Union Exhibit 4, page 12), Allen showed that although the CS-GR for this student showed the student credit deficient, the student had in fact more than enough credits to graduate if one hand-counted M.H.'s credits. Allen also showed how grade changes after the semester could have been typed into the District's computer in cases such as those of students A.L. 12/ and J.M. (Union Exhibit 4, pages 16 and 19), such that these students' CS-GR's appeared to show them credit deficient while in fact these students had enough credits to graduate on May 20, 2001, because the grade changes did not properly appear after they were made in SASI-xp.

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*12/ Teacher Green stated that she changed A.L.'s grade in Human Biology after A.L. took the exam a second time and made-up missed work in the class.*

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In regard to some student grade changes, Allen explained without contradiction that it has been the practice of the HSGD and Oconto High School to allow SED teachers to make final decisions regarding transcript changes for their students. Allen stated, again without contradiction, that SED teachers did not share IEP's with guidance department personnel and that the guidance department did not have access to special education files such that the District's record keeping for those students had to, *per force*, go through the SED.



Although Allen could not explain problems appearing on the transcripts of S.M. and K.W. (Union Exhibit 3, pages 6 and 7-10), Allen's assertion that Tanski should have addressed these problems in her absence at least by the last quarter of the school year was reasonable and logical. It is significant that Dickert failed to ask Tanski any questions regarding problems with transcripts which arose in 2000-01 prior to or during Dickert's investigation thereof, and that problem solving regarding transcripts was Tanski's responsibility, given the absence of Allen on maternity leave from March 29, 2001, forward. The District's failure to call Tanski herein to explain discrepancies in S.F., S.M. and K.W.'s transcripts requires a conclusion that his testimony, if given, would not support the District's case.

Evidence was also offered in this case which remained unrefuted to show that the District's software program could not accurately count special education courses which actually satisfied graduation requirements for these students but may not have been listed on the District's curriculum lists. 13/ In addition, it is significant that the HSGD counselors have had a practice of hand-counting senior credits and that the computer has never been set to default upon the CS-GR. Thus, HSGD employees did not typically see CS-GR's on student transcripts when they viewed them on the computer or when they were printed off, and HSGD employees were not aware of problems with the listings contained in the CS-GR's of their students.

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*13/ For example, special education students often take math courses which satisfy their Algebra requirement, but which cannot be considered Algebra and should not be listed as such on the CS-GR. Apparently SASI-xp cannot be adapted properly to show math as a substituted requirement for Algebra for special education students.*

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The evidence in this case simply does not support Dickert's assertions on the stand that he clearly directed Allen to include accurate CS-GR's on all student transcripts by 2001. In this regard, I note that the District failed to submit any written documentation to support Dickert's assertions. The record in this case is also clear that at no time during the prior four years of Dickert's tenure had he warned or disciplined Allen regarding her "failure" to show accurate CS-GR's on each student transcript. In addition, the evidence regarding a November, 2000, meeting between Dickert, Richter and Allen failed to show that Dickert, in fact, directed Allen to make sure that she had accurate CS-GR's on each student transcript from that point forward. Specifically, Richter in her testimony herein, failed to corroborate that Dickert specifically ordered Allen to include CS-GR's on all student transcripts in November, 2000, or at any other time. 14/ Furthermore, if CS-GR samples were faxed to the District from Marcia Brenner Associates (the District' computer consultants), there is no evidence on this record that Allen ever saw them. In addition, Richter supported Allen's statements that Allen missed the CS-GR computer training classes offered by the District because Richter would not schedule them around Allen's summer job.

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*14/ In her testimony, Richter failed to specifically confirm that she heard Dickert instruct Allen to make sure that the credit summaries/graduation requirements were correct on all student transcripts in the future following the November, 2000, meeting between the three of them (Tr. 276, 292-293).*

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In his testimony, Dickert asserted that Allen fought the change from the Skyward software to SASI-xp. The documentary evidence in this case, as well as Allen's admissions, show that she was certainly unhappy with the change from Skyward to SASI-xp. However, many e-mails from Allen to Richter and others showed that Allen was concerned about and that she tried to understand and correct HSGD problems with the SASI-xp software. Teachers Reuchel and Green also confirmed their frustration with SASI-xp and Richter, which supported Allen's assertions herein. In any event, the fact that Dickert never warned or disciplined Allen for her alleged resistance to change requires a conclusion that this unsupported assertion cannot, in fairness, be used to support Allen's disciplinary transfer.

Dickert also asserted herein that Allen should have made rules in the HSGD regarding verification of special education students' IEP's whenever their transcripts were changed and rules requiring authorization by a counselor for any transcript changes. A detailed analysis of the Board's policies in effect in 2000-01, indicate that it is the District's responsibility to provide and maintain a guidance program in the District. Nowhere in the District's policies does it indicate that the Chairman of the Guidance Department is responsible to make rules nor is the Chairman responsible for the guidance program. Furthermore, there is no verbiage in the District policy which requires credit summaries or graduation requirements to appear on every student transcript. In addition, Allen's position as Head of the HSGD was a non-supervisory position for which she received no extra pay. As there is no requirement in the District's policies that the guidance department create any rules regarding grade changes, credit changes or that the guidance department show accurate CS-GR's on all student transcripts and given the fact that all student transcripts pulled and submitted by the parties met all requirements of District policy, these reasons for Allen's disciplinary transfer must fail. 15/

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*15/ In the circumstances of this case, it should have been up to the Board of Education or the High School principal to establish rules for the HSGD or to clearly direct Allen to do so. This did not happen.*

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Allen's evaluations were good ones prior to June 29, 2001. Dickert failed to discipline her prior thereto for any reason. Therefore, the above-described reasons for Allen's transfer are not supported by this record. 16/ I find that Dickert's allegation that the HSGD records

were in a “shambles,” is not based on any supportive record evidence. Finally, the District failed to present any additional evidence to show that Allen’s transfer was based on student needs or efficiencies.

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*16/ It is also important to note that no situation similar to the one that occurred at the end of the 2000-01 had ever occurred previously in Oconto School District and that no other teacher had ever been transferred as a result of an investigation of alleged wrong doing as Allen was.*

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In all of the circumstances of this case, I find that the charges brought against Allen, and the reasons for her transfer, were neither rationally based nor supported by the record evidence and I therefore issue the following

**AWARD** 17/

The District did not have just cause when it disciplined Lisa Miller Allen by transferring her from a High School Guidance Counselor position to the elementary school position of Title I Counselor/Teacher/Parent Involvement Coordinator. Therefore, I order that Allen be immediately returned to her position as Head of the High School Guidance Department, effective the school year beginning 2002-2003. As there is insufficient evidence to show that any back pay is due and owing or that Allen has otherwise suffered any monetary damage due to her transfer to the elementary school in 2001-2002, I order no back pay.

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*17/ I shall retain jurisdiction of this case, concerning the remedy only, for 60 days from the date of this Award.*

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Dated at Oshkosh, Wisconsin, this 12<sup>th</sup> day of August, 2002.

Sharon A. Gallagher /s/  
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Sharon A. Gallagher, Arbitrator