

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

OCONTO EDUCATION ASSOCIATION

and

OCONTO SCHOOL DISTRICT

Case 29
No. 60209
MA-11560

(Russell Young Grievance)

Appearances:

Wisconsin Education Association Council, by **Attorney Lucy T. Brown**, P.O. Box 8003, Madison, Wisconsin, 53708-8003 on behalf of the Union.

Godfrey & Kahn, S.C., by **Attorney John A. Haase**, P.O. Box 13067, Green Bay, Wisconsin, 54307-3067, on behalf of the District.

ARBITRATION AWARD

At all times pertinent hereto, the Oconto Education Association (herein the Union) and the Oconto School District (herein the District) were parties to a collective bargaining agreement covering the period July 1, 1999 to June 30, 2001, and providing for binding arbitration of certain disputes between the parties. On August 8, 2001, the Union filed a request with the Wisconsin Employment Relations Commission (WERC) to initiate grievance arbitration regarding the suspension of Russell H. Young (herein the Grievant) from his duties and requested the submission of a panel of WERC staff from which to select to arbitrate the issue. The parties subsequently designated the undersigned to hear the dispute and a hearing was conducted on December 4 and 18, 2001. The proceedings were transcribed and the transcript was filed on December 27, 2001. The parties filed briefs on March 6, 2002, and reply briefs on March 27, 2002, whereupon the record 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 stipulated to the following framing of the issues:

Did the School Board have just cause justifying its decision to suspend the Grievant for one-year without pay?

If not, what is the appropriate remedy?

PERTINENT CONTRACT LANGUAGE

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.

BACKGROUND

The Grievant, Russell H. Young, has been employed at the Oconto High School as a special education teacher and coach since 1989. During that time, he has also been active in the Union, most recently serving as President in 2000-2001. Prior to the present case, Young had received two written reprimands from the District, once in 1996 for giving a basketball player permission to leave school without following the established checkout procedure and once in 1995 for making a derogatory comment to the school principal. His performance evaluations as a teacher have been generally high.

Between 1997-2001, the Grievant served as teacher and advisor for S.F., 1/ a special education student at Oconto High School, who had been previously classified as emotionally disabled under the Individuals with Disabilities in Education Act (IDEA). During the 1999-2000 school year, S.F. demonstrated behavior and socialization problems that ultimately led the District to develop an individualized plan to restrict his interaction with other students in unsupervised situations by modifying his schedule, including allowing the student to receive credit for working for a private employer in the afternoons instead of attending school during his senior year. At the end of his junior year, S.F. had accumulated 16.5 of the 24 credits needed to graduate.

1/ The student referenced herein is identified by initials for the purpose of preserving his anonymity.

During S.F.'s senior year, the 2000-2001 school year, he was scheduled for classes during the first three periods of the day and then dismissed to work, for which he was to have received course credit. The Grievant was off work at the beginning of the school year on family leave and did not prepare S.F.'s schedule. Upon his return, he did prepare S.F.'s Individualized Education Program (IEP) for the school year. At the end of the first semester, S.F. failed all his academic courses and earned a total of 1 credit, which was for work study. During the second semester, S.F. was again registered for three academic courses and work study. At the end of the term, the Grievant was asked by the school secretary whether S.F.

would have sufficient credits to graduate and was told that he should, thus S.F. was issued a diploma and graduated on May 20, 2001. Subsequently, on May 30, 2001, the guidance department secretary ascertained that S.F. did not have enough credits to graduate and brought this to the Grievant's' attention. The Grievant reviewed the student's records and determined that he had not received the proper number of credits for his work study and Special Education course in the second semester. He thus instructed the secretary to increase three Special Ed. courses from .5 credits to a full credit each and to increase his work study credits from 2.5 to 4 to reflect the actual hours S.F. spent working during the school day. At the same time, the Grievant discovered that S.F. had only received 1 credit for work study in the first semester, although he had worked four hours per day. He also requested the secretary to change this record, but was told the request would have to go through the Information Technology Specialist, Kathy Richter, since the record was from a previous term. Due to a poor relationship with Richter, the Grievant chose instead to have the department secretary add three independent study courses to S.F.'s spring schedule at one credit apiece, thus raising his credit total to a level sufficient to graduate. It is undisputed that S.F. did not take any of the three courses.

On June 7, 2001, the Grievant discovered that his grade verification sheet did not reflect two of the added independent study courses, nor the necessary credit total. He then contacted Richter and asked that she make the entries reflecting that S.F. had passed these courses and adjust his credit total accordingly. Richter notified the District Administrator, Jeffrey Dickert, of the Grievant's request and Dickert investigated the matter, ultimately discovering that S.F. had not taken the classes for which he was to receive credit. Dickert confronted the Grievant, who admitted that the courses were fictitious and gave as rationale that S.F. should have received 3 additional credits for work study in the first term and this was an attempt to get him the credits he had earned without having to go through Richter. As a result, Dickert commenced an investigation, which resulted in the Grievant being charged with neglect of duty, immorality, misconduct and refusal to obey the rules and regulations of the School Board, with a recommendation to the Board that the Grievant be terminated. On July 25, 2001, the School Board convened a termination hearing, which resulted in the Board issuing the Grievant a one-year suspension without pay. The suspension was grieved according to the procedure set forth in the collective bargaining agreement, culminating in the instant arbitration proceeding. Additional facts will be referenced, as necessary, in the discussion section of this award.

POSITIONS OF THE PARTIES

The District

The District maintains that the Grievant's falsification of student records and misrepresentations to other staff members constitute serious misconduct. In addition, he awarded S.F. excessive credits for work study, well beyond what has been granted in the past,

in order to circumvent the District's credit requirements and permit him to graduate. Arbitral precedents establish that such misconduct warrants discipline and many cases have upheld discharge for similar actions.

In this case, the School Board determined after a hearing that a one-year suspension was appropriate discipline for the Grievant's actions. Where an employee has engaged in wrongful behavior, it is management's prerogative to determine the level of discipline, so long as it is not arbitrary, capricious or unreasonable. The Union has failed to show cause for the Arbitrator to substitute his judgment for that of the School Board. There was no showing of discrimination or arbitrariness and, in fact, the Grievant proposed suspension as the appropriate discipline at the due process hearing. There is no support for the Grievant's contention that he was disciplined for his Union activities. The Grievant's conduct merited discharge, as many arbitral awards attest. He falsified records which may be relied upon in the future by potential employers or institutions of learning and also deliberately deceived his co-workers by claiming S.F. had passed courses he had not taken.

The Grievant's defenses are without merit. He claimed that his actions were intended to correct a clerical error by awarding S.F. 3 credits he actually earned in the first semester through work study. He claimed he created the false classes to avoid dealing with Ms. Richter in attempting to change the first semester record. If that is true, he had several more appropriate options. He could have approached anyone in Administration, or he could have approached a guidance counselor, or he could have required S.F. to complete the course work after graduation. Any of these options would have resolved the issue without having to involve Ms. Richter. His explanation, however, is unconvincing. In March, 2000, S.F. had an IEP meeting to address his behavioral problems, which resulted in an IEP. The IEP does not indicate that work study would play a prominent role in S.F. completing school, but does stress the importance of S.F. attending school and completing his classes. None of the other participants at the IEP meeting recall any discussion of S.F. being given one course credit per semester for every hour of work study and all, except the Grievant, were aware that S.F. would have to pass his classes in his senior year in order to graduate. The record also refutes the Grievant's claims regarding his alleged unwillingness to work with Ms. Richter and whether he, in fact, made an attempt to correct the first semester records before he fabricated the three courses in the spring term.

The Grievant, without excuse, engaged in fraud by falsifying student records and making misrepresentations to other staff members. His conduct brings the integrity of all the District's records into question, as well as the legitimacy of S.F.'s diploma. On the whole, the District was within its rights to suspend him for his conduct and the discipline should stand.

The Union

The Union asserts that, other than adding additional courses to S.F.'s student record, the District's claims of wrongdoing are unsupported. The Grievant has not denied that he added courses the student did not take in order to correct a crediting error, or that this is a

proper subject for discipline, merely the severity of the discipline. The District has alleged other wrongdoing, however, which has not been established by the evidence. Former Superintendent Dickert testified that the Grievant improperly gave the student excessive credits for work study, which he verified before bringing charges against the Grievant, but failed to provide documentation supporting his assertion. The Special Education department had a work study program separate from the District's other work programs, which does not limit the number of credits that may be earned through work study. Several witnesses testified to knowledge of cases where students were awarded more than one credit per semester for work study, contrary to Dickert's assertion. There is a long history in the District of making unique accommodations to enable students to graduate and in this case the District had, in fact, assured S.F.'s mother that he would graduate despite the fact that, as a result of a manifestation hearing in March, 2000, S.F. was released from school to work after third hour. The work study credits were the only way of getting S.F. the credits necessary to graduate within the restrictions imposed at the manifestation hearing and did not violate any known school policy.

It was also not a violation of District policy or practice for the Grievant to give S.F. a full credit for each special education course. While typically students receive .5 credit for each 45 minute class, according to the testimony exceptions are made, especially with special education students. In this case, the accommodation was necessary to permit the student to graduate with his class, as had been represented to his mother. At the time, the High School special education department operated without any clear guidelines or oversight from the administration. The teachers were expected to, and generally did, come up with creative, if unorthodox, solutions to meet the needs of their students, of which the Grievant's handling of S.F.'s situation is but one example. Further, the Vice Principal was apparently aware of S.F.'s circumstances and asserted to his mother that he would graduate, suggesting that he was aware of and in accord with the plan to give maximum credit for work study and academic courses.

The District, while justified in imposing discipline, did not have cause to suspend the Grievant for one-year. The District did not conduct a fair investigation. The investigation was conducted alone by Superintendent Dickert, who had a contentious relationship with the Grievant, stemming from the Grievant's activities as a Union leader and public involvement in an effort to force Dickert's resignation the previous year. Other faculty testified to the poor relationship between the men and the Grievant had even filed a grievance in the past due to Dickert's perceived retaliatory conduct. Nevertheless, Dickert was the sole investigator into the Grievant's conduct despite his apparent bias. Dickert also left his position at the end of June, 2001. Therefore, he conducted his investigation and recommended the Grievant's termination within three weeks, all the while wrapping up all his other duties for the District and preparing to move to his new position. The investigation was hurried and sloppy, resulting in charges that were inconsistent with the evidence presented at the termination hearing and failure to bring forth any witnesses with firsthand knowledge of the matter. The testimony offered by Dickert, himself, was inaccurate and misleading and failed to establish

any motive for the Grievant to have acted as he did, other than for the reasons given by the Grievant himself. A proper investigation would have determined that the Grievant had not engaged in an orchestrated pattern of wrongful conduct, but had rather made a single mistake, albeit a serious one, which should be viewed in the context of a special education program where unorthodox solutions to problems were common.

The one-year suspension meted out by the District was disproportionate to the seriousness of the Grievant's conduct. The Grievant had previously had two written reprimands in 12 years, both long in the past and neither involving his conduct as a teacher. His professional evaluations have been consistently positive. Crediting S.F. for courses he did not take was a serious mistake and violation of school policy, but was an isolated incident. He did not act out of self-interest and the record demonstrates that the District has in the past not consistently observed strict crediting standards. On this basis, a one-year suspension was excessive. The punishment issued to the Grievant is even more unreasonable when it is noted that in the recent past the School Board elected not to discipline the Superintendent for misrepresenting his credentials. Mr. Dickert served as Superintendent from 1995-2001, but was not licensed to be an administrator until 1999. Dickert did not inform the Board of this at the time of his hire and the Board did not learn of it until notified by the Department of Public Instruction in 1999. His actions were totally motivated by self interest and his explanation for his conduct was incredible. Despite Dickert's deception, the Board did not discipline him, but merely directed him to complete the accreditation process, whereupon he was given a raise. In light of this, the Grievant's suspension for conduct that was no more serious was disparate, especially since other teachers in the special education department have for years engaged in creative crediting practices in order to help special needs students graduate without objection from the District. In light of the above, a one-year suspension was disproportionate and should be remitted to no more than three weeks.

The District in Reply

The District argues that the Grievant's misconduct was much more serious than the Union admits. He committed many wrongful acts, including deliberate falsification of official records to give S.F. credit for courses he did not take and making misrepresentations to other staff members in order gain their assistance in perpetrating academic fraud. He also gave the student more credits than were appropriate for work study, in effect providing him 8 work study credits, or one-third of the credits necessary to graduate, in his senior year alone. The Grievant's claim that there was a decision made at the March, 2000, manifestation hearing that S.F. would receive the work study credits is not supported by the record, nor are his assertions that the District had assured S.F.'s mother that he would graduate with his class, or that giving him 8 work study credits was the only way to honor that commitment.

The District had just cause to terminate the Grievant, let alone suspend him. The District has cited many cases supporting termination for falsification of records, whereas the Union has cited none to support its arguments. The District conducted a thorough

investigation, culminating in a Due Process hearing, wherein the Grievant was afforded an opportunity to present evidence in his defense and answer the charges against him. The fairness of the process is shown in that the Board did not terminate the Grievant, as prayed for in the charges, but imposed a suspension, which was the penalty recommended by the Grievant, himself. The length of the suspension was reasonably related to the seriousness of the conduct and the fact that, contrary to the Union's assertions, the Grievant had a poor disciplinary record, including two previous reprimands, one of which was for insubordination toward the High School Principal. The Grievant has not accepted the seriousness of his actions, but has instead chosen to blame others. It is clear that, having once assured the school secretary that S.F. was eligible to graduate, when the secretary discovered the credit shortfall the Grievant engaged in a deliberate course of misrepresentation to cover his mistake, thereby attempting to assure that he would not have to explain his error, or continue to deal with S.F., an admitted behavior problem, the following year. The Union's claims of disparate treatment also do not bear scrutiny. There is no evidence of any other faculty member receiving lesser discipline under similar circumstances and the comparison with Mr. Dickert's situation is not apt. The record indicates that Mr. Dickert believed in good faith that he was certified as an administrator and that once it became clear that he was not he took the necessary steps to obtain certification. The Union provided no evidence to support its claims against Mr. Dickert and the Board's decision not to discipline him cannot be used as a comparison to its actions regarding the Grievant.

The Union in Reply

The Union asserts that, in its attempt to disparage the Grievant, the District ignores the context within which the decisions regarding S.F. were made. Historically, the special education department has had to operate with minimal oversight and support from the administration. Special education teachers have had to handle their own disciplinary problems and develop creative solutions to academic problems of the students without guidelines or administrative input. Notwithstanding that the Grievant's actions were unprecedented and inappropriate, they must be viewed against a backdrop of administrative indifference. Thus, even though no student had ever received four credits for work study, before, there were no rules or guidelines precluding it. It should also be noted that other special education teachers had employed equally unorthodox strategies to assist other students in the past without administrative objection.

The District also does not credibly refute the fact that S.F. would not have been able to graduate without significant work study credits. There is no evidence to deny the Grievant's contention that the plan to provide S.F. with the work study credits was the result of the manifestation hearing. S.F. needed 7.5 credits in his senior year in order to graduate, but was only signed up for 3, clearly demonstrating that the rest were to be earned through work study. The Grievant was aware that S.F.'s past academic history strongly indicated that he would not pass his academic classes, thus he built in a "fudge factor" to meet this contingency. This

scenario is not refuted by any evidence presented by the District. The District accuses the Grievant of lying at many points, but his story is internally consistent, credible and unrefuted by District witnesses. Also, in order to support the unreasonable length of the suspension, the District exaggerates the Grievant's conduct and attempts to compound his "crime" by suggesting that his actions in requesting the false courses be added and credited by other staff made them unwitting accomplices to his wrongdoing.

An arbitrator has a duty to modify discipline where it is excessive, unreasonable or the result of an abuse of discretion. The record demonstrates that the penalty was unfair and, further, it is disingenuous for the District to suggest that the Grievant acquiesced in the year long suspension imposed by the Board, when the hearing transcript reveals that only the concept of a suspension, not the length, was discussed by the Grievant. The cases cited by the District in support of its action are inapposite and distinguishable. In *Re CENTRAL MICHIGAN STATE UNIVERSITY*, 101 LA 66 (1993) involved falsification of records of multiple students where there were no special needs or other extenuating circumstances, unlike the instant case. More on point is *THOMAS INDUSTRIES, INC.*, 83 LA 418, (1984), where the employee's honesty in admitting his actions and lack of self-interested motive were considered mitigating factors by the arbitrator.

The discipline should be reduced for a number of reasons. The District's theory that the Grievant was motivated by a desire to get rid of the student lacks evidentiary support and is inconsistent with the Grievant's efforts to prevent his expulsion the previous year. Further, all agree that had the student not graduated he would not have returned to school in the fall, so he would no longer have been the Grievant's student regardless, which the Grievant knew. Also, the District had a long history of lax enforcement of rules regarding grading and crediting as regards special education students. Arbitrators have mitigated punishment for more severe infractions than those here for that reason. Further, the Board clearly discriminated in that it chose to overlook the serious misrepresentations of Superintendent Dickert while imposing a one-year suspension on the Grievant. Finally, there is ample evidence that the actions of the Board were more based upon the Grievant's activities as a Union leader, than as a teacher. These factors support the argument that the penalty imposed was based on considerations other than the evidence, was too severe and should be remitted.

DISCUSSION

As a result of the Grievant's actions in attempting to alter the student's academic record, the District, subsequent to the Due Process hearing, issued a written reprimand and suspended the Grievant for one year without pay. The August 7, 2001 letter advising the Grievant of the discipline states as follows:

. . .

Pursuant to the direction of the Board of Education, you are hereby reprimanded for engaging in misconduct, immorality, neglect of duty and refusal to obey the rules and regulations of the Board of Education.

This reprimand is based on your conduct of preparing and submitting a document to the Guidance Department which falsely indicated that a special education student ("S.F.") had completed three courses for which S.F. had never enrolled or completed. By submitting the false document, you knew that the official transcripts of the Oconto Unified School District would be changed to reflect that S.F. had actually taken courses, completed courses and received credit for courses that S.F. neither enrolled nor completed. Moreover, you involved other employees of the School District in your actions such that they were unknowingly assisting you in the perpetration of an academic fraud. It is also apparent that you assigned more credits for S.F.'s completion of work-study than was appropriate or in any way consistent with the number of credits assigned for such courses in the past.

You claim that S.F. was not given full credit for work-study in the first semester and that you falsified documents in order to correct that mistake. Your explanation is unacceptable. Instead of following appropriate or reasonable procedures to correct such alleged mistake, you chose to create false documents, lie to your co-workers and attempt to create false transcripts.

Your conduct was completely unacceptable. Any teacher should know that it is inappropriate to give a student credit for taking a course for which the student never enrolled or completed. Furthermore, the School District's official transcripts constitute official verification to the student, universities, technical colleges, employers and any other person who requests such information, that the student has met the graduation requirements, completed all the courses indicated on the transcripts, and had rightly earned a diploma from the School District. Your conduct shows that you have no understanding of the importance of accurate transcripts.

Please be advised that the Board of Education views your misconduct as an extremely serious matter warranting extremely serious punishment. Your discipline includes this letter of reprimand in addition to the 12-month unpaid suspension from the employment with the Oconto Unified School District. Please be advised that the Board of Education expects to see no repeat of the type of conduct you have displayed in this matter. Any future violations of any school rules, acts of misconduct/immorality or neglect of duty will result in additional disciplinary action against you, up to and including termination.

On behalf of the Board of Education, I would like to express how deeply disappointed both the Board and I are with your actions in this matter.

. . .

The infractions prompting the District's action may be summarized as 1) attempting to falsify S.F.'s academic record to reflect satisfactory completion of courses for which the student wasn't enrolled; 2) lying to co-workers in order to make them unwitting accomplices in his scheme; and 3) giving S.F. an excessive number of work study credits. In consequence, the Board of Education found the Grievant guilty of misconduct, immorality, neglect of duty and refusal to obey the rules and regulations of the Board of Education, contrary to Article X of the collective bargaining agreement. While conceding the Grievant's wrongful conduct, the Union maintains that his actions were mitigated by a worthy motive and the fact that the rules regarding crediting for special education students were ill-defined and that the District was lax in their enforcement. The Union further maintains that there was a poor and biased investigation by the administration and that the severity of the discipline was, in part, based on bias on the part of the Board of Education.

The one-year suspension is within the disciplinary authority of the District under the language of Article X, so long as it is supported by just cause. This is reflected in the framing of the issue by the parties, which specifically focuses on the level of discipline imposed. The District argues, however, that the just cause analysis applies to whether discipline is warranted and, if it is, the employer is then at liberty to determine the appropriate level of discipline. Under this view, the arbitrator's role is limited to determining whether there is just cause for any discipline. If so, the employer's discretion to fashion the punishment is virtually unfettered except in rare cases where there has been a clear abuse of that discretion. This view relegates the arbitrator to a role similar to that of an appellate court, which is frequently bound by standards of review to uphold lower court decisions if they may in any way be supported by the evidence, rather than conduct a trial *de novo*. Civil courts operate under legal strictures not binding upon employers, however, giving rise to a presumption on appeal that the defendant has had the full benefit of due process of law before an impartial trier of fact. No such presumption applies in an employment setting. Where the employer serves, in effect, as both prosecutor and judge, there is an inevitable blurring of lines raising questions, at least, as to the impartiality of the proceedings. This is exacerbated by the fact that the employer is not limited beyond the language of the contract in making its determination as to the facts of the case or in the imposition of penalty. Also, employers, it is to be hoped, rarely find themselves in the position of having to sit in judgment of their employees in misconduct matters and, therefore, often lack experience in quasi-judicial proceedings. This is merely a recognition of the reality that, in undertaking to discipline an employee, an employer may have a number of interests at stake beyond due process and few guideposts to direct its action. The just cause principle seeks to ameliorate these concerns and, as such, permits the arbitrator to inquire, not only into the bare bones facts of the Grievant's conduct, but also into the propriety of the employer's response.

The Grievant's actions in modifying S.F.'s transcript to reflect credit for courses he did not take and in awarding him an unusual number of credits for work study are a matter of record and are not disputed by the Union. Further, at least as to the falsification of S.F.'s transcript, the Union does not contend that this was not serious misconduct, nor that discipline is not warranted. The August 1, 2001 letter of discipline issued to the Grievant references both acts, but clearly prioritizes the falsification of the transcript in explaining the District's rationale for the suspension. Since the Grievant's conduct is undisputed, and is, at least in part, agreed by all, including the Grievant himself, to have been wrongful and deserving of some level of discipline, I find the first prong of the analysis – just cause to issue discipline – to be established.

I turn to the question of whether the degree of discipline issued was appropriate or excessive. Many of the District's points are well taken. There is no question that the integrity of student records are central to the District's mission, both to the students and the community. Falsification of those records does a disservice to everyone. The student whose records are altered is represented to have a competence which he does not. Any other school or employer will have to rely on a tainted record in making admission or hiring decisions. Other graduates of the District may have the validity of their credentials called into question. The District's reputation within the educational community will suffer. In short, the Grievant's actions are a very serious matter, whatever motivated them.

On the other hand, the Grievant's actions cannot be evaluated in a vacuum, but must be viewed within the context of the environment in which they were taken. The record reveals that the Special Education Department at Oconto High School was allowed to, and expected to, operate with little administrative support or oversight and that the administration placed a high emphasis on improving the graduation rate of special education students. 2/ To that end, the Special Education faculty developed "creative" strategies in order to ensure that their students obtained the necessary credits for graduation. 3/ Prior to S.F.'s graduation, these practices were never challenged or questioned.

2/ In addition to the Grievant, Guidance Counselor Lisa Miller-Allen, Special Education teacher Danielle Sherman and IEP Coordinator Kim Ozak all testified that the Special Education Department operated with little administrative support. Unlike the regular faculty, special education teachers independently developed the course plans for their students, established their own curricula, determined the number of credits to be earned for individual courses and for work study and handled their own discipline problems. Miller-Allen further testified that the administration placed pressure on the faculty to increase the graduation rate due to the District's high number of dropouts.

3/ Lisa Miller-Allen testified regarding several students who were given multiple work study credits in the same semester to make it possible for them to graduate, and/or who were given more credit for the courses they took than that provided in the District's course handbook. Danielle Sherman testified that Special Education teachers would tailor the curriculum of low functioning students to permit them to meet the District's graduation requirements (i.e., a cognitively disabled student might receive an algebra credit for learning certain rudimentary math concepts without ever actually studying algebra).

In addition, the Union introduced three transcripts of students other than S.F. who graduated in the classes of 2000 or 2001 with credit deficiencies either in specific subject areas or in the aggregate number of credits earned under the District's established requirements.

Going into his senior year, S.F. had earned 16.5 credits toward the 24 needed for graduation, leaving him 7.5 credits short. A review of his transcript reveals that in the previous three years he had never had never been enrolled for more than 7 credits in any one year, nor had he earned more than 5.25. 4/ During his 11th grade year, he had enrolled for 5.5 credits and earned 3.5. At a manifestation meeting in March, 2000, S.F.'s mother expressed legitimate concern about the likelihood of her son obtaining the necessary credits to graduate on time, especially if he was only attending school half days, and was given the impression that the difference would be made up through work study. 5/ In the Fall term of the 2000-2001 school year, when the Grievant was on Family Leave, S.F. was enrolled for 2.5 credits, including 1 credit of work study. He failed all his academic courses that term, thus he went into his final semester needing 6.5 credits to graduate. In January, 2001, he was enrolled for 4 credits for the Spring term, including 2.5 credits of work study, 2.5 credits less than needed for graduation. Sometime in early 2001, S.F.'s mother had a meeting with Assistant Principal Todd Fischer regarding truancy issues. At that time, Fischer assured her that if S.F. satisfactorily completed his coursework he would graduate on time, an obviously incorrect statement. This was important to her because she feared that if he could not graduate on time S.F. would drop out and not complete high school. The reality of S.F.'s situation was discovered by the Grievant just prior to graduation, at which time he made the fateful decision to alter the student's academic record rather than seek to correct the crediting error from the first semester through Ms. Richter.

4/ S.F. obtained 2.5 credits, including ½ work study credits, in summer school after his 10th grade year. Thus, the actual number of credits he had earned during the regular school year was 14.0 over three years, or an average of 4.67 credits per year.

5/ In March, 2000, the District considered expulsion of S.F. due to his behavioral problems. Since he was a special education student, a manifestation meeting to determine if his behavior was linked to his emotional problems was required. The meeting was attended by S.F. and his mother, as well as the Grievant, Kim Ozak, Lisa Miller-Allen, Assistant Principal Elaine Pulver, Special Education teacher Steve Soull, Assistant Special Education Director Ronald Kapp and Guidance Counselor Dave Tanski. At the meeting, S.F.'s behavioral problems were determined to be related to his emotional disability and an Individualized Education Plan was developed for him in lieu of expulsion, which only required him to attend school half days and limited his interaction with other students while there.

The picture that develops is of a Special Education department with a defined goal of graduating the students enrolled in the program, but with virtually no guidelines as to how that was to be accomplished, or to what degree educational standards were allowed to be

compromised to meet the stated goal. It is within this context that the Grievant's actions must be evaluated. It is noteworthy that none of the educators who testified at the hearing agreed with the Grievant's actions in adding fabricated courses to S.F.'s transcript and he, himself, admitted it was a serious error. Thus, it is clear that at some point a line was crossed into the realm of unacceptable behavior, but it is not nearly as stark or well demarcated a line as the District contends.

The District maintains that the degree of the Grievant's misconduct was more than sufficient to merit the suspension. It emphasizes the serious nature of falsifying a student's record, both in terms of the District's credibility and the impact on future potential employers or educational institutions which would rely on the false transcript. The District also questions the Grievant's stated rationale for his action, arguing that the Grievant's goal was merely to graduate S.F. at any cost and thereby avoid the possibility of having him return to school, because he was a difficult student who the Grievant didn't like. The District also cites to numerous arbitration awards wherein falsification of documents was held to warrant termination to support its position. It relies most heavily on MUSKEGO-NORWAY SCHOOL DISTRICT, WERC CASE 55, NO. 54010, MA-9516 (BURNS, 6/24/97) and IN RE CENTRAL MICHIGAN STATE UNIVERSITY, 101 LA 66 (HOUSE, 1993) in support of its action.

There is no question as to the seriousness of the Grievant's actions. Nevertheless, as stated above, those actions must be viewed in context and, in this case, the context was one of a Special Education department which had a long history of "creatively" addressing the crediting problems of its students in order to help them graduate, and an administration content to not inquire too closely into the why's and wherefore's as long as success was achieved. The District's explanation for the Grievant's behavior is not credible in light of the testimony of the Grievant, S.F.'s mother and Assistant Principal Fischer that S.F. was preparing to drop out. If the Grievant had wanted to get rid of the student he need have done nothing more than assure him that he would not graduate. Thus, I am inclined to accept the Grievant's explanation that his goal was to correct a crediting error from the previous semester and chose what he perceived to be the path of least resistance to do it.

I do not find the arbitral precedents cited by the District to be on point. MUSKEGO-NORWAY involved an employee who falsified a medical report from his doctor in order to induce his employer to give him an extended medical leave. Thus, the employee's motive was to fraudulently obtain a contractual benefit to which he was not entitled. Here, the Grievant's motive was not to obtain something for himself, but to correct an error in order to provide to the student credits to which he believed he was entitled. In Re CENTRAL MICHIGAN STATE UNIVERSITY involved a professor who awarded passing grades to foreign students who had not done the coursework for his class. While, on its face, this case appears similar, there are important distinctions. In CENTRAL MICHIGAN, there were no extenuating circumstances mitigating the professor's actions, he simply gave grades to students who had not earned them. Here, the Grievant believed that S.F. had earned, and was entitled to, sufficient credits for graduation. As the Special Education department was apparently structured and operated at the time, that was his call to make. His error, and a serious one, was in the method he chose to

rectify the situation. Thus, this case has mitigating factors not present in either of the awards cited by the District. Nonetheless, the Grievant's misconduct was of a nature that undercuts the credibility of the institution he serves as should have been obvious even in the prevailing environment. As such it calls for discipline sufficient to impress upon him the gravity of his actions and dissuade him from engaging in them in the future.

Based upon the record as a whole, therefore, and for the foregoing reasons, I hereby enter the following

AWARD

The District did have just cause to suspend the Grievant without for misconduct. Under all the facts and circumstances, however, a 12-month unpaid suspension was unwarranted. The suspension is hereby remitted to 6 months without pay and the District shall pay the Grievant the requisite back-pay along with any other attendant benefits for the period of the remittur.

The Arbitrator will retain jurisdiction for a period of 60 days in order to resolve any issues surrounding implementation of the remedy.

Dated at Madison, Wisconsin, this 19th day of September, 2002.

John R. Emery /s/

John R. Emery, Arbitrator