

BEFORE THE IMPARTIAL HEARING OFFICER

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In the Matter of the Grievance of

L.P.

Under the Grievance Procedure of

MADISON METROPOLITAN SCHOOL DISTRICT

Case ID: 88.0059

Case Type: IHO

DECISION NO. 39925

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**Appearances:**

Tamara Packard, Attorney, Pines Bach, 122 W. Washington Avenue, Suite 900, Madison, Wisconsin, appearing on behalf of grievant, L.P.

Benjamin Roovers, Attorney, 545 W. Dayton Street., Madison, Wisconsin, appearing on behalf of the Madison Metropolitan School District.

**IMPARTIAL HEARING OFFICER DECISION**

Madison Teachers Inc. and the Madison Metropolitan School District selected the undersigned to serve as an impartial hearing officer as to a disciplinary grievance filed by LP. In her grievance, LP asserted she had been suspended for one day without just cause by the District.

A hearing was held in Madison, Wisconsin on February 28, 2023. A stenographic transcript of the hearing was prepared, and the parties thereafter filed post hearing briefs by April 27, 2023.

On or about November 22, 2021, the Sherman Middle School Principal made an announcement at the start of the school day reminding students to wear masks because COVID remained a health threat. Shortly thereafter, several 7th grade students in LP's classroom were not wearing their masks over their nose. What LP said in response is in dispute. Only the students and LP were present. But whatever was said, some students concluded from LP's comments that the absence of one of their other teachers, Mrs. Johnson, was due to COVID. Rumors spread thru out the school and upon her return to work, Mrs. Johnson was approached by students and told that LP had said she had COVID. An investigation into what LP said on November 22 followed.

Upon completion of the investigation, the District advised LP by letter dated January 3, 2022 that she was being suspended for one day. That letter stated in part:

On December 3, reports were made by students and staff alleging that you had made comments about a colleague's health status, specifically that you had informed students that this staff member had COVID.

When I asked you about this, you stated that you had talked to students about pulling up their masks because people were getting sick and that you did not recall mentioning "the other staff member" nor "anything about COVID." The incident was investigated further and found that you had made comments to the entire class about people getting sick with COVID and specifically named the other staff member as an example. In addition, students heard you saying that you were afraid you were going to get COVID because you had been around the other staff member a lot.

Consequently, the comments you made led students to believe that the other staff member did have COVID, which made them fearful for their health and prompted them to inquire if she did have it.

A couple initial observations are warranted. The precision of LP's recollection and that of the students who were interviewed is inherently suspect given the passage of time between the remarks which were made and subsequent investigatory interviews. Further, LP obviously has a self-serving motivation to deny some of the allegations made. On the other hand, the 7th graders may well have been focused on other matters at the time of the remarks or not paying attention at all.

LP concedes that she said "Please put your masks up. That's how people are getting sick these days. Like Mrs. Johnson." As I observed during the hearing, a student hearing those words would reasonably conclude that Johnson was sick with COVID. Further, as the District correctly observed in the suspension letter, "the comments you made led students to believe that the other staff member did have COVID, which made them fearful for their health and prompted them to inquire if she did have it."

Thus, whether or not LP made other COVID related comments, the remarks she admits she made were sufficient in and of themselves to cause students to be fearful and to damage LP's already fraught relationship with co-worker Johnson.

Whether the negative impact and fallout from LP's reference to "Mrs. Johnson" provides just cause for the discipline imposed presents a close question. There is no indication that LP intended her reference to Johnson to cause harm. On the other hand, earlier in November 2021, LP received a formal Letter of Expectation based on "concerns that several staff members had raised regarding hostile and disrespectful interactions they had experienced with you." It seems clear that one of those "staff members" was Johnson. In November 2018, LP received a Written Reprimand for "Inappropriate Verbal Interactions." In April 2016, LP received a written memo confirming District concerns "around the communications you have had with others, maintaining professional boundaries, and monitoring your degree of negativity on a consistent basis." Thus, it is apparent that the content and manner of LP's communication with others can be problematic and that the District has placed LP on notice three times of the need for change. As reflected by her November

22 remark regarding Johnson, it is apparent that the change the District sought did not occur. Given the impact of LP's remark and the failure of the lesser levels of instruction/discipline to bring about change, I conclude that there is just cause for the one-day suspension. Therefore, the grievance is denied.

Issued at the City of Madison, Wisconsin, this 26<sup>th</sup> day of June 2023.

**WISCONSIN EMPLOYMENT RELATIONS COMMISSION**

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Peter G. Davis, Impartial Hearing Officer