

**BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
BEAUMONT UNIFIED SCHOOL DISTRICT**

In the Matter of the Proceeding to Dismiss:

BRIAN CLEARY, Respondent

OAH No. 2022050885

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence by videoconference and telephone on November 3, 4, 7, 8, 9, and 10, 2022, and January 23, 24, 25, and 26, 2023. The Commission was comprised of the following members: Administrative Law Judge (ALJ) Mary Agnes Matyszewski, Ray Andrzejewski, and Scott Richards, Jr.

Kerrie E. McNally, Attorney at Law, Adams, Silva & McNally, LLP, represented complainant, Jennifer Castillo, Assistant Superintendent Human Resources, Beaumont Unified School District.

Carlos R. Perez and Alejandra Gonzalez-Bedoy, Attorneys at Law, Law Office of Carlos R. Perez, APLC, represented respondent, Brian Cleary, who was present.

On January 25 and 26, 2023, the Commission met to deliberate. On January 26, 2023, the record was closed, and the matter was submitted.

CASE SUMMARY

Mr. Cleary's interactions with a female high school student enrolled in his first period physics class during the 2021-2022 school year formed the bases of the allegations. Although Mr. Cleary's interactions with the student were immature and showed a lack of good judgment, they did not constitute immoral conduct. Complainant also did not prove that Mr. Cleary was dishonest or evidently unfit to serve. While complainant did establish that Mr. Cleary's behavior demonstrated a persistent refusal to obey district policies and regulations, the Commission concluded, based upon the evidence presented, and consideration of the factors set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, that the allegation sustained did not warrant Mr. Cleary's dismissal from the district. On this record, the statement of charges is dismissed, and Mr. Cleary shall be reinstated and awarded back pay with interest and benefits.

PROTECTIVE ORDERS

Exhibits 4, 25 through 43 inclusive, G, Q, R, U through Y inclusive, BB through DD inclusive, KK, KK2, FFF, HHH, III, MMM through PPP inclusive, SSS through ZZZ inclusive, and CCCC through KKKK inclusive, documents containing the names of students and parents of students, were received and contained confidential information. It is impractical to redact the information from these exhibits. To protect the privacy and the confidential personal information from inappropriate disclosure, those exhibits are ordered sealed. A protective order was issued on November 22, 2022, when the matter was pending. Another protective order was issued on January 26, 2023, when the matter was submitted. These sealing orders govern the release of

documents to the public. A reviewing court, parties to this matter, their attorneys, the California Commission on Teacher Credentialing, its attorneys, or designee, and a government agency decision maker or designee under Government Code section 11517, may review the documents subject to these orders, provided the documents are protected from release to the public.

In lieu of the students' names, initials will be used in this decision and shall be used in any transcript of the hearing if one is prepared.

FINDINGS OF FACT

Jurisdictional Matters

1. Mr. Cleary was employed by Beaumont Unified School District (district) as a science teacher. During the time of the alleged incidents, he was teaching Physics and Advanced Placement Physics (AP Physics) at Beaumont High School.

2. On February 18, 2022, K.M., a student in Mr. Cleary's first period physics class, notified administration of what she considered to be inappropriate behavior between Mr. Cleary and her friend, M.T., another student in his class. K.M. completed a witness statement form and testified at this hearing.

3. On March 1, 2022, the district placed Mr. Cleary on paid administrative leave so it could complete its investigation. The district interviewed students, obtained emails and texts, and interviewed Mr. Cleary. Notes summarizing those interviews were received into evidence and were essentially consistent with the testimony offered.

4. On April 1, 2022, Jennifer Castillo, the district's Assistant Superintendent, Human Resources, provided Mr. Cleary a letter enclosing a copy of the Notice of Intent

to Immediately Suspend Without Pay, Notice of Recommendation for Dismissal, Statement of Charges (Statement of Charges), and supporting materials. She informed Mr. Cleary of his right to a *Skelly*¹ conference “[b]efore any decision is made to go forward with the recommendation” to terminate and immediately suspend him from employment. Assistant Superintendent Castillo also provided Mr. Cleary with the identity of the *Skelly* officer and advised him the *Skelly* conference was set for April 19, 2022, at which time he would be given an opportunity to respond to the charges.

5. On April 19, 2022, Mr. Cleary sent a written response “in lieu of an in-person *Skelly* meeting.” He wrote that it was his “hope that, after reviewing the letter, you will agree dismissal is neither appropriate nor warranted.” Mr. Cleary wrote further:

K.M. . . . accused me of an inappropriate relationship with her friend, M.T. M.T. did not corroborate this. No wrongdoing ever occurred.

¹In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain “preremoval safeguards,” including “notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline.” The Supreme Court’s directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

M.T. is an emotionally disturbed [special education] student with kidney disease and a learning disability. She reported anxiety with group interaction, and retreated to the back of my classroom. She sat behind my desk where she did very little work. She spent most of her time there, sometimes accompanied by K.M. , and earned a very poor grade.

M.T. is one of 30-40 students who spent their lunch time in my room. She sometimes would check in with her 2nd or 4th period teacher, then return to my room. Her [special education] teachers allowed her to go where her anxiety was less intense. [Special education] teachers came to my room regularly to pass messages to M.T. or retrieve her when she needed to leave. Everyone knew where she was at all times.

I felt sometimes that M.T. crowded me as I [*sic*] at my desk. I told her there needed to be more distance between us. She responded with a vomiting sound, and then, crowded me less.

K.M. often joined M.T. behind my desk and I would have to work around them to access my computer or materials. They both put their feet on my desk, told outrageous stories, asked for advice, and competed for attention.

M.T. indicated to me that her kidney disorder was probably terminal within 8 years. At about the same time, I revealed

to all students and staff that I was receiving treatment for thyroid cancer. M.T. and I made deals with each other to ensure we both followed through with treatments we found intimidating or scary. I did my best to comfort her anxieties while encouraging her through her treatment.

M.T. claimed that K.M. was jealous of the time she spent in my room, and that K.M. had threatened to turn us in for “doing bad stuff” if she didn’t leave and eat lunch with her instead. I didn’t take the threat seriously as we were not doing anything wrong.

I was never alone with M.T. and had zero capacity to communicate with her outside of class or normal district email. She never had my personal contact info, and I never had hers. [Name] [*s/c*] occasionally asked for hugs and I sometimes allowed them, but only from the side, and only with one arm. At times, she would approach from the side and lean on my arm. Hugs and leaning never lasted more than a moment.

About two years ago, Mrs. Ponce reported to administration that a friend of M.T. approached her with disturbing news. The friend stated that M.T. was in love with the Engineering Teacher, Mr. Medore. M.T. also believed Mr. Medore was in love back with her. Mrs. Ponce filed multiple reports on the matter. Mr. Medore still works at [Beaumont High School].

M.T. had a similar experience with Mr. Barker at San Gorgonio Middle School [SGMS]. He still works at SGMS.

I participated in an interview on March 8. At no time was I invited or allowed to present evidence, background, or my personal perspective on the matter. The following day, I texted Joel Hudec in the hopes that he could facilitate another opportunity for me to speak. I was led to believe there would be ample chance to present evidence. Since then, however, I have been informed of the possibility of my dismissal without having had, in my view, an adequate opportunity to present my side of the story.

I made no advances or sexual comments toward M.T. I stepped up to help a person who appeared to need it. The help I offered was 100% wholesome. No harm occurred or was going to occur. The initial report by K.M. was rife with assumptions, inaccuracies, and false conclusions. The notice of suspension given to me on April 1, presents my motives in a false light and is both inaccurate and misleading.

Mr. Cleary requested that the charges be withdrawn, and he be returned to the classroom. He also welcomed the opportunity to be interviewed again.

6. After reviewing all the evidence submitted, including Mr. Cleary's letter, the *Skelly* officer issued a decision on April 21, 2022, concluding "it is appropriate for the District to move forward with your immediate suspension and termination."

7. On April 26, 2022, Assistant Superintendent Castillo signed the Statement of Charges in her official capacity. The Statement of Charges set forth the facts and laws on which the district was relying and sought to immediately dismiss Mr. Cleary from employment on the grounds of immoral conduct (Education Code section 44932, subdivision (a)(1)), dishonesty (Education Code section 44932, subdivision (a)(4)), evident unfitness for service (Education Code section 44932, subdivision (a)(6)), and persistent violation or refusal to obey regulations and district policies (Education Code section 44932, subdivision (a)(8)).² Complainant also alleged Education Code section 44939, subdivision (b), immoral conduct, as grounds to immediately suspend Mr. Cleary without pay. The charges stemmed from Mr. Cleary's interactions with an eleventh grade female student enrolled in his first period physics class during the 2021-2022 school year.

8. Mr. Cleary timely appealed the dismissal action, denying that grounds for his dismissal from employment existed, and this hearing followed.

Motion to Compel, Motions in Limine, and Pre-hearing Objections

9. Mr. Cleary filed a motion seeking the following records which the district refused to produce:

- Referral and Attendance documents for two main students in connection with the Charges, students K.M. and M.T.
- Student Behavioral and Disciplinary Records of students M.T. and K.M.

² Complainant did not allege Education Code section 44932, subdivision (a)(2), unprofessional conduct.

- I.E.P. records of Student M.T.
- All Communications relating to behavioral issues of M.T. or K.M. including any complaints made by teachers or staff.
- Documents relating to any prior investigation and/or complaints by the District of allegations of misconduct by M.T. against other teachers.
- All Communications relating to any concerns by staff members concerning the conduct of M.T.

Mr. Cleary's motion was granted. As noted below, those documents revealed that M.T. made allegations against other male teachers, claiming she was being "groomed" and "swabbed." The documents further showed that the district was aware of these issues but never put a behavior plan in place for M.T.

10. The parties filed motions in limine and oppositions thereto. Tentative rulings were issued and the parties were allowed to orally argue their positions at the start of the hearing, after which the tentative rulings were affirmed.³ Respondent's objections to hundreds of pages of newly disclosed documents of the staff training the district provided were sustained, but the district was allowed to ask question regarding that training.

Classroom Layout, Seating Assignments, and Environment

11. Mr. Cleary's physics class took place in a regular-sized classroom, not a larger-sized science classroom. The classroom had six tables arranged in rows of two,

³ The tentative rulings were marked and received in evidence as Exhibit 100.

with six stools around each table, three stools on each side. The tall tables had even taller stools that did not fit under the tables. At the back of the class on one side of the room there was a lab table that was also used to play ping pong, and next to it was Mr. Cleary's L-shaped desk with his teacher's chair. Mr. Cleary testified that this was a large, padded chair he brought from home as it was more comfortable than the one provided by the district. The district provided a black mesh chair that he also kept behind his desk, and his Teaching Assistant (TA) sat there when grading papers.

The shorter portion of the L-shaped desk was parallel to the students' tables with the longer side of the L running along the side wall. Mr. Cleary's chair was behind the shorter portion of the desk such that when he sat behind his desk, he faced the students, with his right arm along the wall. The other chair was to the left of Mr. Cleary's chair.

A diagram of the classroom showed that from the front to the back of the classroom, Tables 6, 4, and 2 were on the lab/ping pong table side of the room, with Table 2 being closest to the lab/ping pong table, at the back of the room. Tables 5, 3, and 1, were on Mr. Cleary's desk side of the room, with Table 1 being closest to Mr. Cleary's desk, at the back of the room. The main entrance to the classroom was through a door located by Table 5. There was also a door located on the side wall behind the lab/ping pong table which led to the hallway, printer, special education office, and restroom.

M.T. was assigned to Table 3, in the top left seat. However, she seldom sat in her assigned seat, often sitting at the ping pong table or at Mr. Cleary's desk in one of the chairs located there. No other students sat at Mr. Cleary's desk other than the TA. No other student sat in Mr. Cleary's chair.

The classroom environment was typically very loud. Students were allowed to move around the classroom while working on their labs. Because of the size of the classroom, students were also allowed to conduct their labs in the hallway or outdoors. During lab days, Mr. Cleary would play music in the classroom, and move around helping other students and answering questions. Students were allowed to talk with each other regarding their labs, and consult with students at other tables. On the days that Mr. Cleary gave instruction, students were expected to sit in their seats and listen. Students also sat in their seats and listened when the different groups gave their presentations. At the end of class, if students had completed their work, they were allowed to play ping pong in the remaining minutes of class time.

Students were graded on their projects, the research that went into the projects, and how well they presented their work. Each student was graded individually. There was no ability to repeat assignments or make up work, and there was no extra credit given to students.

K.M.'s Complaint to the District

12. K.M. met M.T. in Mr. Cleary's first period physics class during the 2021-22 school year. She and M.T. became "very, very close friends" who "texted frequently." During the second semester, K.M. notified school officials of her concerns regarding Mr. Cleary's and M.T.'s behavior. She later provided the district with her text message exchanges with M.T. K.M. said she and M.T. are no longer friends because of K.M.'s complaint. The district investigated the matter, interviewing students and Mr. Cleary, and prepared notes of those interviews. Students, district employees, and Mr. Cleary testified in this hearing. Below is a summary of the notes obtained during the investigation and the witnesses' testimony.

K.M. 'S WRITTEN STATEMENT

13. In her written statement the district asked her to prepare, K.M. wrote:

M.T. and Brian Cleary (teacher) are having too close of a teacher/student relationship. Cleary will ask M.T. personal questions about her home life & health issues. He also says she does things to make him "hard." At one point in time they started hugging & cuddling up in class. [Student] is a witness to these actions. In his 1st period physics class, M.T. doesn't do her work & gets an A. Cleary is giving M.T. "special treatment" & extra credit work which he does not give to others. I have brought up the situation multiple times to M.T. about what needs to be changed, but nothing has been done it has gotten to the point where they have started wrestling (illegible) chasing around for fun in class. Yesterday 2-17-22 after we did a lab M.T. was sitting on Mr. Clearys [sic] ping pong table in his room. Cleary sat next to M.T. & they started hugging & almost cuddling (illegible) shoulders, sitting super close, her leg over his.⁴ These events have gone on for months & other students have also noticed that this behavior is weird. Mr. Cleary has also told M.T. (past 3 months) that when she is around him, he wants to do things (sexual). [Student] has witnessed the cuddling & also thought it was weird. He has also brought up

⁴ As noted below, K.M. denied observing this during her testimony.

numerous times of how M.T. reminds him of his daughter & how she (daughter) should act. I have told M.T. to report him but she refuses, so it has come to this point.

K.M. 's Testimony

14. During the 2021-22 school year K.M. was a junior in Mr. Cleary's first period physics class. K.M. met M.T. in Mr. Cleary's class, and they were friends, but M.T. has not spoken to K.M. since K.M. notified the district of her concerns. When they were friends, K.M. "kept an eye out for M.T. in class" because she "wanted to make sure she was safe." She described M.T. as "very mature and grown-up for her age."

K.M. was assigned to sit at Table 3, with M.T., on the side facing Mr. Cleary's desk. M.T. only sat there sometimes; other times she sat at Mr. Cleary's desk. K.M. never sat at Mr. Cleary's desk, although she would visit M.T. when M.T. was sitting at Mr. Cleary's desk. Mr. Cleary did not allow any other student to sit at his desk, except for the TA, who sat in a chair at his desk.

M.T. never did the assigned classwork. She did not participate in the labs, she did not do any of the work. M.T. told K.M. that she earned credit other ways. She said that Mr. Cleary would send her around school looking for objects that he needed for his labs. Although Mr. Cleary did not allow extra credit work, he gave M.T. extra credit for doing these tasks. M.T. showed K.M. her grades, but K.M. could not confirm that M.T. received any extra credit. K.M. claimed she went with M.T. one time on one of these excursions, but K.M. did not earn any extra credit for doing so. Mr. Cleary allowed M.T. to grade other students' lab work. M.T. also cursed in class every day, and K.M. never heard Mr. Cleary tell her to stop.

K.M. did observe M.T. having panic attacks. They usually lasted 20 to 25 minutes and occurred three or four times per week. M.T. told K.M. that she went to Mr. Cleary's class during other periods. M.T. told K.M. that Mr. Cleary's class is a comfort zone for her, and she did not have anywhere else to hang out, so she would go to his class. M.T. told K.M. she went to Mr. Cleary's class every day for lunch; K.M. never went there at lunch. M.T. told K.M. she had lunch alone with Mr. Cleary. Based on what M.T. told her, K.M. thought that M.T. and Mr. Cleary were having lunch together alone.

Mr. Cleary and M.T. did "not interact in a typical student/teacher manner. They acted like a father/daughter type relationship." K.M. saw hugging between Mr. Cleary and M.T. They hugged chest to chest and also did side hugs, shoulder to shoulder. K.M. witnessed chest to chest hugs between them almost every day during class, their bodies were touching. She witnessed side hugs between them almost every morning. The hugs happened during class and when other students were present. The hugging began in September 2021 and lasted up in until February 2022. During their hugs, M.T.'s arms would be over Mr. Cleary's shoulders on his lower back; Mr. Cleary's arms would be on M.T.'s shoulders on her lower back. K.M. never observed Mr. Cleary tell M.T. to stop the face-to-face or the side hugs. The hugs made K.M. feel "uncomfortable" because she did not "believe a teacher should hug a student that way." K.M. thought the hugs were "inappropriate."

Mr. Cleary and M.T. chased each other in the classroom during class time when other students were present. It looked as if they were playing tag. She observed Mr. Cleary chasing M.T., and M.T. chasing Mr. Cleary. When they would "catch" each other, they would push each other, and then chase each other again. This chasing activity happened almost every day in class. K.M. does not know if either of them had something in their hands during the chase. Mr. Cleary did not chase any other

students in class, and K.M. has never seen another teacher chase a student. K.M. never heard Mr. Cleary tell M.T. to stop the chase.

M.T. wrote her name on things in the classroom. She wrote "[M.T.'s nickname] was here" on whiteboards, stools, tables, students' paperwork, and on Mr. Cleary's clipboard. M.T. wrote on items every day in class. No other students wrote on the whiteboard or other classroom items. M.T. used both permanent marker and an Expo marker to write on the items. She wrote on items during class time. K.M. does not know if Mr. Cleary took any action to remove M.T.'s writings.

Mr. Cleary wrote on M.T.'s shoes. Mr. Cleary wrote "Freaky Fresh," which is Mr. Cleary's nickname.⁵ He wrote on the inner sole of M.T.'s shoes. Mr. Cleary also wrote "Freaky Fresh" on M.T.'s cell phone case. K.M. recognized Mr. Cleary's handwriting because he would write on students' papers as part of his grading/feedback. Mr. Cleary never wrote on K.M.'s personal items, and she has never seen another teacher write on a student's personal belongings.

Mr. Cleary threw things at M.T. He threw ping pong balls and baby dolls at her a couple times per week. Mr. Cleary had little baby dolls around the classroom that he would grab and throw at M.T. Mr. Cleary did not throw ping pong balls or dolls at any other students.

Mr. Cleary and M.T. sat on the ping pong table together. They sat shoulder to shoulder. Their legs would be touching. She never saw M.T. put her legs on top of Mr. Cleary's leg. Mr. Cleary was facing the class and his arm was around M.T.'s shoulder. K.M. never heard Mr. Cleary tell M.T. to stop, and did not see Mr. Cleary scoot away

⁵ Mr. Cleary and M.T. testified his nickname is "Funky Fresh," not "Freaky Fresh."

from M.T. She also saw M.T. sit on Mr. Cleary's lap behind his desk. She was sitting on one of his legs and leaning her head on his shoulder. It looked like M.T. was taking a nap, and Mr. Cleary was just watching over the classroom. This happened "quite often." She never heard Mr. Cleary tell M.T. to stop sitting on his lap, and she never saw any other students sit on Mr. Cleary's lap. She never saw any other teacher allow a student to sit on the teacher's lap.

K.M. also saw Mr. Cleary rub M.T.'s leg in class when they were on the ping pong table. She observed this rubbing approximately five times. She never saw Mr. Cleary rub the leg of another student, and never saw any other teacher rub a student's leg. She observed Mr. Cleary rub M.T.'s back. He would rub it in a circular motion going up and down M.T.'s back. She observed this rubbing approximately 20 or 30 times and does not know why Mr. Cleary did it.

K.M. heard Mr. Cleary ask M.T. personal questions. He asked about her mental health, her physical health, her family life at home, and how her mother treats her. She never heard Mr. Cleary ask M.T. questions of a sexual nature. M.T. would also tell K.M. about her conversations with Mr. Cleary. M.T. also told K.M. that Mr. Cleary asked her medical questions, personal questions, and questions about her family life. K.M. overheard discussions between Mr. Cleary and M.T. Mr. Cleary told M.T. that he found her "intriguing" and "interesting."

Mr. Cleary told M.T. that she makes him "hard." K.M. does not know what they were talking about when Mr. Cleary made the "hard" comment. K.M. thought she might have been hearing things, and Mr. Cleary had not actually made that comment but realized she heard it correctly when M.T. told her he made that statement. K.M. thought perhaps Mr. Cleary was talking about something in the classroom when he said the word "hard," she was not aware that he was talking about M.T. until M.T.'s text

confirmed the comment was about M.T. M.T. also told K.M. that Mr. Cleary made sexual comments to her, but K.M. does not recall the specifics. K.M. originally testified that M.T.'s text regarding the "hard" comment was not the first time K.M. heard the comment, but she later testified that her knowledge of what the comment meant was based on M.T.'s text. She also later testified that she never heard Mr. Cleary say that M.T. made him hard.

K.M. explained how she and M.T. "orchestrated a plan" to make Mr. Cleary jealous. M.T. wanted K.M. to talk to M.T. about a boy M.T. saw on a social media platform to see how Mr. Cleary would react. K.M. identified the text messages exchanged between she and M.T., which included the "script" M.T. wanted K.M. to follow regarding the attempt to make Mr. Cleary jealous. The idea was for M.T. to know how Mr. Cleary felt towards her. K.M. originally did not want to "go along with the script" M.T. had written, but M.T. continued to ask K.M. to do it, and K.M. "finally gave in." K.M. did not think the script was a good idea. K.M. thought it was "strange or unusual" for M.T. to want to make Mr. Cleary jealous. K.M. thought M.T. had a crush on Mr. Cleary "because they were acting a little too close to each other."

K.M. and M.T. performed the script in class while Mr. Cleary was walking by them. K.M. believes Mr. Cleary heard them because he looked over at both of them "with a weird looking face like he was interested in the discussion." After the two performed the script, M.T. later texted K.M. that Mr. Cleary was acting "protective." It was not the first time M.T. had claimed that Mr. Cleary was protective towards her; she made that comment "quite often," but K.M. does not know the context in which it was made. M.T.'s text also said that Mr. Cleary told M.T. that he did not want her hanging out with boys who were either her age or older. K.M. never heard him say this, she got this information from M.T.'s text.

M.T., in addition, texted that Mr. Cleary asked M.T. if K.M. had “crossed the line” when K.M. asked M.T. how a medical appointment went. M.T. thought it strange that Mr. Cleary would comment on their conversation. It seemed like he was eavesdropping on their discussions, and asking M.T. personal questions. Mr. Cleary doing this “bothered” K.M. because she felt he should not eavesdrop on their personal, private discussions.

K.M. texted M.T. about Mr. Cleary brushing against K.M. in class. K.M. was leaning up against her table talking to another classmate, and Mr. Cleary “went right up behind me and brushed up against me,” “on my behind.” It was “quick,” K.M. was looking in another direction, and Mr. Cleary kept walking after he brushed up against K.M. After it happened, K.M. looked towards him, Mr. Cleary did not look at K.M. , and he did not say or do anything that indicated he had brushed up against her. K.M. thought it was “weird” and she mentioned it to another classmate who told her that it was fine, and she should just brush it off and not worry about it. K.M. also testified about her text exchanges where M.T. was absent and wanted K.M. to give Mr. Cleary a hug for her, but K.M. texted that doing so made her uncomfortable and she did not want to hug Mr. Cleary.

K.M. never heard Mr. Cleary ask M.T. any questions in class that were “overly personal.” On one occasion when M.T. and K.M. were discussing M.T.’s home life and how Child Protective Services (CPS) had been called, M.T. later texted that Mr. Cleary overheard that conversation. K.M. also provided the following text from M.T. (written as in original):

i feel like today Cleary hit comfort with me officially bc he
farts around me now and when he walks by me when i sit in

the black chair⁶ he doesn't even care about my personal space he just brushed against me like tf @ i can't tell if he feels like I'm annoying and in the way, or if he feels like i'm just a student he's trying to help support, or if he's growing an actual attachment i'm so confused to be honest!

K.M. never discussed M.T.'s "fart" comment, but "thought it was a little weird." K.M. did observe Mr. Cleary brush up against M.T. "quite a few times," approximately three or four times a week. M.T. told K.M. that Mr. Cleary invaded her personal space, the two would be "super close with each other and Mr. Cleary would be in [M.T.'s] bubble or her space."

In another text, M.T. asked K.M. to confirm that Mr. Cleary was "alive" for M.T.'s "peace of mind" one day when M.T. was absent. K.M. thought the request was "weird." Another text contained M.T.'s concern about wearing a rash guard to school during spirit week. M.T. thought Mr. Cleary would ask her a lot of questions about it. K.M. "thought it odd" that Mr. Cleary would ask any questions, and she advised M.T. not to answer his questions as it was not his business. There were some texts K.M. did not believe, such as when M.T. told her that Mr. Cleary told M.T. that she reminded him of his daughter because that "seemed weird" and K.M. never heard Mr. Cleary say that to M.T.

M.T. sent K.M. a text message claiming Mr. Cleary told M.T. he had "grow a attachment and a bond" [*sic*] with M.T., which concerned K.M. because "a bond with a student is unprofessional." K.M. was concerned for M.T.'s safety around Mr. Cleary.

⁶ The black chair was the district-provided teacher chair.

K.M. was concerned by M.T.'s text that she was going to "take the leap" and open up to Mr. Cleary. K.M. was also concerned regarding a text from M.T. about her "territory" because M.T. wanted to "claim" Mr. Cleary as her own.

M.T. texted K.M. that Mr. Cleary told M.T. that seeing her that way "fucked [him] up," and he went home depressed. K.M. did not ask M.T. to explain the text but thought a teacher should not get "messed up" or go home depressed when seeing a student in a bad state of mind. K.M. was concerned because she thinks a student should not have an effect on the teacher unless it is schoolwork-related. K.M. worried that M.T. having such an impact on Mr. Cleary would affect how M.T. learned in class.

M.T. did review emails on Mr. Cleary's computer in class. M.T. told K.M. that Mr. Cleary would leave his computer open, and she could see all his emails. M.T. texted K.M. that she was looking at Mr. Cleary's emails and saw an email regarding herself from her "case carrier" that stated something to the effect of: "it has been brought to my [case carrier's] attention" or "I [case carrier] am aware of M.T. behavior in your class . . ." After seeing that email, M.T. was afraid she would be switched out of Mr. Cleary's class.

K.M. never saw another teacher interact with any student like Mr. Cleary interacted with M.T. When she saw their interactions, "it made me feel uncomfortable." M.T. and Mr. Cleary were "all touchy and loving but in a creepy way." She told M.T. that the interactions with Mr. Cleary were "weird and made me feel uncomfortable." She acknowledged that part of what made her uncomfortable were M.T.'s texts. K.M. told M.T. that if M.T. did not notify the district about the behavior, K.M. would do so.

Much of K.M.'s testimony was not credible and was unsupported by other credible evidence, as discussed below. Further, much of it was based on M.T.'s text

messages, most of which were simply not true. Although complainant argued that K.M. observed more than other students because she was looking out for M.T., so that was why she saw things in the classroom that others did not see, that argument was not persuasive. Instead, it appeared that K.M. incorrectly thought M.T. was receiving special treatment and set out to get Mr. Cleary fired. Her participation in the script to make Mr. Cleary jealous also cast doubt on her credibility. It showed she shared an emotional bond with M.T., and was willing to participate in a scheme to embarrass Mr. Cleary. Most of K.M.'s claims were unsupported, and some of her testimony directly contradicted her written statement and texts and was internally inconsistent. In short, she was not a reliable witness.

M.T.'s Testimony

15. M.T. is the student at issue in the statement of charges. During the 2021-22 school year M.T. was a junior at Beaumont High School enrolled in Mr. Cleary's first period physics class. There are six periods in the day with two lunch periods. Students attend each class, once a day, five times per week. M.T. has an Individualized Education Plan (IEP) with her primary disability identified as Emotional Disturbance, and her secondary disability identified as Specific Learning Disability. She has been receiving special education services since 2013. Of note, despite repeated administration emails and testimony about putting a behavior plan in M.T.'s IEP because of her actions involving other male teachers, no such plan was ever put in place. Further, as found below, contrary to the statement of charges, it was never established that Mr. Cleary participated in developing M.T.'s IEP, other than to provide input regarding physics. He certainly was never a part of the IEP meetings regarding M.T.'s behaviors with male teachers.

M.T. liked Mr. Cleary as a teacher. He made her feel safe in his class. The environment in his class was very loud. Mr. Cleary would give instructions and packets of the assignments to the students. All the students knew what they had to do. Mr. Cleary would play music and "bounce around to each group" to make sure they were on task and to "address appropriate" questions. Students were allowed to walk around the classroom, and to perform their labs outdoors or in the hallway.

M.T. was assigned a table in Mr. Cleary's classroom but did not sit there on a regular basis. She sat at the ping pong table or with the TA at Mr. Cleary's desk. Sitting at the desk with the TA made her more comfortable. She enjoyed the class better if she sat with her back up against something with no people walking behind her.

On one occasion, M.T. went to Mr. Cleary's class before school. She does not recall her junior year schedule, so did not recall going to his class during second or fourth period, and "perhaps maybe" she went to his class during third period. She could not recall if she had her Learning is Power (LIP) class, a special education study skills class, during fourth period, but during that class she would go to Mr. Cleary's classroom "when [her] work was finished with permission." When asked to explain, M.T. testified that she did not want "anyone to be misled" that she was in his classroom without her teachers' knowledge. All of her teachers knew she was in Mr. Cleary's classroom. She went there during her LIP class two times per week. When she went to his classroom, she would sit and listen to instruction and observe the labs.

She went to Mr. Cleary's class whenever she had a panic attack, and he helped her. He asked her what she needed, and if he could get her anything, and he got her water. She claimed when this occurred he was teaching class. She said he would come and "direct the [panic attack] issue and then go back to teaching." On cross-

examination she later said these panic attacks occurred during her first period physics class.

M.T. graded other students' papers. She graded "a couple students' work with a TA." Mr. Cleary would distribute labs, and the students would take notes on the labs and after he collected the work, she and the TA would grade it. There were no occasions when she graded work alone without the TA. M.T. and Mr. Cleary discussed taking AP physics during her senior year. He told her that she "could have been better challenged by the work" so should consider taking AP physics. She received a C or D grade first semester and an A grade second semester.⁷

M.T. "daily" wrote "[M.T.'s nickname] was here"⁸ on items in the classroom. She "wrote everywhere." She wrote on the whiteboard, ping pong table, desks and tables. She used both erasable and permanent markers. Mr. Cleary never disciplined her for writing on items in his classroom. He would just wipe off anything on which she had written, and "he knew it bothered my OCD [Obsessive Compulsive Disorder]" when it was taken down.

When asked if she and Mr. Cleary played chase, she testified it was not "chase" to get away, it was more like she would hurry towards Mr. Cleary to get something away from him. She "would not call it 'chasing,'" it was "more like speed walking." She would speed walk towards Mr. Cleary to get whatever "I had or he had," and she wanted it back, and she would catch him, "trying to get back an object such as a

⁷ This grade was given after Mr. Cleary was placed on leave, so does not appear to have been the grade he gave Marissa.

⁸ Some students testified she wrote "[M.T.'s nickname spelled differently] was here."

marker or clipboard," a lab he was looking at, or some article of paper. The bumping never happened intentionally while they were speed walking. The classroom was so small, with so many labs going on and stools pulled out, that when Mr. Cleary would stop, she would keep going and "bump" into him. Sometime Mr. Cleary "bumped" her when he was walking past her because the area between the desks and whiteboard were very narrow. When this happened, Mr. Cleary would "continue on or say 'excuse me.'" It was not intentional or done in a negative, or harmful manner; Mr. Cleary never pushed her "in an inappropriate manner."

M.T. smiled when asked if Mr. Cleary threw things at her, admitting he threw ping pong balls at both her and the TA. She claimed "a few times perhaps" he threw markers, but never pencils at her. When asked if Mr. Cleary had a nickname, she answered "perhaps, it depends." When asked if Mr. Cleary used the nickname "Funky Fresh," M.T. answered that he "spoke about it, yes." She then claimed she wrote the words "Funky Fresh" on her cell phone case and on her shoes. She denied Mr. Cleary ever wrote on her personal items, claiming "I wrote on my own shoes." M.T.'s answers clearly demonstrated her lack of credibility because Mr. Cleary had already admitted to the district that he wrote "Funky Fresh" on M.T.'s belongings.

M.T. admitted that she gave Mr. Cleary side hugs "a couple times." She did not remember leaning on his arm and putting her head on his shoulder. She explained that the "two hugs" she gave him occurred when he was standing at the ping pong table, she gave him a hug, and he went back to playing ping pong. She hugged him on the side; he did not really even touch her, it was more like a pat on the back. Mr. Cleary never hugged her, he put his hand behind her to reciprocate a side hug but nothing more than that. He did not hug her with two hands and they did not front hug. She agreed it would not be appropriate for either of them to "face-to-face hug."

M.T. did not remember Mr. Cleary ever telling her that she was “interesting.” She denied he ever told her she was “intriguing.” She admitted that Mr. Cleary did tell her she was “intelligent.” M.T.’s testimony was contradicted by her text message exchange with K.M. where she wrote (punctuation as in original):

Cleary said..”...The things you say.. I find you very intriguing
the things you say are very interesting” And then early in
like class he was like “this song I think it’s the Italian that
gets me kinda hard”

I was like uhhh lovely..? [scared face emoji]

M.T. claimed her text regarding Mr. Cleary’s statement about being hard was a “misconception,” claiming “a lot of his music was a different language, [it was] Italian.” However, this testimony did not explain that text. She denied that Mr. Cleary ever told her that she made him hard or said anything to her she thought was inappropriate or sexual. He never touched her in an inappropriate manner. An administrator told her that she told another student something about Mr. Cleary being hard, but she does not recall making that statement. Of note, M.T. was smiling while giving this testimony, casting doubt on her credibility.

M.T. told Mr. Cleary about issues with her health. When asked if he told her that he had cancer, she testified the “whole class was aware of this” diagnosis. She told Mr. Cleary about her stepfather’s death. She could not recall discussing boys she was “interested in” with Mr. Cleary. She did not remember talking to Mr. Cleary about boys. Her testimony was contradicted by her text messages telling K.M. Mr. Cleary “was like maybe don’t hang out with ‘boys.’”

M.T. was asked to explain the following text (punctuation in original):

I was in clearys at 1st lunch he said seeing me the way he did yesterday fucked him up and he said he went home depressed. Tho he said it wasn't my fault

I just feel like my mask is getting weaker and weaker and I'm scared

She claimed that this text was sent a day following a panic attack. Mr. Cleary told her he did not like seeing her like that, and it messed him up, and he went home the next day and was depressed. She claimed that he asked her if she was okay and told her that it "fucked him up" and "he went home depressed" but she believes "he meant it in a joking manner." She thought "he had concern for my well-being and I think it bothered him I was so frustrated." Upon further questioning, M.T. later claimed that Mr. Cleary did not use the F word, that was her word. She also claimed he made these comments when her peers were around but could not recall when he made the statements. He asked her whether what had affected her was still affecting her, told her his classroom was available for her, and she thanked him.

M.T. identified the witness statement she prepared for the district. When the initial allegations took place, she was told to write an incident report. She was "trying to figure out what they were trying to tell me and write it all down at once." When she filled out the statement, she "knew a little bit of what had been reported regarding Mr. Cleary." She was "trying to process it though" she "did not understand fully." In her statement she signed on March 1, 2022, M.T. wrote (errors in original):

I was told that I said to a student something in the regard to Mr. Cleary being hard. it is not in my nature to speak in this way or tell people stuff like that this is a very serious

allegation. I remember months ago talking to a friend about him in a overwhelming sounding manner because I try not to miss school when sick and she may have misinturprited it by thinking my health or something wouldn't be put first. I was overwhelmed because missing school all around makes me anxious and nervous to fall behind and even more so when there are people I truly care about there and hate letting them down. I don't recall say anything along the lines of Mr. Cleary being hard at all he is a good teacher and not in his nature to speak like that this was definitely misscommunication and person probably misunderstood what I said it is often very loud in his class due to his labs and conversation. perhaps it was loud and I maybe like this is not very likely possible said "oh it sounded like he said something (illegible) about him being hard, but he said

" I'm sure I would have reasure to what he might or said aside from what something can sound like because he often talks fast and we are all just trying to keep up and things can be misinturprited. if her were to have said something as forward as that I would have asked for a repeate or clearification or ask a peer what they heard. Whatever it may have been about the lab parts or what have you or perhaps him just being a hard teacher if it was something intentional as that im more that positive I would remeber but can't say I do because not really like him to say that stuff. I've reasured this person that Im totally good, fine and

am comfortable and come to school to for myself because I can't miss work and fall behind and miss school makes me feel like ive let my teachers I care about down.

M.T. ate lunch in Mr. Cleary's class "every day along with everyone else." She was not the only one in his classroom during lunch. There were clubs that Mr. Cleary ran in his classroom and supervised during lunch. There were perhaps 40 or 50 students present during lunch. Many of the students were in the ping pong club, she was not, she just liked to watch. "Lots of students sat and ate or watched the ping pong tournaments." She never had lunch alone with Mr. Cleary.

M.T. presented as one who clearly loved the attention she was receiving and she appeared untruthful. It appeared she had written false texts to K.M. and then tried to explain them away at this hearing. Her testimony seemed deliberate, contrived, and intended to exculpate Mr. Cleary. That impression was only strengthened by the evidence of her prior false claims against other male teachers as detailed below. In addition, her testimony was contradicted, not only by her text messages, but also by Mr. Cleary's admissions made during the district's investigation. However, it was overall consistent with what other students observed. It was also consistent with Mr. Cleary's testimony that nothing inappropriate occurred. In sum, she was a non-credible, unreliable witness.

Health Care Plan in M.T.'s IEP

16. Cecilia Keegan is a district nurse. She described her duties and responsibilities at Beaumont High School. M.T. had a care plan in her IEP because of her health issues. M.T.'s physician had prepared orders for the school, which Ms. Keegan used to create the health care plan that was part of M.T.'s triennial IEP. The

health plan contained a chart with two columns, one titled "If you see this" the other titled "Do this." The chart contained four boxes, three of which dealt with M.T.'s physical issues. The fourth box told staff that if M.T. "seems upset, angry, or overwhelmed. May shut down," then staff was to "Offer her a 5-7 minute break outside away from other students."

Ms. Keegan testified that M.T.'s health care plan allowed accommodations for her condition. Because of her kidney condition, she was allowed to use the restroom as often as needed. M.T.'s physician also recommended that because of her anxiety, she should be allowed to "step away," so that was also incorporated in her IEP health care plan. Ms. Keegan testified that the physician's order was "very vague," simply stating for her to be "away from other students." M.T.'s stepfather had recently died and that was one of the reasons for her anxiety. M.T.'s mother told Ms. Keegan that M.T. was having a very hard time, and what helps M.T. is to spend some quiet time by herself, and then she is "usually ready to go."

Accordingly, allowing M.T. to take five to seven minute breaks was part of her IEP accommodations. There were no limitations placed on the number of breaks she was allowed to take, nor was she directed to go anywhere specific to take her breaks, but she was expected to return to class afterwards. There were never any changes made to the health plan, and all these accommodations were still in place when M.T. was a student in Mr. Cleary's classroom.

Other Students' Testimony

17. Students in Mr. Cleary's first period physics class, who were eleventh and twelfth graders during the 2021-22 school year, testified, and many prepared written statements. They were also interviewed by the district, and their testimony was mostly

consistent with the district's notes of those interviews. Although every student did not witness every event alleged, each student witnessed most of them. The students were credible, and appeared to be trying their best to recall the events.

STUDENT N.M.

18. N.M. was an eleventh grader at Beaumont High School during the 2021-2022 school year. He was in respondent's first period physics class with M.T. N.M. sat at Table 1 in the middle bottom row seat, which was the row closest to Mr. Cleary's desk with his back to Mr. Cleary's desk. M.T. was assigned to Table 3, but more often sat in the black chair at Mr. Cleary's desk. At the beginning of the school year, N.M. heard Mr. Cleary tell M.T. to return to her table, but eventually he stopped. No other students sat at Mr. Cleary's desk other than possibly K.M. M.T. would also socialize with Mr. Cleary at his desk; only a few other students ever talked to him at his desk. Mr. Cleary spent half the class time at his desk, the other half walking around; when at his desk he would be "mostly" on his computer.

Mr. Cleary interacted with the students. He would go up to them if they needed help on their projects. Each table group would have different assignments, they would do a lab about the assignment, and present it on Tuesdays or Wednesdays. If Mr. Cleary was giving a lecture, students would sit at the tables. While working on labs, students were free to move around the classroom. It was a pretty noisy classroom environment. Students could also work on their labs outside; there is a door leading from Mr. Cleary's class to the outdoors. Mr. Cleary would play music on his computer. If students finished their labs, they could do other activities, including playing ping pong, in the last few minutes of class time; playing ping pong did not happen "very often" during class.

N.M. described Mr. Cleary as a "pretty cool and chill," "friendly" teacher. Mr. Cleary was "weird in a good way, funny weird." Mr. Cleary was a "strict teacher when he gets angry," but N.M. could not think of any examples. N.M. knew M.T. went to respondent's class during lunch because he and M.T. have the same lunch period, and he would sometimes go to Mr. Cleary's class and see M.T. there. Mr. Cleary ran a ping pong club at lunch time, N.M. was not part of it. When he went to Mr. Cleary's class at lunch, there were approximately 35 other students in the class.

N.M. observed M.T. put her head down on her desk, not do her assigned classwork, and socialize with other students at her table or with Mr. Cleary. M.T. regularly cursed every day in class whenever she got mad. She would use the "F" word. Mr. Cleary "most often" told M.T. to stop swearing. All the students heard her swearing, and the class would react by getting quiet to which M.T. would respond, "Oh, sorry." Other students in class did not swear on a daily basis like M.T. did.

Mr. Cleary and M.T. engaged in "horseplay" in class possibly three or four times. They would chase each other around the classroom, and shove and push each other. N.M. does not recall the context of the chases. He saw M.T. chase Mr. Cleary but cannot recall if Mr. Cleary chased M.T. He did see that M.T. would charge at Mr. Cleary trying to push him, and Mr. Cleary would push M.T. with his back. They would be laughing while engaging in this behavior, it appeared they were having fun. N.M. recalls one of them running with a whiteboard marker but does not recall who was holding it or if one of them was trying to grab the marker from the other. Mr. Cleary never told M.T. to stop, and he did not horseplay with any other students.

M.T. wrote "[M.T.'s nickname] was here" on "things" in class every day, but he did not elaborate on what items she wrote. One time when N.M. was about to leave at the end of class, he saw Mr. Cleary and M.T. hug face-to-face while standing by Mr.

Cleary's desk. M.T. hugged Mr. Cleary with both of her arms. Mr. Cleary had his arms leaning against his desk and N.M. did not recall if Mr. Cleary moved his arms to hug M.T. back. Mr. Cleary did not push M.T. away or tell her to stop. He does not recall any other students hugging Mr. Cleary. N.M. never saw Mr. Cleary touch M.T. inappropriately or heard him say anything inappropriate to M.T.

N.M. overheard M.T. and Mr. Cleary talking about their childhood and heard her tell Mr. Cleary about her health. He never heard Mr. Cleary say anything about his health to M.T. Mr. Cleary and M.T. discussed health "often," "approximately five times," but N.M. cannot recall any specifics. Mr. Cleary and M.T. had those discussions at Mr. Cleary's desk. It did not appear they were having a private discussion. He does not recall Mr. Cleary or M.T. sharing their health issues with other students. He does not recall Mr. Cleary saying anything about his health other than one time telling the class he had metal plates in his knees.

N.M. never saw any other teacher act how Mr. Cleary and M.T. acted last year. He acknowledged that in class he primarily focused on his work; he was not keeping an eye out for M.T.

STUDENT L.B.

19. L.B. was an eleventh grader in Mr. Cleary's first period physics class during the 2021-22 school year. L.B. was assigned to the middle seat of Table 6, in the row farthest from the front of the class, facing Mr. Cleary's desk. L.B. knew M.T. from class and met her during their sophomore year. M.T.'s assigned seat was diagonally to L.B.'s left. M.T. sat in a few different seat at the Table 3, the bottom left and the top right seats. Mr. Cleary usually walked around the classroom.

In the beginning of the year, M.T. sat in her assigned seat, but towards the middle of the year she sat at different tables or at Mr. Cleary's desk. L.B. could not specifically recall, but it "feels like" she observed M.T. with her feet up on Mr. Cleary's desk. No other students were at Mr. Cleary's desk like M.T. M.T. did not complete her work. She did not participate in labs and L.B. was confused as to why she did not. Labs were "a big part of how we were graded" so L.B. did not know why M.T. did not participate.

L.B. described the atmosphere in the classroom as follows: the students were in table groups and would do the assignments with their group. There was a lot of talking and the classroom was loud because the students collaborated. However, when a group was presenting their lab results, the classroom would be quiet while the rest of the students listened to the presenting group. L.B. was not sure M.T. listened to the groups making presentations.

M.T. frequently cursed in class. She use the "F" word, the "MF" word, the "B" word, and the "S" word. She was "pretty loud, loud enough to get your attention" and L.B. would look over at her. L.B. does not recall if M.T. swore while at Mr. Cleary's desk. She never heard Mr. Cleary tell M.T. to stop swearing. L.B. does not think that cursing is appropriate at school. There is a rule in every classroom to be respectful and to not use swear words. It was "distracting" when M.T. swore and "threw me off guard a little bit." She never heard any other students curse in Mr. Cleary's class.

There was also a rule prohibiting horseplay in class. However, Mr. Cleary did not follow that rule. Once or twice a week, Mr. Cleary would be "kind of walking fast in the classroom" and M.T. would be following him. It looked like it was a "chasing game," a "game of tag with fast walking." Mr. Cleary and M.T. engaged in this activity "pretty frequently." It looked like Mr. Cleary was trying to get away from M.T. L.B. could not

recall if Mr. Cleary chased M.T. M.T. would “catch Mr. Cleary” and try to get something that was in his hands. M.T. would be hugging Mr. Cleary from behind to get the item. It appeared to be a game. L.B. thought it was “distracting,” it “gets your attention,” it was “uncomfortable,” it “made me uncomfortable, I felt I had to look.” No other students chased Mr. Cleary like M.T. did. L.B. never heard Mr. Cleary tell M.T. to stop. She never observed Mr. Cleary push or shove M.T. or touch her in an inappropriate way.

M.T. wrote her name on things. She wrote “[M.T.’s nickname] was here.” L.B. remembers seeing M.T.’s writings on things “a lot.” L.B. never heard Mr. Cleary tell M.T. to stop writing on things. L.B. did not personally know that M.T. went to Mr. Cleary’s classroom during other periods, but she heard from other students that M.T. would come in during their classes and that made her “confused” because L.B. never went to Mr. Cleary’s classroom other than during her assigned period. L.B. and her friends questioned why M.T. went to Mr. Cleary’s classroom during other periods, but she never asked M.T. or district staff why.

STUDENT E.E.

20. E.E. was a senior in Mr. Cleary’s first period physics class during the 2021-22 school year. E.E. was assigned to sit at Table 1, and sat in different seats at the table. Mr. Cleary was always moving around, helping students with their work but sometimes sat at his desk. Mr. Cleary also allowed the TA to sit behind his desk.

E.E. described Mr. Cleary as a “fantastic teacher.” Mr. Cleary was “always really helpful, he made me understand physics a bit and I am not a very science student.” Mr. Cleary’s teaching style was one of having a curriculum that was “very well polished.” Students would work on projects to understand how physics works. During second

semester they would do the same projects, but Mr. Cleary's expectation was that students would do them better because they had worked through the problems before. Classes were "very chaotic but in a good way." There were a lot of things going on at once as each table was working on their own project. Students were allowed to move around and look at other projects. There was lots of talking within the groups.

M.T. was a classmate with whom E.E. talked "time to time," but they were not friendly. M.T. was assigned to Table 3, but she usually did not sit there. Instead, she sat at Mr. Cleary's desk or sometimes on the ping pong table. It was "pretty rare" for her to sit at Table 3. M.T. never did her work as far as E.E. knew. He does not know what she did. The class work was "very physical." The students were making things but M.T. usually was not a part of her group. She used her cell phone during class, socialized, or was on Mr. Cleary's computer. M.T. "often cursed in class." She used curse words "every two sentences." Mr. Cleary never told her to stop.

Mr. Cleary and M.T. chased each other in the middle of the classroom like they were playing tag. The tag/chasing happened both ways, with Mr. Cleary chasing M.T., and M.T. chasing Mr. Cleary, although more often M.T. chased Mr. Cleary. E.E. described the chasing as being "closer to running" than walking. He does not recall if they had objects in their hands. The two also poked at each other like they were tickling each other. The chasing and poking happened "pretty often." Mr. Cleary did not chase any other student, and E.E. never saw another student chase Mr. Cleary. E.E. has never observed any other teacher engage in this behavior.

M.T. wrote her name on things in the classroom. She wrote "[M.T.'s nickname] was here" on the whiteboards, on the table, and sometimes wrote with lead pencil. He never observed Mr. Cleary telling M.T. to stop. Mr. Cleary would "playfully" throw things at M.T. such as markers or pencils. He never threw things that other students.

E.E. observed Mr. Cleary and M.T. give each other side hugs and saw them sitting on the ping pong table together. He was coming into the class one morning, it was pretty early, and the two were sitting on the ping pong table and talking. He could not tell what they were saying because they were whispering but it did not seem like a "normal student/teacher conversation." "The setting of it and how it was, was a bit intimate." They were sitting close together, but he cannot recall if they were touching. M.T. leaned on Mr. Cleary and put her head on his shoulder. There were approximately six or seven other people in the classroom when this occurred. The two were sitting pretty close, but "from this angle I was looking I did not want to look." He could have heard their discussion but he "chose to zone out because I did not want to meddle in their business." He described this incident as "intimate, the whole setting, she was there early, it just felt intimate, and it was a whisper not really like a talking."

E.E. spoke with friends at school about how weird it was that M.T. would be in Mr. Cleary's class when it was not her assigned period. E.E.'s friend who was in Mr. Cleary's physics class during a different period talked with E.E. about it being weird that M.T. came in to Mr. Cleary's class during that class.

E.E. also observed M.T. in Mr. Cleary's classroom after school during the ping pong tournament. E.E. never had lunch at Mr. Cleary's class, he participated in the ping pong club during a different lunch time. Mr. Cleary supervised the ping pong club during lunch, and students could play ping pong at the end of class.

STUDENT D.H.

21. D.H. was a twelfth grader during the 2021-22 school year in Mr. Cleary's first period physics class. He previously had Mr. Cleary for geophysical science during his freshman year. He thought Mr. Cleary was a fair teacher, "more of a laid back

teacher, he was not constantly lecturing, he was not a strict teacher.” He liked Mr. Cleary as a teacher because he let the students teach themselves. Mr. Cleary let the students learn from their own research, and if they had a problem he would help them.

D.H. sat at Table 1 in the top right seat. At the beginning of the school year, Mr. Cleary created a layout of the different subjects the students would be learning. Each time there was a new topic, Mr. Cleary would walk to the table groups, explain that topic, and then students would take pages of notes from their textbooks or other sources regarding the topic. On Mondays, Wednesdays, and Fridays, students would take notes and create a lab about that subject. Mr. Cleary played music on those days and students were allowed to move around and talk. Students were allowed to work on their labs both inside and out of the classroom, and class was pretty loud. Students would present their labs on Tuesdays and Thursdays. Mr. Cleary walked around the classroom helping students at their labs, he was only at his desk to take attendance.

D.H. knows M.T. from class, but is not friends with her. D.H. described M.T. as an “a**hole.” To some students she was nice and friendly, to other students she was an a**hole. He heard her say that she wanted to kill her teachers, she hated them and wished they were dead. D.H. has nothing personally against M.T., and never really spoke to her in school.

M.T. had an assigned seat but usually sat at Mr. Cleary’s desk. She rarely participated in the labs, and only presented twice with her table group. Other than the TA, no other students were allowed to sit at Mr. Cleary’s desk. He never saw K.M. at Mr. Cleary’s desk. While at Mr. Cleary’s desk, M.T. would talk to the TA, sleep, be on her phone, or “once in a while” try to go on Mr. Cleary’s computer, but he would ask her not to do so if he saw her. M.T. did not do her assigned work. If Mr. Cleary went back to his desk, she would socialize with him.

On one occasion in early February 2022, D.H. saw Mr. Cleary and M.T. sitting behind his desk talking, and M.T. placed her hand on Mr. Cleary's knee up to his thigh. They were sitting side-by-side. M.T. raised her left hand, placed it on Mr. Cleary's right knee, then moved it up a little bit to the upper part of his inner thigh. At that point, D.H. looked away because "it just made me really uncomfortable, it happened and I looked away but I was uncomfortable by what I saw, it's how I felt." D.H. saw Mr. Cleary pull back, get up, and walk around the classroom. M.T. backed up and moved away. D.H. got the impression M.T. enjoyed what had happened. He never saw other teachers act this way. D.H. never saw Mr. Cleary attempt to touch M.T. He never heard Mr. Cleary say anything inappropriate to students. He felt that Mr. Cleary cared about all the students. He enjoyed Mr. Cleary's physics class.

D.H. saw M.T. chase Mr. Cleary in class. He saw them hug "only one time" towards the end of class. M.T. was talking to Mr. Cleary, and when class ended they stood up and hugged face-to-face. He overheard discussions between the two of them regarding how she was doing in her classes, her personal life, of her life at home, and how she hated her home life. He heard M.T. discuss "a lot" with Mr. Cleary how she hated her teachers. D.H. tried to ignore what Mr. Cleary and M.T. were doing in class and focus on his schoolwork.

There were times M.T. would come to class looking very upset. She would be crying and would sit behind Mr. Cleary's desk. She looked mad. Sometimes she would break pencils or storm out of the classroom. She would typically be upset several times a week. It was distracting because she was really loud and disruptive. Her behavior drew attention away from what other students were doing in class. Sometimes she was "really destructive" and Mr. Cleary would ask her to step out of the classroom. Other

times he would try to talk to her and see what was wrong to calm her down. D.H. felt Mr. Cleary was “doing the best he could” to resolve or address M.T.’s behaviors.

D.H. saw M.T. running after Mr. Cleary in class. He does not know why this happened but M.T. would run, and Mr. Cleary would “kind of speed walk away.” He never saw Mr. Cleary chase M.T.

D.H. heard rumors that this was not the first time M.T. claimed that this happened with a teacher. She made these allegations before but they were “proven false.” He heard those rumors from another student who had the other teacher. M.T. claimed she had been “with that other teacher.”

Mr. Cleary’s Education and Employment History

22. Mr. Cleary’s testimony regarding his education and employment history is summarized as follows: after high school, he attended Cal State Fullerton where he obtained a communication degree with an emphasis in advertising. He worked in sales for approximately 10 years where he did very well, but was not personally satisfied, so his wife convinced him to return to school to obtain a teaching degree. At the time, they were living in the Inland Empire so he attended Cal State San Bernardino, where he decided to pursue classes so he could teach science and math. He obtained a biology credential, an earth sciences credential, and a physics credential. He is certified to teach Gifted and Talented Education (GATE) students and has several other required certificates.

His first teaching job was in 2005 at Martin Luther King Jr. High School where he taught for one year. His family then moved, and he taught at Arroyo Valley High School for six years. He and his family later moved to Northern California to care for his relatives, and he taught in Paradise for one year. His family returned to Southern

California where he taught at John Muir Charter School for approximately three years. He was hired by Beaumont High School in 2015, and was there until placed on leave in 2022. At Beaumont High School he taught physics and AP physics to juniors and seniors, and a few earth science classes to freshman when needed.

Beaumont High School Performance Evaluations

23. Mr. Cleary was evaluated while teaching at Beaumont High School. During the 2021-22 school he received overall scores of "Meets or Exceeds Standards." His 2020-21 evaluation documented:

[Mr. Cleary] continuously has a positive level of energy and enthusiasm with his students. [Mr. Cleary] demonstrates his deep understanding and passion for his content/subject-area. His class instruction provides students with opportunities for collaboration between student to student and student to teacher, while promoting critical thinking and independence for students. The structure and expectations of [Mr. Cleary's] labs are clear through the use of rubrics, posted instructional materials and resources, and ongoing communication with your *[sic]* students. [Mr. Cleary] is a contributing team member in his Professional Learning Community (PLC) and in staff meetings. [Mr. Cleary] is often collaborative and seeks professional input when looking to implement new ideas and continues his reflective practices as an educator.

Mr. Cleary's Testimony

24. Mr. Cleary's testimony about the events at issue is summarized as follows: His philosophy is to teach students how to learn, and do so in the context of the subject matter. He teaches them how to do presentations, and how to teach themselves and each other. He does this so that students take ownership of their learning, and he is removed from the process. His classroom is 100 percent project-based, he does not lecture or give tests. Students perform their own research, become familiar with the subject matter, and then demonstrate their knowledge by group presentations. His classes perform 51 labs per year, which students present on Tuesdays and Thursdays. He makes a point to allow students to use their own materials so that the subject matter is relevant to them. Students' grades are based upon their individual contributions and presentations.

He was asked by yearbook staff to provide pictures so he took photos during class. The photographs depicted students actively engaged in experiments, most of whom were smiling and appearing to enjoy their work. During the 2020-21 school year Mr. Cleary did distance learning because of COVID-19. He still did all of the labs, he just performed them alone on camera for his students. While testifying, Mr. Cleary became extremely emotional and choked up when describing his classes.

Mr. Cleary reviewed the "IEP At A Glance" documents that the case managers shared with all teachers. Each document was brief, a page or two, and contained general categories, the accommodations, and "a lot of legalese" he did not understand. M.T.'s "IEP At A Glance" indicated she had "Specific Learning Disability," which he finds puzzling because he does not know what that means, and also "Emotional Disturbance," and "Kidney Problem." He recalls M.T.'s accommodations were to reduce her problems, give her extra time, and give her an ability to get out,

decompress, calm down, and get fresh air, and the district did not dispute this. Mr. Cleary provided all those accommodations to M.T. No evidence was offered that Mr. Cleary participated in formulating the accommodations set forth in M.T.'s IEP, was given more information than is contained in the IEP At A Glance, or had any of her qualifying categories explained to him. Although he was at one IEP meeting in February 2022, his participation involved her school work, not her behavior issues.

M.T. also shared with him that she had a bad kidney that was "getting torn up" by kidney stones. He asked if she was a candidate for transplant, but she told him her condition was hormonal so a transplant was not an option, and her lifespan was only estimated to be to age 25. Mr. Cleary explained how he would check for M.T.'s understanding of the materials being taught. M.T. did some of the class work, but not all of it, and using the tools he was taught, he determined that M.T. understood the material quite well. For the accommodation allowing her to leave class, a couple of times she left the classroom, other times she would go to the back of the room where the ping pong table was located and sit there. There were also times where she stayed at her group table during class.

As to the preferential seating accommodation, M.T. wanted to sit in the back of the room quite often, usually at the ping pong table. This was a lab table Mr. Cleary used for ping pong if nothing was going on in class. M.T. sat there often to escape the noise of her group. M.T. spent more time sitting behind Mr. Cleary's desk than any other place in the classroom. Mr. Cleary would redirect her to sit at her table "on a regular basis."

M.T. was in his first period class and occasionally she would come to class before it started. Sometimes she would come back during second period, and sometimes she would come back after lunch during fourth period. He does not recall

when she started coming to his class during other periods, it happened sometime during the school year. Whenever she came to his class during other periods he would ask her, "Who's missing you?" He would also tell her to return to her scheduled class, but she told him she "could not stand" to go back to those classes. She told him she had checked into her other class, done all her work, and was allowed to go wherever she wanted because of her anxiety. Mr. Cleary did not want to violate her IEP, so he allowed her to remain. He shared with Lindsey Garcia, M.T.'s special education case manager, that M.T. was coming to his classroom. He pointed out where she would "hang out," and that M.T. said she came because of her anxiety.

Mr. Cleary believes the district's claim that he said M.T. came to his class during other periods approximately half the days of the week is not accurate. He does not believe he said that during his meeting with the district. He recalls she would come in to his class during other periods once or twice a week. Any time that M.T. was in his classroom during other periods, she was coming from special education classes so part of Mr. Cleary's discussions with Ms. Garcia were about M.T. being in his class. He had many in person discussions with Ms. Garcia about M.T. being in his class during other periods. He quantified that as having "dozens" of discussions with Ms. Garcia about M.T. being in his class.

Mr. Cleary also spoke with Ms. Quick and Mr. Studer, special education teachers, about M.T. Ms. Quick told him M.T. was "a great kid, does her work real fast, and she is less anxious in your classroom so I let her go to your class." Mr. Studer told him that M.T. is the "happiest, loveliest girl on earth," she is "nothing but smiles," and Mr. Studer was happy that M.T. had somewhere (Mr. Cleary's classroom) where she felt safe. Ms. Garcia told Mr. Cleary "practically the same thing" and described the LIP class to him as a study hall type of class. She said that if M.T. was finished with her work, she

was free to come to Mr. Cleary's classroom. It was his understanding that M.T. was allowed to go where her anxiety was less. All of M.T.'s teachers were aware that M.T. came to Mr. Cleary's classroom during other periods. When teachers needed M.T., they would come to Mr. Cleary's classroom to get her. Of note, Ms. Quick and Mr. Studer were not called to testify in this hearing.

M.T. also came to Mr. Cleary's classroom during lunch, but so did all the other students. He explained that once he was on campus, his door remained open all day long and his room was "a very populous [*sic*] place." It was primarily his students who came, but they often brought their friends, too. He was never alone with M.T. or with any student at lunch. M.T. told Mr. Cleary that K.M. was not happy that M.T. was spending lunch in Mr. Cleary's classroom and not joining K.M. at the quad. Mr. Cleary encouraged M.T. to join K.M. , but M.T. was adamant that she wanted to be in Mr. Cleary's room.

Mr. Cleary did not allow M.T. to sit at his desk as an accommodation, but she did sit at the end of his desk next to the ping pong table. He never allowed her to put her feet on his desk or lay or sleep on his desk. K.M. also sat there on a regular basis as she would join M.T. at Mr. Cleary's desk. Mr. Cleary would redirect M.T. and K.M. away from his desk. He never granted M.T. access to his computer, and never became aware of M.T. accessing his computer. Many students cursed in class, as did M.T. Mr. Cleary did not allow M.T. to use profanity in class, but she did, and he would go to her in person and have a private discussion with her about her cursing. When he asked her to stop, she would, but not indefinitely. Mr. Cleary used this one on one approach with other students who used profanity or misbehaved because he found this method of talking to students works best to get them to redirect their behavior.

Mr. Cleary required M.T. to do all the assigned classwork, including labs. She completed some of the classwork with her table group. M.T. received a very low D during the first semester, which he shared during her February 2022 IEP meeting. Mr. Cleary never gave M.T. extra credit for retrieving something for him. He allowed her to grade other students labs in his second semester class but did not allow her to assist his TA with classwork. He did not allow M.T. to grade other students' lab reports in exchange for doing her own work. M.T. took an interest in the labs, and asked if she could grade them. Mr. Cleary allowed her to do so one time. She did a great job, so he let her continue. However, his TA did the majority of the grading. It was a common practice for TAs to grade students' lab reports. During M.T.'s February 2022 IEP meeting, Mr. Cleary informed M.T.'s mother; M.T.'s case manager, Ms. Garcia; and Ms. Brandon, the administration's representative; that he was allowing M.T. to grade labs. They were pleased she was grading labs, glad she was being challenged and given an opportunity to demonstrate her mastery of the subject.

Mr. Cleary has seen M.T. exhibit anxiety, sometimes with large outbursts, but typically with much smaller signs of anxiety, which did not require her to leave his classroom. One of the most severe anxiety attacks Mr. Cleary observed was when M.T. learned that her case manager, Ms. Garcia, was leaving Beaumont High School, and then left a day earlier than M.T. expected. M.T. came in to Mr. Cleary's fourth period class very upset. She was openly sobbing, sat in the black mesh chair by his desk, and was pounding on the table. All the other students stopped what they were doing, and "you could hear a pin drop" in his classroom. Mr. Cleary was on the other side of the room and felt powerless to do anything to help M.T.

Mr. Cleary denied playing chase or tag with M.T. during class. He explained that during class he was moving constantly. He described himself as a hyperactive person

who finds comfort in movement, so he travels constantly. His class requires movement, and he would go around all the tables asking every student questions. However, he later testified that M.T. chased him in class, and that he never told her to stop. She would attempt to stop him, try to get where he was standing, and try to get the dry eraser from him, but he would try to evade her. He testified it was not hard to evade her and "when I wanted the game to be over I would stop and hand back to her whatever it was she was trying to get." Mr. Cleary gave an extremely protracted answer trying to explain how this behavior was not a game of chase, but then used the word "game" in his testimony which supported the district's allegation and the students' observations. He also admitted there were times when he threw ping pong balls. There were ping pong balls "all around the room," and "at times they spilled." Mr. Cleary and students threw them, but this only occurred on a couple of occasions.

Mr. Cleary never told M.T. that the things she said were "intriguing" or "interesting." He did not tell her she was too young to be talking to boys. Quite the contrary, he regularly tried to get her to have lunch with her peers and cultivate those relationships. He never told her that he cared about her. He never shared his personal cell phone or email address with her. He did not engage in significant personal discussions with her. He did not allow her to sit on his lap, drape her leg on him, or cuddle with him. He did not give her face-to-face hugs. When asked if he gave her side hugs, he stated that he generally tries to avoid hugs with students but understands "it is socially awkward" if someone tries to hug him and he avoids it, so his approach is to give a side hug that lasts for a second or two. He explained that M.T. is significantly shorter than he is, so during any side hug he "may have patted her shoulder," but that is all. He never had his arms around her neck or shoulders, and he would never allow students to put their arms around his waist. He never had his arm

around her while the two of them watched the class. He never brushed up against her. He never rubbed her thigh or leg, and never allowed her to do so to him.

When asked if M.T. ever leaned her head on him, he explained this occurred after she entered his classroom, and "it was obvious she was not having a good day medically." She was in pain, and either she had not taken her medication because she did not like the side effects, or she had just taken her medication and it had not yet taken effect. Because of their height differential, M.T.'s head reached his triceps at just about his elbow. He explained that if someone leans on him he does not pull away immediately or the person would fall so he would make sure that she was okay and then continue on his route. He recalls her leaning on him about three or four times and it lasting only a few seconds. These answers, too, sound long and protracted.

Mr. Cleary had discussions with M.T. regarding maintaining distance. He recalls sitting at lunch reading emails when he noticed her chair inching closer. She responded by making a "vomiting sound" but did create more space between them. He never farted in front of her. He never made the Italian hard comment. He never made a comment about being hard. He never pushed M.T. on the arm, shoulder, or upper chest. She never pushed him on his chest. He never touched M.T. in an inappropriate way. He never attempted to sexualize the relationship.

M.T. wrote "[M.T.'s nickname] was here" on several items in his class. At first she only wrote it on the whiteboard, but eventually he found it written on items throughout his classroom. He would erase it when he saw it. At first M.T. thought that was unfair because other students wrote on the board. He explained that he encouraged students to write on the board "as long as it was not self-promotion," so he erased M.T.'s writings because it was self-promotion. M.T. would follow him to attempt to prevent him from erasing it, running to the location that he was about to

erase, and sometimes she would get there before him but he is much taller than her, and would reach over her and erase it. After he would erase her writing, he would move on. Mr. Cleary wrote "Funky Fresh" on M.T.'s cell phone and shoes, using the same marker M.T. used. "Funky Fresh" was a nickname he was given when teaching at Martin Luther King High School. He wrote on M.T.'s things "to try to get her to understand how it feels when your personal property is messed with."

M.T. never told him her stepfather was dead. He gathered that fact from discussions she had with other students when she was near him. The same is true for her medical treatment. He gathered that information from what he read in the "IEP At A Glance" and from what he overheard. He did reveal to all of his students that he was battling cancer. It was something he told his students during the first week of school. He explained that he did so because he thinks life skills are an important part of academics. He also wanted to show the students his strength and resilience to encourage them to face struggles in their own lives. No one at the district ever voiced any concerns to him about sharing his cancer story with his classes.

Mr. Cleary first learned of this investigation when M.T. came to his classroom "panicked" and asked him, "Have they questioned you?" He did not know what she was talking about. She told him she had been questioned, and they were probably going to question him. He asked her what she was talking about, and she told him, "They think you did something inappropriate, that you did something wrong." He told her he had not done or said anything wrong, so he would go clear it up, and she "bolted" from his classroom. Assistant Principal Joel Hudec later entered his room. Other students were present and he was still breaking down the lab when Assistant Principal Hudec asked him to step out. He did so and Assistant Principal Megan Cotton

was there in the hall. Mr. Cleary was told there had been an allegation that they needed to address to which he replied, "Yeah, let's clear it up."

He told them he was free sixth period, and Assistant Principal Hudec arrived during sixth period, and walked Mr. Cleary down to the office where Security Officer Kevin Fowler was present. Mr. Cleary was told he had a right to a representative, which he immediately waived as he had nothing to hide. He was questioned for approximately 30 minutes. Assistant Superintendent Castillo and Domenica Bernuer, the district's Director of Human Resources (HR Director) were in the office next door, and Assistant Principal Hudec jokingly told Mr. Cleary that he was going to have to say it all again with them, to which Mr. Cleary agreed. Mr. Cleary then went to speak with the two women, but they did not ask him any questions, instead they handed him paperwork, and that was the first time he realized he was being placed on leave and would not be returning to his classroom.

When walking back to his classroom, Mr. Cleary told Assistant Principal Hudec that he had heard K.M. was frustrated with how much time M.T. was spending in Mr. Cleary's classroom, so he surmised it must be her who filed the complaint. Assistant Principal Hudec encouraged Mr. Cleary to return to the office to tell Assistant Superintendent Castillo and HR Director Bernuer this fact, and he did so. However, they told him that they were not taking statements from him at this time. When he returned to his classroom Assistant Principal Hudec told him that the district was requesting he leave his portable hard drive for the district to inspect, something Mr. Cleary was reluctant to do because it contains all of his family and classroom photographs, as well as a large music library, which he did not want to lose. Assistant Principal Hudec said the district needed it for the investigation, so Mr. Cleary agreed.

On March 8, 2022, Mr. Cleary was again interviewed. Present at that meeting were Chase Moore, Mr. Cleary's union representative, Attorney Kerrie McNally who "led the meeting," Assistant Superintendent Castillo and HR Director Bernuer. Mr. Cleary was questioned regarding inappropriate touching. At the time he "had faith" that if he were truthful enough, the district would understand that he did not deserve to be investigated. He was not provided any information, just asked questions regarding touching in many different ways, many different times. He was asked about relationships with students, small talk, and what he did on his weekends.

Mr. Cleary was questioned regarding whether M.T. had ever told him that she got her "ass beat." He explained that one day M.T. entered his classroom, "threw her phone flippantly on her desk," and said that she was going to have to transfer to Yucaipa High School. When Mr. Cleary asked her why, she told him that CPS had come to her home and removed her brother. He asked her if she was out of her house and looked to see if she had any markings indicating she had been beaten as she said she got her "ass beat." She assured him that she was safe now because CPS had come and taken action. Mr. Cleary assumed he was hearing about this incident "in the aftermath." This was the last he ever heard of this incident. He did not file a CPS report because CPS had already taken action so he did not feel it was necessary to contact CPS since they were already involved in the matter. In the past, Mr. Cleary has made other CPS reports. In the future he will call CPS as soon as he hears the student discuss CPS. He should have "played safer" and contacted them.

During the district interview when he made the "ass beat" comment Mr. Cleary observed that Attorney McNally's eyes got extremely wide, and she took a quick breath. He tried to explain to Attorney McNally that when M.T. made the "ass beat" comment to him, it was after CPS had already taken action, but Mr. Cleary did not feel

like Attorney McNally was listening to his answers. Attorney McNally said to him "I don't care," and asked if he was trained in mandated reporting protocols. During the interview when he tried to explain his answers, she often interrupted him, asking about his mandated reporter training. Mr. Cleary admitted that "in hindsight" he could have reported what M.T. told him, but at the time, it was his understanding that M.T. was out of danger, CPS was involved, and she had been removed from the home.

Mr. Cleary did refer to M.T. as a "stray dog" during the meeting which "was another mistake." He used this term in frustration. "I was in an uncontrollable slide at the meeting, grasping at straws, when I described the discussions with [Assistant Principal Hudec] I was trying to explain what I tried to do for M.T. to support her. I was very concerned for my financial future, and family. I was very frustrated." After the March 8, 2022, meeting, Mr. Cleary was "in a panic, my confidence was eroded, it became apparent I was in far deeper trouble than I ever thought I would be." When he began the interview he was anxious about his career. His life and his family were in danger, and he wanted the opportunity to tell his side of the story. However, during the interview he was interrupted every time he tried to explain his answers, and he left the interview with much higher anxiety.

After the meeting he texted Assistant Principal Hudec. Mr. Cleary explained that their families are friends so that was why he texted. That afternoon after the meeting he "asked around" and found out that his opportunity to speak had "come and gone," and the district was going to make its decision. Mr. Cleary's "world came crashing down, I was losing my mind, basically I never got my chance to speak," and he texted Assistant Principal Hudec to see if he could help. All that was ever mentioned during Mr. Cleary's interview was "an inappropriate relationship with M.T." He never had an indication of anything beyond that when he left the interview. He truly believed he

would be given a chance to speak, and once the truth was out, he would be fine. He still believes that. He feels bad that he put Assistant Principal Hudec in this spot by sending the text to him. He feels bad he put Assistant Principal Hudec "in a bad position with my text." It was unprofessional for him to text, but he did it out of desperation. "I was thrashing and trying to save myself, I put him in a bad spot and use language I should not have used."

Mr. Cleary was invited to come to the school on April 1, 2022, and arranged for his representative to join him, but Assistant Superintendent Castillo told him this would not be necessary as the meeting was just to give him legal paperwork. She said he would be able to provide a response at the *Skelly* hearing. Mr. Cleary then reached out to several colleagues because he was "getting frantic," and could not believe this was happening to them. His colleagues referred him to Rachel Ponce, a Beaumont High School science teacher, telling him that Ms. Ponce had information regarding M.T. Ms. Ponce told him that M.T. "has a history," and he learned things from Ms. Ponce that are set forth below in the section summarizing her testimony. When Mr. Cleary learned this information, he was "floored," and thought it was "a pattern of behavior that was enormously relevant to the charges" against him and gave that information to his attorney.

Mr. Cleary never intended to give M.T. preferential treatment. His intention was to perform the actions legally required by her IEP. He taught his students decency and thought he was a person with compassion, but these charges forged him into a different person. He thought he was doing an amazing job, and doing all he could, but this has been "an eye-opening experience." This incident has torn him up, and he realizes a student who needed his help (M.T.) did not get the help she needed, but his heart was in the right place. However, going forward he would never write on her

belongings, and not allow her to hug him. He thought he was being accommodating to her anxiety complaints by allowing her to stay in his classroom, but thinks that he can do better. "In hindsight there is plenty I believe I could have done better."

Mr. Cleary used to think the district owed him an apology, but now he wants to be part of that apology. He needs to repair both his and Beaumont High School's reputation as people in the community may think that something happened. He believes he has "fostered lots of goodwill" during his 18 years of teaching, and he wants to help repair his community. He is upset that he had a hand in damaging his community, which is why he wants to help repair it. In the future he would also ask for help in addressing student behaviors. He always thought he was strong enough to handle things alone, but would now seek help.

He passionately explained the joy the teaching gives him, how he would "skip home with a smile on my face," and wants to return to the classroom. He shared screenshots of text messages and emails with parents and staff who reached out regarding students who needed additional support. He also shared the thank you letters he has received each year from students telling him he was their most influential teacher.

Evidence Regarding M.T.'s Prior Allegations

25. M.T. made similar allegations against male teachers, accusing them of sexual conduct or inappropriate behavior, and engaged in similar behaviors during both her freshman and junior years. She was not on campus during her sophomore year because teaching was remote due to COVID-19. During her freshman year, the 2019-2020 school year, M.T. claimed that a teacher, Matthew Medore, was "grooming" her, and she was being "swabbed" by police as part of the investigation.

ALLEGATIONS MADE DURING M.T.'S FRESHMAN YEAR (2019-2020)⁹

Assistant Principal Chelsea Ramirez

26. Chelsea Ramirez is currently an Assistant Principal at Glenview High School. During the 2019-20 school year, she was an Assistant Principal at Beaumont High School. She described the different areas of responsibility for each Assistant Principal. Her area of responsibility was primarily ninth grade. There was another Assistant Principal who oversaw special education students, so Assistant Principal Ramirez does not know why issues regarding M.T. first came to her attention.

During the 2019-20 school year, a number of statements were made and confirming emails sent to Assistant Principal Ramirez regarding M.T. and her claims regarding Matthew Medore, an Engineering teacher. Ms. Garcia approached Assistant Principal Ramirez to report that M.T. was making a number of allegations that were highly alarming to teachers. Ms. Garcia was very upset. Assistant Principal Ramirez told Ms. Garcia she would speak to those teachers, which she did.

Assistant Principal Ramirez sent an email to Principal Jesus Jimenez, Assistant Principal Hudec, and Shawn Mitchell regarding what Ms. Garcia disclosed. Attached to her email were the emails she received from the teachers with whom she spoke. (Those emails are summarized below with each teacher's testimony.) In her email, Assistant Principal Ramirez wrote that staff members had "recent interactions with a student [M.T.] that were highly alarming." She wrote further:

⁹ The headings and sections summarizing the witness' testimony will use the witness' job title when the incidents occurred.

This student is creating and using staff members names [s/c] in creating stories that have little to no truth, including that she was just interviewed by [Beaumont Police Department] about her relationship with Mr. Medore, ([Beaumont Police Officer] Castro¹⁰ had no interaction with this student since last year) was interviewed yesterday and need to go back to Mr. Hudec/admin to finish being questioned. (did not occur) My concern is this student is openly telling students and staff all stories, using staff members names [s/c] of who is doing what, about "investigating" her claims, of being swabbed by police for supposed-sexual relationship with Medore, being groomed, or being investigated by Mr. Hudec/admin (also did not occur)[.] We are holding an emergency IEP on Friday to discuss further, but I wanted to send to you now for documentation as teachers are highly concerned and uncomfortable.

In her discussions with staff, Assistant Principal Ramirez learned that Mr. Medore was unaware of the allegations. The Beaumont police officer assigned to the school denied he was taking swabs of M.T. So "very quickly the claims" M.T. was making using staff names were discovered to be false. It was "highly alarming" because allegations like this do not happen often and is not common to make false

¹⁰ Officer Castro was assigned to the school.

claims using staff names. Assistant Principal Ramirez described M.T.'s false claims as an "educator's worst case scenario."

Assistant Principal Ramirez spoke with Physical Education (PE) Coach Rudy Gonzalez, who told her that M.T. said she would not be in class because she was being questioned by the Beaumont police. Coach Gonzales was very upset and concerned because he initially believed M.T., and thought she had been inappropriately touched. He was even more concerned upon learning that her claims were false because "those allegations are the worst for a teacher."

Assistant Principal Ramirez explained that because M.T. is a special education student, there are behavioral goals that can be created if needed. The district would need an emergency IEP meeting to discuss behavior goals for M.T. M.T. was creating false narratives and going to classrooms where she should not be. The goal in M.T.'s IEP was to prevent elopement, but M.T. was taking passes and going to other teachers' classes so the elopement goal would need to be reviewed.

There was an emergency IEP meeting scheduled for February 7, 2020, to address M.T.'s behavior issues. A short while before it was to begin, Ms. Garcia notified Assistant Principal Ramirez that M.T. was not in her assigned classroom, and Ms. Garcia did not know where she was. Assistant Principal Ramirez and Ms. Garcia went to Mr. Medore's classroom, where they found M.T. hiding in the back of his classroom, under a desk/table. Assistant Principal Ramirez was "shocked" M.T. was there, but cannot recall if Mr. Medore was alarmed. Assistant Principal Ramirez called M.T.'s mom, who was coming to school for the emergency IEP meeting, and Assistant Principal Ramirez and Ms. Garcia walked M.T. to the meeting room to wait for M.T.'s mother to arrive.

During the IEP meeting, M.T.'s mother was mortified with the stories M.T. had created. M.T. acknowledged that she created them to get attention. Assistant Principal Ramirez had no evidence or reason to believe that any of M.T.'s claims were true. M.T.'s mother wanted to put M.T. in an independent study class, and seek mental health support for her. There were discussions during the IEP meeting about a behavioral plan, but Assistant Principal Ramirez does not know if one was ever put in place.

Teacher Matthew Medore

27. Matthew Medore teaches engineering and manufacturing at Beaumont High School. M.T. was in one of his classes during her freshman year, which was a "weird year" because of the COVID-19 lockdown in the spring.

Mr. Medore recalled that M.T. liked engineering, she was a good student, she did work outside of class, asked for extra work, and he would "infiltrate the harder work" from his more advanced classes for her to do. She told him her family had a machine shop, which is why she wanted the harder work. Mr. Medore got constructive feedback from M.T., as he does from many students. M.T. was a "pretty average student" but she was very inspired to follow her family's career path.

Mr. Medore recalls M.T. started acting very strangely in class. She had anxiety issues and would be hyperventilating. He was "absolutely" concerned for her well-being. She was a special education student with an IEP, but he recalls nothing beyond what was written in the IEP or provided to him by Ms. Garcia. At the time he reviewed M.T.'s IEP records, the accommodation she had was to give her access to the bathroom. He talked with M.T., telling her that she could leave his classroom anytime she needed. He does not recall any accommodations regarding her taking breaks from

class. He was told M.T. was experiencing a lot of anxiety issues. She had panic attacks in class. The first time she had one it was "very scary for me, I didn't know what to do, as teachers we are not prompted for this." Mr. Medore's teaching assistant was M.T.'s friend, and literally held her hands during the panic attack, which lasted about three or four minutes. Mr. Medore did not call M.T.'s mother or notify the office about the panic attack.

One time there were Kaiser medical records left behind in class, and he looked at them to see whose records they were. The records were M.T.'s, and they referenced suicide and self-destruction. He was "absolutely" concerned. He did not do anything to accommodate her at that time and did not report it. On several occasions M.T. said CPS showed up at her home, and her mother told him that M.T. claiming CPS came to the home was "an ongoing issue," which seemed to suggest that M.T. was lying about CPS visits. No evidence was offered that Mr. Medore reported M.T.'s CPS statements to CPS.

Mr. Medore recalls one of the high school counselors physically walking M.T. to his classroom, and dropping her off during a different period than his scheduled class with her because "she was having a hard day at school." Ms. Garcia would let M.T. go to Mr. Medore's fifth period class, which was not her scheduled class period. When she came, Mr. Medore would have her grade papers or work on projects. M.T. came to his fifth period class approximately two or three times per week. It was something that he and M.T. discussed with Ms. Garcia, and it became "an unofficial thing." He has "no clue" why M.T. chose to come to his class during fifth period. She would also come to his classroom before school, and sometimes remain for approximately 30 minutes after first period started. He could not get her to leave, despite directing her to do so.

Mr. Medore recalls “a weird issue in my classroom” regarding M.T. that was brought to his attention. There were rumors regarding him that he notified administration about. M.T. claimed another student was accusing him of raping that student in class. Mr. Medore was concerned and reported the claims to the principal via an email. M.T. told him she was being harassed after telling him about the other student’s allegations, and he reported that to the principal, too. He was never aware that M.T. alleged that he did any of the misconduct with her. His understanding was that another student was making those allegations. The district performed an investigation and met with Mr. Medore at the very end of it. The district found that the allegations against him were untrue.

When Ms. Garcia reported M.T.’s statements to Assistant Principal Ramirez, she asked Mr. Medore to send an email regarding his “overall impression of M.T.,” which he did on February 4, 2020. In it he wrote how M.T. completed almost the entire semester’s work in the first month of school and “[s]ince then I have been mentoring her on how to develop her skills into a usable manner that would be advantageous to an employer.” He wrote further:

In September, there was an alleged sexual assault that another female student made about me, that M.T. informed me about. When I reported the situation and it was investigated, the story was flipped onto M.T. as her being the victim. Since then M.T. informed me that she had been bullied due to the situation. When I reported this, the issue (to my knowledge) was unresolved. I know she has a lot of built up feelings about the issue.

Recently M.T.'s disposition has changed. When I have asked her whats [sic] going on, she's indicated "a lot". She has confided in me that she has a lot of medical issues going on, one of which is an anxiety issue, which recently I witnessed. She has indicated that because of her issues, she has applied for a service animal to help. M.T. one day mistakenly left her Kaiser documentation in my class, and I opened it to see what and whos [sic] it was, and at a glance saw that she is being treated for suicidal thoughts and self destruction.

Along with her medical issues, M.T. has indicated that things are not going well at home. Apparently dad is back in her life (this happened before winter break) but has limited custody, and mom and step dad [sic] are in the middle of a divorce. About two weeks ago, M.T. expressed that CPS was called and now she is concerned of being removed from her home. Last week, Mr. Torres counseled her and afterwards dropped her off to my classroom said she was having a rough day. In addition to this, Mrs. Garcia, allows her to come work in my 5th period where she will either act as an unofficial TA or work on getting caught up on class work or her own projects.

On friday [sic] 1/31/2020, M.T. had a panic attack in my classroom 6th period (I cannot remember the reason why she was in there 6th period), where myself, my TA, and her

friend in that class were able to get her settled down. Afterwards, I did not feel comfortable leaving her after school until she got picked up. I asked M.T. if she would like to follow me to Mr. Richie's room where I was helping him with something. She did, and she remained on the phone the entire time will [sic] she was contacted for pickup.

With the school's and district's stance of creating positive interactions with students, I feel like I have gone out and beyond with helping her through not only her school work, but her times of need, as I would do with any student. I feel like M.T. is a good resource for information regarding my program I have asked her opinion numerous times on curriculum, projects, and how I am grading students.

Mr. Medore said he never engaged in any inappropriate behavior with M.T. He never hugged her, never touched her or allowed her to touch him, did not chase her in class or write things on her belongings. Doing so would be "crossing the boundaries" between the student and teacher.

Teacher Rudolph Gonzalez

28. Rudolph Gonzalez has been a Physical Education (PE) teacher at Beaumont High School for the past six years. He "vaguely" recalls talking with Ms. Ramirez in the 2019-20 school year. He was teaching sixth period PE when M.T., then a freshman, approached him, and told him the things he listed in his email. As soon as she started sharing those things with him, he immediately grabbed his cell phone and

started calling and emailing the office because of his concerns. When school ended, he went to administration to see if he needed to fill out a CPS report.

The email he wrote on February 4, 2020, stated:

During 6th period M.T. approached me with a pass from Mrs. Garcia. M.T. then began to explain to me why she hasn't been in class and why she was late today. M.T. told me she was in the office being questioned by police about a teacher. M.T. told me that this was the second time there were allegations About [sic] her and the teacher. M.T. told me the teacher was Mr. Medore. M.T. then begin [sic] to tell me that principle [sic] was showing her pictures that another student took of her and Medore together around campus and in the classroom. M.T. told me that the girl was jealous of her and the teacher because the teacher spent more time helping her in engineering class. M.T. said that The [sic] police were trying to get a swab from her and it was the second time they wanted to swap [sic] her; for another incident that happened last semester with the same teacher. M.T. told me that Medore was getting accused of "grooming" her and that he was in with the police getting questioned. M.T. told me she needed to get back to the principles [sic] and she left. After school I went straight to admin and reported this to them.

M.T. was never inappropriate with Coach Gonzalez. He believes he sets clear boundaries for students. He has never chased students or let them chase him. He does

not write on students' belongings. He does not allow them to sit on his lap, or lean on him. If such behavior had ever happened, he would have told the student to stop and would have notified administration.

Teacher Rachelle Ponce

29. Rachelle Ponce is a science teacher at Beaumont High School. She had a student who was "giving her information" regarding M.T. The first time the student reported it to Ms. Ponce, she wasn't really concerned because she hears things like that all the time from students. Ms. Ponce never spoke with M.T., and does not think she knew the student was reporting things to Ms. Ponce. However, "because there have been prior instances on the campus regarding teachers and students," she "didn't want it to come back on me." Ms. Ponce reported what the student told her because she did not want to get in trouble for knowing something she did not report. She did not explain what "prior instances" had occurred on campus.

Ms. Ponce was told other administrators were more familiar with M.T.'s issues so to talk to them. She spoke with Assistant Principal Ian Young and told him that a student reported that M.T. liked Mr. Medore. The student also reported that M.T. had left her jacket in class, and Mr. Medore kept it for her, so M.T. took that as a sign that he liked her. Either Assistant Principal Hudec or Assistant Principal Young asked Ms. Ponce to document the matter which she did in an email to Principal Jesus Jimenez on January 15, 2020, wherein she wrote:

I am sharing some old information and new information I have received from a student of mine. I guess you can say this student is my "informant" as she likes to share information with me. The student's name is [name]. The

information she gives me is about her friend and it stresses her out a lot and she is scared that her friend will know she is "telling on her." Also, I feel that it is important to mention that [student] may not be such a reliable source. I say this because she has stated she has borderline personality disorder and she is in and out of the hospital due to talks of suicide, so she does have "mental issues."

Anyway, the old news...last October I spoke with [Assistant Principal Hudec and Assistant Principal Young] about the situation (I apologize that I forgot to make this email then which Assistant Principal Young did asked me to do). Here is the situation:

[Student's] friend is M.T., and M.T. has a major crush on Mr. Medore. M.T. has told [student] how she really hopes something could/would happen between them. Every little thing Mr. Medore does (smile...) Gives M.T. this hope that he likes her. M.T. would come in to class late at least 1-2 times a week with a note from him. This has not happened in a while. When I spoke with [Assistant Principal Young and Assistant Principal Hudec] they were aware of this situation.

So the new information which is not too much but I did think I should say something:

[Student] shared with me yesterday (January 14, 2020) that she thinks M.T. and Mr. Medore are now texting. She

mentioned that M.T. sent him a text asking him if he was here (assuming on campus). When [student] saw the text, M.T. scrolled up very quickly. And that is it. I know it is not a lot to go on...but I am trying to cover myself.

Principal Jimenez never spoke with Ms. Ponce, and she has no knowledge if an investigation regarding the Mr. Medore allegations was performed. She was never told to file a CPS report.

Ms. Ponce testified that teachers are expected to set boundaries, and students are expected to follow the rules teachers set. If the student does not follow them, teachers can report it depending on the consequence or the problem. When there is a boundary violation the first time, the teacher should address it, but if the teacher is not comfortable or cannot address the matter with the student, the teacher should report it to administration.

Special Education Case Manager Lindsey Garcia

30. Lindsey Garcia was a special education teacher at Beaumont High School from August 2019 until February 2022, when she left to become a Behavioral Specialist in the district. M.T. remained on Ms. Garcia's caseload when she left Beaumont High School. As M.T.'s case manager, Ms. Garcia was responsible for ensuring her IEP meetings were held, her goal progress was tracked, and her needs were met. Ms. Garcia communicated with teachers and service providers, and coordinated or facilitated IEP team meetings and meetings regarding M.T.'s needs. Teachers are given a document called "IEP At A Glance" at the start of each school year for the students in their classroom with an IEP. This document is a brief summary of information contained in the IEP, which lists the student's qualifying disability, accommodating

services, academic goals, and general IEP goals. A teacher may not share a particular student's accommodations with other students. Accordingly, Mr. Cleary could not tell other students about M.T.'s accommodations.

M.T.'s qualifying disability for an IEP was Emotional Disturbance.¹¹ She also had physical health issues, including kidney issues which required her to frequently use the restroom. M.T. engaged in attention seeking behaviors and she displayed anxious behaviors. During her freshman year she had attention seeking behaviors "when she brought up situations with a teacher on campus." "Through the years there have been different instances" of M.T. engaging in these behaviors. There was no evidence that Mr. Cleary knew of these issues before being placed on leave.

Ms. Garcia does not recall if the accommodations set out in M.T.'s IEP were arranged, but the IEP documents showed that individual counseling services for M.T. had been increased to weekly sessions from the previous bimonthly sessions. Ms. Garcia does not recall whether M.T. liked to answer questions in class. She is aware that M.T. was allowed to take longer time on schoolwork and allowed to make up assignments. Also, if M.T. seemed anxious, teachers could verbally prompt her to take a break, and M.T. could use the counseling office as a quiet place for a break. M.T. was also provided educationally-related mental health services as she struggled with regulating her emotions, especially her anxiety.

2019-2020 School Year Issues

31. Ms. Garcia testified about the issues with M.T. during M.T.'s freshman year (2019-20 school year). Ms. Garcia allowed M.T. to go to Mr. Medore's classroom

¹¹ No testimony explaining this category was offered.

and would have had a discussion with him regarding her going to his class. Ms. Garcia was questioned about the contents of Mr. Medore's February 4, 2020, email referenced above. She was not aware of an incident where Mr. Torres counseled and then dropped M.T. off at Mr. Medore's classroom when she was having a rough day. She also did not recall M.T. being an "unofficial TA" during ninth grade.

Ms. Garcia said that special education behaviors can be addressed in the IEP process. M.T.'s IEP team met to discuss her attention-seeking behaviors. There was an IEP meeting to discuss concerns regarding Mr. Medore. Ms. Garcia remembers this incident involved M.T. claiming that Mr. Medore "was attempting to groom her." Ms. Garcia was very concerned and shocked regarding what M.T. was telling her, which was why she notified administration. It was concerning that either M.T. was reporting inappropriate behavior, or she was lying. Ms. Garcia was concerned that "a pattern was developing." In a February 4, 2020, email to Assistant Principal Ramirez regarding M.T.'s statements, Ms. Garcia wrote:

Yesterday afternoon M.T. came into the [special education] office and told me the following:

She asked if I had been contacted by Mr. Hudec and I told her no. She then proceeded to tell me that Mr. Medore is being investigated for "grooming" her. She also told me that this is the 3rd time this has happened and that Mr. Medore was going to get his attorney involved. When I asked her how she had this information she told me that Mr. Medore told her.

This morning I spoke with Coach Gonzales as M.T. told him similar things. The following is what he related to me:

M.T. told him that a student had taken pictures of she [*sic*] and Mr. Medore in the classroom as the student was jealous of them. She also stated that this was the 2nd time that this had happened and that she did not want to be swabbed again.

This information is bothersome as last week M.T. communicated to me the situation that had taken place at home when CPS and Beaumont PD were involved. After she relayed the info to me she said "You have to mandate report this don't you?" She also spoke about the situation to multiple other teachers on campus. I'm concerned that a pattern is developing especially since we have returned from Christmas break. I spoke with parent regarding M.T.'s increased anxiety we recently held an IEP meeting where this topic was discussed. I will work on scheduling and IEP and drafting goals to address this behavior.

A February 7, 2020, IEP meeting was held to address the issues Ms. Garcia raised in her email. The IEP report prepared after that meeting documented:

The team discussed M.T.'s behavior and the escalation of her anxiety. [Teacher] stated that she is concerned as M.T. had issues with her anxiety in class. She also informed the team that M.T. was very distressed last Friday and talked

with her about a home visit from Child Services that had taken place the evening before.

M.T. has shared with multiple team members about the Child Services visit and asking if now they have to “mandate report” what she shared.

[Assistant Principal] Ramirez shared that M.T. has been telling teachers that she is involved in an investigation with a teacher and administrator. She has perpetuated this narrative and told multiple staff members a similar story. M.T. has shared with multiple staff members that she does not want to be “swabbed” again and that administration is investigating whether or not a staff member has been “grooming” her. The team is concerned about M.T.’s health and behavior. [Assistant Principal] Ramirez shared that no interview between an administrator and M.T. had taken place regarding the incidents that she has been reporting.

[M.T.’s mother] shared that M.T. needs to be reevaluated by a neuropsychologist and she is currently working with her health plan to coordinate.

[¶]. . . [¶]

This meeting will be continued on Monday 2/10/2020.

Ms. Garcia did not know how the administrative team addressed M.T.’s behaviors and claims after the February 7, 2020, IEP meeting. She was never told what

happened and she never did any follow-up. (It was unclear why she did not follow up because, as M.T.'s case manager at the time, she had a duty to do so.) She never saw any documentation regarding drafting goals to address M.T.'s behavior and does not recall having any discussions regarding such goals. Although the IEP indicated that a follow-up meeting would occur on February 10, 2020, she does not recall if one was held. She does not know the outcome of scheduling a neuropsychological visit, and does not recall any discussions regarding mandated reporting.

2021-2022 School Year Issues

32. Ms. Garcia described issues with M.T. during her junior year (2021-22 school year). Ms. Garcia was teaching an LIP class, a support class for students with IEP's. M.T. was in Ms. Garcia's fourth period LIP class. M.T. was in Mr. Cleary's first period physics class, and she had discussions with M.T. regarding taking AP physics. M.T. initiated those discussions because she was interested in potentially taking AP Physics her senior year. Taking that class was discussed during an IEP meeting with the IEP team, but Ms. Garcia does not recall if Mr. Cleary was in favor of M.T. taking that class.

LIP was a shared classroom. Mr. Cleary's classroom was next door to the LIP classroom. Ms. Garcia never observed Mr. Cleary teaching. In the fall of 2021, Ms. Garcia was moved to teach an ELA intervention class and a new teacher, Joel Burdick, took over M.T.'s fourth period LIP class. All LIP students were to work in Ms. Garcia's classroom. If students needed to contact another teacher, she would confirm with that teacher that the student could go to that teacher's classroom. The student would have a pass to do so, and the student would have to come back to Ms. Garcia's class.

Ms. Garcia does not recall during the 2021-22 school year whether M.T. went to Mr. Cleary's class during LIP. She does not recall if Mr. Cleary asked her if M.T. was allowed to come to his class during LIP. She does "not remember specifically" that M.T. missed LIP class. She does not recall M.T. missing other classes. She does not recall Mr. Burdick asking her about M.T. missing his LIP class or her telling him that there was a "prearrangement" for M.T. to go to Mr. Cleary's class during LIP. Mr. Cleary never asked her if it was okay for M.T. to grade other students' schoolwork and not do her own work. Although M.T. did have aides in the classroom, Ms. Garcia does not recall any aides reporting they observed inappropriate behavior between M.T. and Mr. Cleary.

M.T.'s IEP included a "preferential seating" accommodation. Ms. Garcia explained this meant M.T. would be "seated in an area or place most conducive to her learning." Ms. Garcia said this would be "determined student by student, class by class, on a case-by-case basis." It could mean placing a student at the front of the classroom, by a power outlet, away from doors or windows, it would "really just be on a case-by-case basis." Ms. Garcia said sitting at the teacher's desk would not be preferential seating as that is the teacher's space where information or documents might be readily available or on the computer. Mr. Cleary never asked her if allowing M.T. to sit at his desk satisfied the preferential seating accommodation.

However, on cross-examination Ms. Garcia admitted that a teacher has the discretion to determine what is the best "preferential seating" for the student. Ms. Garcia acknowledged there was nothing specific in her IEP prohibiting M.T. from sitting at the teacher's desk, but just based on Ms. Garcia's "previous experiences" with M.T. "during her high school career, where boundaries are important and she struggles with boundary issues," allowing her to sit at the teacher's desk "would probably be

confusing to her.” There was no evidence that Mr. Cleary ever knew about M.T.’s “previous experiences” or “boundary issues.”

Ms. Garcia did not recall if M.T.’s IEP had a behavior support plan in place, but to her knowledge, there was no such plan in M.T.’s IEP. Again, as her case manager and with knowledge of M.T.’s “previous experiences” and “boundary issues,” it was unclear why Ms. Garcia did not ensure there was a behavior plan in M.T.’s IEP.

OTHER ALLEGATIONS DURING M.T.’S JUNIOR YEAR (2021-2022)

Special Education Teacher Joel Burdick

33. Joel Burdick is a special education teacher at Beaumont High School who replaced Ms. Garcia after the 2021-22 school year began when Ms. Garcia was promoted to Behavior Specialist in the district. During the 2021-22 school year, Mr. Burdick taught two LIP classes, managed special education students’ caseloads to ensure services were being provided, completed required paperwork, “pushed” into general education classes to provide extra support for students, and participated in IEP meetings.

M.T. was not one of the students on Mr. Burdick’s caseload because she remained on Ms. Garcia’s caseload. M.T. was in Mr. Burdick’s fourth period LIP class, and he “pushed” into her third period math class and her sixth period history class. He reviewed her “IEP At A Glance” to see the services she was receiving. M.T. would also come by the special education office to “check in” at mornings and at lunch. Mr. Burdick explained that several special education teachers are assigned to the special education office, and “lots of students” come by the office. The “check ins” were very informal and at the students’ discretion. Mr. Burdick never observed M.T. interact with Mr. Cleary.

During LIP, M.T. often went to Mr. Cleary's class to grade papers. On his first day at Beaumont High School, Mr. Burdick became aware that M.T. would often do this several times a week. He spoke with Ms. Garcia about it, who told him there was "a prior arrangement" allowing M.T. to leave LIP to go to Mr. Cleary's classroom. If M.T. went to Mr. Cleary's class, Mr. Burdick did not mark her absent because she went there with permission.

During the 2021-22 school year, Mr. Burdick reported M.T.'s behavior to administration because she made him feel uncomfortable. M.T. would follow him around campus, say inappropriate things to him, and act out inappropriately if she did not get what she wanted. She told Mr. Burdick about her home life, and that CPS was involved. After Mr. Cleary was placed on leave, M.T. told Mr. Burdick she missed him and did not know how she could go on. She implied it was hard for her with him gone, and she had trouble dealing with school without him. The day after she made these comments, Mr. Burdick asked to have his schedule changed.

Mr. Burdick does not know if there was a goal in M.T.'s IEP to address her behaviors, but her behaviors were discussed in person a number of times with her case manager, Ms. Garcia. Mr. Burdick explained that M.T.'s behavior concerned him. She attempted to get close to him or physically touch him, even after he told her to stop. She would walk up behind him, put her hands on his shoulders, attempt to sit on his desk, attempt to sit at the chair at his desk, and follow him around the classroom. She would act out by lying on the floor, yelling, threatening students, and destroying school property. Her outbursts on the floor lasted 15 to 20 minutes. She would threaten to throw her chrome book when she got frustrated, and when she could not answer questions on a test. Her behaviors "somewhat existed" before Mr. Cleary was placed on leave, happening "to a lesser extent, but became more extreme after Mr.

Cleary was placed on leave.” She had increased outbursts culminating in her saying inappropriate things, and threatening to destroy school property. Mr. Burdick tried various strategies to address her behavior, but it became so concerning he reported it to Assistant Principal Megan Cotton, his direct supervisor.

Mr. Burdick told Assistant Principal Cotton that M.T.’s behaviors were making him uncomfortable, and she kept trying to close the distances between them. This worried him, and he wanted to change his schedule so that he was away from her. He asked Assistant Principal Cotton to reassign him so that he would no longer have any classes with M.T. After speaking with Assistant Principal Cotton, he was removed from M.T.’s “push in” schedule so he only had her for LIP. Assistant Principal Cotton also made changes to the special education office, which is a double-sized classroom with doorways on both sides and entrances into the hallway. Students were no longer allowed in the office, and the doors were to remain locked. Students would have to email or knock on the door to gain entrance. However, despite these changes, the issues with M.T. continued. She would find ways to get in the special education office because teachers usually did not lock the doors when they left. M.T. would also continue to find Mr. Burdick at lunch time. He reported these issues to his department chair Dawn Brandon, and she tried to keep the special education office secure.

Assistant Principal Cotton sent a directive to Ms. Brandon to make changes to keep the special education office secure. There were signs posted, and Mr. Burdick’s schedule was changed. But the problems with M.T. remained. She would still find him in his office, attempt to be close to him during LIP class, and attempt to find and attend the open lunch periods that he hosted. He felt her attempts to get close to him were inappropriate, and her behaviors continued until the end of the 2022 spring

semester. Of note, this was similar conduct to how M.T. behaved towards Mr. Medore and Mr. Cleary.

In March 2022 when he was asked to meet with Assistant Superintendent Castillo he was not told the purpose of the meeting. However based upon the questions, he inferred it was a regarding an investigation of Mr. Cleary. He told Assistant Superintendent Castillo that he was informed M.T. was allowed to go to Mr. Cleary's class to grade papers, and that it had been arranged with Ms. Garcia. Mr. Burdick was never told there were any problems with M.T. leaving LIP and going to Mr. Cleary's class. Mr. Burdick reported his issues with M.T. before his meeting with Assistant Superintendent Castillo. However, during his meeting he was not asked about his own experiences with M.T. or his concerns.

Mr. Burdick testified that "much later" in the school year he sent an email on June 2, 2022, to Human Resources (HR) Director Domenica Bernuer that he copied to Assistant Principal Jamie Santos, Principal Jimenez, Assistant Principal Cotton, Assistant Principal Hudec, and Assistant Principal Ramirez. He sent the email because M.T. continued to make him feel uncomfortable, and he felt this needed to be communicated to Human Resources and administration. M.T. kept requesting that he administer her testing in a separate location, she was at his desk waiting for him, she constantly came by asking for him, and she displayed emotional reactions when he was not around. The procedures put in place to set boundaries with M.T. were not working. Mr. Burdick would be sitting at his desk working with other students or grading papers, and M.T. would scoot her chair and try to get as close to him as she could. Occasionally she would disrupt class by yelling, cursing, or being loud. He would try to verbally admonish her, trying to calm her down, but her behaviors were

escalating. He titled his email "Report and documentation of student harassment," and wrote:

I would like to report and document that I felt harassed and made to feel uncomfortable by a student this school year, most aggressively this week.

This has been addressed by me in a meeting with my direct supervisor, [Assistant Principal] Cotton, and resulted in having my schedule changed. Additionally, it has been reported by my department chair, Dawn Brandon, who communicated this as an issue to her supervisor, as well as assisting with precautionary measures.

These measures included the student directly being admonished not to enter the office by [Assistant Principal] Cotton, the doors to the office being locked, and signs posted on the doors that students are not allowed and it is not a direct entrance.

The student, M.T. , continued to find ways into the [special education] office (E12), including alternate entrances, ignoring admonishments and signage. She would actively search for me in other classrooms I work in throughout the day. This continued up to the point where today and yesterday I had to avoid the [special education] office altogether. I also had to lock my classroom doors, and asked security to keep the E building locked for the second

period of the day. The student was reported by other teachers asking around where I was located for the day.

The student often ignores prompting and coaching and repeatedly attempts to be inappropriately close to myself [s/c], including things such as slowly scooting her chair closer when I am not looking, attempting to sit on my desk, and often waiting for me when I return to the office. The student will also physically follow me around the classroom during the 4th period class that I teach and deliver her service minutes.

Assistant Principal Hudec replied to the email, apologizing to Mr. Burdick that this was happening to him, and thanking him for notifying administration. Assistant Principal Hudec also wrote: "Has the IEP team addressed the concern and develop [s/c] a Behavior Goal for M.T.?" (Of note, a behavior goal was never created in M.T.'s IEP to address these behaviors.) Assistant Principal Hudec further advised that he would put in an Exclusion Lock¹² on the master schedule so M.T. would not be scheduled to any of Mr. Burdick's assigned sections. After these email exchanges, Mr. Burdick did not have any follow-up from Assistant Principal Hudec.

In Assistant Principal Cotton's reply to Mr. Burdick's email, she apologized for what was happening, thanked him for reporting his "concerns immediately," and

¹² An Exclusion Lock is a program that prevent students and/or teachers from being assigned to the same classes.

informed him that he would “reach out to M.T.’s case manager about a goal to address behavior.” Again, a behavior goal was never created in M.T.’s IEP.

Mr. Burdick testified that even though an “Exclusion Lock” had been placed on the master calendar that was supposed to prevent M.T. from being assigned to any of his classes, in the 2022-23 school year she was assigned to him two times per day. He followed up with administration, and she was removed from his classroom. Mr. Burdick described the attempts to stop M.T.’s behavior as “ineffective.” His own attempts to establish boundaries did not work. He “constantly” tried to put additional space between himself and M.T., to no avail. He never did anything to encourage her behaviors. He would not allow her to sit at his desk, touch or lean on him, or hug him as that would be inappropriate.

Special Education Department Chair Dawn Brandon

34. Dawn Brandon is now an Assistant Principal at Beaumont High School. Previously, she was the department chair of the special education program at the high school.

M.T. and a couple students would come through the special education office, even though they knew they were not allowed to do so. M.T. would come in the mornings and “fist bump” teachers. Some days she came at lunch. Ms. Brandon initially had no specific concerns regarding M.T., but given the frequency with which she was coming in the special education office, Ms. Brandon was concerned about maintaining confidentiality of the documents that were on the special education teachers’ desks. There were times teachers left the doors unlocked, and she wanted to ensure confidentiality of the office.

However, in March 2022, Ms. Brandon had specific concerns regarding M.T., and sent an email to Assistant Principal Cotton on March 23, 2022, in which she wrote:

As a department, we have some significant concerns with M.T. [The special education classroom] has become a hangout for her instead of attending classes even after directing her to go to class. It is now at the point where she has made it very uncomfortable for our male and female teachers. She stands very close when speaking to our male teacher [*sic*]. They move themselves away, but she continues to attempt to move close. For example yesterday Mr. Simonson was getting ready to go to class, M.T. said "you are in [room number] right?" M.T. sought this information out, because she doesn't have Mr. Simonson for any class. Other concerns are, she will try and hug Joel Burdick from behind. He will turn away and tell her "that is not appropriate"

Joel is in a very uncomfortable position and he also has her as a student in [LIP] 4th period. She is also seeking attention from Vanessa Rubio and Patrick Studer. I don't want any of our teachers being put in any unnecessary uncomfortable situations.

I wanted to let you know, so it could be addressed appropriately.

Ms. Brandon was not M.T.'s case manager, and M.T. was not in any of Ms. Brandon's classes. Ms. Brandon "felt a responsibility" to refer any concerns she had to administration, which she did. Mr. Cleary never brought any concerns to Ms. Brandon regarding M.T. During an IEP meeting, he recommended that M.T. be placed in his AP physics class her senior year. Mr. Burdick brought his concerns regarding M.T. hugging him to Ms. Brandon, and she told him to send an email to administration and copy the principal and the HR department. She thought it odd M.T. knew Mr. Simonson's schedule when she did not have him as a teacher.

Ms. Brandon expects teachers to establish and follow classroom rules and establish appropriate boundaries with students. If the student does not follow the rules, the teacher should report it to administration and the department chair. She has never seen an accommodation in an IEP that allows preferential seating to be at the teacher's desk.

Assistant Principal Megan Cotton

35. Megan Cotton is an Assistant Principal at Beaumont High School. Her areas of responsibility have changed since the new principal started this school year. During the 2021-22 school year, her duties included handling students with disabilities and overseeing the special education program.

A group of staff members approached her one day during the 2021-22 school year to tell her their concerns regarding M.T. Afterwards, Assistant Principal Cotton spoke to other teachers and obtained emails from them. The first email she received was from Ms. Brandon, the Special Education Department Chair, referenced above. Mr. Burdick reported he was trying to create boundaries, but M.T. would not adhere to them. Assistant Principal Cotton spoke with M.T. regarding boundaries, contacted

M.T.'s case manager, Ms. Garcia, and discussed scheduling an IEP to address M.T.'s "behavior concerns." Assistant Principal Cotton was not part of the IEP, and believes it is the case manager's responsibility to follow up, and "they would take it from there."

Assistant Principal Cotton stated that teachers are expected to establish boundaries and rules in the classroom. Teachers are expected to comply with the rules they set. If a student does not respect boundaries, the first step would be discussing the matter with the student, and if nothing changes, calling the student's home if that was appropriate. If this still did not work, the teacher should report the concern to administration, and seek support from the administration team. Mr. Cleary never brought any concerns regarding M.T. to administration. Assistant Principal Cotton never observed Mr. Cleary's classroom and never observed M.T.'s behavior in the classroom. No one from administration went to observe Mr. Cleary's classroom and/or observe M.T.'s behavior in class.

Testimony of District Employees Regarding Mr. Cleary's Investigation

ASSISTANT SUPERINTENDENT JENNIFER CASTILLO

36. Jennifer Castillo has been employed by the district since 2017 and been the Assistant Superintendent of Human Resources since 2020. Her duties include recruitment, hiring, performance evaluations, negotiations and employee discipline. She expects teachers to always be professional; they have an obligation to set and enforce boundaries with students, and she referenced the district's job description for high school teachers in her testimony.

She claimed the district offered child abuse reporting and prevention to teachers because when she first arrived at the district, there were two incidents of teachers being involved with students, and so the training was given as a preventative

measure so that all teachers were aware of the expectations, as well as ways to keep from putting themselves in similar situations. Assistant Superintendent Castillo authenticated the documents related to trainings Mr. Cleary attended, and the sign in sheets he completed documenting his attendance, and those documents were received in evidence.

When Assistant Superintendent Castillo was notified regarding the allegations against Mr. Cleary, she reviewed notes of student interviews, and she interviewed students, Mr. Cleary, and some staff members. She also spoke with K.M. 's parents and M.T.'s mother. She prepared notes of her interviews which were received in evidence. Some of those notes were slightly different from the testimony of witnesses offered. For example, she did not document that D.H. told her he "looked away" when M.T. placed her hand on Mr. Cleary's knee. Mr. Cleary claimed some of the notes regarding his interview were not an accurate summary of the statements he made. Assistant Superintendent Castillo testified that Mr. Cleary's explanations regarding touching M.T. were "a little inconsistent" because he initially acknowledged touching her on the shoulder, then admitted to side hugs, then acknowledged the two hugged every day. He also acknowledged that M.T. leaned on his shoulder, describing her as a "leaner."

Mr. Cleary stated that during the first quarter of the 2021-22 school year he told M.T. there needed to be distance between them, but he did not follow-up after that time. He also initially told her to stop swearing, but that was not effective so he allowed her to continue. He admitted making the stray dog comment to Assistant Principal Hudec. Mr. Cleary also admitted he and M.T. threw ping pong balls at each other during class.

Mr. Burdick told Assistant Superintendent Castillo that he thought M.T. was "like a TA" for Mr. Cleary because she graded papers for him, and he assumed it had been

prearranged for M.T. to go to Mr. Cleary's class as often as she did. He said Mr. Cleary never reached out to him regarding M.T., and M.T. shared with him that Mr. Cleary was her favorite teacher.

Assistant Superintendent Castillo spoke with Ms. Garcia, who had been M.T.'s case manager for approximately three years. Ms. Garcia knew there were times when M.T. would go to Mr. Cleary's class, and M.T. told Ms. Garcia that Mr. Cleary was a good teacher. Ms. Garcia shared the incident regarding Mr. Medore, documented below, and that M.T. had suffered trauma including her stepfather's death and her biological father abandoning her for another family. Ms. Garcia was not aware that M.T. was sitting at Mr. Cleary's desk, nor was she aware that she was not going to her LIP class with Mr. Burdick. Mr. Rubio had M.T. for second period and said that M.T. would generally stop in his class and then leave and go to Mr. Cleary's classroom.

As part of her investigation Assistant Superintendent Castillo searched the district's emails to see if there had been any emails exchanged between Mr. Cleary and M.T. She identified emails that she located. In one series of emails exchanged on February 18, 2022, M.T. notified Mr. Cleary that she would be absent, and the two emailed about the music he played in class, which the students enjoyed. In email exchanges in the Fall of 2021 and January 2022, Mr. Cleary commented about wanting to watch surfing, looking up a name, his blog, asking if M.T. had been practicing her ping pong, and commenting about the quiet. One email simply said "Bump," which seemed odd, but no testimony explaining any of these emails was offered.

When Assistant Superintendent Castillo interviewed Mr. Burdick, he told her he thought there was "a prearrangement" allowing M.T. to go to Mr. Cleary's class during LIP. He thought it had been prearranged with M.T. and Ms. Garcia. If M.T. was up-to-date on her classwork, she was allowed to leave LIP and go to Mr. Cleary's classroom.

Sometimes she left LIP to go to other classrooms. Mr. Burdick was aware that M.T. went to Mr. Cleary's classroom. Assistant Superintendent Castillo did not check attendance records to document that M.T. was in LIP or Mr. Cleary's class. The attendance records she checked contained no entries that M.T. missed her second or fourth period classes, and there was no documentation of any unexcused absences.

Assistant Superintendent Castillo spoke with Mr. Rubio, M.T.'s second period teacher, who was also aware that M.T. left class to go to the special education office, Mr. Cleary's classroom, or another teacher's classroom. The second period teacher stated that M.T. would go back and forth throughout the day to various classrooms and check in with teachers throughout the day. The teachers were all aware where M.T. would go when she left their classrooms. None of them told Assistant Superintendent Castillo that M.T. left their classrooms without permission.

Assistant Superintendent Castillo acknowledged that at the first meeting with Mr. Cleary, he was placed on administrative leave. Although he tried to share information, she told him he would have an opportunity to do so in the future, but for now was being placed on leave so the district could conduct an investigation. Mr. Cleary was offered a *Skelly* meeting, but he chose not to attend and, instead, offered a written response.

After conducting her investigation, Assistant Superintendent Castillo was part of the team that recommended Mr. Cleary be terminated, and explained her rationale for doing so. She admitted that M.T.'s prior false allegations made against other teachers did not factor into her decision. Nor did she have any concerns that K.M.'s claims may have been affected by her mistaken belief that M.T. was getting an A while K.M. was getting a D grade.

DIRECTOR OF HUMAN RESOURCES DOMENICA BERNUER

37. Domenica Bernuer is the district's Director of Human Resources. Her duties include recruitment and employment, as well as managing leaves, certifications, and the disciplinary process. She had no personal knowledge of any of the events at issue. She merely sat in on meetings and took notes. She had no role in investigating any of the allegations.

HR Director Bernuer's notes listed things she was going to follow up on after the meetings, such as getting records of M.T.'s grades and attendance. However, HR Director Bernuer testified that she does not know if she ever did so. She did not do any follow-up after the March 8, 2022, meeting with Mr. Cleary.

HR Director Bernuer was aware that in 2019 M.T. made a similar claim against Mr. Medore, but she does not have any information regarding it as she started working in the district in 2020, the year after those events.

ASSISTANT PRINCIPAL JOEL HUDEC

38. Joel Hudec is currently a principal at an elementary school. Prior to that he was an Assistant Principal at Beaumont High School during the times at issue in this matter. Assistant Principal Hudec acknowledged there was "lots of administrative turnover" during this time.

Assistant Principal Cotton notified him of the allegations against Mr. Cleary, and he was asked to escort Mr. Cleary off campus when Mr. Cleary was placed on administrative leave. During the escort, Mr. Cleary, said that he was "100 percent innocent," had done nothing wrong, and that K.M. was "making lies and going to ruin his life." While they were in his classroom gathering his things, Mr. Cleary asked if he

could return to the office to speak again with human resources. Assistant Principal Hudec escorted Mr. Cleary back to the office but did not participate in the meeting. Assistant Principal Hudec then escorted Mr. Cleary to his car. Assistant Principal Hudec was not involved in investigating the allegations against Mr. Cleary.

Assistant Principal Hudec does not recall the statement regarding a stray dog. On March 9, 2022, he received a text message from Mr. Cleary. Human resources had previously requested that if Mr. Cleary contacted administration, they were to notify human resources. Thus, Assistant Principal Hudec did not respond to Mr. Cleary and, instead, turned over the text message to human resources, as requested. Mr. Cleary's text message stated:

Hey Joel, I had a big meeting with HR yesterday, and it went okay. There's clearly no evidence to be found, but the district's lawyer pushed really really hard into the stuff I did that they think encouraged the perception. The perception is all there is - nothing more, and I don't understand why they're chasing that instead of celebrating the fact that nothing actually happened. I don't feel that [my union representative] did anything for me, and I'd like the opportunity to speak again with someone at my side who's got a pair. I will be supremely disappointed with any result less than full exoneration and public apology. I don't plan on accepting any slaps on the wrist, and that appears to be what they're preparing. I stood patiently while this tornado circled me, naïvely counting on truth to prevail. The only righteous ending here is for me to be rewarded. I tell you

this partly to vent, but mostly to ask you to exert whatever influence you can help me. I fear I'm being made into a monster to be ceremoniously punished. Personally, I think we should celebrate an investigation that reveals nothing. Unfortunately, they don't seem to see it that way. I am a completely innocent person who's about to be told, "Well, you should have known better than to let it look like you were doing it." I haven't wanted to put up any fights, but this is not okay. I'm going bonkers. If there's nothing you can do, I understand. Thank you for always being decent.

Assistant Principal Hudec is aware that during the 2019-20 school year another student claimed M.T. was having an inappropriate relationship with another teacher, Mr. Medore. That student claimed M.T. was spreading rumors of having an inappropriate relationship with Mr. Medore. Assistant Principal Hudec spoke with witnesses, who did not corroborate any wrongdoing. M.T. denied that Mr. Medore had done anything wrong. Assistant Principal Hudec described how Mr. Medore came into his office very upset, advising that claims were being made against him, and he was "absolutely innocent and wanted no part of it." Mr. Medore was told that the school had contacted the police department, and an investigation was going forward, and he would probably be contacted by police.

Following the police investigation it was determined the allegations were unfounded. Assistant Principal Hudec also concluded that the claims were unfounded and unsubstantiated. Assistant Principal Hudec was unsure about what he shared regarding Mr. Medore's investigation with those who performed Mr. Cleary's investigation. He agreed that the allegations in both cases were serious. Assistant

Principal Hudec was not sure of when, during Mr. Cleary's investigation, that he advised the district of Mr. Medore's investigation or when he turned over the notes of that investigation. He does not know if it was after he received Mr. Cleary's text.

After Mr. Medore's investigation, M.T. complained she was being harassed in class by other students. "Appropriate discipline" was assigned to M.T. and the other students, and parents were contacted. Assistant Principal Hudec spoke with M.T.'s mother, who told him that Mr. Medore had very similar features to M.T.'s biological father, and he referred M.T. to school counseling.

In May 2022 Assistant Principal Hudec received a series of emails from Mr. Burdick, who was concerned regarding M.T.'s behavior and expressed feeling harassed. Mr. Burdick wanted preventative measures put in place to limit contact with her which was done. One measure was an Exclusion Lock. Assistant Principal Hudec does not know if an Exclusion Lock was put in place for Mr. Medore.

Assistant Principal Hudec would expect teachers to notify their supervisor and set appropriate boundaries for M.T.'s behavior. He admitted administration never went to observe Mr. Cleary's classroom, never observed what was happening with M.T. on campus, and he is unaware of any observations ever being performed.

PRINCIPAL JESUS JIMENEZ

39. Jesus Jimenez was the Principal at Beaumont High School for four years, including during the 2021-22 school year. He is currently the Director of Secondary Education with Fremont Unified School District.

Principal Jimenez visited Mr. Cleary's classroom when he did his "regular rounds," but never did so "officially." He did it to have a visible presence on campus.

He would stop by every classroom for approximately two or three minutes, and his visits were unannounced. Principal Jimenez never formally evaluated Mr. Cleary because he did not oversee the science department, another Assistant Principal would have done that evaluation. Principal Jimenez's opinion of Mr. Cleary was that he was a good teacher. He never had any complaints regarding Mr. Cleary or his behavior from either parents or students, and he never witnessed any inappropriate behavior. Mr. Cleary had an outgoing personality, and his entire class was project-based where students worked in teams, and created a product or assignment. Principal Jimenez observed students engaged in the lessons in Mr. Cleary's class.

Principal Jimenez did not know M.T. He did not know if she was involved in a prior investigation. Her name "did not ring a bell." He explained that administration consisted of a team of six administrators divided by different departments and grade levels. As such, unless there were appeals of the decisions made by Assistant Principals, certain matters never came across his desk. Of note, it was concerning Principal Jimenez was not even aware of M.T.'s name given all the allegations surrounding her, especially since they involved allegations of inappropriate relationships with male teachers.

Principal Jimenez expected teachers to establish rules and follow them. He expected teachers to set and enforce boundaries. If students did not follow the rules or violated boundaries, he would expect teachers to report that to administration. Mr. Cleary never reported any issues regarding M.T. violating boundaries. Principal Jimenez first learned of the matter involving Mr. Cleary and M.T. while at the airport in Sacramento. He received a call from one of the Assistant Principals about the allegations. He was never involved in the investigation of Mr. Cleary but was made aware at the end of the investigation that Mr. Cleary was placed on administrative

leave. Principal Jimenez was never given any “particulars or details” of the investigation, and left to begin his new job at the end of the 2021-22 school year.

Lindsey Garcia’s Rebuttal Testimony

40. Complainant recalled Ms. Garcia as a rebuttal witness to refute other witness’ testimony. Ms. Garcia denied that she and Mr. Cleary had “dozens” of discussions regarding M.T. She does not recall any specific conversation, but “maybe two or three times” they talked about M.T. When she requested information from teachers to prepare for the IEP, she never received an email from Mr. Cleary. She recalled having a verbal discussion with him regarding M.T. taking the AP Physics Class, and a similar discussion at the IEP.

Ms. Garcia does “not specifically recall” allowing M.T. to go to Mr. Cleary’s class, but she does not generally allow any of her students to do that. She was M.T.’s case manager from her freshman year until partially through her junior year, and during that time Ms. Garcia “did not have a practice of allowing students to go to other teachers’ classes.” She could not recall telling Mr. Burdick that there was an arrangement for M.T. to go to Mr. Cleary’s classroom. She did not “agree or disagree” she said that, she just could not recall making that statement.

When Ms. Garcia was shown Mr. Medore’s email in which he wrote that Ms. Garcia allowed M.T. to come to his class during her non-scheduled class time, Ms. Garcia then testified that she would allow M.T. to go for class projects. However, she does not recall dropping M.T. off anywhere, let alone Mr. Medore’s class, and recalls having no discussions with Mr. Medore regarding M.T.’s work. Thereafter, when Ms. Garcia was pressed for specifics, she claimed the questions were “getting into the

weeds” and she could “not recall specifics” because these events happened “more than three years ago.”

When confronted with Assistant Superintendent Castillo’s notes of her interview of Ms. Garcia, wherein Assistant Superintendent Castillo documented that Ms. Garcia stated that M.T. went to Mr. Cleary’s class sometimes, Ms. Garcia then changed her testimony to state that she “never claimed” she “was unaware” that M.T. was in Mr. Cleary’s class as she was “aware sometimes” that M.T. went to his class. When questioned further, Ms. Garcia then testified she would allow a student to go to another teacher’s class if there were “prior arrangements made.”

Ms. Garcia does not recall Mr. Cleary asking her if it was okay that M.T. came to his class. She recalled seeing M.T. in his class one time when she was supposed to be in LIP, and Ms. Garcia gestured to M.T. through the window to leave and return to LIP. Ms. Garcia stated that she wanted M.T. to use her LIP wisely and get the additional support she needed.

Ms. Garcia’s testimony was contradictory, and unsupported by other reliable evidence. Her demeanor made her appear hostile and defensive. In short, her testimony was not credible.

Testimony of District’s Professional Education Provider

41. Diane Cranley is a consultant for the district, who specializes in child sexual abuse. She has been training districts and community members since 2007. She works for Keenan and Associates, a joint powers authority/insurance company that offers training to its members, such as the district. Ms. Cranley described her work as consisting of two parts: she provides support groups for parents of children who have been abused and adult survivors of abuse; and she provides training for parents,

school districts, and law enforcement agencies on how to prevent sexual abuse. Since 2014 she has been primarily providing trainings for school districts. Those include preventing sexual abuse in schools and providing best practices for school districts.

Ms. Cranley provided two-hour on-site trainings for district staff in 2017 and again in 2018. Staff who attended her trainings were provided certificates of completion.¹³ The content of the trainings focused on understanding grooming behaviors, which often appear in child molestation cases before boundaries are crossed, and on providing her eight best practices for protecting the sexual innocence of children. She explained how grooming and boundary crossing have become the key parts of her trainings. Ms. Cranley reviewed the topics she discussed, which covered the stages of grooming in depth. She described the different types of boundaries that exist, and how violating boundaries can be precursors to grooming behaviors. She stated it is important for teachers to have appropriate boundaries to set students' expectations regarding those boundaries.

Expert Witness Testimony

42. Deirdre M. D'Orazio, Ph.D., received her Bachelor of Arts in psychology from Villanova University; and her Master of Arts in clinical psychology and her Ph.D. in clinical psychology with a forensic psychology proficiency from the California School of Professional Psychology at Alliant University. Dr. D'Orazio has extensive training, education, and experience working with and treating sexual offenders and their victims. She has written numerous publications and taught several courses and workshops. She has received education and presented workshops and trainings

¹³ Certificates attesting to Mr. Cleary's attendance at trainings were received.

regarding groomers and grooming behaviors. Her credentials were impeccable, and she presented as an extremely accomplished and knowledgeable expert.

Dr. D'Orazio reviewed the documents at issue in this matter, and met four times with complainant's counsel. She did not interview Mr. Cleary or any of the students, and based her opinions on the documents and information she obtained from counsel. She testified about the common tactics or strategies that are used in the grooming process. She explained the seven steps groomers typically take with the vulnerable target, which include choosing the target, gaining access to the target, isolating the target, building trust, normalizing successive boundary violations, normalizing the behavior, and giving the target special treatment. Dr. D'Orazio described how Mr. Cleary's interactions with M.T. satisfied those seven grooming criteria, but acknowledged that groomers often are not aware that their behavior is grooming behavior. However, the behavior becomes more intentional as the groomer proceeds through the seven steps, and groomers are likely to deny their behaviors. Dr. D'Orazio opined that M.T. was a vulnerable target, and detailed the lasting negative effects the grooming behavior can have on the target.

Dr. D'Orazio was aware of "some concerns" regarding other male teachers but was not told any of the details other than that those allegations were unfounded and those teachers were not disciplined. Those incidents did not affect her opinions regarding Mr. Cleary. Dr. D'Orazio would not be surprised if M.T. made complaints against other teachers because her school records and texts chronicled a pattern of behaviors. Dr. D'Orazio explained that this is why it is incumbent upon adults to set and enforce boundaries. Adults should redirect and enforce limits when children do not adhere to those boundaries.

Character Witness Testimony

43. Isaac Hasan is a former Beaumont High School student who is currently employed as a thermal design and aerospace engineer at General Atomics in San Diego. He graduated from Beaumont High School in 2018, and was an aerospace engineering major at Cal Poly Pomona where he graduated in 2022. Mr. Hassan had Mr. Cleary as a teacher for two years; for physics as a sophomore and then for AP physics during his junior year in high school. Mr. Hasan was also a teacher's assistant in one of Mr. Cleary's regular physics classes. Mr. Hasan said he was always a smart kid who did well in math, and when he took Mr. Cleary's course he just loved physics and decided to make it a career.

He described Mr. Cleary as "a great teacher" who "took a lot of time to take care of students to make sure they understood the material." Mr. Cleary was not a traditional teacher and did not teach in the usual way. The students were given specific videos to watch and Mr. Cleary took a hands on approach to learning. Mr. Hasan said, "I am where I am today because of things I was taught in that class." Mr. Cleary hosted the ping pong club at lunch where there were lots of students, Mr. Cleary was never alone with students. Mr. Cleary's classroom was "an open and free space" where students were "open and could ask questions." Mr. Cleary was never unprofessional.

District Policies and Board Regulations

44. District policies and board regulations regarding ethics, mandated reporting, preventing and reporting child abuse, and establishing boundaries were introduced. Mr. Cleary acknowledged receiving those documents. Complainant alleged that Mr. Cleary's actions violated provisions of those policies and regulations.

LEGAL CONCLUSIONS

Applicable Code Sections Regarding Dismissal Actions

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44934 and 44944.)

2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(2) authorizes dismissal for unprofessional conduct. Subdivision (a)(1) authorizes dismissal for immoral conduct. Subdivision (a)(4) authorizes dismissal for dishonesty. Subdivision (a)(6) authorizes dismissal for evident unfitness for service. Subdivision (a)(8) authorizes dismissal for persistent violation or refusal to obey regulations and district policies.

3. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and sets forth the Commissions' authority regarding its final decision.

4. Education Code section 44938 outlines the procedures the governing board must follow before acting on any charges brought against a permanent employee.

Burden and Standard of Proof

5. The "burden of proof" means the obligation of a party, to convince the trier of fact that the existence of a fact sought to be proved is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The district has the burden of proof to establish cause to dismiss its employee.

6. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than, the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Applicable Board Policies and Regulations

BOARD POLICIES

7. Board Policy Nos. 4119.21, 4119.21, 5141.4, 5145.3, and Administrative Regulation Nos. 5141.4, 5145.3 set forth the professional standards the board expects of its employees. As noted, the board expects district employees to “maintain the highest ethical standards, behave professionally, follow District policies and regulations,” “exercise good judgment when interacting with students and other members of the school community,” and “engage in conduct that enhances the integrity of the District, advances the goals of the District’s educational programs, and contributes to a positive school climate.” The board further expects its employees to report suspected child abuse.

Relevant Judicial Authority

IMMORAL CONDUCT

8. "Immoral conduct" is conduct hostile to the welfare of the general public and is not confined to sexual matters. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

9. There are certain professions which impose upon persons attached to them responsibilities and limitations on freedom of action, which do not exist in regard to other callings. Public officials such as judges, policemen, and schoolteachers fall into such a category. (*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.)

10. "As between a teacher and his student, '(a)n important part of the education . . . is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept.' (Citation.) 'A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the [students] coming under [his] care and protection. . . . The teaching by example as well as precept, of obedience to properly constituted authority and discipline necessary to a well ordered society, is an important part of education.'" (*Watson v. State Bd. of Education* (1971) 22 Cal.App.3d 559, 565.)

11. "The calling of an educator is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment. The educator's ability to inspire children and to govern them, his power as an educator, and the character for which he stands are matters of major concern in an educator's selection and retention. . . . An

educator in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the students coming under his care and protection. (Citation.)" (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463-64.)

12. The governing board of a district is entrusted with the conduct of the schools under its jurisdiction, their standards of education, and the moral, mental, and physical welfare of the pupils during school hours. An important part of the education of any child is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept. "Book learning" is only a phase of the important lessons a child should learn in a school. (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 970-71.)

13. Immoral conduct cannot be considered in the abstract. It must be considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public; more specifically, conduct which is hostile to the welfare of the school community. In providing standards to guide school boards in placing restraints on conduct of teachers, the Legislature is concerned with the welfare of the school community. Its objective is the protection of students from corruption. This is a proper exercise of the power of a state to abridge personal liberty and to protect larger interests. But reasonableness must be the governing criterion. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 224.) The phrase "immoral conduct" within the meaning of the Education Code denotes immoral or unprofessional conduct or moral turpitude of the teacher that renders the teacher unfit to teach. (*Ibid.* at p. 225.)

14. The term “immoral” has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. The term “immoral conduct” has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. “Immoral conduct” is not confined to sexual matters. It includes an inconsiderate attitude toward good order and the public welfare. It is sometimes synonymous with “dishonesty” or a high degree of unfairness. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811, noting that no other California cases had previously defined the term “immoral conduct.”)

15. Rejecting statutory terms, such as “immorality,” “unprofessional conduct,” or “moral turpitude” as overly broad to use as grounds for discipline of public school teachers, the court in *Morrison, supra*, created a seven-part test to assess whether a misbehaving teacher is fit to teach. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 466.) “Because terms such as ‘immoral,’ ‘unprofessional,’ or ‘involving moral turpitude’ are too broad and amorphous to be used as a basis for the termination of a professional license, it must be shown the conduct in question indicates an unfitness to engage in the profession.” (*Id.* at pp. 473-74.)

16. Since the term “immoral conduct” is vague and broad, whether the conduct demonstrates an unfitness to teach must be measured against seven criteria set forth in *Morrison, supra*. (*Governing Board of ABC Unified School District v. Haar* (1994) 28 Cal.App.4th 369, 383.)

DISHONESTY

17. In *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220, fn 12, the Supreme Court required application of the *Morrison, supra*, factors to the determination of "dishonesty." As the Court noted: "Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute 'dishonesty' as a ground for discipline." (*Ibid.*)

18. In an often-cited definition, the court stated in *Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717:

Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness. [Citations.] As put by the court in *Alsup v. State*, 91 Tex. Cr. 224, . . . 'dishonesty denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.'

EVIDENT UNFITNESS FOR SERVICE

19. The applicable standard or determinative test in teacher dismissal cases is whether the person is fit to teach. "Fitness to teach" is a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560-561.)

20. "Evident" is defined as "clear to the vision and understanding." "Unfit" is defined as "not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound" and "unsuitable, incompetent and not adapted for a

particular use or service." (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

21. In *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, the court noted the two parallel, yet contradictory, lines of cases regarding "unfit for service." One line of cases equated that term with "unprofessional conduct" and the other line of cases distinguished the two definitions. In deciding that the latter line of cases was the correct way to evaluate "unfit to serve," and complied with the rules of statutory construction. The *Woodland* court concluded that "unprofessional conduct" and "evident unfitness for service" do not mean precisely the same thing. Although conduct constituting "evident unfitness for service" will often constitute "unprofessional conduct," the converse is not always true. Evident unfitness for service requires that unfitness for service be attributable to defect in temperament, which is not necessary for a finding of unprofessional conduct. Nevertheless, lower courts may not disregard the criteria for unfitness set out in *Morrison* where that court concluded that "unprofessional conduct" meant conduct showing a teacher was unfit to teach. These criteria must be analyzed to determine, as a threshold matter, whether the conduct indicates unfitness for service. If it does, the next step is to determine whether the "unfitness" is "evident"; i.e., whether the offensive conduct is caused by a defect in temperament. (*Id.* at pp.1442-1445.) A finding of "unfit to serve" can be made if the evidence, taken in the aggregate, shows that retaining the employee would pose a significant danger of psychological harm to students and fellow teachers. (*Id.* at p.1456.)

22. To establish a teacher is unfit to teach, *Morrison, supra*, requires a nexus between government employment and alleged employee misconduct stemming from the principle that "[n]o person can be denied government employment because of

factors unconnected with the responsibilities of that employment." (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463.)

23. "Unlike 'unprofessional conduct,' 'evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectation of the employing school district.'" (*San Diego Unified School District v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1142-43.)

24. An employee's actions on a given day may suggest a lack of judgment and discretion, or may be an isolated act precipitated by an unusual accumulation of pressure and stress. An absence of any other incidents in the employee's teaching career suggestive of lack of judgment or discretion can further distinguish the aberrant character of the act at issue. In such a case, a fact finder could reasonably conclude that the isolated incident of poor judgment was outweighed by years of demonstrated teaching competence, and that on balance the employee possessed the qualities of character necessary for teaching fitness. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696-701.)

25. The nexus between an employee's conduct and his fitness to teach is established when the conduct is detrimental to the mission and functions of the employer. Factors to consider are whether the acts demonstrate a serious lapse in good judgment, the teacher failed to recognize the seriousness of his misconduct, the teacher attempted to shift blame to parents and students who might access his posting, his principal had lost confidence in his ability to serve as a role model based upon the posting, or, most noteworthy, the teacher's testimony that he did not think his postings would have any impact on his ability to teach his students if any of them

had viewed his post and that he did not view his posting as immoral. The conduct itself, together with the teacher's failure to accept responsibility or recognize the seriousness of it, given his position as a teacher and role model, demonstrates evident unfitness to teach. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1465-66.)

26. One act does not alone demonstrate the unfitness of the teacher, but is simply one of the factors to be considered. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal. App.3d 555, 561-62.)

27. There must be a nexus between the teacher's conduct and his usefulness to the school district and only when so construed can grounds to dismiss for immoral conduct or unfitness to serve be constitutionally applied. (*Board of Trustees v. Judge* (1975) 50 Cal. App. 3d 920, 929.)

PERSISTENT VIOLATION OF OR REFUSAL TO OBEY LAWS

28. The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) Education Codes section 44932, subdivision (7) pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; "it is the persistent disregard" of school rules that the subdivision is designed to regulate. (*Id.* at p.84.)

Evaluation of the Causes for Dismissal

29. Mr. Cleary's behavior demonstrated a lack of maturity and lack of good judgment. However, it did not constitute immoral conduct or an unfitness to teach. Mr. Cleary is a friendly, student-oriented teacher, whose classroom had little formal structure allowing students to freely move around the classroom, hallway, and outdoors as they worked on physics projects. In addition, it did not appear that Mr. Cleary had ever established any supportive relationships with colleagues or reached out to administration to address student issues. This combination of a loose classroom environment and lack of colleague support greatly contributed to what occurred.

Mr. Cleary also demonstrated a naïveté of thinking he could befriend and help students, but was clearly in over his head with M.T. She was an emotionally disturbed, conniving, dishonest student who fixated on male teachers and erroneously interpreted their actions as demonstrating love and/or affection for her. It does not appear that any boundaries or behavior plans were ever put in place for M.T., and she was allowed to freely roam the halls of Beaumont High School causing mischief. Mr. Cleary was left without any support to try and help M.T.

M.T.'s allegations as a freshman that Mr. Medore was being investigated for grooming her, that she was being swabbed, and confirming with teachers that they were required to report her comments to CPS because they are mandated reporters, suggested a level of awareness regarding the attention her claims would attract. However, that awareness possessed by a student as immature and emotionally disturbed as M.T., was a precarious situation as evidenced in this matter. Mr. Cleary was, unfortunately, unaware of M.T.'s prior behaviors and false allegations and fell prey to what he thought was a troubled student he could help. Similarly, Mr. Medore's email, even after he was aware of the allegations made against him, also demonstrated

a naïve teacher who still praised M.T. For whatever reason, Mr. Cleary, like Mr. Medore, failed to appreciate how dangerous a student like M.T. could be.

The Commission did not find K.M. to be a credible witness. The claims that she observed more that occurred in the classroom than other students because she was “looking out for M.T.” were not persuasive. K.M. participated in the plot to make Mr. Cleary jealous, exchanged multiple texts with M.T. regarding Mr. Cleary, erroneously thought M.T. was receiving an A grade for doing nothing, whereas K.M. ’s grade was a D, and made allegations about classroom behavior that no other students observed. In short, the Commission discounted much of her testimony.

Other students observed some of the alleged behaviors, the game of tag, throwing ping pong balls, M.T.’s swearing, M.T. writing on objects, and M.T. sitting at Mr. Cleary’s desk, none of which rose to the level of immoral conduct. Rather, those activities supported the Commission’s finding that Mr. Cleary is immature and exercised poor judgment. Further, Mr. Cleary did not “allow” M.T. to swear in class. He would talk to her when she did so, but, like her other behaviors, it was all but impossible to get her to stop. It was not established that M.T. ever ate lunch alone in Mr. Cleary’s classroom. It was not established that M.T. informing Mr. Cleary about her health or him asking how she was constituted immoral conduct. It was not established that allowing her to grade labs constituted immoral conduct. M.T.’s IEP team was aware she was grading papers, as were other teachers.

The behaviors that were concerning, Mr. Cleary writing on M.T.’s personal items, hugging her, and allowing M.T. to lean on him, again clearly showed Mr. Cleary exercised serious lapses in judgment, but did not establish immoral conduct. The one student who, one morning before class started, observed what looked like an “intimate” conversation between Mr. Cleary and M.T. while they were sitting close on

the ping pong table was concerning, as was another student's claim that M.T. rubbed her hand up Mr. Cleary's thigh. However, neither student notified administration of what they observed until after they were interviewed by the district after Mr. Cleary was placed on leave.

The student who saw the "intimate" setting acknowledged there were six or seven other students in the classroom at the time, and the student who saw the thigh incident said it occurred during class. While the Commission was troubled by these two claims, in light of all the other evidence presented, the Commission could not conclude that these incidents occurred or, if they did, that they rose to the level of immoral conduct. The "intimate" incident seemed to be a teacher and student talking before class began in the presence of several other students. It did not appear to rise to the level of constituting immoral conduct. If the thigh incident did occur, the student said Mr. Cleary got up and walked away, which would support Mr. Cleary's claims that he did nothing to encourage M.T.'s behavior. A teacher retreating from a student's improper advances does not constitute immoral conduct. Again, the incidents showed poor judgment but not immoral conduct.

Regarding M.T.'s actions in class, Mr. Cleary was forbidden by law to share M.T.'s accommodations with other students. Accordingly, he was not allowed to tell them why she was allowed to sit at his desk, why she did not complete her work, or why she came to his class during other periods. It appeared that Mr. Cleary did his best to implement M.T.'s IEP accommodations, and received no support from administration. Although at this hearing district witnesses criticized Mr. Cleary for letting M.T. sit at his desk, at no time was Mr. Cleary ever instructed of what to do to implement M.T.'s IEP accommodations and he thought he was complying with them. Complainant did not establish that Mr. Cleary allowing M.T. to sit at his desk was not a

“preferential seating” accommodation. Testimony from administrators criticizing Mr. Cleary for allowing her to do so was not persuasive or supported by any reliable evidence.

In addition, all of M.T.’s teachers were aware when she was in Mr. Cleary’s class during her non-assigned periods. It was prearranged that she was allowed to go to Mr. Cleary’s classroom, and Ms. Garcia’s testimony to the contrary was not credible. As Mr. Burdick credibly testified, when he first began teaching at Beaumont High School, he asked Ms. Garcia why M.T. was not in his LIP class as scheduled, and she told him there was a prearrangement allowing M.T. to go to Mr. Cleary’s class during other periods. Complainant did not establish that Mr. Cleary allowing M.T. to be in his classroom during her non-schedule periods constituted immoral conduct.

Further, despite numerous issues with M.T. and other male teachers and several emails indicating a behavior plan would be put in place in M.T.’s IEP, one was never created. The district never took effective steps to stop M.T.’s behavior towards male teachers. She still continued to enter the special education office and harass Mr. Burdick. The Exclusion Lock did not work as the following year M.T. was placed in two of Mr. Burdick’s classes. Despite an IEP meeting and calls for a behavior plan, nothing more was done. Moreover, Mr. Cleary was never given any warning about M.T.’s past actions or her issues, so he had no way of knowing he needed to be extra cautious around her.

Although complainant’s expert, Dr. D’Orazio, was well credentialed and established in her field, her opinions that Mr. Cleary’s behavior constituted “grooming” were not persuasive. As she also acknowledged, individuals can engage in behaviors without realizing they are “grooming behaviors.” The Commission determined that

while Mr. Cleary's actions showed immaturity and a lack of good judgment, he was not grooming M.T.

Accordingly, cause does not exist to dismiss Mr. Cleary pursuant to Education Code section 44932, subdivision (a)(1), because complainant did not prove by a preponderance of the evidence that Mr. Cleary engaged in immoral conduct.

30. Mr. Cleary was not completely forthcoming regarding the tag/chase game he and M.T. played in class. His rationale for writing on her personal items was concerning and inexcusable. He also gave long, often rambling, answers trying to justify his behavior and make it sound harmless rather than owning up to his immaturity and poor judgment. However, his actions did not rise to level of constituting dishonesty. Moreover, given that the majority of the charges were not proven, it was not established that Mr. Cleary was dishonest when he denied engaging in those behaviors when interviewed. Mr. Cleary's testimony regarding his attempts to explain what occurred and how his answers were misconstrued was persuasive. He appeared to be completely caught off guard by allegations, which inexplicably snowballed in the face of a student with a prior history of making similar false allegations and with an administration that did nothing to stop M.T.

Accordingly, cause does not exist to dismiss Mr. Cleary pursuant to Education Code section 44932, subdivision (a)(), because complainant did not prove by a preponderance of the evidence that Mr. Cleary engaged in dishonesty.

31. Complainant did not establish that Mr. Cleary had a defect in temperament making him evidently unfit for service. He had a good rapport overall with his students. He received good yearly evaluations. There was no evidence that he was a danger to staff or children. It appeared he had a safe environment for his physics

class, and the students looked actively engaged in the class work. It appeared that Mr. Cleary could use some guidance regarding establishing stronger classroom boundaries, establishing stronger relationships with colleagues, and not trying to be his students' friend. The Commission felt that most of his issues with M.T. stemmed from the fact that he wanted his students to like him, but he needs to establish stronger teacher/student boundaries. The Commission was also concerned that administration never followed through to put a behavioral plan in M.T.'s IEP or notified Mr. Cleary about her issues with male teachers. His classroom environment, combined with a student with M.T.'s issues, and his wanting to be a friend to students was "a perfect storm" for a situation like this to occur. However, it did not demonstrate that he was unfit to serve.

Accordingly, cause does not exist to dismiss Mr. Cleary pursuant to Education Code section 44932, subdivision (a)(6), because complainant did not prove by a preponderance of the evidence that Mr. Cleary was evidently unfit for service.

32. Some of Mr. Cleary's actions were persistent, weird, and immature. He did not set sufficient boundaries with M.T., and his games of chase, throwing ping-pong balls, and writing on her personal belongings was not professional. Mr. Cleary could have done more to stop M.T.'s swearing, such as calling her parent, writing M.T. up, or reaching out to administrators for help. However, his explanation for why he did not file a CPS report was reasonable. He also gave M.T. a grade of D, so she was not receiving preferential treatment. His actions did persistently violate some of the district's policies and regulations.

Accordingly, cause exists to dismiss Mr. Cleary pursuant to Education Code section 44932, subdivision (a)(8), because complainant proved by a preponderance of the evidence that Mr. Cleary persistently violated district policies and regulations.

Evaluation of the Cause to Suspend Mr. Cleary Without Pay

33. Mr. Cleary was suspended without pay based on assertions that he engaged in immoral conduct. As was discussed above, complainant failed to establish that Mr. Cleary engaged in immoral conduct. In cases decided under former Education Code section 13408, from which Education Code section 44939 was derived, courts have historically determined that district employees are entitled to back pay, benefits and interest when the district failed to establish charges at hearing upon which the suspension was based, even if the employee was dismissed from employment on other grounds. (*Mass v. Board of Education of the San Francisco Unified School District* (1964) 61 Cal.2d 612; *Board of Education of Los Angeles County v. Commission on Professional Competence* (1976) 61 Cal.App.3d 664; and *Von Durjais v. Board of Trustees Roseland School District* (1978) 83 Cal.App.3d 681.)

Therefore, having found Mr. Cleary did not engage in immoral conduct, cause does not exist to suspend him without pay. Mr. Cleary is entitled to back pay, benefits, and interest accrued during the period of his suspension.

Morrison Factors

34. Having found cause to discipline Mr. Cleary, the issue becomes what discipline to impose. In deciding that question, the seminal case for teacher dismissals is *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. The Supreme Court held that a district "cannot abstractly characterize the conduct . . . as 'immoral,' 'unprofessional,' or 'involving moral turpitude' . . . unless that conduct indicates that the [teacher] is unfit to teach." (*Id.* at p. 229.) The Supreme Court suggested seven factors to consider when evaluating whether the school employee should be dismissed:

- (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity;
 - (2) the proximity or remoteness in time of the conduct;
 - (3) the type of teaching certificate held by the teacher;
 - (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct;
 - (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct;
 - (6) the likelihood of recurrence of the questioned conduct;
- and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

(Id. at p. 229.)

The Supreme Court found these “factors are relevant to the extent that they assist the [district] in determining whether the teacher's fitness to teach, i.e., in determining whether the teacher's future classroom performance and overall impact on his students are likely to meet the [district's] standards.” (*Id.* at pp. 229-230.) An employee can be dismissed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher. The

inquiry is whether any adverse inferences can be drawn from the teacher's conduct as to his teaching ability, or as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher. (*Id.* at p. 235.) Those factors were considered in this decision.

35. The notoriety and publicity accorded the conduct may also be considered. (*Jack M., supra.*, at p.702, footnote 5.)

36. The *Morrison* factors may be applied to the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

37. Only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

38. Unprofessional conduct has been defined as conduct, measured by the *Morrison* factors, which indicates unfitness to teach. (*Board of Education v. Jack M.* (1970) 19 Cal.3d 691, 696-697; *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1173-1174.)

Other Disciplinary Considerations

39. An administrator's loss of confidence in the educator and doubt regarding the educator's ability to serve as a role model for students are factors that may be considered. (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1460.)

40. The Commission is vested with discretion not to dismiss an employee even if grounds for discipline exist. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 209.)

Commission's Determination

41. Having considered the charges established, and finding that Mr. Cleary persistently violated district policies and regulations, and considering the case law and applicable *Morrison* factors, the commission determined that cause does not exist to dismiss Mr. Cleary from employment in the district. The commission further determined that he should be reinstated with back pay with interest and benefits. Although it cannot order him to do so, the Commission strongly encourages Mr. Cleary to form stronger bonds with administration and colleagues, take additional training in setting classroom boundaries, and seek out more support from peers.

ORDER

1. Mr. Cleary's appeal of his dismissal from employment with the Beaumont Unified School District is granted. The district's request to dismiss Mr. Cleary is denied. Mr. Cleary shall not be dismissed from employment with the district. The Notice of Intent to Immediately Suspend Without Pay; Notice of Recommendation for Dismissal; and Statement of Charges filed against Mr. Cleary are hereby dismissed.


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2. Mr. Cleary's appeal from the Beaumont Unified School District's decision to suspend him without pay is granted. The district's decision to suspend Mr. Cleary without pay pending his dismissal is reversed. The district shall pay Mr. Cleary backpay with interest and from the time he was suspended without pay until the date of this decision and restore his benefits.

DATE: 05/05/2023


Ray Andrzejewski (May 5, 2023 17:49 PDT)

RAY ANDRZEJEWSKI

Commission Member

DATE: 05/05/2023


Scott Richards, Jr.

SCOTT RICHARDS, JR.

Commission Member

DATE: 05/08/2023


Mary Agnes Matyszewski (May 8, 2023 08:00 PDT)

MARY AGNES MATYSZEWSKI

Administrative Law Judge

Office of Administrative Hearings