In the Matter of Arbitration Between

SAWYER MASONJONES,	:
Petitioner,	:
and	:
BOARD OF EDUCATION OF THE GALLUP-McKINLEY COUNTY SCHOOL DISTRICT,	:
Respondent.	:

Before: Carl C. Bosland, Esq., Arbitrator

Appearances:

For the Petitioner	Grace Rhodehouse Barberena, Esq. Shane Youtz, Esq. YOUTZ VALDEZ, P.C.
For the School Board:	Samantha M. Adams, Esq. ADAMS & CROW LAW FIRM

Hearings: March 31, April 24, 2026

Place of Hearing: Gallup, New Mexico/Remote

Close of Record: July 17, 2026

Date of Decision: August 15, 2026

Type of Proceeding: Statutory Discharge

AWARD SUMMARY

For the reasons discussed below, the District established Misconduct and Insubordination but did not prove just cause to discharge Petitioner. The District's decision is reversed.

I. STATEMENT OF THE CASE

This matter concerns the propriety of the District's discharge of Sawyer Masonjones ("Petitioner") under the parties' Collective Bargaining Agreement and the applicable provisions of the New Mexico School Personnel Act.

II. STIPULATIONS, EXHIBITS, AND WITNESSES

Stipulations

The parties agreed that documents electronically acknowledged or signed by Petitioner and maintained in his personnel file could be received without further authentication. The parties also stipulated that the PELRB order discussed during the hearing would not be admitted into evidence.

Exhibits

At the commencement of the second hearing day, the parties confirmed the exhibits previously admitted into evidence.

The District's admitted exhibits consisted of District Exhibits 1, 2, 3, 4, 5, 8, 9, 10, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, and 29. District Exhibit 29 consisted of the parties' Collective Bargaining Agreement. During the second hearing day, the District also introduced District Exhibits 30 through 36.

The Union's admitted exhibits consisted of Union Exhibits 1 through 7 and Union Exhibits 10 and 11.

The Union previously lodged objections to District Exhibits 8, 9, and 10, which were received subject to those objections. District Exhibit 31 was received subject to the Union's reservation concerning the manner in which Petitioner's electronic acceptance was authenticated. Consistent with the practice generally followed in labor arbitration, the Arbitrator received the challenged exhibits and considered both the objections and the weight properly accorded the evidence.

To the extent not otherwise expressly addressed herein, all remaining evidentiary objections are overruled. The admitted exhibits have been considered for whatever probative value they possess.

Witnesses

A. District Witnesses

- **Jvanna Hanks II**, Interim Superintendent
- **K'Dawn Montano**, former Assistant Superintendent
- **Nick Garro**, former Principal, Miyamura High School

- **Darren Soland**, District Investigator
- **Ashley Ryan**, Ph.D., Assistant Superintendent

B. Petitioner Witnesses

- **Sawyer Masonjones,** Petitioner
- **Kiersten Jacoby,** retired District teacher and former Miyamura High School teacher
- **Valerie Scott, teacher,** Miyamura High School

III. RELEVANT PROVISIONS

A. Collective Bargaining Agreement

Article 4. Federation Rights

6. The Federation Building Representative and Executive Officers are recognized as Federation leaders in their respective worksites. This recognition carries with it the right of the Representatives to carry out their Federation responsibilities. Such responsibilities will not normally be carried out during duty time.

Article 20. Student Discipline

E. Employees shall be the initial source of discipline for all students under their direct supervision. An employee shall take reasonable action as permitted under policy and law to properly discipline a disruptive student prior to referring the student and the problem to administration. An employee shall refer to the administration a student whose behavior prevents instruction and/or threatens the safety of either an employee or other students.

Article 22. Employee Investigations

A. The District has the right to investigate all allegations of employee misconduct and insubordination.

B. NEW MEXICO SCHOOL PERSONNEL ACT

NMSA 1978, Section 22-10A-2 — Definitions

D. "discharge" means the act of severing the employment relationship with a licensed school employee prior to the expiration of the current employment contract.

I. "just cause" means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights[.]

K. “moral turpitude” means an act or behavior that gravely violates the accepted standards of moral conduct, justice or honesty and may include ethical misconduct[.]

NMSA 1978, Section 22-10A-27 — Discharge hearing; licensed school employees; procedures

A. A superintendent may recommend to the governing authority the discharge of a licensed school employee during the term of a contract authorized pursuant to Section 22-10A-21 NMSA 1978 only for just cause according to the following procedure:

. . .

(2) the superintendent shall state in the notice of intent to recommend discharge the cause for the recommendation and shall advise the licensed school employee of the licensed school employee’s right to a discharge hearing before the governing authority as provided in this section.

. . .

G. The superintendent shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the superintendent had just cause to recommend discharge of the licensed school employee.

NMSA 1978, Section 22-10A-28 — Discharge appeals; licensed school employees; independent arbitrator; qualifications; procedure; binding decision

D. Appeals from the decision of the governing authority shall be decided after a de novo hearing before the independent arbitrator. The superintendent, as delegate of the governing authority, shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the superintendent had just cause to discharge the licensed school employee. The superintendent shall present evidence first, with the licensed school employee presenting evidence thereafter.

. . .

I. The rules of civil procedure shall not apply to the hearing, but it shall be conducted so that both contentions and responses are amply and fairly presented. To this end, the independent arbitrator shall permit either party to call and examine witnesses, cross-examine witnesses and introduce exhibits. The technical rules of evidence shall not apply, but, in ruling on the admissibility of evidence, the independent arbitrator may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

. . .

K. The independent arbitrator shall render a written decision affirming or reversing the action of the governing authority. The decision shall contain findings of fact and conclusions of law. The

parties shall receive the written decision of the independent arbitrator within thirty working days from the conclusion of the hearing.

…

N. Each party shall bear its own costs and expenses. The independent arbitrator's fees and other expenses incurred in the conduct of the arbitration shall be assigned at the discretion of the independent arbitrator.

C. NEW MEXICO ADMINISTRATIVE CODE

N.M.A.C. 6.69.2.7 — Definitions

B. "Insubordination" means actual or implied willful refusal to follow written policies, regulations, rules, or procedures established by the department, the local school board, or administrative authorities; or the lawful written or oral orders, requests, or instructions of administrative authorities.

D. GALLUP-McKINLEY COUNTY SCHOOLS PERSONNEL HANDBOOK

I. Employee Code of Conduct

A. Policy

An obligation rests with every employee of the Gallup-McKinley County Schools to render the performance of duties in an honest, efficient, and courteous manner. Employees will therefore be responsible and held accountable for adhering to all policies, rules, directives and procedures prescribed by the District.

B. Commitment to Students

5. Staff and faculty will serve as a positive role model.

6. Staff and faculty will promote learning and exercise control through appropriate planning, management, and instruction.

E. Commitment to the District

4. Staff and faculty will comply with the state-approved Code of Ethics of the education profession and uphold administrative directives and regulations, school board policies, and local, state and federal regulations.

G. Controlled Substances and Alcohol

1. Regarding controlled substances, staff and faculty will report known or suspected use, possession, distribution, etc., of controlled substances or alcohol by students or employees.

XV. General Working Conditions

D. Safety Policy Statement

3. All employees shall care for the safety of students under their control. The practice of safety will be an integral part of the instructional program.

L. Employee Cell Phone Use

1. Gallup-McKinley County School Board recognizes advances in technology and the impact that they can have on education; however, they also recognize that inappropriate use of personal cell phones and other electronic devices during instructional time can often disrupt student learning and can also lead to a lack of productivity of other employees. Staff members need to be mindful of the appropriate way to incorporate these new technologies into the educational setting and also use them with integrity and professionalism. Employees who misuse their personal cell phone or other electronic devices at work shall be subject to disciplinary action in accordance with District Policy.

E. GALLUP-McKINLEY COUNTY SCHOOLS STUDENT BEHAVIOR HANDBOOK

Appropriate Learning Environment

Attendance and Tardiness

Any actions involving attendance and punctuality or the location of students on school property, in distance learning, online learning, or any hybrid educational setting with GMCS which disrupt the orderly operation of the class or school are prohibited.

Inappropriate Use of Cell Phones and Personal Electronic Devices

Student use of cell phones or personal electronic devices during class time, testing times, and other unauthorized times is prohibited unless a teacher permits their use for educational purposes.

Alcohol, Drugs, and Tobacco or Vaping Products

Drugs or paraphernalia, including vaping devices, are prohibited on school property, at school-sponsored events, or on school transportation.

Possessing, using, purchasing, distributing, or selling any tobacco or nicotine product, regardless of the manner of delivery, inhalation, or consumption, is prohibited on school property, at school-sponsored events, or on school transportation.

IV. STATEMENT OF THE ISSUE

The parties did not stipulate a joint statement of the issue to be decided. Having considered the parties' respective positions, the Arbitrator frames the issue as follows:

> Did the District have just cause to discharge Sawyer Masonjones under the New Mexico School Personnel Act, NMSA 1978, §§ 22-10A-27 and 22-10A-28? If not, what shall be the appropriate remedy?

V. BACKGROUND

A. The Parties

Gallup-McKinley County Schools ("District") is a public school district located in Gallup, New Mexico. The District and the Gallup McKinley County Federation of United School Employees, AFT Local 3313, AFL-CIO ("Union"), were parties to a Collective Bargaining Agreement covering employees represented by the Union.

Petitioner was employed as a licensed teacher at Miyamura High School. During the relevant period, he was a bargaining-unit member and, beginning in January 2025, served as Union President.

B. Petitioner's Dual Credit Assignment

During the 2024–2025 school year, Petitioner taught a Dual Credit Health Course offered through a partnership between the District and the University of New Mexico-Gallup ("UNM-Gallup"). The UNM-Gallup professor developed the college curriculum, assigned coursework, and awarded grades. Petitioner remained responsible for supervising students, maintaining classroom management and accountability, and providing instructional support while they were assigned to his classroom.

The parties disagree concerning the full scope of Petitioner's instructional responsibilities. The District maintains that he was required to actively facilitate student learning, assist students, maintain engagement, and provide supplemental or "like assignments." Petitioner maintains that his role was principally to facilitate and support the university coursework and that responsibility for the curriculum, course requirements, and grading remained with the UNM-Gallup professor. That disagreement is central to several allegations addressed below.

C. Investigation and Discharge Proceedings

In January 2025, the District issued Petitioner a Letter of Reprimand for conducting Union-related activity during instructional or duty time, which it claimed was not permitted by the

CBA. The Letter directed Petitioner to refrain from similar conduct and warned that further violations could result in additional discipline. The District subsequently rescinded the Letter on procedural grounds and removed it from Petitioner's personnel file. Petitioner's Union-related communications, including communications occurring after he received the Letter, nevertheless became part of the subsequent investigation.

The investigation expanded to include concerns regarding Petitioner's use of instructional time, student attendance and accountability, classroom supervision and management, response to student vaping, student engagement, instructional support, professional conduct, and statements concerning the training and administrative assistance he received.

On March 12, 2025, the Superintendent issued a Notice of Intent to Discharge alleging Misconduct, Insubordination, Unfitness, and Turpitude as grounds for Petitioner's discharge. Following a hearing, the Board of Education approved the Superintendent's recommendation and discharged Petitioner. Petitioner appealed under the New Mexico School Personnel Act, and the district court appointed the undersigned to conduct the de novo arbitration authorized by NMSA 1978, Section 22-10A-28.

VI. CONTENTIONS

A. District

The District contends that it established, by a preponderance of the evidence, that Petitioner engaged in Misconduct, Insubordination, Unfitness, and Turpitude, and that the sustained charges provided just cause for discharge. According to the District, the evidence demonstrates a continuing pattern of failing to perform the instructional, supervisory, and professional responsibilities of a licensed teacher.

The District principally relies upon evidence that Petitioner conducted Union business and engaged in personal and licensure-related activities during instructional or duty time; failed to take attendance consistently and maintain accountability for students leaving the classroom; responded inadequately to student vaping and other prohibited conduct; failed to maintain student engagement or provide sufficient instructional assistance; and relied excessively upon the UNM-Gallup professor. The District also cites Petitioner's classroom-security practices, instructions to students concerning administrative visits, use of profanity, lunch with a student, and allegedly false statements concerning the training and administrative support he received. It maintains that Petitioner's continued Union-related communications after receiving an administrative directive constituted insubordination and that the alleged classroom deception and investigative falsehoods established turpitude and unfitness.

The District argues that its expectations were reasonable and known to Petitioner and that the investigation fairly established the charged conduct. It disputes Petitioner's claims of anti-Union retaliation, inadequate administrative support, disparate treatment, and procedural unfairness. The District further maintains that progressive discipline was not required because of the seriousness, repetition, and cumulative effect of the misconduct and the resulting loss of trust. In

its view, Petitioner's favorable evaluations, lack of active prior discipline, and positive aspects of his performance do not outweigh the sustained misconduct or render discharge disproportionate.

B. Petitioner

Petitioner contends that the District failed to prove the charged misconduct in the categorical terms alleged or to establish just cause for discharge. He disputes that he abandoned his instructional or supervisory responsibilities, knowingly permitted students to vape, allowed students to leave class without accountability, wholly failed to take attendance, improperly delegated his instructional role, or engaged in the pervasive personal telephone use, gaming, video viewing, profanity, deception, and dishonesty alleged by the District. He maintains that the District exaggerated isolated or disputed events, relied excessively upon summarized student accounts, and failed to account for the unconventional structure of the new Dual Credit program and the attendance and behavioral challenges presented by the assigned students.

Petitioner further contends that the investigation and discharge were motivated by anti-Union animus arising from his increasingly prominent Union activity. He argues that the District failed to provide adequate notice and clearly communicated expectations, conducted an incomplete and one-sided investigation, denied him meaningful access to the student accounts, disregarded favorable evidence, failed to provide adequate administrative support, and treated comparable conduct by other teachers more favorably. He disputes that his Union-related communications constituted willful insubordination and maintains that any inconsistencies in his statements reflected misunderstandings or imperfect recollection rather than intentional dishonesty.

Finally, Petitioner argues that he had favorable evaluations and no active disciplinary record, that any performance or classroom-management deficiencies were correctable, and that the District failed to provide a meaningful opportunity for improvement through counseling, directives, a growth plan, or progressive discipline. He maintains that, even if some misconduct warranted discipline, discharge was disproportionate to the conduct actually proven. Petitioner therefore requests reversal of the discharge, reinstatement, restoration of lost compensation and benefits, and any other appropriate relief.

VII. DISCUSSION, FINDINGS, AND CONCLUSION

A. Applicable Legal Standards

The District bears the burden of proving that it had just cause to discharge Petitioner. "'Just cause' means a reason that is rationally related to a school employee's competence or turpitude or the proper performance of the school employee's duties and that is not in violation of the school employee's civil or constitutional rights." NMSA 1978, § 22-10A-2(I). In a de novo appeal before an independent arbitrator, the superintendent "shall have the burden of proving by a preponderance of the evidence that, at the time of the notice of intent to recommend discharge, the superintendent had just cause to discharge the licensed school employee." *Id.* § 22-10A-28(D); see also *id.* § 22-10A-27(G).

The New Mexico Court of Appeals has explained that an independent arbitrator does not merely review whether the District acted reasonably upon the information available when the discharge decision was made. Rather, the arbitrator conducts a de novo hearing, independently determines whether the alleged misconduct occurred, and decides whether the District proved by a preponderance of the evidence that the proven misconduct constituted just cause for discharge. *Santa Fe Pub. Schs. v. Romero*, 2001-NMCA-103, ¶¶ 10–14, 131 N.M. 383, 386–88.

A preponderance of the evidence means evidence establishing that a disputed fact is more probably true than not true. If the evidence is evenly balanced, the District has not satisfied its burden. *Id.* ¶ 18 (quoting UJI 13-304 NMRA 2001).

Although the Arbitrator's authority ultimately derives from the School Personnel Act, traditional labor-arbitration principles remain useful in evaluating whether just cause has been established. Relevant considerations include notice, the reasonableness of the employer's expectations, the fairness of the investigation, the reliability of the evidence, consistency of discipline, and whether the penalty reasonably relates to the misconduct proven. The traditional "Seven Tests" are employed as analytical guideposts rather than independent legal requirements. Frank Elkouri & Edna Asper Elkouri, *How Arbitration Works* ch. 15 (Marlin M. Volz & Edward P. Goggin eds., 5th ed. 1997); *The Common Law of the Workplace: The Views of Arbitrators* §§ 6.1–6.5 (Theodore J. St. Antoine ed., 2d ed. 2005); Robert H. Koven & Susan L. Smith, *Just Cause: The Seven Tests* Introduction, pt. V (2d ed. 2006).

Petitioner bears the burden of establishing the factual predicate for any affirmative defense, including improper motive, selective enforcement, disparate treatment, or pretext. His failure to establish an affirmative defense does not relieve the District of its independent burden to prove just cause for discharge. Evidence supporting an affirmative defense nevertheless remains relevant insofar as it bears upon the District's motive, the consistency of its actions, the fairness of the investigation, or the proportionality of the penalty.

In resolving disputed facts, the Arbitrator considered each witness's opportunity to observe, the internal consistency and corroboration of the testimony, admissions and prior inconsistent statements, the reasonableness of each account, and, where appropriate, demeanor. Contemporaneous documents were evaluated in light of their timing, source, purpose, and consistency with the remaining record. The evidence has been considered as a whole, and the findings below rest upon its quality and persuasive force rather than the number of witnesses supporting a particular account.

B. Findings Concerning the Alleged Conduct

The Notice of Intent identifies numerous factual allegations supporting the charged grounds for discharge. The Arbitrator first determines whether the District proved those allegations by a preponderance of the evidence. Related allegations are grouped by category to provide a clearer analysis. Whether the conduct proven sustains the charged legal characterizations and constitutes just cause for discharge is addressed separately below.

1. Classroom Supervision, Management, and Instructional Responsibilities

The District contends that Petitioner failed to devote instructional time to his assigned duties, maintain appropriate accountability for students, and exercise effective classroom supervision and management. The related allegations are addressed both individually and collectively insofar as they bear upon his fulfillment of those responsibilities.

a. Use of Instructional Time

The District alleges that Petitioner used instructional or duty time for Union-related communications, personal telephone use, licensure work, videos, gaming, and other activities unrelated to instruction or student supervision. Petitioner disputes the extent of the alleged activities and the District's characterization of them.

(1) Union Activities During Instructional Time

The District contends that Petitioner repeatedly conducted Union business during instructional or duty time. Petitioner acknowledges sending Union-related emails during such time but maintains that the conduct was inadvertent. He further argues that the District used the incident as a pretext for a broader investigation motivated by anti-Union animus.

On January 22, 2025, Petitioner received a Letter of Reprimand for sending a Union-related email during contract time. Although the District later rescinded the Letter on procedural grounds, the rescission did not establish that the conduct was permissible or negate Petitioner's notice that the District considered Union business during instructional or duty time improper. Article 4.6 of the Collective Bargaining Agreement similarly provides that Union responsibilities "will not normally be carried out during duty time." Nevertheless, Petitioner sent additional Union-related emails during instructional or duty time on January 24, including one inadvertently transmitted to District management. The investigation identified approximately fifteen such emails. Their number and timing persuade the Arbitrator that the January 24 incident was not merely an isolated mistake.

The District established by a preponderance of the evidence that Petitioner repeatedly conducted Union business during instructional or duty time.

(2) Personal Activities and Other Noninstructional Use of Instructional and Contract Time

The District alleges that Petitioner used instructional or contract time for personal telephone calls, checking his cellular telephone, viewing videos, gaming, and completing licensure and micro-credentialing work. The Investigation Report states that a majority of the thirteen Dual Credit students interviewed reported that Petitioner regularly sat in a gaming chair with his feet on his desk while using his telephone or engaging in other personal electronic activities. Some students also reported that Petitioner told the class he was taking an emergency telephone call.

Petitioner acknowledged sitting in a gaming chair with his feet elevated, checking his telephone when he believed he had nothing to do, and completing Level II licensure and micro-credentialing work during contract time. He also acknowledged receiving one emergency telephone call from his partner, occasionally viewing videos shown to him by students, and devoting some contract time to Union business. Although he denied routinely spending substantial portions of class on personal electronic activities, he explained that these activities occurred because he believed he had little or nothing to do during portions of the Dual Credit class.

Petitioner's admissions establish that he used assigned instructional or contract time for activities unrelated to his immediate teaching responsibilities, including occasionally checking his telephone, receiving one emergency call, and completing Level II licensure and micro-credentialing work. Unlike the disputed allegations concerning the frequency of his electronic activity, the licensure and micro-credentialing finding rests principally upon Petitioner's own admissions.

The extent and frequency of Petitioner's personal electronic activity depend principally upon Investigator Soland's summary of the thirteen student interviews. Soland conducted the interviews, prepared the Investigation Report, testified under oath, and was extensively cross-examined. The record provides no persuasive basis to conclude that he inaccurately summarized the students' accounts. Nevertheless, because the Report does not reproduce the individual statements and the students did not testify, the Arbitrator cannot assess their credibility, compare their accounts, or evaluate the context of particular statements. Those limitations affect the weight accorded the summarized accounts, particularly concerning the frequency and duration of the alleged conduct.

The District further relies upon the contemporaneous interview notes, Montano's and Soland's testimony concerning the students' apparent candor and consistency, and Petitioner's acknowledgment that the notes accurately recorded what the investigators heard. Those considerations support the accuracy of the investigative summaries and warrant according them probative weight. They do not, however, eliminate the limitations arising from the absence of student hearing testimony. Accuracy in recording what a student said does not independently establish the truth, context, or weight of the underlying account, nor do contemporaneous notes cure Petitioner's inability to test that account through cross-examination.

The Notice further alleges that staff members observed Petitioner lying under his desk during his preparation period while watching videos on his telephone. The District did not identify those staff members or present testimony from anyone who personally observed the incident. Although District counsel repeated the allegation in her opening statement, an opening statement is not evidence. The allegation is therefore afforded limited weight.

The District further alleges that Petitioner left the classroom during instructional time to converse with staff members in the hallway and permitted employees to enter his classroom for noninstructional conversations. Montano testified that she viewed video showing Petitioner conversing with staff members in the hallway for long periods, but the video was not introduced into evidence, and none of the participants testified. Petitioner acknowledged leaving the

classroom on several occasions but attributed those instances to speaking privately with a student's parent, assisting a neighboring teacher with Credit Recovery, and helping another teacher address classroom-management problems. The record does not establish the purpose of the conversations depicted on the video or substantiate the allegation that employees entered Petitioner's classroom for noninstructional conversations. Accordingly, the District did not prove that these interactions were inconsistent with Petitioner's instructional responsibilities.

Considering the record as a whole, the District established that Petitioner used assigned instructional or contract time for personal and other noninstructional activities on more than isolated occasions. This finding rests principally upon his admissions that he checked his telephone and completed licensure and micro-credentialing work because he believed he had little to do during portions of the Dual Credit class. The District did not, however, establish the alleged frequency or duration of his telephone use, video viewing, gaming, or other conduct dependent primarily upon summarized student interviews or uncorroborated investigative information.

b. Student Accountability and Classroom Supervision

The District alleges that Petitioner failed to take fourth-period attendance; maintained an open E-Hall Pass system that allowed students to leave without returning; responded inadequately to student vaping; permitted cellular-telephone use, music, sleeping, and other noninstructional activity; and generally failed to maintain appropriate student accountability and classroom supervision. Petitioner disputes the factual basis and characterization of these allegations.

(1) Attendance

The District contends that Petitioner failed to take attendance for his fourth-period Dual Credit class. Principal Garro testified that each scheduled period required a separate attendance entry, even though the same students were assigned to Petitioner for third, fourth, and fifth periods. Because students could leave during passing periods and lunch, attendance taken during an earlier period did not establish who returned for fourth period. The Staff Handbook likewise directed teachers to take attendance for every class every day.

The Synergy records, as explained by Garro, showed instances in which Petitioner entered attendance for one period but not a succeeding period involving the same students. When no attendance was entered, Synergy defaulted to recording students as present. The investigative evidence also indicated that students sometimes skipped the later periods because attendance was not consistently taken.

Petitioner maintained that the Dual Credit assignment functioned as a multi-period block and that he had not received adequate guidance concerning its attendance procedures. Garro testified, however, that each period remained a separately scheduled class and that Petitioner attended beginning-of-year training addressing attendance and the Staff Handbook. The record does not establish that the training specifically addressed the Handbook's requirement to take attendance for every class every day. The Handbook nevertheless contained that requirement and was made available to Petitioner electronically and at the beginning of the school year.

Petitioner was familiar with Synergy but testified that the Dual Credit class appeared in the system as a single three-to-five block, preventing him from recording attendance separately for each period. He maintained that he believed taking attendance for the block was sufficient. Garro testified, however, that Synergy training included attendance functions, the system had not materially changed from the prior year, and this was Petitioner's third year using it at Miyamura. Although Petitioner testified that he reported individual students' attendance problems to an assistant principal and counselor, the record does not establish that he requested assistance with Synergy or advised the administration that the system prevented separate attendance entries. Soland likewise testified that the training records he reviewed were inconsistent with Petitioner's assertion that he had received no attendance-related training.

The Arbitrator finds that Petitioner had adequate notice of the attendance requirement. Attendance was addressed generally during training; the available Handbook required attendance for every class every day; and Petitioner had prior experience using Synergy. Although Petitioner testified that he believed attendance for the three-to-five block was sufficient, he did not seek clarification or report during the school year that Synergy prevented him from recording attendance separately for each scheduled period. Collectively, the evidence establishes that he knew or reasonably should have known that attendance was required for each period of the Dual Credit assignment.

The District established that Petitioner did not consistently take or record attendance for the later periods of that assignment. The Synergy records, as explained by Garro and considered with the investigative evidence, showed repeated instances in which attendance was entered for one period but not for a succeeding period. Petitioner's testimony reinforced that evidence: he explained that Synergy listed the course as a single three-to-five block, that he believed attendance for the block was sufficient, and that he did not separately record attendance for each period within the block. Although an entry showing all students present would not, standing alone, prove that attendance was omitted, the record as a whole establishes repeated failures to take or record attendance for the later periods.

The proof falls short of the Notice's assertion that Petitioner never took fourth-period attendance. It establishes repeated, but not universal, failures to take or record attendance for later periods. The allegation is therefore sustained only to that extent.

(2) E-Hall Pass Procedures

The District alleges that Petitioner maintained an open E-Hall Pass system that permitted students to approve their own requests to leave class, resulting in students leaving without returning. The Investigation Report states that students could leave under Petitioner's system without meaningful oversight and sometimes remained out for extended periods or failed to return. Petitioner acknowledged using what he described as an open E-Hall Pass system and that skipping and ditching were significant problems, but attributed those problems to inadequate administrative guidance.

Garro testified that E-Hall Pass was implemented schoolwide to improve attendance, safety, and student accountability. Students submitted electronic requests, but teacher approval was required

before they could leave. Teachers commonly kept the E-Hall Pass window open to review pending requests; an open window did not permit students to approve their own passes. Garro further testified that teachers received the governing protocol and a midyear refresher, as corroborated by District Exhibit 19.

Petitioner denied allowing students to leave without permission. He testified that open pass referred to the auto-approval feature, which electronically approved a request only after he had granted verbal permission. According to Petitioner, that feature was covered during training, and he kept the E-Hall Pass screen open to monitor how long students remained outside the classroom.

The District did not prove that Petitioner's E-Hall Pass configuration permitted students to approve their own requests. Garro and Petitioner agreed that teacher authorization was required, and no witness with personal knowledge contradicted Petitioner's explanation that auto-approval followed his verbal permission. The student accounts summarized in the Investigation Report, together with Petitioner's acknowledgment that third- and fourth-period skipping and ditching were a problem, nevertheless establish that his administration and monitoring of the system did not provide adequate student accountability. The District did not prove student self-approval. It did establish that Petitioner's administration and monitoring of E-Hall Pass provided inadequate accountability when students left and failed to return.

(3) Student Vaping

The District alleges that students regularly vaped nicotine and THC products in Petitioner's classroom and that he failed to intervene or refer them for discipline. The Investigation Report summarizes multiple student accounts describing recurring vaping with little risk of consequence. Several students reported that Petitioner sometimes instructed students to put away their devices or stop vaping but did not refer or report the conduct.

Garro testified that vaping violated District rules and required teacher intervention and referral to administration. Teachers received disciplinary procedures and could submit referrals through Synergy, but Garro could not recall any vaping referral from Petitioner. Garro had no firsthand knowledge of vaping in Petitioner's classroom and learned of it through Soland's investigation. Soland testified concerning the consistency of the student accounts, although neither the students nor their individual statements or recordings were presented at the hearing.

Petitioner denied knowingly permitting or intentionally ignoring vaping. He testified that COVID-19 had largely impaired his sense of smell and that he instructed students to stop whenever he observed them vaping. No medical evidence substantiated or refuted his claimed loss of smell. Petitioner did not inform the District that the condition impaired his ability to detect vaping or request assistance or accommodation. The record contains no evidence that he submitted a disciplinary referral or otherwise reported student vaping during the relevant period.

The District established that vaping occurred in Petitioner's classroom and that his response was inadequate. The evidence did not establish, however, whether the students were vaping nicotine, THC, or some other substance. Nor did the District prove that Petitioner authorized or

encouraged vaping, knowingly permitted every incident, or deliberately disregarded all vaping that occurred. The student accounts, Petitioner's admission that he sometimes directed students to stop, and the absence of any referral or report establish that he knew of vaping on multiple occasions but limited his response to verbal directives rather than reporting or referring the conduct. His claimed loss of smell may explain why he did not detect some incidents, but it does not account for his failure to report or refer the incidents of which he became aware.

c. Instructional Performance and Responsibilities

The District alleges that Petitioner failed to provide adequate instruction and assistance to Dual Credit students and improperly shifted his instructional responsibilities to the UNM-Gallup professor. Petitioner disputes both the scope of his assigned role and the adequacy of his performance.

The District maintains that Petitioner's role extended beyond supervising students while they completed online coursework. It contends that he was expected to facilitate learning, monitor progress, answer questions within his capabilities, assist students in communicating with the professor, and provide supplemental or like assignments after they completed their university work. According to the District, Petitioner provided insufficient assistance and relied excessively upon the UNM-Gallup professor.

Petitioner maintains that his role was to monitor students, facilitate their participation, assist within his knowledge, and supplement the university coursework when appropriate, while the professor retained responsibility for curriculum, assignments, and grading. He contends that he answered questions, developed supplemental work, communicated with the professor about student needs, and referred only questions concerning matters controlled by the professor. He also cites the program's newness and the lack of clearly coordinated expectations.

(1) Student Engagement and Classroom Activity

The District alleges that students who completed their UNM-Gallup coursework were routinely permitted to sleep, listen to music, use cellular telephones, or otherwise remain idle. It further alleges that, apart from an initial essay, Petitioner provided no supplemental work despite program expectations that students receive like assignments after completing their university coursework.

The Investigation Report summarizes student accounts that classroom time after completion of assigned work frequently consisted of sleeping, listening to music, cellular-telephone use, and other noninstructional activity. The written Dual Credit expectations directed that students not remain idle and that teachers provide complementary work, including worksheets, videos, research, or activities related to the students' academic pathways. Garro stated during the supplemental investigation that Petitioner had been informed of those responsibilities and testified that Petitioner received Dual Credit training and had continuing access to support from the District's College, Career, and Civic Readiness personnel.

Petitioner acknowledged that some students engaged in noninstructional activities after completing their university work but maintained that this occurred despite his efforts to keep them engaged. He testified that he developed research projects and honors assignments, some of which students completed, and others refused, and encouraged students to work on assignments for other classes after completing their university coursework.

Contemporaneous emails between Petitioner and Professor Tallant provide some support for that testimony. They reflect that Petitioner developed or proposed additional assignments and recognized the importance of meaningful work, student motivation, and firm expectations. They also show, however, that he frequently placed primary responsibility for establishing those conditions upon Tallant.

Soland testified that, during the investigation, Petitioner claimed that students had conducted research but provided no examples, while the interviewed students reported receiving no supplemental assignments beyond the initial essay. Petitioner testified that his ability to require supplemental work was limited because the professor controlled the curriculum and grading. Jacoby generally confirmed the division of responsibility, while emphasizing that the high school teacher remained responsible for answering questions and keeping students on track. This evidence bears upon the frequency and effectiveness of the supplemental work but does not establish that no additional assignments existed.

The evidence establishes that students who completed their university coursework frequently slept, listened to music, used cellular telephones, or otherwise disengaged from instruction. Petitioner acknowledged that some students engaged in noninstructional activities after completing their work, although he maintained that this occurred despite his efforts to keep them engaged. The frequency and extent of the conduct rest substantially upon the summarized student accounts. Garro provided limited corroboration by testifying that, during one walkthrough, he observed students who appeared disengaged, which Petitioner explained by stating that some had completed their work. Garro's brief observation does not establish the full extent alleged but lends some support to the student accounts.

The District did not prove the Notice's categorical assertion that Petitioner provided no supplemental assignments beyond the initial essay. His testimony that he created additional work receives some support from his contemporaneous communications with Tallant and was not directly contradicted by firsthand testimony.

The existence of some supplemental assignments does not resolve whether Petitioner maintained meaningful engagement throughout the instructional period. His contemporaneous emails show that he understood the importance of engaging work and firm classroom expectations, yet students frequently remained occupied with noninstructional activities, and his supplemental efforts did not consistently keep them academically engaged. Whether attributable to the program's structure, student resistance, limited grading authority, or Petitioner's instructional choices, the District established that he failed to maintain the engagement contemplated by the written program expectations, but not that he provided no supplemental assignments.

(2) Provision of Instruction and Assistance to Students

The District alleges that Petitioner remained seated at his desk, engaged little with students, and provided inadequate assistance while they completed their coursework. The Investigation Report summarizes student accounts that he rarely assisted them when they encountered difficulty and commonly directed them to the UNM-Gallup professor. The District also relies upon testimony from Soland, the written guidance defining the Dual Credit teacher's role, and contemporaneous communications from Petitioner.

The written guidance contemplated an active supporting role. Although the UNM professor controlled the curriculum, assignments, and grading, Petitioner was expected to assist students, monitor their progress, maintain engagement, and provide supplemental work. His responsibilities therefore extended beyond supervising independent study.

Petitioner testified that he remained available, answered questions within his knowledge, and assisted students who requested help. For questions concerning the university curriculum, assignments, or grading, he either referred students to the professor or obtained and relayed the answer himself. He also cited his supplemental assignments, communications with Tallant, student feedback, and efforts to improve the course.

Contemporaneous emails from Petitioner describe his role as supporting and supplementing the professor's instruction, helping students with assignments, and adding assignments as necessary. They also document communications with Tallant concerning course rigor, assignments, grading, and joint planning, contradicting the contention that Petitioner entirely disclaimed responsibility or made no effort to improve the course. The emails do not, however, establish his day-to-day interaction with students. Petitioner also described himself as more of a TA than a teacher and as mostly monitoring because the professor controlled the curriculum and instruction. Although those statements do not establish that he refused assistance, they reflect his comparatively limited view of his role.

The summarized student accounts portray Petitioner as providing little assistance and remaining largely disengaged while students worked independently. Petitioner testified that he regularly answered questions, assisted within the scope of his role, and remained available when students sought help. No student testified, and the District did not introduce the individual student statements or interview recordings.

The District presented little firsthand evidence concerning Petitioner’s instructional interactions. Garro's brief observations concerned general classroom conditions rather than how Petitioner responded when students sought assistance, and Garro learned of the students' complaints only during Soland's investigation. His testimony and the written guidance establish the District's expectations but not the frequency or quality of the assistance Petitioner provided.

Jacoby confirmed that Dual Credit students worked independently for substantial periods. She understood the high-school teacher's role to include providing time for university work, answering questions, and keeping students on track, while the professor controlled the curriculum and grading. Her testimony confirms that Petitioner was not expected to function as a

traditional classroom instructor but remained responsible for actively assisting students and monitoring their progress.

The District established that Petitioner frequently failed to provide the active instructional involvement contemplated by the program. The consistent student accounts of limited interaction and repeated referrals to the professor are accorded less weight because no student testified and the District presented no other firsthand testimony concerning Petitioner's day-to-day instructional involvement. Those accounts are nevertheless partially corroborated by Petitioner's description of himself as primarily monitoring the students, his limited view of his role, and contemporaneous emails reflecting his tendency to place primary instructional responsibility upon the professor.

The record does not establish, however, that Petitioner wholly abandoned his responsibilities or provided no meaningful assistance. Petitioner testified that he answered student questions, contacted the professor when necessary, developed supplemental work, solicited feedback, and attempted to improve the course. His contemporaneous emails provide some corroboration for those efforts, and the District presented no firsthand evidence directly refuting them. The evidence therefore supports a narrower finding: Petitioner's instructional involvement and assistance were inadequate in significant respects, but he did not wholly abandon his responsibilities or provide no meaningful assistance.

(3) Reliance on the UNM-Gallup Professor

The District alleges that Petitioner improperly directed students to the UNM-Gallup professor for assistance that Petitioner was responsible for providing. Although the professor controlled the university curriculum, assignments, and grading, Petitioner remained responsible for supporting students, answering questions within his capabilities, monitoring their progress, and maintaining engagement. The issue is whether Petitioner's referrals exceeded that appropriate division of responsibility.

The contemporaneous emails demonstrate genuine uncertainty concerning the participants' respective responsibilities. Tallant had expected a collaborative effort and proposed that they meet to develop assignments and define their roles, timelines, and expectations. He described the situation as a communication breakdown. Petitioner expressed willingness to plan jointly but maintained that the District had not initially provided adequate time or clear expectations for that collaboration.

Referrals concerning university grading, assignment requirements, and curriculum were appropriate and did not constitute improper delegation. The evidence nevertheless establishes that Petitioner construed his role too narrowly and relied excessively upon the professor rather than consistently providing the assistance, facilitation, and engagement required of him. The District did not prove that every referral was improper or that Petitioner wholly abdicated his responsibilities; he provided some assistance, communicated with the professor, and developed or proposed supplemental work. Petitioner's overly limited view of his role resulted in insufficient instructional support and facilitation, but the evidence does not establish wholesale abdication of his responsibilities.

2. Professional Conduct and Transparency

The District alleges that Petitioner covered his classroom windows and kept the door locked, instructed students to alter their conduct during administrative visits, used profanity with students, and permitted a student to eat lunch alone with him. Because these allegations involve distinct conduct and evidence, they are addressed separately.

a. Classroom Visibility and Instructions Regarding Administrative Visits

The District alleges that Petitioner covered his classroom windows and kept the door locked to conceal classroom activities and instructed students to put away their cellular telephones and earbuds and appear to be working when administrators approached. It further alleges that Petitioner would then move to the whiteboard to create the appearance that he was providing instruction.

The physical conditions were established. Garro testified that Petitioner's door was closed and locked most of the time and that he used a master key to enter. Soland observed that the classroom windows were covered with black cardboard. Petitioner did not materially dispute that the windows were covered or that the door was frequently closed and locked during instructional time.

The evidence concerning the governing expectation was qualified. Garro testified that administrators encouraged uncovered windows and open doors to promote transparency and permit prompt access during emergencies, but acknowledged that this was a best practice rather than a written requirement. Teachers also closed and locked their doors during the tardy sweep. Jacoby testified that teachers at her school kept construction paper over their door windows for lockdown purposes and kept door locks engaged for security, although classroom doors were ordinarily wedged open when students were present. Soland likewise acknowledged that covered windows and locked doors could serve legitimate safety purposes and were not unique to Petitioner. Thus, neither practice was prohibited, although Garro testified that Petitioner's door—unlike those of most teachers—usually remained physically closed and locked throughout instructional time.

The District contends that these conditions facilitated a procedure for concealing ordinary classroom activity during administrative visits. The Investigation Report summarizes student accounts that, when an administrator approached or entered, students put away their telephones and earbuds and appeared to work while Petitioner moved to the whiteboard and appeared to teach. Students further reported that, after the administrator left, Petitioner told them they were "good."

Soland testified that this account recurred across the student interviews rather than originating with a single student. Garro provided some corroboration based upon multiple classroom visits, testifying that, on some occasions, Petitioner quickly rose from his desk while students removed their headphones, took out notebooks, and began writing when Garro entered. Garro initially attributed that reaction to the principal's presence; however, the record does not establish the number or frequency of his visits. Moreover, no student testified or provided an individual

statement or recording at the hearing. Garro's observations were therefore consistent with the student accounts but did not independently establish a plan to create a false appearance.

Petitioner denied that the covered windows, locked door, and instructions to students formed part of a plan to deceive administrators. He attributed the physical conditions to safety concerns and preventing interruptions and stated that he covered the windows after a social-media safety scare. He acknowledged telling students that Garro would be coming for an evaluation and directing them to put away their telephones and behave appropriately, but characterized this as preparing them for the evaluation rather than concealing ordinary classroom conditions. Although the record does not independently corroborate the asserted safety scare, Petitioner's explanations identify plausible purposes other than concealment.

Directing students to put away personal devices and comply with classroom expectations during an anticipated administrative evaluation is not inherently improper. It is comparable to asking students to be on their best behavior when someone visits the classroom. Petitioner's acknowledgment that he gave those instructions confirms that some students had telephones or earbuds out and that he had not already secured their compliance with classroom expectations. It does not, without additional evidence, establish that he instructed students to create a false appearance of instruction.

The summarized student accounts describe a recurring procedure in which students appeared to work while Petitioner moved to the whiteboard and appeared to teach. Because no student testified and the individual statements or recordings were not introduced, however, the Arbitrator could not examine the students' precise descriptions, their context, or whether ordinary directions to comply with classroom rules were understood as instructions to create a false appearance.

The District established that Petitioner instructed students to put away their telephones and earbuds and behave appropriately during an anticipated evaluation, confirming that some students had been using prohibited devices before Garro entered. It did not establish that the covered windows or locked door were intended to conceal misconduct or that Petitioner enlisted students in deceiving administrators or creating a false appearance of instruction. The evidence establishes only that Petitioner instructed students to comply during the anticipated evaluation after failing to secure their compliance beforehand. It does not establish a plan to deceive administrators.

b. Profanity

The District alleges that Petitioner used profanity when speaking with students. The Investigation Report summarizes student accounts that he used profanity in class, including an incident in which he responded "oh, fuck" when a student showed him a video. The District contends that such language was inconsistent with the professional conduct expected of a teacher.

During the investigation, Petitioner stated that such language was "[n]ot really" characteristic of him but acknowledged that students sometimes showed him videos during class and that this

"may be when the curses" occurred. At the hearing, he acknowledged saying "oh, fuck" in class but characterized it as an accidental reaction to a student's video rather than part of a recurring pattern. His admission establishes that incident without reliance upon the student accounts. Although those accounts suggest additional instances, no student testified, and the evidence does not establish their frequency.

The proof establishes at least one profane exclamation and Petitioner's acknowledgment that similar language may have occurred on other occasions when students showed him videos. Such language reflected poor professional judgment and was inconsistent with the example expected of a teacher. The District did not establish, however, that Petitioner regularly used profanity or directed abusive, derogatory, or discriminatory language at students. The allegation is sustained only to that limited extent.

c. Students Eating Lunch in Petitioner's Classroom

The District alleges that Petitioner exercised poor professional judgment by permitting a female student to eat lunch with him in his classroom. It relies upon the student's investigative statement, the covered classroom windows, and the asserted requirement that students eat in the designated lunchroom.

Soland testified that a female student reported eating lunch in Petitioner's classroom. During the investigation, Petitioner acknowledged that students ate lunch there but stated that multiple students did so and that he had never been told the practice was prohibited. He was not questioned further about the matter at the hearing.

The evidence does not establish that Petitioner ate alone with the student, that the door was closed or locked while students were present, or that any inappropriate interaction occurred. The fact that the classroom windows were generally covered does not establish the conditions during a particular lunch period.

Soland testified that Garro told him students were required to eat in the lunchroom, and the Supplemental Investigation Report records a similar statement. Garro was not questioned about that procedure at the hearing, however, and the District introduced no written rule prohibiting students from eating in a teacher's classroom.

The District established that students, including at least one female student, ate lunch in Petitioner's classroom. It did not establish that Petitioner ate privately with that student, that any inappropriate interaction occurred, or that he had clear notice the practice was prohibited. The evidence therefore does not establish the alleged professional-boundary violation.

3. Honesty During the Investigation

The District contends that Petitioner made materially false statements concerning the training and administrative support he received and argues in its post-hearing brief that those statements support a finding of turpitude. The threshold question is whether the Notice identified that alleged dishonesty with sufficient specificity to constitute an independent ground for discharge.

The Notice is the governing charging document. Section 22-10A-27(A)(2) requires the Superintendent to state the cause for the recommended discharge, while Sections 22-10A-27(G) and 22-10A-28(D) require proof that just cause existed when the Notice was issued. Although the arbitration is de novo and permits additional evidence concerning the noticed causes, it does not permit the District to add a materially different ground after issuance of the Notice. *See Santa Fe Pub. Schs. v. Romero*, 2001-NMCA-103, ¶ 22, 131 N.M. at 387-88.

The Notice generally referred to "falsehoods" and accused Petitioner of "lying to [his] supervisor and to the School District's investigators to conceal [his] misconduct." It also alleged in detail that he instructed students to create a misleading appearance of classroom instruction, thereby placing that alleged deception at issue.

The Notice did not, however, identify any allegedly false statement concerning training or administrative support, when or to whom it was made, or why it was false. Nor did it identify such statements as a separate basis for turpitude. The general accusation that Petitioner lied to investigators did not reasonably notify him that his descriptions of training and support would themselves be asserted as an independent ground for discharge.

The Notice need not identify every item of supporting evidence, but it must identify the alleged misconduct sufficiently to permit Petitioner to prepare a meaningful defense. Because the Notice did not identify his statements concerning training and administrative support as alleged falsehoods, the District may not rely upon them as an independent ground for discharge. Any inconsistencies in those statements may nevertheless be considered in evaluating the credibility of Petitioner's explanations concerning the misconduct properly charged in the Notice.

4. Summary of Findings Concerning the Alleged Misconduct

The District established some allegations, established others only in part, and failed to establish others in the categorical terms stated in the Notice. The findings concerning the alleged misconduct are summarized below.

Use of instructional and contract time. Petitioner repeatedly conducted Union business during instructional or duty time and, on more than isolated occasions, used assigned time for personal or noninstructional activities, including licensure and micro-credentialing work. The District did not establish the alleged frequency or duration of his telephone use, video viewing, or other personal activity, or establish that he engaged in gaming. The District also did not establish that Petitioner left the classroom for noninstructional conversations or otherwise abandoned his students.

Student accountability and supervision. Petitioner repeatedly failed to take or record attendance for later periods of the Dual Credit assignment, inadequately monitored students leaving through E-Hall Pass, and responded inadequately to known vaping. The District did not establish that he invariably omitted attendance, permitted students to approve their own passes, or authorized or encouraged vaping.

Instructional performance and responsibilities. Petitioner did not consistently take adequate measures to maintain student engagement, provide the active instructional support contemplated by the Dual Credit program, or appropriately balance his responsibilities with those of the UNM-Gallup professor. The District did not establish that he provided no supplemental assignments, wholly abandoned his instructional role, invariably refused assistance, or improperly referred every question to the professor.

Professional conduct and transparency. Petitioner uttered at least one profane exclamation in the presence of students and acknowledged that similar language may have occurred on other occasions when students showed him videos. He also instructed students to put away personal devices during an anticipated evaluation, confirming that he had not already secured their compliance with classroom expectations. The District did not establish that he enlisted students in deceiving administrators; used the covered windows or locked door to conceal misconduct; regularly used profanity or directed abusive language at students; or engaged in an inappropriate private lunch with a student.

Alleged dishonesty during the investigation. The Notice did not sufficiently identify Petitioner's statements concerning training and administrative support as alleged falsehoods constituting an independent ground for discharge or basis for turpitude. Any inconsistencies were considered only in evaluating his explanations concerning the misconduct properly charged.

C. Did the Proven Conduct Establish the Charges?

The District established some factual allegations, established others only in part, and failed to establish others as stated in the Notice. The question here is whether the conduct proven sustains the charged legal characterizations of Misconduct, Insubordination, Unfitness, and Turpitude. Whether the sustained charges warranted discharge is addressed separately below.

The Notice characterizes the conduct as Misconduct, Insubordination, Unfitness, and Turpitude but does not consistently identify which allegations support each charge. The District's post-hearing brief treats the Union-email conduct as insubordination; the alleged classroom deception and investigative falsehoods as turpitude; and the supervision, attendance, engagement, and instructional deficiencies as misconduct related to the proper performance of Petitioner's duties. Because the charges have different requirements, the Arbitrator evaluates the proven conduct under the specific theories advanced rather than assuming that every allegation establishes every charge.

1. Insubordination

The District principally contends that Petitioner committed Insubordination by continuing to conduct Union business during instructional or duty time after Garro expressly directed him to stop.

N.M.A.C. 6.69.2.7(B) defines insubordination as an "actual or implied willful refusal" to follow established written policies, regulations, rules, or procedures, or the lawful written or oral instructions of administrative authorities. The District therefore must establish an identifiable

policy or lawful instruction, Petitioner's knowledge of it, and his actual or implied willful refusal to comply.

Article 4.6 of the Collective Bargaining Agreement provides that Union responsibilities "will not normally be carried out during duty time." On January 22, 2025, Garro issued Petitioner a Letter of Reprimand for sending a Union-related email during contract time. The Letter directed compliance and warned that further violations could constitute insubordination and result in additional discipline, including discharge.

The Letter was later rescinded because Petitioner had not received Union representation during the preceding meeting. The rescission precludes treating it as an operative disciplinary penalty but does not eliminate Petitioner's actual notice of Garro's instruction. Petitioner acknowledged that he understood Garro had not authorized Union activity during contract time. Garro's instruction was lawful and consistent with Article 4.6 because it regulated the timing of Petitioner's Union activity during instructional or duty time, not the content of his protected advocacy.

Within days, Petitioner sent additional Union-related emails during instructional or duty time, including one on which the Superintendent was inadvertently included as a recipient. The investigation identified other such communications drafted or sent during assigned work time. Petitioner did not materially dispute sending them but maintained that the Superintendent's inclusion on the January 24 email was inadvertent and that his interpretation of the Public Employee Bargaining Act permitted the activity. Although he also referred generally to the CBA's statement that Federation responsibilities "will not normally" be carried out during duty time, he did not explain how the particular communications fell outside the ordinary application of that limitation.

The additional communications establish that Petitioner knowingly continued conducting Union business during assigned time after receiving and understanding Garro's instruction. His belief that the Public Employee Bargaining Act permitted the activity did not authorize him to disregard that instruction. His hearing testimony that he would not repeat the "mistake" bears favorably upon his corrective potential but does not negate the willfulness of his earlier noncompliance.

The District established that Petitioner's continued Union-related communications during instructional or duty time, after receiving and understanding Garro's instruction, constituted insubordination. Whether that insubordination, alone or with the other sustained misconduct, warranted discharge is addressed in the proportionality analysis.

2. Misconduct

The District contends that Petitioner's use of assigned time, deficiencies in student accountability and supervision, inadequate instructional involvement, and unprofessional conduct collectively constituted Misconduct and a failure to perform his professional duties.

Neither the School Personnel Act nor the regulations cited in the Notice separately define misconduct. The term is therefore given its ordinary meaning: improper conduct or a dereliction of duty. In this context, misconduct requires conduct inconsistent with the obligations reasonably associated with Petitioner's position; mere inefficiency, unsuccessful performance, or an isolated error in judgment does not necessarily constitute misconduct. Because Misconduct is not itself a category identified in the statutory definition of just cause, the conduct proven must be rationally related to Petitioner's competence, turpitude, or the proper performance of his duties. NMSA 1978, § 22-10A-2(I). Misconduct may satisfy that standard without establishing Unfitness or the ethical or moral dimension required for Turpitude.

Petitioner repeatedly conducted Union business during instructional or duty time, used assigned time for personal and licensure-related activities, failed to take or record attendance consistently for later periods, inadequately monitored students leaving through E-Hall Pass, and responded inadequately to known vaping. He also failed to maintain consistent student engagement and provide the active instructional support contemplated by the Dual Credit program. Each deficiency was rationally related to the proper performance of his duties.

These deficiencies concerned fundamental responsibilities rather than matters of teaching style. The Dual Credit structure permitted substantial independent work and left curriculum and grading to the UNM professor, but Petitioner remained responsible for instructional time, attendance, student whereabouts, prohibited conduct, engagement, and reasonable instructional support. His failure to perform those responsibilities consistently constituted professional misconduct.

The District did not prove, however, that Petitioner invariably omitted attendance, permitted students to approve their own hall passes, affirmatively allowed vaping, provided no supplemental assignments, or wholly abandoned his instructional role. Nor did it establish that he engaged in gaming or prove the alleged frequency or duration of his telephone use, video viewing, or other personal activity. The scope of the Misconduct charge is limited accordingly.

Of the remaining professional-conduct allegations, only Petitioner's admitted use of profanity established Misconduct, and then only as a limited instance of poor judgment. The evidence established at least one profane exclamation, and Petitioner acknowledged that similar language may have occurred on other occasions when students showed him videos. The District did not prove that he used the covered windows or locked door to conceal misconduct, enlisted students in deceiving administrators, or engaged in an inappropriate private lunch with a student. Directing students to put away personal devices during an anticipated evaluation did not itself constitute Misconduct, although it confirmed that he had not already secured their compliance with classroom expectations.

The District established Misconduct rationally related to the proper performance of Petitioner's duties, principally concerning his use of instructional time, student accountability and supervision, classroom engagement, and instructional support. The charge is sustained only to the extent of the conduct actually proven.

3. Unfitness and Turpitude

The District contends that the cumulative alleged conduct demonstrated that Petitioner was Unfit to continue teaching. It principally asserts two bases for Turpitude: that Petitioner enlisted students in creating a misleading appearance of classroom instruction and that he made materially false statements concerning his training and administrative support.

Neither the School Personnel Act nor the regulations cited in the Notice separately define Unfitness. The District's post-hearing brief likewise does not define it or identify it as an independent statutory ground, instead treating it as a conclusion drawn from the alleged conduct. The Arbitrator therefore applies its ordinary meaning: a lack of the suitability or capacity necessary to perform the duties of the position. The relevant inquiry is whether the proven conduct, viewed cumulatively, demonstrates that Petitioner lacked the ability or suitability to perform the essential responsibilities of his position.

Because Unfitness is not separately included in the statutory definition of just cause, the Arbitrator considers whether the proven conduct demonstrates unfitness and, independently, whether that conduct is rationally related to Petitioner's competence, turpitude, or the proper performance of his duties.

Turpitude, unlike Unfitness, is statutorily defined. The statutory definition of moral turpitude requires an ethical or moral dimension beyond ordinary performance deficiencies or poor judgment. NMSA 1978, § 22-10A-2(K).

The alleged false statements concerning training and administrative support cannot support either charge. As determined above, the Notice did not identify those statements with sufficient specificity to constitute an independent ground for discharge. Any inconsistencies bear only upon the credibility of Petitioner's explanations concerning the properly noticed allegations.

The District also failed to prove that Petitioner enlisted students in deceiving administrators. His admitted direction that students put away personal devices and behave appropriately during an anticipated evaluation was not inherently dishonest. Although summarized student accounts suggested a recurring procedure for creating a false appearance of instruction, no student testified or provided an individual statement or recording at the hearing. Garro's observations were consistent both with the District's theory and with the ordinary response to a principal's presence, and the District did not establish that the covered windows or locked door facilitated concealment. The evidence therefore did not establish the asserted deception by a preponderance of the evidence.

Neither of the District's principal bases for Turpitude was established. Nor did Petitioner's sustained performance deficiencies, Insubordination, and limited instances of poor judgment demonstrate that he lacked the ability or suitability to continue performing the duties of a teacher. His favorable evaluations, recognition that his classroom-management approach had been too permissive, and efforts to impose firmer boundaries and improve his documentation support the conclusion that the deficiencies were correctable rather than evidence of Unfitness. The sustained Misconduct was rationally related to the proper performance of his duties but did

not establish Unfitness or Turpitude. Accordingly, the District established Misconduct and Insubordination but not Unfitness or Turpitude.

D. Petitioner's Affirmative Defenses and Mitigating Factors

Petitioner contends that the discharge was motivated by anti-Union animus, resulted from an unfair investigation, reflected inadequate notice and administrative support, involved disparate treatment, and improperly bypassed progressive discipline. These contentions are addressed insofar as they bear upon the District's motive, the reliability and fairness of its decision, and whether the sustained charges warranted discharge.

1. Anti-Union Animus, Retaliation, and Pretext

Petitioner's Union activity became increasingly prominent during the 2024–2025 school year, and the investigation followed closely after the District discovered his Union-related communications during instructional or duty time. Scott provided firsthand testimony that administrators became visibly hostile and agitated when Petitioner raised teacher scheduling and other employee concerns during staff meetings, while Petitioner remained nonaggressive and spoke when questions or announcements were invited. Petitioner similarly described a change in administrators' tone as his Union activity increased. Garro, in contrast, characterized Petitioner's advocacy as angry, negative, and disruptive. This conflicting testimony, together with the temporal proximity, provides some evidence of tension or hostility surrounding Petitioner's Union advocacy.

No email or other documentary evidence identified at the hearing contained an expressly hostile or anti-Union statement by a District official. Nor does the record connect the reaction described by Scott to the particular bargaining position advanced in the January 24 communications or establish that the substance of those communications influenced the investigation or discharge decision. The evidence therefore supports Petitioner's perception that administrators had become hostile toward his advocacy but provides limited evidence that anti-Union animus motivated the challenged employment actions.

Petitioner also cites his classroom reassignment as retaliatory. The move occurred at the beginning of the school year and, according to Petitioner, separated him from his former Health pathway colleagues and caused inconvenience and disruption. The record does not establish, however, when the decision was made, who made it, or that the decisionmaker knew of Petitioner's later membership-recruitment activity. The reassignment did not affect his compensation, status, or duties. Garro explained that the new classroom was located near the College and Career Readiness Center and approximately ten steps from a counselor experienced in supporting Dual Credit students. Petitioner did not dispute that proximity but viewed the move as isolating him from his former colleagues and support structure. The evidence therefore does not establish that the reassignment was motivated by Union activity.

Petitioner did not establish that anti-Union animus motivated or materially affected the reassignment, investigation, or discharge. Although the investigation began with his Union-related communications, the District's stated concern was that he prepared or sent them during

assigned time after being instructed not to do so. The investigation subsequently developed independent evidence concerning supervision, attendance, instructional performance, and professional conduct. Petitioner's anti-Union defense therefore is not sustained.

2. Procedural Due Process and Fairness of the Investigation

Petitioner contends that the District conducted an incomplete, outcome-driven investigation that began with Union activity and expanded into a search for grounds for discharge. He argues that the District relied heavily upon students from one Dual Credit class, failed to interview students from his other classes, did not invite him to identify witnesses or present evidence, and denied him meaningful access to the students' identities and individual statements. He also cites the nonproduction of certain dated or time-stamped Canvas materials. According to Petitioner, these limitations prevented him from testing the allegations and presenting evidence favorable to his defense.

The District responds that Soland interviewed the Dual Credit students, administrators, counselors, District personnel, and Petitioner and reviewed emails, attendance and classroom records, training documentation, and other relevant materials. Petitioner's explanations prompted additional inquiry and a Supplemental Investigation Report. The District maintains that it produced the information within its possession or access, that certain Canvas materials became inaccessible after Petitioner's employment ended, and that student-identifying information was protected by confidentiality requirements. It further notes that Petitioner received a Board hearing and a de novo arbitration at which he was represented by counsel, presented evidence, and cross-examined the District's witnesses.

Petitioner participated in a detailed investigative interview and provided explanations concerning the Dual Credit program, training, attendance, classroom management, student discipline, and administrative support. Several explanations prompted additional investigation. Although the record does not show that Soland expressly invited Petitioner to identify witnesses or submit documents, it identifies no witness, evidence, or exculpatory lead that Petitioner offered and the District refused to pursue. The investigation focused upon the Dual Credit class from which the allegations arose. The failure to interview students from Petitioner's other classes limited the investigation's comparative scope but does not establish that the District deliberately selected adverse witnesses or excluded identified favorable evidence.

The investigative reports recorded qualifications and variations among the student accounts, including that some students had not observed vaping and that Petitioner had not expressly authorized it. Because the reports summarized the interviews, however, Petitioner could not examine each student's precise words, context, or individual credibility. That limitation affects the weight of the student accounts but does not establish that the investigation was one-sided or fundamentally unfair.

The District did not produce certain dated or time-stamped Canvas materials because it represented that they were no longer accessible after Petitioner's employment ended. At the hearing, Union counsel accepted that the District had produced what it could access and disclaimed deliberate withholding. The District also invoked student-confidentiality

requirements, but the record does not show that the Union proposed redaction, a protective arrangement, or another means of obtaining the statements while protecting student identities and that the District rejected it. Nor did confidentiality prevent Petitioner from learning the substance of the allegations.

The student statements present a more substantial evidentiary concern. Protecting student identities was legitimate, but confidentiality did not establish the reliability of their accounts or relieve the District of its burden. Redacted or anonymized statements, interview notes, or recordings could have preserved confidentiality while permitting examination of the students' precise words, context, and possible differences in perception. Because the students did not testify and no such materials were introduced, neither Petitioner nor the Arbitrator could meaningfully assess those matters or test the investigative summaries against their underlying sources. These limitations affect whether allegations dependent upon uncorroborated student accounts were proven, but do not themselves establish that the investigation was unfair.

Petitioner did not establish that the District denied him procedural due process or conducted a fundamentally unfair investigation. The investigation included favorable and unfavorable information, Petitioner was interviewed with Union representation, and some of his explanations prompted further inquiry. He later received a Board hearing and a de novo arbitration at which he could present evidence and challenge the District's case. Although the investigation was not exhaustive and could have used more formal procedures for soliciting defense evidence and providing protected access to student accounts, those shortcomings affect the weight and sufficiency of particular allegations rather than provide an independent basis for setting aside the discharge.

3. Inadequate Administrative Support

Petitioner contends that the District placed him in a new Dual Credit program with students known to have significant attendance and behavioral problems but failed to provide adequate systems, guidance, coordination, or administrative follow-up. He maintains that he repeatedly raised concerns through Early Warning System meetings and directly with counselors and administrators, only to have the resulting difficulties later characterized as his misconduct. The District responds that Petitioner received training, written guidance, access to support personnel, and established procedures for raising concerns. It further argues that any shortcomings in administrative support did not excuse responsibilities within Petitioner's control, including attendance, student accountability, responses to vaping, engagement, instructional assistance, and appropriate use of assigned time.

The Dual Credit cohort presented known attendance and behavioral challenges. Scott testified that she warned administrators and counselors that several students had chronic attendance, tardiness, or behavioral problems and questioned whether the procedures for monitoring students traveling to UNM-Gallup were adequate. The program was also new, and responsibility for assignments, accountability, and coordination among Petitioner, the District, and UNM-Gallup was not always clear.

Petitioner raised concerns about attendance, participation, and students' ability to succeed. Scott testified that he identified problem students during Early Warning System meetings and described some administrative responses as dismissive or unresolved. Petitioner similarly testified that he reported skipping and concerns about students who could no longer pass the university course, as well as insufficient assignments from one professor. The record does not establish consistent administrative follow-up resolving those concerns.

The District nevertheless provided some support. It established Early Warning System meetings, assigned counselors and student-success personnel, monitored students traveling to and from UNM-Gallup, provided written Dual Credit guidance, and deployed administrators to address broader attendance problems. Administrators also directed Petitioner to document concerns, contact parents, speak with students, or use established referral procedures. Those measures may not have provided the direct intervention Petitioner sought, but they demonstrate that support structures were available.

The District knew that the cohort presented unusual challenges, and its response did not fully resolve the problems Petitioner identified. The program's developing structure and imperfect coordination also contributed to uncertainty concerning his instructional role. Those circumstances mitigate some deficiencies and bear upon their correctability, but do not excuse the sustained misconduct. Petitioner remained responsible for attendance, student accountability, responses to known misconduct, instructional facilitation, and appropriate use of assigned time. Inadequate support also does not explain his continued Union communications after a specific instruction. The defense is therefore sustained only as a mitigating factor relevant to progressive discipline and proportionality.

4. Disparate Treatment and Selective Enforcement

Petitioner contends that the District selectively investigated and disciplined him for practices common among other teachers, including attendance problems, cellular-telephone use, covered windows, locked doors, student lunches in classrooms, and preparing students for evaluations. He also compares his treatment with Jacoby's experience in the Dual Credit program. The District responds that Petitioner identified no similarly situated employee who engaged in comparable conduct known to the District and received more favorable treatment. It maintains that generalized similarities do not establish comparable failures involving attendance, student accountability, vaping, personal use of instructional time, instructional support, or continued Union activity after a specific directive.

Several practices cited by Petitioner were not unique to him. Attendance and tardiness were schoolwide concerns; Jacoby experienced attendance problems and substantial Dual Credit attrition; and other teachers used cellular telephones, kept doors locked for security, sometimes covered windows, permitted students to eat lunch in classrooms, and advised students to behave appropriately during evaluations. Whether that evidence establishes disparate treatment depends upon whether the circumstances were materially comparable.

The attendance evidence is not materially comparable. Petitioner was not disciplined merely because students were absent or left the program, but for repeatedly failing to take or record

attendance and inadequately accounting for students who left class. Although Jacoby experienced attendance and enrollment problems, the record does not establish that she failed to take required attendance, inadequately administered hall passes, or knowingly failed to respond when students left and did not return. Her experience therefore does not establish comparable misconduct.

The cellular-telephone evidence likewise does not establish selective enforcement. Montano testified that legitimate work-related use was permitted and that other teachers had been disciplined for personal use while supervising students. The record identifies no teacher who engaged in comparable personal use under similar supervisory circumstances and received more favorable treatment. Montano's testimony that an initial violation ordinarily could result in a warning remains relevant to progressive discipline and proportionality, but not to disparate treatment.

The evidence establishes that covered windows, locked doors, and student lunches in classrooms were not categorically prohibited and occurred elsewhere under appropriate conditions. Consistent with that evidence, the Arbitrator did not sustain the allegations that Petitioner used those conditions to facilitate concealment or engaged in an inappropriate private lunch. Because those allegations were not sustained as Misconduct, the comparator evidence does not establish disparate discipline.

Preparing students for an anticipated evaluation was likewise not shown to be unique or inherently improper. Petitioner testified, without contradiction, that other teachers told students when evaluations were expected and directed them to behave appropriately. Because the District did not prove that Petitioner went further and enlisted students in deception, this evidence limits the underlying allegation but does not establish disparate discipline. It also precludes treating the conduct actually proven as an aggravating circumstance.

The record also identifies no other Union representative who continued conducting Union business during instructional or duty time after receiving and understanding a specific instruction to cease. The evidence therefore does not establish selective enforcement of the instruction underlying the Insubordination finding.

The comparator evidence shows that some conduct described categorically in the Notice was more commonplace or less serious than alleged, and that evidence has been considered in limiting the sustained findings. Petitioner did not, however, identify another employee who engaged in materially comparable misconduct and received more favorable treatment. He therefore did not establish disparate treatment or selective enforcement. Evidence that the District ordinarily used lesser discipline for some correctable conduct remains relevant to progressive discipline and proportionality.

5. Progressive Discipline

Petitioner contends that the District lacked just cause to proceed directly to discharge because he had no active disciplinary record and most sustained deficiencies were correctable through counseling, directives, a growth plan, or lesser discipline. The District responds that neither the

School Personnel Act nor the Collective Bargaining Agreement invariably requires progressive discipline and that a growth plan is not required for deliberate misconduct involving Insubordination, student safety, dishonesty, or Turpitude. It further maintains that a licensed teacher required no corrective process to understand the fundamental expectations at issue.

Petitioner had no active discipline when the Notice was issued. The January Letter of Reprimand had been rescinded and may not be treated as a prior disciplinary step. Its rescission did not, however, erase Petitioner's actual notice of the instruction concerning Union activity. His continued Union communications after receiving that instruction therefore differ from conduct first brought to his attention through the discharge proceedings.

Apart from Garro's instruction concerning Union communications during duty time, the District had not addressed the remaining concerns through formal discipline, a growth plan, or a comparable corrective process. Before the investigation, it had not advised Petitioner that his performance was deficient in attendance, E-Hall Pass accountability, responses to vaping, instructional support, or student engagement. Garro testified that he personally observed students disengaged or inactive during classroom visits, yet the record does not establish that he identified those observations to Petitioner as performance deficiencies or prescribed corrective expectations. Although Petitioner raised attendance, behavioral, and programmatic concerns, the District did not use those occasions to identify specific deficiencies or establish measurable expectations for improvement.

Petitioner's own testimony reflects some recognition that his classroom-management approach had been too permissive. He acknowledged giving students "way too many chances," stated that an approach that had worked in prior classes "did not work here," and testified that he would impose firmer boundaries and improve his documentation. He also began using a spreadsheet during the second semester to track attendance and behavioral concerns. These acknowledgments reinforce the finding that his classroom management was inadequate, but they also indicate that the deficiencies were susceptible to correction through clearer expectations, supervision, and progressive discipline.

Montano testified that an initial instance of improper cellular-telephone use ordinarily could result in a verbal warning, followed by documentation and a directive, with more serious discipline for repeated conduct or conduct endangering students. Although that testimony does not establish disparate treatment, it shows that the District regarded at least some personal telephone use and supervisory deficiencies as susceptible to graduated correction. Montano had not extensively considered a growth plan because she believed so little instruction was occurring that she did not know where to begin. That explains her view of the allegations' seriousness but does not show that the District evaluated whether counseling, directives, monitoring, a growth plan, or lesser discipline could correct the conduct actually proven, particularly in light of Petitioner's prior record and favorable evaluations.

Progressive discipline is not invariably required. Neither the School Personnel Act nor the Collective Bargaining Agreement mandates a fixed sequence of penalties, and an employer may proceed directly to discharge when the proven misconduct is sufficiently serious or demonstrates that correction would be futile. The District is therefore correct that the absence of progressive

discipline does not defeat a discharge otherwise supported by just cause. The question here is different: whether the narrower misconduct actually proven was sufficiently serious, in light of the entire record, to warrant discharge without prior corrective intervention.

Most of the sustained misconduct was susceptible to correction. Attendance, student accountability, responses to vaping, instructional facilitation and engagement, and use of assigned time could have been addressed through directives, training, monitoring, a growth plan, or graduated discipline. The new Dual Credit program, challenging student cohort, imperfectly coordinated responsibilities, deficiencies in administrative support, and Petitioner's lack of prior active discipline strengthen the case for corrective intervention.

Petitioner's continued Union communications after receiving and understanding Garro's instruction were more deliberate and warranted substantial discipline. The record does not establish, however, that the communications materially disrupted instruction, caused a substantial supervisory lapse, or demonstrated that corrective discipline would be ineffective. The sustained Insubordination therefore does not establish that Petitioner was beyond correction or justify bypassing progressive discipline altogether.

The absence of progressive discipline does not negate the sustained Misconduct or Insubordination or preclude substantial discipline. It is nevertheless significant that most deficiencies were potentially correctable, Petitioner had no active disciplinary record, and the District did not meaningfully consider a growth plan or lesser discipline. Those circumstances weigh heavily in determining whether the District proved just cause for discharge.

The sustained conduct was rationally related to the proper performance of Petitioner's duties and therefore satisfied the substantive statutory standard for discipline. Whether it constituted just cause for discharge depends upon whether that penalty was proportionate to the Misconduct and Insubordination actually proven.

E. Proportionality of the Penalty

The remaining question is whether discharge was proportionate to the sustained Misconduct and Insubordination. The District must prove "just cause to discharge," not merely conduct satisfying the statutory definition of just cause. NMSA 1978, § 22-10A-28(D). The penalty therefore must rest upon the specifications actually proven, not the broader allegations stated in the Notice.

Petitioner's proven misconduct was substantial and warranted discipline. Petitioner repeatedly conducted Union business during instructional or duty time after receiving and understanding an administrative instruction. He also used assigned time for personal and licensure-related activities, inconsistently recorded attendance for later periods, inadequately accounted for students leaving class, responded inadequately to known vaping, failed to maintain sufficient engagement, and did not consistently provide the active instructional support required by the Dual Credit program. These deficiencies implicated legitimate District expectations and fundamental teaching responsibilities.

The District did not prove the case as broadly alleged. It failed to establish that Petitioner invariably omitted attendance, permitted students to approve their own passes, affirmatively allowed vaping, provided no supplemental work, wholly abandoned instruction, or improperly referred every question to the professor. It also did not establish the alleged extent of his personal electronic activity, classroom deception, concealment, pervasive profanity, an inappropriate private lunch, or independently chargeable investigative falsehoods. Proportionality must be assessed upon the narrower conduct proven.

Several considerations weigh against discharge. Petitioner was entering his third year with the District, had favorable evaluations, and had no active disciplinary record. The rescinded Letter of Reprimand provided actual notice concerning Union activity but did not constitute a disciplinary step or establish prior discipline regarding his classroom performance, supervision, or instructional responsibilities.

The District argues that Petitioner's favorable evaluations reflected his success in creating a misleading appearance of classroom instruction. That argument could bear principally upon evaluations conducted during the Dual Credit assignment and depends upon the deception allegation, which the District did not prove. The record contains no evidence that, in his prior classes, Petitioner covered his windows, routinely locked his door, remained disengaged with his feet elevated, or instructed students to alter their conduct when administrators entered. His favorable evaluations from those classes therefore remain relevant to his employment history and corrective potential, although they do not excuse the misconduct established during the Dual Credit assignment.

The Dual Credit assignment differed materially from a traditional classroom. Students performed substantial independent work, while responsibilities for curriculum, grading, assistance, and supplemental assignments were divided between Petitioner and the professor and were not always clearly coordinated. The program was new, the student cohort presented known attendance and behavioral challenges, and administrative support did not fully resolve Petitioner's concerns. These circumstances reduce his culpability and support the potential effectiveness of clearer expectations and corrective measures, but do not excuse his failure to take attendance, account for students leaving class, respond to known vaping, use assigned time appropriately, or exercise reasonable supervision.

Most sustained deficiencies were susceptible to correction through specific directives, training, monitoring, a growth plan, or progressive discipline. Before recommending discharge, the District had not clearly identified each deficiency, provided Petitioner a meaningful opportunity to correct it, or determined that corrective measures would be ineffective.

Petitioner's continued Union communications after receiving and understanding the District's instruction were deliberate and support substantial discipline. His Union position and protected advocacy are not aggravating circumstances; the relevant consideration is his knowing use of instructional or duty time contrary to the instruction. The record did not establish, however, that the communications were improper in content, materially disrupted instruction, or caused a substantial failure of supervision. Although serious, the sustained Insubordination does not establish that his continued employment was untenable.

The cumulative misconduct weighs in the District's favor, but overlapping consequences of the same classroom practices may not be counted as separate aggravating offenses. Petitioner's limited instructional assistance, inadequate engagement, excessive reliance upon the professor, and use of classroom time for other activities were interrelated aspects of his performance in the same unconventional program. Their combined effect was substantial, but they remained predominantly correctable performance and classroom-management deficiencies.

The District established substantial grounds for discipline but did not prove that Petitioner was beyond correction or that continued employment under clearly defined expectations and substantial discipline was no longer reasonably possible. The sustained Insubordination and cumulative Misconduct do not outweigh his favorable evaluations, absence of active discipline, the correctable nature of most deficiencies, the shortcomings in the Dual Credit program and administrative support, and the District's failure to prove several serious allegations. The District therefore did not establish that discharge was proportionate to the conduct proven.

The misconduct warranted substantial discipline, and a substantial suspension might otherwise reflect both its seriousness and the mitigating circumstances. This statutory appeal, however, is governed by NMSA 1978, Section 22-10A-28(K), which directs the Arbitrator to issue a decision "affirming or reversing" the Board's action but does not authorize modification or substitution of a lesser penalty. That omission is significant because the Legislature has expressly authorized modification when it intended to confer that power. Under the State Personnel Act, the State Personnel Board may "modify the disciplinary action," and an arbitrator is expressly granted all of the Board's powers in that regard. NMSA 1978, § 10-9-18(F), (H). Similarly, the Unemployment Compensation Law authorizes reviewing officials to "affirm, reverse or modify" the decision under review. NMSA 1978, § 51-1-8(G), (H). Section 22-10A-28(K), by contrast, authorizes only affirmance or reversal. In the absence of statutory language or controlling authority permitting modification, the Arbitrator concludes that he may not substitute a suspension or other lesser penalty for the discharge imposed by the Board.

F. Conclusion

The District established that Petitioner engaged in Misconduct and Insubordination rationally related to the proper performance of his duties. It did not establish Unfitness or Turpitude. The sustained charges were limited to the factual specifications proven and warranted substantial discipline.

The District did not prove, however, that the sustained charges warranted discharge. Most involved correctable performance, supervision, and classroom-management deficiencies. Petitioner had favorable evaluations, no active disciplinary record, and no meaningful opportunity to correct those deficiencies, and the District did not establish that corrective measures would have been ineffective. Considering the conduct proven and the relevant mitigating circumstances, discharge was disproportionate.

Accordingly, the District established Misconduct and Insubordination satisfying the substantive definition of just cause under NMSA 1978, § 22-10A-2(I), but did not establish just cause to

discharge Petitioner. Because Section 22-10A-28(K) does not authorize the Arbitrator to substitute a lesser penalty, the Board of Education's decision discharging Petitioner is reversed.

G. Allocation of Arbitration Fees and Expenses

NMSA 1978, Section 22-10A-28(N), provides that each party shall bear its own costs and expenses and authorizes the Arbitrator, in his discretion, to assign the Arbitrator's fees and other expenses incurred in conducting the arbitration. Petitioner prevailed on the dispositive issue presented in this statutory appeal: whether the District had just cause to discharge him. Although the District proved misconduct warranting substantial discipline, it did not prove just cause for discharge, and the Board's decision has been reversed. Under these circumstances, the District shall bear the Arbitrator's fees and expenses incurred in conducting the arbitration. Each party shall otherwise bear its own costs and expenses.

VIII. AWARD

1. The District established Misconduct and Insubordination to the extent supported by the factual specifications sustained in this Decision. It did not establish Unfitness or Turpitude.
2. The District did not prove by a preponderance of the evidence that the sustained Misconduct and Insubordination constituted just cause to discharge Petitioner.
3. The decision of the Board of Education discharging Petitioner is reversed.
4. The District shall reinstate Petitioner and restore his seniority and other employment rights.
5. Pursuant to NMSA 1978, § 22-10A-29(B), the District shall reinstate Petitioner's compensation in full, including any additional compensation allowed other licensed school employees of like qualifications and experience, and reimburse the compensation lost during the entire period in which his compensation was terminated, less the offset authorized by the statute. The District shall also restore any employment benefits lost because of the discharge.
6. The District shall bear the Arbitrator's fees and expenses incurred in conducting this arbitration. Each party shall bear its own costs and expenses.
7. The Arbitrator retains jurisdiction for sixty days from the date of this Award solely to resolve disputes concerning the calculation and implementation of the remedy awarded above. Retained jurisdiction does not extend to reconsideration of the merits or modification of the remedy.

Dated: August 15, 2026

Carl Bosland

_ Carl C. Bosland, Esq.
Arbitrator