

STATE OF NEW JERSEY
COMMISSIONER OF EDUCATION

In the Matter of the Tenure Charges Against

WILLIAM CARR

and

CARLSTADT-EAST RUTHERFORD REGIONAL BOARD OF EDUCATION,

Bergen County, New Jersey

Agency Docket No.: 142-6/15

AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated as Impartial Arbitrator by authority of the Commissioner of Education of the State of New Jersey in accordance with the TeachNJ statute, N.J.S.A. 18A:6-17, and having been duly sworn, and having duly heard the proofs and allegations of the parties, after applying the criteria set forth in the TeachNJ statute AWARDS as follows:

Based on the evidence submitted, the eleven tenure charges brought by the Carlstadt-East Rutherford Regional Board of Education against Respondent William Carr are sustained in part and denied in part.

The Board was entitled to suspend Respondent on April 23, 2015 for the balance of the 2014-15 school year in response to Respondent's actions regarding students that occurred on April 21, and 23, 2015, provided that the District had initiated in a timely manner a process to refer Respondent for a fitness for duty evaluation by an Independent Medical Examiner selected, in the first instance, by the District and for anger management counseling. The District failed to take either action. Filing of tenure charges for these two incidents, rather than suspending Respondent and referring him for evaluation by a medical professional or psychologist was arbitrary, which violated an applicable standard established by the TEACHNJ statute, and thus cannot be sustained. Therefore, the discipline imposed regarding Charge Four and Charge Five is hereby modified as described below.

Respondent shall be reinstated forthwith to his former position as a history teacher at Becton High School. The following penalties shall be assessed for Respondent's proven conduct precipitating the filing of tenure charges in the instant case. The 120-day interval during which Respondent was suspended without pay shall be deemed an unpaid disciplinary suspension for his submission of vouchers to which he signed names other than his own, which is the subject of Charges One and Two, and for his conduct toward colleagues and students, which is the subject of Charge Three, Counts I and II and Charge Six, Counts I, II,

and III. Had the District imposed an appropriate sequence of progressively severe discipline identifying Respondent's perceived shortcomings in the classroom and his interactions with colleagues before preferring tenure charges, a more stringent penalty might have been sustained.

The District shall refer Respondent forthwith for a fitness for duty examination, specifically referring Respondent for anger management counseling and such other therapy or counseling as an Independent Medical Examiner shall determine. The IME shall be selected by mutual agreement of respondent or his representative and the District Superintendent or her representative. In the event of a deadlock on the selection, the parties shall return to this Arbitrator for a determination.

If the neutral IME determines that Respondent is ready and fit to return to his teaching duties at Becton High School, Respondent shall be assigned to similar teaching duties as in the past and shall be eligible for extra-curricular assignments as he was before tenure charges were filed. In the event that the District determines that returning Respondent to full duty immediately after he has been released to work by the IME, or the IME's designated therapist, if any, would be pedagogically disruptive, the District may, at its discretion for sound educational reasons, defer Respondent's return to full, active duty until the beginning of the

2016-17 school year, provided that Respondent is provided with full pay and benefits hereafter through his reinstatement to duty, is listed immediately as a full-time tenured faculty member at Becton High School, is given unfettered opportunity to bid for extra-curricular activity positions for 2016-17, and is offered a teaching schedule that is substantially similar to the schedule he was assigned before tenure charges were filed.

Given the unequivocal testimony by District witnesses establishing that Respondent's submission of vouchers seeking payment of third party vendors for goods and services provided regarding extra-curricular activities for which Respondent was responsible as faculty advisor did not violate any District policy or applicable law, and further considering that Respondent's submission of vouchers on which he had signed the names of others without their authorization constituted improper conduct that violated the generally applicable standards of ethical and fair dealing, the District shall also withhold increments from Respondent for each of the next two years.

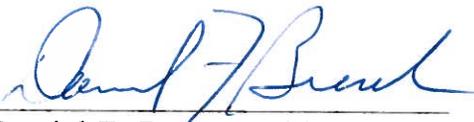
By operation of the TEACHNJ statute, Respondent was off the District payroll for 120 days, after which his salary and benefits should have been fully restored pending the outcome of this arbitration

proceeding. If they have not been fully restored as of the 121st day after suspension, all unpaid salary and benefits shall be paid forthwith.

The District's tenure charges based on Respondent's classroom performance have not been sustained by a preponderance of credible evidence. Charge Eight is unduly vague. Therefore, Charges Seven, Eight, Nine, and Ten are hereby dismissed. Charge Eleven, which is an amalgam of the preceding charges, is hereby dismissed as unsupported by the evidentiary record.

The Arbitrator hereby retains jurisdiction to resolve any dispute that may arise regarding the remedy, or the enforcement of the remedy, ordered pursuant to this Award.

February 1, 2016


Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 1st day of February 1, 2016 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

A handwritten signature in blue ink, appearing to be 'D. Brent', written over a horizontal line.

An Attorney at Law of the
State of New Jersey

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Hearings in the above-entitled matter were held on September 22, 2015, September 25, 2015, October 1, 2015, October 20, 2015, and October 22, 2015 at the Carlstadt-East Rutherford Regional High School District Board offices in East Rutherford, New Jersey, before Daniel F. Brent, duly designated by the New Jersey Commissioner of Education as Impartial Arbitrator pursuant to N.J.S.A. 18A: 6-17, the Teacher Effectiveness and Accountability for the Children of New Jersey (TeachNJ) statute. Both parties participated in these hearings, were represented by counsel, and were afforded full

and equal opportunity to offer testimony under oath, to cross examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceedings. The evidentiary record was declared closed upon the receipt of the stenographic transcript and the subsequent submission of post-hearing briefs by both parties.

NATURE OF THE CASE

Respondent William Carr has been employed as a history teacher at Becton Regional High School in East Rutherford, New Jersey for twenty-six years, during which time he has also coached the debate team, been advisor to the school newspaper, and received accolades for his teaching, including AP level courses, with great success. To motivate and engage his students at various levels of academic rigor, Mr. Carr has developed a repertoire of techniques and antics that have won him admiration and approval from many of his students and colleagues over the years. Respondent has also demonstrated, particularly in the two years before tenure charges were filed against him, passive aggressive behavior and a confrontational attitude toward co-workers and several students that precipitated the tenure charges at issue in the instant case.

More particularly, tenure charges were filed after Mr. Carr was observed engaging in what the Board construed as angry, aggressive, and unprofessional behavior toward two students in two separate incidents that occurred only two days apart in April 2015 while Respondent was monitoring the school cafeteria. These incidents were recorded on video cameras positioned through the school. There is no audio component. The High School Principal and the Disciplinarian testified in support of the District's assertion that, despite a warning after the first incident on April 21, 2015, Respondent again lost self-control and angrily berated a female student until she broke down in tears in the main school office.

The District also cited many interactions between Respondent and other teachers and supervisors in which Respondent was allegedly uncooperative, dismissive, or disruptive. His angry outbursts were characterized by the District as inconsistent with the District's reasonable expectations of professional collegiality and standards of conduct toward students. The eleven tenure charges filed in June 2015 included allegations that Respondent consistently made off-topic, personal, and inappropriate comments to students and that he exhibited odd and concerning behavior in class, including throwing erasers and faking seizures when students gave incorrect answers. Respondent was also charged with disrespectful demeanor towards colleagues and supervisors to the extent that two female supervisors reported feeling

distressed and threatened. According to the District, Respondent has unequivocally demonstrated that he is patently unfit to perform the functions of a teacher.

Respondent was also charged with dishonest conduct and violating District policies by signing vendors' names to multiple payment vouchers for extra-curricular activities such as debate tournament registrations and travel expenses. These violations occurred over many years, but only recently came to the attention of District officials. Although the District made no claim that the Respondent defrauded the District of any funds or that he personally profited from his actions, the District alleged that his deviation from the prescribed protocol for securing payment for vendors regarding extra-curricular activities, which occurred repeatedly over many years and which Respondent readily admitted when confronted, created an adequate independent basis to terminate his employment.

Respondent Carr refuted the tenure charges as unfounded or as insufficient to terminate his employment. Mr. Carr admitted his circumvention of vendor procurement policies, but characterized his conduct as either necessary to register for debate tournaments or similar events in a timely manner where no vendor signature could be obtained before registration fees were due or as regrettable laziness to seek written

vendor confirmation in advance. Respondent also described his theatrical antics in the classroom as an important element in keeping his students alert and engaged with his lessons. According to Respondent Carr, although most students understood and appreciated his rapid-fire references and off-beat humor, some students, including several former students who testified at the arbitration proceedings, did not grasp the subtlety, sarcasm, or humor of his remarks.

Respondent asserted that the absence of any progressively severe discipline addressing his alleged shortcomings in the classroom precluded sustaining the tenure charges regarding his teaching. He further asserted that he had behaved appropriately in fulfilling his cafeteria supervisory responsibilities on April 21 and 23, 2015 and that the District had over-reacted to his comments to the students and to administrators. Respondent defended his interactions with colleagues as within the boundaries of civility, if not collegiality, and cited the absence of discipline for the incidents cited in the the tenure charges as precluding termination of his employment on this or any other basis.

TENURE CHARGES

The eleven tenure charges signed by the District Superintendent on May 21, 2015 and received by the Commissioner of Education on June 22, 2015 are incorporated by reference herein in their entirety.

RELEVANT STATUTORY LANGUAGE

TEACHNJ ACT

8. N.J.S.A. 18a:6-16:

* * *

If, following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator pursuant to section [23] 22 of P.L. 2012 Ch. 26 for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

* * *

[23] 22. (New Section)

* * *

b. The following provisions shall apply to a hearing conducted by an arbitrator pursuant to N.J.S. 18A:6-16, except as otherwise provided pursuant to P.L. , c. (C

(1) The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case;

* * *

(3) Upon referral of the case for arbitration, the employing board of education shall provide all evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. At least 10 days prior to the hearing, the employee shall provide all evidence upon which he will rely, including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employing board of education or its representative. The employee shall be precluded from presenting any additional evidence at the hearing except for purposes of impeachment of witnesses.

Discovery shall not include depositions, and interrogatories shall be limited to 25 without subparts.

c. The arbitrator shall determine the case under the American Arbitration Association labor arbitration rules. In the event of a conflict between the American Arbitration Association labor arbitration rules and the procedures established pursuant to this section, the procedures established pursuant to this section shall govern.

d. Notwithstanding the provisions of N.J.S. 18A:6-25 or any other section of law to the contrary, the arbitrator shall render a written decision within 45 days of the start of the hearing.

e. The arbitrator's determination shall be final and binding and may not be appealable to the commissioner or the State Board of Education. The determination shall be subject to judicial review and enforcement as provided pursuant to N.J.S. 2A:24-7 through N.J.S. 2A:24-10.

f. Timelines set forth herein shall be strictly followed; the arbitrator or any involved party shall inform the commissioner of any timeline that is not adhered to.

g. An arbitrator may not extend the timeline of holding a hearing beyond 45 days of the assignment of the arbitrator to the case without approval from the commissioner. An arbitrator may not extend the timeline for rendering a written decision within 45 days of the start of the hearing without approval of the commissioner. Extension requests shall occur before the 41st day of the respective timelines set forth herein. The commissioner shall approve or disapprove extension requests within five days of receipt.

* * *

(d) The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

(e) The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case. The arbitrator shall render a decision within 45 days of the start of the hearing.

8A:6-123 Review, approval of evaluation rubrics.

17.

b. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to set standards for the approval of evaluation rubrics for teachers, principals, assistant principals, and vice-principals. The standards at a minimum shall include:

(1) four defined annual rating categories for teachers, principals, assistant principals, and vice-principals: ineffective, partially effective, effective, and highly effective;

- (2) a provision requiring that the rubric be partially based on multiple objective measures of student learning that use student growth from one year's measure to the next year's measure;
- (3) a provision that allows the district, in grades in which a standardized test is not required, to determine the methods for measuring student growth;
- (4) a provision that multiple measures of practice and student learning be used in conjunction with professional standards of practice using a comprehensive evaluation process in rating effectiveness with specific measures and implementation processes. Standardized assessments shall be used as a measure of student progress but shall not be the predominant factor in the overall evaluation of a teacher;
- (5) a provision that the rubric be based on the professional standards for that employee;
- (6) a provision ensuring that performance measures used in the rubric are linked to student achievement;
- (7) a requirement that the employee receive multiple observations during the school year which shall be used in evaluating the employee;
- (8) a provision that requires that at each observation of a teacher, either the principal, his designee who shall be an individual employed in the district in a supervisory role and capacity and who possesses a school administrator certificate, principal certificate, or supervisor certificate, the vice-principal, or the assistant principal shall be present;
- (9) an opportunity for the employee to improve his effectiveness from evaluation feedback;
- (10) guidelines for school districts regarding training and the demonstration of competence on the evaluation system to support its implementation;
- (11) a process for ongoing monitoring and calibration of the observations to ensure that the observation protocols are being implemented correctly and consistently;
- (12) a performance framework, associated evaluation tools, and observation protocols, including training and observer calibration resources;

(13) a process for a school district to obtain the approval of the commissioner to utilize other evaluation tools; and

(14) a process for ensuring that the results of the evaluation help to inform instructional development.

d. Beginning no later than January 31, 2013, a board of education shall implement a pilot program to test and refine the evaluation rubric.

e. Beginning with the 2013-2014 school year, a board of education shall ensure implementation of the approved, adopted evaluation rubric for all educators in all elementary, middle, and high schools in the district. Results of evaluations shall be used to identify and provide professional development to teaching staff members. Results of evaluations shall be provided to the commissioner, as requested, on a regular basis.

18A:6-124 Regulations.

24. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in accordance with an expeditious time frame, to set standards for the approval of evaluation rubrics for all teaching staff members, other than those included under the provisions of subsection b. of section 17 of P.L.2012, c.26 (C.18A:6-123). The standards at a minimum shall include: four defined annual rating categories: ineffective, partially effective, effective, and highly effective.

28. This act shall take effect in the 2012-2013 school year, except that section 17 of this act shall take effect immediately. The Department of Education shall take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved August 6, 2012.

17. a. The Commissioner of Education shall review and approve evaluation rubrics submitted by school districts pursuant to section 16 of P.L.2012, c.26 (C.18A:6-122). The board of education shall adopt a rubric approved by the commissioner.

b. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to set standards for the approval of evaluation rubrics for teachers, principals, assistant principals, and vice-principals. The standards at a minimum shall include:

- (1) four defined annual rating categories for teachers, principals, assistant principals, and vice-principals: ineffective, partially effective, effective, and highly effective;
- (2) a provision requiring that the rubric be partially based on multiple objective measures of student learning that use student growth from one year's measure to the next year's measure;
- (3) a provision that allows the district, in grades in which a standardized test is not required, to determine the methods for measuring student growth;
- (4) a provision that multiple measures of practice and student learning be used in conjunction with professional standards of practice using a comprehensive evaluation process in rating effectiveness with specific measures and implementation processes. Standardized assessments shall be used as a measure of student progress but shall not be the predominant factor in the overall evaluation of a teacher;
- (5) a provision that the rubric be based on the professional standards for that employee;
- (6) a provision ensuring that performance measures used in the rubric are linked to student achievement;
- (7) a requirement that the employee receive multiple observations during the school year which shall be used in evaluating the employee;
- (8) a provision that requires that at each observation of a teacher, either the principal, his designee who shall be an individual employed in the district in a supervisory role and capacity and who possesses a school administrator certificate, principal certificate, or supervisor certificate, the vice-principal, or the assistant principal shall be present;
- (9) an opportunity for the employee to improve his effectiveness from evaluation feedback;
- (10) guidelines for school districts regarding training and the demonstration of competence on the evaluation system to support its implementation;
- (11) a process for ongoing monitoring and calibration of the observations to ensure that the observation protocols are being implemented correctly and consistently;
- (12) a performance framework, associated evaluation tools, and observation protocols, including training and observer calibration resources;
- (13) a process for a school district to obtain the approval of the commissioner to utilize other evaluation tools; and
- (14) a process for ensuring that the results of the evaluation help to inform instructional development.

c. A board of education shall adopt a rubric approved by the commissioner by December 31, 2012.

d. Beginning no later than January 31, 2013, a board of education shall implement a pilot program to test and refine the evaluation rubric.

e. Beginning with the 2013-2014 school year, a board of education shall ensure implementation of the approved, adopted evaluation rubric for all educators in all elementary, middle, and high schools in the district. Results of evaluations shall be used to identify and provide professional development to teaching staff members. Results of evaluations shall be provided to the commissioner, as requested, on a regular basis.

f. The commissioner shall establish a model evaluation rubric that may be utilized by a school district to assess the effectiveness of its teaching staff members.

OPINION AND ANALYSIS

Respondent William Carr has been, by all accounts, a gifted and dedicated teacher at Becton High School for more than two decades. His devotion to conveying history, politics, and a sense of how government works to generations of students was amply chronicled during the arbitration hearings in this tenure dispute. His dramatic, and sometimes edgy, sometimes outlandish techniques for getting his points across have been part of his teaching repertoire for years. Also part of his mode of presentation and relationship building techniques have been off-beat humor, sarcasm, exaggerated reactions to student responses, and a sincere investment in creating a dynamic learning environment in his classroom, regardless of the skill and ability levels of a particular student or group of students.

Apparently, according to the testimony offered by the District, not every student understood or appreciated Respondent's offbeat, oddball, and energized teaching style. On balance, however, the evidentiary record demonstrated persuasively that Bill Carr has been a talented and effective teacher, extra-curricular activity leader, and mentor for a very long time. If the newly appointed cadre of District management found his style and techniques to be at odds with their concept of good pedagogy, it was incumbent on them to communicate their perception to Respondent long before citing his techniques as evidence of unfitness to teach. No significant or meaningful progressively severe corrective discipline predicated on Respondent's classroom activity or teaching prowess was imposed by the District before tenure charges were filed. Therefore, the District has failed to demonstrate not only that Respondent's behavior in the classroom violated discernible District instructional standards, but also that he was placed on notice, and subsequently disciplined in reasonable increments, for failing to respond to such notice related to his teaching skills.

Furthermore, the derogatory testimony of students who were purportedly offended at his comments about the Marines or other topics raised in class must be discounted substantially, not only because their testimony reflected a lack of understanding of the points Respondent was trying to teach at the time, as established persuasively by his testimony

and theirs, but also because one student witness is the sister of JR, the subject of another tenure charge to be discussed below, and the other student witness was a friend of JR's sister. Their perspective, relevance, and motivation mandate discounting the reliability of their portrayal of Respondent's classroom demeanor as accurate in establishing actionable misconduct beyond Respondent's admitted description of his dramatic classroom antics.

This is not to say that Respondent was above reproach or that her did nothing "creepy" in his classroom remarks. However, the evidentiary record established that District officials should have taken corrective action, beginning with a counseling and increasing incrementally thereafter, rather than precipitously escalating this category of complaint regarding his teaching performance to the basis of a tenure charge.

Nothing in the record established that Respondent made any sexually suggestive or otherwise patently inappropriate remarks to these complainant witnesses. At most, he ventured too far into a grey area of good taste with some of his classroom allusions. None of these remarks justified a conclusion that Respondent was unfit to teach. Thus, in the absence of progressively severe corrective discipline recently imposed and addressing these actions, the District's use of his classroom performance as a basis for a tenure charge was arbitrary and capricious.

The District's imposition of discipline on this basis violated the standard established by the TEACHNJ statute, thereby creating a valid basis mandating the Arbitrator to dismiss Tenure Charges Seven and Eight.

As Respondent readily admitted as soon as he was asked, Respondent is culpable for having signed vendor's names to vendor requisitions related to securing funds for student extra-curricular activities that he had submitted to the District's Business Office over a period of many years. The District acknowledged that it has no evidence that Respondent personally profited financially or in any other way from forging these signatures or that the District suffered any loss or other detriment because of these actions. Nor is there any basis in evidentiary record to dispute Respondent's testimony that he resorted first to this shortcut to resolve a bureaucratic conundrum of needing to register for debate tournaments in advance as there was no vendor or tournament representative who could sign off on the requisition in time to meet registration deadlines. Thereafter, Respondent's practice of signing another person's approval of the vendor requisition was motivated by laziness and expedience. In any event, his actions, especially without disclosure to District officials, were patently wrong and justified discipline.

Although Respondent readily and immediately admitted his longstanding practice as soon as he was asked to explain the voucher signatures, his candor did not completely offset the inherent dishonesty of his actions. Neither does the absence of any indication that Respondent personally profited in any way from this practice exonerate him. Forging an official employer document is a serious offense. Under most other circumstances, forging a vendor's signature would sustain a summary dismissal for conduct unbecoming a District employee. However, the unique testimony adduced in the instant case distinguishes the instant situation. Both the District's auditor and the District's Business Administrator credibly and unambiguously testified that Respondent's submission of vouchers he had signed forging vendors' names, while distasteful and poor practice, did not violate any law or Board policy. But for this credible testimony, the Respondent's actions may have justified dismissal for cause. However, this competent and credible testimony by responsible and experienced District agents precludes summary discharge based on the unique facts and circumstances of the instant case. Respondent's actions nevertheless merit substantial discipline.

The District initially recognized that summary discharge was not justified, and the Board authorized an increment withholding. Moreover, testimony by Union officials described a settlement they thought had

been reached with the District to impose an increment withholding as the sole appropriate penalty for Respondent's voucher related misconduct. This testimony was credible, but the settlement agreement was not formalized before the District Superintendent thereafter discovered the total number of vouchers involved and the long interval during which Respondent's voucher practice had continued. Following the District Superintendent's discovery of the full facts, the increment withholding was escalated to a tenure charge seeking dismissal.

Regardless of which version of the purported settlement deal is more accurate, the discovery of additional evidence of wrongdoing could properly be considered by the Board in modifying its initial penalty. Moreover, given the credible testimony by both the Board's outside auditor and the Business Administrator that no applicable law or District policy was violated by Respondent, the tenure charge emanating from voucher-related impropriety, Charges one and Two must be dismissed.

Regardless of whether Respondent's actions contravened an explicit Board policy, this conduct should not be excused entirely, as District employees are expected to act with integrity in their dealings, particularly with the District. Respondent failed to fulfill this responsibility over an extended period of time. That the procedure to secure payment of extra-curricular activity expenses has since been

modified to eliminate the requirement of obtaining a vendor's certification signature in advance of preparing for payment by the District directly to the vendor is irrelevant and immaterial. Therefore, the category of penalty initially implemented by the Board of an increment withholding shall be increased to an increment withholding of two years duration to reflect the severity and longevity of Respondent's misconduct.

There was extensive testimony describing Respondent's interactions with his peers and supervisors. Stated succinctly, Respondent failed to act in a cheerful and overtly collegial manner. He was grumpy and arrogant, and did not reform his conduct despite repeated admonitions that collegiality was deemed essential to his successful performance of his duties. On the other hand, the responses described by complaining employee witnesses in their testimony exaggerated their sense of alarm and dismay at the Respondent's abrupt or condescending reactions to actions he felt were demeaning to his professionalism. No reasonable basis was adduced in their testimony to justify the level of anxiety and visceral dread described by these witnesses.

According to their accounts of interactions with Respondent as portrayed in their testimony, Respondent may have been unpleasant, but he was never physically threatening or so verbally abusive as to support

a tenure charge seeking immediate dismissal. Discipline short of tenure charges was been warranted, but a tenure charge based on his occasional inappropriate verbal outbursts cannot be sustained.

Pleasant collegial interactions are a reasonable expectation in the workplace, and especially in a school setting. However, not every interaction will be suffused with sweetness and light. The Arbitrator finds that the complaints reported to management by the two complaining employee witnesses were sufficient to justify intervention by management at the level of counseling, and the imposition of progressively severe discipline if counseling failed to remediate the conduct. The eccentric or rude behavior described by these two complainants did not justify sustaining a tenure charge.

Respondent was charged with intentionally thwarting an investigation of a small batch of unclaimed office supplies, which he eventually acknowledged having ordered. The divergent testimony regarding attempts to identify these supplies precludes a finding that Respondent intentionally was uncooperative. The witness who testified about this incident on behalf of the District was indignant about Respondent's dismissive treatment when she raised the issue while he was teaching. The totality of circumstances underlying the supply issue was insufficiently probative of any misconduct to sustain discipline,

much less a tenure charge, based on Respondent's conduct during this sequence of events. Therefore, Charge Six, Counts 1 through 3 are hereby dismissed.

The allegations of out of control behavior with two students while Respondent was performing his assigned cafeteria supervision duty on April 21 and 23, 2015 are more problematic. Video surveillance cameras recorded two incidents involving students in or near the cafeteria. In the first, JR resists Respondent's apparent entreaties that he abide by conditions previously imposed by the school administration limiting JR's access to, and presence in, the cafeteria. These limits were based on multiple prior incidents involving JR, whose prior difficulties at school were also well known to the police officer regularly assigned to Becton High School. This incident forms the basis for Charge Four. The second incident depicts a female student, GC, who, after being told repeatedly by Respondent to return to the cafeteria from a hallway adjacent to the cafeteria, where she had ventured for a drink of water and was meandering to look into what appears to be a gym class, was apparently uncooperative. When Respondent insisted, the student became overtly disrespectful, and according to Respondent, verbally abusive including profanity, and the situation escalated as Respondent walked the student to the main office at a quick pace.

There is no soundtrack for these videos, but the body language and actions of Respondent and JR and GC in the cafeteria, the hallway and the main office support the District's contention that Respondent behaved improperly and overreacted in both situations.

Respondent testified that he was provoked by disrespectful verbal responses by both students while properly performing his assigned cafeteria supervision duties, and that he simply directed them, as emphatically as the situation warranted, to report to the central office when they did not acquiesce to his instructions and thereafter accompanied them to assure prompt compliance with his directives. According to Respondent, his ire as depicted on the video recordings was raised by the failure of administrators to react to the students' disrespectful conduct, including profanity, with sufficient urgency and to impose sufficient and appropriate discipline.

Despite the absence of audio, and accepting Respondent's description of the student's provocative conduct in each incident as accurate, there remains a perceptible unambiguous residue of anger portrayed by Respondent's movements as augmented by visible indicia of his attitude. His testimony corroborated this conclusion. Whatever the students said, Respondent was obligated by virtue of his position and experience to remain the adult in charge of each situation and to act with

professional decorum. According to credible testimony offered by the District regarding JR, Respondent should have called for assistance, rather than leaving his post precipitously. A similar conclusion applies as to the incident involving GC.

Respondent's conduct in the main office and immediately outside the office after the High School Principal closed the door to defuse the situation with GC demonstrated anger management issues justifying legitimate concern by District administrators. Whatever rationale Respondent cited in his testimony to explain his actions on April 21 and 23, 2015, the District reasonably concluded that further intervention was necessary. How this intervention was implemented forms the crux of the instant case.

Respondent was an effective and highly rated teacher for more than two decades before multiple interactions with peers and students gave rise to growing concerns about his temperament and what the District perceived as significant deterioration of his self-control. The District's decision to intervene was supported by the evidentiary record, but the District's reaction of filing tenure charges seeking immediate dismissal reaction was unwarranted, arbitrary, and capricious.

If the District, in exercising its managerial discretion, determined that Respondent could no longer be trusted to perform his duties on school premises after the April 23, 2015 incident, the District should have not only suspended Respondent, but also referred Respondent for a fitness for duty evaluation and then for anger management training rather than simply suspending Respondent as its sole disciplinary antecedent to filing tenure charges. If Respondent was behaving too irascibly to perform his duties satisfactorily, he should have been placed on involuntary leave pending an independent medical evaluation and thereafter been afforded treatment consistent with the IME's findings.

The Board's treatment of what it perceived as Respondent's deteriorating job performance after twenty-five years of stellar teaching and prize-winning extra-curricular activity mentoring, coupled with recent sporadic unprofessional outbursts, as the basis for immediately filing tenure charges for conduct unbecoming a teaching staff member and inefficiency was arbitrary and capricious in the context of standards imposed by the TEACH NJ statute. The District's concern with what supervisors perceived to be Respondent's overt or purportedly passive aggressive expressions of anger and unprofessional level of collegiality should have been treated initially as a cause for referral for potential professional intervention to determine if a treatable medical or psychological existed, or at least by imposing progressively severe

discipline, rather than as a basis summarily to dismiss an excellent teacher whose behavior in school was becoming, from the District's perspective, more and more problematic.

The District has not established by either a preponderance of the evidence or by clear and convincing evidence that Respondent William Carr has satisfied the criteria for removal or dismissal of a tenured teacher established by the TEACHNJ statute or under the applicable case law cited as the basis of the eleven tenure charges preferred by the District. The conduct cited by the District in tenure charges comprising the instant case does, however, justify the imposition of substantial discipline. Respondent's conduct also mandates that the District refer Respondent to fitness for duty testing and remedial anger management or other treatment consistent with the findings of an Independent Medical Examiner and as may be deemed appropriate by professional evaluators and therapists.

Therefore, based on the evidence submitted, the District was entitled to suspend Respondent on April 23, 2015 for the balance of the 2014-15 school year in response to Respondent's actions regarding students that occurred on April 21, and 23, 2015, provided that the District had initiated in a timely manner a process to refer Respondent for a fitness for duty evaluation by an Independent Medical Examiner

selected, in the first instance, by the District and for anger management counseling. The District failed to take either action. Filing of tenure charges for the two incidents described in Charges Four and Five, rather than suspending Respondent and referring him for evaluation by a medical professional or psychologist was arbitrary, which violated an applicable standard established by the TEACHNJ statute, and thus cannot be sustained. Therefore, the discipline imposed regarding Charge Four and Charge Five is hereby modified as described below.

Respondent shall be reinstated forthwith to his former position as a history teacher at Becton High School. The following penalties shall be assessed for Respondent's proven conduct precipitating the filing of tenure charges in the instant case. The 120-day interval during which Respondent was suspended without pay shall be deemed an unpaid disciplinary suspension for his submission of vouchers to which he signed names other than his own, which is the subject of Charges One and Two, and for his conduct toward colleagues and students, which is the subject of Charge Three, Counts I and II and Charge Six, Counts I, II, and III. Had the District imposed an appropriate sequence of progressively severe discipline identifying Respondent's perceived shortcomings in the classroom and his interactions with colleagues before preferring tenure charges, a more stringent penalty might have been sustained.

The District shall refer Respondent forthwith for a fitness for duty examination, specifically referring Respondent for anger management counseling and such other therapy or counseling as an Independent Medical Examiner shall determine. The IME shall be selected by mutual agreement of respondent or his representative and the District Superintendent or her representative. In the event of a deadlock on the selection, the parties shall return to this Arbitrator for a determination.

If the neutral IME determines that Respondent is ready and fit to return to his teaching duties at Becton High School, Respondent shall be assigned to similar teaching duties as in the past and shall be eligible for extra-curricular assignments as he was before tenure charges were filed. In the event that the District determines that returning Respondent to full duty immediately after he has been released to work by the IME, or the IME's designated therapist, if any, would be pedagogically disruptive, the District may, at its discretion for sound educational reasons, defer Respondent's return to full, active duty until the beginning of the 2016-17 school year, provided that Respondent is provided with full pay and benefits hereafter through his reinstatement to duty, is listed immediately as a full-time tenured faculty member at Becton High School, is given unfettered opportunity to bid for extra-curricular activity positions for 2016-17, and is offered a teaching schedule that is

substantially similar to the schedule he was assigned before tenure charges were filed.

Given the unequivocal testimony by District witnesses establishing that Respondent's submission of vouchers seeking payment of third party vendors for goods and services provided regarding extra-curricular activities for which Respondent was responsible as faculty advisor did not violate any District policy or applicable law, and further considering that Respondent's submission of vouchers on which he had signed the names of others without their authorization constituted improper conduct that violated the generally applicable standards of ethical and fair dealing, the District shall also withhold increments from Respondent for each of the next two years.

By operation of the TEACHNJ statute, Respondent was off the District payroll for 120 days, after which his salary and benefits should have been fully restored pending the outcome of this arbitration proceeding. If they have not been fully restored as of the 121st day after suspension, all unpaid salary and benefits shall be paid forthwith.

The District's tenure charges based on Respondent's classroom performance have not been sustained by a preponderance of credible evidence. Charge Eight is unduly vague. Therefore, Charges Seven,

Eight, Nine, and Ten are hereby dismissed. Charge Eleven, which is an amalgam incorporating by reference the preceding charges, is hereby dismissed as unsupported by the evidentiary record.

The Arbitrator hereby retains jurisdiction to resolve any dispute that may arise regarding the remedy or the enforcement of the remedy ordered pursuant to this Award.

February 1, 2016
Princeton, NJ

Daniel F. Brent, Arbitrator