

In the Matter of the **TENURE** Hearing)
)
 Between)
)
LISA RADZIK)
 "Respondent")
)
 and)
)
WOODBRIAGE TOWNSHIP)
BOARD OF EDUCATION)
 "Petitioner")
 _____)

OPINION and AWARD

AGENCY DOCKET NO. 159-7/13

In accordance with the Teacher Effectiveness and Accountability for Children of New Jersey Act, ("TEACHNJ Act" or "Act") P.L. 2012, Chapter 26 signed into law by Governor Chris Christie on August 6, 2012 the undersigned was appointed as Arbitrator of the dispute described herein.

The hearings were held on June 19, 25 and 26, 2014 at the Woodbridge Township Town Hall, Woodbridge, New Jersey. The hearings were transcribed. The parties had full and fair opportunity to present evidence and argument, to engage in the examination and cross-examination of affirmed witnesses, and otherwise to support their respective positions. The record was deemed closed on July 25, 2014 upon receipt of the parties' closing and reply briefs.

BEFORE: Mattye M. Gandel, Arbitrator

APPEARING FOR PETITIONER:

Nicolas Celso, III, Esq.
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APPEARING FOR RESPONDENT:

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BACKGROUND:

The matter arose as a result of four Tenure Charges, Joint Exhibit J-1,¹ filed against Respondent, Lisa Radzik (nee Lisa Sivillo), including unbecoming conduct and/or other just cause for dismissal, pursuant to N.J.S.A. 18A:28-5 and N.J.S.A. 18A:6-10.1 et seq. According to a letter dated May 5, 2014 from M. Kathleen Duncan, Director of Bureau of Controversies and Disputes, the charges were reviewed and "deemed sufficient, if true, to warrant dismissal or reduction in salary."

Charge I

. . . during the 2009-2010 school year, Stephanie Klecan was assigned to respondent's room as a Test Proctor for the NJ ASK Test. Prior to the first day as a Test Proctor for the administration of the May 2010 NJ ASK Test, respondent told Ms. Klecan to look over the students' shoulders during the test. If it appeared that the students had marked their answer to a particular question incorrectly, Ms. Klecan was advised by respondent to "tap on their desk." As the students were completing the NJ ASK Test, respondent and Ms. Klecan looked over the students' shoulders and, using "post-it notes," recorded answers for use in jointly monitoring and correcting the answers of the students. If a student answered a question incorrectly, they would tap on the question number that was wrong. If the student continued to choose the wrong answer to a question, respondent and/or Ms. Klecan would point to the question again. Ms. Klecan witnessed respondent prepping the students regarding the meaning of the tapping procedure. During both the 2009-2010 and 2010-2011 NJ ASK Tests, Ms. Sivillo, in addition to the tapping procedure, also used body language, for example a head nod or prolonged glance, to alert students. Finally, in at least one instance, she verbally told a student his answer was wrong.

Count 1

Prior to the administration of the 2010 NJ ASK Test, respondent informed the students about the above described method(s). As described by then student A.G.,² respondent told the class: ". . . if I tap the desk and point to a number, that's just me saying you got it wrong and check your answer."

¹ Joint Exhibits are designated as "J" exhibits; Petitioner's Exhibits are designated as "P" exhibits and Respondent's exhibits are designated as "R" exhibits.

² All students are referred to only by their initials.

Count 2

During the administration of the 2010 NJ Ask Test, using the above described method(s), respondent alerted student S.C. and others to incorrect answers.

Counts 3 through 9 are the same as Count 2 except Count 3 refers to student A.G.; Count 4 refers to student A.M.; Count 5 refers to student J.M.; Count 6 refers to student C.P.; Count 7 refers to student B.R.; Count 8 refers to student S.M. and Count 9 refers to student R.R.

Count 10

Lisa Sivillo instructed Stephanie Klecan, a novice staff member, to engage in the wrongful actions described above in utter disregard for her professional and personal well being and the damage such action might cause her. In fact, Ms Klecan has suffered both professionally and personally as a result.

Charge II

. . . Once the OFAC had begun its investigation, respondent, on at least one occasion in or about February 2012 (or soon thereafter), attempted to influence the information that Stephanie Klecan would report to the OFAC investigators and/or obstruct their investigation. By way of example, without limitation, on one occasion, respondent telephoned Ms. Klecan to tell her that she simply tell the investigators: that her "role was to pass out pencils and tissue[s]."

Charge III

. . . The wrongful assistance provided by respondent to her students, as set forth above, resulted in inflated scores on the NJ ASK Test which provided an incorrect indication of their respective abilities. This, in turn, interfered with and/or thwarted the attempts of parents to obtain subsequent, special and/or supplemental educational services for their children, and/or misled staff who had responsibilities for ascertaining the eligibility for such services, resulting in certain cases in the denial of same. For example, without limitation, student S.C. was not evaluated by the District's Child Study Team until the end of fifth grade, despite the fact that she had been struggling since the second grade, in part because of her scores on the 2010 NJ ASK Test. S.C. was denied services until she was in the sixth grade, in part, because of her scores on the 2010 NJ ASK Test.

Charge IV

. . . The wrongful assistance provided by respondent to her students, . . . resulted, at least in part, in an investigation conducted by the OFAC, at the behest of the NJ State Department of Education. The adverse outcome of said investigation, in turn, resulted in the need for the Board to publicly announce the OFAC's findings; the need to hire an

independent consultant to review related data, and the cost associated therewith; preparation and submission of a corrective action plan, and the attendant negative publicly and tarnished reputation of the School District in the community and State.

POSITIONS OF THE PARTIES:

The Petitioner's position is that it has proven by a preponderance of the credible evidence that Respondent is guilty of unbecoming conduct warranting dismissal; that Respondent is unfit to remain a tenured teaching staff member based on arbitration case law, principles and precedents and that progressive discipline is not a fixed and immutable rule because some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.

Further, Petitioner asserts that Respondent's acts are egregious on their face; that she conducted herself in a premeditated and conspiratorial manner and in a manner that not only besmirched her own integrity but that of other teachers including Stephanie Klecan; that Respondent knew that she was not supposed to provide assistant to students while they were taking the NJ ASK test; that Respondent had multiple training occasions at which the rules were discussed; that she had the State Test Examiner's Manual and signed the Test Security Agreement and that she violated her fiduciary duties to the School District, her students, their parents and her colleagues.

Additionally, it is Petitioner's position that based on the accepted definition of the term "unbecoming conduct," Respondent breached the public trust placed on her position of an elementary school teacher; that the evidence presented during the arbitration in support of the Charges, demonstrates that Respondent is unfit to be an educator in a public school and that she engaged in deceitful conduct when she influenced examinees'

responses and provided feedback and ultimately tried to influence others to cover-up her conduct. Not only did Respondent breach the public's trust and the environment at Avenel Street School 4 and 5, but her actions also negatively impacted the students' impressions of the propriety of certain conduct during testing.

Petitioner contends that even more egregious, Respondent enticed, solicited and encouraged participation of Ms. Klecan, a newly hired, young teacher, who happened to be her cousin through marriage, which destroys the public's trust in a teaching staff member.

The Petitioner cited decisions wherein the Commissioner of Education, other arbitrators and Administrative Law Judges (ALJ) have found that even a staff member with an unblemished record can be found to have engaged in unbecoming conduct warranting the serious penalty of termination when one lies and misleads investigators, lacks candor and remorse during the investigation. In the instant matter, the Petitioner's position is that Respondent engaged in deceitful conduct when she provided students with answers and feedback during a secure State test; that she engaged in deceitful and untruthful conduct when she lied to State investigators; that she enticed a novice teacher to help her and to deceive investigators and that her actions were harmful to students as many of them did not receive the assistance and educational services that they required due to their NJ ASK scores.

Further, the fact that the Board did not charge Respondent with cheating with respect to questions other than those that were multiple choice does not mean that it did not occur. It only means that the Board could not sustain its burden in this specific regard

but does not nullify that Respondent assisted students with the multiple choice questions. The Board asserts that Respondent cheated on the multiple choice portions of the tests.

As to the credibility of the students and Klecan, it is the Board's position that the students testified consistently; that their testimony confirmed the accuracy of the handwritten statements and that they were not confused.³ The cheating did not take place during the mock tests as proven by the much lower scores achieved by the students on the mock tests, when there was no coaching, than on the final NJ ASK tests in May when there was coaching. If in fact Respondent had provided the students with direct assistance on the mock tests, they would have obtained higher scores on the mock tests than they actually did. Further, though Klecan had told prior untruths, weighing all the factors including her declarations against self-interest, the destruction of her familial bonds and her profound psychological torment so evident from her demeanor, it is evident that her present testimony was truthful.

Petitioner does not have to disprove every possible factor that may have contributed to the inflated test scores but the WTR (wrong to right) erasure analysis shows how many answers were changed by the students. Further, not every student received a perfect score, just an unusually high one. While Respondent claimed that she could not have had time to accomplish all her tasks during the test and still have coached students, Exhibits P-5 and P-7 showed that the tests contained many multiple choice questions. These were not "spot quizzes," but rather in-depth tests some of which lasted

³ The Board asserts that the identity of the students is clearly part of the record as shown in Exhibits P-4 through P-11.

10, 40 or 45 minutes each, given over a four-day period affording Respondent more than sufficient time to circulate among the students to coach them.

Respondent's allegation that someone else altered her students' test results in without merit and defies common sense. OFAC conducted an in-depth investigation, which produced not one scintilla of evidence that the answers were altered after she turned in the tests. If Respondent wanted to assert this argument as an affirmative defense, then she bore the burden of proving it.

Finally, there is no question that Respondent engaged in a pattern of unbecoming behavior related to her administration of the NJ ASK test in successive years; that she actively assisted her students during the test by indicating when they had an incorrect answer choice; that Respondent knew or reasonably should have known that she was violating both the spirit and intent of the test procedures and that her contrived defense does not constitute a legitimate mitigating factor.

Because of her misconduct, which damaged the Board of Education, the community at large and the integrity of the Statewide NJ Ask testing program, students were denied needed educational services. Therefore, Petitioner asks this Arbitrator to determine that her conduct warrants dismissal.

Respondent gives multiple reasons that Charge I, asserting that she improperly coached her students during the 2010 and 2011 NJ ASK tests, must be dismissed.

- Extensive pressure was placed on students doing well on the NJ ASK tests.
- There were times during mock tests when the teacher provided assistance speaking to students and encouraging them and using post-it notes, tapping and blocking students' work with folders.
- OFAC's investigation found that when tests were not with the teachers, there was a problem and no testimony was offered by the Board to show that tests were

maintained in a secure manner. It is not Respondent's responsibility to show that tests were not secure when she was not in possession of them but rather the District's responsibility.

- While Respondent gave detailed information about what took place during the actual tests, the District presented no more than vague statements.
- The alleged tapping, nodding, etc. with regard to an incorrect answer on a multiple choice question cannot begin to explain how the students received perfect scores. It does not explain how students perfectly answered the open-ended math questions or how they could have received a perfect score in language arts when they had to write a story or provide an essay and does not explain how in a math section lasting 10 minutes, Respondent had time to circulate, review answers, tap on desks, return to recheck, exchange post-it notes with Kelcan and note the remaining time on the board.
- Further, in contrast to the similarities of responses to open-ended questions produced by students in John Radzik's classes, OFAC only analyzed scores and erasures of Respondent's students but did not refer to any type of cheating on the open-ended questions and no evidence was offered by the District to show identity of answers by Respondent's students.
- The District's allegation that Respondent gave notice of the incorrect answers to her students does not stand up. Because the high scores cannot be explained, means that one cannot target Respondent.
- Additionally, Respondent asserts that with the passage of time, the students lost the distinction between what occurred during mock tests, which students took at least one time per month during the school year, and the actual NJ ASK tests. This confusion can also be attributed to the long wait between the time of the tests and when the students wrote their statements and by the fact that it is not known what they were asked or directed to do during the interviews or when the students wrote the statements.
- Andrew Anderson, who served as Respondent's proctor three days in 2011, testified that at no time did he see Respondent going to students' desks and tapping on the test.
- Regarding Klecan's testimony, she lied twice to OFAC and only told the "truth" after the OFAC report was issued and she was suspended. However, as a non-tenured teacher she could have been terminated with 60 days notice. Instead, she was suspended with pay during her full year of suspension and was reinstated for the 2013-2014 school year.
- While the Board might argue that Klecan was an innocent relative, that does not explain why she lied about cheating during the 2011 NJ ASK test when she was the examiner in her own classroom and not a proctor for Respondent. She admitted that she did not read the Test Security Agreement in 2011 but acknowledged that she signed and violated it. There is no way to determine when Klecan is telling the truth and when she is dishonest.

Respondent's position is that Charge II, that she told Klecan to lie to OFAC investigators by saying that her "role was to pass out pencils and tissues" must be dismissed.

- Respondent denies the Charge.
- Although Klecan claims that she walked up and down the rows pointing to wrong answers, none of the students claimed Klecan did so and one student even stated that the other person in the room did not point to the test. Who is to be believed?
- Respondent did not tell Klecan to mislead investigators if she told Klecan that her only job was to "pass out pencils and tissues."

Charge III alleges that scores received by students prevented them from obtaining special education and/or supplemental educational services.

- A concerned parent testified that she was not able to attain services for her child until the sixth grade. However, the rejection of her requests began in second and third grades even before her child took the NJ ASK in third grade. Therefore, the denial of special help was not due to her third grade NJ ASK score. Further, Dr. Robert Zega, Superintendent of Schools, testified that the student's 2011 NJ ASK score, which rated her proficient, when taken alone, could not disqualify a student for assistance. Therefore, there was no testimony with regard to any student in Respondent's class who was denied services solely because of that student's score.
- This Charge must be dismissed.

Similarly, Respondents asserts that Charge IV must be dismissed.

- While this Charge is embarrassing to the District, the accusations leveled at Respondent cannot account for the scores the students received on the open-ended questions. Respondent asserts that something happened to those tests when they were not within her control and while that might cause embarrassment to the District, it was not caused by her.
- The District is still employing Klecan, who admits lying twice to OFAC investigators, and paid her for her entire year of suspension. This should be embarrassing to the District.

Finally, Respondent replied to the Board's reply brief acknowledging that the identity of Respondent's students is clearly part of the record but that there was no evidence to show the identity of answers to the open-ended questions. This fact was

admitted to by the Board because Respondent was not charged with cheating with respect to open-ended questions. As to the OFAC report, Respondent cited its statement in its brief regarding the security of test documents and asserts that the lack of reference in a hearsay report to something does not prove that something did or did not happen. Finally, Respondent questions the correlation between the test results for the mock tests and the final test.

Therefore, Respondent asks this Arbitrator to dismiss the tenure charges against her and to reinstate her to her position of employment with all lost salary and other benefits of employment.

OPINION:

Respondent was a third grade teacher at Avenel Street School 4 and 5, where she had taught since the 2004-2005 school year. In May of each school year students in the third grade are given the NJ ASK tests in math and language arts (LAL). Respondent was a third grade examiner during the May 2010 and 2011 NJ ASK tests and as such acknowledged that she received training to be an examiner; that she received the examiner's booklets, which explained the examiners general responsibilities for the proper administration of the tests before, during and after the tests and that she signed the security agreements.

Petitioner Exhibit P-15, Statewide Assessments Test Security Agreement, dated April 11, 2011 signed by Respondent listed 10 items for which Respondent was responsible. The following points specifically relate to this matter.

I acknowledge that I will have access to the secure test materials . . . I understand that these materials are highly secure, and it is my professional responsibility to protect the security as follows:

. . .
8. I will not interfere with the independent work of any student taking the assessment, and I will not compromise the security of the test by any means including, but not limited to:

. . .
c) Coaching students during testing or altering or interfering with the students' responses in any way.

. . .
g) Participating in, directing, aiding, counseling, assisting in, or encouraging any of the acts prohibited in this section.

10. I have been trained to administer statewide assessments.

Additionally, Respondent acknowledged that she received and signed this same security document prior to the 2010 NJ ASK test.

Respondent testified that daily during the year for at least an hour to an hour and a half she did test preparation with her students leading up to the May tests and that once a month "mock" tests were given, which looked just like the official test. Additionally, she gave her students strategies to help them take the tests including filling in two to three "bubbles" on the answer sheet and then going back and erasing the ones that were wrong. Respondent repeatedly asserted several factors regarding the events of the days of the NJ ASK in 2010:

- She never told the students that she was going to point if they had a wrong answer.
- She never pointed to any wrong answers.
- She never told Klecan to look over students' shoulders and tap on their desks if they had a wrong answer.
- She never told Klecan to do anything with post-it notes and the answers.
- She did not use a clipboard.

Regarding the 2011 actual tests

- She never told the students that she was going to point to an answer if they had a wrong answer.
- She never told a student to fix an answer.

In contrast to her actions during the actual tests, Respondent testified that during the mock tests she would tap on desks. She would use body language to let the students know that there was a wrong answer and she would tell them to fix that answer. Respondent believed that the students who testified that she gave them answers or helped them by tapping or nodding were confusing the mock tests with the actual NJ ASK tests.

Teresita Munkacsy, who is a Special Investigator for the New Jersey Department of Education in the Office of Fiscal Accountability and Compliance, (OFAC) testified that she became involved in an investigation in August of 2011 of the NJ ASK test administered in this District because of the erasure analysis report. This report flagged several schools in the District for higher rates of wrong to right (WTR) answers. Munkacsy explained that when the test results are analyzed by vendors, who scan the tests to see how students are doing on the assessment tests,

they do an average of how many kids in the third grade would erase on the language arts test from wrong to right and on the math test from wrong to right, and they do that across the entire state. And then they start using basic statistics. They take the state mean and then they calculate a standard deviation, (SD) and then once a school is two standard deviations above the state mean, the Office of Assessments (OA) begins to start looking at that school. If there are four standard deviations above the state mean, then the Office of Assessments has asked us, the OFAC office, to come in to do a review of that school to make a determination as to why they had such a large erasure rate.

P-3 is the Investigative Report prepared by Munkacsy and her team in August 2012. Relevant sections of the report regarding Respondent's actions are as follows.

The **EXECUTIVE SUMMARY** state that

. . . The Acting Commissioner of Education tasked the Office of Fiscal Accountability and Compliance (OFAC) to conduct an investigation into potential irregularities in student answer patterns during the administration of the 2010 NJ ASK test.

The irregularities that launched the investigation were the wrong to right (WTR) erasure patterns detected on the tests by Measurement Incorporated (MI), the NJDOE state assessment contractor for the NJ ASK. The NJ DOE set a threshold of four standard deviations (SD) above the statewide mean for WTR erasures before the OFAC was assigned to investigate. The SD is an indication of how far the values in a data set deviate from the mean.

In the Woodbridge Township School District (district), the Avenel Street Elementary School (Avenel), third grade, was identified as a school wherein an investigation would be conducted.

. . .

Further, the **INVESTIGATIVE SUMMARY** of this report stated that

From witnesses' accounts, a data analysis review of the 2010 and 2011 NJ ASK EA Reports, and a review of 2010 testing data, investigators determined that there was interference with the third grade examinees' responses and the security and/or confidentiality of the testing materials was breached at Avenel.

Witnesses provided information that led the investigators to conclude the following . . . Avenel staff participated in a variety of activities that breached the security and confidentiality of the testing materials:

. . .

2. Ms. Lisa Sivillo, a third grade teacher in 2010 and 2011.

3. Ms. Stephanie Klecan, a test preparation teacher in 2010 and a third grade teacher in 2011.

. . .

. . .

The investigators interviewed three teachers from AMS who confirmed that while administering a mock NJ ASK test for 2012, some of their students inquired whether they would be receiving help during the administration of the NJ ASK test as they had the previous year.

The investigators also reviewed the 2010 MI data for Avenel to assist in determining the underlying causes of the excessive erasures and found the following:

- Avenel was more than five SDs above the state mean. Eighty-seven third grade students who participated in the NJ ASK at Avenel had a total of 501 WTR erasures. This equates to a mean WTR erasure rate of 5.76. The OA set the criteria by which further investigation would be warranted by the OFAC with a mean WTR erasure rate 4 SDs above the statewide mean of 4.59 WTR.
- 93.8% of Avenel third grade math students (75 of the 80) received an advanced proficient score on the NJ ASK MATH test, statewide only 37.3% of third grade students received this score.
- 47.5% of the third grade students (38 of the 80) achieved a 300 MATH scale score. The probability of having 38 Avenel students achieve a score of 300 on the Math test is less than 1 in one hundred million. Based on the scores these students achieved on the LAL test, approximately 18.03% of the students, or 15 students, could have been expected to have achieved this score.
- 18.75% of the third grade students (15 of the 80) achieved a perfect multiple (MC) score (35/35) on the NJ ASK MATH test. The probability of having 15 Avenel students achieve a perfect MC score of 35 on the Math test is less than 1 in one hundred thousand. Based on the scores these students achieved on the LAL test, approximately 4.32% of the students, or four students, could have been expected to have achieved this score.
- 45% of the third grade students (36 of the 80) scored 34 or better on the MATH MC. The probability of having 36 Avenel students score 34 or above on the MC section of the Math test is less than 1 in one trillion. Based on the scores these students achieved on the LAL test, approximately 12.46% of the students, or 10 students, could have been expected to have achieved this score.

Lisa Sivillo⁴

The investigators determined during their investigation, Ms. Sivillo breached the test during the 2010 NJ ASK.

The 2010 third grade NJ ASK MATH test was taken by 102,085 students state-wide. Eight of those 102,085 had 18 or more WTR erasures. Three of those eight students were Avenel students and had been tested by Ms. Sivillo. According to MI, the odds of three of the eight students with 18 WTR erasures state-wide, ending up in the same class are less than one in one billion.

The investigators interviewed two of the three students with 18 WTR erasures . . . When questioned . . . investigators were told the week prior to

⁴ Lisa Sivillo's married name is Lisa Radzig.

testing Ms. Sivillo informed the students that any answers pointed to by the teacher or proctor should be reviewed and corrected. From additional witness interviews, the investigators confirmed Ms. Sivillo circulated around the classroom during the 2010 NJ Ask, observing the students' work and pointing to incorrect answers, indicating to students which answers needed to be changed.

Ms. Sivillo administered the 2010 NJ ASK test to 21 students. Eleven of Ms. Sivillo's student's received a score of 300 on the MATH test, one of which was one of the three students with 18 WTR erasures. The remaining ten students, including the other two students with the 18 WTR erasures, received an advanced proficient MATH score. None of Ms. Sivillo's students received of a score of 300 on the LAL portion of the 2010 NJ ASK test and only two of the 21 students received an advanced proficient score, the other 19 received a proficient score.

A review of these same 21 students' 2011 NJ ASK scores revealed the three students with the 18 WTR erasures did not perform in the advance proficient range in the MATH and two of them were partially proficient on the LAL portion of the test. When reviewing the 2011 scores for the remaining set of students, only two of those 18 remaining students received a score of 300 on the MATH test.

CONCLUSION

Based upon the preponderance of evidence collected during the investigation, the OFAC concludes that the aforementioned named individuals breached, encouraged and/or facilitated the breaching of NJ ASK test security protocols.

REDCOMMENDATION

The district shall submit to the OFAC a corrective action plan indicating the measures it will implement to correct the procedural irregularities listed above and it should also include the measures the district will implement to ensure staff compliance with the testing security procedures.

Munkacsy testified regarding several of Petitioner's exhibits to explain how she and her staff reached the conclusions in the OFAC report, P-3. P-5 lists the students in Respondent's class during the 2009-2010 school year with columns indicating the highest percentage achieved on the math mock test compared to the percentage score

achieved on the NJ ASK math test in May 2010. This exhibit reveals that the highest percentage achieved for the mock tests that year ranged from 38% to 81%. In contrast, the percentage scores for these same students on the actual math NJ ASK tests ranged from 92% to 100% and the Math Scale ranged from 277 to 200, which was advanced proficient.⁵

Similarly, P-7 represents Respondent's students during the 2009-2010 school year for the Language Arts (LAL) mock and actual NJ ASK tests. The highest percentage on the mock tests ranged from 39% to 78% whereas the percentage scored on NJ ASK ranged from 71% to 87%. The actual LAL score for Respondent's students ranged from 210 to 243, which meant that they were all proficient.

Respondent acknowledged that, as requested, she had given the principal the results of these mock tests that were administered through the school year and that for some of the mock tests, she assisted the students but believed that the ones that the District scored she did not give assistance.⁶ However, she asserted that there was no proof as to whether these mock tests cited in P-5 and P-7 were from September, December, April or any other time during the year but acknowledged that she has no idea when they were given during the year. Her contention was that these mock tests could have been taken early in the year but that throughout the year her students became so good at the mock tests that she was not surprised that they did so well on the May tests. However, this Arbitrator was not convinced. Munkacsy's unrefuted

⁵ Below 200 = below proficient; 200-249 = proficient; 250-300 = advanced proficient

⁶ It was undisputed that Respondent handed in the NJ ASK test booklets after the tests were administered but there was no testimony about the handling of the actual NJ ASK tests once they were turned in. However, as stated below, credible testimony from students and Klecan convinced this

testimony was that she received the results of those math and LAL mock tests from the principal and that the "Highest % on Mock" column on P-5 and P-7 represented the highest score each student achieved on a math/LAL mock test during the school year. Therefore, the scores on the mock tests were not from any particular month of the year but represented the highest percentage each student achieved on a mock test during the entire year and were a telling comparison with the scores achieved on the May NJ ASK.

Munkacsy further testified that P-5 and P-7 analyzed the WTR erasures for the multiple choice questions in math and LAL, respectively, which she characterized as very unusual.⁷ One student on P-5 had 18 WTR erasures. Munkacsy explained that on average a student would erase 1.2 times in New Jersey on the 2010 NJ ASK math test. The next column, standard deviation, is how much that number fluctuates, which on P-5 is 0.58 for T.A. Munkacsy then calculated for that particular student how far above the standard deviation that student's erasure rate was," which was 28.97. Reviewing P-7 in the same manner for erasures in LAL, it shows that for third grade in 2010 on average a student would erase .4 or less than half a question and change it from a wrong answer to a right answer. For T.A., the standard deviation would have been 1.53 and the final column indicated that T.A. was 2.35 above the standard deviation.

Arbitrator that it was the students who made the WTR erasures with teacher assistance.

⁷ While Respondent was accurate in that there was no proof that she assisted students with the open-ended questions, that was not one of the Charges. In fact, there was no evidence produced concerning how Respondent's students performed on the open-ended questions or written sections and no testimony that they scored high or low. There was simply no information. Exhibits P-5 through P-8 clearly indicated that the only answers being analyzed were those for multiple choice (MC) questions. There was no information to conclude that the students answered the open-ended math questions perfectly or received perfect scores for the essay questions in the LAL section. The Charges concerned multiple choice questions with erasures in math and LAL and a conclusion that she violated her responsibility as to the

P-6 compares Respondent's students' scores on Math on the 2010 NJ ASK with their scores in 4th grade. This document shows that all the students' scores decreased except for two students whose scores (300) remained the same. Of interest was that one of the students' scores dropped by 98 points, another dropped by 80 points and another dropped by 59 points.

Another document presented by the District, P-8, represents a comparison between the scores Respondent's students received on the LAL NJ ASK when they were in third grade in 2010 and the scores the same students received on the LAL tests when they were in the fourth grade in 2011, not in Respondent's class. This document shows that when the students were in the fourth grade, all of the students' scores dropped except for three students.

Christopher Callahan, District Test Coordinator, who is responsible for all the testing in the District including the NJ ASK, conducted an independent investigation after the issuance of the OFAC report wherein he analyzed the third grade data and the fourth and fifth grade scores at Avenel 4 and 5. He testified that

most students will fluctuate very little between grades third, fourth and fifth, as our analysis indicates throughout the district, that's usually the case. When I analyzed Ms. Sivillo's class, we found that not to be the case.

However, based on his analysis, Callahan concluded that these students who were categorized as advanced proficient would not have been advanced proficient students.

P-9, which represents a comparison of scores for math and LAL and which was prepared by Callahan, shows the drop in scores for each of Respondent's students from

multiple choice questions would be sufficient to sustain the Charges.

the third grade to the fourth grade and then a comparison between the scores achieved in the fifth grade compared to those achieved in the third grade. For example, S.C. with 19 erasures in 2010 dropped 59 points from third to fourth grade, 36 points from fourth to fifth grade with an overall drop of 95 points between third and fifth grades. Student D.R. with 12 erasures dropped 24 points from third to fourth grades and another 30 points from fourth to fifth grades. Student J.M. with 10 erasures in 2010 dropped 43 points between third and fourth grades and another 41 points from fourth grade to fifth grade. Student C.M. dropped 98 points between third and fourth grades. C.P. with 18 erasures in 2010 dropped 54 points from third to fourth grades. T.A. who had 18 erasures in 2010 dropped 53 points from third to fourth grade and another 63 points from fourth to fifth grades. Callahan testified that not only are these drops significant but also the fact that T.A. had scored a 300 in Respondent's class on the 2010 NJ ASK and then dropped 53 points and another 63 points was highly unusual. In sum, as testified to by Callahan, every student on P-9, except for two students for whom the District did not have three years worth of data, "had significant or very significant decreases in their scores" between 2010 and 2012.⁸

As Respondent testified, she gave her students monthly mock tests in preparation for the May tests. In fact, she stated that she gave the kids so many mock tests during the school year that by May "they were answering fifth grade questions because we were done with the third grade books. . . My kids were answering harder questions than they were supposed to, so when the real NJ ASK came, those questions

⁸ Callahan testified that P-11 reflects a similar analysis of those students Respondent tested in 2011 and compared their data with the following year and found significant decreases in scores.

they would say were babyish, that it was easy for them.” However, the record does not substantiate Respondent’s statement. Why were there so many erasures, above the norm for the State, if the questions were “babyish” and why did the test scores drop precipitously the following years? Respondent’s explanation that the class sizes were bigger and that there was a different environment with different teachers was not reasonable.

Of course, statistics do not always tell the whole story. In the instant matter, seven former students of Respondent and a teacher, who acted as a proctor for Respondent in 2010, testified.⁹

Each of the seven students who testified had given a written statement regarding his/her experience in Respondent’s class during either the 2010 or 2011 NJ ASK tests and correctly identified her as the teacher. The statements were written in May and June of 2013 for events that happened in May of 2010 or 2011. When evaluating all of the testimony and their statements, a consistent pattern emerged. First of all, all the students credibly asserted that no one told them what to write. Additionally, during the actual NJ ASK tests, the students recalled that Respondent pointed to wrong answers and nodded to them when they changed to the correct

⁹ Andrew Anderson testified on behalf of Respondent. He had been the proctor for three of the four days (Monday through Wednesday) of the 2011 NJ ASK tests in Respondent’s room and was a groomsman in her wedding. He testified that the days he was her proctor she did not have any conversations with him prior to the tests; that his job was to walk around and make sure the kids were on task and to hand out pencils and tissues; that he received training and knew that it was not right to tell kids their answers were incorrect or give them a signal; that he was not in the room prior to 9 a.m. and did not know what Respondent told the class prior to the beginning of the test; that he did not know what happened on the fourth day of testing, Thursday, when he was not in her room, and that while he was in the classroom he never saw Respondent tapping on a student’s desk or giving students an answer. In the opinion of this Arbitrator, Anderson’s testimony was a neutral factor. It did not shed any more light on the facts and did not prove or disprove Respondent’s position.

answer. She double tapped on wrong answers, pointed to a question and said fix it but did not tell the correct answer or tapped on a wrong answer and did a thumbs up when it was corrected.¹⁰ Consistent with the analysis of the number of erasures, two of the students, C.P. with 18 erasures on the math NJ ASK, and J.M. with 10 erasures on the math NJ ASK, testified that Respondent acted in this manner a couple of times. Three of the students testified and/or wrote that Respondent told them before the test that she would be coming around and pointing to indicate that an answer was wrong. After carefully, evaluating all of the students' testimony, this Arbitrator was convinced of their honesty and accuracy in recounting the events during the NJ ASK tests.¹¹

Klecan, Respondent's proctor for the 2010 NJ ASK test, gave very emotional but credible testimony. She admitted that she had lied during two interviews regarding the incidents in May 2010 denying that anything improper took place during the tests in Respondent's class and acknowledged that she did not come forward until after the OFAC report was issued. However, while this Arbitrator is certainly not condoning her actions, she had recently received her K-5 certification but was only a substitute and a replacement teacher, when her cousin John Radzik, (Radzik) told her of an opening at Avenel School as a test prep teacher during the 2010 school year to help prepare students for the NJ ASK tests. A week prior to the test she was asked by Radzik to be a proctor in Respondent's class, which Klecan accepted.

¹⁰ Three of the seven students who testified were asked if they were sure that these events happened during the actual NJ ASK test as opposed to the mock or practice tests and each one testified with assurance that Respondent's actions took place during the actual NJ ASK test.

¹¹ One student recalled putting boxes around her paper to hide her answers, which Respondent claimed was done during the mock tests and not the actual NJ ASK. While this one student might have been inaccurate, the overwhelming testimony and written statements from the students were consistent.

Klecan testified that Respondent told her prior to the first day of testing that during the test they would walk around the room and point and tap on students' desks to let them know that their answer was wrong. While she felt uneasy about doing this, Respondent told her that this is what she was told to do and therefore, Klecan did the same. The next year, 2010-2011, when Klecan had her own classroom, she continued to assist the students in the same manner.

During the investigation, Klecan stated that she received "a lot of phone calls" from Respondent, who would update her on the investigation. Respondent told her that an investigator would call her because Respondent had given Klecan's name. Further, Klecan testified that Respondent told her just to say that her job was to pass out pencils and tissues and that Radzik would be in the background saying "that's your only job to pass out pencils and tissues, that's all you did." Klecan was interviewed two times, in February and April 2012 but did not tell the truth until the OFAC report was released. Her explanation for this delay was that

I didn't feel comfortable throughout the whole initial process but I was scared to tell the truth because I was not tenured, I didn't know what would happen to me. I was in their wedding. So I didn't want to ruin their wedding.

According to Klecan, she came to the realization that she had done something she should never have done. She met with a Union lawyer and wrote an eleven page certified statement dated October 15, 2012, P-26, containing 39 points explaining what happened and why she engaged in her inappropriate/unprofessional behavior. Klecan wrote and testified that she understood that if her statements were willfully false, she would be subject to punishment.

The record established that Klecan taught at Mawby Street School in the District during the 2011-2012 school, was suspended for the 2012-13 school year but was rehired as a second grade teacher at Mawby Street School for the 2013-2014 school year.¹²

Respondent claimed that there was no way to tell whether Klecan was telling the truth the first two times she was interviewed or when she wrote her certification and testified at the arbitration hearing and that, therefore, her testimony should not be credited. However, this Arbitrator cannot agree. Klecan has told a compelling story and was deemed credible by this Arbitrator. She made a terrible mistake, used poor judgment and is living with that error and the financial and professional consequences, perhaps for the rest of her life, but she has tried to rectify the matter by telling the truth despite the embarrassment and devastating affect upon her family.

Further, Respondent's position is that the District should be embarrassed that Klecan is still in its employ. However, that matter is not before this Arbitrator, who is only empowered to determine whether the Charges against Respondent have been proven by the District, not whether Klecan should continue to be employed. Admitting one's error and correcting one's path in life are commendable acts and worthy of reconsideration. In the instant matter, Klecan's testimony and those of the students corroborated each other and supported the Charges against Respondent.

¹² The record established that the Board could have suspended Klecan for her actions for sixty (60) days and then terminated her but chose not to do so. Rather, she was suspended for a year, 2012-2013, lost her increment and her tenure was broken. She was reappointed for the 2013-2014 school year as a new teacher and, going forward, can be terminated for performance for four years before she can attain tenure. It is not before this Arbitrator to determine if she received the appropriate penalty but this Arbitrator did conclude that her truthful testimony at the hearing shed light on the events surrounding

P.C., the mother of S.C., testified as to how her child was adversely affected by the inflated scores on the NJ ASK when S.C. was in Respondent's third grade class in the 2009-2010 school year. P-6 indicated that S.C. received a score of 277 on her 2010 math NJ ASK test, which was rated as advance proficient. However, P-5 revealed that S.C. was one of the students with a very high WTR erasure rate of 18 with a standard deviation above the mean of 28.97. S.C. substantiated that Respondent told the class before the test that she would be pointing to wrong answers and give a thumbs up if it was correct. She was clear that this happened during the actual NJ ASK and not the mock tests.

P.C. testified that she had been trying since her child was in second grade to get additional help for her; that she wanted to have her child held back but was told that was not a good idea but that it was not until the fourth or fifth grades when the issue of the scores on the NJ ASK were the main focus. P.C. stated that in the fourth and fifth grades she was told that because of her scores on the third and fourth grade NJ Ask tests, she was not going to be evaluated.

The record established through P-9 that S.C.'s scores dropped precipitously from third to fifth grades. From third to fourth in math she dropped 59 points. From fourth to fifth she declined an additional 36 points and her overall decline from third to fifth grade was 95 points. In LAL, S.C. dropped from a 218 in third grade to a 155 in fifth grade, which was a drop of 63 points. As testified to by Callahan, "most students will fluctuate very little between grades third, fourth and fifth" but that certainly was not the case for S.C. nor was it the case for most of the students in Respondent's class. S.C.

the 2010 NJ ASK tests in Respondent's classroom.

was finally tested at the end of fifth grade and was given special education assistance beginning in sixth grade.

Superintendent of Schools, Dr. Robert Zega, explained that the Child Study Team looks at several different measures to determine if a student qualifies for supplemental academic help. One of those measures is the NJ ASK. He claimed that it is difficult to justify recommending a student for additional help when the student achieves an advanced proficient score on the NJ ASK. However, while Zega acknowledged that S.C.'s NJ ASK score in 2010 was not the only factor that disqualified her for special assistance, he stated that in hindsight some of the students in Respondent's third grade class should have been receiving additional services based on their scores. Given all the testimony, this Arbitrator was convinced that at least part of the reason S.C. was prevented from receiving the necessary additional services to achieve academically was the inflated NJ ASK scores.

Additionally, Zega confirmed that because of the issuance of the OFAC report, the Board had to write a corrective action plan for test security going forward, had to read the report at a Board meeting and publicize it on the District's website. Further, Zega's undisputed testimony was that because of the report one parent demanded and was compensated because of the damage to her child caused by the inflated scores. This Arbitrator was convinced that there was a negative impact on the District due to the information revealed in the OFAC report and the unacceptable behavior of Respondent and other staff members.

Charge I, Counts 1 through 10 have been proven.

Charge II has been proven.

Charge III has been proven.

Charge IV has been proven.

This is a very disturbing matter. A teacher is a role model and should be held to a very high standard. A teacher has the ultimate responsibility of teaching children and molding them in a positive manner so that they reach their highest potential as students and members of society. Impressionable students in third and fourth grades learn by example.

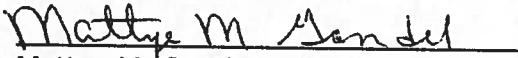
In the opinion of this Arbitrator, Respondent failed in her responsibility. Respondent failed in her responsibility as set forth in the Test Security Agreement, which she signed, P-15, and in her obligations as a teacher and as a public employee. The record proved that she interfered with the independent work of the students. She coached them during the test by interfering with their responses and participated in and encouraged the prohibited acts contained in the Test Security Agreement. Importantly, she also failed by setting an example for students and a co-worker that it was acceptable to cheat on a test. Her goal was to make certain that her students achieved high scores on the NJ ASK, no matter the process to achieve that goal. However, process is important. Setting an example of proper behavior is important. Respondent was a poor role model for these students. Returning Respondent to the classroom would signal that her actions were acceptable and that it is OK to cheat, which would further increase the damage done to the students and to the District.

In conclusion, this Arbitrator has reviewed and carefully weighed all the evidence and arguments presented at the hearing and through briefs and reply briefs by both parties even though many facets were not referred to in the Opinion. Considering all the facts, this Arbitrator must decide that the Petitioner has proven each of the Charges.

In consonance with the proof and upon the foregoing, the undersigned Arbitrator hereby finds, decides, determines and renders the following:

A W A R D


1. The District has proven all four Charges by a preponderance of the evidence.
2. The Tenure Charges are sustained and Respondent shall be dismissed as a tenured teaching staff member at Avenel Street School 4 and 5 and the District.


Mattye M. Gandel

Dated: August 4, 2014

State of New Jersey)
 :SS
County of ~~Essex~~ (Morris)

On the 4th day of August 2014 before me personally came and appeared Mattye M. Gandel, to me known and known to me to be the person described herein who executed the foregoing instrument and she acknowledged to me that she executed the same.



Notary Public
MUSARRAT MOGHEBI
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires on 23, 2017