#429-14

STATE OF NEW JERSEY COMMISSIONER OF EDUCATION

IN THE MATTER OF THE ARBITRATION OF THE TENURE CHARGES	DOE DOCKET NO. 177-7/14
between	
SCHOOL DISTRICT OF THE BOROUGH OF BOUND BROOK,	**OPINION**
Petitioner,	**AND**
-and-	**AWARD**
GLENN CIRIPOMPA,	
Respondent	

BEFORE: MICHAEL J. PECKLERS, ESQ., ARBITRATOR

DATE(S) OF HEARING: September 5, 2014; September 17, 2014

DATE OF AWARD: October 20, 2014

APPEARANCES:

For the Petitioner:

Robert J. Merryman, Esq. APRUZZESE, McDERMOTT, MASTRO & MURPHY, PC
Daniel Gallagher, Ed.D, Superintendent of Schools
Edward Smith, Principal (September 5, 2014)
Kristin Brucia, ESL Teacher "
Alexandra Shafi, Special Education Teacher "
Marian Steward, Music Teacher "
Elizabeth Levering, Art Teacher "
Kyle Franey, Athletic Director (September 17, 2014)

For the Respondent:

Arnold M. Mellk, Esq., MELLK ONEILL
Glenn Ciripompa, Respondent
Samuel Schneider, M.D. (September 17, 2014)

I. BACKGROUND OF THE CASE

Glenn Ciripompa has been employed by the Borough of Bound Brook School District ("the District" or "Petitioner") since September 1, 2004, achieving tenure as an instructor on September 1, 2007. At all times that should be considered relevant for the purposes of this proceeding, Mr. Ciripompa was assigned as a Teacher of Math at the Bound Brook High School. On July 14, 2014, the District Board of Education met in closed session to consider tenure charges of CONDUCT UNBECOMING filed against Mr. Ciripompa by then-Superintendent of Schools Edward Hoffman on June 25, 2014.

At the public portion of the meeting, the Board went on to unanimously adopt parallel resolutions finding that whereas the Superintendent of Schools had filed tenure charges against Mr. Ciripompa, probable cause existed to credit the evidence provided in support of Counts I and II, and that the evidence if true was sufficient to warrant the dismissal of Mr. Ciripompa from his tenured teaching position. A further resolution was also passed suspending him without pay pursuant to N.J.S.A.18A:6-14, until such time as a paid suspension may be required by law or the tenure charges adjudicated. On July 15, 2014, Board Secretary/Business Administrator Clifford Doll forwarded an original and two copies of the tenure charges, along with the Statement of Evidence, Certificate of Determination and Certificate of Service to Commissioner of Education David Hespe.

On July 21, 2014, Respondent through counsel Mellk filed an ANSWER TO

SWORN TENURE CHARGES, which was received by the Department of Education, Bureau of Controversies and Disputes on July 22, 2014. On July 23, 2014, Director M. Kathleen Duncan acknowledged receipt of the certified tenure charges filed with the Commissioner on July 17th as well as the answer filed on the 22nd in a notification of the transmittal of the file to an arbitrator. An August 1, 2014 letter from Ms. Duncan to counsel advised that the captioned charges had been deemed sufficient, if true to warrant dismissal or reduction in salary, and were being referred to me, pursuant to N.J.S.A. 18A:6-16 as amended by *P.L.* 2012, c. 26. Under separate cover that same date, I was notified of my appointment to hear and decide the tenure matter.

In a prior July 30, 2014 letter to counsel, I notified them of my pending appointment, offering potential dates for a conference call and hearings. In the event that interrogatories were to be propounded, reference was also made to the fact that they should be limited to 25, with no subparts. Respective discovery obligations were also detailed. On August 4, 2014, Respondent filed a NOTICE OF MOTION FOR SUMMARY DECISION with supporting brief, which requested oral argument and substantially argued that Petitioner had failed to comply with the provisions of N.J.S.A. 18A:6-17.1 ("Upon referral of the case for arbitration, the employing board of education shall provide all evidence…").

The conference call went forward as scheduled on August 7, 2014, and allowing for a response to the Respondent's motion by Petitioner, the motion was set down and returnable August 14, 2014. At that time, counsel argued their

respective positions regarding arbitrability. On August 20, 2014, Respondent's application was denied in an ORDER ON MOTION FOR SUMMARY DECISION, which is incorporated by reference herein. In pertinent part this: recognized that the instant motion was a matter of first impression, and that Respondent had provided no reported decisions interpreting the term *upon referral; determined that the plain language of the* TEACH NEW JERSEY ACT does not support the restrictive application Respondent proposes; found that the sophisticated legislators who crafted the language knew how to set hard and fast timelines when they wanted to; noted that the AAA rules which control the proceeding unless in conflict with the statute are similarly silent; concluded that Respondent has not provided a scintilla of evidence that the words *upon referral* mean *simultaneous* to the referral of the case and that a rule of reasonableness should apply; reasoned that with the first hearing scheduled for September 5, 2014, no serious argument may be made by Respondent that Mr. Ciripompa was somehow prejudiced by the submission of Petitioner's STATEMENT OF EVIDENCE and WITNESS list on August 7, 2014 upon counsel's return from vacation, when the DOE referral papers bear a *Bates* stamp of August 4, 2014.

After an additional August 25, 2014 conference call to address a minor discovery dispute, Respondent timely filed his STATEMENT OF EVIDENCE pursuant to N.J.S.A. 18A:6-17.1 on August 26, 2014. Hearings were then convened at the District Offices in Bound Brook, New Jersey on September 5, 2014 and September 17, 2014, which proceeded in an orderly manner. At that time, counsel were provided with a full opportunity to introduce relevant and

[1] admissible documentary evidence which had been previously submitted pursuant to the discovery schedule; to participate in oral argument, and to undertake the direct and cross-examination of sequestered witnesses who testified under oath. Mr. Ciripompa was present in the hearing room at all times, with the exception of when an Executive Session was convened to discuss evidentiary issues. Post-hearing briefs with supporting case citation were thereafter timely filed on October 3, 2014, with the record declared closed at that time. This AWARD is issued within 45 days of the start of the hearing, as mandated by statute.

II. FRAMING OF THE ISSUE

Has the Board of Education established the tenure charges of conduct unbecoming by a preponderance of the credible evidence? If so, what shall be the proper penalty?

III. RELEVANT STATUTORY LANGUAGE

P.L. 2012, Ch. 26 (TEACHNJ) ACT

* * *

8. N.J.S.A. 18a:6-16 is amended to read as follows;

* * *

1/ At the initial September 5, 2014 hearing, Respondent made a motion objecting to Petitioner's introduction of a document that appears at page 242 of its trial exhibit, which purports to be a twitter posting. The basis of the objection is that the document is untimely as it was provided by the District on August 8, 2014, after the submission of the main packet, which I had previously ruled was admissible. In reply, Petitioner cites the inadvertent nature of the omission, with the document immediately e-mailed to Respondent. After a recess to permit me to review the document *in camera* as well as my prior ruling, a bench ruling issued excluding the same, except for the purpose of rebuttal. On the record, I referenced my prior decision while incorporating it by reference, and declined to extend the rule of reasonableness rationale further. T1, 7-11.

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.

* * *

9. N.J.S.A. 18A:28-5 is amended to read as follows:

18A:28-5. a. The services of all teaching staff members employed prior to the effective date of P.L. c. (C.) (pending before the Legislature as this bill) in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all other school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

* * *

[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 (pending before the Legislature as this bill):

(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.

* * *

IV. POSITIONS OF THE PARTIES

Petitioner Bound Brook School District[2]

Petitioner Bound Brook Board of Education ("Bound Brook" or "District") instituted Tenure Charges against Glenn Ciripompa ("Ciripompa"). The Charges, as well as the accompanying Statement of Evidence, were signed and certified by then-Bound Brook Superintendent of Schools Dr. Edward Hoffman. The charges focus on Ciripompa's use of the District's computer network, his District

2/ As referenced in n. 1, a bench ruling was issued at the September 5, 2014 hearing excluding the admission of a tweet, with the door to its admissibility on rebuttal left open. Petitioner never availed itself of that opportunity. And while the parties may generally acknowledge that the same may have served as the catalyst for the District's investigation of Mr. Ciripompa's utilization of his Bound Brook issued laptop and Ipad, the attempt by Petitioner to bootstrap this omitted evidence onto a perceived *nexus* argument is improper. It also requires that I assume facts that are not in evidence. In that regard, Petitioner argues that the tweet alleged a Bound Brook high school teacher was sending nude photos of himself, which was 100% correct. It thereafter reasons that the very risk the District policy was designed to prevent came to fruition, with a significant risk that members of the community would learn about this conduct and link it to the Board of Education. No such evidence was introduced at hearing, nor testimony adduced, and this argument has accordingly been afforded no consideration. A similarly dim view is taken of Bound Brook's somewhat oblique suggestion that Mr. Ciripompa was soliciting prostitution, based upon the nature of one of his emails. Such a charge or suggestion is noticeably absent from Count 1. The record also confirms that while the laptop and Ipad were seized by law enforcement when the Bound Brook Police Department and the Somerset County Prosecutor's Office responded to investigate, nothing contradicts Respondent's position that Mr. Ciripompa did nothing illegal.

provided laptop, IPad and his interactions with female staff members over the past few school years. Ciripompa, through his attorney, filed an Answer to the Tenure Charges. After considering the Charges, the Statement of Evidence and the response filed by Ciripompa, the District certified the Tenure Charges and suspended Ciripompa without pay. The Charges were forwarded by the Commissioner of Education, who in turn assigned Michael Pecklers to serve as Arbitrator in this matter under the provisions of the new Tenure Law.

The Bound Brook Board of Education brought tenure charges against Glenn Ciripompa, a teacher, for unbecoming conduct, pursuant to N.J.S.A. 18A:6-10 et seq. In accordance with Public Law 2012, Ch. 26, known as "Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ")", the Commissioner of Education, once Tenure Charges have been certified, then determines if the Charge is sufficient to warrant dismissal or reduction in salary of the person charged, and if so refers the case to an Arbitrator for further proceedings. N.J.S.A. 18A:6-16. Such referral occurred in this case, and Arbitrator Michael Pecklers was designated to serve as the arbitrator in this matter.

Pursuant to N.J.S.A. 18A:6-17.1(b)(1), the arbitrator shall conduct a hearing "within 45 days of the assignment of the arbitrator to the case", and "must render a decision with 45 days of the start of the hearing." N.J.S.A. 18A:6-17.1(d). The arbitrator's determination is "final and binding and may not be appealable to the Commissioner or the State Board of Education". The determination is subject to

judicial review and enforcement. N.J.S.A. 18A:6-17.1(e).

N.J.S.A. 18A:1-1 defines a "teaching staff member" as "a member of the professional staff of any district or regional board of education [who is] require[d] to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the state board of examiners and includes a school nurse." Breitwieser v. State-Operated Sch. Dist. of City of Jersey City, Hudson Cnty., 286 N.J. Super. 633, 637-38 (App. Div. 1996).

N.J.S.A. 18A:6-10 provides that a tenured teacher may not be dismissed "except for inefficiency, incapacity, unbecoming conduct, or other just cause." The school district bears the burden of proving by a preponderance of the credible evidence its charges seeking removal of a tenured employee. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Tenure Hearing of Ziznewski, A-0083-10T1, 2012 WL 1231874 (N.J. Super. Ct. App. Div. Apr. 13, 2012) (unreported).

Although "conduct unbecoming" by a teacher or other public employee is not defined in the statutes or regulations, it has been described as an "elastic" phrase that includes "'[C]onduct which adversely affects the morale or efficiency'" of the public entity or "which has a tendency to destroy public respect for . . . [public] employees and confidence in the operation of [public] services". In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960) (citation omitted); Karins v. City of Atl. City, 152 N.J. 532, 554 (1998); In the Matter of the Certificates of

Cheryl A. Sloan, OAL DKT. EDE 5595-11, 2012 WL 2520387 (N.J. Adm. June 15, 2012); In the Matter of the Tenure Hearing of Mark C. Bringhurst, School District of the City of Vineland, Cumberland County, Agency Dkt. No. 236-8/12 (2012).

Unbecoming conduct "need not 'be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.'" Karins, supra, 152 N.J. at 555 (quoting Hartmann v. Police Dep't of Ridgewood, 258 N.J. Super. 32, 40 (App. Div. 1992)). It may include "[A]ny conduct which adversely affects the morale or efficiency of the [department]." Id. at 554 (citation omitted). The touchstone of the determination lies in the certificate holder's "[F]itness to discharge the duties and functions of his/her office or position." In re Grossman, 127 N.J. Super. 13, 29 (App. Div. 1974); In re Young, 202 N.J. 50, 66 (2010).

At the hearing in this matter, nine (9) witnesses testified. A summary of their testimony is as follows:

(1) Kristin Bruscia

Ms. Bruscia is employed as an English as a Second Language (ESL) Teacher at Bound Brook High School. She has been employed in Bound Brook for twelve (12) years. She is familiar with Glenn Cirimpompa, and has worked with him. (9/5/14 Tr. 23:13-24)

Ms. Brucia described issues she has had with Ciripompa in the workplace. First she testified that in the past when she would sign into work in the main office Cirimpompa would come up to her and whisper how nice she looked. This occurred more than once. (9/5/14 Tr. 23:25 – 24:14)

Second, Ms. Brucia explained that on Valentine's Day two school years ago (2012-2013), she started receiving a number of flowers with notes from an anonymous person. The flowers were being delivered by students as part of a fundraiser. Ms. Brucia was contacted by a teacher in charge of the fundraiser who asked her about the receipt of the flowers and told her that "Mr. C" was sending the flowers to Ms. Brucia. Ms. Brucia testified that later in the day Cirimpompa sent her an e-mail, on the School District's computer system, confirming that the flowers were from him. Ms. Brucia responded with an e-mail to Cirimpompa advising him that she had a boyfriend and was not happy with him sending her flowers. (9/5/14 tr. 24:15-25:15)

Ms. Brucia testified that she was concerned with the flowers being sent to her for two (2) reasons. First, she had a boyfriend and she did not want to receive flowers from Ciripompa, and second, and more importantly, she was concerned that students saw another teacher sending her flowers with notes. She felt this was inappropriate. (9/5/14 Tr. 26:2-16)

Third, Ms. Brucia testified that in the 2011-12 school year Ciripompa had asked her to meet him at the park with her son on Mother's Day, advising Ms.

Brucia that "I got rid of my wife for Mother's Day and I'm sending her for a day at the spa". Ms. Brucia testified that she did not want to go and let Mr. Ciripompa know that she was not interested. (9/5/14 Tr. 26:17 – 27:11)

Ms. Brucia testified that based on the conduct and behavior of Ciripompa towards her she changed her routine at work. She was careful to avoid signing in at the main office when Ciripompa was present. She would avoid going to get coffee or going to scan documents if Ciripompa was present because, according to her, "I wouldn't put myself in a position where the two of us would even have to make small talk." (9/5/14 Tr. 27: 21- 28:21)

On cross-examination, Ms. Brucia testified that she did report the incident involving the flowers being sent by Ciripompa to the then Assistant Superintendent Dr. Gallagher.

(2) Alex Shafi

Ms. Shafi is employed as a Special Education Teacher at Bound Brook High School. She is in her second full year of employment at the school. She knows Ciripompa. (9/5/14 Tr. 38:1-6)

Ms. Shafi testified about two incidents that occurred during the 2013-2014 school year, her first year of teaching, involving Ciripompa. In one incident, which occurred sometime in April 2014, Ciripompa asked Ms. Shafi to go out with him after her softball game that day. This occurred while two students were present. Ms. Shafi declined the request. That same day, however, Ciripompa

showed up at the softball game that Ms. Shafi was coaching in the rain. He remained at the game for about ten (10) minutes. Ms. Shafi was concerned enough about the matter to report the incident to the Athletic Director Kyle Franey. (9/5/14 Tr. 39:19-40:8) She did so because she felt uncomfortable.

Also during the 2013-14 school year, Ciripompa had commented to Ms. Shafi how attractive she was at a school basketball game. This also made her uncomfortable. (9/5/14 Tr. 40:9-41:4)

(3) Marian Stewart

Ms. Stewart is a Music Teacher at Bound Brook High School. She is starting her third year at the high school. Ms. Stewart knows Mr. Ciripompa and has worked with him. During the 2013-14 school year, there was an incident in which Mr. Ciripompa spoke to Ms. Stewart in front of students and made a comment about how tight her pants were. After Ciripompa left, a student, who was present and heard the comment, asked Ms. Stewart about the comment and what it meant. This made Ms. Stewart uncomfortable. (9/5/14 Tr. 57:1-13)

(4) Kyle Franey

Mr. Franey is the Athletic Director for the Bound Brook School District, and also serves as Acting Principal of the Middle School. During the 2013-14 school year Mr. Franey served as both Athletic Director and the Assistant Principal of the High School. (9/5/14 Tr. 59:3-7)

Mr. Franey testified that sometime in late April of the 2013-14 school year, Ms. Shafi reported a conversation she had with Ciripompa in which he had asked her out. She relayed that this had made her feel uncomfortable. Mr. Franey also testified that he witnessed Ciripompa show up at the softball game that same day in the rain, and stay for about ten (10) minutes. Mr. Franey had never seen Ciripompa at any of the softball games before. He noted that it was unusual in that it was raining during the game. (9/5/14 Tr. 59:14-61:25)

(5) Elizabeth Levering

Ms. Levering is an Art Teacher at Bound Brook High School. She has held this position for five (5) years. She knows Ciripompa. (9/5/14 Tr. 65:13-65:24)

Ms. Levering testified about some incidents she had with Ciripompa. On one occasion, she had been having a conversation with another female staff member about the fact that Levering's boyfriend was going to be away on business. Although not a party to the conversation, after the other staff member had left, Ciripompa spoke to Ms. Levering and told her that if she needed anything while her boyfriend was away she should call him and let him know. The comment and the way it was conveyed made Ms. Levering uncomfortable.

Ms. Levering also testified that Ciripompa had commented on how she looked on a few occasions. On one occasion, Ciripompa told her how nice she looked in a pair of jeans. Ms. Levering testified that she has changed her routine

at work due to the behavior of Ciripompa. The occasion where he commented on her appearance in jeans occurred when she was changing an art display after school. Because of that conduct by Ciripompa, she no longer changes art displays after school but, instead, changes the displays during prep periods or in between periods to avoid such contact. Ms. Levering further testified that she avoids going to the cafeteria unless she "absolutely ha[s] to". She has taken these steps "[T]o avoid any type of confrontation or any type of situation where I might feel uncomfortable".

On cross-examination, Ms. Levering admitted that she had raised the issue of Ciripompa's behavior with her union. She was advised of her right to file a formal complaint against Ciripompa, but she chose not to. (9/5/14 Tr. 68:13-69:2) Ms. Levering also testified that during the incident in which Ciripompa commented on her jeans, she was concerned not only because of the comment but also "the close proximity" and the fact that Ciripompa was looking her up and down. (9/5/14 Tr. 73:3-75:9)

(6) Dr. Daniel Gallagher

Dr. Gallagher is the Superintendent of Schools for the Bound Brook School District. He has held this position since July 2014. Previously, he served as Assistant Superintendent and High School Principal for ten (10) years. He knows Ciripompa and recalled that he hired Ciripompa in Bound Brook in 2004. Ciripompa has been assigned as a Math Teacher at the High School his entire career. (9/5/14 Tr. 75:20-76:23)

Dr. Gallagher identified a series of documents that were entered into evidence. These include the following:

- P-1 that is the Sexual Harassment Policy for the District that has been in effect since May 2002; and
- P-2 that is the Inappropriate Staff Conduct Policy for the District that has been in effect since January 2011.

P-3 is a sign in sheet for three (3) days of in-service training held on September 3, 4 and 6, 2013. Dr. Gallagher confirmed that Ciripompa was present for and signed in on all three (3) dates. Dr. Gallagher testified that all staff members are required to attend sexual harassment training an annual basis. The training for the 2013-14 school year was held on one of the three in-service dates reflected on P-3. Dr. Gallagher attended the training, which was presented by an attorney. The PowerPoint presentation of the attorney was identified as P-4. (9/5/14 Tr. 78:7-78:12)

Dr. Gallagher learned about the incident involving Ms. Shafi and Ciripompa the same day it happened. He had also previously heard about the incident involving Ms. Bruscia receiving flowers from Ciripompa. Dr. Gallagher was pursuing the issue involving Mr. Ciripompa asking Ms. Shafi out in front of students when he learned about a more serious issue.

Dr. Gallagher had learned of teaching staff members reporting that a Bound Brook teacher was sending out nude pictures. A staff member had e-mailed to Dr. Gallagher a twitter page, which led Dr. Gallagher to search the electronic system with respect to Ciripompa. (9/5/14 Tr. 84:18-85:3)

Dr. Gallagher explained that all teachers in the Bound Brook School District receive both a laptop and an IPad that they may take home with them. When they receive these devices, teachers are required to sign a form (P-5) acknowledging receipt of the device and indicating their agreement to comply with the District's Internet Use Polices. Ciripompa signed P-5 on August 22, 2013. (9/5/14 Tr. 85:6-86:16)

Dr. Gallagher identified P-6 and P-7, which are the District's policies on acceptable use of the District's networks, computers and resources. These are the policies referenced in P-5. Dr. Gallagher explained that staff members are advised that District computers and IPads are District property and can only be used for District purposes, relating to the education of students. The District is able to monitor staff usage of technology. (9/5/14 Tr. 87:10-89:7)

Dr. Gallagher testified that the information provided by a staff member, by forwarding the Twitter page, prompted him to begin an investigation into to the contents of Ciripompa's computer. The District's Director of Technology, Leo Dreitser, was directed to get Ciripompa's computer and give him a temporary laptop. The contents of Ciripompa's computer were viewed and revealed one hundred (100) or more e-mails with photos attached. The photos were of naked women. The Bound Brook Police Department was immediately contacted. Both the Bound Brook Police Department and the Somerset County Prosecutor's Office responded to review the matter.

According to Dr. Gallagher, while the Prosecutor's Office was at the

District they had Ciripompa's IPad opened with a code from Mr. Dreitser. Additional photos were discovered on his IPad. The prosecutor took both Ciripompa's IPad and laptop. (9/5/14 Tr. 93:6-22)

Dr. Gallagher identified P-9, which is a series of e-mails and photos numbering one hundred eighty-nine (189) pages. These were obtained from the District's network. Dr. Gallagher explained that the District can access each staff member's e-mail from the District's network. P-9 contains e-mails that were sent from or to Ciripompa's District e-mail account. (9/5/14 Tr. 92:20-94:22) Further, the e-mail address would indicate that the e-mail was being sent from a Bound Brook Board of Education account.

When he saw the e-mails and photos sent and received by Ciripompa, Dr. Gallagher was very concerned. He explained that the District's policy is very clear that staff cannot have obscene language, photos, or similar materials on their devices. He noted that in the past, staff members have come to him when they had questionable material on their devices and he would have to report directly to Mr. Dreitser to make sure that it did not happen again. (9/5/14 Tr. 94:23-95:20)

Dr. Gallagher explained that all of the e-mails are date and time stamped so that it can be confirmed when they were sent or received. He was able to determine that in fact, Ciripompa sent some of the inappropriate e-mails during work hours.

P-10 in evidence is the District Attendance for Ciripompa for the 2013-14 school year. All of the shaded boxes would reveal when Ciripompa was not present, either due to a sick day, personal day or school not being in session. The white boxes would confirm the dates that school was open and Ciripompa was present. P-11 shows the dates that Ciripompa was not at work and the reason, such as a sick day, personal day or family illness. (9/5/14 Tr. 96:14-97:19)

Using P-10 and P-11, Dr. Gallagher was able to determine whether Ciripompa was present at work and was working at the time an e-mail was sent. He was able to confirm from these two documents and P-9 that Ciripompa was present and was at work when he sent e-mails on the following dates and times:

- Monday, November 25, 2013 at 12:15, an e-mail was sent by Ciripompa via the District's network from his Board of Education e-mail address. At that time, Mr. Ciripompa was at work. (P-9, page 55)

- Tuesday, December 3, 2013 at 7:27 a.m., an e-mail was sent by Ciripompa via the District's network from his Board of Education e-mail address. At that time, Mr. Ciripompa was at work. (P-9, page 60) Dr. Gallagher explained that teaching staff members are required to report for work at 7:25 a.m.

- Thursday, November 21, 2013 at 9:11 a.m., an e-mail was sent by Ciripompa via the District's network from his Board of Education e-mail address. At that time, Mr. Ciripompa was at work (P-9, page 104).

- Wednesday, September 25, 2013 at 8:54 a.m., an e-mail was sent by Ciripompa via the District's network from his Board of Education e-mail address. At that time, Mr. Ciripompa was at work (P-9, page 171).

Dr. Gallagher also testified about the distinct markings on District provided computers and IPads. He was able to confirm that the naked male in the photo,

on page 169 of P-9, is holding Ciripompa's District Provided IPad. Dr. Gallagher explained that all District IPads have markings showing the particular school (HS for High School), followed by the first initial and six letters of his last name followed by IP, which stands for IPad.

On Rebuttal, Dr. Gallagher identified R-3 in evidence as Ciripompa's teaching schedule for the 2013-14 school year. That schedule shows that Ciripompa taught Algebra II during Period 1, had a prep period during Period 2, taught Advanced Algebra during Periods 4 and 5, had lunch during Period 6, had a prep period during Periods 7 and 8, taught Geometry during Period 9 and taught AHSA Math during Period 10.

Dr. Gallagher confirmed that first Period starts at 7:35 a.m., and teachers must be in work by 7:25 a.m. First Period ends at 8:30 a.m., and Ciripompa's next teaching Period starts at 9:28 a.m. The Period between 8:30 a.m. and 9:28 a.m. is a prep period, which by contract is to be used for the mutual benefit of the teacher and students. Dr. Gallagher also confirmed that the four-minute period-of-time between class periods, such as from 10:18 a.m. to 10 22 a.m. is passing time. Teachers are required to be in the hallway to supervise students during this time-period. Dr. Gallagher testified that teachers receive twenty-five (25) minutes for lunch.

(7) Edward Smith

Mr. Smith is the High School Principal at Bound Brook High School and

has held this position since September 2013. During the 2013-14 school year, Mr. Smith formally observed Ciripompa as a Math Teacher. Mr. Smith testified that Ciripompa has a laptop on his desk that is visible to students who come up to his desk. (9/5/14 Tr. 63:1-64:23)

(8) Dr. Samuel Schneider

Dr. Schneider is a psychiatrist who has been in practice for 33 years. He met with Ciripompa after he was called by Mr. Cridge, an attorney who is representing Ciripompa, who advised Dr. Schneider that he needed to have Ciripompa evaluated quickly.

Dr. Schneider was provided background by Ciripompa's attorney and then spoke to Ciripompa "about what was going on." (9/17/14 Tr. 7:3-18) It was Dr. Schneider's understanding was that there had been the abuse of a District issued IPad for Ciripompa's own use and apparently some pictures of Ciripompa. Dr. Schneider found no evidence of psychopathology.

Dr. Schneider repeated what Ciripompa had told him with regard to his engaging in sending and receiving inappropriate e-mails and pictures and that this was due to "difficulties in his intimate relationship with his wife". (9/17/14 Tr. 10:6-18) On cross-examination Dr. Schneider admitted that he is not a certified teacher, has never taught in a public school, has never been a public school administrator, and has never worked in a public school. He was retained by Mr. Mellk's law firm, who is paying him for his report and his testimony. (9/17/14 Tr.

11-12)

Dr. Schneider did not review any materials in preparing his report. Ciripompa did not bring any materials. Dr. Schneider never saw any of the e-mails sent or received by Ciripompa on his work computer or IPad. (9/17/14 Tr. 14:6-22) Dr. Schneider testified that he did not administer any tests when he evaluated Ciripompa. He further explained that he was trying to determine if there was an underlying psychiatric or psychological problem that would cause Ciripompa to engage in the behavior of sending or receiving inappropriate e-mails on the school computer. His conclusion is there was no psychiatric or psychological problem that would cause the behavior for which Ciripompa is being charged.

Dr. Schneider had no knowledge of charges against Ciripompa relating to his interactions with female staff members and that issue was never discussed. Dr. Schneider reached his conclusions and wrote his report with the understanding that Ciripompa had never gotten into trouble in the school in the past. Dr. Schneider admitted that he never reviewed Ciripompa's personal file or even asked for a copy of the file.

Dr. Schneider testified that he concluded, based on information provided by Ciripompa, that he had never "acted out" with respect to his behavior. When asked if sending out nude photos of himself could be considered "acting out," Dr. Schneider testified that "I think—you could consider it acting out." (9/17/14 Tr. 20:7-16) Dr. Schneider admitted that he did not know who the nude photos of

Ciripompa had been sent to. (9/17/14 Tr. 20:17-19) Dr. Schneider admitted that Ciripompa is not being treated by him, and he has no knowledge that Ciripompa is treating with anyone.

(9) Glenn Ciripompa

Ciripompa testified as to Exhibit R-3 and identified it as his teaching schedule for 2013-14.

It is important to note that there was no testimony to refute any of the evidence presented on behalf of the School District's witnesses or the documentation presented. Dr. Schneider could only testify as to what he was told by Ciripompa or Ciripompa's attorney. He has no firsthand knowledge of any facts relevant to this proceeding.

Therefore, the following facts were clearly established by the testimony and exhibits presented and have not been refuted in any manner and, thus, must be accepted as true for purposes of this proceeding.

During the 2012-2013 and 2013-14 school year, Mr. Ciripompa engaged in a consistent pattern of inappropriate use of the Bound Brook School District's technological devices and its computer network. This includes sending inappropriate e-mails, receiving inappropriate e-mails, receiving nude pictures of women and sending nude pictures of himself. This conduct violated the District's appropriate use policies and was, in every respect, improper and inappropriate given the fact that the e-mails and photos were sent over his employer's network.

The e-mails sent and received by Ciripompa are in evidence as P-9. Ciripompa does not deny that he sent or received these e-mails. Further, he does not challenge, in any way, the testimony of Dr. Gallagher that the e-mails were obtained by accessing the e-mail account of Mr. Ciripompa as contained on the Bound Brook School District's network. Without reviewing every e-mail sent and received by Ciripompa, the following shows the inappropriate nature of these e-mails:

- Pages 11-12 In a series of e-mails dated February 19 through February 21 Ciripompa corresponds with a Tamara Wallace who provides Mr. Ciripompa with her rates for her services. She also advises him that he must verify himself at her agency's site "to make sure you're not a cop and over 18". Ciripompa responds by providing a photograph of himself along with message "Email back soon, so can start planning when I can cum to you."

- Page 35 Ciripompa responds to a Craigslist address with a message in which he writes "I am looking for NSA sex. I have a huge appetite for sex and I am always willing to please."

- Page 37 Ciripompa responds to a Craigslist ad and writes that he is "very discreet D/D free and very horny. I have been with other couples and I am very respectful of your boundaries. Having oral first is OK with me."

- Page 53 Ciripompa responds to a Craigslist ad and writes that "I have been with other couples and I am very respectful of your boundaries. I am OK with everything from watching you to joining in. Let me know."

- Page 63 Ciripompa responds to a Craigslist ad with the Subject heading "Couple ISO Hung Male" and writes that "I work a lot, but am free most evenings and I am always looking to get laid after I'm done working."

- Page 71 Ciripompa responds to a Craigslist ad writes that "I have had experience with another couple but they moved away, and I am not a afraid of male/male contact. Here is a pic so that you know I am real."

- Page 91 Ciripompa responds to a Craigslist ad with the Subject heading "Your ass" and writes "I am looking for NSA sex. Like you I don't want the emotional stuff that goes along with relationships. I don't really have any turn-offs. I like everything, the only limitation I have is no marks left that

people can see."

- Page 95 Ciripompa responds to an advertisement for a "party" in which the hosts supply "mixers, chips, cups, condoms and lube." The response is from the address "Glenn Ciripompa GCirimpompa@bbrook.org."

- Page 104 Ciripompa responds to a Craigslist ad with the subject heading "White Educated Stud-Cut" and writes "Yes I am cut, about 7" when properly motivated. I don't have a ton of hair on my body, some on back and front, but I do not look like a bear. I will try to call around 3:30."

- Pages 152 -155 In a series of e-mails with a couple looking for "steady boyfriend in our bedroom" Ciripompa makes three requests for them to "send more pics". In addition, a nude photo of a male holding laptop over his face is sent under a message from Ciripompa "here is another pic".

- Page 165 An email is sent to Ciripompa under the Subject "Meet-up a Virgin Escort" in which is it stated that "I'm free this evening if you're ready, my rate per hour is $75 and I can work with u if needed."

- Pages 168-169 Ciripompa responds to a Craigslist ad with the subject heading: "Attractive couple seeking attractive male for tonight" and writes that "I love that pic, and I want to cum help you. I am trying to send a pic, honestly I don't know if it will go thru." On the next page is a photo of a naked man holding Glenn Ciripompa's IPad over his face, in what is a photo taken in front of a mirror.

- Pages 177 Ciripompa responds to a Craigslist ad with the Subject heading: "Fuck without condom, make me pregnant" and writes "I would love to cum and help you… I do not mind not using condoms, as long as that is what you want…."

- Page 180 Ciripompa responds to an email on October 6, 2013 that requests his picture with an e-mail message "I would love to get together" with a photo of a nude male underneath.

- Nude photos of women were sent to Ciripompa's work e-mail address as demonstrated on pages 3, 6-7,9, 15, 21, 24, 26, 28, 30-31, 33, 43, 45, 48, 80, 89, 93, 107-108, 119, 127, 129-130, 164.

- Nude photos of a man were sent from Ciripompa's work e-mail address as demonstrated on pages 60, 145, 152, 169, 173, 181.

As was explained by Dr. Gallagher, every staff member who is provided

with a laptop signs a form (P-5) in evidence in which they "[A]gree to comply with all computer and Internet use policies set forth by the Bound Brook Board of Education." P-5 was signed by Ciripompa confirming his understanding that he was required to comply with his employer's computer and internet use policies. P-6 and P-7 are the policies enacted by the Bound Brook Board of Education with respect to computer and internet use.

P-6 provides in pertinent part as follows:

> The Board adopts the following standards of conduct for the use of computer networks and declares the unethical, unacceptable, inappropriate or illegal behavior as just cause for taking disciplinary action, limiting or revoking network access privileges, instituting legal action or taking any other appropriate action as deemed necessary.
>
> The Board provides access to computer network(s)/computers for **administrative and educational purposes only.** The Board retains the right to restrict or terminate teaching staff member access to the computer network(s)/computers at any time for any reason. The Board retains the right to have the Superintendent or designee monitor network activity, in any form necessary, to maintain the integrity of the network(s) and ensure its proper use.
>
> **Any individual engaging in the following actions declared unethical, unacceptable or illegal when using computer network(s)/computers shall be subject to discipline or legal action:**
>
> **A. Using the computer network(s)/computers for illegal, inappropriate or obscene purposes, or in support of such activities. Illegal activities are defined as activities which violate federal, state, local laws and regulations. Inappropriate activities are defined as those that violate the intended use of the network(s). Obscene activities shall be defined as a violation of generally accepted social standards for the use of publicly owned and operated communication vehicles.**
>
> (emphasis added)

■■

C. Using the computer network(s) in a manner that:

10. Possesses any data which is a violation of this policy; or

11. Engages in other activities that do not advance the educational purposes for which the computer network(s)/computers are provided.

(P-6) The policy provides that discipline for violations of the policy includes

7. Dismissal;
8. Legal action and prosecution by the authorities; and/or
9. Any appropriate action that may be deemed necessary as determined by the Superintendent and approved by the Board of Education.

(Id.)

As Dr. Gallagher explained, staff members are advised that the District-provided computers and laptops are District property and are only to be used for purposes relating to the education of students.

The District had also adopted policies relating to Sexual Harassment and Inappropriate Staff Conduct. (Exhibits P-1 and P-2). The District's Sexual Harassment Policy, No. 3362 states in pertinent part:

> Offensive conduct and speech are wholly inappropriate to the harmonious employment relationships necessary to the operation of the school district and intolerable in a workplace to which the children of the district are exposed.
>
> ***
>
> Sexual harassment includes all unwelcome sexual advances, requests for sexual favors, and verbal and physical contacts of a sexual nature that would not have happened but for the employee's gender.
>
> ***
>
> The sexual harassment of any employee of this district is strictly forbidden. Any employee or agent of this Board who is found to have sexually harassed an employee of this district will be subject to discipline which may include termination of employment.

Policy No. 4281 on Inappropriate Staff Conduct provides in pertinent part:

> School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and **shall not engage in inappropriate language or expression in the presence of pupils.**
>
> (emphasis added)
>
> The Commissioner of Education has determined inappropriate staff conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a public employee.

The undisputed evidence in this matter shows that Ciripompa engaged in the following inappropriate conduct with respect to other staff members in Bound Brook High School:

- He asked Alex Shafi to go out with him in the presence of pupils;
- He showed up at a softball game that Ms. Shafi was coaching, in the rain, the same day she declined his request to go out with him, causing Ms. Shafi concern;
- He used pupils to send flowers to another teacher, Kristin Brucia, with messages that the teacher found to be inappropriate;
- He commented on the attractiveness of Alex Shafi at a school event;
- He commented on the clothing worn by Marian Stewart in front of students, prompting questions about the comment by a student;
- He commented on the clothing worn by Elizabeth Levering while looking her up and down;
- He asked Kristin Brucia to arrange a meeting at the park after advising her that he got rid of his wife for the day; and
- He offered to provide his help to Elizabeth Levering while her boyfriend was away, after listening on a conversation in which she noted that her boyfriend was going to be away for some time.

Further, it was not disputed that after Ciripompa engaged in this unwarranted and inappropriate conduct, two of the female staff members, Kristin Brucia and Elizabeth Levering, were forced to change their work routines so as to avoid any contact or interaction with Mr. Ciripompa. This is simply unacceptable. No female staff member should be forced to alter their routines at work because they are made to feel uncomfortable by way of unwelcome comments and romantic advances. Instead, the staff member responsible for making these women fell uncomfortable at work should be held accountable for his actions.

LEGAL ARGUMENT

POINT I

THE DISTRICT HAS PROVEN CONDUCT UNBECOMING ON THE PART OF GLENN CIRIPOMPA BASED ON HIS IMPROPER USE OF SCHOOL DISRICT DEVICES AND THE DISTRICT'S NETWORK

The Bound Brook School District has proved that there is just cause to terminate Glenn Ciripompa's employment in the District. As the Arbitrator knows, a "just cause analysis" for purposes of determining whether an employee should be terminated from his/her employment has two components: is the employee "guilty as charged" of the charges instituted against the employee by the employer, and, if so, is termination the appropriate remedy for the employee's actions? In this case, the answer to both questions is a resounding yes, and the Arbitrator must terminate Glenn Ciripompa's employment in the Bound Brook School District.

As was confirmed through testimony, District policies (P-6 and P-7) and the acknowledgement form signed by Ciripompa, District-provided laptops, IPads and the District's network, which includes staff members e-mail accounts, is District property and the property of Ciripompa's employer. Such equipment and networks are to be used only for the education of students of the Bound Brook School District. Ciripompa repeatedly, recklessly and shamelessly ignored the restrictions imposed on his use of the District's equipment and network by engaging in internet use that was solely for his own personal needs and gratification. Further, he did so in manner that put the District's entire network at risk, created a significant risk of exposure of students to his inappropriate computer usage and created a significant risk of embarrassment for the District and its staff members.

As noted, the District policies, of which Ciripompa acknowledged in writing applied to his use of District devices and networks, prohibits use "for illegal, inappropriate or obscene purposes, or in support of such activities." Ciripompa's use violated at least two (2) and possibly (3) three of the categories of prohibited activities.

While impossible to confirm, the e-mail correspondence contained in pages 11-12 of P-9 appears to reflect the solicitation of prostitution. In a series of e-mails dated February 19 through February 21 Ciripompa corresponds with a Tamara Wallace who provides Ciripompa with her rates for her services. She also advises him that he must verify himself at her agency's site "**to make sure**

you're not a cop and over 18". It is not explained why it is important that Ciripompa verify that he is "not a cop", but it is a safe assumption that the conduct involved is not legal. This fact, tied in with the rates for services and Ciripompa's responses, which contain sexually suggestive language, clearly indicates that the "services" for which rates have been provided are for activities that are not legal.

Board Policy No. 3321 defines inappropriate activities as "those that violate the intended use of the network(s). The intended use of the network is for "administrative and educational purposes only." Nothing in the e-mails and photos sent and received by Ciripompa on the District's network is related to administrative or educational purposes. The sole purpose of this correspondence is the personal satisfaction of Ciripompa.

Finally, the activities engaged in by Ciripompa are clearly "obscene" under the District's acceptable use policy. The policy defines obscene activities "as a violation of generally accepted social standards for the use for publicly owned and operated communication vehicles." Receipt and dissemination of nude photos of men and women, sexually explicit language and sexually suggestive messages clearly violate generally accepted social standards for use of a School District-owned and operated communication network.

In considering the actions of Ciripompa, there are two important facts to keep in mind. First, he used his employer's computer network to engage in conduct that did not in any way further his employer's interest and, in fact, put his

employer's interests at risk through the possibility of network corruption and public embarrassment. An employer has the right to restrict employees in their use of their property and equipment. This would include computer networks. The Bound Brook Board of Education has, as a matter of public policy, made a decision to limit the use of its computers and networks and prohibit impermissible uses that do not further its goals and objectives both as an employer and as a public school district. Ciripompa's flagrant and repeated violations of the reasonable and necessary restrictions imposed on his use of his employer's network and devices clearly constitutes conduct unbecoming a public employee.

Second, Ciripompa works in a public school where the mission is the education of children. Sending and receiving inappropriate messages and photographs from an e-mail address that identifies him as an employee of the Bound Brook Board of Education has the tendency to bring embarrassment and ridicule on the District, and raise questions about the fitness and professionalism of Bound Brook staff members.

It must be noted that the issue of Ciripompa's improper network usage came to light when the Assistant Superintendent, Dr. Gallagher leaned of a Twitter post, in which it was reported that a Bound Brook High School Teacher was sending nude photos of himself. It turned out that the Twitter post was 100% accurate. Thus, one of the very risks that the District's policy was designed to prevent came to fruition. Using the District's network and e-mail address to send nude photos created a very real possibility that recipients of

those photos would know or would learn that the individual sending such photos was an employee of the Bound Brook Board of Education.

This creates a significant risk that members of the community would learn about this conduct and link the conduct to the Bound Brook Board of Education. In fact, members of the community did learn that Ciripompa was sending inappropriate images. Such notoriety can only hurt the reputation and esteem of a public school district and will justifiably raise questions in the minds of parents about the safety of their children. What parent would not have concerns with knowing that their child's teacher is sending nude photos of himself over the internet?

It is also significant that in addition to engaging in unbecoming conduct by using the District network and District provided devices for inappropriate activities, Ciripompa also engaged in such activities during work time. By such conduct, he dramatically increased the risk that this inappropriate content could be viewed by students and he effectively stole time from his employer.

It is not disputed that on at least four (4) occasions, Ciripompa sent e-mails for non-work related matters that violate the acceptable use policy, during work time. Dr. Gallagher confirmed through the District's attendance records that on Monday, November 25, 2013 at 12:15 p.m., an e-mail was sent by Ciripompa, on the District's network, from his Board of Education e-mail address. Ciripompa was at work and, according to his work schedule R-3, and Dr. Gallagher's testimony, would have been in a prep period during Periods 7 and 8. (P-9, page

55) The e-mail message was a response to an e-mail Ciripompa received the night before about arranging a sexual liaison with a couple. (Id.)

On Tuesday, December 3, 2013 at 7:27 a.m., Ciripompa sent an e-mail on the District's network from his Board of Education e-mail address. At that time, Ciripompa was at work, being required to report for work at 7:25 a.m. The e-mail sent by Ciripompa on work time was a response under the subject: "NSA Sex" and involved Ciripompa sending a nude photo to an e-mail address. (P-9, page 60)

On Thursday, November 21, 2013 at 9:11 a.m., Ciripompa sent an e-mail on the District's network from his Board of Education e-mail address. At that time, Ciripompa was at work and, according to R-3 and the testimony of Dr. Gallagher, would have had a prep period, which is for the mutual benefit of the teacher and students. The e-mail sent by Ciripompa during work time was a response to an e-mail seeking to arrange a sexual liaison with a couple. (P-9, page 104).

Finally, it was confirmed that on Wednesday, September 25, 2013 at 8:54 a.m., Ciripompa sent an e-mail on the District's network from his Board of Education e-mail address during his prep period. The e-mail sent by Ciripompa during work time related to request from a Craigslist account requesting a photograph of Ciripompa's face. A photo, which appears to be taken in a classroom, was then e-mailed by Ciripompa during work time. (P-9, page 104).

It hardly needs to be stated that an employer has the right to expect its employees to engage in work during work time. An employee is not permitted to engage in personal activities unrelated to work, particularly activities in violation of his employer's policies, while on the clock. Ciripompa's actions in engaging in inappropriate e-mail messaging in blatant violation of the Board's acceptable use policy, while on work time and being paid by the taxpayers of Bound Brook, is unquestionably conduct unbecoming a public employee.

Further, in addition to being inappropriate and dishonest, such conduct by Ciripompa heightens the risk that a student may view the inappropriate materials being sent and received by Ciripompa. Given that Ciripompa keeps his District-provided laptop on his desk, and that laptop is visible to students who come up to the desk, the risk of exposure to what is clearly objectionable material for students is very real and completely unacceptable. As was noted by the Administrative Law Judge in In the Matter of the Tenure Hearing of Darlene Donahue, OAL Docket Nos. 4379-03 and 6586-03 (Mar. 10, 2006), adopted, Agency Docket Nos. 177-6/03 and 285-8/03 (Commissioner of Educ. Apr. 24, 2006), aff'd, Docket No. 25-06 (State Bd. of Educ. Oct. 4, 2006), the fact that students did not actually see the inappropriate images on the teacher's computer does not diminish the seriousness of the conduct. The Judge found that:

> What is material is the fact that [Respondent] embarked on these searches during school hours, in the school library, using the circulation desk computer. She knew, or certainly should have known, that her conduct was not only improper and unprofessional, but in violation of the District's policy for computer use as well.

The conduct of Ciripompa, with respect to his internet usage, was improper on many levels; it was dishonest to the extent it was conducted during work time; it was inappropriate to the extent it violated the internet policies that governed his use of the District's network and devices; and it demonstrated a monumental lack of judgment and personal responsibility. By engaging in this highly inappropriate and unjustified conduct and behavior, Ciripompa created a very real risk of exposure of inappropriate materials to his students and of discredit being brought on the Bound Brook School District by identifying himself, through the use of the District's network and e-mail address, as a Bound Brook School District staff member. No employer or public school district should ever have to tolerate such inappropriate conduct and complete lack of personal responsibility, integrity or professionalism. Such behavior, which is not in any respect disputed, clearly demonstrates conduct unbecoming a public school teacher.

POINT II

THE DISTRICT HAS DEMONSTRATED THAT CIRIPOMPA'S CONDUCT WITH RESPECT TO FEMALE CO-WORKERS CONSTITUTES CONDUCT UNBECOMING A PUBLIC SCHOOL TEACHER

As noted above, it was not disputed that on numerous occasions Mr. Ciripompa engaged in conduct with respect to female co-workers that was inappropriate and made these teachers uncomfortable. Further, by his unwarranted conduct and behavior, Ciripompa forced some of the teachers to change their routines and how they handled their professional responsibilities just

so they could avoid him and not be made to feel uncomfortable by his inappropriate conduct.

The evidence proves numerous instances of comments by Ciripompa about female staff members' clothes and appearance. In one instance such comment was made in the presence of students. In another instance, the comment was made while Ciripompa was looking the staff member up and down. Such conduct is clearly inappropriate.

It has been recognized that "intent to discriminate is not a prerequisite to finding of sexual harassment..." Williams v. Newark Board of Education, 93 N.J.A.R.2d (CSV) 371, 373 (1993). Instead, "well intentioned compliments by coworkers may constitute unlawful sexual harassment" because the law prohibiting harassment "is aimed at the effect of the conduct rather than the motive or intent." Id. The New Jersey Supreme Court has recognized that "harassing conduct need not be sexual in nature; rather, its defining characteristic is that the harassment occurs because of the victim's sex." Lehmann v. Toys R Us, 132 N.J. 587, 602 (1993). In the instant matter Ciripompa engaged in a pattern of behavior that involved unwelcome comments, unwelcome conduct, and propositions to go out with him. There is no question that this conduct occurred because of the gender of the staff members involved.

In and of themselves, the actions of Ciripompa are both inappropriate and in violation of the District's sexual harassment policy. However, his conduct was even more egregious in that in many instances his conduct occurred in front of

students or involved students. When he asked Alex Shafi to go out with him Ciripompa did so in the presence of students. When he made a comment to Marian Stewart about her tight pants, he did so in front of students. When he sent carnations to Kristin Brucia, he directly involved students by having students deliver the flowers and his messages directly to Ms. Brucia. Ciripompa's involvement of students in his inappropriate conduct demonstrates the complete lack of judgment and insight into his inappropriate behavior and clearly demonstrates that he has no ability to control his own impulses.

Ciripompa appears to have no understanding of the fact that younger female staff members have no interest in him romantically, are not complimented by his comments about their clothes and appearance; and find his requests to go out with him both disturbing and uncomfortable. Further, three of the teachers who received unwelcome attention from Ciripompa testified that they were particularly concerned with the fact that Ciripompa's behavior was witnessed by students. Such conduct, while also a form of harassment, also violates the District's Inappropriate Staff Conduct Policy, which prohibits staff members from engaging "**in inappropriate language or expression in the presence of pupils.**" (P-2) (emphasis added)

Public school districts try to teach students about respect for one another and the need to avoid harassing behavior. The Bound Brook Board of Education cannot effectively convey these messages if one of its teachers is making inappropriate comments to other teachers, asking teachers out on dates in front

of students, or sending flowers to another teacher by using students to deliver the flowers and messages.

The conduct of Ciripompa in making inappropriate comments, engaging in inappropriate behavior towards his female co-workers and engaging in such conduct in the presence of students clearly rises to the level of conduct unbecoming a teacher and cannot be tolerated in a public school.

POINT III

THE ONGOING CONDUCT AND BEHAVIOR ON THE PART OF CIRIPOMPA REQUIRES TERMINATION AS THE ONLY APPROPRIATE PENALTY

As noted above, no evidence was presented by Respondent to refute the evidence presented to support the charges. In essence, there was no opposition to those charges. Thus, the sole issue in this case is the appropriate penalty. Given the seriousness of the conduct involved, the ongoing nature of that conduct despite Ciripompa's understanding of the restrictions imposed on his computer usage and his training on sexual harassment, and a complete and total lack of remorse or regard for his conduct, it is clear that termination is the only appropriate penalty.

The Commissioner of Education and a number of arbitrators have concluded that the very type of behavior engaged in by Ciripompa warrants not only termination of tenured employment, but also the revocation of a teaching staff member's professional certificate. A summary of these cases is as follows:

In the Matter of the Certificates of Richard Voza, OAL Docket No. 6989-10 (Oct. 18, 2011), adopted, Docket No. 0910-166 (State Bd. of Examiners Dec. 16, 2011), a high school English teacher had his teaching certificates revoked based on his inappropriate use of the district's internet service. The Administrative Law Judge ("ALJ") found that the teacher sent and received inappropriate e-mails involving matters related to sex and personal relationships, as well as e-mails that included references to students. The ALJ also noted that the e-mails were sent "while at school and on school equipment and on the school account". In adopting the ALJ's initial decision that the teacher's teaching certificates should be revoked, the State Board of Examiners found that the teacher "clearly engaged in conduct that negate[d] his status as a role model for students."

In Matter of the Tenure Hearing of Darlene Donahue, *supra.*, a tenured middle school librarian was terminated for using the district's computers to access pornographic materials on the internet during school hours and to send several e-mail messages containing inappropriate language to another employee. In sustaining the charges and recommending dismissal, the ALJ noted that "[u]nbecoming conduct or the lack of fitness to discharge the duties of a teacher are grounds for dismissal." Id. at 24 (citing N.J.S.A. 18A:6-10). "Unfitness to remain a teacher may be demonstrated by a single incident if sufficiently flagrant." Id. (citing In re Fulcomer, 93 N.J. Super. 404, 421 (App. Div. 1967), and other cases). The ALJ noted that "[V]iewing pornographic material on the internet has been compared to public lewdness and, therefore, considered to be conduct unbecoming." Id.

> [Respondent] is a public school teacher who is entrusted with the care and custody of children and must exercise a degree of self-restraint and controlled behavior unlike most other types of employment. In re Tenure Hearing of Lucarelli, 97 N.J.A.R.2d (EDU) 537, 541, quoting In the Matter of the Tenure Hearing of Sammons, 1972 S.L.D. 302, 321. As a public role model, she is held to a higher standard of behavior than other employees and individuals in society. In the Matter of the Tenure Hearing of Sammons, supra. Sadly, she did not meet this standard and violated the public trust and confidence needed for her to continue in her capacity as a teacher of middle school-aged children.

Id. at 29. The Commissioner of Education and the State Board of Education thereafter adopted and affirmed the ALJ's decision to dismiss the teacher for conduct unbecoming a teacher.

In Board of Education of the Toms River Regional Schools and Dale Orlovsky, Agency Dt. No. 230-9/13(January 6, 2014), the Arbitrator upheld termination of a tenured teacher in principal part based on a finding that "the Board has demonstrated that it had just cause to dismiss Orlovsky for conduct unbecoming a public employee based on his misuse of a school computer by accessing websites unrelated to school activities and which contain graphic and explicit sexual dialogue."

In a factually similar case, In the Matter of the Certificates of Stephen Dantinne, Docket No. 1213-166 (State Bd. of Examiners Dec. 6, 2013), the State Board of Examiners revoked a teacher's certificates because he accessed pornographic and inappropriate images on a district computer during work hours. The teacher admitted to accessing the inappropriate websites and acknowledged his actions violated the district's computer policies. However, he argued that

revocation was not proper because he had an unblemished thirty-two-year career, was not subject to progressive discipline, students could not view any of the materials on his computer, his actions were limited in scope, and he was undergoing counseling. The Board rejected these arguments, finding that his "level of behavior fell far below that expected of a certificate holder." The Board further held that, despite the unblemished career, the incident was sufficiently flagrant that "the only appropriate response to Dantinne's breach is the revocation of his certificates."

The case of In the Matter of the Certificates of Christopher Daggett, OAL Docket No. 4994-12 (Jan. 30, 2013), Agency Docket No. 1011-227 (State Bd. of Examiners Apr. 12, 2013), involved tenure charges brought against a teacher for using a district-owned computer to access adult dating websites, take and upload nude pictures of himself, place nude or partially nude photographs of himself and others on the school computer, and giving false and misleading information to investigators.

Although the tenure charges were settled, when the teacher resigned, the case was referred to the State Board of Examiners for a determination of whether his teaching certificates should be revoked. The ALJ found, and the Board agreed, that the certificates should be revoked because his conduct "severely undermined the public's trust and confidence needed to hold a certificate for a teaching position." The Board further determined that the teacher's "conduct d[id] not display the role model behavior expected of a teacher." The teacher's

combat military service and overcoming learning disabilities to become a special needs teacher did not mitigate against the inappropriate conduct.

In the case of In the Matter of the Tenure Hearing of Gregory Gomes, OAL Docket No. 4161-02 (Nov. 1, 2002), adopted, Agency Docket No. 148-5/02 (Commissioner of Educ. Dec. 23, 2002), tenure charges were sustained against a Social Studies Teacher for conduct unbecoming, based on his using the district's computers to access and view pornographic materials on the internet while on school property and during school hours. The school district further alleged that the teacher used the district's computers during school hours to write a romance novel for his own personal financial gain.

While admitting the conduct, the teacher argued that dismissal was too severe because students were not able to view or access the materials he viewed. The ALJ rejected these arguments concluding that "[i]ntentional access of pornography at the school creates an offensive working environment." The ALJ found the conduct "sufficiently flagrant to justify his dismissal" because his conduct "was not a single incident of misconduct involving a serious lack of sound judgment." Rather, the teacher "demonstrated a serious lack of self-restraint and judgment on repeated occasions" by "repeatedly view[ing] internet pornographic materials, over several months, while on school property, in unoccupied classrooms and in the school library." The ALJ further noted:

> Like many public servants, respondent, is a public school teacher who regularly interacts with school age children, and therefore, is in a position of public trust. Teachers are entrusted with the care and custody of children, and so their duties require a degree of self-

> restraint and controlled behavior unlike most other types of employment. In re Tenure Hearing of Lucarelli, 97 N.J.A.R.2d (EDU) 537, 541, quoting In the Matter of Tenure Hearing of Sammons, 1 972 S.L.D. 302, 321. As entrusted public role models, teachers are held to a higher standard of behavior than other employees and individuals. In The Matter of the Tenure Hearing of Jacqueline Sammons, 1972 S.L.D. 302. Gomes violated the public trust and confidence needed for him to continue in his capacity as a teacher of teenaged school children.

The ALJ recommended dismissal of the teacher, and the Commissioner of Education agreed.

Finally, in Matter of the Certificates of Dean Howarth, Docket No. 0607-156 (January 18, 2007), the State Board of Examiners revoked the certificates of a tenured teacher primarily based on his sending and receiving inappropriate e-mails on a school district computer. In so holding the State Board concluded that

> Howarth was a dedicated teacher who nevertheless engaged in inappropriate, and at times, reprehensible conduct with regard to sending and receiving inappropriate and pornographic e-mails at work. The record is replete with exhibits which no reasonable individual could argue were in any way appropriate for workplace viewing, let alone further dissemination.
>
> Howarth has clearly engaged in conduct that negates any claim he can have as a role model for children.... Moreover, the fact that no student viewed this material on his computer is more happenstance and not the cause for acclamation...The potential for seeking the material existed and therefore does not lessen the severity of the offense.

Similarly, conduct involving sexual harassment of co-workers has also warranted termination as the appropriate penalty. Williams v. Newark Board of Education, 93 N.J.A.R. at 375; (custodian removed for sexual harassment of co-workers); Coleman v. County of Essex, 2005 WL 1190417 (April 25, 2005)

(removal appropriate penalty for sexual harassment of co-workers); In the Matter of Hollis Bruce, 1998 WL 34275763 (November 10, 1998) (Senior Correction Officer removed for harassment of co-workers).

The results in these cases demonstrate that the Commissioner of Education and the State Board of Examiners have no tolerance for teachers using school district computers and networks for inappropriate and impermissible activities. Further, there is no tolerance of sexual harassment of co-workers. Such conduct has, in nearly every case, resulted in the termination of employment and the loss of one's professional teaching certificate. A common theme running through these cases is the fact that teachers are entrusted with children and thus must exercise a higher level of self-restraint and self-control than other types of employees.

Ciripompa has demonstrated that he has neither self-restraint nor self-control. He has engaged in inappropriate use of school district computers over the course of at least two school years. He has engaged in inappropriate conduct towards female co-workers over the course of at least three school years. He has used the District provided devices and networks to send highly inappropriate e-mails during work time.

Such conduct cannot be tolerated and demonstrates, as was held by the Commissioner in Gomes, that Ciripompa "violated the public trust and confidence needed for him to continue in his capacity as a teacher of teenaged school children." Therefore, the only appropriate discipline in this matter is termination

of Ciripompa's employment as a teacher.

It must be noted that unlike some the cases cited above in which the teaching staff member was still terminated, in this instance there is absolutely no indication that Ciripompa has any remorse for his actions or has demonstrated that he is not likely to engage in these actions again. The only witness offered by Ciripompa was a psychiatrist hired by his attorneys to have him evaluated to determine if there was an underlying psychiatric or psychological problem that would cause Ciripompa to engage in the behavior. His conclusion was there is not. Therefore, the actions of Ciripompa were taken with a full understanding of what he was doing and with the knowledge that what he was doing was improper and in violation of District policies and his professional responsibilities. There is no evidence in the record that Ciripompa is receiving counseling or has taken any step to address his behavior or his misconduct in any manner.

Despite the fact that he signs an acknowledgment form each year in which he agrees to abide by the District's internet use policies, Ciripompa has repeatedly violated those polices over the course of at least two school years. (See P-9 pages P135, e-mail of January 3, 2013 and P 165, e-mail of May 12, 2014). Further, despite the fact that he has received training on sexual harassment each year, and as recently as September 2013, Ciripompa has not corrected his behavior in any manner when it comes to his interactions with female staff members.

There is not one shred of evidence in the record to show that Ciripompa

takes any responsibility for his actions, has any regrets for his actions and has taken, or will take, any steps to correct his behavior. Therefore, it is more than likely that Mr. Ciripompa will continue the same inappropriate and unprofessional behavior were he to continue as a teaching staff member. Given the seriousness of his behavior, however, and the very real risk of harm to the District's network, the risk of harm to students and the risk of ridicule and embarrassment for the Bound Brook School District and its employees, there is simply no other sanction that can be imposed in this matter other than termination.

Finally, given the inappropriate manner in which Ciripompa has handled himself with respect to female staff members, again without any remorse, a sanction less than termination would serve as an insult to those staff members who were brave enough to report his conduct and testify about his behavior. Female staff members in Bound Brook High School should not have to change their work routine, so as to avoid being made to feel uncomfortable. Instead, Ciripompa should be held accountable for his actions. By his conduct and behavior Ciripompa has poisoned the work environment for a number of teachers. This is simply unacceptable and should not be tolerated in any employment setting, much less a public school. In order to protect staff members from such inappropriate conduct and behavior, Ciripompa's employment as a Bound Brook teacher must be terminated.

Based upon the foregoing analysis and above-cited authorities, Respondent Bound Brook Board of Education requests that the Arbitrator find

that the charges of unbecoming conduct have been proven and that the appropriate penalty is the termination of the employment of tenured Math Teacher Glenn Ciripompa, thereby ruling in favor of the Bound Brook Board of Education and dismissing Ciripompa's challenge to the Tenure Charges filed against him.

Respondent Glenn Ciripompa

The Bound Brook Board of Education brought tenure charges against Mr. Ciripompa for unbecoming conduct, alleging inappropriate use of the District network and computers and harassment of female staff members. While Mr. Ciripompa acknowledges violating the District's acceptable use policy, his computer use occurred out of the presence of students, and with no chance that any student could inadvertently see the computer.

Further, the Board represented that there is no allegation that Mr. Ciripompa is a threat to students. Additionally, the testimony of the staff members whom Mr. Ciripompa allegedly harassed clearly shows that there is no basis for this charge; no conduct by Mr. Ciripompa falls within the District's Sexual Harassment Policy, whose language mirrors the relevant case law. Mr. Ciripompa's violation of the acceptable use policy should not lead to his removal from his tenured position with the District.

LEGAL ARGUMENT

POINT ONE

NO STUDENT WAS EXPOSED TO, OR IN DANGER OF BEING EXPOSED TO, MR. CIRIPOMPA'S INAPPROPRIATE USE OF THE DISTRICT NETWORK AND COMPUTER.

Count I of the tenure charges alleges, *inter alia*, that Mr. Ciripompa engaged in inappropriate use of the District network and computer during regular work hours and, further, his computer "was typically in his classroom during the school day were it could potentially be viewed by students." (¶¶ 14, 16)

According to Superintendent Daniel Gallagher, there are only four school-day communications at issue. (Hearing Transcript, Sept. 5, 2014 ("T1") 107:1-5) None of these communications occurred while Mr. Ciripompa was in his classroom with students present: The first e-mail introduced by the Board was sent by Mr. Ciripompa on September 25, 2013 at 8:54 a.m. (T1, 110: 9-10) According to the Genesis Reading Page submitted into evidence as R-3, Mr. Ciripompa was not with students from 8:30 a.m. until 9:28 a.m. As Dr. Gallagher testified, Mr. Ciripompa had a Prep Period during this time. (Hearing Transcript, Sept. 17, 2014 ("T2") 28:12-13) The only photograph associated with this date provided by the Board is a dark silhouette of a man's head. (See P171)

The second e-mail introduced by the Board was sent by Mr. Ciripompa on November 21, 2013 at 9:11 a.m. (T1, 100:3-6) According to the Genesis Reading Page, Mr. Ciripompa was not with students from 8:30 a.m. until 9:28

a.m.; again, this was his prep period. (T2, 28:12-13) This e-mail contains only text; there is no photograph. (See P104)

The third e-mail introduced by the Board was sent by Mr. Ciripompa on November 25, 2013 at 12:15 p.m. (T1, 98:5-13, 107:10-14) According to the Genesis Reading Page, Mr. Ciripompa was not with students from 11:12 a.m. until 12:39 p.m. Dr. Gallagher testified that Mr. Ciripompa had lunch 6th period, and a Prep Period 7th and 8th periods, at some point during which 12:15 p.m. falls. (T2, 28:15-16) This e-mail contains only text; there is no photograph. (See P114)

The fourth e-mail introduced by the Board was sent by Mr. Ciripompa on December 3, 2013 at 7:27 a.m. (T1, 98:25-99:5, 107:16-17) The school day starts at exactly 7:35 a.m. (T1, 107:23); according to Dr. Gallagher, the students do not have to be in the classroom until that time. (T1, 108:15-18) The Genesis Reading Page shows that Mr. Ciripompa's first class did not start until 7:35 a.m. Furthermore, the only photograph associated with this date provided by the Board shows the silhouette of a man's body; it is impossible to see any detail, *e.g.*, whether the man is clothed or unclothed. (See P060)

Accordingly, the e-mails flagged by the Board as having been sent by Mr. Ciripompa during the school day were not, and could not have been, seen by any students, and indeed there is not even a scintilla of evidence to the contrary. In any event, the e-mails themselves in fact belie the Board's argument that "...if you have a laptop on your desk and you're accessing inappropriate sites, there's

a potential risk of harm to students." (T1, 122:11-14)

First, the Board provided no evidence that Mr. Ciripompa was "accessing inappropriate sites," and second, the two photographs the Board provided show nothing inappropriate. Mr. Ciripompa's conduct can be contrasted with, *e.g.*, Pemberton Twp. Sch. Dist. Bd. Of Ed. V. Donahue, 2006 WL 901626 (N.J. Admin.) (respondent, who was dismissed from her position, had viewed approximately 52 inappropriate and pornographic web sites on her computer at school (while attempting to access approximately 160 such sites in total) mostly during class time over a three-day period, and had saved approximately seven of them in a "favorites" folder); Egg Harbor Twp. Bd. Of Ed. V. Gregory Gomes, 2002 WL 31936064 (N.J. Admin.) (respondent, who was dismissed from his position, repeatedly viewed pornographic sites over several months in both unoccupied classrooms and the school library, and either knowingly or inadvertently saved pornographic material on computers that were used by other teachers as well as students). The Pemberton court noted that "[v]iewing pornographic material on the internet has been compared to public lewdness and, therefore, considered to be conduct unbecoming." 2006 WL 901626, *15. Here, none of the four e-mails noted by the Board contained any pornographic material. Moreover, the Board explicitly acknowledged that Mr. Ciripompa was not a threat to students. (T1, 121:13-16)

While Mr. Ciripompa should not have been using the District network and computer for these e-mails, the fact remains that there was no harm apart from

his violation of the District's acceptable use policy. Mr. Ciripompa was engaged in consensual communication with adults, and broke no laws. However, as Dr. Samuel Schneider opined in his report subsequent to speaking with Mr. Ciripompa, Mr. Ciripompa understands his lapse in judgment and is extremely unlikely to ever engage in this behavior again, i.e., there was no evidence of any psychopathology. (R-1; T2, 7:25-8:1, 9:13-10:2)

POINT TWO

THE BOARD PROVIDED NO EVIDENCE THAT MR. CIRIPOMPA HARASSED ANY FEMALE STAFF MEMBERS.

In Count II of the tenure charges, the Board alleges, *inter alia*, that:

> 2. During the 2013-14 School Year complaints were received about Mr. Ciripompa's inappropriate conduct toward female staff members[;]
>
> 3. Interviews of female staff members revealed that Mr. Ciripompa has repeatedly engaged in unprofessional, inappropriate and potentially harassing behavior towards female staff members[;]
>
> 4. On two occasions Mr. Ciripompa asked female staff members out on dates in front of students[;]
>
> 5. Mr. Ciripompa has repeatedly commented about the physical appearance and dress of female staff members[;]
>
> 6. Mr. Ciripompa sent flowers to a female staff member, using students to deliver the flowers, along with messages that the female staff member found to be inappropriate.

While the specific term is not used, it is clear that the Board is alleging Mr. Ciripompa engaged in sexual harassment. Indeed, the Board introduced into evidence District Policy 3362, Sexual Harassment, defines sexual harassment as

"all unwelcome sexual advances, requests for sexual favors, and verbal or physical contacts of a sexual nature that would not have happened but for the employee's gender." The Policy continues,

> Whenever submission to such conduct is made a condition of employment or a basis for an employment decision, or when such conduct is severe and pervasive and has the purpose or effect of unreasonably altering or interfering with work performance or creating an intimidating, hostile or offensive working environment, the employee shall have cause for complaint.

The Board also introduced into evidence its Legal Guidelines regarding sexual harassment, which define it as "[u]nwelcome conduct of a sexual nature," including "both physical and verbal conduct, relating to the victim's gender, sexual orientation or sexual identity." The testimony of the "female staff members" during the hearing shows that the charge of sexual harassment is simply unsupportable.

A. **Kristin Brucia**

Kristin Brucia, an ESL teacher at Bound Brook High School, testified that, more than once, Mr. Ciripompa whispered to her as she was signing into school that she looked nice or was wearing a nice dress. (T1, 24:4-13) She did not have an exact number, and provided no dates. Ms. Brucia further testified that two years prior. Mr. Ciripompa had anonymously sent her carnations on Carnation Day, a school fundraiser. (T1, 24:14-22) These were the flowers noted in the tenure charges, *see supra*. As for the messages attached, Mr. Ciripompa purportedly wrote, "you make coming to work enjoyable" and "another one, I think

said something like, I hope these flowers make you smile." (T1, 26:7-9) These messages were not provided by the Board. In any event, the tenure charges state that the "female staff member" involved found the messages to be inappropriate. This language, of course, coming under the Harassment count of the tenure charges, would lead one to believe that the word "inappropriate" means "harassing." As Ms. Brucia testified, however,

> And the students, they see a teacher putting - saying this is - who it's from, writing out the note, here is a dollar, $2 for this carnation, send it to Ms. Brucia. So then they know. Then they're talking. Then the teachers hear.
>
> And it's just inappropriate.

(T1, 26:11-16) This is clearly not "harassment" as outlined in Board Policy 3362 and the Legal Guidelines.

Ms. Brucia also testified that "[t]he Mother's Day prior to" the Valentine's Day on which she received the carnations, Mr. Ciripompa asked her, the mother of a son, if she wanted to meet him and his sons at the playground for a play date. (T1, 27:1-6) There was no testimony that Mr. Ciripompa asked her this in the presence of students. Ms. Brucia declined. (T1, 27:9) Mr. Ciripompa never asked her out or provided her with flowers again. (T1, 35:13-25)

Ms. Brucia stated that she made a complaint to Dr. Gallagher about the carnations at the time. (T1, 32:13-16) Dr. Gallagher apparently advised her to write an e-mail to Mr. Ciripompa to let him know that she was not interested. (T1, 32:20-24) She allegedly did so, but did not send a copy to any administrators. (T1, 33:11-19) The Board did not produce the e-mail. Mr. Ciripompa did not

respond. (T1, 33:20-22) At no time did Ms. Brucia provide any written statements to the District regarding any concerns she had about Mr. Ciripompa. (T1, 29:21-30:13) In fact, the only time Ms. Brucia met with any administrator regarding Mr. Ciripompa was in 2014; she did not remember what questions were asked. (T1, 33:23-35:2) She made no complaints to any federal or state agency about Mr. Ciripompa's "behavior." (T1, 35:3-8)

B. Alexandra Shafi

Alexandra Shafi, a Special Education teacher at Bound Brook high school, testified that Mr. Ciripompa approached her last year after school, and asked her if she wanted to go out with him after the school softball game. (T1, 38:9-10) She stated that "there were two students nearby[,]" but gave no testimony that these students heard Mr. Ciripompa's question. (T1, 38:10-11) The Board produced no evidence that they did so. After she said no, Mr. Ciripompa indicated that he wanted to talk about the school's new evaluation system; Ms. Shafi again declined. (T1, 38:12-15) The conversation ended. (T1, 38:15)

Ms. Shafi then testified she found it "odd" that Mr. Ciripompa was at the softball game; "I just noticed him as I was walking back from being first base coach." (T1, 38:16-18, 39:12-13) Ms. Shafi reported this to Mr. Franey, the Athletic Director, at the softball game, and Dr. Gallagher, who was with him. (T1, 39:21-23) When Mr. Franey heard of Ms. Shafi's concern "he just you know, said, okay." (T1, 47:5-7) Dr. Gallagher, too, "just said, you know, okay.... He just asked if I was okay." (T1, 47:12-15) When asked if she knew, or would agree

with, the statement that "five to seven of [Mr. Ciripompa's] students were playing in that game," Ms. Shafi answered, "I would believe that statement." (T1, 47:17-25) There was no testimony that Mr. Ciripompa was looking at Ms. Shafi, or any evidence that he even noticed her.

Ms. Shafi further testified that "[o]nce at a basketball game, and I said this before I am not sure if it was joking or serious because it was one of those comments. Just making a comment about my looks, being pretty." (T1, 40:12-15) When Ms. Shafi left the game, it was not due to Mr. Ciripompa's comment, but because she had to pick up her cousin. (T1, 41:2-9) Neither Edward Smith, Ms. Shafi's Principal, nor Dr. Gallagher, suggested that Ms. Shafi file any complaints with the District's Affirmative Action Department or any agency and, in fact, she never did so. (T1, 48:11-13; 51:8-25)

C. Marian Stewart

Marian Stewart, a music teacher at Bound Brook high school, testified that there was one incident with Mr. Ciripompa that made her uncomfortable. (T1, 57:1-2) Mr. Ciripompa made a joke about Ms. Stewart's pants, saying "were those pants made by and then inserted the name of some paint company." (T1, 57:3-5) It was not the comment, however, but the fact that a student overheard it that concerned Ms. Stewart: "... after [Mr. Ciripompa] left the room, a student asked me about it. Said, what did that mean? And so while if we had been alone, it would have been all in good fun and fine. It was the fact that students overheard it that bothered me." (T1, 57:7-11) The student who heard the

comment did not mention it again; no other student asked Ms. Stewart about it. (T1, 58:3-9) This is the extent of the Board's evidence that Mr. Ciripompa "sexually harassed" Ms. Stewart.

D. Elizabeth Levering

Ms. Levering is an art teacher at Bound Brook high school. She testified that she "just felt it was inappropriate that Glenn had overheard a conversation I had been having with a co-worker and had offered any assistance he could give me while my boyfriend was away on business." (T1, 66:3-7) Ms. Levering subsequently explained that Mr. Ciripompa's comment was made to her in the teachers' lunchroom: "... I was leaving and he had said it, that if I ever needed anything while Kyle - Kyle is my boyfriend. While Kyle was gone, to let him know if it [sic] could help me in any way." (T1, 71:13-16) Mr. Ciripompa never called Ms. Levering; nor did he ever mention again helping her out. (T1, 71:19-23)

When asked if Mr. Ciripompa ever made any other comments that made her uncomfortable Ms. Levering testified,

A. You know, he had - he had been forward with - looking at things I had - ways I had dressed, nice pair of jeans and things like that. And it just combination [sic] of that and being close and personal space.

Q. I'm sorry. Did he comment on things you were wearing?

A. I can't give a specific right now.

Q. Did he ever comment on your dress?

A. Yes.

Q. How often did that happen?

A. I don't know. A few times, twice maybe.

Q. And this was last year?

A. Or the year before.

(T1, 66:19-67:10)

Ms. Levering subsequently testified specifically about the clothing commentary; she explained that she was changing an art display in the hallway, and Mr. Ciripompa told her he liked her jeans. (T1, 71:24-72:5) This occurred in the winter of 2012-2013. (T1, 74:16-19) Ms. Levering testified that he was "looking me up and down or whatever it was." (T1, 73:9-10) She did not report to the police she was being harassed; nor did she tell Dr. Gallagher. (T1, 73:24-74:5) She did not tell Mr. Ciripompa he was making her uncomfortable. (T1, 74:6-8) Finally, Ms. Levering never put in writing any complaints about Mr. Ciripompa's behavior, despite her understanding of her right to do so. (T1, 68:13-25)

The test for hostile environment sexual harassment includes four requirements: the complained-of conduct 1) would not have occurred but for the employee's gender; and it was 2) severe or pervasive enough to make a 3) reasonable woman believe that 4) the conditions of employment are altered and the working environment is hostile or abusive. Lehman v. Toys R Us, Inc., 132 N.J. 587, 603-04 (1993). The complainant must show that "her working

conditions were affected by the harassment to the point at which a reasonable woman would consider the working environment hostile." *Id.* at 610.

This is an objective standard, which avoids the problem of the hypersensitive employee having "an idiosyncratic response to conduct that is not, objectively viewed, harassing." *Id*, at 612-13. Here, while Mr. Ciripompa most likely would not have made the above-noted comments, or sent carnations, if the staff members involved were not female, no other requirement has been proven.

First, it is clear that Mr. Ciripompa did not engage in "severe or pervasive" conduct, which is evaluated by considering the conduct itself rather than the effect of the conduct on any particular plaintiff. El-Sioufi v. St. Peter's Univ. Hosp., 382 N.J. Super. 145, 178-79 (App. Div.2005). When Kristin Brucia declined Mr. Ciripompa's invitation for a play date with their children - his first such request - he never asked again; nor did he engage in any other conduct directed toward her. Alexandra Shafi testified to one occasion on which Mr. Ciripompa asked her to go out with him. She declined, and he never asked again; nor did he engage in any other conduct directed toward her - the Board produced no evidence that Mr. Ciripompa attended the softball game for any reason other than to watch the game, and, even if Mr. Ciripompa did once tell Ms. Shafi she "looked pretty," this cannot be considered "severe and pervasive" harassment.

Marian Stewart testified to only one comment made to her by Mr. Ciripompa, and even stated that it would "have been all in good fun and fine" if a

student hadn't overheard it. Elizabeth Levering testified that after Mr. Ciripompa told her he would be happy to help her while her boyfriend was out of town, he never mentioned it again. And even if Mr. Ciripompa did tell Ms. Levering he liked her jeans, this again cannot be considered "severe and pervasive" harassment. *Compare,* Mancini v. Twp. of Teaneck, 349 N.J. Super. 527, 559 (App.Div.2002), wherein the court found that the plaintiff was "subjected to a continuing escalating pattern of gender-based harassment by multiple individuals in the Department. The subject matter, sexually-explicit cartoons or photographs, suggestions of sexual acts, or sexually harassing behavior by other officers, all constituted sexual harassment."

It is also clear that Mr. Ciripompa did not engage in behavior that "altered the conditions" of employment, or made the working environment "hostile or abusive." "Conduct must be extreme to amount to a change in the terms and conditions of employment." El-Soufi, *supra*, 382 N.J. Super. at 179 (quoting Farragher v. City of Boca Raton, 524 U.S. 775, 788, 118 S. Ct. 2275, 2284 (1998)). Whether an environment is "hostile" or "abusive" can be determined "only by looking at all the circumstances, which may include the frequency of the discriminating conduct; its severity; whether it is physically threatening, or humiliating, or a merely offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.*

Cases where a single statement has been found to have created a triable question about whether a hostile work environment existed "have uniformly

involved an outrageous and offensive statement made by a supervisor directly to the complaining subordinate." *Id.* That is not the situation here. Moreover, none of the women involved were forced to change their behavior at work in any meaningful way as a result of Mr. Ciripompa's alleged actions.

Ms. Brucia, when asked if she did anything differently as a result of Mr. Ciripompa's conduct, explained that they worked in different departments. (T1, 28:1) She testified, if I had to go to the coffee machine or to scan something, if on occasion Mr. C. was in there making copies or doing something, I could see in the glass that he was in that room and I would just come back later. We didn't have the same lunch period last year to my knowledge. I wouldn't put myself in a position where the two of us would even have to make small talk. I just stayed away. We're not like I said in the same department. (T1, 28:1-10).

Regarding signing in and out of the office, Ms. Brucia continued, "The same situation. If I was going to sign in in the morning and he was in there, wait and hang out. Maybe talk to whoever is- usually people standing out in the main doorway area. And then go in - it's a small room. Go in when he left. That's all. (T1, 28:14-21)." Ms. Shafi, when asked the same question, testified, "I felt awkward after. So, I avoided contact a little. Although, our paths don't really cross very much. We're not in the same department. The only time I see him is in passing, walking down the hallway." (T1, 41:25-42:4) Ms. Stewart was not asked if she altered her routine after Mr. Ciripompa's comment. Ms. Levering testified that, as a consequence of Mr. Ciripompa's purported conduct, "I no

longer change display cases after school hours. I did it in-between periods or when I have my prep.... I also avoid going to the cafeteria when, you know, when I didn't have to - absolutely have to." (T1, 67:21-68:2)

Accordingly, there is no evidence that Mr. Ciripompa's purported conduct and comments to these four women was severe, pervasive, hostile or abusive, or altered the conditions of the workplace. There was no harassment here, and Count II of the tenure charges must be dismissed.

POINT THREE

THE BOARD'S POLICY OF PROGRESSIVE DISCIPLINE SHOULD BE UTILIZED.

The touchstone of unbecoming conduct is a teacher's fitness to discharge the duties and functions of his office or employment. Laba v. Newark Bd. Of Ed., 23 N.J. 364, 384 (1957). The court must consider "the gravity of the offenses under all the circumstances involved, any evidence as to provocation, extenuating [sic], or aggravation" and "any harm or injurious effect which the teacher's conduct may have had on the maintenance of discipline and the proper administration of the school system." In re Fulcomer, 93 N.J. Super. 404, 422 (App.Div.1967).

The circumstances show that Mr. Ciripompa has not engaged in unbecoming conduct. As discussed, *supra*, the Board has failed to prove that any student viewed, or could have viewed, any pornographic or inappropriate content on Mr. Ciripompa's laptop. The Board acknowledged that Mr. Ciripompa

was not a threat to students. (T1, 121:13-16) That, too, was the conclusion of Dr. Schneider, who found that Mr. Ciripompa poses no threat, sexual or otherwise, to students or any other members of the community, and simply engaged in sexual fantasies due to marital difficulties. (R-1; T2, 10:6-18)

The Board has further failed to prove that Mr. Ciripompa sexually, or in any other manner, harassed any female staff member. The Board has also failed to prove (and indeed, did not seek to prove) that Mr. Ciripompa engaged in any illegal activity. Finally, the Board has provided no evidence that it has been unable to maintain discipline or the proper administration of the school as result of any conduct undertaken by Mr. Ciripompa. Indeed, the only issue here is Mr. Ciripompa's violation of the District's acceptable use policy, *i.e.*, his use of the District's network and computer for other than administrative and educational purposes. This violation does not rise to the level of unbecoming conduct and should, in any event, be subject to the District's progressive discipline policy.

Board Policy 3321, the Acceptable Use Policy, incorporates Policy 3150, which provides for Progressive Discipline for its violation. Such discipline includes:

1. Use of network computers only under direct supervision
2. Suspension of network privileges
3. Revocation of network privileges
4. Suspension of computer privileges
5. Revocation of computer privileges

6. Suspension
7. Dismissal

The Board has bypassed Nos. 1 - 6, and seeks instead Mr. Ciripompa's termination. There is no basis for this. In determining the proper penalty, the trier of fact must consider the nature of the offense, the concept of progressive discipline, and the employee's prior record. In the Matter of Arnold Borrero, City of Newark, 2009 WL 3816616 (N.J. Admin.).

Progressive discipline recognizes that some infractions are so serious and egregious that removal is appropriate, even where there is no prior disciplinary history (*Id.*); "the requirement of 'cause' sufficient to bypass the theory of progressive discipline equates with whether the fact finder has found that the employee's actions, in the context of his job title and work environment, are sufficiently egregious so as to warrant removal[.]" Long v. Dept. of Labor, 2000 WL 970704 (N.J. Admin.). "Termination of employment is the penalty of last resort reserved for the most severe infraction or habitual negative conduct unresponsive to intervention." *Id.* (quoting Rotondi v. Dept. of Health and Human Services, CSV 385-88 (Sept. 28, 1988)).

Mr. Ciripompa has no prior disciplinary history. His improper use of the District's network and computer was an acknowledged lapse of judgment (See Dr. Schneider's report) resulting in no discernable harm. Mr. Ciripompa's actions were neither serious nor egregious, so that the Board's policy of progressive discipline should be bypassed; indeed, his termination would be an unduly harsh

and unjustified penalty.

For the foregoing reasons, it is respectfully requested that the Arbitrator find that the Board failed to prove any allegations that would justify the removal of Mr. Ciripompa from his tenured position. The penalty of removal is disproportionate and unfair.

V. STATEMENT OF THE CASE

Notice is taken at the outset of this discussion that tenure laws were originally enacted and designed to establish a "competent and efficient school system," and to protect teaching and other staff from dismissal for "unfounded, flimsy or political reasons." *See generally* Viemeister v. Prospect Park Board of Education, 5 N.J. Super. 215, 218 (App. Div. 1949); Spiewak v. Rutherford Board of Education, 90 N.J. 63 (1982). The statutory status of a tenured individual should accordingly not be lightly removed. *See,* In re Tenure Hearing of Claudia Ashe-Gilkes, City of East Orange School District, 2009 WL 246266 (January 12, 2009), *adopted* by the Commissioner of Education (May 28, 2009).

N.J.S.A. 18A:6-10 provides that a tenured teacher may not be dismissed or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct, or other just cause..." As the moving party in this disciplinary matter, the District assumes the prefatory burdens of making a *prima facie* showing that it has satisfied or established the sufficiency of the unbecoming conduct tenure charges by a preponderance of the credible evidence. *See* Cumberland Farms,

Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); In re Tenure Hearing of Grossman, 127 N.J. Super. 13, 23 (App. Div. 1974 *cert. denied* 65 N.J. 292 (1974)); In re Phillips, 117 N.J. 567, 575 (1990); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Tenure Hearing of Ziznewski, A-0083-10T1, 2012 WL 1231874 (New Jersey Sup. Ct. App. Div. April 13, 2012) (unreported); *see also* State v. Lewis, 67 N.J. 47 (1975) (defining *preponderance* as the "[g]reater weight of the credible evidence in the case."); Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958); Spagnuolo v. Bonnet, 16 N.J. 546, 554-555 (1954).

In that event, the burden will shift to Respondent to proffer and prove his affirmative or exculpatory defenses. Should that be accomplished the burden will return to the District to rebut this showing with substantial credible evidence. Once a determination has been made of whether the tenure charges have been established, and as this issue was framed by the parties, the District is then tasked with the additional burden of demonstrating that the dismissal of Mr. Ciripompa is warranted for the offending conduct. In deciding whether to remove Respondent from his tenured teaching position with the Bound Brook School District, I am required to consider the totality of the circumstances, the nature of the act(s), and the impact on his career. *See* In re Fulcomer, 93 N.J. Super 404, 421 (Appellate Div. 1967). The evidence needed to meet a board's burden is not to be taken frivolously and must be viewed on a case by case basis. In the Matter of Ziznewski, School District of Township of Edison, Middlesex County, OAL Docket No. EDU 4727-08 (May 5, 2010).

Following a comprehensive analysis of the record evidence, with full consideration given to the respective positions of the parties and voluminous case citation, I find that Petitioner has failed to satisfy the foregoing obligations requiring that the instant discipline be **MODIFIED TO A SUSPENSION OF 120 DAYS**. The material facts of the case are generally not in contention, with Respondent's trial strategy to leave Petitioner to its proofs while discounting the same, focusing upon mitigation and the perceived *Draconian* nature of the sanction imposed by the District.

Glenn Ciripompa is a tenured teacher with the Borough of Bound Brook Board of Education, having been employed since September 2004 and receiving tenure in September 2007. During the 2013 – 2014 School Year he taught math at Bound Brook High School. On June 25, 2014, then-Superintendent of Schools Edward Hoffman filed tenure charges against Mr. Ciripompa, which alleged CONDUCT UNBECOMING. Count 1 generally included the following allegations:

> [t]he District has had in place for a number of years a very clear and strict acceptable use policy for all employees and students using District computers, Ipads and District networks; all staff, including Mr. Ciripompa received and signed for a copy of the acceptable use policy; District computers and Ipads can be used for administrative and educational purposes only, with employees specifically prohibited from using the same for illegal, inappropriate or obscene purposes, or in support of such activities; in May of 2014, school officials learned of allegations that Mr. Ciripompa had sent nude pictures of himself electronically; a check was made of the District's network and use of the network by Mr. Ciripompa, which revealed that Mr. Ciripompa had repeatedly engaged in inappropriate use of the District network, the District provided computer and the District provided Ipad; such inappropriate use included e-mails with individuals with no apparent ties to the Bound Brook School District, through which Mr. Ciripompa attempted to arrange sexual liaisons with individuals and couples, with Mr.

> Ciripompa receiving notices of sex parties and expressing a desire to attend; Mr. Ciripompa requested and received numerous nude photos of women and sent nude photos of himself through the District's network; Mr. Ciripompa sent and received inappropriate e-mails during regular work hours.

Petitioner has correctly argued herein that the term *unbecoming conduct* by a teacher or other public employee is not defined in the statutes or regulations, and has been described as an "elastic phrase." In Karins v. City of Atlantic City, 152 N.J. 532, 551 (Coleman, 1997), the Supreme Court of New Jersey addressed the issue with respect to a police officer. The guidance provided is equally applicable in the instant case, with Justice Coleman opining that:

> New Jersey Courts have applied the standard of 'conduct unbecoming' in numerous cases involving the discipline of police officers. For instance, in In re Emmons, 63 N.J. Super. 136, 164 A.2d 184 (1964), the Appellate Division confronted the issue whether [88717] an off-duty police officer's refusal to cooperate and to submit to a sobriety test following an automobile accident constituted 'conduct unbecoming an officer.' *Id.* at 140, 164 A.2d 184. The court observed that '[t]he phrase is a classic one,' that has been defined as 'any conduct which adversely affects the morale or efficiency of the bureau ... [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.' *Ibid.* (*quoting* In re Zeber, 398 Pa. 35, 156 A.2d 821, 825 (1959).

Conduct unbecoming a teacher has been found to include a broad range of behavior that impacts a teacher's ability to perform his duties or otherwise renders him unfit to have the responsibility to care for children. *See*, I/M/O/ the Certificate of Cheryl Sloan, OAL Docket No. EDE 5595-11 (2012) [*citation omitted*]; In the Matter of the Tenure Hearing of Mark Bringhurst, School District of the City of Vineland, Cumberland County, DOE Docket No. 236-8/12 (2012). The behavior also need not be predicated upon the violation of any particular rule

or regulation, but may be based merely upon a violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct. *See,* Karins, *supra*, 155 N.J. at 555 [*quoting* Hartman v. Police Department of Ridgewood, 258 N.J. Super 32, 40 (App. Div. 1992)]. It may include "[a]ny conduct which adversely affects the morale or efficiency of the [department]." *Id.* at 554. [*citation omitted*]. It is also well settled that New Jersey teachers are subject to higher standards of behavior than individuals in other employment, because of the influence they exercise over students. *See generally*, I/M/O Tenure Hearing of Theresa Lucareli, Board of Education of the Borough of Brielle, Monmouth County, OAL Docket No. EDU 10413-95 (1997); I/M/O the Certificate of Cheryl A. Sloan, *supra*, OAL Docket No. EDE 5595-11 2012 N.J. Agency Lexis 288 (2012) [*citing* State Board of Examiners v. Charlton, 96 N.J.A.R. 2d (EDE) 18, 21].

District Policy 3321 ACCEPTABLE USE OF COMPUTER NETWORK(S)/COMPUTERS AND RESOURCES BY TEACHING STAFF MEMBERS, at Petitioner Exhibit 6 provides *inter alia*:

* * *

> The Board provides access to computer network(s)/computers for administrative and educational purposes only. The Board retains the right to restrict or terminate teaching staff members' access to the computer network(s)/computers at any time, for any reason. The Board retains the right to have the Superintendent or designee, monitor network activity, in any form necessary, to maintain the integrity of the network(s) and ensure its proper use.
>
> Standards for Use of Computer Network(s)

Any individual engaging in the following actions declared unethical, unacceptable or illegal when using computer networks(s)/computers shall be subject to discipline or legal action:

A. Using the computer network(s)/computers for illegal, inappropriate or obscene purposes, or in support of such activities. Illegal activities are defined as activities which violate federal, state, local laws and regulations. Inappropriate activities are defined as those that violate the intended use of the network(s). Obscene activities shall be defined as a violation of generally accepted social standards for use of publicly owned and operated communication vehicles.

* * *

Violations

Individuals violating this policy shall be subject to appropriate disciplinary actions as defined by Policy No. 3150, Discipline which includes but [is] not limited to:

1. Use of the network(s)/computers only under direct supervision;
2. Suspension of network privileges;
3. Revocation of network privileges;
4. Suspension of computer privileges;
5. Revocation of computer privileges;
6. Suspension;
7. Dismissal;
8. Legal action and prosecution by the authorities; and/or
9. Any appropriate action that may be deemed necessary as determined by the Superintendent and approved by the Board of Education.

See also, CIRIPOMPA FORM ACCEPTING PROPERTY BELONGING TO THE BOUND BROOK SCHOOL DISTRICT, Petitioner Exhibit 5; District Policy 2361 ACCEPTABLE USE OF COMPUTER NETWORKS/COMPUTERS AND

RESOURCES (M), [governing pupil use of networks and computers] Petitioner Exhibit 7.

Superintendent of Schools Dr. Daniel Gallagher provided credible and unrebutted testimony, which along with the District's moving papers established a *prima facie* showing that Mr. Ciripompa engaged in unbecoming conduct, as alleged in Count 1 of the tenure charge. He initially explained that Bound Brook teachers receive both a laptop computer as well as an Ipad, which may be taken home with them. Upon receipt, they are required to sign the form at Petitioner Exhibit 5, which acknowledges receipt of the devices and indicates their agreement to comply with the District's internet use policies. These policies were identified as Petitioner Exhibit's 6, 7. TI, 85-86.

Dr. Gallagher urged that the staff members are advised that the District computers and Ipads are Bound Brook Board of Education property, which may only be used for District purposes relating to the education of students. The Superintended disclosed that the District is able to monitor staff usage of technology at the network level and went on to discuss the investigation into Mr. Ciripompa's computer and Ipad usage that he conducted after receiving the twitter post, in his ten-role of Assistant Superintendent. TI, 87-90.

The District Director of Technology Leo Dreister was instructed to get Respondent's computer, while giving him a temporary laptop. After receiving it and in the presence of Principal Ed Smith, Dr. Gallagher utilized the "Spotlight" feature to view the contents. Typing in dot JPEG, a complete list of approximately

[3]

one hundred or more e-mails with photos attached was recovered. After opening only a few, Dr. Gallagher indicated that he had grave concern and immediately notified the Superintendent of Schools what he had discovered. Dr. Gallagher recalled that the immediate response was to call the Bound Brook Police Department. They responded within fifteen minutes and the Somerset County Prosecutor's Office within thirty minutes. While the latter was present at the District, Mr. Ciripompa's Ipad was opened with a code from Mr. Dreitser, with additional photos found. In expressing his concern on the discovery of the foregoing, Dr. Gallagher allowed that most of what he saw was pornographic material; the District policy was very clear; in the past, staff members have come to him when they had questionable material on their devices. He would then report this directly to Mr. Dreitser to make sure that it did not happen again. TI, 91-95.

In reply to Petitioner and while conceding that this use of the District's network and computers violated the applicable use policy, Respondent avers that his computer use occurred out of the presence of students with no chance they could inadvertently see the computer Respondent further underlines that the

---

3/ Dr. Gallagher identified Petitioner Exhibit 9, which contains 189 pages of e-mails (some with attached photos from women in various stages of undress), and Craigslist postings from/between Mr. Ciripompa and assorted women or couples seeking a sexual tryst. Invitations to a "Bi Play Party" at Club Oasis in New York City, as well as what are apparently "swingers' parties" also appear. The Board has summarized some of these communications at great lengths in its brief, which is incorporated into its position statement above. They will not be repeated herein. Suffice it to say, however, that they support the then-superintendent's allegations contained in Tenure Count 1, that Mr. Ciripompa repeatedly engaged in the inappropriate use of the District network, the District provided computer and the District provided Ipad, with some of the e-mails sent on school time.

District represented there is no allegation that Mr. Ciripompa poses a threat to students.

Characterizing the communications as exchanges between consenting adults with no harm apart from the violation of the District's acceptable use policy, particular emphasis is placed by Respondent upon the fact that only four of the e-mails were sent during school time and on District property when Mr. Ciripompa was at Bound Brook High School. Dr. Gallagher touched upon these during his testimony at the first hearing at TI, 107, noting that they included:

- November 25, 2013 @ 12:15 p.m.;
- December 3, 2013 @ 7:27 a.m.;
- November 21, 2013 @ 9:11 a.m.;
- September 25, 2013 @ 8:54 a.m.

As elicited upon the cross-examination of the Superintendent and argued in Respondent's brief, Mr. Ciripompa had no pupil contact time when these e-mails were sent. According to the Genesis Schedule at Respondent Exhibit 3, on November 25, 2013, Respondent was not with students from 11:12 a.m. until 12:39 p.m., by virtue of the fact that he had 6th period lunch, followed by 7th and 8th period preps. TI, 98; 107; TI, I28. On December 3, 2013, Mr. Ciripompa would have been required to sign-in for work by 7:25 a.m., with the 1st period class starting at 7:35 a.m. when the students arrive. TI, 98-99; 107. On November 21st at 9:11 a.m. and September 25, 2013 at 8:54 a.m. Respondent was likewise on a prep period from 8:30 a.m. until 9:28 a.m. both dates. TI, 100; TI, I28.

On the bases of the foregoing, a finding must issue that Petitioner has established the sufficiency of Count 1, based upon Mr. Ciripompa's inappropriate use of the District's network and computer equipment that was issued to him. A critical caveat however, is my determination that the allegations contained in ¶¶ 11-13 and in particular concerning Mr. Ciripompa's receipt of numerous nude photos of women and the submission of his own through the District network, took place while he was not on District premises.

Notice is also taken that the four e-mails discussed above as charged in ¶ 14 that were sent while at the Bound Brook High School, did not include any pornographic pictures. Rather, the November 21, 2013 and November 25, 2013 e-mails contain no attached photographs; the September 25, 2013 e-mail is a picture of Mr. Ciripompa's face or head; and the December 3, 2013 e-mail is only a dark silhouette of a man's body, from which as Respondent has properly argued it is impossible to determine whether the figure is clothed or unclothed. While the Petitioner has argued that this depicts Mr. Ciripompa nude, that has not been established and the accompanying e-mail sent only says "[n]ice picture. Here is mine." *See*, Petitioner Exhibit 9, at p. 60.

Parenthetically, there is no evidence that Respondent accessed any pornographic sites while using the District's laptop and Ipad. Nor has the District succeeded in establishing based upon Respondent's teaching schedule that any students did or could have viewed or witnessed Mr. Ciripompa's salacious e-mails. These considerations sharply factually distinguish the case at bar from

the cases cited by the Petitioner. *See e.g.* Pemberton Township School District Board of Education v. Donahue, 2006 WL 901626 (N.J. Admin.) (52 inappropriate and pornographic web sites viewed on school computer, while attempting to access 160 sites, mostly during class time over a 3 day period. Additionally, 7 of them had been saved in the "favorites" folder of the school's computer); Egg Harbor Township v. Gregory Gomes, 2002 WL 31936064 (N.J. Admin) (repeatedly viewed pornographic sites over several months in occupied and unoccupied classrooms and school library, and saved pornography on computers used by students and teachers); *see also*, I/M/O Tenure Charges BOE of Tom's River Regional Schools and Dale Orlovsky, DOE Docket No. 230-9/13 (2013); I/M/O the Certificates of Richard Voza, SBOE Docket 0910-166.

As to Petitioner's reliance upon the *dicta* of the ALJ in the Donahue case that the fact that students did not actually see the inappropriate images is of no moment, the cited language on its face transparently indicates that the case is factually inapposite:

> [w]hat is material is the fact that [Respondent] embarked on these searches during school hours, in the school library, using the circulation desk computer. She knew, or certainly should have known, that her conduct was not only improper and unprofessional, but in violation of the District's policy for computer use as well.

Count II of the tenure charges concerns allegations attendant to Respondent's behavior toward his colleagues. These contended that:

> teaching staff members, including Mr. Ciripompa, receive training with respect to appropriate conduct toward staff members and workplace harassment on an annual basis; during the 2013-2014 School Year, complaints were received about Mr. Ciripompa's inappropriate conduct towards female staff members; interviews

with female staff members revealed that Mr. Ciripopmpa had repeatedly engaged in unprofessional, inappropriate and potentially harassing[4] behavior towards female staff members; on two occasions Mr. Ciripompa asked female staff members out on dates in front of students, making them very uncomfortable; Mr. Ciripompa has repeatedly commented about the physical appearance and dress of female staff members, making them very uncomfortable; Mr. Ciripompa sent flowers to a female staff member, using students to deliver the flowers, along with messages that the female staff member found to be inappropriate.

District Policy 3362, SEXUAL HARASSMENT (M)[5] at Petitioner Exhibit 2 states in full:

[t]he Board of Education recognizes that an employee's right to freedom from employment discrimination includes the opportunity to work in an environment untainted by **harassment** and sexual **harassment**. Offensive speech and conduct are wholly inappropriate to the harmonious employment relationships necessary to the operation of the school district and intolerable in a workplace to which the children of the district are exposed.

Sexual **harassment** includes all unwelcome sexual advances, requests for sexual favors, and verbal and physical contacts of a sexual nature that would not have happened but for the employee's gender. Whenever submission to such conduct is made a condition of employment or a basis for an employment decision, or when such conduct is severe and pervasive and has the purpose or

---

4/ While the charges contained in Count II do not specifically state *sexual* harassment, it is clear from the nature of the allegations and the cited policy that this is in fact the case, as Respondent has likewise recognized.

5/ Petitioner has argued without challenge and the record indicates, that annual sexual harassment training is provided to all employees of the Bound Brook Board of Education. The SIGN-IN SHEET FOR 9/3/13, 9/4/13, 9/5/13 bears Mr. Ciripompa's signature, confirming that he attended the training that was conducted by Teresa Moore, Esq. of LEGAL ONE. The Agenda for the training states that the following would be covered: overview of statutory requirements related to equity, affirmative action, protection from sexual harassment and other discrimination; overview of HIB & dating violence statutes; working through real-life scenarios; summary/Q & A. The DEFINING SEXUAL HARASSMENT page generally tracks ¶ 2 of the District's policy, distinguishing *quid pro quo* from the *hostile work environment* variety, which is alleged herein. The HOSTILE EDUCATION ENVIRONMENT page states: "For Adult – Harassment that is sufficiently severe, persistent or pervasive to limit an employee's ability to function in the workplace; could be a single incident."

effect of unreasonably altering or interfering with work performance or creating an intimidating, hostile, or offensive working environment, the employee shall have cause for complaint.

The sexual **harassment** of any employee of this district is strictly forbidden. Any employee or agent of this Board who is found to have sexually harassed an employee of this district will be subject to discipline which may include termination of employment. Any employee who has been exposed to sexual **harassment** by any employee or agent of this Board is encouraged to report the **harassment** to any appropriate supervisor who will report it to the Superintendent of Schools. An employee may complain of any failure of the Board to take corrective action by recourse to the procedure by which a discrimination complaint is processed. The employee may appeal the Board's action or inaction to the United States Equal Employment Opportunity Commission or the New Jersey Division of Civil Rights. Complaints regarding sexual **harassment** shall be submitted following the procedures outlined in Regulation No. 1530, Equal Employment Opportunity.

The Affirmative Action Officer shall instruct all employees and agents of this Board to recognize and correct speech and behavior patterns that may be sexually offensive with or without the intent to offend.

See also, District Policy 4281 INAPPROPRIATE STAFF CONDUCT

Both sides have relied upon the New Jersey Supreme Court's seminal sexual harassment decision in Lerhman v. Toys R Us, Inc., 132 N.J. 587, 603-04 (1993). This established a four part test requiring that the complainant show 1) the complained of conduct would not have occurred but for the employee's gender; and 2) was severe or pervasive enough 3) to make a reasonable woman believe that 4) the conditions of employment are altered and the working environment is hostile or abusive. Accordingly, the complainant must show that "her working conditions were affected by the harassment to the point at which a

reasonable woman would consider the working environment hostile. *Id.*, at 610.

Based upon the credible testimony of its witnesses at the September 5, 2014 hearing, the District asserts that the following undisputed evidence underpins its contention that Respondent engaged in inappropriate conduct with other Bound Brook High School Staff members:

- He asked Alex Shafi to go out with him in the presence of pupils;
- He showed up at a softball game that Ms. Shafi was coaching, in the rain, the same day she declined his request to go out with him;
- He used pupils to send flowers to another teacher, Kristin Brucia, With messages that the teacher found inappropriate;
- He commented on the attractiveness of Alex Shafi at a school event;
- He commented on the clothing worn by Marian Steward in front of students, prompting questions by a student about the comment;
- He commented on the clothing worn by Elizabeth Levering while looking her up and down;
- He asked Kristin Brucia to arrange a meeting at the park, after advising her that he got rid of his wife for the day;
- He offered to provide his help to Elizabeth Levering while her boyfriend was away, after listening in on a conversation in which she noted her boyfriend was going to be away for some time.

The argument follows that in and of themselves, the actions of Respondent are both inappropriate and in violation of the District's sexual harassment policy. According to the District, this conduct is even more egregious in that in many instances it occurred in front of students or involved students. Bound Brook charges that Mr. Ciripompa appears to have no understanding of the fact that

younger female staff members have no interest in him romantically; are not complimented by his comments about their clothes and appearance; and find his requests to go out with him both disturbing and uncomfortable

The standard for establishing *hostile environment sexual harassment* is consistently recognized. The District policy speaks of "unwelcome sexual advances, requests for sexual favors, and verbal and physical contacts of a sexual nature that would not have happened but for the employee's gender." After detailing *quid pro quo sexual harassment*, it goes on to proscribe conduct if it "is severe or pervasive and has the purpose or effect of unreasonably altering or interfering with work performance or creating an intimidating, hostile, or offensive working environment." The LEGAL ONE In-Service Training classified the same as "[h]arassment that is sufficiently severe, persistent or pervasive to limit an employee's ability to function in the workplace."

Both versions track the guidance provided by Lehman, however, it must not be overlooked that the Supreme Court decision established an *objective* woman standard, which as Respondent has properly emphasized, avoids the problem of the hypersensitive employee having "[a]n idiosyncratic response to conduct that is not, objectively viewed, harassing." Lehman, 132 N.J. *supra,* at 612-613. The District has pointed to the above identified behavior as evidence of inappropriate action constituting unbecoming conduct. However, in doing so, it relies in large part upon the *subjective* feelings of the witnesses and emphasizes only that this behavior would not have occurred *but for* the women's sex. Based upon Lehman

and indeed the District's own policy, that is not enough to demonstrate *hostile environment sexual harassment.*

I credit the Respondent's position that when the conduct of Mr. Ciripompa itself is evaluated rather than its effect on any particular witness, it is clear that he did not engage in *severe* or *pervasive* conduct. *See*, El-Sioufi v. St. Peter's University Hospital, 382 N.J. Super. 145, 178-79 (App. Div. 2005). Kristin Brucia testified in part that two years prior, Mr. Ciripompa had anonymously sent her carnations on Carnation Day, which was a school fundraiser. The attached messages attributed to Respondent said, "You make coming to work enjoyable," and "I hope these carnations make you smile." TI, 24-26.

Ms. Brucia commented that she got a call from the teacher overseeing the fundraiser who asked her if she had received anything that day. When she asked why, the ESL Instructor was told that Mr. C was purchasing them and that the students were talking about it. It was a little gossipy, Ms. Brucia remarked. Later on in the day, an e-mail was received from Mr. Ciripompa confessing that he had sent the carnations and wishing her a Happy Valentine's Day. The witness recalled that she replied, thanking him for the flowers but indicating that she had a boyfriend. This was two years ago. TI, 25-26.

Ms. Brucia continued that Respondent had asked her out once the Mother's Day prior to the carnation incident. She explained that because she has a son and Mr. Ciripompa has two sons, he asked if she wanted to have a "play date" with them in the park. This was after he disclosed that he had "gotten rid of his

wife on Mother's Day, and sent her off to a spa." TI, 27. Upon cross, Ms. Brucia verified that it was Valentine's Day of 2012 and urged that there was nothing inappropriate with regard to the messages sent with the carnations. She reported that she did complain to Dr. Gallagher in 2012, who advised her to write Respondent an e-mail telling him that she was not interested, and to come back if anything further came of it. The e-mail was then written to Mr. Ciripompa, with no response received. TI, 32-33. After that, Respondent never asked her out on a date or provided her with flowers again. TI, 35.

Alexandra Shafi testified next for the District, and said that Mr. Ciripompa had approached her last year after school, asking if she wanted to go out with him after the school softball game. When she replied "No" Respondent stated that he wanted to discuss the school's new evaluation system. She again declined. TI, 38. The witness went on to explain that Mr. Ciripompa then showed up at the softball game, testifying that she noticed him as she was walking back after being first base coach. Ms. Shafi found this odd and said it gave her an eerie feeling. According to the witness, the incident was later reported to Athletic Director Franey, who was at the game. Dr. Gallagher was then called. TI, 38-39; 46.

Ms. Shafi later described one other incident with Respondent that took place at a basketball game. Couching the testimony in terms of not being sure if he was joking or serious because it was "one of those comments," the witness recalled that he said she was pretty. "Something along the lines of me being like

the good-looking teacher in the History Department. Again in hindsight, not sure exactly what was said." TI, 40. Not much reaction was given to it, she said as she just felt uncomfortable. *Ibid.*

Upon cross-examination, Ms. Shafi expanded upon her conversation with Mr. Franey at the softball game, explaining that Mr. Ciripompa had asked her about going out and then asked a second time, but then added talking about the evaluation system. That threw her off, because she was a new teacher, and was not sure why he would want to talk to her about it. TI, 46. She thereafter admitted that Respondent had a few students who were playing in the game and agreed that five or seven sounded right. TI, 47.

A meeting with Dr. Gallagher in the Spring of 2014 was then recounted. Ms. Shafi allowed that she was asked a general question "if a staff member has made you feel uncomfortable," with no one identified by name. Denying that she knew the Superintendent was talking about Mr. Ciripompa, Ms. Shafi represented that she was caught off-guard and wasn't sure why she was being called into the office, because after she had talked to Dr. Gallagher at the softball game, she did not hear anything and thought this was a non-issue. TI, 50-51.

Bound Brook High Music Teacher Marian Steward provided testimony about an incident with Mr. Ciripompa that made her feel uncomfortable. Ms. Steward stated that during the 2013-2014 School Year Respondent made a joke that said, "[w]ere those pants made by ..." and then inserted the name of a paint company. She offered that she did not really get it at first, with the implication

being that the pants were too tight. Then after Respondent left the room, a student asked Ms. Steward about the comment, asking what did it mean? The witness reasoned that had they been alone, it would have been all in good fun. However, the fact that a student overheard it concerned her. TI, 56-57. During cross, Ms. Steward denied that she ever heard about it again from that student, or that any other student had asked about Mr. Ciripompa's comment. TI, 58.

The testimony of Art Teacher Elizabeth Levering was two-fold in nature. Initially, Ms. Levering submitted that she felt it was inappropriate that Respondent had overheard a conversation she had been having with a co-workers, and offered any assistance he could give while her boyfriend was away on business. Specifically, Respondent stated that if she needed anything while her boyfriend was away, she should give him a call. This conversation took place in the lunchroom, Ms. Levering recalled, and submitted that "I didn't feel it was being said in the nature of, if you need me to clean out gutters or anything like that." TI, 66. Upon cross-examination, Ms. Levering denied that Mr. Ciripompa ever called her or mentioned helping her out after that. TI, 71.

Without offering specifics and after expressing a general impression that Respondent had commented on the way she dressed a few times last year or the year before, "nice pair of jeans" etc., Ms. Levering described an incident during the 2012-2013 School Year when she was changing art projects in the hallway after school. At one point, Mr. Ciripompa made a comment about how good she looked in a pair of jeans, and was talking to her and in her personal space a little

bit when she was changing a display case on the second floor. TI, 66-67.

The District has amplified the fact that Policy No. 4281 INAPPROPRIATE STAFF CONDUCT proscribes the expression of any inappropriate language or expression in the presence of students. In support of the position that Respondent violated this restriction, an exchange with Alexandra Shafi is pointed to, where Mr. Ciripompa asked her if she wanted to go out after a softball game in the presence of two students. Assuming without deciding that one staff member asking out another constitutes "inappropriate language or expression," there is no evidence based upon the testimony that the students ever heard the request or reacted to it. TI, 38. And in the case of Ms. Steward, while a student did over Respondent's comment about her jeans, it was never mentioned again and no other students overheard it. TI, 58.

Nor has Petitioner presented evidence that any of the female witnesses modified their behavior or routine in any material way. Ms. Brucia testified that:

> [i]f I had to go to the coffee machine or scan something, if on a few occasions Mr. C was in there making copies or doing something, I could see in the glass that he was in that room and I would just come back later. We didn't have the same lunch period last year to my knowledge. I wouldn't put myself in the position where the two of us would even have to make small talk. I just stayed away. We're not like in the same department. There really wasn't any reason for us to collaborate. I have ESL students.

Ms. Brucia additionally urged that it was the same situation with signing in. TI, 27-28.

After testifying that she felt awkward around Respondent after he showed

up at the softball game, Ms. Shafi said that she avoided contact a little although their paths don't really cross very much and they are not in the same departments. Instead, the only time Ms. Shafi sees Mr. Ciripompa is in passing, walking down the hallway. TI, 41-42.

Ms. Levering advised that she no longer changes the art display cases after school hours and does it between periods or when on a prep. She continued that she also avoided going to the cafeteria except when she had to, in order to avoid any type of confrontation or any kind of situation where she might feel uncomfortable. TI, 67-68. A report on the foregoing was never given to Dr. Gallagher, nor was Respondent told he was making her feel uncomfortable. TI, 73-74. There was no testimony offered by the District with respect to Ms. Steward making any schedule modifications and as Respondent focused upon during cross, none of the District's witnesses ever reported the actions of Mr. Ciripompa to the Bound Brook Police Department; filed a complaint with the New Jersey Division on Civil Rights, or the U.S. Equal Employment Opportunity Commission; or availed themselves of the District's HR internal complaint process.

Accordingly, while it is acknowledged that modifications to some school routines and avoidance behavior may have been undertaken by several of Respondent's colleagues to avoid Mr. Ciripompa, the complained of actions do not meet the generally recognized definition of *hostile environment sexual harassment* and do not rise to that level. *See,* Lehman, *supra*, 132 N.J. at 537;

El-Soufi, R.N. v. St. Peter's University Hospital, *supra*, 382 N.J. Super. 145 (finding that appellants had failed to come forward with sufficient evidence to constitute a prima facie case of sexual discrimination, thereby satisfying the first prong of the McDonnel Douglas Corp. v. Green, 411 U.S. 792 (1973) three step burden shifting analysis... "As we have held: 'epithets or comments which are merely offensive' will not establish a hostile environment claim.") *citing inter alia*, Harris v. Forklift Systems, Inc. 510 U.S. 17, 21; Heitzman v. Monmouth County, 321 N.J. Super. 133, 147 (App. Div. 1999) *quoting* Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

And with all due respect to the credible and well-intentioned testimony of the District's witnesses, the conduct of Respondent pales in comparison to that of the actors in the cases that purportedly buttress the District's position. *See*, Gurvin William v. Newark Board of Education, OAL Docket No. CSV 4102-92 (Bari-Brown, 1993) (noting that an intent to discriminate is not a prerequisite to a finding of sexual harassment and finding that according to the Affirmative Action complaint filed — respondent continued to ask woman out after she told him she had no interest in him; told her on more than one occasion that she looked good; told her she looked like she could make "good babies;" attempted to get her to go out with him by placing a $50 bill on the desk; as she was leaving her desk to go home, respondent grabbed her by the arm and pulled her into him. Respondent had also previously been warned about his conduct and had been suspended twice for unbecoming conduct including committing an act of violence and bodily harm.); Leroy Coleman v. County of Essex, OAL Docket No. CSV 11192-02 (ALJ

Springer, 2004) (findings made that appellant made "deliberate and repeated unsolicited verbal comments, requests for sexual favors, gestures, ... and physical conduct of a sexual nature toward them," including — grabbing a woman's arm forcefully and inquiring of her name; blocking her path in a narrow hallway with his stomach touching hers, sometimes with his arms outstretched so she could not pass; placing his arms on the wall and maneuvering her into a corner to attempt to kiss when alone in an elevator; repeatedly coming up behind her and kissing her face and neck; discussing intimate details of his sex life with her and asking her to do the same; following her into a women's bathroom and blocking the entrance; placing his arm across the breast of another woman on several occasions; brushing up against the body of another woman, placing his hands on her and blocking her path; intentionally grabbing the same woman's crotch while reaching for a buzzer under a counter.); I/M/O Hollis Bruce, OAL Docket No. CSV 4517-97 (Mastro, 1998) (finding that senior corrections officer had on various occasions verbally and sexually harassed another female corrections officer, including — advising an inmate in her presence that he should not lick her boots, as he could get "the clap;" reporting to colleagues that she had received good jobs, because she was having sexual relations with superiors, as well as that she was having sex with other corrections officers and inmates; repeatedly calling her "bitch."); *see also* Mancini v. Township of Teaneck, 349 N.J. Super. 527 (App. Div. 2002). These considerations warrant a conclusion that the District has not demonstrated a *prima facie showing* on Count II, requiring that it be **DISMISSED WITH PREJUDICE**.

Petitioner having satisfied Count 1 of the tenure charge of unbecoming conduct, the operative question then becomes the appropriateness of the penalty of removal that was imposed by the District. As previously noted, guidance has been provided by our Appellate Division, which stands for the proposition that generally when deciding penalty/sanctions in a tenure proceeding, relevant factors to be considered in the equation of whether dismissal or something less is appropriate, include the nature and the gravity of the offense; the impact on the teacher's career; any extenuating or aggravating circumstances; and the harm or injurious effect the conduct may have had on the proper administration of the school system. In re Fulcomer, *supra* 404, 422.

In deciding the correct quantum of discipline to be imposed for unbecoming conduct where the charge is sustained either in the arbitral or the OAL forum, a scheme of progressive discipline is generally applied. This reflects the idea that the nature, number and proximity of earlier disciplinary infractions —both minor and major — should occasion progressively severe sanctions, unless just cause to the contrary is shown. *See generally*, West New York v. Bock, 38 N.J. 500 (1962); I/M/O Tenure Hearing of Owen Newson, State Operated School District, City of Newark, DOE Docket No. 276-9/12 (Pecklers, January 10, 2013); *see also*, In the Matter of Arnold Borrero, City of Newark, 2009 WL 3816616 (N.J. Admin); Long v. Department of Labor, 2000 WL 970704 (N.J. Admin.) *quoting* Rotondi v. Department of health and Human Services, CSV 385-88 (September 28, 1988).

The notion of progressive discipline is certainly *on all fours* with Bound Brook School District Policy # 3321, which is what Mr. Ciripompa violated. This cross-references Discipline Policy No. 3150 and articulates an escalating hierarchy of penalties. These include: use of the network(s)/computers only under direct supervision; suspension of network privileges; revocation of network privileges; suspension of computer privileges; revocation of computer privileges; *suspension*; dismissal; legal action and prosecution by the authorities; and/or any appropriate action that may be deemed necessary as determined by the Superintendent and approved by the Board of Education. *See*, Petitioner Exhibit 6.

There is no dispute, however, that a single *cardinal* violation may serve as the basis for the removal of a tenured teacher who as here, has an otherwise unblemished disciplinary record. *See,* Henry v. Rahway State Prison, 81 N.J. 571 (1980); *see also,* Fulcomer, *supra*, at p. 421 ("We hold no brief for the teacher's conduct in this case. Other proper means were available to him to maintain discipline or compel obedience. Nor have we any doubt that unfitness to remain a teacher may be demonstrated [888 26] by a single incident if sufficiently flagrant.") [*citing*, Redcay v. State Board of Education, 130 N.J.L. 369 (Sup. Ct. 1943), affirmed o.b. 131 N.J.L. 326 (E & A 1944)].

I fully credit the District's position that Mr. Ciripompa's inappropriate use of the computer network, and issued laptop and Ipad was inappropriate on so many levels. It violated the internet policies that governed his use of the District's

Network and devices; it demonstrated a monumental lack of judgment and personal responsibility. It represented palpable manifest dishonesty, as he stole time from the Board Brook Board of Education on the occasions he should have been prepping for his next class to satisfy his own prurient interests. In so finding, I recognize that this occurred for a limited period on four discrete occasions during the 2013 – 2014 School Year.

Coupled with the other offending e-mails and nude photos sent and received while off-duty, this conduct cumulatively amounted to a shocking abdication of his professional responsibility raising bad judgment to an art form. The District has additionally accurately observed that Respondent expressed no remorse for his actions at the hearing, with his testimony limited to an identification of his schedule.

Therefore, in determining whether dismissal or a penalty of something less is appropriate and reduced to its lowest terms, the fundamental question with which I am faced is whether or not Mr. Ciripompa may be returned to the classroom without harm or an injurious effect on the proper administration of the Bound Brook School District. Petitioner recognizes this in arguing that "[t]he touchstone of the determination lies in the certificate holders '[f]itness to discharge the duties and functions of his/her office or position.'" *citing* In re Grossman, 127 N.J. Super. 13, 29 (App. Div. 1974); In re Young, 202 N.J. 50, 66 (201); *see also*, Laba v. Newark Bd. Of Ed., 23 N.J. 364, 384 (1957). Based upon the totality of the circumstances, it is my considered opinion that he can.

The record confirms that Respondent has no prior disciplinary infractions on his record, and is by all indications a satisfactory teacher. He had no prior warnings about his misuse of the computer system. The Petitioner has made several cogent arguments with respect to minimizing the impact of Respondent's expert witness, including that he did not review any documents in developing his report, which is based solely on the representations of Mr. Ciripompa. As far as the fact that he was retained and compensated by Respondent, that is par for the course and in some hearings there are dueling experts.

However, Dr. Sneider has a distinguished *C.V.*, and been practicing in the field of psychiatry since 1983. Among his areas of clinical focus is Disorders of Impulse Control — Sexual Deviance. *See,* Respondent Exhibit 2; TII, 6. He met with Respondent for a 90 minute period and was fully aware of the nature of the charges related to inappropriate network and computer usage. Both during his testimony and in his report at Respondent Exhibit 1, Dr. Schneider opined that Mr. Ciripompa understood his lapse in judgment and was extremely unlikely to engage in the behavior again. In short, in his opinion there was no evidence of psychopathology.[6] TII, 7-9, 17.

6/ Dr. Sneider's testimony was "[i]n terms of adverse interactions with students, or with colleagues or anything, and in terms of his communications on the internet, while it may have been inappropriate to use the computer for personal use, I didn't find anything pathological in it." TII, 8. At p. 10 of the transcript of the September 17th hearing, Dr. Sneider stated in response to a question of whether Respondent had described any of the reasons for the behavior: "What was said - - what he told me was that he had some difficulties in his intimate relationship with his wife over a number of years, and that that was, in part, explaining why it is he resorted to the behavior that he did." Page 2 of the REPORT found that "In my professional opinion, Mr. Ciripompa does not pose a threat sexual or otherwise to his students or other members of the school community. He has never engaged in aberrant sexual activity." *See,* Respondent Exhibit 1. Respondent has additionally pointed to the District's Board's representation at the September 5, 2014 hearing in arguing against the admission of Respondent Exhibit 1, "[n]o one ever said he was a threat to students … We never said that." TI, 121.

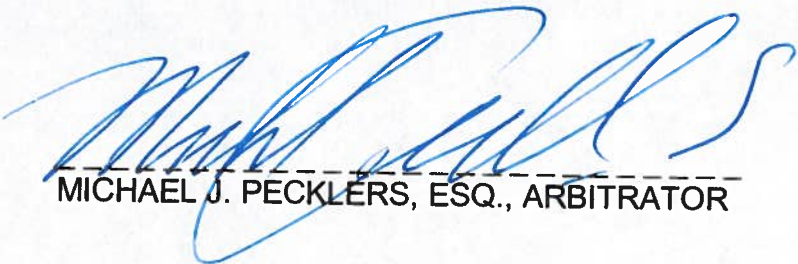
In conclusion, the foregoing considerations requires a finding that the Bound Brook School District has not satisfied its second obligation of showing that the subject tenure charges justify the removal of Respondent from his tenured teaching position. Moreover, the totality of the foregoing findings of fact clearly militate against such a result, and the cases cited in support are again not on point. *See,* In the Matter of the Certificate of Stephen Dantone, SBOE Docket No. 1213-166 (2013); In the Matter of the Certificates of Christopher Daggett, SBOE Docket No. 1011-227 (2011); In the Matter of the Certificates of Dean Howarth, SBOE Docket No. 0607-156 (2007). The subject discipline shall accordingly be **MODIFIED** to a **SUSPENSION WITHOUT PAY OF 120 DAYS**. That penalty is sufficiently severe to impress upon Respondent the inappropriateness of his actions and have a future deterrent effect. IT IS SO ORDERED.

VI. CONCLUSION

The District has established the sufficiency of Count 1 of the tenure charges to result in dismissal or a reduction in salary, with the included caveats, by a preponderance of the credible evidence. Count II has been dismissed with prejudice. However, the penalty of dismissal has been modified, as discussed herein.

AWARD

THE SUBJECT TENURE CHARGES SEEKING DISMISSAL OF RESPONDENT SHALL BE MODIFIED TO A SUSPENSION WITHOUT PAY OF 120 DAYS. MR. CIRIPOMPA SHALL THEREAFTER BE RETURNED TO DUTY AND OTHERWISE MADE WHOLE, CONSISTENT WITH ALL STATUTORY AND CONTRACTUAL ENTITLEMENTS.

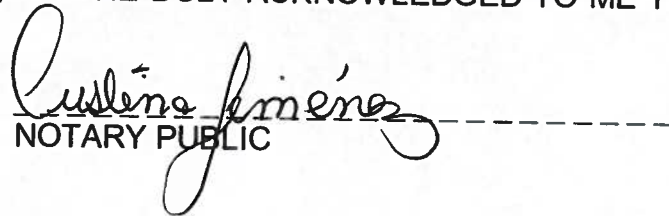


Dated: October 20, 2014
NORTH BERGEN, N.J.

MICHAEL J. PECKLERS, ESQ., ARBITRATOR

STATE OF NEW JERSEY
SS:
COUNTY OF HUDSON

ON THIS 20TH DAY OF OCTOBER 2014, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQ.**, TO BE KNOWN TO ME AND THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.



NOTARY PUBLIC

CRISTINA JIMENEZ
Notary Public of New Jersey
ID. No. 2416114
My Commission Expires 01/12/2017