222-15

DOCKET # 360-12/14

X---X

In the Matter of the Tenure Charges Preferred by

EDISON TOWNSHIP BOARD OF EDUCATION

"District

-against-

MARYELLEN LECHELT

"Respondent"

X---X

ARBITRATOR'S OPINION and AWARD

BEFORE:
ARTHUR A. RIEGEL, ESQ., ARBITRATOR

APPEARANCES:
FOR THE DISTRICT:
BUSCH LAW GROUP, LLC by ARI D. SCHNEIDER, ESQ.
MARGARET DELUCA, DISTRICT AFFIRMATIVE ACTION OFFICER

FOR THE RESPONDENT:
SELIKOFF & COHEN, PA by KEITH WALDMAN, ESQ. & STEPHEN B. WALTON, ESQ.
JEFFREY BOWDEN, PRESIDENT, EDISON TOWNSHIP EDUCATION ASSOCIATION
MARYELLEN LECHELT, RESPONDENT

BACKGROUND

On November 24, 2014, Dr. Richard O'Malley ("Dr. O'Malley") filed tenure charges with the Board. On December 10, 2014, Ms. Lechelt timely served and filed a statement of position, which is optional under *N.J.S.A.* 18A:6-11. On December 16, 2014, the Board certified the tenure charges and forwarded them to the Commissioner of Education, who received the charges on

December 17, 2014. On December 30, 2014, Ms. Lechelt timely filed her answer. On Friday, February 6, 2015, a pre-hearing conference was held between the parties. A discovery deadline was established, as were tentative hearing dates.

Subsequently, the parties exchanged initial disclosures and discovery. This matter was consolidated for hearing with *I/M/O Tenure Charges Against Maria Weber*, Docket No. 361-12/14 and *I/M/O Tenure Charges Against Tyler Van Pelt*, Docket No. 362-12/14. Hearings were conducted on March 10, March 19, March 25, April 2, April 13, and telephonically on April 21, 2015. On April 2, 2015, following conferral with counsel, May 8, 2015 was established as the due date for Ms. Lechelt's post-hearing brief, with the express understanding that the brief would be submitted to the Arbitrator, and that he would forward the briefs to all counsel only after all briefs were submitted.

THE CHARGES

BACKGROUND COMMON TO ALL CHARGES

Ms. Lechelt has been an Elementary Teacher employed by the Board since September 2011. She has a Certification as a Teacher of students with disabilities. Ms. Lechelt was obliged, among other things, to ensure the implementation and enforcement of all Board policies, follow administrative directives and procedures, as well as New Jersey law, and accord herself appropriately towards and amongst the other Board employees she works with on a day to day basis – *i.e.*, not to conduct herself inappropriately in their presence and cause them embarrassment, discomfort, offense and concern. Ms. Lechelt, however, has ignored the foregoing duties and responsibilities, and knowingly accorded herself in both a highly inappropriate and highly offensive manner – exposing others to a hostile and uncomfortable working environment.

Board Policy 3362, *Sexual Harassment*, states that "[s]exual harassment includes all unwelcome . . . verbal contacts of a sexual nature that would not have happened but for the employees gender." Policy 3362 further states that "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."

Board Policy 3281, *Inappropriate Staff Conduct*, states in relevant part that "[I]nappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Therefore, school staff members are advised to be concerned with such conduct which may include, but is not limited to, communications and/or publications using emails, text-messaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display."

Board Policy 3211, *Code of Ethics*, indicates that "the educator shall exert every effort to raise professional standards to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education."

Board Policy 1140, *Affirmative Action Program*, establishes that the program shall "promote the acceptance of persons of diverse backgrounds regardless of race, creed, color, national origin, ancestry, age, martial status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status." Further, this Policy provides that the Board's affirmative action program will "foster a learning environment that is free from all forms of prejudice, discrimination, and harassment based upon race, creed, color, national origin, ancestry, age, martial status, affectional

or sexual orientation, gender, religion, disability, or socioeconomic status in policies, programs, and practices of the Board of Education."

Board Policy 3321, *Acceptable Use of Computer Network(s)/Computers and Resources by Teaching Staff Members*, advises employees that 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." Policy 3321 further states that "the Board provides access to computer network(s)/computers for administrative and educational purposes only." Moreover, the foregoing policy, in relevant part, states that "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: (1) using the computer network(s)computers for . . . inappropriate or obscene purposes."

Finally, Board Policy 3351, *Healthy Workplace Environment*, requires that "employees interact with each other with dignity and respect" and further states that "repeated malicious conduct of an employee or group of employees directed toward another employee or group of employees in the workplace that a reasonable person would find hostile and offensive is unacceptable and is not conducive to establishing or maintaining a healthy workplace environment."

On October 23, 2014, during a voluntary Engrade Chromebook Training, Ms. Lechelt actively participated in a group chat on the Today's Meet website (https://todaysmeet.com/engraderocks) through the District's computer network. Today's Meet is a public web forum, accessible by all Board employees and students. The group chat spanned for a period of roughly two and a half hours and served no instructional purpose. Rather, the chat was

graphically sexual in nature; discriminatory to women, homosexuals, elderly persons and special education/handicap students; highly offensive to anyone not involved with same; and created a hostile work environment to other Board employees who were able to view, at any point in time, the content of the discussion.

The nature of the foregoing conversation is egregious beyond the bounds of decency. No persons and/or classifications of persons were spared. Ms. Lechelt's behavior, as set forth more specifically below, illustrates a complete and shameful disregard of her responsibilities as an employee of the Edison Township Board of Education and a member of the teaching profession, including, but not necessarily limited to, violations of the above mentioned policies. Ms. Lechelt's conduct has caused both members of the Board's Administration and members of the staff grave concerns over her intentions and capabilities, to the point of no longer feeling comfortable to be in her presence and/or permitting her to interact with other Board employees or students.

I hereby charge Maryellen Lechelt with *conduct unbecoming a teaching staff member, misbehavior and/or other just cause, including but not necessarily limited to* insubordination; all of which warrant her dismissal, pursuant to N.J.S.A.18A:28-5, and 18A:6-10.1, et seq. As more specifically set forth below, it is clear that she has exhibited a callous disregard for the expectations of her employer, as well as the rights of other employees of the Board, to conduct their daily activities in an environment that is free from harassment, discrimination, bullying and inappropriate conduct and communications, as well as an egregious breach of the professional standards imposed upon her as a member of the teaching profession.

SPECIFICATION OF CHARGES

CHARGE I

Unbecoming Conduct and/or Other Just Cause
Inappropriate Staff Conduct With Other Staff Members

On October 23, 2014, while attending a voluntary Engrade Chromebook Training at the Board's Offices, Maryellen Lechelt engaged in a course of misconduct that violated New Jersey Law, as well as Board policies, regulations and procedures regarding staff interaction with and/or concerning other staff members. More specifically, Ms. Lechelt actively participated in a conversation through the District's network, in a public chat room ("Today's Meet"), that was visible to those present in the room and obtainable by any District employee and student through the Today's Meet website, which was discriminatory, offensive, rife with sexual innuendo and ultimately created a hostile work environment (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence). This misconduct by Ms. Lechelt is unconscionable and constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

Count 1 - Inappropriate comments about Sara Bleekinger – Engrade Trainer

On October 23, 2014, Ms. Lechelt engaged in a course of misconduct directed towards Ms. Bleekinger, which was inappropriate, foul, discriminatory, offensive, harassing and sexual in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence). Such conduct resulted from a group chat through "Today's Meet" that was visible to Alysia Battista and others who were present in the Training, as well as to the entire Edison Township School District community, as "Today's Meet" is a public chat room which maintains a transcript of each conversation and is accessible to all Board employees and students.

More specifically, Ms. Lechelt made the following comments about Ms. Bleekinger:

1. "the eyebrows are distracting";
2. "im [sic] trying to have her look at you";
3. "your [sic] making her nervous";
4. "this is essentially like a robot teaching the class";
5. Regarding the trainer, Ms. Bleekinger, allegedly looking at Mr. Van Pelt, Ms. Lechelt stated, "lets make it a drinking game";
6. "im [sic] starting to get a bit of a fargo accent from her";
7. "still interested tvp???"

8. "I have a feeling shed rather go out with me"

9. "I think her car is parked behind him and she's seeing if she left her windows open"

10. "im [sic] worried you'll catch something from her backchannel"[1];

11. "lets take her to lunch tvp . . . you can share a burrito";

12. "theres [sic] not enough room in her repository for two";

13. "no hes [sic] going to have to take it slow, . . . no backchannels yet . . . that's his signature move too";

14. "I'm going to use the bathroom now . . . I think I like her too";

15. In response to Mr. Van Pelt's statement that he was "thinking of a super smart question to ask that will make her melt," Ms. Lechelt stated, "what is it? Do you want to blow me?"

Ms. Lechelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for anyone who has had occasion to review her comments and made it unpleasant for Ms. Battista and other staff members to be in her presence for fear that they will either be harassed, discriminated against and embarrassed; made to feel uncomfortable; and/or forced to hear and or view Ms. Lechelt make further inappropriate and offensive comments to them, about them and/or about others.

Count 2 - Inappropriate comments about special education/handicap students

On October 23, 2014, Ms. Lechelt engaged in a course of misconduct directed towards special education/handicap students, which was inappropriate, foul, discriminatory, offensive and harassing in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence). Such conduct resulted from a group chat through "Today's Meet" that was visible to Alysia Battista and others who were present in the Training, as well as to the entire Edison Township School District community, as "Today's Meet" is a public chat room which maintains a transcript of each conversation and is accessible to all Board employees and students.

More specifically, Ms. Lechelt made the following comments concerning special education/handicap students:

- "I like the group name 'morons'";
- "they take the tart cart home";
- "I also prefer my lows 'jesus Christ, why the fuck did they place you with me?'";

[1] A reference to anal sex.

- "middle group = 'just shut your mouth and do your work.'"

Ms. Lechelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for anyone who has had occasion to review her comments and made it unpleasant for Ms. Battista and other staff members to be in her presence for fear that they will either be harassed, discriminated against and embarrassed; made to feel uncomfortable; and/or forced to hear and or view Ms. Lechelt make further inappropriate and offensive comments to them, about them and/or about others.

Count 3 - Inappropriate comments about Superintendent of Schools, Dr. O'Malley

On October 23, 2014, Ms. Lechelt engaged in a course of misconduct directed towards Dr. O'Malley, which was inappropriate, foul, discriminatory, offensive, harassing and sexual in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence). Such conduct resulted from a group chat through "Today's Meet" that was visible to Alysia Battista and others who were present in the Training, as well as to the entire Edison Township School District community, as "Today's Meet" is a public chat room which maintains a transcript of each conversation and is accessible to all Board employees and students.

More specifically, Ms. Lechelt made inappropriate and unsubstantiated comments about Dr. O'Malley's appearance, sexual proclivity, professionalism and hiring/promotion practices, as more fully set forth in Exhibit B of the Sworn Statement of Evidence. Ms. Lechelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for anyone who has had occasion to review her comments and made it unpleasant for Ms. Battista and other staff members to be in her presence for fear that they will either be harassed, discriminated against and embarrassed; made to feel uncomfortable; and/or forced to hear and or view Ms. Lechelt make further inappropriate and offensive comments to them, about them and/or about others.

Count 4 - Inappropriate comments about Alysia Battista

On October 23, 2014, Ms. Lechelt engaged in a course of misconduct directed towards Alysia Battista, which was inappropriate, foul, discriminatory, offensive, harassing and sexual in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence). Such conduct resulted from a group chat through "Today's Meet" that was visible to Alysia Battista and others who were present in the Training, as well as to the entire Edison Township School District community, as "Today's Meet" is a public chat room which maintains a transcript of each conversation and is accessible to all Board employees and students.

More specifically, Ms. Lechelt made the following comment about Alysia Battista:

- "she keeps scratching her lips and they are getting bigger."

Ms. Lechelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for anyone who has had occasion to review her comments and made it unpleasant for Ms. Battista and other staff members to be in her presence for fear that they

will either be harassed, discriminated against and embarrassed; made to feel uncomfortable; and/or forced to hear and or view Ms. Lechelt make further inappropriate and offensive comments to them, about them and/or about others.

Count 5 - Inappropriate comments directed at unidentified employees in the Training

On October 23, 2014, Ms. Lechelt engaged in a course of misconduct against other unidentified employees in attendance at the Engrade training, which was inappropriate, foul, discriminatory, offensive, harassing and sexual in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence). Such conduct resulted from a group chat through "Today's Meet" that was visible to Alysia Battista and others who were present in the Training, as well as to the entire Edison Township School District community, as "Today's Meet" is a public chat room which maintains a transcript of each conversation and is accessible to all Board employees and students.

More specifically, Ms. Lechelt made the following comments about various unidentified employees:

- "maybe you should start slowly . . . like with this lady in the red tshirt in the second row";

- Following Mr. Van Pelt's statement that he "has been there done that," Ms. Lechelt stated, "so did JB";

- "she is a fan of the backchannel . . . and jean overalls."

Ms. Lechelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for anyone who has had occasion to review her comments and made it unpleasant for Ms. Battista and other staff members to be in her presence for fear that they will either be harassed, discriminated against and embarrassed; made to feel uncomfortable; and/or forced to hear and or view Ms. Lechelt make further inappropriate and offensive comments to them, about them and/or about others.

Count 6 - Inappropriate and offensive comments between each other

On October 23, 2014, Ms. Lechelt engaged in a course of misconduct, which was inappropriate, foul, discriminatory, offensive, harassing and sexual in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence). Such conduct resulted from a group chat through "Today's Meet" that was visible to Alysia Battista and others who were present in the Training, as well as to the entire Edison Township School District community, as "Today's Meet" is a public chat room which maintains a transcript of each conversation and is accessible to all Board employees and students.

More specifically, Ms. Lechelt made the following comments:

- "poor man's anything is as good as its gonna [sic] get in Edison";
- "oh I will be a supervisor soon – I'm cute and blonde";
- "I didn't realize your were a backchannel guy . . . thank god I found out";
- "this conversation is so beautifully filthy";
- "she hates us . . . but then again, who doesn't";
- In reference to the use of the word repository, Ms. Lechelt stated, "yes, its used in your backchannel";
- "suck in the beauty tvp because its all down hill when we get back to schoo [sic]";
- "Well you better start thinking about baseball or dick cheney before you stand up";
- Following a reference made by Mr. Van Pelt that he just returned from the bathroom where he masturbated, Ms. Lechelt stated, "I knew it! Do you still like her . . . or are you over it";
- After suggesting that Mr. Van Pelt ask the instructor if she wants to blow him, Ms. Lechelt stated, "I love when you guys ask me that";
- "that's better than the ol [sic] 'powder your balls' shower."

Ms. Lechelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for anyone who has had occasion to review her comments and made it unpleasant for Ms. Battista and other staff members to be in her presence for fear that they will either be harassed, discriminated against and embarrassed; made to feel uncomfortable; and/or forced to hear and or view Ms. Lechelt make further inappropriate and offensive comments to them, about them and/or about others.

CHARGE II

Insubordination and Unbecoming Conduct and/or Other Just Cause Disruption of Professional Development Training

All of the allegations contained in the Background Information and preceding Charges are incorporated by reference as if fully set forth herein. On October 23, 2014, during an Engrade Training, Maryellen Lechelt engaged in a course of misconduct that was inappropriate, foul, discriminatory, harassing, offensive and sexual in nature. More specifically, by actively participating in a group chat through "Today's Meet", which was – in part – about Alysia Battista, visible to Ms. Battista and highly offensive to her, Ms. Battista was unable to focus and effectively forced to leave the training to forego further angst, ultimately preventing her from reaping any instructional benefits.

This misconduct by Ms. Lechelt is unconscionable and constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

CHARGE III

Insubordination and Unbecoming Conduct and/or Other Just Cause
Misuse of the District's Computer Network

All of the allegations contained in the Background Information and preceding Charges are incorporated by reference as if fully set forth herein. On October 23, 2014, Maryellen Lechelt actively participated in a group chat through the District's computer network that was inappropriate, foul, discriminatory, harassing, offensive and sexual in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence), by way of the "Today's Meet" website, which constituted a flagrant misuse of Board resources and showed a concerning lack of judgment and failure to comply with the heavy duty of self-restraint and controlled behavior expected from any member of the teaching profession. This misconduct by Ms. Lechelt is unconscionable and constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

CHARGE IV

Insubordination and Unbecoming Conduct and/or Other Just Cause
Violations of District Policies

All of the allegations contained in the Background Information and preceding Charges are incorporated by reference as if fully set forth herein. On October 23, 2014, Maryellen Lechelt actively participated in a group chat through the District's computer network that was inappropriate, foul, discriminatory, harassing, offensive and sexual in nature (the content of which is set forth more fully in Exhibit B of the Sworn Statement of Evidence), by way of the "Today's Meet" website, which was both viewable to other attendees of the Engrade Training and obtainable by any District employee and student through the "Today's Meet" website, in violation of numerous Board Policies, as more specifically set forth immediately below within this Charge. This misconduct by Ms. Lechelt is unconscionable and constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

Count 1 – Violation of Sexual Harassment Policies/Regulations

Mr. Lechelt's conduct violated Board Policy 3362, *Sexual Harassment*, in that it subjected Alysia Bennett, as well as other Board employees, "to sexually offensive speech and conduct . . . wholly inappropriate to the harmonious employment relationships necessary to the operation of the school district." Further, Ms. Lechelt's conduct was severe and pervasive and had the purpose or effect of unreasonably altering or interfering with work performance or creating an intimidating, hostile or offensive working environment for others. More specifically, Ms. Lechelt made statements, including but not limited to, her sexual abilities and those of co-workers; obscene

teasing, jokes and remarks of a sexual nature; comments of a sexual nature on, or staring at, an individual's physical attributes; and questions about sexual conduct. Regardless of whether such comments were directed at a particular individual, or even if such targets were aware that comments were made about them, Ms. Lechelt's graphic declarations constitute sexual harassment.

Count 2 – Violation of Affirmative Action Policy

Ms. Lechelt's conduct violated Board Policy 1140, *Affirmative Action Program*, in that it subjected Alysia Battista, as well as other Board employees, to a "learning environment [rife] with all forms of prejudice, discrimination and harassment . . ."

Count 3 – Violation of Sexual Harassment and Affirmative Action Policies pertaining to Affirmative Action Investigation

Following an Affirmative Action/Sexual Harassment Investigation conducted by the District's Affirmative Action Office, Margaret Deluca, Ms. Lechelt's conduct during the October 23, 2104 Today's Meet group chat was determined to be in violation of the District's Sexual Harassment and Affirmative Action Policies, as well as various other Board Policies. In relevant part, Ms. Deluca found that the "comments in the chat were directed against females and were so outrageous that the teacher filing the complaint was unable to concentrate on the needed instruction, thus interfering with her work performance." Further, Ms. Deluca expressed her concern that Ms. Lechelt did not understand the gravity of her conduct. As a result of same, Ms. Deluca recommended that Dr. O'Malley "consider the most severe [disciplinary] consequences for Ms. Lechelt." Ultimately, Ms. Lechelt's behavior triggered an Affirmative Action/Sexual Harassment investigation that resulted in a determination of misconduct by her.

Count 4 – Violation of Code of Ethics Policy

Ms. Lechelt violated Board Policy 3211, *Code of Ethics*, in that she failed to "exert every effort to raise professional standards to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons."

Count 5 – Violation of Inappropriate Staff Conduct Policy

Ms. Lechelt violated Board Policy 3281, *Inappropriate Staff Conduct*, by engaging in inappropriate conduct, outside of his professional responsibilities, including communications through the internet, which were available to pupils and for public display.

Count 6 – Violation of Healthy Workplace Environment Policy

Ms. Lechelt violated Board Policy 3351, *Healthy Workplace Environment*, by engaging in "repeated malicious conduct . . . directed toward another employee or group of employees in the workplace that [Ms. Battista, and others, found] hostile [and] offensive."

Count 7 – Violation of Acceptable Use of Computer Network(s)/Computers and Resources by Teaching Staff Members

Ms. Lechelt violated Board Policy 3321, *Acceptable Use of Computer Network(s)/Computers and Resources by Teaching Staff Members*, by engaging in a group chat on the District's computer network that had no administrative and/or educational purposes. More specifically, Ms. Lechelt violated this Policy by actively participating in a conversation through the District's computer network that was highly inappropriate (contrary to the intended use of the network) and outright obscene (contrary to the generally accepted social standards for use of publicly owned and operated communication vehicles).

CHARGE V

Insubordination and Unbecoming Conduct and/or Other Just Cause
Failure to Pay Attention During Professional Development Training

All of the allegations contained in the Background Information and preceding Charges are incorporated by reference as if fully set forth herein. On October 23, 2014, during an Engrade Training, as a result of a roughly two and a half hour inappropriate and extraneous conversation, unrelated to the Training in any way, Maryellen Lechelt failed to pay attention and/or make any effort to benefit from the instruction provided. By her own admission, Ms. Lechelt stated, "I can continue to sit in the back of my room and read us weekly" and "im [sic] not going to pay attention now." Ms. Lechelt's actions destroyed the trust placed in her by the Board. This misconduct by Ms. Lechelt constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

CHARGE VI

Insubordination and Unbecoming Conduct and/or Other Just Cause
Ongoing Neglect of Duty

All of the allegations contained in the Background Information and preceding Charges are incorporated by reference as if fully set forth herein. On October 23, 2014, during an Engrade Training, Maryellen Lechelt stated her desire to continue to find ways to act similarly (*i.e.*, engage in inappropriate conversations during instructional time), ultimately conceding her desire to not perform her job in the future. More specifically, Ms. Lechelt made the following comments:

- "we have spent 5 minutes idling which works out to 300,787 hours of time wasted per year . . . which the township has paid close to 300,000 dollars in salary for us to do – yay us";
- "I can continue to sit in the back of my room and read us weekly";

- "tvp, lets start a todays meet when we get back to school and are supposed to teach";
- "lets find another training we can all sign up for . . . this is extremely therapeutic."

This misconduct by Ms. Lechelt constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

POSITIONS OF THE PARTIES

CONTENTIONS OF THE BOARD

The Board argued as follows:

These facts pertain to Maryellen Lechelt.

- Ms. Lechelt has been employed by the Board since September 2011. She received tenure in or about September 2014 – just one month prior to engaging in the conduct at issue. 3T 63:22-25.
- Ms. Lechelt was an elementary teacher, assigned to Lincoln Elementary School for the 2014-2105 school year.
- On September 5, 2014, Ms. Lechelt executed the *Important Board Policies, Regulations, and Mandated Communications* Form, acknowledging that all Board policies and regulations can be found on the Board's website at http://www.edison.k12.nj.us/Page/514 and agreeing to review and conform to the requirements of same. B-18.

The following facts apply to all of the Respondents

- Article III(B)(1 and 2) of the Agreement for Professional Employees between Board of Education Edison Township New Jersey and Edison Township Education Association, July 1, 2011 through June 30, 2014 ("CBA") state, in relevant part, that "all Board of Education policies will be upheld and enforced by all Board employees who are party to this Agreement, as well as by all Administrators, Principals, and Supervisors" and "all Board of Education policies will be available for review in the office of the principal, school library, and the Association office." B-27.
- Board Policy 3321, *Acceptable Use of Computer Network(s)/Computers and Resources by Teaching Staff Members*, advises employees that 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." Policy 3321 further states that "the Board provides access to computer network(s)/computers for administrative and educational purposes only." Moreover, the foregoing policy, in relevant part, states that "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: (1) using the computer network(s)computers for . . . inappropriate or obscene purposes." B-24.

- Moreover, Policy 3321 subject employees who violate same to discipline, which includes but is not limited to, suspension, revocation of computer privileges and/or dismissal. B-24.
- Unequivocally, there is no expectation of privacy for any Board employee when using the district's computer network. In fact, there is no program and/or policy that would trump the foregoing fact. 3T-14:16-15:12; 2T 26:13-19.
- Board Policy 3362, *Sexual Harassment*, states that "[s]exual harassment includes all unwelcome . . . verbal contacts of a sexual nature that would not have happened but for the employee's gender." Policy 3362 further states that "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." B-21.
- Board Policy 3362 also states that "any employee . . . who is found to have sexually harassed an employee of this district will be subject to discipline which may include termination of employment." B-21.
- Board Policy 1140, *Affirmative Action Program*, establishes that the Board's affirmative action program will "foster a learning environment that is free from all forms of prejudice, discrimination, and harassment based upon race, creed, color, national origin, ancestry, age, martial status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status in policies, programs, and practices of the Board of Education." B-20.
- Board Policy 3281, *Inappropriate Staff Conduct*, states in relevant part that "[I]nappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Policy 3281 further states that "School staff's conduct in completing their professional responsibilities shall be appropriate at all time . . . [and] school staff shall not make inappropriate comments about pupils." B-23.
- Board Policy 3211, *Code of Ethics*, indicates that "the educator shall exert every effort to raise professional standards to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education." B-22.
- Board Policy 3351, *Healthy Workplace Environment*, requires that "employees interact with each other with dignity and respect" and further states that "repeated malicious conduct of an employee or group of employees directed toward another employee or group of employees in the workplace that a reasonable person would find hostile and offensive is

unacceptable and is not conducive to establishing or maintaining a healthy workplace environment." Policy 3351 further defines the foregoing unacceptable conduct to include the use of derogatory remarks; insults; verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating. Finally, a single act of such conduct can constitute the unacceptable conduct prohibited by this policy if it is especially severe and egregious. B-25.

- Board Policy 3351 states that "appropriate disciplinary action may be taken depending on the severity of conduct." B-25

- On October 23, 2014, Respondents attended a mandatory Engrade Training (the "Training") at the Board's offices. Engrade was a new initiative (learning management system) for the District's elementary school teachers. 2T 24:3-23.

- The Training lasted for two-and-one-half hours (roughly 9:00-11:30AM) and was conducted by Sara Bleekinger, who is not a Board employee. 2T 28:24-29:2.

- Respondents were required to use their District issued Chromebooks to participate in the Training. All Respondents admit to using same during the Training and connecting to the Internet through the District's network. Further, Respondent's computers were open, with their screens exposed, throughout the duration of the Training. 1T 74:12-18; 2T 25:6-20.

- At 8:53AM, Mr. Van Pelt forwarded an email to Ms. Lechelt, Ms. Weber and Jonathan Bauza, requesting that they "join [him] on [his] personal wiseass backchannel discussion."[2] B-12.

- Mr. Van Pelt attached a link to bring the invitees to a web site called "Todays Meet." B-12. Today's Meet is an interactive program that hosts various educationally based conversations (i.e., teacher to teacher / teacher to student). However, Today's Meet is not a program that the District requires it teachers to use and/or be familiar with. In fact, it has no affiliation to this District. Importantly, the District does not maintain Today's Meet chat and/or content, nor does it request and/or require Today's Meet to do so. 3T 20:5-11; 5T 236:24-237:15.

- Respondents were <u>not</u> required to use Today's Meet as part of the Engrade Training. In fact, there was absolutely no compatibility and/or correlation between the Engrade Training the Today's Meet website. B-41.

- Respondents denied reading Lechelt-3 in its entirety prior to using the Today's Meet Program on October 23, 2014. More specifically, Respondent's did not review Today's

[2] Note that while the invitation was actually sent at 8:53AM, the email illustrates that it was sent at 5:53AM. The district's network is set not set to Pacific Standard time and is therefore displayed at a time three hours earlier than it actually is. 2T 45:13-46:3.

Meet's Privacy Policy and Terms of Service. In fact, said portions of Lechelt-3 became effective December 13, 2014 – after the chat at issue occurred! See, Lechelt-3.

- Moreover, the document bates stamped Lechelt-032 within Lechelt-3 illustrates that Today's Meet chat rooms can be public and/or have limited access. Without question, the chat at issue here was not totally private as Ms. DeLuca – who was not invited to take part in same – was able to access the chat room.[3] See, Lechelt-3.

- The Respondents, along with Jonathan Bauza, proceeded to engage in a 2.5 hour chat (beginning at 8:54AM and ending at 11:24AM) (hereinafter referred to as the "Group Chat"). B-13.

- James Madison Intermediate School Teacher, Alysia Battista, also attended the October 23, 2014 Engrade Training. 1T 60:10-16.

- Throughout the Training, Alysia Battista was seated in the last row, roughly 3 feet directly behind Ms. Lechelt. To the left of Ms. Lechelt were Jonathan Bauza and then Mr. Van Pelt. Ms. Weber was seated directly in front of Mr. Van Pelt. See, Lechelt-1; 1T 181:13; B-44 and Lechelt-1.

- Ms. Battista did not have any personal animosity towards Respondents prior to the Training. In fact she had no relationship (personal/professional) with any of them prior to same. 1T 83:4-9.

- A few moments after the Training began, Ms. Battista was distracted by noise emanating from Mr. Van Pelt, Ms. Lechelt and Mr. Bauza. Mr. Battista proceeded to "shush" Ms. Lechelt. 1T 67:5-22.

- Ms. Lechelt turned around and gave Ms. Battista a look that Ms. Battista interpreted as "really did you just shush me?" Ms. Lechelt and Messrs. Van Pelt and Bauza continued to converse loudly and lean in towards each other's computer screens. 1T 68:14-20.

- Ms. Battista was able to clearly see Ms. Lechelt's computer screen and, therefore, observe the content of the conversation between Ms. Lechelt, Mr. Van Pelt, Mr. Bauza and Ms. Weber. In fact, Ms. Battista indicated that Respondents made no effort to hide what was going on and, in fact, at one point during the training, Ms. Lechelt actually got up from her seat, leaving the computer screen open and the chat on the screen – exposed to the general public and visible to anyone looking. More specifically, Ms. Battista observed the following comments: "short bus" and sexual innuendos – i.e., references to male genitalia, "blow me" and "how do you think I got my job"; comments about lesbians. Ms. Battista also observed comments about someone wearing red. Ms. Battista was wearing red and believed some of

[3] Moreover, this chat was not private as the Respondents, notwithstanding their lack of privacy expectation on the district's network, have no expectation of privacy to the content of a chat displayed on their computer to a third party while in a public room.

the commentary was directed towards her. 1T 69:18-71:22; 74:12-18; 1T 70:5-9, 74:12-19; B-8, B-10.

- Ms. Battista was heavily distracted and highly uncomfortable with the nature of the chat. She described same as "unbelievable". The content of the conversation was upsetting to Ms. Battista because: (1) she has a niece who is classified as special education; (2) she has an "uncle who's epileptic and his whole life he was called retarded and that affected him, so to see that from people who work with children"; and (3) she has a cousin who is discriminated against for being a lesbian. Ms. Battista indicated that "seeing those things especially with people who work with kids, whether it's a joke or not, that's not crossing the line, that's jumping over the line and turning around and spitting on it." 1T 73:5-24.

- Ms. Battista found the Group Chat to be "sexually offensive." 1T 151:16-20.

- Similarly, Ms. Battista clearly observed the web address that hosted the Group Chat. She documented same in both her note to Mr. Figurelli and her written statement. 1T 84:4-16; B-8 and B-10.

- Ms. Battista, based on the portions of the transcript she saw, believed that the Respondents were talking about her – *i.e.*, she observed a comment about something red somebody was wearing, and assumed it was a reference to her because she was wearing a red sweater; and she saw a reference about someone "scratching their lips", which Ms. Battista tends to do when she gets upset, as was the case during the Group Chat. 1T 71:8-22; 176:11-21.

- Ms. Battista made a determination to inform central administration about this chat. She believed that since she preaches to her students to "say something if they see something", she would be disingenuous if she did not do same. Moreover, she expressed concern – *i.e.*, "if that's what's going on in public when other people can see it and I don't think they made any effort to hide what was going on, what could possibly be going on when the kids were not being supervised by other adults." 1T 74:7-11.

- Ms. Battista proceeded to take photographs of Ms. Lechelt's computer screen so she would be able to prove the egregiousness of Respondent's chat. Ms. Battista did not take the time to focus her phone when she snapped the pictures and that is why same cam out blurry. 1T 75:21-25; B-7.

- Ms. Lechelt made all of the comments in the chat attributed to "mamalechelt." B-4. Specifically, Ms. Lechelt made the following comments about the Engrade Trainer – Sarah Bleekinger:

    - "the eyebrows are distracting";

    - "im [sic] trying to have her look at you";

    - "your [sic] making her nervous";

- "this is essentially like a robot teaching the class";
- Regarding the trainer, Ms. Bleekinger, allegedly looking at Mr. Van Pelt, Ms. Lechelt stated, "lets make it a drinking game";
- "im [sic] starting to get a bit of a fargo accent from her";
- "still interested tvp???"
- "I have a feeling shed rather go out with me"
- "I think her car is parked behind him and she's seeing if she left her windows open"
- "im [sic] worried you'll catch something from her backchannel"[4];
- "lets take her to lunch tvp . . . you can share a burrito";
- "theres [sic] not enough room in her repository for two";
- "no hes [sic] going to have to take it slow, . . . no backchannels yet . . . that's his signature move too";
- "I'm going to use the bathroom now . . . I think I like her too";
- In response to Mr. Van Pelt's statement that he was "thinking of a super smart question to ask that will make her melt," Ms. Lechelt stated, "what is it? Do you want to blow me?" B-13.

• Ms. Lechelt made the following comments concerning special education/handicap students:

  - "I like the group name 'morons'";
  - "they take the tart cart home";
  - "I also prefer my lows 'jesus Christ, why the fuck did they place you with me?'";
  - "middle group = 'just shut your mouth and do your work.'" B-13.

• Ms. Lechelt made the following comments about Dr. O'Malley:

  - "I heard these engrade broads are easy . . . tricky d told me that . . . holla";[5]

[4] A reference to anal sex. 3T 266:4-7.
[5] "Tricky d" is a reference to Dr. Richard O'Malley. 3T 227:20-24.

- In response to Mr. Van Pelt's statement that he did not want Dr. O'Malley's "sloppy seconds," Ms. Lechelt stated "well that eliminates the whole district then . . . how do you think I got the job";
- "I can appreciate any man that looks like a turtle having the ability to get any woman";
- "I find him incredibly sexy . . . in a 'I need a job' kinda way";
- "oh he's proficient in pulling chicks . . . the catch is . . . theyre ugly." B-13.

- Ms. Lechelt made the following comment about Alysia Battista:
  - "she keeps scratching her lips and they are getting bigger." B-13.
- Ms. Lechelt made the following comments about various unidentified employees:
  - "maybe you should start slowly . . . like with this lady in the red tshirt in the second row";
  - Following Mr. Van Pelt's statement that he "has been there done that," Ms. Lechelt stated, "so did JB";
  - "she is a fan of the backchannel . . . and jean overalls." B-13.
- Ms. Lechelt made the following comments to Mr. Van Pelt, Ms. Weber and Mr. Bauza:
  - "poor man's anything is as good as its gonna [sic] get in Edison";
  - "oh I will be a supervisor soon – I'm cute and blonde";
  - "I didn't realize your were a backchannel guy . . . thank god I found out";
  - "this conversation is so beautifully filthy";
  - "she hates us . . . but then again, who doesn't";
  - In reference to the use of the word repository, Ms. Lechelt stated, "yes, its used in your backchannel";
  - "suck in the beauty tvp because its all down hill when we get back to schoo [sic]";
  - "Well you better start thinking about baseball or dick cheney before you stand up";

- Following a reference made by Mr. Van Pelt that he just returned from the bathroom where he masturbated, Ms. Lechelt stated, "I knew it! Do you still like her . . . or are you over it";
- After suggesting that Mr. Van Pelt ask the instructor if she wants to blow him, Ms. Lechelt stated, "I love when you guys ask me that";
- "that's better than the ol [sic] 'powder your balls' shower." B-13.

The foregoing chat had no educational purpose, nor did it enhance the instruction of the Training in any manner. 3T 250:24-251:6; B-42.

- Ms. Battista left the Training to speak with Steve Figurelli about her observations. Mr. Figurelli was unavailable so Ms. Battista wrote him a quick note and placed same in a sealed envelope for his attention. B-8.
- Ms. Battista returned to the Training because she knew the Training was important and because she felt she had a professional obligation to sit through same. She did not believe she could simply leave for the day. 1T 79:19-80:1; 149:19-21.
- As a result of Respondents' conduct, Ms. Battista was unable to concentrate and was prevented from learning the content of the Training. Thus, Ms. Battista was unprepared to use Engrade with her students and/or to teach Engrade to her less computer savy team members and/or student teachers. 1T 71:23-25; 81:8-11; 1T 60:17-61:5.
- Within an hour after the Training, Ms. Battista met with her building Principal, Mr. Duggan, to inform him of Respondents' conduct. 1T 82:2-8.
- Pursuant to the request of Mr. Duggan, Ms. Battista prepared a handwritten statement, documenting her observations during the Training. 1T 83:15-19; B-10.
- Thereafter, later in the day on October 23, 2014, Ms. DeLuca interviewed Ms. Battista as part of an affirmative action investigation concerning Respondents' conduct. Ms. Battista provided Ms. DeLuca with a handwritten statement. Ms. Battista was very upset and visibly shaken during this meeting. See, B-11, B-10 and 2T 31:2-33:18; 1T 88:3-18; B-10.
- Ms. DeLuca accessed and reviewed a written copy of the Today's Meet Group Chat ("Transcript"). More specifically, Ms. DeLuca was initially provided with a copy of same by Tara Beams, but also was able to access a copy of the Transcript by simply opening Today's Meet.com and entering the Chat Room created by Mr. Van Pelt. 2T 41:4-20; B-13.
- Ms. DeLuca found the Transcript to be disgusting and offensive. 2T 48:20-23.
- The chat between Mr. Van Pelt, Ms. Lechelt and Ms. Weber was open to the public and anyone with the chat name was able to access same. 2T 44:6-10; 6T 8:19-22.

- In fact, Don Platvoet, during his brief training of Respondent's on the potential uses of Today's Meet, did not inform Respondent's that it was a private program. 6T 8:8-15.

- Next, Ms. DeLuca met with and interviewed the other teachers in attendance during the October 23, 2014 Engrade Training, with the expectation of three or four teachers that Mr. Duggan had already spoken with. 2T 50:12-25; See, teacher interview notes.

- Only one other teacher present during the Training (Angie McKenna) observed the content of the chat between Respondents. 2T 52:22-53:16.

- Ms. DeLuca then proceeded to separately interview each of the Respondents. B-14 through B-16; 2T 56:10-12.

- Mr. Van Pelt and Ms. Lechelt indicated that they made derogatory references to special education and/or handicap students as a result of the Instructor's "offensive" use of the designation "low" for students. 2T 63:15-64:8.

- Per the District's Assistant Superintendent for Special Services, the Instructors use of the designation "low" should not have been offensive. In fact, all of the tests used by the District to classify special education students use the term "low" when classifying students. 2T 65:13-66:5; 3T 237:12-239:16.

- Respondents all appeared to be sorry they were caught, not sorry they had engaged in the conduct at issue. 2T 93:19-24; 104:14-105:4; 114:18-21.

- Specifically, Mr. Van Pelt did not take Ms. DeLuca's interview seriously. On two separate occasions during the interview, Mr. Van Pelt blurted out offensive, disgusting and unacceptable comments – *i.e.*, (1) when explaining that the phrase "eating chicken" means oral sex, Mr. Van Pelt stated under his breath, audible to Ms. DeLuca, that he likes oral sex; and (2) after explaining that the phrase "get the baby batter off the brain" was a reference to masturbation, Mr. Van Pelt stated, that he did not masturbate, "at least not that time." 2T 75:2-8; 76:6-20; 88:6-89:6.

- Throughout the course of her investigation, Ms. DeLuca determined the following meanings for the following phrases used by Respondents:

    - That many, if not all, references to "backchannel" were references to anal sex. B-15; 2T 68:7-16; 3T 266:4-7.

    - Mr. Van Pelt consistently used the phrase "eating chicken", which means both smoking marijuana and oral sex. 2T 71:1-2, 73:22-23.

    - After Ms. DeLuca stated that Ms. Battista "keeps scratching her lips and they are getting bigger." Mr. Van Pelt stated, "DSL." "DSL" is an acronym for the phrase *Dick Sucking Lips*. B-13; 2T 77:5-24.

- "Tricky d" and "Little Richard" were derogatory references to Dr. O'Malley, made by Ms. Lechelt and Mr. Van Pelt, respectively. B-13; 3T 227 20-24; 5T 244:12-20.
- Mr. Van Pelt's use of the phrase "get[ting] the baby batter off the brain" was a reference to male ejaculation/masturbation. 2T 87:10-88:5; B-14.

- Following her interviews of Respondents, Ms. DeLuca reviewed and analyzed all relevant Board Policies to determine whether violations had occurred. 2T 114:22-115:1; 2T 55:3-20.

- Finally, Ms. DeLuca analyzed and evaluated all of the information/evidence gathered throughout her investigation and prepared a memorandum summarizing her findings and providing recommendations for Dr. O'Malley's review. B-26; 2T 126:10-22.

- Ms. DeLuca recommended that Dr. O'Malley consider the most severe consequences possible for all three Respondents because "they didn't seem, for lack of a better term, to get it. They didn't seem to realize the seriousness of the situation." 2T 127:25-128:13.

- Dr. O'Malley recommended that Tenure Charges be filed against Respondents because he "felt their comments and their actions were so egregious, that it would not make them suit [sic] to fit in a position of entrusting them with children . . . I just felt that in the context of their – what they wrote and what they were talking about was just – just disgusting and unbearable . . . <u>And how could I ever look a parent in the eye and say that their children are safe knowing that they are in front of their classroom</u>." 3T 57:17-58:3.

- The Tenure Charges were posted to the public through the news media. Parents and teachers alike have approached Dr. O'Malley on a daily basis to express their trepidations to the possible return of Respondents to the classroom. 3T 62:22-63:19.

- Dr. O'Malley indicated that "every parent and Edison resident and teacher in the district aren't – now that the transcript was posted, that they feel that this was absolutely disgusting, and how can anyone not only talk about this, but talk about someone's child like this." 3T 63:4-8.

The record is closed and the evidence speaks for itself – the Board has proven by a preponderance of the credible evidence that Lechelt engaged in unbecoming conduct, misbehavior and/or other just cause warranting her dismissal from their tenured positions with the Board.

Lechelt conduct in engaging in a discriminatory, offensive and highly inappropriate group chat that constitutes unbecoming conduct and/or just cause warranting their dismissal. On October 23, 2014, during a mandatory Engrade Training, Lechelt and the other respondents engaged in a two

and one-half hour "Group Chat" through the "Today's Meet Website, visible to those present in the room, observed in detail by Alysia Battista and ultimately printed through the news media and therefore, viewable by the general public. Respondents conceded that they were responsible for posting the various comments attributed to them (*i.e.*, "tvp" = Mr. Van Pelt; "trish" – Ms. Weber; and "mamalechelt" = Ms. Lechelt).. The chat was full of sexual innuendo, discriminatory, offensive and ultimately created a hostile and uncomfortable work environment for Ms. Battista. In fact, Ms. Battista believed portions of the chat were directed at her and was made to feel so uncomfortable by the general content of same that she was unable to remain focused during the Training and was ultimately brought to tears after having been exposed to same.

The inappropriateness of Respondents' chat is born from an objective review of the Today's Meet Transcript (B-13). Respondents' subjective descriptions and/or interpretations of the chat as a *joke* or a *misunderstanding* are entirely irrelevant to this Tribunal's consideration. Conversely, the Board's conclusion that the Respondents displayed such poor judgment through their participation in the Group Chat that they are not fit to be entrusted with the care of this District's students, coupled with the common sense determination that their conduct crossed all behavioral boundaries for public school teachers, should not be disturbed.

As to Charge I Count 1, Respondents, as a group, consistently directed commentary towards and/or about Ms. Bleekinger that was sexually explicitly offensive, demeaning, derogatory and wholly inappropriate. More specifically, Respondents consciously decided to turn a serious and important instructional course into a fantasy game of sorts, within which they vividly described and/or actively suggested ways for Mr. Van Pelt to initiate and achieve sexual interactions with Ms. Bleekinger, along with the sexual fantasies Mr. Van Pelt had towards Ms. Bleekinger. Mr. Van Pelt

admitted to making the following comments: "I'd like to tag her"; "you know what would look good on you? ME"; "do you like to have your hair pulled"; "I'd like to invite her to a private backchannel discussion . . . all night long".

Ms. Lechelt admitted to making the following comments: "I have a feeling she would rather go out with me";"im [sic] worried you'll catch something from her backchannel"; "theres [sic] not enough room in her repository for two"; "do you want to blow me". Ms. Weber admitted to making the following comments: "dare you to ask if she would go out with our friend ty"; "tell her to meet u [sic] at Dartmouth at 4"; "im [sic] sure his roomie would love to join too") our friend ty"; "tell her to meet u [sic] at Dartmouth at 4 (Van Pelt's address)" ; "im [sic] sure his roomie would love to join too").

Despite denying engaging in such behavior within their Answers to the Sworn Tenure Charges and Answers to Interrogatories, Mr. Van Pelt and Ms. Weber conceded, through their testimony, that their comments towards Ms. Bleekinger were inappropriate. Conversely, the record is devoid of any concession of remorse by Ms. Lechelt with regard to the specific comments she directed towards Ms. Bleekinger during the Group Chat.

Regardless of Respondent's testimony, even a cursory review of the portions of the Transcript directed towards Ms. Bleekinger illustrate that same is inappropriate for teachers to partake in during school hours and through the District's computer network. Further, whether or not Ms. Bleekinger observed the comments directed towards her is immaterial. The record is clear – the Board's administration, Ms. Battista (the only Board employee to view the chat) and the general public found the comments directed towards Ms. Bleekinger to be inappropriate, foul, discriminatory, offensive, harassing and sexual in nature. Thus, the Board has provided sufficient

evidence to sustain this Charge.

With respect to Count 2 of Charge I, Ms. Van Pelt and Ms. Lechelt engaged in the following exchange:

> Performance indicators are very positive with this fella – tvp
>
> I like the group name "morons" – mamalechelt
>
> The mo moes – lol
>
> Bobo – tvp
>
> They take the tart cart home – mamalechelt
>
> Short bus kids – tvp
>
> I name my smart kids group "mr vp's favority students – tvp
>
> Lol – mamalechelt
>
> And my low group is called "I hate you don't waste my time" – tvp
>
> My middle group is "whatever" – tvp
>
> I also prefer for my lows "jesus christ, why the fuck did they place you with me?" – mamalechelt
>
> Middle group = "just shut your mouth and do your work" – mamalechelt

The foregoing comments were, without question, made by Mr. Van Pelt and Ms. Lechelt and directed towards the special education/handicap students in their respective classes (*e.g.*, "tart cart" and "short bus" are references to vehicles used to transport special education students).

Mr. Van Pelt and Ms. Lechelt, after having occasion to discuss, with each other, their conduct during the Group Chat, conspired and formulated an excuse that is illogical, unpersuasive and perhaps, most importantly, devoid entirely of any remorse. Specifically, Mr. Van Pelt indicated that

he made the foregoing comments because Ms. Bleekinger "advised teachers they could feel comfortable labeling the students low because these labels wouldn't be seen" and such comments "struck a nerve." Similarly, Ms. Lechelt indicated that she made the foregoing statements following Ms. Bleekinger's categorization of students as "lows" and "your lows", coupled with Ms. Bleekinger informing the group that groups can be given any name the teacher desires. As a result of same, Ms. Lechelt explained that she countered such ridiculousness with more ridiculousness.

Notwithstanding the fact that Mr. Van Pelt and Ms. Lechelt are essentially attempting to argue that *two wrongs make a right*, their argument is fatally flawed and not credible for two reasons: (1) they acknowledged and accepted the district's use of various tests (*i.e.*, Woodcock-Johnson, Wechsler, etc.) that classify students as "low", "very low", "low-average"; and (2) they did not raise any complaints during the Training regarding Ms. Bleekinger's classifications of students as "low," but, rather, devised such an argument only after realizing others viewed what they written. Most importantly, however, even if Mr. Van Pelt and Ms. Lechelt were subjectively offended by something the instructor had said, their responsive commentary – made of their free will and volition – exhibited a disturbing lack of judgment and that, when viewed objectively, illustrates their true feelings towards this district's students. Thus, the Board has sustained its burden in establishing that Mr. Van Pelt and Ms. Lechelt engaged in unbecoming conduct by making wildly inappropriate comments about special education/handicap students.

Finally, as argued by the Board in its opening remarks, and as elicited through the testimony of Ms. DeLuca and Dr. O'Malley, Mr. Van Pelt and Ms. Lechelt's efforts to blame their voluntary conduct on something said by Ms. Bleekinger illustrates their childishness, lack of remorse, poor judgment and inability to comprehend right and wrong. Respectfully, any effort by Respondents to

mitigate the gravity of this particular Charge should be disregarded.

Charge I Count 3 concerns offensive and inappropriate comments made by Mr. Van Pelt and Ms. Lechelt about Dr. O'Malley, the Superintendent of Schools. In relevant part, they engaged in the following exchange:

> I heard these engrade broads are easy – mamalechelt
>
> Tricky d told me that – mamalechelt
>
> Well, I don't want that dudes sloppy seconds – tvp
>
> Well that eliminates the whole district then – mamalechelt
>
> I hear its part of the criteria – holla
>
> It is – mamalechelt
>
> How do you think I got the job – mamalechelt
>
> I'm not saying I disagree with all of the man's philosophies – tvp
>
> I can appreciate any man that looks like a turtle having the ability to get any woman – mamalechelt
>
> I find him incredibly sexy – mamalechelt
>
> In a "I need a job" kinda way – mamalechelt
>
> I am not prepared to accept the premise that little Richard has ever been proficient at pulling chicks – tvp
>
> Oh he's proficient at pulling chicks – mamalechelt
>
> The catch is . . . theyre ugly – mamlechelt

Mr. Van Pelt and Ms. Lechelt conceded making the foregoing statements and admitted that said exchange was about their boss – the superintendent of schools, Dr. O'Malley. On their face, the comments reference Dr. O'Malley's appearance, sexual proclivities and sexually-based hiring, firing and promotional practices. However, such defamatory comments are entirely without basis

in fact or reality and ultimately caused Dr. O'Malley undue embarrassment once the Today's Meet transcript was posted by the news media.

Suffice it say that the inappropriateness of this exchange between Mr. Van Pelt and Ms. Lechelt is borne from Ms. Weber's recognition and acknowledgment of same in the middle of the exchange – *i.e.*, "inappropriate in so many ways." Further, however, this count must be sustained against Mr. Van Pelt and Ms. Lechelt as they both acknowledged the inappropriateness and untruthfulness of their respective comments. 5T 139:19-140:6; B-15.

Charge I Count 4 deals with the unbecoming conduct of Mr. Van Pelt and Ms. Lechelt with respect to their harassing and offensive conduct about Alysia Batista. They engaged in the following exchange:

> She keeps scratching her lips and they are getting bigger – mamalechelt
>
> Actually ignore than [sic] – mamalechelt
>
> That – mamalechelt
>
> That was a complete threes company statement – mamalechelt
>
> Dsl – tvp
>
> We totally just made eye contact and totally had a moment – tvp

The foregoing comments were all made within a couple seconds of each other, as they are each time stamped 9:55AM. B-13.

Ms. DeLuca, through her investigation, deciphered the meaning and context of this portion of the chat between Ms. Lechelt and Mr. Van Pelt. Specifically, Ms. Lechelt's reference to "scratching lips" was a direct reference to Ms. Battista, who testified that when she gets nervous/anxious she has a habit of scratching her lips, and was doing same during the Respondents'

group chat. In response to Ms. Lechelt's comment about Ms. Battista's lips, Mr. Van Pelt stated "dsl." B-13. "Dsl" is a text acronym for "dick sucking lips." Clearly, Mr. Van Pelt's comment was directed toward Ms. Battista. Therefore, through the testimony of Ms. DeLuca and Ms. Battista, as well as the logical objective inferences to be drawn from the exchange on its face, the Board has sustained these allegations against Ms. Lechelt and Mr. Van Pelt.

Charge I Count 5 indicates that Mr. Van Pelt and Ms. Lechelt made offensive, discriminatory and inappropriate comments about unidentified employees in the training session. They made the following comments throughout his participating in the Today's Meet Group Chat:

> Following a reference by Ms. Lechelt to a lady in the red tshirt, Mr. Van Pelt stated, "been there done that"
>
> Had her when she was in her f-ing prime
>
> How's that for an image . . . try getting that out of your head
>
> Yea . . . she got the mustache too yo

Ms. Lechelt added the following comments:

> Maybe you should start slowly . . . like with this lady in the red tshirt in the second row
>
> Following Mr. Van Pelt's statement that he "has been there done that," Ms. Lechelt stated, "so did JB"
>
> She is a fan of the backchannel . . . and jean overalls

Clearly, as was par for the course throughout the Training and the Group Chat, Mr. Van Pelt and Ms. Lechelt picked a target (*i.e.*, lady in red tshirt) and attacked said employee through comments that were insulting, discriminatory, derogatory, offensive and sexual in nature. More simply, Mr. Van Pelt and Ms. Lechelt, through the foregoing comments, degraded a colleague by mocking her age, appearance and alleged sexual behavior. Thus, such comments were highly

inappropriate and deemed offensive to Alysia Battista, the Board's Administration and the general public - which likely includes the lady referenced by Mr. Van Pelt and Ms. Lechelt.

Count 6 of Charge I alleges that the Respondents made disgusting, offensive and inappropriate sexual comments among themselves and about each other.

Respondents, throughout the Group Chat, made consistent comments between each other about Mr. Van Pelt enjoying, preferring and/or engaging in anal sex – *i.e.*, use of word "backchannel." Mr. Van Pelt and Ms. Lechelt discussed masturbating, particularly in school and during the training session. In fact, the clear implication from their conversation was that Mr. Van Pelt had excused himself from the Training to masturbate in the restroom. Mr. Van Pelt made multiple references to the act of oral sex – *i.e.*, eating chicken, as well as a flippant comment about him being a "lesbian". Ms. Lechelt stated emphatically that she "loves" when Respondents ask her to "blow" them. Finally, the inappropriateness of Respondents' exchange is encapsulated by Ms. Weber's admission that the conversation is "so beautifully filthy" and "it always is when tvp is chatting."

Without question, such comments were graphically sexual, offensive, discriminatory, harassing and inappropriate to Ms. Battisa, Ms. DeLuca, Dr. O'Malley and the general public. Such commentary simply has no place inside of a school building. Thus, the Board has established that Respondents, with respect to this Charge, have engaged in unbecoming conduct.

Charge II alleges that Respondents engaged in unbecoming conduct during the training session when the caused a disruption by preventing Ms. Batista from participating in the training.

The record evidence demonstrates that Ms. Battista, upon viewing portions of the Group Chat, became offended, was unable to focus and was effectively forced to leave the training to report

the misconduct she observed Respondents partake in. In fact, Respondents' conduct prevented Ms. Battista from learning the content of the training. Thus, Ms. Battista was unprepared to use Engrade with her students and/or to teach the Engrade program to her team members and/or student teachers.

Respondents' defense to this Charge is entirely misplaced. More specifically, Respondents, through their testimony, failed to address the actual disruption to Ms. Battista (which was alleged in Charge II of the each of the Sworn Tenure Charges), while attempting to divert this Tribunal's attention to the lack of general disruption. Importantly, however, the Board did not charge Respondents with causing a general disruption to the Training as the Group Chat was only observed by one person and thus, logically, only could have disrupted one person – Alysia Battista.

Merrian's Webster Dictionary defines disruption as follows: to cause (something) to be unable to continue in the normal way; to interrupt the normal progress or activity of (something). Here, without question, Respondents' Group Chat resulted in a situation where Ms. Battista was unable to continue with the Training in the normal way. Thus, the Board has sustained its burden in establishing that Respondents disrupted the Engrade Training.

As a consequence of Respondents' partaking in a 2 ½ hour group chat, they failed to pay attention to the training. The Board has established by a preponderance of the credible evidence that Respondents, as a result of their participation in a 2.5-hour conversation during the Training, failed to sufficiently pay attention to the content and/or presentation of the Engrade materials.

The Board had an expectation that all teachers present at the Training, or any professional development training for that matter, would pay attention to the entirety of the instructional presentation and refrain from engaging in ancillary and unrelated conduct. Respondents' conduct fell far short of the foregoing expectation.

The transcript of the Chat proves that it lasted for 2.5 hours. Mr. Van Pelt made his first comment at 8:54AM and his last comment at 11:23AM. Similarly, Ms. Lechelt made her first comment at 8:54AM and her last at 11:24AM. B-13. Finally, Ms. Weber made her first comment at 8:58AM and her last comment at 11:24AM. B-13. Between 8:54AM and 10:49AM, the longest period of time in between comments was only 4 minutes, on two separate occasions. Both Mr. Van Pelt and Ms. Weber testified that they spent as much as 15-20 minutes participating in the chat. See, Ms. Lechelt did not attempt to quantify her participation in the chat.

Regardless of the self-serving estimates set forth by Mr. Van Pelt and Ms. Weber, even if each Respondent only spent 15-20 minutes participating in the chat (or the length of time it took them to type the comments they admitted to making into the chat), they failed to pay attention, or at the least, refrain from engaging in unrelated activity – by their own admission – throughout the entirety of the Training. Thus, the Board has sustained this Charge against all Respondents.

As to Charge III, on October 23, 2014, during the Training, Respondents participated in an inappropriate, foul, discriminatory, harassing and offensive chat through the District's computer Network and District's computers. The chat was not the result of any educational and/or instructional requirements or necessities. Thus, it constituted a misuse of the District's computer network.

Board Policy 3321, *Acceptable Use of Computer Network(s)/Computers and Resources by Teaching Staff Members*, states – in relevant part – that "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: (1) using the computer network(s)/computers for illegal, inappropriate or obscene purposes, or in support of such activities . . . Inappropriate activities are defined as those that violate the intended use of the network(s) . . . ; and (3) using the computer

network(s) in a manner that: engages in other activities that do not advance the education purposes for which computer network(s)/computers are provided."

Here Ms. Weber agreed that her conduct constituted a misuse of the District's network. Similarly, Ms. Lechelt grudgingly conceded that her participation in the Group Chat did not enhance any educational purposes. Only Mr. Van Pelt refused to acknowledge same by steadfastly arguing that the Group Chat, which provided an infusion of humor to the Training, enhanced the Respondents' learning capacity.

Next, an objective review of the content of the chat illustrate that same was wholly inappropriate in relation to Board Policy 3321 and entirely unrelated to the educational purposes of the Training. Finally, and perhaps most importantly, the admissions of Ms. Lechelt and Ms. Weber that they misused the district network must be similarly attributed to Mr. Van Pelt, as his conduct during same was at least as egregious as the other two Respondents.

Thus, the Board has sustained its burden in proving that Respondents misused the District's computer network, constituting unbecoming conduct.

Charge IV indicates that Respondents' conduct during the training session violated several district policies. In September 2014, Respondents executed "Important Board Policies, Regulations, and Mandated Communications Forms." B-17, 18 and 19. These forms indicate, "employees are expected to review and become familiar with all Board policies and regulations" and further, directs employees to the web address where same can be found. In fact, Respondents all acknowledged that the policies and regulations are on the Board's website and agreed to "conform to the requirements of the policies and regulations of the Edison Township Board of Education."

Additionally, Article III(B), *Board Policies*, of the controlling CBA states, in relevant part, that: (1) all Board of Education policies will be upheld and enforced by all Board employees who are party to this Agreement, as well as by all Administrators, Principals, and Supervisors; and (2) all Board of Education policies will be available for review in the office of the principal, school library, and the Association office.

Thus, regardless of whether or not Respondent's actually adhered to their obligations to familiarize themselves with and abide by all Board policies and regulations, their affirmative obligation to do same undercuts any efforts by Respondents to argue that they were unaware of certain policy requirements that they disregarded. More simply put, in considering whether or not Respondents violated Board Policies as alleged in the Sworn Tenure Charges against them, this Tribunal must find that they were familiar with all Board Policies and aware of their obligations pursuant to same.

Pursuant to Counts 1, 2 and 3 of Charge IV, Respondents are charged with violating the Board's Affirmative Action and Sexual Harassment Policies. More specifically, Board Policy 1140, *Affirmative Action Program*, requires the Board to implement and "foster a learning environment that is free from all forms of prejudice, discrimination, and harassment based upon race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status in the policies, programs, and practices of the Board of Education."

Board Policy 3362, *Sexual Harassment*, states that "[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 sexual harassment." Said Policy further provides that "<u>[s]exually</u>

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 which the children of this district are exposed." Sexual harassment includes all "verbal or physical contacts of a sexual nature that would not have happened but for the employee's gender. When such inappropriate conduct is "severe and pervasive" and has the 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. Finally, employees are put on notice through Policy 3362 that should they be found guilty of sexual harassment, they will be subject to discipline which may include termination.

Though Respondents were not charged with violating New Jersey's sexual harassment laws, Respondents sought to interject the more stringent standards of same into this matter in an effort to defend the Board's allegations. Respectfully, any comparison of the Respondents' conduct to New Jersey Law is not relevant and/or appropriate, as Respondents were not charged with violating state law.

However, to the extent this Tribunal disagrees with the Board's interpretation of the Sworn Charges, the Board contends Respondents have, in fact, violated New Jersey Law, as established by the New Jersey Supreme Court. Lehman v. Toys R Us, Inc., 132 N.J. 587, 603-604 (1993)(a four part test must be considered in determining whether or not sexual harassment has occurred: (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).

Here, the credible record evidence is clear and convincing – Respondents violated the Board's Affirmative Action and Sexual Harassment Policies. Ms. Battista, based on the portions of the transcript she saw, believed that Respondents – at least in part - were talking about her (*i.e.*, she observed a comment about somebody in read, and assumed it was a reference to her because she was wearing a red sweater; and she saw a reference about someone "scratching their lips", which Ms. Battista tends to do when she gets upset and was doing during the Group Chat). More specifically, but without limitation, Ms. Battista observed and recalled the following commentary between Respondents: reference to a "short bus" - a demeaning reference to the mode of transportation for special education students; the size of male genitalia; use of the word "dick"; comments about being a "virgin"; describing the trainer as a lesbian, with a reference to a rainbow; "blow me" – "how do you think I got my job"; "men who are like 'turtles'". As a result of Respondents' conduct, Ms. Battista was unable to concentrate and was prevented from learning the content of the training – *i.e.*, Respondents altered and interfered with Ms. Battista's work performance and created an intimidating, hostile, and offensive working environment.

Further, the severity and pervasiveness of Respondent's 2.5 hour chat is borne from Ms. Battista's reaction at the time she observed same, Ms. Battista's demeanor during her testimony when she broke down in tears because she remains upset with the content of Respondent's chat and the testimony and conclusions of Ms. DeLuca and Dr. O'Malley.

Ms. DeLuca, an experienced affirmative action coordinator/investigator, determined that Respondents' comments during the Today's Meet Group Chat included: (1) explicit and graphic references to sexual acts and sexual sayings; (2) references and imaginations regarding a sexual relationship between Mr. Van Pelt and Ms. Bleekinger; (3) comments concerning Ms. Bleekinger's

sexual preferences – *i.e.*, the suggestion that she is a lesbian; (4) inexcusable and insulting comments about special education/handicap students; (5) demeaning comments about other persons present in the training, including their sexual orientation and/or age; and (6) inappropriate, insulting and unfounded comments concerning Dr. O'Malley's physical appearance and hiring/promotion practices.

Ultimately, Ms. DeLuca concluded that the related Board Policies were violated because Respondents' verbal attack on females, elderly persons, lesbians and students with disabilities created a hostile and offensive working environment for Alysia Battista. Respectfully, the record would not support any alternative finding by this Tribunal.

Importantly, Respondents' efforts to attack the credibility of Ms. Battista by categorizing her as both unreasonable and atypical are unavailing. Initially, common sense must prevail.

Regardless of Respondents' self-serving and rehearsed definitions/meanings for the various phrases used throughout the transcript, this Tribunal must evaluate same based on the meaning the general public would have, and since has, attributed to such relevant statements – that they are disgusting, sexually offensive, insulting, demeaning, and discriminating on their face. Further, to the extent this Tribunal is convinced that Respondents' efforts to apply the "reasonable person standard" to Ms. Battista are appropriate, which the Board remains steadfastly opposed to, the Board argues that said standard has been satisfied – both Ms. DeLuca and Dr. O'Malley corroborated the reasonableness of her reaction to Respondents' Group Chat.

Thus, to categorize Ms. Battista's reaction to Respondents' commentary as "unreasonable" would be to implicitly identify such comments as acceptable. Moreover, the Board would be remiss to fail to point out the hypocrisy of Respondents' argument – *i.e.*, Respondents, in one breath, ask

this tribunal to find that Ms. Battista's reaction to Respondents' comments was atypical or unreasonable, while in the other breath, argue that their "reaction" to Ms. Bleekinger's well accepted categorizations/classifications of special education students (*i.e.*, "low") was normal and a legitimate excuse to their behavior. Respondents' attempt to deflect this Tribunal's attention from their conduct, by yet again attacking Ms. Battista's person, should not be overlooked. The overwhelming record evidence illustrates that Respondents' conduct violated the Board's Affirmative Action and Sexual Harassment Policies.

Count 4 and 5 of Charge IV asserts that Respondents violated Board Policy 3211 and Board Policy 3281. The *Code of Ethics* policy states in relevant part that the educator "shall not intentionally expose the pupil to embarrassment or disparagement." Further, Policy 3211 requires that the "educator shall exert every effort to raise professional standards to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons."

Board Policy 3281, *Inappropriate Staff Conduct*, indicates, in relevant part, "staff members have the public's trust and confidence to protect the well-being of all pupils attending the school district." Policy 3281 further requires that "school staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments . . . about pupils." B-23.

The foregoing policies hold Board employees to the highest degree of morality and professional standards. Similarly, they confer expectations on Board employees to safeguard the trust and confidence conferred upon them by the public. However, Respondent's voluntary and

willful conduct during the October 23, 2014 Group Chat, along with the content of said chat, constituted a grave lack of professional judgment and a breach in the trust attributed to these teachers by both the Board and the general public. More specifically, the 2.5-hour conversation between the Respondents, with no instructional/educational purpose, during an important Professional Development Training (a professional responsibility) was highly inappropriate and a drastic deviation from the administration's expectations for its employees to embrace the Engrade program and/or act with a certain level of respect and commitment during any professional development training.

Further, the content of same, specifically the derogatory references by Mr. Van Pelt and Ms. Lechelt about their special education / handicap students leapt across all bounds of decency. Perhaps most importantly, as a result of the words documented by Respondents, the young impressionable students (and their parents) previously assigned to Mr. Van Pelt and or Ms. Lechelt, at any time during the employment of Mr. Van Pelt and Ms. Lechelt, are forced to wonder which hurtful and derogatory grouping they were assigned to by their respective teacher. Thus, the Board has sustained its burden in establishing that Respondents' conduct violated Board Policies 3211 and 3281.

Count 6 refers to Board Policy 3351, *Healthy Workplace Environment*, which states, in relevant part, "employees [must] interact with each other with dignity and respect . . . Repeated malicious conduct of any employee or group of employees directed toward another employee or group of employees in the workplace that a reasonable person would find hostile or offensive is unacceptable and is not conducive to establishing or maintaining a healthy workplace environment."

Policy 3351 defines unacceptable conduct as conduct that constitutes the "use of derogatory remarks; insults; verbal . . . conduct that a reasonable person would find threatening, intimidating

or humiliating. A single act of such conduct shall not constitute the unacceptable conduct prohibited by this policy unless it is especially severe and egregious."

Here, once again, the Board has sustained its burden in proving that Respondents have violated this Policy. By there own admission, the overall content of the Group Chat contained interactions devoid of both dignity and respect – *e.g.*, graphic and vulgar sexual comments concerning Mr. Van Pelt's desires with respect to Ms. Bleekinger; derogatory and insulting comments about Mr. Van Pelt and Ms. Lechelt's student groupings and special education students in general; baseless insulting and defamatory remarks about Dr. O'Malley's appearance and hiring/firing/promotional practices; derogatory and insulting remarks about woman, lesbians, elderly persons. B-13. Further, the Group Chat by Respondent's lasted 2.5 hours, encompassed 16 pages of a transcript and contained 318 separate comments, making the foregoing malicious conduct repeated conduct. B-13.

Finally, notwithstanding Respondents' unjustified and desperate claims that Ms. Battista is not a reasonable person and/or did not have a reasonable reaction to the content of the Group Chat, Ms. DeLuca and Dr. O'Malley certainly found Respondents' conduct hostile, offensive and humiliating as well.[1] In reality, even a cursory review of the public comments associated with any of the printed news articles related to Respondents' conduct illustrates that the general public also finds the content of Respondents' Group Chat hostile, offensive and humiliating. Thus, without question, the Board has also satisfied the *reasonable person* element of this Policy.

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[1]Importantly, note that until the news media released a copy of the Group Chat transcript, no non-administrator, besides Alysia Battista, had seen a copy of same. Thus, Respondents' argument that Ms. Battista's reaction was atypical is disingenuous in that no one else had occasions to observe the chat during the Training.

Respondent Lechelt's willingness and intent to continue to engage in similar inappropriate group chats during instructional time constitutes unbecoming conduct During the October 23, 2014 Group Chat, Ms. Lechelt made the following comments, exhibiting both her willingness to avoid performing her required job functions in the future and her desire to continue to find ways to act in a similar manner as Respondents acted during the Training (*i.e.*, engage in inappropriate activities during instructional time):

> We have spent 5minutes idling which works out to 300,787 hours of time waster per year . . . which the township has paid close to 300,000 dollars in salary for us to do – yay us
>
> I can continue to sit in the back of my room and read us weekly
>
> Tvp, lets start a todays meet when we get back to school and are supposed to teach
>
> Lets find another training we can all sign up for . . . this is extremely therapeutic

Predictably, Ms. Lechelt testified that such statements were taken out of context, and that, if given the opportunity to come back to her classroom, she would never engage in similar behavior again. However, Ms. Lechelt, as a result of her conduct during the Training, has not earned the right to be given the benefit of the doubt and/or avail herself to the "trust me" defense. Rather, this Tribunal must consider whether such testimony was authentic, or simply a self-serving effort to minimize the gravity of these statements in an effort to ultimately save her job.

The Board submits that the overwhelming evidence, coupled with Ms. Lechelt's lack of credibility, points to the latter. Had Ms. Battista not observed the Group Chat, and reported same to the administration, the logical inference from the comments attributed to Ms. Lechelt is that she had every intention of using Today's Meet as a tool to engage in additional inappropriate, offensive

and disgusting discussions with her colleagues during instructional time. Ms. Lechelt's intentions must be evaluated at the time the relevant statements were made, not after she was caught, coached and prepared to defend her job. Importantly, at the time Ms. Lechelt contributed to the Group Chat she was clearly enjoying herself, speaking freely and unconcerned with the ultimate affects of her comments. Thus, there is simply no reason for this Tribunal to ignore Ms. Lechelt's stated intentions.

Credibility is the value that the fact finder gives to the testimony of a witness. It contemplates an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Credible testimony must proceed from the mouth of the credible witness and must be such as common experience, knowledge and common observation can accept as probable under the circumstances. The Board cites judicial case law in this regard.

In deciding the facts of a case, the fact finder must decide which witnesses to believe and which witnesses not to believe based on the following factors: (1) interest in the outcome of this case; (2) witness' recollection; (3) ability to know what he/she was talking about; (4) contradictions or changes in testimony; (5) demeanor; (6) whether or not testimony makes sense; (7) reasonableness of testimony when considered in the light of other evidence. See, NJ Model Civil Jury Charge. Additionally, New Jersey law permits a fact finder to reject the entirety of a witness's testimony if a determination is made that the witness deliberately lied on any fact significant to the decision in the case.

Initially, all Respondents' display of remorse during the Hearing was incredible as the Board exposed the same glaring contradictions made by each Respondent. Respondents attempted to

illustrate, through their testimony, remorse for their behavior during the Training. However, the authenticity of such remorse, only displayed to the person responsible for deciding their fate, after undergoing hours of preparation with their counsels, must certainly be undermined by the Respondents conduct (*i.e.*, lack of remorse) during their suspension meetings with Dr. O'Malley, November 11, 2014 interviews with Ms. DeLuca, Sworn Answers to the Tenure Charges and Answers to Interrogatories.

Notwithstanding the lone admissions of making the comments in the Transcript, as well as other various innocuous admissions, Respondents uniformly and consistently denied the remaining substantive allegations made by the Board in the Sworn Tenure Charges. Id. Therefore, the weight given to Respondents' staged showing of remorse during the Hearing, must certainly be weighed in light of their failure to exhibit the same remorse when meeting with Dr. O'Malley and Ms. DeLuca, filing their Answers to the Charges and serving their Answers to the Board's Interrogatories. Such behavior by the Respondents bolsters the Board's assertion that Respondent's were only sorry they got caught, but not sorry for what they had done.

Next, Respondents' efforts to assert an expectation of privacy in defense of their actions during the Group Chat is unreasonable based on the record and the law – *i.e.*, Board Policy 3321 expressly denies Board employees of any expectation of privacy when using the district's network; pursuant to state and federal law, when something is exposed to the public view, such as this Group Chat, same is not protected by an reasonable expectation of privacy. Thus, Respondents' efforts to push such an illogical argument/defense on this Tribunal illustrate Respondents' lack of credibility.

Mr. Van Pelt and Ms. Lechelt's lack of credibility is further borne from the unreasonableness of their defense to the Charge alleging that they made inappropriate comments directed towards

special education / handicap students – *i.e.*, that their perceived anger towards Ms. Bleekinger's direction to label a group of students "low" triggered their barrage of insulting and demeaning commentary.[2] This argument is irrational because: (1) the district's Assistant Superintendent / Director of Special Services informed Ms. DeLuca that the use of the designation "low" is an acceptable norm; (2) all Respondent's acknowledged and accepted the District's practice, as well as the nationwide practice, of using various test that ultimately label the students as "low", "very low" and "average"; and (3) not one of the Respondents confronted Ms. Bleekinger during the Training about her student *designations* or raised a concern with the administration with regard to their accepted use of such *offensive* tests/terms.

Rather, only after they realized they were in trouble for making such offensive comments did they devise, between each other, this defense. Mr. Van Pelt and Ms. Lechelt's position on this issue is so contrary to reality, and therefore, so inherently unreasonable, that it should be entirely discredited. More importantly though, the unreasonableness of Mr. Van Pelt and Ms. Lechelt's testimony on this issue illustrates their lack of candor and overall lack of credibility.

Lastly, when engaging in credibility determinations related to each Respondent, it should not be lost on this Tribunal that all of the Respondents, rather than simply take ownership for their conduct, blamed and attacked others (*i.e.*, Ms. Bleekinger and Ms. Battista), for causing these grown teachers to act in the manner they chose to act. More specifically, the notions that Ms. Bleekinger's use of a uniformly accepted student classification; or that Ms. Bleekinger was inadequately prepared for the presentation; or that Ms. Battista was a "peeping tom" with the intention of bringing trouble upon the Respondent's are so ostensibly absurd that the credibility of the persons making such

[2]Notably, this ludicrous defense also illustrates their lack of remorse – *i.e.*, their willingness to blame their voluntary actions on someone else, as opposed to simply stating they were wrong without qualification and excuse.

statements must be gaged against he lunacy of same. In other words, a credible witness/person would not make such arguments.

Thus, the Board submits that this record is replete with reasons that should cause this Tribunal pause when considering whether Respondents provided credible testimony.

As a point of legal argument, the Board asserts that Respondents had no right to privacy when engaging in the Group Chat during the October 23, 2014 training session. Throughout this process, Respondents have asserted that they had a good faith belief that the Group Chat was private. More specifically, in concert, Respondents argued that if the chat rooms were open to the public, student privacy concerns under FERPA and state law would be triggered. However, Respondents' efforts to assert an expectation of privacy in defense of their actions during the Training are unavailing, as both the record and the law are fatal to such a defense. In fact, said argument is so suspect that it does nothing more than bolster the Board's assertion that Respondents are not remorseful for their conduct – *i.e.*, despite the baselessness of the claim, Respondents have conspired to stick with the defense through the resolution of this matter.

Board Policy 3321, *Acceptable Use of Computer Network(s)/Computers And Resources by Teaching Staff Members*, states – in relevant part – that "[t]he 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." Further, every District employee is aware that there is no expectation of privacy when using the District's computer network, and there is no program and/or policy that trumps same. More specifically, Respondents were actually informed during Today's Meet training that the program was <u>not</u> private.

Here, Respondents all executed "Important Board Policies, Regulations, and Mandated Communications" Form, within which Respondents agreed to review and conform to all Board Policies. Simply put, there is no way the Board could have been more explicit with the reality that employees do not enjoy any expectation of privacy when using the District's network.

FERPA is a Federal Law that controls the disclosure of personally identifiable information from an eligible student's *education records* to a third party unless the eligible student has provided written consent. The applicable statute defines education records as those records, files, documents and other materials which: (1) contain information directly related to a student; and (2) are maintained by an educational agency or institution or by a person acting for such agency or institution. Importantly, without dispute, the Group Chat did not contain and/or reference specific students or information directly related to specific students. Further, the Board does not maintain the Group Chats and/or transcripts of the Chats, and there is simply no reason for Respondents to have thought otherwise. Thus, Respondents' efforts to grasp on to the protections of FERPA, despite the record evidencing that FERPA's application is unjustified, is merely an act of desperation.

A person cannot assert an expectation of privacy with regard to something exposed to the public view. There is no liability under the tort of invasion of privacy for observing a plaintiff or even taking his photograph while he or she is walking on a public highway, since he or she is not then in seclusion, and his or her appearance is public and open to the public eye. These premises are supported by judicial case law.

Here the record evidence is clear, Ms. Battista observed the conversation and identified the web address by viewing Ms. Lechelt's computer screen during a Training session. In fact, all Respondents engaged in the Group Chat on their computers in a room filled with thirty to forty other

persons, with the screens open and on their desks for a two and a half hour period, during which they all, at one point or another, stood up and walked around, while not closing their computer screens. Had Respondents desired to avail themselves to an expectation of privacy, they surely would have found a way to be more discreet during the Group Chat. Thus, Respondent's expectation of privacy defense is contrary to well-established law. In fact, in the event this Tribunal feels compelled to give any deference to Respondents' FERPA based privacy argument – to which the Board contends none is warranted – Respondents' cavalier participation in the Group Chat during a training, visible to other members of the public, must trump any FERPA privacy considerations.

As to the charges served on Respondents, the record confirms that the Board has proven by a preponderance of the credible evidence that Respondents are guilty of conduct unbecoming, insubordination and/or other just cause warranting dismissal. The infractions established in the record evidence cut to the core of Respondents' fitness to continue to teach. Unlike labor arbitration, this Tribunal's decision regarding any potential penalty must be first and foremost concerned with the welfare of students, not the employment rights of Respondent. There is ample, longstanding precedent for this proposition in the body of School Law in New Jersey that has developed over the last several decades, as well in the growing number of Tenure Hearing arbitral decisions under the recently revised Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TeachNJ Act").

With respect to just cause, in evaluating whether an employer has just cause to discipline an employee, Arbitrators follow guidelines similar to those utilized in Enterprise Wire Co., 46 LA 359, 363-64 (1966); Grief Brothers Cooperage Corp., 42 LA 555, 558 (1964). Consequently, it has been

held that the employer should satisfy the conditions set forth in the above cases in order to prove "just cause" for the disciplining the employee.

The "inherent duties of a public employee include compliance with all reasonable rules and regulations, and duties arising from a fiduciary relationship to the public and from such duties as arise by the nature of the office held." Unless the penalty is unreasonable, arbitrary or offensively excessive under all of the circumstances, it should be permitted to stand. These statements have been well established by New Jersey courts.

Moreover, recent case law suggests that progressive discipline is ***not*** a fixed and immutable rule to be followed without question because some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record. For example, in American Arbitration Association Decision, 2010 AAA LEXIS 439, Arbitrator Renovitch acknowledged that extremely serious offenses usually justify the enforcement of a discharge.

The holding that dismissal was warranted in the cited case resulted from a Grievant failing to perform an end-of-run check, which resulted in a sleeping student being left on her school bus. In that case, the arbitrator enforced a summary dismissal. Arbitrators Tener, Dichter and Simon enforced summary dismissals in other cases that reflected other fact patterns.

Moreover, since the implementation of the TeachNJ Act, Arbitrators have dismissed teachers for engaging in inappropriate conduct that has reflected poorly on both the teacher and the school district. The cited decisions were all issued since 2012.

In anticipation of the cases Respondents will likely seek to rely upon to argue that their dismissal is not warranted in this matter, the Board asserts same are readily and easily distinguishable from the matter at bar based on discrepancies in fact and proofs.

Here, the just cause conditions have been satisfied: namely, Respondents were forewarned prior to the Group Chat that dismissal could result from misusing the District's computer network and violating various Board Polices and standards of expected behavior; Respondents conduct on October 23, 2014 violated established Board Policy and any reasonable expectations of employee conduct; Respondents' conduct was investigated fully; substantial evidence, including Respondents' acknowledgments of wrongdoing, admissions and a copy of the actual transcript, were obtained; and termination was reasonably related to the seriousness of Respondents' offenses (*i.e.*, the duration and wholly inappropriate nature of the conversation, coupled with the grave lack of judgment displayed by Respondents) and the Respondents' past record. Specifically, Respondents' conduct with respect to the group chat, without the consideration of progressive discipline, rose above and beyond the level of egregiousness necessary for dismissal.

Accordingly, satisfaction of the just cause standard, along with the arbitral precedents, must result in the termination of Respondents. Their acts are egregious on their face. In fact, the totality of their conduct, and each specific charge considered alone, are more egregious than that deemed sufficient for dismissal in the above-cited precedents. Respondents violated board policies and the common decency expected of public school teachers, as illustrated in the record evidence, by misusing the District's network to mock, insult, harass and offend others (including special education students, the superintendent of schools, the Engrade Training presenter, females, older persons and each other), while creating a hostile and unhealthy work environment for the one person who openly observed same; continuing such conduct for a period of 2.5 hours during scheduled instructional time; failing to comprehend the seriousness of their conduct by constantly making excuses, placing the blame elsewhere and disingenuously declaring remorse only when face-to-face with the assigned

arbitrator after being prepped by their counsel as to what this tribunal wants to hear; and, in the case of Mr. Van Pelt, admitting to masturbating on school property.

Respondents showed a complete lack of concern for the parents and students of the Edison Township School District, and a callous sense of desperation by attempting to attack and demonize the VICTIM – Ms. Battista (*e.g.*, referring to her as a "*peeping Tom*", claiming that she went out of her way to discover their chat and ultimately blaming her for the trouble and embarrassment now endured).

The record, as discussed and documented above, clearly illustrates that Respondents recognize a large portion of their conduct was inappropriate. Specifically, Respondents concede, for the most part, that they misused the District's network and made regrettable comments about other persons and classifications of persons

It is well established in case law that the term "unbecoming conduct" is a broadly defined, elastic term, encompassing any conduct that has a tendency to destroy public respect for government employees and competence in the operation of public services. In hearings similar to this one, arbitrators have determined that 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. In this matter, Respondents have unmistakably breached the public trust placed in their position as teachers.

Charge VIII of the charges alleges that the acts of misconduct set forth in the Charges and the Counts, jointly and severally, manifest a series of ongoing infractions over an extended period of time, despite prior warnings, constituting a pattern of conduct unbecoming a teacher. This pattern warrants dismissal. Notwithstanding that each charge warrants a finding of conduct unbecoming a

teacher and/or just cause for dismissal, when taken together, a pattern if unbecoming emerges sufficient to warrant Me. Van Pelt's dismissal from his tenured position.

The Commissioner has confirmed that a pattern of conduct that persists over a number of years warrants dismissal, even if the individual charges standing alone would not. It cites numerous decisions in this regard.

Based on the foregoing, Respondents have failed to satisfy the standards of a profession predicated on public trust and respect. Respondents' misdeeds were not mere oversights or simple mistakes. Their misconduct go to the heart of their character and fitness.

CONTENTIONS OF RESPONDENT

Respondent argued as follows:

In the present case, the material facts as to the misconduct which occurred are not in dispute. The transcript of the chat says what it says. This is simply not a case that warrants termination of employment. The punishment that the Edison Township Board of Education ("Board") is requesting does not fit the crime.

In this matter, Maryellen Lechelt ("Ms. Lechelt"), an award-winning teacher with an unblemished employment record who in the past has received acclaim and favorable evaluations for her classroom teaching excellence, engaged in a single act of misconduct, an on-line chat with colleagues which she reasonably believed to be private, and while engaged in the chat made a few regrettably inappropriate comments. Immediately after the chat, in an informal interview with the superintendent and assistant superintendent, Ms. Lechelt expressed sincere remorse for her comments, took ownership of her conduct, and clearly manifested that she understood the gravity

of her comments and their potential impact.

In New Jersey, the lead case on misconduct-based tenure charges is *In re Fulcomer*, 93 *N.J. Super.* 404 (App. Div. 1967)(copy enclosed). The TEACHNJ Act does not specify whether the Arbitrator is bound by *Fulcomer* or whether your award is to be governed by the classic seven tests for just cause. In *Fulcomer*, the Appellate Division reversed a decision terminating a teacher's employment based upon a single incident of misconduct. The Commissioner reasoned that Mr. Fulcomer engaged in the misconduct alleged, and therefore, termination of employment was warranted. The court disagreed, breaking the test down to two elements:

- Did the employee engage in conduct unbecoming a teacher?
- If so, does the misconduct proven warrant the penalty of termination of employment or some lesser penalty?

The court noted that, in assessing penalty, the person hearing and deciding the case (then, the Commissioner of Education; now, under the TEACHNJ Act, you, the arbitrator) should consider factors including:

- impact of the decision on the respondent's teaching career;
- the longevity of the respondent's career;
- the respondent's otherwise good teaching record;
- the respondent's unquestioned teaching ability;
- the absence of discipline by the school board during employment;
- the absence of past increment withholdings;
- the nature and gravity of the offenses under all the circumstances involved;
- evidence as to provocation, extenuation 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.

The proofs in this case have shown that, during Ms. Lechelt's tenure as a teacher in the Board's employ, she was recognized by the school district and by the community as an outstanding teacher. She always earned outstanding evaluations, and the Edison Chamber of Commerce named her Edison Township's Outstanding Classroom Teacher of the Year for 2012. In the interviews with administrators and in her testimony in this case, Ms. Lechelt took full responsibility for comments she made in the Engrade Chromebook Training on October 23, 2014 ("Training"). She acknowledged that her comments at issue in this case were inappropriate and she clearly demonstrated understanding and remorse as to the impact of those comments. Ms. Lechelt had one bad morning where she had a one-time lapse in judgment.

However, it is clear that the Board's characterization of Ms. Lechelt's attitude and demeanor toward the Training, other staff and faculty members, and of her students, during the Training and in general, is grossly inaccurate. In her testimony, Ms. Lechelt has explained the comment concerning special needs students which, if read in a vacuum, could be viewed as alarming. The presenter at the Training suggested that teachers could name groups of students "low" as in "low performing." Ms. Lechelt, who is a Special Education teacher and who is the mother of a special needs child, found the presenter's use of such terms personally offensive and mocked the presenter. Overall, although Ms. Lechelt's career has not been a long one, the conduct at issue here is consistent with a youthful indiscretion. When looking at Ms. Lechelt's comments during the chat, contrary to what the Board asserts, it is obvious she was paying attention to the Training. While admittedly some of her comments were inappropriate and in poor taste, the Board greatly exaggerates the malice

behind those comments. By seeking the penalty of removal, and by filing tenure charges, the Board completely ignores the positive contributions Ms. Lechelt has made to her students and to the community while in the Board's employ.

The Board attempts to paint the chat as violating the Board's healthy workplace environment and anti-harassment policies. However, the proofs in this case have shown that the chat was neither severe nor pervasive, and was not readily accessible to members of the public. The chat was only accessed and accessible through the use of unusual means by a colleague who, because she had an axe to grind, re-positioned herself and zoomed her iPhone camera in on Ms. Lechelt's computer screen to view and photograph the chat, and then had an atypical, unreasonable, and idiosyncratic reaction to the chat. In addition, no person could access the chat unless invited or if the person knew the chat room's web address.

The impact of a decision to terminate Ms. Lechelt's employment would have the net effect of ending her teaching career. The conduct at issue here simply does not warrant such a harsh penalty, particularly in view of Ms. Lechelt's unblemished employment record.

The Board and its administrators have taken a prosecutorial approach to this matter and have chosen to try to "spin" this matter into much more than it is. As the proofs show, during the EEO/AA investigation, the Board's administrators brushed aside and failed to document any mitigating circumstances, or expressions of remorse, concluding that Ms. Lechelt did not acknowledge the gravity of her misconduct, when she plainly did, and that it warranted removal of Ms. Lechelt from her teaching position. The Board has repeatedly tried to spin and exaggerate the conduct at issue, assigning the worst possible meaning to each double entendre, overstating the disruption caused by the chat, and disregarding mitigating circumstances. The *Fulcomer* case and

the seven tests for just cause require much more.

Furthermore, the Board's efforts to terminate Ms. Lechelt's employment ignore past case law where teachers have been charged with unbecoming conduct for much more egregious conduct than Ms. Lechelt's, and yet were not terminated from their positions. All of the counts in the Board's tenure charges center upon unwise conduct occurring during a two (2) hour training session, on one (1) single day, which did not take place in the classroom, and which Ms. Lechelt mistakenly believed was part of a private on-line chat. The Board's effort to terminate Ms. Lechelt's employment, especially given the fact that the Board itself has recognized that she is an outstanding teacher, is extremely disproportionate to her conduct. Although Ms. Lechelt did make some indiscreet comments, she did not engage in conduct unbecoming that warrants the termination of her employment.

We urge the Arbitrator to review this case keeping in mind Ms. Lechelt's outstanding teaching record and unblemished disciplinary record, the first-time nature of this conduct, Ms. Lechelt's remorse and realization of the impact of her comments, and prior case law which shows the Board's effort to terminate Ms. Lechelt's employment to be excessive. The punishment does not fit the crime.

Respondent urges the Arbitrator to consider to be the most critical elements of the proofs presented:

- Ms. Lechelt is a Special Education teacher who has been employed by the Board as a full-time teacher since June 2011. (Lechelt Testimony, 3T171-21 to -23[1])

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[1] In this brief, citations to the transcripts of the hearing are as follows:

"1T" refers to the transcript of March 10, 2015;
"2T" refers to the transcript of March 19, 2015;
"3T" refers to the transcript of March 25, 2015;

- The Board first assigned Ms. Lechelt to teach at Menlo Park Elementary School. She was eventually transferred to Lincoln Elementary School. The transfer was not disciplinary. (O'Malley Testimony, 3T99-2 to -7; Lechelt Testimony, 3T172-23 to -25; 3T179-1 to 180-14)

- Before the incident in question, Ms. Lechelt had an unblemished employment record. In her evaluations, Ms. Lechelt earned ratings of "very good" and "excellent" under the old rubric. After the rubric changed, Ms. Lechelt has earned evaluations of "proficient" and, increasingly as "accomplished." (Exh. Lechelt-3; O'Malley Testimony, 3T100-7 to 103-15; Lechelt Testimony, 3T172-6 to -13)

- Before the incident giving rise to these tenure charges, Ms. Lechelt never has received any form of discipline or warnings. (O'Malley Testimony, 3T57-13 to -16; 3T98-22 to 99-1; Lechelt Testimony, 3T179-11 to -24)

- Dr. O'Malley reviewed Ms. Lechelt's teaching performance, recommended Ms. Lechelt for re-employment for 2013-14 and 2014-15 academic years and recommended she receive tenure. (O'Malley Testimony, 3T96-8 to 97-2)

- In 2012, Ms. Lechelt was named Outstanding Teacher of the Year by the Edison Township Chamber

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"4T" refers to the transcript of April 2, 2015;
"5T" refers to the transcript of April 13, 2015, and
"6T" refers to the transcript of April 21, 2015.

of Commerce. (O'Malley Testimony, 3T97-16 to -18; Lechelt Testimony, 3T175-8 to -14)

- Ms. Lechelt was invited by the Chamber of Commerce to attend an awards dinner to honor her achievement. At the dinner, Dr. O'Malley and Ms. Lechelt took a picture together, and Dr. O'Malley congratulated Ms. Lechelt on her achievement. (O'Malley Testimony, 3T97-6 to 98-21; Lechelt Testimony, 3T176-9 to -23)

- The Board announced on its own website that Ms. Lechelt was named Teacher of the Year in 2012 and, in the announcement, stated how proud it was of Ms. Lechelt. (Exh. Lechelt-4; O'Malley Testimony, 3T103-24 to 104-19; Lechelt Testimony, 3T176-2 to -8)

- Ms. Lechelt was nominated for teacher of the year on one other occasion. (Lechelt Testimony, 3T175-12 to -14)

- While employed for the Board, Ms. Lechelt either began or was a part of the following school activities, usually for no additional compensation:

  - school newspaper;
  - Special Education intervention referral service;
  - anti-bullying club advisor;
  - an after-school athletic club for girls;
  - piloted I-STEM, a program designed to promote science achievement in schools;

- asked to mentor other non-tenured teachers; and
- served on several committees. (Lechelt Testimony, 3T172-17 to 173-10)
- Ms. Lechelt was particularly proud of her efforts as the founding anti-bullying club advisor and in connection with the I-STEM inclusion program because of her teaching background and her experience as a parent of a special needs child. (Lechelt Testimony, 3T172-17 to 173-10)
- During her teaching career, Ms. Lechelt has successfully taught many Special Education students. (Lechelt Testimony, 3T173-19 to 175-2)
- Ms. Lechelt is the mother of a special-needs child named Hallie who has struggled achieving success in school. (Lechelt Testimony, 3T192-10 to -18)
- Before working for the Board, Ms. Lechelt participated in graduate classes with Ms. Alysia Battista ("Ms. Battista") The graduate classes were small, seminar-style classes, where students would present and comment. The program was a small one so many of the students were in the same classes with each other. (Lechelt Testimony, 3T186-1 to -12)
- Ms. Lechelt often attended Board-sponsored trainings and/or inservice sessions where Ms. Battista was present. Often, Ms. Lechelt and Ms. Battista would publicly disagree and volunteer opposite opinions on issues being discussed. In particular, Ms. Lechelt and Ms. Battista publicly and contentiously disagreed at a language arts training, on how a language arts program should be introduced in the classrooms. (Lechelt Testimony, 3T186-13 to 187-20)
- Today's Meet is a website that offers opportunities for teachers and students to log in and set up chat rooms and speak to one another. (Deluca Testimony, 2T42-43; Lechelt Testimony,

3T181-13 to 183-4) The Board offered training on the use of the site and it encouraged teachers to use this site. (Lechelt Testimony, 3T181-13 to 183-4)

- Ms. Lechelt first became aware of Today's Meet and its capabilities when she attended training for the science curriculum on October 10, 2014. The instructor of the science curriculum training was Mr. Don Platvoet ("Mr. Platvoet"), staff development trainer for Edison Township. He sent teachers links to be used during this training, and a link to a chat room on Today's Meet was one of the links Mr. Platvoet sent to the curriculum training's participants, including Ms. Lechelt. (Lechelt Testimony, 3T181-13 to 183-4)
- During the October 10, 2014 curriculum training, Mr. Platvoet encouraged the participants to converse with one another in a chat room during his presentation. (Lechelt Testimony, 3T182-5 to -11)
- After using the Today's Meet chat room at the curriculum training, Ms. Lechelt decided to try and use it with her students as part of her curriculum. She researched the Today's Meet website, and found, under the Frequently Asked Questions section, the following statement: "Rooms are never listed publicly, so only the people who know the name of your room can join it. With Teacher Tools you can add more controls—and accountability."[2] (Exh. Lechelt-2 at pp. 74; Lechelt Testimony, 3T182-21 to 183-4) This caused Ms. Lechelt to believe that comments made in these chat rooms were private, and never accessible to the public. (Exh. Lechelt-2 at pp. 74 ; Lechelt Testimony, 3T183-4) Ms. Lechelt also believed that only users sent a link to the chat room could access chat room content. (Lechelt Testimony, 3T181-5

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[2]The Board argued that the date of the online documentation suggests that it was created ***after*** Ms. Lechelt engaged in the chat. Ms. Lechelt testified without contradiction that she read such documentation ***before*** she engaged in the chat. (Lechelt Testimony, 3T180-24 to 182-20) The Board offered no proofs that an earlier version of this documentation was not available on-line during the time period that Ms. Lechelt said she read it.

to -7)

- Ms. Lechelt was totally unaware that any member of the public, or any person not specifically given the specific name and URL address of the chat room, could access conversation content in a Today's Meet chat room. (Lechelt Testimony, 3T181-3 to -5)
- The Training was led by Ms. Sara Bleekinger ("Ms. Bleekinger"). Also in attendance was Mr. Tyler Van Pelt ("Mr. Van Pelt"), Ms. Maria Weber ("Ms. Weber"), and Mr. Jonathan Bauza ("Mr. Bauza"). (Deluca Testimony, 2T44-45)
- Mr. Van Pelt, through the Today's Meet chat function, invited Ms. Lechelt, Ms. Weber, and Mr. Bauza to log into a chat room on the Today's Meet website to engage in informal discussions during the Training. At the Training, Ms. Lechelt, Ms. Weber, and Mr. Bauza all logged in to the chat room in reply to Mr. Van Pelt's invitation. (Exh. Board-13)
- During the Training, Ms. Battista was also in attendance. She was seated in the fifth row of seats back from the presentation screen. She was seated directly behind Ms. Lechelt, who was in the fourth row. (Exh. Board-44; Battista Testimony, 1T62-14 to 63-9; 1T93-19 to 94-22; 1T108-19 to -21)
- The distance from Ms. Lechelt's computer screen to Ms. Battista was approximately six (6) feet. (Lechelt Testimony, 3T185-8 to -10) This proposed fact finding is contrary to Ms. Battista's testimony. Ms. Battista claimed that her seat was only a "couple of feet" away from Ms. Lechelt's computer. (Battista Testimony, 1T180-7 to 181-13) This is belied by Ms. Margaret Deluca's ("Ms. Deluca") testimony that the two tables between Ms. Battista and Ms. Lechelt's computer screen were each 18 inches wide (Deluca Testimony, 2T281-3 to -15), and Ms. Lechelt's testimony that she had approximately three feet to sit and for someone

to squeeze behind her. (Lechelt Testimony, 3T184-21 to 185-5) Ms. Lechelt's testimony should be credited over Ms. Battista's on this critical issue.

- Ms. Battista had a direct line of sight to the presentation screen at the front of the room. (Board-45, pg. 2, notes of Angie McKenna interview)
- During the Training, Ms. Lechelt made some inappropriate comments while engaged in the chat with Mr. Van Pelt, Mr. Bauza, and Ms. Weber. The comments were, for the most part, double-entendre and sarcasm. Ms. Lechelt used very little profanity in the chat. (Exh. Board-13, Lechelt Testimony, 3T180-15 to -23)
- At some point early in the Training, Ms. Lechelt turned in her seat. When she did, Ms. Battista saw comments on Ms. Lechelt's computer screen which offended Ms. Battista. (Battista Testimony, 1T108-3)
- In order to view the presentation screen that Ms. Bleekinger was using, Ms. Battista had to lean slightly to the right. Instead, she chose to reposition herself to the left to monitor and photograph the chat. (Battista Testimony, 1T126-2 to 127-24)
- More specifically, despite having a direct line of sight to the presenter, Ms. Battista:
- took her iPhone out;
- repositioned herself to the left;
- moved forward towards Ms. Lechelt and Ms. Lechelt's computer;
- zoomed in on Ms. Lechelt's screen; and
- took several pictures of the screen. (Exh. Board-7, pp. 2-9; Battista Testimony,1T108-7; 1T126-2 to 127-24)
- A logical inference can and should be drawn that Ms. Battista did all of these things to monitor and photograph the chat on Ms. Lechelt's computer screen.
- During her presentation in the Training, Ms. Bleekinger was using terms such as "low" and

"middle" to describe groups of students by intellectual ability. Ms. Lechelt thought about her own child and was offended that Ms. Bleekinger used such labels and that Ms. Bleekinger said words to the effect that you can label the students and they'll never know what you are calling them. In the chat, Ms. Lechelt sarcastically referred to "low" kids in response to and as a way to mock Ms. Bleekinger using these terms. When Ms. Lechelt used the terms "morons" and "tart cart" in the chat, Ms. Lechelt was using the most ridiculous and offensive terms for Special Education students she could think as a logical extension of Ms. Bleekinger's usage of offensive terms, and was suggesting that Ms. Bleekinger might use such terms later in her (Ms. Bleekinger's) presentation. (Deluca Testimony, 2T97-12 to -17; Lechelt Testimony, 3T189-20 to 190-19; 3T192-10 to -18; 3T192-22 to 193-6)

- Ms. Lechelt's intention was to mock Ms. Bleekinger, not to mock special needs students, including her own daughter. (Lechelt Testimony, 3T189-10 to -16)
- Ms. Lechelt's comments regarding the "backchannel" is related to a feature on the Today's Meet website that provides opportunities for chat room meetings and exchanges between teachers and/or between teachers and students. (Exh. Lechelt-2, pg. 5; Lechelt Testimony, 3T266-18 to 267-1)
- Despite Ms. Battista's perception, Ms. Lechelt in no way personally attacked her in the chat. (Lechelt Testimony, 3T189-7 to -9)
- Ms. Battista's interpretation of Respondent's comments made in the chat room were idiosyncratic and erroneous. For example:

Ms. Battista reported that at some point that Respondents were making comments about her. However, not one comment in the chat refers to Ms. Battista. (Lechelt Testimony, 3T189-7 to -9) Ms. Battista reported that Ms. Lechelt's use of the word "turtle" referred to male genitalia. (Battista Testimony, 1T136-14 to 137-21) However, Ms. Lechelt's use of this word referred to Dr. O'Malley's

personal appearance. (Lechelt Testimony, 3T280-25 to 281-4)

Ms. Battista quoted Respondents using the words "terrible" and "useless." However, nowhere in the entire chat do any of Respondents use these words. (Exh. Board-13) Ms. Battista was particularly offended because she thought the chat was directed specifically at her. (Deluca Testimony, 2T32-1 to -15) Ms. Battista had an idiosyncratic reaction to what she saw on Ms. Lechelt's computer screen. (Deluca Testimony, 2T286-21 to -23; Exh. Board-45, Notes of Angie McKenna interview, pg. 2)

Dr. O'Malley met with Ms. Lechelt on October 24, 2014, the day after the Training. Ms.Tara Beams, Assistant Superintendent ("Ms. Beams"), and Mr. Jeff Bowden, Edison Township Education Association President ("Mr. Bowden"), were also in attendance. (O'Malley Testimony, 3T27-24 to 28-1; 3T105-21 to 106-2; Lechelt Testimony, 3T195-9 to -15)

- Before speaking with Ms. Lechelt and hearing her explanations concerning the chat, Dr. O'Malley had already decided to suspend Ms. Lechelt. (O'Malley Testimony, 3T106-3 to -15; Lechelt Testimony, 3T195-17 to -19; 3T199-8 to -10)
- During the meeting with Dr. O'Malley, Ms. Lechelt was visibly upset and terrified while the meeting was proceeding. (Lechelt Testimony, 3T197-23 to 198-13, 3T198-21)
- After seeing Ms. Lechelt was visibly upset and crying, Dr. O'Malley asked Mr. Bowden to get her a tissue and asked Ms. Lechelt "Are you done?" (O'Malley Testimony, 3T109- 18 to -22; Lechelt Testimony, 3T198-4 to -5)
- During her interview with Dr. O'Malley, Ms. Lechelt never had the opportunity to fully explain the context and meaning of the terms she used in the chat. (Lechelt Testimony, 3T197-7 to -8)
- Dr. O'Malley reviewed the chat transcript at least ten (10) times. (O'Malley Testimony, 3T72-20 to 73-4)

- Dr. O'Malley felt personally attacked and hurt by the chat comments. (O'Malley Testimony, 3T24-14 to -17; 3T40-19 to 41-3; 3T106-25 to 107-3)
- Ms. Deluca, the Board's Chief Academic Officer, met with Ms. Battista on October 23, 2014, after the Training (Deluca Testimony, 2T31-6)
- Ms. Battista repeatedly told Ms. Deluca that she was in fear of it becoming known that she reported the Respondents. (1T81-21 to -23) Nevertheless, Ms. Deluca sent Ms. Battista an Affirmative Action Report form to Ms. Battista and told Ms. Battista to fill it out. (Deluca Testimony, 2T38-9 to -15; 2T229-6 to -12)
- Ms. Deluca was chosen by Dr. O'Malley to conduct the investigation into Ms. Battista's complaints concerning Mr. Van Pelt, Ms. Weber, Mr. Bauza, and Ms. Lechelt's conduct during the Training. (O'Malley Testimony, 3T21-6 to -25)
- Ms. Deluca is also the Board's Affirmative Action Officer. In this role, part of her duty is to assure that all district staff receive training on affirmative action and sexual harassment policies. (Deluca Testimony, 2T20-22 to -24; 2T214-15 to -23)
- Ms. Deluca has a very close professional relationship with Dr. O'Malley. Ms. Deluca worked under Dr. O'Malley when both worked at the Matawan-Aberdeen Regional School District, and when Dr. O'Malley became the Board's superintendent, he recruited Ms. Deluca to work for the Board. (Deluca Testimony, 2T255-56; O'Malley Testimony, 3T11-2 to -25; 3T21-25 to 22-2; 3T95-11 to -18)

In the chat transcript, eight (8) screen names are attributed to all of the comments in the chat room. The following is a list of the screen names and the participant who used each name:

- "tvp"-Mr. Van Pelt (Deluca Testimony, 2T190-91);
- "mamalechelt"-Ms. Lechelt (*Id.*);
- "jb"-Mr. Bauza (*Id.*);

- "trish"- Ms. Weber (*Id.*);
- "Captain"-(Ms. Deluca never determined who this was) (*Id.*);
- "lol"- (Ms. Deluca never determined who this was) (*Id.*);
- "docdick"- (Ms. Deluca never determined who this was) (*Id.*), and
- "holla"- (Ms. Deluca never determined who this was) (*Id.*).
- During her investigation, Ms. Deluca spoke to Ms. Battista, questioned the chat room participants who she could identify, and questioned all other teachers in attendance at the Training. (Deluca Testimony, 2T52-9 to -15)
- Ms. Deluca used the web address she was provided by Dr. O'Malley to access the chat transcript. (Deluca Testimony, 2T44-4 to -5; 2T46-11 to -15)
- Ms. Deluca took handwritten notes when conducting the interviews. Subsequently, she made typed notes of her interviews while reviewing her written notes. After completing her typed notes, she discarded her hand written notes. (Deluca Testimony, 2T34-9 to -13; 2T80-1 to -2; 2T194-20 to -24) Ms. Deluca received no training or instruction as to whether and how to maintain these primary materials. (*Id.* at 2T193-10 to -14)
- As part of her investigation, Ms. Deluca interviewed twenty-three (23) other people other than Ms. Battista and the three (3) respondents who attended the Training. Besides Ms. Battista, no other person who attended the Training complained of Ms. Lechelt's conduct being disruptive, offensive, or harassing in anyway.[3] (Deluca Testimony, 2T53-19 to -21; 2T170-24 to 171-24; 2T280-4 to -6)
- Besides Ms. Battista, only one other person who attended the Training claimed to have seen

[3]Tellingly, the Board initially chose to mark only part of its investigative file, omitting the notes of the interviews of others present at the training. Only after an objection was made to the proffer and admission of partial documentation did the Board mark this portion of its investigative file as Exhibit Board-45. The reason is clear. Exhibit Board-45 points to the fact that the chat did not generally disrupt the Training, undercuts the claim that the chat constituted severe and pervasive harassment, and also points to the idiosyncratic nature of Ms. Battista's reaction to the chat. *See* Point I.A.6. of Law and Argument below.

or viewed in any way the contents of the chat at issue. (Deluca Testimony, 2T53-15 to -16) Besides Ms. Battista, no other teacher, staff member (excluding the administration), has told the Board and/or its administrators that they fear they will either be harassed, discriminated against and embarrassed; made to feel uncomfortable; and/or forced to hear and/or view Ms. Lechelt make further inappropriate and offensive comments to them, about them, or about others. (Deluca Testimony, 2T203-10 to -20)

- Besides Ms. Battista, no teacher, staff member (excluding the administration), parent, student, and/or member of the public has reported accessing the Today's Meet chat-room transcript manifesting the chat-room discussion Ms. Lechelt engaged in during the Training. (Deluca Testimony, 2T185-19 to -25)
- Most people whom Ms. Deluca interviewed stated that the atmosphere and noise in the Training was similar to other inservices and/or workshops. (Exh. Board-45)
- Ms. Angie McKenna ("Ms. McKenna"), who sat directly on Ms. Battista's left at the Training, also saw a few inappropriate words on Ms. Lechelt's screen. However, unlike Ms. Battista, she chose to look away and focus on Ms. Bleekinger's presentation. (Deluca Testimony, 2T53-2 to -11; Exh. Board-45, pg. 2)
- According to Ms. McKenna, Ms. Battista was "consumed" by the chat, and was the only person present at the Training who was "consumed" by the chat. (Exh. Board-45, Notes of Angie McKenna interview, pg. 2; Battista Testimony, 1T102-14 to -15; Deluca Testimony, 2T171-12 to -16; 2T291-8 to -20)
- In the course of her investigation, Ms. Deluca spoke with the attorney from Engrade, the company that assigned Ms. Bleekinger to conduct the Training. Engrade's attorney spoke with Ms. Bleekinger, and told Ms. Deluca that Ms. Bleekinger was not disrupted in any way during the Training, and/or was not aware of any disruption at the Training. (Deluca

Testimony, 2T173-1 to -2; 2T243-19 to -25)

- Ms. Deluca never timed the actual keyboarding time Ms. Lechelt spent actually typing comments during the Training. (Deluca Testimony, 2T253-9 to -14)
- Ms. Deluca's report contained no factual findings and/or no conclusions she reached after interviewing those she deemed were the relevant witnesses. (Exh. Board-26)
- Ms. Deluca's report fails to indicate what factors she took into consideration when deciding to recommend considering the "most severe consequences" for Mr. Van Pelt, Ms. Weber, Mr. Bauza, and Ms. Lechelt. (Exh. Board-26)
- Ms. Deluca's typed notes inaccurately described what Ms. Battista was wearing during the Training. In her typed notes of her October 30-31, 2014 interview of Ms. Battista, Ms. Deluca stated that Ms. Battista told her that she was wearing a red dress in the Training. However, Ms. Battista was wearing a red sweater. (Battista Testimony 1T130-8 to -9; Deluca Testimony, 2T269-14 to 270-17) This is material because Ms. Battista erroneously thought that Ms. Lechelt and others were talking about her in the chat when they referred to a woman in the second row wearing a red T-shirt even though she was sitting in the fifth row, wearing a sweater. (Deluca Testimony, 2T265-7 to 267-3)
- Ms. Deluca's typed notes are not complete. When Ms. Deluca asked Ms. Lechelt at the end of the meeting if Ms. Lechelt had anything to add, Ms. Deluca snapped her pen down on the table, and stopped writing, as Ms. Lechelt continued to explain the context and meaning of her comments and express her remorse, but Ms. Deluca wrote none of the comments down. (Lechelt Testimony, 3T200-21 to 201-17)
- During her interview with Ms. Deluca, Ms. Lechelt never had the opportunity to fully explain the context and meaning of the terms she used in the chat. (Lechelt Testimony, 3T205-13 to 209-16)

- When recommending the "most severe consequences" for Ms. Lechelt and the other Respondents, Ms. Deluca never looked at Ms. Lechelt's personnel file to determine what kind of past discipline record Ms. Lechelt had. (Deluca Testimony, 2T253-17 to -18; *contra Fulcomer* and the seven tests for just cause, *see* Law and Argument below)
- Ms. Deluca's interviewed Ms. Lechelt approximately three (3) weeks after the Training. (Lechelt Testimony 3T199-11 to -15) Ms. Deluca's report fails to mention that, during Ms. Lechelt's interview:

Ms. Lechelt stated many times that she thought the chat was private (Deluca Testimony, 2T277-6 to -10);

- Ms. Lechelt mentioned many times that her comments were misguided jokes (Deluca Testimony, 2T97-12 to -17; 2T99-1 to -2; 2T104-18; 2T275-16 to -18; 2T278-16 to -17; 2T278-79; Lechelt Testimony, 3T200-16);
- Ms. Lechelt admitted that her comments were inappropriate (Deluca Testimony, 2T128-5 to -7; 2T275-16 to -18);
- Ms. Lechelt admitted that she used bad judgment (Deluca Testimony, 2T104-20);
- Ms. Lechelt stated that she never would waste time reading magazines when she is supposed to be teaching (Lechelt Testimony, 3T176-24 to 177-23);
- Ms. Lechelt stated that she never has, nor ever would use the same comments while working with students (Lechelt Testimony, 3T197-8 to -17); and
- Ms. Lechelt stated she did not seriously believe that one's appearance or sexual favors were related to the Board's personnel decisions (Exh. Board-15, pg. 3; Deluca Testimony, 2T75-9 to -24)
- When writing her report, Ms. Deluca painted Ms. Lechelt's comments with the most harassing interpretations when the comments could have had several other equally valid

interpretations that were not harassing. (Deluca Testimony, 2T273-6 to 274-16; Lechelt Testimony, 3T205-18 to 209-17)

- Ms. Deluca's report fails to explain why there were four (4) chat room participants' conduct being investigated, but there were eight (8) chat room screen names seen posting comments during the chat. Ms. Deluca's report fails to match each participant with each screen name used, and does not explain which person(s) in the training used the chat room names "Captain", "lol", "docdick", and "holla." (Exh. Board-26)
- Ms. Deluca was supposed to investigate whether Respondents violated the Board's affirmative action policies. On her own, without the Board's direction, Ms. Deluca, in her report, suggested additional Board policies that she felt Respondents had violated. (Deluca Testimony, 2T200-20 to 202-02)
- Several principals from several Edison schools interviewed several teachers who were present at the Training and were not interviewed by Ms. Deluca. Not one teacher reported any kind of disruption at the Training. (Deluca Testimony, 2T51-1 to -25; 2T172-1 to -12)
- In order for any member of the administration, staff member, student, and/or member of the public to have access to the chat, unless they were specifically invited by email, they had to have the web address. If they did not have the web address, they could not access the chat transcript. (Deluca Testimony, 2T165-8 to -9; 2T198-13 to -24)
- Ms. Lechelt's remarks concerning sitting in the back of her class and reading magazines while she is supposed to be teaching, and having chats at other trainings, was an awkward attempt at humor and was a joke. As her prior record shows, Ms. Lechelt never has, nor ever will, sit in the back of a class and read magazines while she is supposed to be teaching her students. (Lechelt Testimony, 3T176-24 to 177-23)
- Ms. Lechelt expressed sincere remorse for her comments made in the chat room during the

training. She expressed her remorse including, but not limited to during her interview with Ms. Deluca, her interview with Dr. O'Malley, and during her testimony. (Lechelt Testimony, 3T200-15; 3T202-4 to -5)

- Ms. Deluca expressed the sentiment that Ms. Lechelt failed to appreciate the gravity of this situation. (Deluca Testimony, 2T127-23 to 128-21) This claim is directly and specifically undercut by the testimony of Ms. Lechelt who testified without contradiction that at the time of her interview by Ms. Deluca she authorized her counsel to make a settlement offer to the Board's representatives. (Lechelt Testimony, 3T208-7 to -21)
- As to penalty, Ms. Lechelt has testified that a one-hundred twenty (120) day suspension would cost her approximately $22,000 in salary. (Lechelt Testimony, 3T210-12 to -13; Exh. Board-27, at pp. 75-76) This testimony is uncontested.
- If the arbitrator were to direct that Ms. Lechelt be suspended without pay from December 16, 2014 until the end of the 2014-2015 school year, this will cost her approximately $38,000.00 in salary. (Lechelt Testimony, 3T213-20 to -22; Exh. Board-27, at pp. 75-76) This testimony is uncontested.
- Based upon past contracts, Ms. Lechelt's salary increments for the 2015-2016 school year will be approximately $2,000.00. A one-time increment withholding would cost Ms. Lechelt approximately $2,000.00. (Lechelt Testimony, 3T214-8 to -9) This testimony is uncontested.
- Provided that the arbitrator returns Ms. Lechelt to work and if Ms. Lechelt were to teach an additional 22 years and then retire, a permanent increment withholding would cost Ms. Lechelt an additional approximately $40,000.00 in salary, and this loss would continue into retirement. (Lechelt Testimony, 3T214-11 to -17) This testimony is also uncontested.
- Ms. Lechelt is not disputing the Board's assertion that she participated in the chat and made inappropriate comments. However, the *Fulcomer* case and the seven tests for just cause demand that

a separate determination be made as to whether Ms. Lechelt's employment should be terminated, or whether a lesser penalty is appropriate. In addition, New Jersey case law under the TEACHNJ Act, and the law preceding the TEACHNJ Act (the Tenured Employees Hearing Act ("TEHA")), provides several examples of public employees charged with conduct unbecoming for actions significantly more egregious and offensive than Ms. Lechelt's conduct, and which did not result in termination of employment. Given the context in which Ms. Lechelt's comments were made, the environment the comments were made in and who they were addressed to, and the relevant case law, it is clear that Ms. Lechelt's conduct is not egregious enough to warrant the harsh penalty of termination of employment.

A petitioning board of education has the burden of proving tenure charges brought against a respondent by the preponderance of the competent and credible evidence. Conduct unbecoming a public employee has been described as an "elastic" phrase that includes "any conduct 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." *Karins v. City of Atlantic City*, 152 *N.J.* 532 (1998); *In re: Emmons*, 63 *N.J. Super*. 136, 140 (App. Div. 1960). In the context of a school tenure case, "the touchstone is fitness to discharge the duties and functions of one's office or position." *In re: Grossman,* 127 *N.J. Super.* 13, 29 (App. Div. 1974).

As noted from the inception of this hearing, *Fulcomer*, *supra*, is the foundational case under New Jersey tenure charge case law. It sets forth the approach which finders of fact in tenure charge hearings must follow when deciding a tenure charge case.

After the State Board upheld the Commissioner's decision as to penalty, the teacher appealed to the Superior Court, Appellate Division. The court upheld the unbecoming conduct decision, but overturned the Commissioner's decision as to penalty. In doing so, the court explained:

However, in our opinion the Commissioner erred in failing to render an independent

decision as to the penalty to be imposed based on the evidence before him and in permitting the local board to exercise this function. The Commissioner also erred in restricting his function to an appellate review as to whether the local board's determination was clearly unreasonable, arbitrary or unlawful. This restricted interpretation of the duties imposed upon him by the Tenure Employees Hearing Act, we believe, resulted in prejudice to the rights of the appellant and requires that the matter be remanded to the Commissioner for decision as provided herein . . . The teacher is entitled to an independent determination as to the scope of penalty based on all the evidence presented against him.

The court then applied the above standards to the circumstances of the case. Citing the teacher's unblemished prior disciplinary record and his outstanding teaching evaluations, the court determined that termination of employment was "an unduly harsh penalty" under these circumstances.

Each of the *Fulcomer* standards support the conclusion that you should not terminate Ms. Lechelt's employment and that you should impose a lesser penalty:

1. Impact of the Decision on Ms. Lechelt's Teaching Career

If Ms. Lechelt's employment is terminated, under New Jersey law, the Board is required to report the termination to the State Board of Examiners for possible revocation of Ms. Lechelt's certificates. *N.J.A.C.* 6A:9B-4.5. This would effectively end a promising teaching career for Ms. Lechelt, who has consistently proven to be an excellent teacher and has demonstrated her ability in providing an outstanding education for her students. She has had superior ratings in her observations, and she has won awards for her teaching. This factor weighs heavily in Ms. Lechelt's favor and supports the conclusion that her employment should not be terminated.

2. The Length of Ms. Lechelt's Employment with the Board

Although at the time of the Training Ms. Lechelt was into her fourth (4th) year as a teacher

for the Board, *Fulcomer* shows that the length of her career is not dispositive and does not overshadow other factors which clearly weigh in Ms. Lechelt's favor. At the time of his tenure hearing, Mr. Fulcomer was a teacher for only seven (7) years. However, the court determined that Mr. Fulcomer should be retained as a teacher. In this case, similar to *Fulcomer*, given the fact that all of the *Fulcomer* factors weigh heavily in Ms. Lechelt's favor, length of teaching career should not pre-dominate over the other factors.

3. Ms. Lechelt's Impeccable Teaching Record

Not only has Ms. Lechelt never had an increment withheld, she has never before been disciplined, formally or informally. It is unquestioned and unchallenged that Ms. Lechelt's teaching record prior to the Training was impeccable. Not only did Ms. Lechelt testify that she had never been disciplined in any manner for any kind of misconduct, Dr. O'Malley testified to her outstanding teaching record as well. (O'Malley Testimony, 3T100-7 to 103-15) The only type of recognition Ms. Lechelt received in her employ for the Board was positive recognition when, as stated above, she was named Teacher of the Year for 2012. Again, this factor weighs heavily in Ms. Lechelt's favor and supports the conclusion that her employment should not be terminated.

4. Ms. Lechelt's Unquestioned Teaching Ability

Besides the aforementioned Teacher of the Year award, Ms. Lechelt's outstanding teaching ability can be seen in a number of ways. Not only have Ms. Lechelt's ratings in her observations and evaluations always been outstanding, her supervisors often cited her as the model example for other teachers to follow. Ms. Lechelt's immediate supervisors even recognized this, as she was asked to serve as a mentor to other teachers who were struggling. A teacher who was not outstanding would not be asked to serve in such a role

5. Ms. Lechelt's Spotless Prior Disciplinary Record with No Increment Withholdings

As to this *Fulcomer* factor, it must be stated that, once again, this factor weighs heavily in

Ms. Lechelt's favor and supports the conclusion that her employment should not be terminated.

6. The Nature and Gravity of Ms. Lechelt's Offense under All Circumstances Involved

As to the nature and gravity of the offense, Ms. Lechelt's comments were made during a morning inservice training, and did not occur in the classroom with students present. No comments were ever made to any student. No comments were made to any other person besides the three other adults who were involved in the chat.

Under the New Jersey case law for hostile environment sexual harassment and the Board's own policies, the Board is hard pressed to contend that, under all of the circumstances, Ms. Lechelt's conduct amounts to sexual harassment. The lead case on sexual harassment in New Jersey is *Lehmann v. Toys 'R' Us, Inc.*, 132 *N.J.* 587 (1993)(copy enclosed). The Supreme Court in *Lehmann* set forth the elements that a plaintiff must prove in a New Jersey sexual harassment case. Those standards have not been met here.

In its tenure charges and in the testimony of its witnesses, the Board repeatedly claims that Ms. Lechelt sexually harassed Ms. Battista, created a substantial disruption of the Training, and made others fear of being harassed. A careful review of the proofs in this matter demonstrates that no harassment occurred because the conduct was neither ***severe nor pervasive*** nor was it conduct that would make a ***reasonable woman*** believe that the working environment is hostile or abusive.

The tenure charges charge independent violation of the Board's Sexual Harassment and Healthy Workplace Environment policies (Exhs. Board-21 and Board 25). At hearing, the Board argued that the conduct was both severe and pervasive but attempted to read the "reasonable woman" element out of the policies. However, the "reasonable person" element is clearly an articulated part of the Healthy Workplace Environment policy. (Exh. Board 25 at pg. 1, ¶ 2, line 4) Moreover, notwithstanding the contention that the reasonable woman element is not present in the Board's Sexual Harassment policy, the source law cited as the basis of the policy, 29 C.F.R. §1604.11 clearly

includes the element of reasonableness and provides "(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." This reasonableness element is plainly incorporated into the Board's policy (Exh. Board-21 at pg. 1, ¶ 2).

On the issue of severity or pervasiveness, the conduct at issue was neither severe nor pervasive. As to severity, the contents of the chat were not severe. The comments were sarcastic, filled with innuendos and double-entendres (Exh. Board-13). The fact that Ms. Deluca had to resort to Google to find the meaning of several of the comments (Deluca Testimony, 2T77-19 to -21) makes clear the fact that the comments were not particularly graphic or severe. There are very few curse words used, there is very little discussion about sex, and there is very little discussion concerning body parts, none of it graphic in nature (Exh. Board-13).

On the issue of "pervasiveness," at hearing the other parties often argued the issue of "expectation of privacy." These arguments miss the point. The true issue is one of pervasiveness. To be pervasive, the conduct must be, literally, "existing in or spreading through every part of something." http://www.merriam-webster.com/dictionary/pervasive This means that it must be generally known and public. In this case, the conduct was not generally known and public. Other than the participants, only Ms. Battista and Ms. McKenna were aware of the existence of the chat.

On the issue of "unreasonable interference" with work or of whether a "reasonable person" would view the working environment as hostile and abusive, the atypical reaction of Ms. Battista is critical. It is important to bear in mind the extraordinary lengths Ms. Battista had to resort to in order to see and photograph the chat on Ms. Lechelt's computer screen. Ms. McKenna, a neutral third-party witness, who was sitting next to Ms. Battista at the Training, told Ms. Deluca at her interview, that Ms. Battista had a direct line of sight to Ms. Bleekinger and the presentation board. Therefore, there was no need for Ms. Battista to adjust herself in any way to see Ms. Bleekinger's presentation.

In spite of this, Ms. Battista, who was, as Ms. McKenna described, "consumed" by the chat (Exh. Board-45 at p. 2), took out her iPhone, re-positioned herself to the left, leaned forward toward Ms. Lechelt's and her computer, aimed her iPhone at Ms. Lechelt's computer screen, zoomed in on the screen and took several pictures (Exh. Board-7, pp 2-9). This clearly shows that Ms. Battista had to make special efforts to be disrupted by and to photograph what was on Ms. Lechelt's computer screen.

When analyzing the other proofs against Ms. Battista's testimony, it is clear she did not testify truthfully as to the lengths to which she went to view and photograph the chat. One striking example is when she described the distance between where she was sitting and Ms. Lechelt's computer screen. Ms. Battista stated, on direct and on cross-examination, that she was a couple of feet from Ms. Lechelt's screen (Battista Testimony, 1T180-7 to 181-13). However, this is physically impossible. As Exh. Board-7, pg. 1 shows, there is someone sitting immediately to Ms. Battista's left. If Ms. Battista was only two (2) feet away from the computer screen as she contends, in order to see the screen around Ms. Lechelt, given the angle that she took the pictures in Exh. Board-7, pg. 2-9, Ms. Battista would either be sitting in her neighbor's lap, or Ms. Battista's neighbor would have had to move from his/her seat. There is no testimony that either of these things took place. However, if the computer screen was significantly further away than two (2) feet away, then Ms. Battista could have done what she testified she did. In other words, she could have re-positioned herself to the left, leaned forward, zoomed in on the screen, and took her pictures.

Ms. Lechelt's testimony on this matter is much more credible. Ms. Lechelt testified that the tables, by themselves, were at least two (2) feet wide. (Lechelt Testimony, 3T184-8 to 185-5, *accord* Deluca Testimony, 2T281-3 to -15) Given the fact that there was room between the tables for people in Ms. Lechelt's row to sit and squeeze behind the people who were seated (Lechelt Testimony, 3T184-8 to 185-5), and given Ms. Lechelt's unchallenged testimony that her computer was at the

end of her table, there had to have been at least five (5) feet from where Ms. Battista was sitting, and where Ms. Lechelt's screen was.

It is a simple case of common sense and geometry. If Ms. Battista were as close to Ms. Lechelt's computer screen as she claimed she was, the photos would have been taken from a much more acute angle. The only logical conclusion to be reached is that Ms. Battista exaggerated how close she was to Ms. Lechelt's computer screen. Ms. Battista was further away from Ms. Lechelt's screen when she took the photographs. Therefore, Ms. Battista had to zoom her phone in to specifically focus on viewing the content of the chat and to photograph it.

To paraphrase Judge Garibaldi in *Lehmann*, Ms. Battista is the hypersensitive employee who had an idiosyncratic reaction to what she saw on Ms. Lechelt's computer screen. Not only did Ms. Battista have to go through extraordinary steps to view and take pictures of Ms. Lechelt's computer screen when having a direct line of sight to Ms. Bleekinger, in light of Ms. McKenna's reaction to the chat, Ms. Battista's reaction was unreasonable from its inception. The Board's own interviews clearly show that, despite the Board's claims, there was no general disruption of the Training. Furthermore, while Ms. Lechelt acknowledged that her comments were inappropriate and unprofessional, placed in the proper context, the conduct is not as severe and pervasive as the Board suggests.

Ms. Battista's response to the chat was plainly unreasonable. Ms. McKenna, sitting directly to Ms. Battista's left, also saw some of the chat, but only after Ms. Battista asked her to look at the screen. When Ms. McKenna did look at the screen, her reaction was almost polar opposite to Ms. Battista's "consumed" reaction: Ms. McKenna saw the words, chose to look away, and focus her attention on Ms. Bleekinger. (Deluca Testimony, 2T53-2 to -11) Ms. Battista, as stated above, instead chose to re-position herself to take pictures of Ms. Lechelt's computer screen. During the Training, Ms. McKenna was the reasonable woman–Ms. Battista was not.

The non-public, non-disruptive nature of the chat is borne out by Ms. Deluca's interviews of the other attendees at the Training which the Board initially chose to exclude from the record when it initially moved only portions of its investigative materials into the record. Other than Ms. Battista, not one person said he or she believed that Ms. Lechelt's conduct disrupted them. Other than Ms. Battista, not one person stated that his or her work environment was hostile or abusive.

Therefore, the Board's claim that Ms. Lechelt's conduct violated these policies is unfounded. Given the absence of severe or pervasive conduct and given Ms. Battista's unreasonable and idiosyncratic reaction, it is clear that Ms. Lechelt did not sexually harass Ms. Battista or anyone else. This *Fulcomer* factor, once again, weighs heavily in Ms. Lechelt's favor and supports the conclusion that her employment should not be terminated.

7. Evidence of Provocation, Extenuation, and/or Aggravation

Many of Ms. Lechelt's comments were in response to inappropriate comments made by Ms. Bleekinger during the Training. During the hearing, Ms. Lechelt testified that Ms. Bleekinger was frequently using terms such as "lows" to describe groups of students. As Ms. Lechelt memorably stated in her testimony, she was offended by the usage of that term, because of the struggles her daughter Hallie experiences in school. Her "tart cart" comment in the chat was an attempt to mock Ms. Bleekinger for using these offensive terms, in a "what offensive term will she use next" manner.

8. The Lack of Any Harm or Injurious Effect Which Ms. Lechelt's Conduct Had on the Maintenance of Discipline and the Proper Administration of the School System

There is no evidence that Ms. Lechelt's continued employment in Edison will have any kind of negative effect on the maintenance of discipline and the proper administration of the school system. Ms. Deluca and Dr. O'Malley both testified in conclusory terms that they do not feel comfortable returning Ms. Lechelt to her position because the Board has fielded complaints about Ms. Lechelt. However, it is the Board's burden to prove this, and the Board has failed to enter one

single document into evidence which would show some kind of public perception problem or problems with overwhelming parent concern if Ms. Lechelt were to remain employed.

C. Applying the Seven Tests for Just Cause

Applying the above-stated just cause principles to this case, the testimony and proofs clearly show that, at the very least, the Board has failed to provide satisfactory answers to questions 4, 5, and 7 of the seven tests for just cause. The Board's investigation was not conducted fairly and objectively, and it lacked substantial proof that Ms. Lechelt was "guilty as charged."

The testimony and proofs show the Board investigated this incident with the result being pre-determined. Ms. Deluca interviewed twenty-three (23) other staff members who attended the Training. She also spoke to Engrade's attorney, who spoke to Ms. Bleekinger. In addition, principals at several Edison schools conducted their own interviews. Out of all of these people who were interviewed, the only person who said there was a disruption during the Training was Ms. Battista. Yet, despite at least twenty-three (23) other people contradicting her by stating the atmosphere in the Training was the same as any other training, the Board decided there was a disruption.

Before the Training, she received an email invitation from Mr. Van Pelt to join him in a Today's Meet chat room during the Training. Once engaged in the chat, Ms. Lechelt knew there were no students in the chat room, and thought the chat was just between her and her adult friends. The chat Respondents engaged in was immature and inappropriate. However, during the Training, Ms. Bleekinger used terms for students that, as stated previously, greatly offended Ms. Lechelt.

While Ms. Lechelt's explanations in no way diminish her lack of judgment, once again Ms. Deluca omitted these explanations from her notes and report, and by doing so, her and Dr. O'Malley failed to consider any evidence of mitigation. That kind of investigation is grossly inadequate and

completely improper.

As indicated above, Dr. O'Malley seeks her dismissal. New Jersey case law provides numerous examples of public employees charged with conduct unbecoming for conduct much more egregious and serious than Ms. Lechelt's conduct, but yet were not fired from their tenured positions. It is clear that, when comparing the circumstances of Ms. Lechelt's conduct and the comments she made, they pale in comparison to those of some of the teachers who were the subject of cited cases.

E. Cost Analysis of Potential Penalties

Ms. Lechelt testified without contradiction that a one-time increment withholding would cost her approximately $2,000 based upon the current guides. Ms. Lechelt testified that, based upon the 2013-14 salary guide, if she were to experience a permanent increment withholding, she would lose approximately $40,000 in salary over the course of her career due to the lost increment.

In addition, Ms. Lechelt provided uncontested testimony as to cost of the 120-day suspension from December 16, 2014 until April 15, 2015. She has already lost $22,000 in salary as a result of the 120-day unpaid suspension this year. (Lechelt Testimony, 3T210-12 to -13)

Ms. Lechelt provided uncontested testimony that if she was returned to her employment, but suspended without pay for a longer period of time from December 16, 2014 until the end of the 2014-2015 school year, based on the 2013-14 Salary Guide, her total loss in salary would be approximately $38,000. (Lechelt Testimony, 3T213-20 to -22) If the Arbitrator were to impose a suspension from December 16, 2014 until the end of the 2014-2015 school year and a one-time increment withholding, Ms. Lechelt would lose approximately $40,000 in salary. (Lechelt Testimony, 3T214-11 to -17) If Ms. Lechelt were to be suspended from December 16, 2014 until the end of the 2014-2015 school year and further penalized with a permanent increment withholding, she would lose approximately $78,000 in salary over her career.

In response to anticipated Board argument, Ms. Lechelt Is sincerely remorseful for her conduct. She has credibly taken full responsibility for her chat room comments.

The Board has claimed that Ms. Lechelt is not truly remorseful for her conduct in the chat. The Board has attempted to show this by alleging that Ms. Lechelt's did not have a remorseful attitude during her interviews, which it claims shows she did not understand the gravity of her conduct. However, when examining the proofs, it is clear that Ms. Lechelt expressed remorse for her comments at every step of this tenure charge process, from the day she was interviewed by Dr. O'Malley until the day she testified at hearing. She testified sincerely and honestly about how remorseful she was, demonstrated that she fully understood the impact of her comments and how they could be construed, and credibly stated that she would never repeat this conduct again. Nothing in Ms. Lechelt's teaching career or in her testimony suggests that there will be a re-occurrence of this conduct.

Additionally, Dr. O'Malley testified that, in his meeting with Ms. Lechelt, she began crying. However, he called her tears "crocodile tears." (O'Malley Testimony, 3T29, 11-20) Ms. Lechelt, during her testimony, said she began crying in Dr. O'Malley's office when she thought about the struggles her own special needs daughter experiences. Similarly, when Ms. Lechelt began talking about her daughter at the hearing, she began crying. Despite Dr. O'Malley's perspective, the anguish Ms. Lechelt feels when she considers her daughter's issues is real. This also strongly indicates the sincerity of Ms. Lechelt's remorse.

In its cross-examination, the Board tried to paint Ms. Lechelt's remorse as insincere by questioning her about her statements in her Answer to Tenure Charges and her responses to the Board's Interrogatories. The Board argues that because Ms. Lechelt did not admit to violating Board policies, she is somehow insincere in her remorse and does not understand the gravity of her actions.

The words her lawyers write in legal documents are not the measure of Ms. Lechelt's remorse. At hearing, she testified convincingly that she regretted her conduct during the Training, she understood how her comments could impact others, she understood that her comments were inappropriate, irresponsible, and could be construed as offensive, and that she would never repeat the same conduct again. You saw her testify; you can measure the sincerity of her testimony and her expressions of remorse. Moreover, the Board's argument ignores Ms. Lechelt's consistent expression of genuine remorse for her actions. She expressed remorse during her interview with Ms. Deluca, her interview with Dr. O'Malley, and most prominently, in her testimony.

It is unquestioned that besides one ill-advised morning, as noted above, Ms. Lechelt has dedicated herself to helping children with special needs and to improving the lives of all of her students.

Given New Jersey case law providing that the expression of remorse is a mitigating factor and given that Ms. Lechelt has never been disciplined for any reason prior to this single incident, you should not terminate Ms. Lechelt from her tenured teaching position.

At hearing, the Board's counsel alluded to legal principles articulated in *In re: Tenure Hearing of Jennifer O'Brien, State-Operated School District of the City of Patterson, Passaic County*, OAL Docket No. EDU 5600-11, Agency Ref. No. 108-5/11, 2011 *WL* 5429055 (Oct. 28, 2011), *aff'd by Comm'r* (Dec 12, 2011)(copy enclosed). However, *O'Brien* is not in any way similar to Ms. Lechelt's case, nor controlling of this case's outcome. In *O'Brien*, a teacher was charged with conduct unbecoming for posting on a publicly-available Facebook page that she was "not a teacher-she was a warden for future criminals!" among other disparaging comments about her students. *Ibid.* Here, the ALJ cites the primary reason for recommending termination of employment–that the teacher was not remorseful.

However, as the proofs and evidence shows, Ms. Lechelt's case cannot be more inapposite

to *O'Brien*. As stated above, Ms. Lechelt expressed sincere remorse for her conduct and clearly understands the impact her conduct could have on the school and the Edison community. Ms. Lechelt has consistently expressed this remorse, beginning with the EEO/AA investigation conducted by Ms. Deluca, and continuing to her testimony at the tenure charge hearings. There is nothing in Ms. Lechelt's past history that would even remotely suggest that her conduct at the Training is likely to re-occur. The sincere remorse and understanding she has consistently expressed clearly distinguishes this case from the insincere and/or non-existent remorse and understanding expressed by the teacher in *O'Brien*.

There are numerous examples in New Jersey case law where a public employee's sincere remorse for their actions was a major factor in determining the penalty for those actions. Ms. Lechelt's circumstances and statements of remorse and understanding demonstrates that, unlike the teacher in *O'Brien*, her employment should be reinstated. Once again, Ms. Lechelt never had been previously disciplined for anything. She is legitimately and sincerely remorseful for her conduct. She clearly understands the possible impact of her conduct on the school and the Edison community. Ms. Lechelt's demonstrated sincere remorse, clear understanding, and lack of prior discipline demonstrate her ability to work with staff members and students alike, and that also shows her conduct will not repeat itself. Therefore, Ms. Lechelt should not be terminated from her tenured teaching position.

The Board's tenure charges are prosecutorial in tone, charging Ms. Lechelt with six different offenses, with two charges having multiple counts. By doing so, the Board paints Ms. Lechelt's conduct in as negative light as possible, refocusing the same conduct through six different lenses. The Board attempts to portray Ms. Lechelt's one-time occurrence of bad judgment into multiple charges and counts in an attempt to paint Ms. Lechelt as unworthy of her position and a threat to children. The Board could have merged the charges to accurately reflect the one-time nature of Ms.

Lechelt's conduct. At hearing, the Board continued to suggest that the chat amounted to multiple acts of misconduct.

However, the Board cannot escape what the proofs show. The proofs show that, once again, this is the first time Ms. Lechelt was disciplined in any way, and that her prior disciplinary record is spotless. It is uncontested that Ms. Lechelt participated in a single chat on one morning, during a two-and-one-half-hour (2 ½) inservice session. No matter how hard the Board attempts to spin Ms. Lechelt's conduct, the Board cannot change the fact that this was the first-and only-time Ms. Lechelt engaged in any kind of misconduct. While it does not excuse what Ms. Lechelt said, the Board's attempt to inflate Ms. Lechelt's one-time conduct into multiple charges and counts is improper. Therefore, the conduct should be analyzed as what it is–a single incident.

The Board argues that Ms. Lechelt was not justifiably offended by Ms. Bleekinger's usage of the terms "lows" during the training to describe students because Ms. Deluca testified that a Board-employed administrator said he did not find term offensive. Additionally, the Board argued that standardized tests use that term, so it cannot be offensive. However, by so arguing, the Board once again is completely ignoring the context in which Ms. Bleekinger used the term and how she used it.

It is undisputed that Ms. Bleekinger used the term "lows" several times to describe low performing and/or Special Education students. (Deluca Testimony, 2T97, 12-17; Lechelt Testimony, 3T189-90, 20-19; 3T192, 10-18; 3T192-93, 22-6) All three (3) Respondents testified that Ms. Bleekinger's usage of that term offended them. (Lechelt Testimony, 3T189-90, 20-19) Once again, Ms. Lechelt testified that when she heard that term she thought of how disgusted she would be if her daughter was ever grouped and/or thought of in that way. Given these thoughts, not only the usage of the term "lows," but the number of times Ms. Bleekinger used the term, and the callous manner in which she used the term–"you can call them lows and they'll never know it"–offended

Ms. Lechelt. This is the context that the Board has repeatedly ignored, and refused to consider. Ms. Deluca testified that because one of the Board-employed administrators said he was not offended by the term "lows," it could not have been offensive to Ms. Lechelt. However, once again, this testimony lacks credibility because it is unsupported hearsay with no documentary support. More importantly, this Board administrator was not in the Training, and did not see how many times Ms. Bleekinger used the term "lows" and the manner it was used.

The Board attempts to point to standardized testing using the term "low" as proof of the term's acceptability. However, using the term "low" as part of standardized tests is completely devoid of the context in which Ms. Bleekinger used the term. It reflects neither the number of times Ms. Bleekinger used the term nor the manner in which Ms. Bleekinger used the term. It also does not reflect Ms. Lechelt's consideration of her special needs child. Despite what the Board argues, context matters when assessing Ms. Lechelt's comments. When applying the proper context to Ms. Lechelt's comments, it is clear she was offended by Ms. Bleekinger's usage of the term "lows."

The Board separately charges Ms. Lechelt with violation of its Acceptable Use policy (Exh. Board-24), its Inappropriate Staff Conduct policy (Exh. Board-23) and its Code of Ethics (Exh. Board-22), arguing that the same conduct constitutes multiple infractions. However, as New Jersey case law clearly demonstrates, when teacher usage of school computers has been found to violate school board policies, the violation of the policies, on its own, is not sufficient to support terminating the teacher's employment. There are several cases which illustrate this principle. These cases clearly show that a school board is required to show more than a pro forma violation of its policies in order to support a termination of a teacher's employment. In each of these cases, the arbitrator applied the *Fulcomer* standard and/or the seven tests for just cause, and took the teacher's prior disciplinary record into account when deciding the appropriate penalty.

For these reasons and the other reasons outlined in this brief, the Board's proposed penalty

does not fit the crime. We ask that you impose a penalty far less than what the Board has requested. A one-hundred twenty (120) calendar day suspension with a one year increment withholding and advancement to Step 6 of the Board's salary guide in the 2016-17 school year is appropriate.

OPINION

After considering the documentary and testimonial evidence, the undersigned concludes that Maryellen Lechelt is guilty of Charges I- Counts 1,2, 3, 4, 5, 6, IV- Counts 1,2, 4, 5, 6. 7, V and VI. Charges II, III, and IV-Count 3 are dismissed.

ANALYSIS OF THE CHARGES

The charges are arranged such that the numbered charges and specifications are preceded by a section entitled *Background Common to All Charges*. It would be appropriate to address that section before considering the numbered charges and specifications.

The bulk of this section deals with established Board policies. The cited policies concern sexual harassment (BX21), inappropriate staff conduct (BX23), the code of ethics (BX22), affirmative action (BX20), acceptable use of computer networks and computers (BX24) and a healthy workplace environment (BX25). The relevant Board Policy Numbers are 3362, 3281, 3211, 1140, 3321 and 3351 respectively.

On the theory that employees cannot be held accountable for the implementation of policies of which they were not put *on notice*, it is first essential to determine if and how the teachers employed by the Board knew of the existence of these policies and how they knew or should have known the substantive content of the policies.

The Board met its burden of demonstrating that the Respondents acknowledged their knowledge of the existence of said policies, the manner in which they could secure copies of the policies and their agreement to review the policies and to abide by them. It did so by producing a document entitled *Important Board Policies, Regulations and Mandated Communications Form.*

The record indicates that Respondent Lechelt executed this form on September 5, 2014 (BX18). Thus, she acknowledged that she was aware of the policies, that she would review them and conform to them.

In sum, Respondent Lechelt was *on notice* both procedurally and substantively of the Board's policies central to these charges. More important, she agreed to review the policies, to be conversant with the policies and to conduct herself in accordance with them.

It is well settled that employers are entitled to establish policies and work rules and to require employees to conform to them. This statement is true provided the employees are notified of the policies and rules. In this case, Respondent Lechelt acknowledged her responsibility to comply with them.

What is highly relevant here is that, under the circumstances, the failure to abide by the rules and policies is chargeable conduct. Since the failure to comply is chargeable, the Board is well within its rights to impose discipline on employees who are guilty of such breaches.

The second major component of *Background Common to All Charges* is a reference to a group chat on the *Today's Meet* website that was conducted through the District's computer network. The 2 ½ hour group chat was alleged to have taken place on October 23, 2014 during a professional development program that was called an *Engrade Chromebook Training.*

The District provides the teachers with laptop computers, Chromebooks. Thus, those participating in the group chat did so on District owned computers.

The record suggests that *Engrade* is a educational program employed by the District. The October 23, 2014 meeting was devoted to the program.

It is unchallenged that the *Engrade* meeting took place on October 23, 2014, that the group chat lasted (from beginning to end) 2 ½ hours and that Respondent Lechelt and approximately 25 other teachers were in attendance.

This section of *Background Common to All Charges* goes on to elaborate on the group chat and sets forth the allegedly unacceptable content of it. To the extent that these matters are included in the Charges and Specifications, they will be addressed below.

Charge I

This charge asserts that Respondent Lechelt's participation in the group chat rises to the level of unbecoming conduct and/or just cause. It alleges that Lechelt violated New Jersey law and Board policies, regulations and procedures concerning staff interactions. It charged that the chat room was public, was visible, and was accessible to other employees and students. It added that the chat room was offensive, discriminatory, rife with sexual innuendo and constituted a hostile work environment. This charge was the subject of six *counts* or specifications.

Count 1 concerned inappropriate comments about the Endgrade trainer, Sara Bleekinger. Lechelt was charged with a course of misconduct toward Ms. Bleekinger. It stated that the group chat was foul, discriminatory, offensive, harassing and sexual in nature. It cited the specific comments made by Lechelt during the group chat.

It should be stated that the group chat lasted for 2 ½ hours. It was downloaded from the computers and it was 16 pages in length (BX13). The text of Lechelt's comments were included in the charges served on her.

It must be noted that Lechelt's comments must be read in the context of comments made by other participants in the group chat. There were three main participants, Maria Weber, Maryellen Lechelt and Tyler Van Pelt. All of them were served with charges. While the matter was consolidated relative to the hearings, separate decisions are being written for each of the three named participants.

There was a small number of additional participants in the chat. They were either not

identified or no longer employed by the Board. In any event, their participation was limited and minor as compared to the three charged teachers.

As to Lechelt's culpability or lack thereof of Count 1, her comments about Sara Bleekinger were inappropriate. The comments related to Bleekinger's looks and speech. They also dealt with an imaginary liaison between Van Pelt and Bleekinger. Many of her comments had sexual innuendos and denigrated Bleekinger's professional abilities.

When these comments are put in the context of the entire chat, their inappropriateness is magnified. Thus, an objective review of the comments concerning Sara Bleekinger suggests that Lechelt's comments in and out of context with the total chat were inappropriate.

Despite the obvious, Lechelt argued that, while there is no denying what her comments were, she is not guilty of this Count. She insisted that the she had an expectation of privacy relative to the chat. She posited that the chat would have gone unknown but for Alysia Battista, another attendee at the meeting, seeing it. Thus, in her view, the chat was private and her participation in it cannot be chargeable conduct.

As will be discussed in greater depth below, Lechelt and her cohorts had no expectation of privacy. They were engaged in a chat in a public setting while using a District computer and a District network. Under the circumstances, there could be no expectation of privacy.

The fact that they thought that the chat was private is of no moment. Thinking something does not make it so.

Their reasoning was that one needed an access code in order to see that chat's comments. That reasoning is fallacious. Anyone passing by could see what was on the screens of the computers. The fact that only one person complained about chat is irrelevant. The chat was undertaken in a public setting and, irrespective of all of the issues concerning the ownership of the computer and the

network, it fell into the public realm. Once that is recognized, it is readily apparent that Lechelt had no expectation of privacy.

Much was said about Lechelt's remorse for her conduct. While she in fact made certain comments about her remorse for having participated, the defense suggests that she has not fully taken responsibility for her participation in the chat.

She always had the option of logging out of the chat. If she thought the comments being made were truly offensive, why would she continue to participate? She did not, suggesting that the comments were not, in her view, inappropriate until she was called to task for it.

Furthermore, Lechelt made a significant number of the comments in the chat transcript. Many of them were crude and surprising given her level of education and her profession. Her comments were not disputed.

Once the content of the chat became known, Lechelt became the subject of charges of unbecoming conduct for making inappropriate comments about Sara Bleekinger. The fact that the comments were not known to Bleekinger is irrelevant. The comments were public and were treated that way.

This count alleges that Lechelt's comments were disruptive and had a negative impact on another Engrade participant, Alysia Battista. These issues will be addressed below since they are part of many of the charges. In short, the Board met its burden relative to Count 1.

Count 2 concerns comments made about special needs students. The comments were undisputed. They referred to the children in outrageous pejoratives.

Lechelt indicated that she made these comments in response to Bleekinger referring to a *low group*. She suggested that she was offended by the term *low group*. She tearfully added that one of her children has special needs and resented the thought that her daughter would be described in such

a way.

There is no way that Lechelt can justify her comments. Even if she did feel offended, a proposition that the undersigned has difficulty accepting, why would she not address her resentment like an adult and a professional? Under those conditions, she would have either privately or publicly expressed her displeasure. She certainly would not have made the comments quoted in the transcript in an attempt to be humorous. If she thought her comments were funny, no rational reader of the transcript would laugh.

Once again, even of Lechelt had been offended by Bleekinger's characterization, her conclusion that *low group* is demeaning was arrogant and is a view that was unsupported by anything in the professional literature. By contrast, District witnesses cited to test and other professional literature that specifically referred to *low groups.*

In sum, Lechelt has neither the credentials nor the standing to refute the use of an accepted term. She is entitled to have an aversion to it but she does not have the right to object to it by making the comments she made.

It must be added that Lechelt's comments must also be viewed in the context of Van Pelt's comments about special needs students. She and Van Pelt were clearly having what they thought was a good time at the expense of handicapped students

For the reasons stated above, Lechelt is culpable of Count 2.

Count 3 alleges that Lechelt made inappropriate comments about Dr. O'Malley, the Superintendent of Schools. A review of the transcript reveals that Lechelt's comments indicate her reference to Dr. O'Malley as *tricky d.* They comment about his appearance. They are replete with sexual innuendo and suggest that his hirings are less than ethical and professional.

Her comments were unacceptable. When put in the context of Tyler Van Pelt's comments

about the Superintendent, they become even more offensive. Lechelt is guilty of Charge 3.

Count 4 addresses comments that Lechelt made about Alysia Battista. Alysia Battista is the teacher who saw Lechelt's computer screen and became upset when she read the comments that were part of the chat .

The comments made by both Lechelt and Van Pelt were graphic. Lechelt chose to comment about Battista's tendency to pick at her lips when she is anxious. Lechelt made a negative comment about this tendency and made a derisive comment about the lips getting bigger. Many of the comments in the exchange between Lechelt and Van Pelt were sexual in nature. The comments rose to the level of unbecoming conduct. Lechelt is guilty of Count 4.

Count 5 addresses comments made by Lechelt about unidentified individuals attending the training. The comments were primarily made by Lechelt and Van Pelt.

As were true of the comments made about Ms. Bleekinger, Ms. Battista and Dr. O'Malley the comments attributed to Lechelt about unidentified attendees at the training t were offensive, crude and sexual in nature. They were also discriminatory with respect to older people.

Count 5 was proven. The Board met its burden of proof in this regard.

Count 6 concerns comments made by Lechelt to Van Pelt and Weber. These comments concerned her becoming a supervisor because she is *cute and blonde,* made a reference to Van Pelt as being a *backchannel guy* (a reference to anal sex), references to Van Pelt being sexually aroused, a reference to male genitalia and an acknowledgment of her enjoying being asked to perform oral sex.

A review of the comments is sufficient to conclude that they constituted unbecoming conduct. Moreover, as noted above, Alysia Battista read the comments and became upset by them. Given the crudeness of the comments, her reaction was understandable and reasonable. Lechelt is guilty of Count 6.

Charge II

This charge is limited to a single count. It alleges that Lechelt was insubordinate and guilty of unbecoming conduct in that she was involved in the disruption of Engrade training. An analysis of the allegation must be done before a determination is made about the charged misconduct.

The key word in this charge is *disruption.* An accepted definition of this word suggests that the action(s) of an individual or group interfered with the ability of others to continue an ongoing activity. Put another way, the actions of one or more people had to have prevented the organizers of a specific activity from continuing the activity to its planned conclusion.

With this definition in mind, one needs to examine the facts surrounding the instant matter. It is uncontested that the training started and ended on time. It is also clear that from the perspective the trainer, Sara Bleekinger, her presentation was made in an uninterrupted manner. Thus, it is difficult to conclude that Lechelt and others disrupted the training.

That is not to suggest that Alysia Battista was not upset by the contents of the chat. It is apparent that seeing the text of the chat interfered with her ability to benefit from the training.

It must be said that Battista was the subject of negative comments by the three main participants in the chat. There was a good deal of blaming the victim here. Such a response was inappropriate.

By any reasonable standard, there were many grossly offensive comments that were made during the chat. Any reasonable person would have found them offensive and large numbers of reasonable people would have been disturbed to read the comments, particularly in a professional setting.

The undersigned hastens to add that an absence of disruption of the training session does not obviate the contention that Lechelt was guilty of misconduct. As noted in the findings to Charge I,

she was guilty of misconduct. Specifically in Charge I Count 3, 4, and 5, Lechelt was found to be culpable of unbecoming conduct in connection with Alysia Battista, Dr. O'Malley and Sara Bleekinger. Furthermore, as will be seen in charges not yet addressed, she is guilty of additional misconduct.

However, it cannot be said that Lechelt disrupted the training session. If the actions of Lechelt and her two cohorts had not transpired, from the perspective of the vast majority of the attendees, it is likely that the session would have been no different than it was in the presence of the group chat. Thus, Charge II is dismissed.

Charge III

This charge alleges the misuse of the District's computer network through a group chat that was *inappropriate, foul, discriminatory, harassing, offensive and sexual in nature.* The District alleged that the foregoing was a flagrant misuse of the Board's resources. The Board concluded that this conduct constitutes unbecoming conduct, insubordination and just cause for dismissal.

Without commenting on the merits of Charge III, the Arbitrator points out that Charge IV Count 7 alleges, although worded in a slightly different way, the same misconduct in the context of Board Policy 3321.

Therefore, the issue of the alleged misuse of the District's computers and network will be addressed in the discussion of Charge IV Count 7. As such, Charge III is dismissed.

Charge IV

This charge asserts that Maryellen Lechelt violated various District policies. The District posited that such misconduct constituted unbecoming conduct and/or just cause for dismissal.

Charge IV is comprised of seven counts. Each of the counts will addressed individually. It should be noted that, of the seven counts, only Count 3 does not allege that Weber violated a specific

District policy.

With that in mind, there are certain comments that apply to Counts 1, 2, 4, 5, 6, 7. Since it is more efficient to make certain observations about all six counts at the outset rather than repeat them in connection with each policy, the following observations apply to all of the cited Board policies.

As noted above, Lechelt was *on notice* about each policy (BX18). This document listed 34 policies and procedures in effect in the District. The policies cited in the six counts identified above are all listed on the document.

Lechelt signed this document to acknowledge receipt of it as well as an acknowledgment of her awareness that the policies can be found on the Board's website. Finally, Lechelt's signature reflects her agreement to conform to the listed policies and procedures.

What must be concluded is that Lechelt was bound to comply with the policies. If she failed to review the policies in order to be able to comply with them, she did so at her own risk. In short, she was required to comply with the policies.

A second observation to be made is that Lechelt and her two colleagues participated in the group chat. Their continued participation in the chat makes each of them responsible for its contents.

It is true that Lechelt made some, not all, of the inappropriate comments. However, had she been concerned about her commitment to honor District policies, she would have logged off of the chat and, in so doing, disassociated herself from it. She did not do so and must be held accountable for her actions.

What remains is an application of the facts of this case to the terms of the cited policies. Such an analysis will result in a determination of whether Weber is guilty of one or more of the counts.

Count 1 alleges a violation of the Board's sexual harassment policy (Policy number 3362) (BX21). In relevant part, the policy states:

> The Board of Education recognizes that an employee's right to freedom from employment discrimination includes the opportunity to work in an environment untainted by sexual harassment. Sexually offensive speech and conduct are wholly inappropriate to the harmonious relationships necessary to the operation of the school district and intolerable in a workplace to which the children of this district are exposed.
> Sexual harassment includes 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.
> Whenever submission to such conduct is made a condition of employment or the basis for an employment decision, or when such conduct is severe and pervasive and has the purpose or effect if 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 the Board who is found to have sexually harassed an employee of this district will be subject to discipline which may include termination of employment.
> The Affirmative Action Officer shall instruct all employees and agents of the Board to recognize and correct speech and behavior patterns that may be sexually offensive with or without the intent to offend.

Before considering the facts, there needs to be analysis of the policy. The policy addresses two forms of sexual harassment, sexually offensive speech and sexually offensive advances, both physically and verbally. There is no evidence of sexual advances in any way, shape or form. Thus, the relevant language in this policy concerns the first paragraph above.

The sexual harassment in this case concerns sexually offensive speech. The purported sexually offensive speech was contained in the comments made during the group chat.

The facts suggest that Alysia Battista, a participant at the Engrade training was sitting behind and to the left of Maryellen Lechelt. She was able to see Lechelt's computer monitor and was able

to read the ongoing comments of the group chat and became offended by the comments that were overtly sexual as well as those that had sexual innuendos

Battista became upset by what she saw and left the meeting room. She filed a complaint about the chat and the instant proceeding resulted.

To be clear, counsel for Weber, Lechelt and Van Pelt all cited *Lehman v. Toys 'R' Us,* 132 N.J. 587 (1993) as the seminal case in New Jersey for matters involving sexual harassment. The cited case is applicable to the portion of the instant policy that deals with physical and verbal sexual advances. This aspect of the policy is found in its second paragraph, not the first one.

Moreover, the language in the second paragraph tracks *Toys 'R' Us.* The same cannot be said for the first paragraph. It is evident that, if the Board intended for the *Toys 'R' Us* standards to apply to both paragraphs, it would have made such an indication in the policy. Thus, the plain language of the policy indicates that the Board intended to distinguish sexually offensive language from sexual advances of either a physical or a verbal nature.

Thus *Lehman v. Toys 'R' Us* is inapposite here. The standards set forth in *Toys 'R' Us* do not apply in matters involving sexually offensive comments that are distinguishable from cases in which there was sexual advances of a physical or verbal nature.

This case deals with sexually offensive speech. The Board is well within its rights to issue policies that are relevant to the governance of the school district.

With the above analysis having been completed, the undersigned must now consider whether Lechelt was guilty of the violation of the Board's sexual harassment policy in terms of participating in sexually offensive speech.

The Arbitrator is persuaded that she did so through direct comments, by responses to the comments of others and by participating in the group chat from beginning to end. She directly commented on Van Pelt as being a *backchannel guy.* The record suggests that *backchannel* refers

to anal sex. Lechelt made numerous other offensive sexual comments. Thus, Lechelt's comment were sexual in nature.

There are numerous examples of responses by Lechelt to comments made primarily by Van Pelt. These comments were made in the midst of a series of comments about Sara Bleekinger, Alysia Battista and Dr. O'Malley that were sexual in nature.

In sum, Maryellen Lechelt violated the Board's policy proscribing sexually offensive speech. Thus, she is guilty of Charge IV Count 1.

Count 2 alleges a violation of the Board's affirmative action policy (Policy Number 1140) (BX20). This policy is designed to promote the acceptance of people of diverse backgrounds regardless of race, creed, color, national origin, ancestry, age, marital status, affectional or sexual orientation, gender, religion, disability, or socioeconomic status. The intent of the policy is spelled out in the first full paragraph of the policy statement.

While Lechelt's comments were about Alysia Battista and other people, some of them being unidentified participants at the training, they were disparaging of women, special needs students, lesbians and older people (BX13). She cannot credibly assert that she did not violate this policy while sitting through and participating in a chat that was replete with comments about people protected by the policy. Thus, she is guilty of Charge IV Count 2.

Count 3 concerns a purported violation of the policies alluded to in Counts 1 and 2 pertaining to the Affirmative Action Investigation. This count is dismissed.

Lechelt has already been found guilty of Counts 1 and 2. She is essentially being charged with the same misconduct a second time. In this regard, Count 3 is duplicative.

With respect to the interview per se, there are circumstances under which a interviewee's conduct at an interview could rise to the level of misconduct. However, under the facts of this case, Lechelt was said to have not understood the seriousness of the matter but was not shown to have

been guilty of misconduct at the interview per se. Thus, as indicated above, Charge IV Count 3 is dismissed.

Count 4 suggests a violation of the Code of Ethics policy (Policy Number 3211) (BX22). The key language in this policy is found in Principle II. It states as follows:

> The education profession is vested by the public with a trust and responsibility requiring the highest ideals of professional service.
> In the belief that the quality of the services of the education profession influences the nation and its citizens, the educator shall exert every effort to raise professional standards, to promote a climate that encourages the exercise of professional judgment, to achieve conditions which attract persons worthy of the trust to careers in education, and to assist in preventing the practice of the profession by unqualified persons.

Among other issues, this Code of Ethics requires teachers to endeavor to raise professional standards and to encourage the exercise of professional judgment. Lechelt's participation in the group chat was inconsistent with both of these principles.

Lechelt attended a professional development training session. It was offered in order to provide participants with the opportunity to improve their abilities with the Endgrade program. It is inconceivable that experienced educators would engage in group chat for 2 ½ hours while a trainer was engaged in a professional presentation. What makes the misconduct especially egregious is the content of the chat. It was demeaning, denigrating, offensive and discriminatory. There was nothing about the chat that reflected *an endeavor to raise professional standards*. It was crude by any standard and a clear violation of the District's Code of Ethics.

The Arbitrator is compelled to comment on the argument that the amount of time that the participants were involved in the chat was limited to the time spent in inputting the comments. This argument is invalid and inappropriate. It suggests that they may have spent 15-20 minutes actually inputting their entries in the chat.

It is highly disingenuous to assert that the chat lasted 150 minutes but that the participants were involved in the chat for 15 or 20 minutes. That implies that they were focused on the training material for 130-135 of the 150 minutes. That suggests that the three respondents spent no time reading each other's *contributions* to the chat and that they spent no time watching their computer monitors while waiting for responses to previous inappropriate comments.

The chat lasted 2½ hours from beginning to end. The greatest time gap between comments was four minutes. This argument trivializes the misconduct and does nothing to reinforce the premise that they are sincerely remorseful for their actions.

The second aspect of the Code of Ethics that is pertinent here is the creation of a climate that encourages the exercise of professional judgment. The participation in the group chat is the antithesis of the exercise of professional judgment.

The Arbitrator is convinced that Lechelt violated this policy. Thus, Lechelt is guilty of Charge IV Count 4.

Count 5 addresses the Inappropriate Staff Conduct policy (Policy Number 3281) (BX 23). The relevant provision in this policy is found in the fourth full paragraph. It states as follows:

> School staff 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 conduct towards the pupils.

There was an extensive string of comments concerning special needs students in the transcript of the chat. The comments, many of which were made by Lechelt, were, to say the least, inappropriate and discriminatory.

What makes Lechelt even more culpable is the fact that she is a parent of a Special Education student. If such a teacher is not offended by negative statements about students like her daughter, who will be?

Suffice it to say that Maryellen Lechelt violated the Inappropriate Staff Conduct policy. She is culpable of Charge IV Count 5.

Count 6 concerns the Healthy Workplace Environment Policy (Policy Number 3351) (BX25). The relevant language in this policy is found in the second full paragraph of the text. It sates as follows:

> A significant characteristic of a healthy workplace environment is that employees interact with each other with dignity and respect regardless of an employee's work assignment or position in the district. Repeated malicious conduct of an employee or group of employees toward another employee or group of employees in the workplace that a reasonable person would find hostile and offensive is unacceptable and not conducive to establishing or maintaining a healthy workplace environment.

The record indicates that Supt. O'Malley was the subject of numerous comments about his appearance, hiring practices and his purported sexual practices. The comments were graphic and crude. The treatment that he received in the group chat was prototypical of what was proscribed in the policy.

Lechelt made numerous offensive comments about various individuals other than Superintendent O'Malley. Therefore, there was *repeated malicious conduct.*

Therefore, she violated this policy. As such, Lechelt is culpable of Charge IV Count 6.

Count 7 addresses the final policy allegedly violated. It is the policy concerning the acceptable use of district computers and computer networks (Policy Number 3321)(BX24).

The key language in this policy is as follows:

> The Board recognizes that telecommunications will allow teaching staff members access to information sources that have not been pre-screened using Board approved standards. The Board therefore adopts the following standards of conduct for the use of computer network(s) and declares unethical,

> unacceptable, inappropriate or illegal behavior as just cause for taking disciplinary action limiting or revoking access privileges, instituting legal action or taking any other appropriate action as needed necessary.
> The Board provides access to computer network(s)/computers for administrative and educational purposes only. 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 network(s)/computer shall be subject to discipline or legal action:
> 3. Using the computer network(s) in a manner that:
> k. Engages in other activities that do not advance the educational purposes for which the computer network(s)/computers are provided.

Irrespective of the defenses offered by the three charged teachers, there can be no question that they used the District's computers in a manner that was violative of this policy. The defenses will be discussed below. However, the use of the computers for the group chat was clearly in violation of the Board's policy.

Lechelt, as one of participants in the chat, violated the policy concerning the use of District computers and computer networks. Thus, she is guilty of Charge IV Count 7.

Charge V

This charge is one of a single count of misconduct. Lechelt is charged with a failure to pay attention during the Endgrade training and with making no effort to benefit from the instruction provided.

As has been previously documented, Maryellen Lechelt has been found guilty of various kinds of misconduct, ranging from inappropriate conduct with other staff members and with other participants in the group chat and individuals not in the employ of the District to significant

violations of Board policy. In each of those charges and counts, the misconduct could be documented through a review of the transcript of the chat and through a review of the conduct of Lechelt in the context of the terms of several Board policies.

In this charge, Lechelt is said to have not paid attention to the training and having made no effort to benefit from the instruction. The transcript of the chat shows the timing of the comments. At most, there was a time gap of four minutes between comments.

It makes no sense to limit the time spent on the chat to the amount of time writing comments. Lechelt was paying attention to the chat for virtually the full 2 ½ hour duration of the session. The total time she was involved in the chat precluded her paying attention to the content of the training.

Based on the record created, the Arbitrator concludes that Lechelt did not pay attention and did not make appropriate efforts to benefit from instruction that was designed to improve her teaching. As such, Charge V must be sustained.

Charge VI

This charge asserts that Lechelt was guilty of ongoing neglect of duty. The basis of this charge is found in comments she made that suggested that she wanted to avoid performing her duties in the future.

The comments referenced by the District were self-explanatory. She derided the training as a waste of time and then calculated the time wasted as about 300,000 hours of time at a cost of about $300,000. She ended the comment by congratulating them, presumably the chatters, for this waste.

One would think that she would have made better use of her time getting what she could from the training rather than making inane calculations. It is inconceivable that Lechelt, a relatively junior teacher, could not gain some measure of benefit from a staff development program. However, her approach was to publicly deride the District's effort to enhance the training of the teachers and then to engage in offensive calculations in an effort to show that the District was guilty of wasting time

and money.

She followed the above described comment with two more that were equally inappropriate. The first one appeared to suggest that since the training was a waste of time, she could continue to waste time by sitting in the back of her classroom reading a magazine.

The second comment was directed to Van Pelt. She suggested setting up a chat when they return to their teaching duties and to continue the chat when they are supposed to be teaching.

These two comments need to be put in context. On the one hand, Lechelt stressed that none of her inappropriate comments were said to or in the presence of students. On the other hand, she suggested that, because she had so little appreciation of the training, it would be agreeable to her to deny her students instructional time.

Two comments are in order. If she thought her comments were humorous and should not be taken seriously, they were not funny and reflected a side of her that was unlike the image of a dedicated teacher that she tried to project at other points during the hearing.

Second, assuming *arguendo* (an assumption not shared by the Arbitrator) that the training session needed improvement, does Lechelt suggest that every pedagogical effort that she has made has been an outstanding success? Rather than appreciating the District's effort to support the staff through additional training, she chose to denigrate the District's effort and to humiliate the Superintendent and Bleekinger. A professional who finds a training to be in need of improvement makes suggestions for improvement but does not act as Lechelt did.

Lechelt's last comment suggested that the chat was therapeutic and that the chat group should attend other training sessions. The comment indicates that the group chat was so meaningful that they should continue to participate in them in future training sessions.

The comment posits that the negative comments about the Endgrade training were irrelevant. She viewed the training sessions as times for them to act in an irresponsible and unprofessional way.

It clearly puts the defenses she raised in a light that does not serve her well.

Lechelt argued that her teaching record suggests that she would never waste teaching time by reading magazines. Lechelt does not appear to recognize that, if purposeful use of instruction time was of such great importance, she would not have made such a comment because such a thought would never have dawned upon her.

The District charged Lechelt with neglect of duty. The comments reflect an intent to neglect teaching duties and professional obligations in the future. They also add further evidence of her actions during the Endgrade training as rising to the level of neglect of duty. Thus, Lechelt is culpable of Charge IV.

ANALYSIS OF THE DEFENSES

Lechelt offered a number of defenses in an effort to mitigate the findings of misconduct. They are deserving of mention and discussion.

She acknowledged that the facts in this matter are undisputed. However, she urged that she has an unblemished record and that she has expressed sincere remorse for her actions. She stressed that, although they are not mandatory, an application of the *Fulcomer* standards suggests that termination is unjustified in this case.

At the same time that Lechelt makes the above statements in her own defense, she sees her actions as a *youthful indiscretion.* She posits that the District exaggerated its claims of her malice. She minimizes her misconduct by claiming it was limited to two hours of a single day. She characterized her comments in the chat as being *misguided jokes.*

The two paragraphs above stand in contrast to each other. The first one seems to assume responsibility for her actions and simply suggests that a penalty short of termination would be appropriate.

The second paragraph trivializes her misconduct in a number of ways. It leaves the

undersigned uncertain about the sincerity of her remorse and her assumption of responsibility.

The reference to Lechelt's *youthful indiscretion* makes suggests that Lechelt is a teenager. She may have behaved like one but she is a professional who can reasonably be expected to behave like one.

She objected to Dr. O'Malley's and Ms. DeLuca's characterization of her attitude at her interview as being unaccepting of the seriousness of her misconduct. Lechelt's beliefs as set forth in the second paragraph add great credence to the conclusions of Dr. O'Malley and Ms. DeLuca.

Lechelt made a conscious effort to demonstrate that she has added to the tone of the school through her participation in extra-curricular and co-curricular activities. The undersigned notes that Lechelt had a leadership role in an anti-bullying club. This program was designed for the benefit of students.

The Arbitrator is taken by her lack of insight into her own actions. Did she not realize that her comments about Sara Bleekinger were bullying ones? Did she not recognize that her castigation of Battista for having the temerity to look at a computer monitor that was publicly displayed involved bullying. Lechelt's current situation was primarily the result of her own actions. But for the actions of the three people involved in the chat, Battista would not have become upset and would have had nothing to report.

The undersigned will discuss Lechelt's belief that she had a right to privacy. However, the bullying comments that she made were in a public venue. Anyone passing by could have seen her computer screen and would have had the opportunity to share the comments with Ms. Bleekinger.

Moreover, the comments were insulting and denigrating. There is a serious inconsistency between passing oneself off as leading an anti-bullying effort and then acting as she did in connection with Sara Bleekinger, Alysia Battista and others.

A major defense raised by Lechelt was that she had a right to privacy and that the chat was

inaccessible to others. Her premise is totally without merit.

The computers and the network belong to the District. The District always had the right to confiscate the computers and to examine its contents. So much for the chat being inaccessible to others.

Additionally, the chat was conducted in a public venue and subject to being viewed by anyone passing by. The fact is that the chat was seen by Alysia Battista. Rather than recognizing that Battista read the chat in a public setting, Lechelt excoriated Battista as being similar to a voyeur. If Lechelt seriously believed that she had a right to privacy under the facts of this case, she is extremely misguided. Before engaging in the conduct that placed her in a position that could lead to her dismissal, she needed to have the curiosity needed to determine the extent of her liabilities.

It is difficult to credit the argument that Lechelt believed that she really had a right to privacy. She knew or should have known the District's policy concerning the use of its computers and computer networks. She had to know that the chat substantively violated various Board policies as well as common decency.

A second area of Lechelt's defense concerned Alysia Battista. She portrayed Battista as the villain. She claimed that Battista had an ax to grind.. Therefore, in Lechelt's view, she reported the misconduct.

She claimed that Battista and she had disagreed about various professional issues when they both attended training sessions. Thus, taken to its logical conclusion, professionals should not disagree about professional issues because such disagreements could lead to subsequent charges of animus. There is nothing in the record to suggest that Battista engaged in a personal vendetta against Lechelt and seized upon the chat *to get* Lechelt.

Lechelt observed that Battista's interpretations of the chat were erroneous. Lechelt fails to recognize that the basis of the charges have little to do with Battista's interpretations. The charges

are largely based on the transcript of the chat.

She accused Battista of being untruthful. The basis of this claim is Battista's inaccurate estimate of the distance of her seat from that of Lechelt. An inaccurate estimate of distance is hardly an obfuscation of the truth.

Lechelt opined that Battista's response to the chat was unreasonable. Such a view is self-serving and is devoid of credibility. As noted, the chat was offensive on numerous levels. It is not unreasonable that a third party reader of the chat's transcript would become offended.

Are there people who might not have been offended? There are. However, that does not make those who do become upset *unreasonable.* On the contrary, Battista's being upset was entirely reasonable under the circumstances.

Lechelt engaged in a *blame the victim* exercise. Battista saw the chat and became upset by its crudeness. Objectively, the chat was crude. It would have been better for Lechelt to indicate *mea culpa* without trying mitigate the misconduct by in some way blaming Battista for the situation in which she currently finds herself.

Another significant aspect of Lechelt's defense is her allegedly being offended by Bleekinger's reference to some special needs students as being in the *low group.* As indicated above, Lechelt's view of this term is based on nothing other than her opinion. While the District cited professional literature that refers to a *low group,* Lechelt and Van Pelt evidently decided that they were was the final authorities on this matter. Moreover, even if Lechelt believed that she had a serious philosophical difference with Bleekinger, did she really think that making offensive and discriminatory comments about special needs students was the appropriate way to address the issue?

Lechelt's purported reaction to *low group* suggests a sensitivity to this issue. Perhaps her sensitivity stems from the fact that her daughter has special needs. That possibility is understandable. What defies understanding is her justifying her sensitivity while deriding what may

have been Battista's sensitivity to a chat that was laden with overtly and extremely offensive statements.

Lechelt argued that the chat was private because of FERPA issues. This claim is without merit. FERPA is a statute that protects the privacy of student records. Student records were in no way discussed at the Endgrade training.

The Arbitrator concludes that this assertion is further evidence of Lechelt's failure to understand the seriousness of this matter. It also suggests that her remorse is not as sincere as she would like the Arbitrator to believe.

Lechelt suggested that she is an effective professional. Would an effective professional describe Dr. O'Malley as she did? Would such an individual suggest that his hiring practices are based on sexual favors? Would a professional accuse him of making up his mind to suspend her before he interviewed her? This question is posed in the context of Lechelt having reason to know that Dr. O'Malley read the transcript of the chat multiple tomes.

Last, Lechelt observed that, under *Toys 'R' Us,* she is not guilty of sexual harassment. The Arbitrator has addressed this matter in connection with the charge related to the violation of the Board's sexual harassment policy. That analysis need not be repeated here. Needless to say, this argument is not persuasive. As noted above, while the undersigned rejects the *Toys 'R' Us* defense, it is the opinion of the Arbitrator that, while recognizing that others might have reacted differently, Battista's reaction was reasonable. Her reaction was not idiosyncratic.

A final element of the defense concerned the interview conducted by Ms. DeLuca after becoming aware of the alleged misconduct. She outlined the interview by indicating the questions asked and the responses received (DX15).It is necessary to comment on this matter since, under *Just Cause,* the undertaking of a fair investigation is required.

DeLuca interviewed numerous people. She could not identify all of the possible interviewees

but she made a reasonable effort to identify those who should be interviewed. The fact is that a large number of attendees at the training knew little or nothing about the matter at hand.

Lechelt claimed that many of her comments are not reflected in DeLuca's report. However, at the end of the interview, DeLuca specifically provided Lechelt with an opportunity to make any additional comments. Evidently, Lechelt availed herself of the opportunity and DeLuca included them in the summary of the interview.

DeLuca indicated that she took notes during the interview and then transcribed her notes. She was criticized for not preserving her hand written notes. No authority was cited that indicated that handwritten notes must be preserved.

Moreover, the interview was not done in the presence of a court reporter and was not recorded. If Ms. DeLuca was intent on making Lechelt appear guilty, she could have handwritten anything she wanted, preserved her handwritten notes and then transcribed them. The lack of preservation of the handwritten notes in this case is simply a *red herring*.

In the final analysis, the resolution of this matter comes down to a credibility determination. On the one hand, aside from the issue over DeLuca's notes, there were no credibility issues raised in connection with DeLuca. The same cannot be said relative to Lechelt.

The summary of the interview is lengthy and detailed. De Luca credibly stated that the summary was complete and accurate. In this regard, the undersigned credits DeLuca's testimony.

In a broader context, the Arbitrator is persuaded that the investigation of the instant matter was fair and comprehensive. This is fundamental to a finding of *Just Cause.*

THE *FULCOMER* STANDARDS

The Board is seeking the termination of Lechelt's services as a teacher. She argued that the leading New Jersey case concerning the termination of tenured teachers as a consequence of unbecoming conduct is *In re Fulcomer*, 93 N.J. Super. 403 (App. Div. 1967). This was a case in

which the Commissioner of Education concluded that Respindent Fulcomer engaged in unbecoming conduct and that dismissal was required.. The Appellate Division disagreed and held that the trier of fact must first determine if the respondent teacher engaged in unbecoming conduct and, if so, whether the misconduct warranted discharge or a lesser penalty.

The application of *Fulcomer* is not mandated. However, it is useful since, like *Just Cause,* it establishes an objective set of guidelines to be considered in cases such as this one.

In this regard, the Court determined that the following factors should be considered:

1. The potential impact on the charged teacher's career.

It is evident that, should Lechelt be terminated, the District would be required to report the dismissal to the State Board of Examiners for the possible revocation of her teaching certificates. It is reasonable to conclude that a termination in this case would dramatically increase the likelihood of Lechelt's teaching career being ended in New Jersey and probably in other states.

2. The longevity of Lechelt's career.

Maryellen Lechelt has been a teacher in New Jersey for about four years. She is a junior teacher and should not be given the consideration afforded teachers with many more years of effective service.

3. Lechelt's overall teaching record.

Lechelt's teaching record is devoid of negative comments. However, given the length of her tenure in Edison Township school, her record must be viewed as being not fully developed. Her four year record is good but one needs to suspend judgment in this regard until a determination can be made as to whether the past record is prelude to the future.

4. Lechelt's teaching ability

A review of Lechelt's evaluations reveals that she has been consistently rated positively both as a provisional and a tenured teacher. Her ratings as a tenured teacher were either *Proficient or*

Accomplished on the sub-parts to the evaluations, as well as on her overall ratings. She apparently has done well but there is room for further growth. Greater respect for professional training would be helpful.

In addition, the record suggests her willingness to immerse herself in co-curricular and community activities. These activities reflect a desire to contribute to the school's standing through her contributions to out-of-classroom ventures.

5. Whether there was an absence of prior discipline affecting Lechelt during her employment.

Lechelt has never been disciplined in any manner

6 . Whether there was an absence of past increment withholdings.

There is no evidence of a salary increment being withheld.

7. The nature and the gravity of the offenses under all of the circumstances involved.

The misconduct described herein is very serious. She was part of a group of teachers who violated several important Board policies. She argued that her misconduct was mitigated in part by the fact that the trainer, in her view, made offensive comments about special needs students and by Battista's invasion of a private chat. As noted above, Lechelt's comments in this regard were given little weight.

8. Evidence as to provocation, extenuation or aggravation.

Lechelt claimed that she was provoked by certain comments made by Bleekinger. This claimed provocation is without merit.

9. Any harm or injurious effect which Lechelt's conduct had on the maintenance of discipline and the proper administration of the school system.

This matter ultimately became public. It had an impact on the manner in which the community views the school. Further, the comments made about Dr. O'Malley had to be personally embarrassing and offensive and could have had the effect of weakening his image as the

Superintendent of Schools.

Furthermore, Lechelt's comments related to Charge V suggest that she might need closer supervision until she can demonstrate that her intent to reduce her efforts while teaching were either not serious or were reconsidered.

JUST CAUSE

Just Cause standards emanate from *Enterprise Wire,* 46 LA 555 (1956). There are seven tests that need to be applied to a determination of the appropriateness of discipline.

In this case, there was Just Cause to discipline Lechelt. The Board policies forewarned her that she could be disciplined for violations of the policies. The cited policies were more than reasonably related to the *business efficiency of the District and the performance the employer might expect from an employee.* There was an investigation conducted to determine if Lechelt was culpable of misconduct. The investigation was fair and objective. It was related solely to the purported misconduct and there was an effort made to interview anyone who had knowledge of the underlying conduct Based upon the investigation and a review of the transcript, the District determined that there was substantial evidence of Lechelt's guilt. The rules/policies were applied fairly. Finally, the degree of discipline applied herein is related to Lechelt's misconduct and her past record.

CONCLUSIONS

A review of the *Fulcomer* and *Just Cause* standards persuades the Arbitrator that the Board had cause to serve disciplinary charges on Maryellen Lechelt. The Arbitrator points out that both sets of standards have been addressed herein. In sum, Ms. Lechelt is guilty of serious misconduct.

While she has expressed remorse, it is not entirely clear that she fully accepts responsibility for her actions. Nor is it evident that, aside from the possibility of losing her job, she comprehends just how serious her misconduct was.

However, when Lechelt's record is viewed as a whole, her misconduct , while very serious does not rise to the level of justifying termination of services. When this finding is combined with the analysis of the *Fulcomer* and *Just Cause* standards , it becomes clear that dismissal is excessive.

Therefore, Lechelt must recognize that her misconduct was serious and rose to the level of unbecoming conduct. She must also understand that future findings of unbecoming conduct could lead to the termination of her services.

Finally, counsel for the parties did an outstanding job of researching the relevant issues and presented numerous cases for the consideration of the Arbitrator. The cases were reviewed and considered. However, given the number of cases cited by both parties and their non-precedential nature, the cases are not cited in the Opinion. Furthermore, counsel for the parties are to be commended for their overall preparation, the quality of the examinations and cross-examinations and professionalism throughout a long and complicated case.

Thus, the Arbitrator finds that the appropriate penalty to be imposed on Maryellen Lechelt is a 120 day suspension without pay plus a one time loss of a salary increment. Therefore, based on the above, the undersigned makes the following

AWARD

1. Maryellen Lechelt is guilty of Charge I -Counts 1, 2, 3, 4, 5, 6, Charge IV- Counts 1, 2, 4, 5, 6, 7, Charge V and Charge VI.
2. The following charges are dismissed: Charge II,, Charge III and Charge IV- Count 3
3. The penalty imposed on Maryellen Lechelt is a 120 day suspension without pay plus a one time loss of a salary increment.

Dated: June 30, 2015
Hewlett Harbor, NY

ARTHUR A. RIEGEL, ESQ.
ARBITRATOR

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I, Arthur A. Riegel, am the individual described in and who executed the foregoing instrument, which is my Opinion and Award.

ARTHUR A. RIEGEL