DOCKET # 361-12/14
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In the Matter of the Tenure Charges Preferred by

**EDISON TOWNSHIP BOARD OF EDUCATION** "District

-against-

**TYLER VAN PELT** "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:**
**LAW OFFICE OF WILLIAM F. KOY by WILLIAM F. KOY, ESQ.**
**JEFFREY BOWDEN, PRESIDENT, EDISON TOWNSHIP EDUCATION ASSOCIATION**
**TYLER VAN PELT, RESPONDENT**

## *PROCEDURAL HISTORY*

On November 24, 2014, Dr. Richard O'Malley ("Dr. O'Malley") filed tenure charges with the Board. Van Pelt 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. Van Pelt timely filed his 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. Hearing was 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 26, 2015 was established as the due date for Mr. Van Pelt's and the Board's post-hearing brief.

## THE CHARGES

## BACKGROUND COMMON TO ALL CHARGES

Mr. Van Pelt has been a Teacher employed by the Board since the 2000-2001 school year. He is currently a union representative for his building. As an employee of the Board, Mr. Van Pelt 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 himself appropriately towards and amongst the other Board employees he works with on a day to day basis – *i.e.*, not to conduct himself inappropriately in their presence and cause them embarrassment, offense, discomfort and concern. Mr. Van Pelt, however, has continuously ignored the foregoing duties and responsibilities, and worse, has demonstrated an unwillingness and/or inability to improve, correct and modify his performance.

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."

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 must "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."

Additionally, Article VI Section C , *School Visitations by Association Representatives*, of the Agreement for Professional Employees between the Board of Education Edison Township New Jersey and Edison Township Education Association, states in relevant part that "Representatives of the Association . . . shall be permitted to transact official Association business on school property at all reasonable times with the approval of the principal and/or Superintendent, provided that doing so shall not interfere with or interrupt normal school operations."

Mr. Van Pelt has an imperfect record of employment with the Board. Importantly, Mr. Van Pelt was first reprimanded during the 2005-2006 school year for using "the e-mail system of the [Board] on December 23, 2005 to transmit an email, which was not related to the educational mission of the Board, to every user in the District." Thereafter, on September 28, 2007, Mr. Van Pelt received a written reprimand for failing to submit a signed Technology Agreement and an executed Appendix A of the Alcohol and Drug Free Workplace Form. Additionally, Mr. Van Pelt was issued a written reprimand, resulting in his pay being docked for one day, after he failed to provide the Board with a sufficient physician's statement of illness following the use of a sick day. Perhaps most troubling is that the foregoing disciplinary action taken against Mr. Van Pelt has not served to modify and/or improve his conduct moving forward. Rather, it appears to have emboldened him, particularly in light of his initiation of and participation in the egregious conversation that lies at the heart of the herein Charges.

Specifically, on October 23, 2014, during a voluntary Engrade Chromebook Training, Mr. Van Pelt invited three (3) other Board employees (Maryellen Lechelt, Maria Weber and Jonathan Bauza), via email, to join 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, lesbians, 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. Mr. Van Pelt's behavior, as set forth more specifically below, illustrates a complete and shameful disregard of his responsibilities as an employee of the Edison Township School District and a member of the teaching profession, including, but not necessarily limited to, violations of the above mentioned policies, New Jersey Law and the controlling collective bargaining agreement. Even worse, Mr. Van Pelt's conduct has caused both the Board's Administration and members of the Board's staff grave concerns over his intentions and capabilities, to the point of no longer feeling comfortable to be in his presence or permitting him to be in the presence of other Board employees and students.

I hereby charge Tyler Van Pelt with *conduct unbecoming a teaching staff member, misbehavior, neglect and/or other just cause, including but not necessarily limited to* insubordination; all of which warrant his 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 he has exhibited a callous disregard for the expectations of the Board, and 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 him 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, Tyler Van Pelt 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, Mr. Van Pelt initiated and participated in a conversation through the District's network, in a public chat room ("Today's Meet"), visible to those present in the room and obtainable by any District employee and student through the Today's Meet website, which was full of sexual innuendo, discriminatory, offensive and ultimately created a hostile

work environment (the content of which is set forth more fully in Exhibit H of the Sworn Statement of Evidence). This misconduct by Mr. Van Pelt 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, Tyler Van Pelt 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 H 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 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, Mr. Van Pelt made the following comments about Ms. Bleekinger:

A. "she looks like a poor man's denise richards";

B. "I dare one of you to delete her whole shit";

C. "oh she is aware of my presence . . . she is getting flush around the drop collar";

D. "I made a video of her presenting and that shit gets 5 stars";

E. "i'd like to invite her to a private backchannel discussion . . . all night long";

F. "i'd like to give her some bad options";

G. "it's nervousness cuz [sic] I fear she may reject me ... it may be over betwee [sic] us before it got started";

H. "my next pick up line was going to be 'how about I cook you breakfast'";

I. "I would treat her like a queen ... do you hear me a queen";

J. "i'd like to tag her";

K. "no, see, you guys don't get it ... when they are with me they love it all";

L. "had to get the baby batter off the brain ... well that is the test, if you still care after that occurs ... and that's how I have always known I'm in true love ... and I love her";

M. "can you help me with my pickup line at the end ... I was gonna [sic] go with 'you know what would look good on you? ME'";

N.“I am thinking of a super-smart question to ask that will maker her melt ... maybe ‘do you like to have your hair pulled?’ ... have you ever seen a crisp one hundred dollar bill?”;

O.“how do you like to do it? Do you like to shower first? Personally I like to give my undercarriage a good how’s your father beforehand.”

Mr. Van Pelt’s conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for all persons who have had occasion to review his commentary and made it unpleasant for Ms. Battista and other staff members to be in his 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 Mr. Van Pelt 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, Tyler Van Pelt 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 H 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, Mr. Van Pelt made the following comments about special education/handicap students:

·“bobo”;

·“short bus kids”;

·“I name my smart kids group ‘mr vp’s favority students’”;

·“and my low group is called ‘I hate you don’t waste my time’”;

·“my middle group is ‘whatever’”;

Mr. Van Pelt’s conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for all persons who have had occasion to review his commentary and made it unpleasant for Ms. Battista and other staff members to be in his 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 Mr. Van Pelt 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, Tyler Van Pelt engaged in a course of misconduct directed towards Superintendent of Schools, 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 H 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, Mr. Van Pelt 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 H of the Sworn Statement of Evidence. Mr. Van Pelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for all persons who have had occasion to review his commentary and made it unpleasant for Ms. Battista and other staff members to be in his 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 Mr. Van Pelt 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, Tyler Van Pelt 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 H 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, Mr. Van Pelt made the following comments about Alysia Battista:

1. Following a comment by Ms. Lechelt directed towards Ms. Battista, concerning Ms. Battista "scratching her lips," Mr. Van Pelt responded, "dsl"[1] and then "we totally just made eye contact and totally had a moment";

Mr. Van Pelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for all persons who have had occasion to review his commentary and made it unpleasant for Ms. Battista and other staff members to be in his 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 Mr. Van Pelt 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**

[1] "DSL" is slang for the phrase "dick sucking lips."

On October 23, 2014, Tyler Van Pelt engaged in a course of misconduct directed towards 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 H 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, Mr. Van Pelt made the following comments about various unidentified employees:

i. Following a reference by Ms. Lechelt to "this lady in the red tshirt in the second row," Mr. Van Pelt stated "been there done that";

ii. "had her when she was in her f-ing [sic] prime";

iii. "how's that for an image ... try getting that out of your head";

iv. "yea ... she got the mustache too yo [sic]."

Mr. Van Pelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for all persons who have had occasion to review his commentary and made it unpleasant for Ms. Battista and other staff members to be in his 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 Mr. Van Pelt 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, Tyler Van Pelt 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 H 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, Mr. Van Pelt made the following comments to Ms. Lechelt, Ms. Weber and Mr. Bauza:

I. After Ms. Lechelt stated to Mr. Van Pelt that "I didn't realize you were a backchannel guy,"[2] Mr. Van Pelt stated: "now you know ... thought everybody knew" and "you can tell by the way the ladies walk ..."

II. "on the contrary, I am both a feminist and devout lesbian";

[2] "Backchannel guy" is a reference to anal sex.

III."I eat more chicken any man ever seen [sic]";[3]

IV."like being in the backseat of a vw bug?";

V."I eat it all ... cookies and milk, cookies and milk ... and chicken";

Mr. Van Pelt's conduct resulted in a disruption of the October 23, 2014 Engrade Training, created a hostile school environment for all persons who have had occasion to review his commentary and made it unpleasant for Ms. Battista and other staff members to be in his 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 Mr. Van Pelt 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, Tyler Van Pelt engaged in a course of misconduct that was inappropriate, foul, discriminatory, harassing, offensive and sexual in nature. More specifically, by taking part 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 was effectively forced to leave the training to forego further angst, ultimately preventing her from reaping the benefits of the instruction. This misconduct by Mr. Van Pelt 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**
**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 his participation in a roughly two and a half hour inappropriate and extraneous conversation, Tyler Van Pelt failed to pay attention and/or make any effort to benefit from the instruction provided, destroying the trust placed in Mr. Van Pelt by the Board. This misconduct by Mr. Van Pelt constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

[3] "Eating chicken" refers to oral sex.

## CHARGE IV

**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, Tyler Van Pelt initiated and 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 H 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 Mr. Van Pelt is unconscionable and constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

## CHARGE V

**Insubordination and Unbecoming Conduct and/or Other Just Cause**
**Masturbating In or Around Board Property**

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, Tyler Van Pelt excused himself from the Engrade Training, at around 10:39 AM, presumably to masturbate within the confines of Board property. In fact, Mr. Van Pelt was not shy in informing Ms. Lechelt, Ms. Weber and Mr. Bauza of same when he informed the group that he was gone for a while because he "had to get the baby batter off the brain" – a reference to masturbation. Moreover, Mr. Van Pelt admitted to masturbating in or around school property on at least one other prior occasion and advised Ms. DeLuca of same while being interviewed during Ms. DeLuca's Affirmative Action investigation. This misconduct by Mr. Van Pelt is unconscionable and constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

## CHARGE VI

**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, Tyler Van Pelt initiated and 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 H 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 Mr. Van Pelt is unconscionable and constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

**Count 1 – Violation of Sexual Harassment Policy**

Mr. Van Pelt's conduct violated Board Policy 3362, *Sexual Harassment*, in that it subjected Alysia Battista, 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, Mr. Van Pelt'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, Mr. Van Pelt made statements, including but not limited to, his 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, Mr. Van Pelt's graphic declarations constitute sexual harassment.

**Count 2 – Violation of Affirmative Action Policy**

Mr. Van Pelt'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, Mr. Van Pelt'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 Mr. Van Pelt did not understand the gravity of his conduct, particularly in light of Mr. Van Pelt's unrestrained commentary regarding his attraction to the presenter and his off color comments regarding his proclivity for oral sex and his suggestion that he has previously masturbated on Board premises. As a result of same, Ms. DeLuca recommended that Dr. O'Malley "consider the most severe [disciplinary] consequences for Mr. Van Pelt." Ultimately, Mr. Van Pelt's behavior triggered an Affirmative Action/Sexual Harassment investigation that resulted in a determination that he engaged in misconduct.

**Count 4 – Violation of Code of Ethics Policy**

Mr. Van Pelt violated Board Policy 3211, *Code of Ethics*, in that he 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**

Mr. Van Pelt 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**

Mr. Van Pelt 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**

Mr. Van Pelt 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, Mr. Van Pelt violated this Policy by initiating and 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 VII

**Insubordination and Unbecoming Conduct and/or Other Just Cause**
**Violations of the Collective Bargaining Agreement**

All of the allegations contained in the Background Information and preceding Charges are incorporated by reference as if fully set forth herein. Contrary to the requirement of Article VI© of the Agreement for Professional Employees between Board of Education Edison Township New Jersey and Edison Township Education Association, Tyler Van Pelt has consistently conducted union activity during instructional time (*i.e.*, engaging in conduct involving and/or concerning union activities, events and/or obligations while he should have been teaching and/or monitoring his students), without the approval of the principal and/or Superintendent. This conduct, as more

specifically set forth below, constitutes unbecoming conduct, misbehavior, neglect, insubordination, and/or other just cause for dismissal.

**Count 1**

On September 11, 2014, at 2:00PM and 3:01PM, during Math class and Science/Social Studies respectively, Mr. Van Pelt drafted and sent out emails concerning and/or relating to union activity/events.

**Count 2**

On September 17, 2014, at 2:14PM, during Math class, Mr. Van Pelt drafted and sent out an email concerning and/or relating to union activity/events.

**Count 3**

On September 18, 2014, at 2:10PM, during Math class, Mr. Van Pelt drafted and sent out an email concerning and/or relating to union activity/events.

**Count 4**

On October 23, 2014, at 12:13PM and 3:22PM, during Literacy class and immediately following Science/Social Studies, Mr. Van Pelt drafted and sent out emails concerning and/or relating to union activity/events.

**Count 5**

On October 23, 2014, at or around 9:38AM and 10:05AM, during Engrade Training – Professional Development, Mr. Van Pelt reviewed an email from ETEA President Jeff Bowden and then prepared and sent an email to Vanessa Barros, both concerning and/or relating to union activity/events.

## CHARGE VIII

### Pattern of Unbecoming Conduct, Insubordination and/or Other Just Cause over Protracted Period of Time

All of the allegations and facts set forth in the above Background Information, Charges and Counts are incorporated by reference as if fully set forth herein. By virtue thereof, it is evident that Mr. Van Pelt has been engaged in a course of misconduct extending over a protracted period of time, such that, his pattern of misconduct, jointly and severally, constitutes unbecoming conduct and manifestly demonstrates his unfitness to serve in a position of educational leadership, warranting his dismissal.

## POSITIONS OF THE PARTIES

## CONTENTIONS OF THE BOARD

The Board argued as follows:

These facts pertain to Tyler Van Pelt.

- Mr. Van Pelt has been employed by the Board since the 2000-2001 school year. He is currently a tenured employee.

Mr. Van Pelt, during the 2014-2015 school year, was an elementary teacher assigned to Lincoln Elementary School.

Mr. Van Pelt was a union representative for his building during the 2014-2015 school year. 5T 159:10-13.

In or about January 2006 Mr. Van Pelt received a written reprimanded from former Superintendent of Schools Carol A. Toth for misusing the district's email system in December 2005 (*i.e.*, transmitting an email "which was not related to the educational mission of the Board, to every user in the school district"). B-33.

Mr. Van Pelt, in response to the foregoing reprimand, indicated that he understood Superintendent Toth's concerns and promised that he "would not utilize the Board's e-mail system in this manner in the future." B-33.

Importantly, Mr. Van Pelt refused to meet with Superintendent Toth on three (3) separate occasions, prior to actually meeting with her, to address this email issue. See B-33.

On or about October 13, 2006, former Assistant Principal Rutan forwarded a memorandum to Principal Kovacs, documenting inappropriate comments made by Mr Van Pelt to a superior of Mr. Van Pelts. Specifically, Mr. Van Pelt stated to Assistant Principal Rutan "if I had a dog that shit over and over on my carpet, I would get rid of it." Assistant Principal Rutan characterized Mr. Van Pelt's comments as "intimidating" and an "affront to [his] person [and] character." B-34.

In or about July 2007 Mr. Van Pelt again demonstrated his unwillingness to cooperate with central administration by effectively refusing to be interviewed as a fact-witness in connection with an affirmative action investigation. B-35.

In or about June 2007, Mr. Van Pelt was reprimanded for the following conduct: (1) possessing beer at the Rutgers Athletic Center during and/or shortly after the Edison High School Graduation Ceremony; and (2) arriving at the main office, the morning after graduation, and acting in a "belligerent, demanding, and loud manner," making the secretaries feel uncomfortable – resulting in a Detective being forced to escort Mr. Van Pelt

from the premises. As a result of the foregoing conduct, Mr. Van Pelt was notified that former Superintendent Toth intended to recommend that the Board withhold his increments for the 2007-2008 school year. B-36.

On or about August 20, 2007, Mr. Van Pelt's increments were, in fact, withheld for the 2007-2008 school year. B-39.

In or about September 28, 2007 Mr. Van Pelt received a written reprimanded for failing to "provide a signed Technology Agreement and Appendix A of the Alcohol and Drug Free Workplace." In other words, Mr. Van Pelt effectively refused to acknowledge his obligation to properly use the Board's technology and his obligation to ensure the work place remains free from drug and alcohol use. B-37.

In or about June 2008, Mr. Van Pelt was arrested an issued a Temporary Restraining Order for physical assaulting his then wife and co-employee. B-46.

As a result of the foregoing incident, Mr. Van Pelt entered into a consent order prohibiting him from contacting his wife and resulting in his transfer from Edison High School so he would not be in the same building as his wife. B-46.

In or about June 2012, Mr. Van Pelt was again reprimanded, this time by current Superintendent of School – Richard O'Malley, Ed.D. – for failing to provide a sufficient certification that an absence was due to a medical illness. Moreover, Dr. O'Malley expressed his concern with Mr. Van Pelt's attempt to supply a deficient and misleading doctor's note that was prepared by a family member. B-38

On September 11, 2014, Mr. Van Pelt 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-17.

Mr. Van Pelt's schedule for the 2014-2015 school year was established prior to the start of the 2014-2015 school year. Mr. Van Pelt was expected to provide instruction during scheduled instructional time. B-32; 6T 28:13-17.

On Thursday September 11, 2014, Mr. Van Pelt engaged in union activity during instructional time. More specifically, he forwarded union related emails to ETEA president Bowden at 2:00PM and 3:01PM, while he was conducting Math and Science/Social Studies Classes, respectively.[4] B-28 and 32; 2T 136:1-138:9.

On Wednesday and Thursday September 17 and 18, 2014, Mr. Van Pelt engaged in union activity during instructional time. More specifically, he forwarded union related emails to

[4] Note that the time times reflected on the emails are 3 hours behind the actual time due to a time zone issue with the District's network. See, 2T 136:6-12.

ETEA president Bowden at 2:14PM on the 17th and 2:10PM on the 18th, during his scheduled Math instructional time. B-29 and 32; 2T 138:10-139:20.

On Thursday October 23, 2014, Mr. Van Pelt engaged in union activity during instructional time. More specifically, he forwarded union related emails to ETEA president Bowden at 12:13PM and 3:22PM, during his Literacy Class and immediately following his Science/Social Studies Class (meaning same, logically, must have been prepared as class was ending and sent right after class ended). B-30/32; 2T 140:1-141:25.

On Thursday October 23, 2014, Mr. Van Pelt engaged in union activity during instructional time – Engrade Training. More specifically, he reviewed and responded to union related emails at 9:38Am and 10:05AM, while he was supposed to be focused on Engrade Training. B-30 and 32; 2T 142:3-143:11.

There were no changes to Mr. Van Pelt's schedule, nor were there any assemblies, on September 11, 17, 18th or October 23rd. 6T 27:3-6, 29:11-14.

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."[5] 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 not 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 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 dare 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.[6] See, Lechelt-3.

[5] 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.

[6] 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 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 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 came out blurry. 1T 75:21-25; B-7.

- Mr. Van Pelt made all of the comments in the chat attributed to "tvp." See, B-2. Specifically, Mr. Van Pelt made the following comments about the Engrade Trainer – Sarah Bleekinger:

    - "she looks like a poor man's denise richards";
    - "I dare one of you to delete her whole shit";
    - "oh she is aware of my presence . . . she is getting flush around the drop collar";
    - "I made a video of her presenting and that shit gets 5 stars";
    - "i'd like to invite her to a private backchannel discussion . . . all night long";
    - "i'd like to give her some bad options";
    - "it's nervousness cuz [sic] I fear she may reject me ... it may be over betwee [sic] us before it got started";
    - "my next pick up line was going to be 'how about I cook you breakfast'";

- "I would treat her like a queen ... do you hear me a queen";
- "i'd like to tag her";
- "no, see, you guys don't get it ... when they are with me they love it all";
- "had to get the baby batter off the brain ... well that is the test, if you still care after that occurs ... and that's how I have always known I'm in true love ... and I love her";
- "can you help me with my pickup line at the end ... I was gonna [sic] go with 'you know what would look good on you? ME'";
- "I am thinking of a super-smart question to ask that will maker her melt ... maybe 'do you like to have your hair pulled?' ... have you ever seen a crisp one hundred dollar bill?";
- "how do you like to do it? Do you like to shower first? Personally I like to give my undercarriage a good how's your father beforehand." B-13.

Mr. Van Pelt made the following inappropriate comments about special education/handicap students:

- "bobo";
- "short bus kids";
- "I name my smart kids group 'mr vp's favority students'";
- "and my low group is called 'I hate you don't waste my time'";
- "my middle group is 'whatever'". B-13.

Mr. Van Pelt made the following comments about Superintendent of Schools, Dr. O'Malley:

- "well, I don't want that dudes sloppy seconds";
- "I am not prepared to accept the premise that little Richard[7] has ever been proficient at pulling chicks". B-13.

Mr. Van Pelt, in response to a comment by Ms. Lechelt directed towards Ms. Battista, concerning Ms. Battista "scratching her lips," stated, "dsl"[8] and then "we totally just made eye contact and totally had a moment". B-13.

[7] "Little Richard" is a derogatory reference towards Dr. Richard O'Malley. 5T 244:3-4.
[8] "DSL" is slang for the phrase "dick sucking lips." 2T 77:5-24.

Mr. Van Pelt made the following comments about various unidentified employees:

- Following a reference by Ms. Lechelt to "this lady in the red tshirt in the second row," Mr. Van Pelt stated "been there done that";
- "had her when she was in her f-ing [sic] prime";
- "how's that for an image ... try getting that out of your head";
- "yea ... she got the mustache too yo [sic]." B-13.

Mr. Van Pelt made the following comments to Ms. Lechelt, Ms. Weber and Mr. Bauza:

- After Ms. Lechelt stated to Mr. Van Pelt that "I didn't realize you were a backchannel guy," Mr. Van Pelt stated: "now you know ... thought everybody knew" and "you can tell by the way the ladies walk ..."
- "on the contrary, I am both a feminist and devout lesbian";
- "I eat more chicken any man ever seen [sic]";[9]
- "like being in the backseat of a vw bug?";
- "I eat it all ... cookies and milk, cookies and milk ... and chicken". 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 savvy 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.

[9] "Eating chicken" refers to oral sex. B-14; 2T 73:22-23.

- 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 interviewing 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 Respondents have engaged in unbecoming conduct, misbehavior and/or other just cause warranting their dismissal from their tenured positions with the Board.

Respondents conduct in engaging in a discriminatory, offensive and highly inappropriate group chat constitutes unbecoming conduct and/or just cause warranting their dismissal. On October 23, 2014, during a mandatory Engrade Training, 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 explicit and offense, 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".

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. Specifically, Mr. Van Pelt stated, "[d]id I make inappropriate comments about [Ms. Bleekinger]? Yes, I would agree they were inappropriate, yes."

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 middles 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 incredible 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 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 efforts to blame their voluntary conduct on something said by Ms. Bleekinger illustrates his childishness, lack of remorse, poor judgment and inability to comprehend right and wrong. Respectfully, any effort by Respondent 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 Battista. 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. In fact, Mr. Van Pelt's incredible and wavering testimony on this issue should add credence to the foregoing conclusion – *i.e.*, during his November 11, 2014 interview with Ms. DeLuca, Mr. Van Pelt could not remember what he meant by the phrase "dsl" and further denied knowing the meaning of same; thereafter, in response to the Board's discovery responses, Mr. Van Pelt – for the first time - stated that he used the phrase "dsl" in reference to an internet connectivity problem encountered by the present. Clearly, as was *par for the course*, Mr. Van Pelt was untruthful, and exhibited a callous willingness to provide deceitful testimony in an attempt to diminish the gravity of his conduct. In fact, the gravity of Mr. Van Pelt's conduct with respect to

this particular Charge is borne from Ms. Van Pelt's efforts to deny his knowledge of the phrase "dick sucking lips" – had this allegation been less serious, it is likely Mr. Van Pelt would have taken ownership of the statement. 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 Van Pelt, with respect to this Charge, has 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. Battista 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.

While Mr. Van Pelt's lack of credibility will be addressed in greater detail below, suffice it to say that Mr. Van Pelt's claim surely does not overcome the Board's proofs coupled with the other Respondents' concessions. Initially, Mr. Van Pelt set up the Group Chat and invited the other Respondents and Mr. Bauza to his "personal wiseass backchannel discussion." Clearly, the name he chose for the Group Chat depicts his true intentions for the chats direction and content – *i.e.*, inappropriate.

Next, an objective review of the content of the chat illustrates 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 "[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." Said Policy further provides that "[sexually 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 red, 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. 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.

Respondent Van Pelt admitted to engaging in unbecoming conduct by masturbating on school property. The Board's proofs in support of this Charge are limited to an admission from the mouth of Mr. Van Pelt. Specifically, during the Training, Mr. Van Pelt came back to the room after roughly 5 minutes in the bathroom and after being told "you took a while" by Ms. Lechelt, stated "had to get the baby batter off the brain." During his November 11, 2014 meeting with Ms. DeLuca, Mr. Van Pelt explained that the foregoing phrase was a line from the Movie *Something About Mary* that meant masturbating prior to going on a date. Immediately after offering that he did not masturbate in the bathroom during the Training, Mr. Van Pelt stated "**at least not that time**," implying that he has engaged in such illicit behavior on past occasions. Said admission was clearly heard by Ms. DeLuca, who was only 3-4 feet away from Mr. Van Pelt. 2T 88:23-89-6.

Conveniently and predictably, Mr. Van Pelt denied making such an admission. However, similar to Ms. Lechelt, there is simply no reason for this Tribunal to discredit Mr. Van Pelt's original inculpatory admission in light of his later self-serving recantation (*i.e.*, his record of discipline and insubordination while employed by this Board). Most importantly, perhaps, at no point during his testimony did Mr. Van Pelt actually deny that he had masturbated on school property on prior occasions. Rather, he simply denied making an admission to Ms. DeLuca. Therefore, it is certainly fair for this Tribunal to infer that Mr. Koy failed to ask Mr. Van Pelt whether or not he had ever masturbated on Board property because Mr. Koy was fearful of the answer. Ultimately, the Board submits that when Ms. DeLuca's credibility is weighed against Mr. Van Pelts, this Tribunal will have

no option but to credit Ms. DeLuca's testimony. Thus, the Board has sustained this Charge - Mr. Van Pelt engaged in unbecoming conduct by masturbating on school property.

Respondent Van Pelt violated Article VI Section C of the CBA by conducting union activity during instructional time. Mr. Van Pelt has failed to overcome the overwhelming record evidence illustrating violations of Article VI Section C of the Collectively Bargained Agreement by conducting union activity during instructional time. Article VI Section C, *School Visitations by Association Representatives*, states that "representatives of the Association . . . shall be permitted to transact official Association business on school property at all reasonable times with the approval of the principal and/or Superintendent, provided that doing so shall not interfere with or interrupt normal school operations."

Specifically, on Thursday September 11, 2014 at 2:00PM and 3:01PM, during Math and Science / Social Studies respectively, Mr. Van Pelt drafted and forwarded electronic correspondence concerning union activities (concerning deduct days for an ETEA member) to ETEA President Bowden. B-28; B-32. Thereafter, on both Wednesday September 17th and Thursday September 18th during Math class, Mr. Van Pelt prepared and forwarded electronic correspondence concerning union activities (regarding teachers volunteering prep time to partake in professional development trains) to ETEA President Bowden. Then, on October 23, 2014 at 10:05AM, during Engrade Training, Mr. Van Pelt prepared and forwarded electronic correspondence to another teacher regarding the designation of a union representative for upcoming roundtable discussions. Finally, on Thursday October 23, 2014 at 12:13PM and 3:22PM, during Literacy Class and immediately following Science/Social Studies, Mr. Van Pelt prepared and forwarded electronic correspondence to ETEA President Bowden concerning union business (roundtable representatives and procedures for

communications between ETEA representatives and Assistant Superintendent Beams). Mr. Van Pelt's defense to the foregoing allegations consists of a general assertion that his schedule changed on a daily basis, with a more specific claim that on September 11, 2014 "there was an afternoon assembly."

Importantly, however, said allegations were proved to be wholly without merit and further exposed Mr. Van Pelt as a dishonest and desperate person. Specifically, Ms. DeLuca testified that: (1) Mr. Van Pelt's schedule did not change at all between September 2014 and October 23, 2014; and (2) there was not an assembly on September 11, 2014, or any of the other dates that Mr. Van Pelt was determined to have engaged in union business during instructional time.

Accordingly, the Board has satisfied its burden in establishing that Mr. Van Pelt engaged in union business during instructional time on at least seven separate occasions. Notwithstanding the fact that the Board exposed Mr. Van Pelt as completely incredible, Mr. Van Pelt's baseless and self-serving allegation that his schedule changed on a daily basis, without a shred of evidence in support of same, is wholly insufficient to overcome the substantial evidence established by the Board.

The record indicates that Respondent Van Pelt has demonstrated a pattern of misconduct and insubordination over a protracted period of time. Based upon the egregiousness of Mr. Van Pelt's disciplinary record, it is both disturbing and unclear as to why his employment has not been terminated earlier. Without question, Mr. Van Pelt has displayed a troubling lack of patience for dealing with superiors and a consistent lack of professional judgment. More specifically, Mr. Van Pelt's disciplinary record reads as follows:

> A written reprimanded for misusing the district's email system in December 2005 (*i.e.*, transmitting an email "which was not related to the educational mission of the Board, to every user in the school district"). B-33.

Mr. Van Pelt refused to meet with former Superintendent Toth on three (3) separate occasions, prior to actually meeting with her, to discuss the foregoing issue. See B-33.

In October 2006, Mr. Van Pelt attempted to intimidate and threaten Assistant Principal Rutan by stating "if I had a dog that shit over and over on my carpet, I would get rid of it." B-34.

In or about July 2007 Mr. Van Pelt again demonstrated his unwillingness to cooperate with central administration by effectively refusing to be interviewed as a fact-witness in connection with an affirmative action investigation. B-35.

In or about June 2007, Mr. Van Pelt was reprimanded for (a) possessing beer at the Rutgers Athletic Center during and/or shortly after the Edison High School Graduation Ceremony; and (b) arriving at the main office, the morning after graduation, and acting in a "belligerent, demanding, and loud manner," making the secretaries feel uncomfortable – resulting in a Detective being forced to escort Mr. Van Pelt from the premises. B-36.

On or about August 20, 2007, Mr. Van Pelt's increments were withheld for the 2007-2008 school year. B-39.

In or about September 28, 2007 Mr. Van Pelt received a written reprimanded for failing to "provide a signed Technology Agreement and Appendix A of the Alcohol and Drug Free Workplace." B-37.

In or about June 2008, Mr. Van Pelt was arrested an issued a Temporary Restraining Order for physical assaulting his then wife and co-employee (Pursuant to the officer's police report, the victim suffered from visible bruises on her left arm, a swollen left cheek and blood in her left eye). B-46.

As a result of the foregoing incident, Mr. Van Pelt entered into a consent order prohibiting him from contacting his wife and resulting in his transfer from Edison High School so he would not be in the same building as his wife. B-46.

In or about June 2012, Mr. Van Pelt received a written reprimand for failing to provide a sufficient certification that an absence was due to a medical illness. Moreover, Dr. O'Malley expressed his concern with Mr. Van Pelt's attempt to supply a deficient and misleading doctor's note that was prepared by a family member. B-38

Despite receiving numerous reprimands, having an increment withheld and being warned that his behavior must improve, Mr. Van Pelt did not heed such advice. Rather, Mr. Van Pelt's poor

behavior and incomprehensibly reckless judgment culminated with the events of October 23, 2014, during which he soared across all bounds of decency associated with any public school teacher. Most troubling though, in a bit of an ironic twist, Mr. Van Pelt actually engaged in the same sort of misconduct that resulted in his first written reprimand – *i.e.*, a misuse of the District's network. Thus, Mr. Van Pelt has failed entirely to conform his behavior to any level of appropriateness. As such, his continued employment will only serve to further endanger the students and staff of the Edison Township School District.

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 Respondents 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 / handicapped 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. 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 tests 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. With regard to Mr. Van Pelt individually, his lack of credibility must be also be determined as a result of his refusal and/or inability to be responsive to the Board's questions on cross-examination, his overall demeanor throughout this case (*i.e.*, his constant interruptions, blurt-outs and curt exchanges with both the Arbitrator and the Board's counsel), and his extensive record of discipline throughout his employment with the Board (including his arrest and receipt of a temporary restraining order for

physically assaulting his wife) – particularly his inability to concede same, despite an abundance of supportive testimonial and documentary evidence.

In fact, most telling perhaps was the testimony of Mr. Van Pelt's character witness – Christian Pedersen . He conceded that had he known about Mr. Van Pelt's lengthy disciplinary record he would not have testified that Mr. Van Pelt is someone with good character or someone who takes their job seriously.

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 statements must be gauged against the 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, 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 "[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." 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 not 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. More importantly, Mr. Van Pelt and Ms. Weber acknowledged reviewing and being familiar with the Board's *Acceptable Use* Policy, along with the Board's right to monitor their network activity. 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 serves 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.

Mr. Van Pelt should be dismissed from his tenured position based on his pattern of misconduct over a protracted period of time. Charges 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 of unbecoming emerges sufficient to warrant Mr. 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.

Mr. Van Pelt's pattern of unbecoming conduct began during the 2005-06 school year and continued thereafter. The Board has shown that Mr. Van Pelt has not satisfied the standards of one

whose profession is linked to the teaching and shaping of young minds , and who is held to a higher standard than is the general public. He has shown an unwillingness or inability to comply with prior warnings and has continued to engage in unbecoming conduct over and over again, culminating with the latest and perhaps most outrageous conduct. His actions directly injured his reputation, that of the district and the trust of the district's administration and parents.

Based on the foregoing, Respondents have failed to satisfy the standards of a profession predicated on public trust and respect. Mr. Van Pelt has done so time and again. He has been progressively disciplined and given repeated chances. He is not deserving of another one.

Regardless of the differences between Mr. Van Pelt and the other respondents, their misdeeds were not mere oversights or simple mistakes. His misconduct go to the heart of his character and fitness to be a public school teacher. He should be dismissed.

**CONTENTIONS OF RESPONDENT:**

Respondent argued as follows:

Picture a time before the internet, say 1980. A few teachers are involved in a private conversation during a training session. They whisper some comments back and forth as to their thoughts on some of the comments from the lecturer. They also throw some comedic barbs back and forth over the course of a few hours.

One person overhears the talking and shushes the group. The group lowers their voices but continue talking now and then. No one else in the room notices anything. The lone complainer is offended that the group did not adhere to her shushing and proceeds to listen in to their private conversation. Since the complainer was outside the range of the conversation, she sneaks up behind

the group in an effort to listen in. During the course of this espionage, she hears multiple items out of context and complains to the Board about this conversation.

It is hard to believe that the above would be even considered to be grounds for termination. A transcript that, when taken out of context, is the basis of the entire case.

Throughout the arbitration, there were discussions of privacy which were downplayed by the Board due to the computer policy. This policy should be used only in so far as to prove that the individuals were chatting during portions of the training (not an uncommon occurrence). To allow the out of context chat transcript, reported by a hypersensitive individual, to be the basis for tenure charges is akin to allowing Big Brother into the school.

All of the participants testified that they believed the chat was private and would not be able to be accessed by any outside party. This was proven to be true, as the only one who accessed the chat was Ms. Battista, who testified to the leaning and focusing outside the norm in order to retrieve the chat room title.

This privacy breach goes beyond a mere computer policy, but rather encourages other teachers to in effect spy on their co-workers and report any alleged over-hearings. The individuals in this chat were not posting on a public website expressing their viewpoints to the public a la Facebook and Twitter, but were merely having a private chat.

It is undisputed and admitted that portions of the chat were offensive and inappropriate. However, are we at the point where we all need to examine our own private conversations at the work place? It is hard to believe that anyone who examines all of their conversations among friends

would not, at one time or another, say something that they regret in jest.

No one is perfect and no one should be ultimately judged for jocular exchanges between consenting friends who are all adults. It must be noted that no students were involved or part of the chat in any way. It also should be noted that only one out of twenty five (25) teachers in the voluntary training were distracted or had any issue with the chat. To charge a teacher with termination under such circumstances sets a dangerous precedent where teachers and employees in a school would essentially be looking over their shoulder to see if Big Brother was indeed watching them and waiting to pounce on their private thoughts and conversations.

We ask that the Arbitrator keep an open mind and when reviewing the testimony, try to picture how people talk in private among friends…..and ask if you would like to be judged on a single documented conversation where there was thought to be complete privacy, whether there should be an expectation of it or not. Also, would you want to be judged, whether to be a competent employee or not, based upon an overheard private conversation with a friend.

This is how the Board wants to judge Tyler Van Pelt ("Van Pelt"). It is undisputed that Van Pelt participated in the chat. He has admitted such and has expressed remorse. Many of the items in the chat were inappropriate, but Van Pelt has explained that at no time were students involved or disparaged. Part of the problem with interpreting a conversation among friends as a third party is not being able to interpret the true intent of the parties. Through the testimony of Van Pelt and others, it is clear that the most serious accusation, disparaging students, has been explained for what it was – a mocking of the instructor for ridiculous categorization and not the students in any way. The rest of the conversation has also been exposed for what it was; jocular exchanges among friends.

While it was admitted to being inappropriate at times, it should not result in the loss of a promising career.

The Board also insists on viewing this incident with Van Pelt as some sort of pattern of wrong doing. The attempted bootstrapping of the Board is a desperate attempt to terminate Van Pelt. The other incidents pointed to by the Board are remote in time and were all dealt with in an appropriate manner, most without any type of formal discipline. There is no way that these past incidents resemble a pattern in any way. In fact, the loss of increment was not even a part of the tenure charges and as such may not be used against Van Pelt after the fact. If this was a significant event it would have been part of the charges.

When these charges are viewed in their proper context and without the manufactured "outrage" by the Board, we are left with reality. The reality of an excellent teacher who made the mistake of having an inappropriate conversation with friends during a training session. Van Pelt himself admits this is wrong. Van Pelt has made clear that it was an error in judgment and it will not happen again. However, to destroy this young man's career over an incident that has shown no direct harm except to a hypersensitive employee and bruised feelings of the Superintendent is not equitable. Van Pelt has paid for his actions and such conversation not in the presence of any student should not result in any further discipline.

It is important to note that Mr. Tyler Van Pelt ("Van Pelt") is an Elementary School Teacher with the Edison Township Board of Education, presently assigned to the fifth grade at the Lincoln School ***(TVP Tr. 72:7-8)***. Van Pelt has 15 years of experience as a teacher with significant experience in regular education and special education ***(TVP Tr. 72:11-75:5)***

During his 15 years in teaching, Van Pelt has been evaluated as superior and outstanding on a consistent basis ***(TVP 75:12-84:1 and TVP Exhibit 1).*** Yet, neither Superintendent, Dr. O'Malley nor Administrator, Ms. DeLuca have been in Van Pelt's classroom despite his outstanding and acknowledged record ***(TVP Tr. 84:2-8 and TVP Tr. 85:13-15).***

Nor, as the record states, have Dr. O'Malley and Ms. DeLuca taken into account Van Pelt's teaching record, commendations and accolades within their investigation and recommendation to pursue the tenure charges against him ***(DeLuca Tr. 154:1-155:22 and O'Malley Tr. 118:22-120:19).***

Van Pelt's record outside the classroom is also remarkable working with "struggling" students, and their academic proficiencies ***(TVP Tr. 85:22-87:5 and 88:22-90:17)***. Van Pelt has been recognized by the State of New Jersey for its SGP rating system. In fact, in the two years that the State has done this, Van Pelt has been the ONLY teacher in his school to achieve a rating of "highly effective" ***(TVP Tr. 86:25-87:10 and 88:12-21)***.

Van Pelt has been bestowed with many commendations and accolades ***(Exhibit TVP 2)***. It is important to note that Dr. O'Malley did not take any of this into consideration ***(O'Malley Tr. 118:22-120:19)*** in formulating his decision as to the tenure charges. Neither did Ms. DeLuca in completing her investigation ***(DeLuca Tr. 154:13-155:22).***

The incident that was the primary factor that led to the charges took place at a training session. Van Pelt initiated a chat room during the October 23, 2014 Engrade Training. He admits to this, as well as participation in the chat room throughout the 2.5 hour session (although his time dedicated to this chat was between 15 - 20 minutes).

The chat escalated, In fact, as to the issue, Group Labeling, as conveyed by the Training Presenter, and was the catalyst of Van Pelt continuing the Today's Meet chat. Van Pelt states, "What the presenter was putting forward struck a nerve in me....She was pitching a selling point ..... stating, you can label your kids ***low***, and they won't see it." ***(TVP Tr. 97:9-98:1; 217:3-19 and 212:13-214:21)***.

In stating that his reaction to the presenter's labeling, Van Pelt conveyed that his (chat) response was "clumsy" and "ludicrous". He also stated that the presenter created an environment that he reacted to by his special education commentary within the transcript ***(Van Pelt Tr. 217:3-19)***. Van Pelt expressed ***extreme remorse*** for his inappropriate, ill-timed comments in reaction to the presenter's expressions of labels for students with disabilities ***(TVP Tr. 98:1-99:23).***

As to Van Pelt initiating the "backchannel discussion", he again expresses extreme remorse and "would delete it in a heartbeat". And, he has expressed to every individual along the line his regret (***TVP Tr. 103:13-25)***. Van Pelt thought the chat was private, as he was initially trained by Don Platvoet, District Staff Developer. Van Pelt conveyed that Platvoet stated the chat was "secure" for use with teachers and students ***(Van Pelt Tr. 246:23-247:4).*** Van Pelt thought it was "safe". Van Pelt validated this privacy after the fact by reviewing Today's Chat materials ***(See Lechelt Exhibit no. 2)*** as confirmation of what Mr. Platvoet stated ***(TVP Tr. 107:20-109:3 and 113:9-13).*** In addition, Van Pelt knew that in order to view the chat on one's computer screen, the specific and private address had to be typed in.

The Board called Mr. Platvoet, Professional Development Trainer, as a rebuttal witness. Mr. Platvoet stated that he did not convey an expectancy of privacy to his trainees. He considers the site

public because the URL (address) can relate to any individual and anyone that has knowledge of that URI can access the site (It is noted that anyone who does not have the site address would not be able to access the site) ***(Platvoet Tr. 7:8-8:22).***

It is important to note that the Board has endorsed all that was presented at the Training by Mr. Platvoet, through one of his supervisors, Steve Figruelli, Elementary Supervisor ***(Platvoet Tr. 12:19-22)***. As to Board document ***ED 1119***, Platvoet is asked what is the meaning of HTTPS? He stated that he did not know. When asked if the "s" meant "secure", Platvoet stated that he did not know ***(Platvoet Tr. 15:21-17:25).***

When questioned as to Board document ***ED 1123***, Platvoet states that he used this slide during his training presentation which had "HTTPS, TodaysMeet.com" on the last line. Platvoet again stated that he did not know the meaning of HTTPS ***(Platvoet Tr. 18:1-19:25).***

Finally, when questioned, "in a Today's Meet site, is it true the only way you could enter it is if you have the address?" Platvoet answers, "To the best of my knowledge, yes." Platvoet adds, "to access a particular chat room on Today's Meet, yes, you need the URL for that chat room" ***(Platvoet Tr. 21:9-20).*** Mr. Platvoet contradicts himself as to the privacy issue - during Direct Examination, he conveyed that the site is public, yet, he now states that you need a specific address (URL) to access a site. Therefore, *the argument of privacy is bolstered by Mr. Platvoet's own words* ***(Platvoet Tr. 22:13-18).***

The chat itself was during the 2.5 hour training, however, Van Pelt confirms that his actual keyboarding time was 15-20 minutes while admitting that the chat room transcript was valid ***(TVP***

***116:3-20 and Board Exhibit 13).*** Ms. DeLuca did not look into the actual keyboarding time of Mr. Van Pelt ***(DeLuca Tr. 207:22-208:2).*** Neither did O'Malley ***(O'Malley Tr. 121:17-23)***. Nor did O'Malley access the chat site during his investigation ***(O'Malley Tr. 82:23-83:1).***

As to the chat itself, 8 names are attributed to the comments therein. "Ms. Deluca's report fails to explain why there were only four (4) chat room participants' conduct being investigated.

Van Pelt, commenting on ***TVP Exhibit 3/Board Exhibit 10***, Ms. Battista's Statement and Affidavit, has concerns with no. 4; her concerns that the teachers in the chat room were making fun of her; Van Pelt had never met Battista, nor had any knowledge of her presence behind them. In addition, Van Pelt challenges Ms. Battista's statements herein as inaccurate and not factual representations.

Van Pelt was interviewed by Affirmative Action Officer, Margaret DeLuca. He describes his meeting with DeLuca as being "guided through the chat" and he was honest and forthright ***(TVP Tr. 128:1-13)***. DeLuca took WRITTEN NOTES in response to Van Pelt's answers to her questions ***(TVP Tr. 128:14-23)***. DeLuca stated that she destroyed the written notes after she typed them; she never produced her actual hand written notes of the Van Pelt interview ***(DeLuca Tr. 60:24-61:2 and 78:22-82:1 and 104:6-10).*** O'Malley stated that he never told DeLuca to destroy her handwritten notes, nor did he instruct her to preserve her notes ***(O'Malley Tr. 115:23-116:7)***. *Therefore, the integrity of the interview and its transfer to Ms. DeLuca's notes (now typewritten) has been compromised.*

In response to Ms. DeLuca's testimony that he was not remorseful, Van Pelt stated, "Its not true". He continued by conveying, "The notion of, you know, we're sorry only because we got

caught of this widespread testimony about a lack of remorse on all individuals. My contention is two part with this notion that DeLuca testified": 1. Short of falling to our knees and resigning...in tears, I don't know what we could have done to express remorse to satisfy Ms. DeLuca; 2. The second notion was ... that we were caught. Van Pelt's understanding was an individual (Ms. Battista) was offended and brought an affirmative action complaint. Van Pelt doesn't know how else he could have expressed remorse to satisfy the Board's understanding of his regret, aside from being honest and trying to cooperate to the fullest extent, which he did, as well as deeply apologizing for any offense that he made ***(TVP Tr. 129:9-130:14).***

As to the Affidavit of Ms. DeLuca ***(Exhibit TVP 5)***, Van Pelt strongly objects to her conclusions as forwarded to Superintendent O'Malley. Specifically, Ms. DeLuca, under oath, swears to the following in no. 8, ".....I personally entered https://todaysmeet.com/engraderocks and accessed a copy of the relevant transcript to confirm it was open to the public. I had no difficulties accessing same." *DeLuca does not note that it was ONLY because she had the specific address for the chat site that she was able to access the site.* Therefore, her statement was not truthful.

As to ***TVP Exhibit 6/Board Exhibit 14***, ***Ms. DeLuca's questions for Van Pelt***, her typed notes cannot be accurate representations of her handwritten notes. In fact, these "misinterpretations" are critical to the record herein. Van Pelt states, "There are a number of patently false statements attributed to me. Questions that are not accurate in terms of how they were asked. There are a number of incomplete responses contained herein:

***Page one, how the chat works, TVP Exhibit 6/Board Exhibit 14*** - DeLuca asked Van Pelt if he was surprised that she was able to access this chat by simply going online. It is obvious that

DeLuca needed the code/chat room address to gain access or she would not be able to gain access ***(Van Pelt Tr. 135:3-136:1 and DeLuca Tr. 164:6-165:9)***. Therefore, without the code/address, the chat room was ***private and secure***. In addition, Van Pelt testified that he, as well as the other Respondents had their confirmation of privacy from ***Exhibit Lechelt 2 (Van Pelt Tr. 207-16-208:17).***

***On page 2***, ***TVP Exhibit 6/Board Exhibit 14***, Van Pelt points out where DeLuca's entries deviate from the actual interview as it occurred. Van Pelt conveys that DeLuca "wildly misinterpreted" his responses as to "short bus kids". DeLuca's entry was a "gross mischaracterization" and "oversimplification" of the response he provided to her at that time.

Also on ***page 2, bullet no. 7***, ***TVP Exhibit 6/Board Exhibit 14***, Van Pelt commenting as to "you can tell by the lady's walk", Ms. DeLuca was making light of the fact that he was trying to be polite and explain the double entendre for a romantic interlude

***On page 3***, ***TVP Exhibit 6/Board Exhibit 14***, Van Pelt states as to the "eating chicken" comment that DeLuca stated that his response was about oral sex and/or smoking marijuana. All that Van Pelt was conveying was his interpretation of a song by the Doors, which refers to a gentleman eating chicken - he treats women better - so he gets the chicken and then when she comes home, they get the pork and beans. He gets the good food, they get the scrap.

***Also on page 3***, ***TVP Exhibit 6/Board Exhibit 14***, Van Pelt admits to the posts in reference to Supt. O'Malley. Van Pelt states, "what I said was regrettable again and this is an incomplete answer. I expressed my apologies for making that statement". Van Pelt also expressed to Ms. DeLuca that's not in keeping with his character. Not only do (I) regret it, (I) felt it was cowardly

***(Van Pelt Tr. 139:19-140:4).*** This was missing from DeLuca's document.

***On page 4***, ***TVP Exhibit 6/Board Exhibit 14***, Van Pelt elaborates as to DeLuca's entry that he admitted to her allegations of masturbation. He states, "This was the most profound inaccuracy of the entire transcript." Van Pelt asserted that he was politely trying to address her questions and comments. "She had already had these slang interpretations." Van Pelt explained to DeLuca that this was a reference to a euphemism ***[TVP Tr. 9:14]***. And she did aptly note that <u>he didn't</u> masturbate. But she also asserted that she was saying "TMI - too much information". DeLuca then stated that Van Pelt said, under his breath, that he did masturbate, as she categorized in her final report to the Superintendent which gave rise to the masturbation charge. There were no follow up questions and Van Pelt emphatically denies making any admission of this type ***(Van Pelt Tr. 141:1-142:1).*** The Board presented no proofs as to the support of their masturbation charge.

Van Pelt then concluded the DeLuca interview by stating *his regret and remorse*, commenting on his late brother who had special needs, as well as his disabled step-son. He also conveyed to DeLuca that this would never happen again and he understood that it was ill-worded, absolutely regrettable. ***(Van Pelt Tr. 142:3-143-16)***. Of course, this *did not make it into Ms. DeLuca's notes*.

Van Pelt commented, as to DeLuca's "conclusions" of her teacher interviews that no teacher other than Ms. Battista reported an alleged disturbance of any kind. Early in the Training, Ms. Lechelt turned in her seat. When she did, Ms. Battista saw comments on Ms. Lechelt's computer screen which allegedly offended Ms. Battista. This was a personal choice by Ms. Battista ***(Battista Tr. 107:25-108-3).*** In order to view the screen that the presenter 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 Tr. 126:4-127:24).*** 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 ***(Board Exhibit 7, pp. 2-9; Battista Tr. 108-7, 126:2-127:24).*** It is clear that Ms. Battista wilfully took these actions on her own.

Ms. Einhorn, sitting right next to Ms. Battista, is not even on DeLuca's interview list. Ms. Einhorn was interviewed by her building principal and did not report any disturbance or anything of concern (DeLuca Tr. 171:22-172:15). No teacher interviewed by Ms. Battista's school principal, Mike Duggan, had seen anything ***(DeLuca Tr. 51:17-52:2).*** These interviews by Ms. DeLuca should be reason enough to ***impeach*** Ms. Battista's testimony as to her discomfort and being ill at ease.

As to Ms. DeLuca's ***Affirmative Action Report to the Superintendent, TVP Exhibit 8/ Board Exhibit 26***, Van Pelt comments on her conclusion that he should face the most severe consequences. However, Ms. Deluca's report contained no factual findings nor any conclusions she reached after interviewing those she deemed were the relevant witnesses. Ms. Deluca's report does not list or discuss any factor she took into consideration when recommending the "most severe consequences" for all Respondents. No conclusions were discussed with Van Pelt by the Superintendent or DeLuca, herself. The first time he saw these were subsequent to the tenure charges.

As to DeLuca's statement that "teachers may be in violation of other Board policies (4

policies listed), Van Pelt states that he was never contacted by anyone as to those allegations, yet he is accused of violating those policies within the tenure charges against him ***(Van Pelt Tr. 150:2-152:1)***. Ms. DeLuca conveys that she did not investigate these 4 policies ***(DeLuca Tr. 201:15-6)***. Supt. O'Malley claims that he did an investigation thereto, however, there is no evidence of this whatsoever ***(O'Malley Tr. 33:13-23)***.

In addition to recognizing his sustained remorse, Van Pelt has sustained significant qualitative and quantitative damages, and will sustain further penalty should the arbitrator render his decision beyond Van Pelt's current suspension from the classroom.

In addition, mending professional and family relationships will be needed and Van Pelt is ready to move into that arena. His marriage has dissolved and this incident has caused no chance at any reconciliation; he has special needs members of his family which he will need to address.

Any increment withholding will be at a loss of several thousands of dollars for one or more years. And should the arbitrator sustain the tenure charges against Van Pelt, his career as an outstanding teacher could be over. The impact of a decision to terminate Van Pelt's employment would have the effect of ending his teaching career. Mr. Van Pelt's conduct herein does not warrant this harsh penalty. With not only a financial impact, but his teaching certification and pension standing at risk, Van Pelt would be an endangered species, at best.

The Board has not documented any mitigating circumstances, Van Pelt's expressions of remorse, nor did the Board acknowledge the gravity of his misconduct, as Van Pelt surely did. The Board repeatedly exaggerated the conduct herein by introducing allegations against him when they

did not include these allegations within the Charges against Van Pelt.

The bottom line is that the record shows that Van Pelt is an outstanding teacher. That must be given serious recognition as to the scales of justice ***(Van Pelt Tr. 152:2-156:20).***

As to the specific written tenure charges filed against him, Van Pelt expressed concern that he has been singled out as a "union representative" therein ***(Van Pelt Tr. 158:20-159:12).*** Supt. O'Malley, when testifying as to Van Pelt's union leadership position, becomes evasive as to why his union status is even mentioned within the charges ***(O'Malley Tr. 125:19-128:16).***

As to Charge I, in addition to his prior testimony beginning with Charge One, Van Pelt added that he was surprised that the Presenter, Sara Bleekinger, did not offer any concern of her own ***(Van Pelt Tr. 160:14-161:7).*** In addition, Van Pelt states that he never used the presenters name, but he would agree that the comments were inappropriate ***(Van Pelt Tr. 238:8-23).*** He did not make comments ***to*** the presenter, but admits to making comments about her ***(Van Pelt Tr. 245:5-8 and 272:1-7).***

As to Count Two, Special Ed Students, Van Pelt stands on his prior testimony conveyed ***(Van Pelt Tr. 161:19-23)***.

As to Count Three, his commentary regarding the Superintendent, in addition to his prior testimony, Van Pelt sincerely apologized for those comments and he regrets them ***(Van Pelt Tr. 161:24-162:2).*** He denies making any derogatory comment to the Superintendent, but admits making the comments about the Superintendent ***(Van Pelt Tr. 244:17-245:3 and 272:1-7).***

As to Count Four, re: Ms. Battista, Van Pelt offers that this count is false; that he made no comment directed at Ms. Battista and he was unaware of her comments ***(Van Pelt Tr. 162:3-8).***

As to Ms. Battista, the parties on either side of her, Ms. McKenna and Ms. Einhorn did not report any disturbance. Ms. Battista reported to Ms. DeLuca that when she was sitting normally, the computer screen of Ms. Lechelt was in her direct line of sight. Ms. Lechelt was sitting directly in front of her, in a chair, with her computer screen on the table in front of her. Therefore, Ms. Battista would not be able to see the screen upon her normal seating position.

When Ms. Battista testified under cross by counsel for Ms. Lechelt that she saw the phrase "short bus kids", it occurred at the moment when Lechelt turned her body and "shot Battista a look" after being "shushed" - yet JB (Mr. Bauza) posts as to the "shushing" in the Today's Meet transcript, and it is separate from the "short bus kids" comment by 8 minutes according to the time stamps. This further impugns Battista's credibility and "reasonableness"

It was also damning that when Ms. Lechelt posted "looks like a turtle", Battista testified that she thought turtle meant "penis" - Battista then goes on to state, "Most of it [the transcript] was open to interpretation". How reasonable is it for one to be offended by text when one admits said text is "open to interpretation," particularly when one doesn't know the context for the text ***(Battista Tr. 138:14-139:6).***

As to Ms. McKenna's comments, she chose to look away and not see Ms. Lechelt's screen. Ms. DeLuca was asked,, "did it ever occur to you, in your mind at all, that Ms. Battista had an atypical idiosyncratic reaction to what was happening?" Ms. DeLuca stated that, "No, it never

occurred to me. She was legitimately upset".

Ms. DeLuca stated that she could not see Ms. Battista's pictures (of the computer screen) as they were blurry. And, in the first photo of the series, Ms. Battista could not see the screen at all as Ms. Lechelt was positioned between her screen and Ms. Battista. This calls into question that Ms. DeLuca did not take into consideration that Ms. Battista made it her business to look around Ms. Lechelt to see what was on the screen.

Ms. DeLuca did not think that was odd as she stated that Ms. Battista was trying to get a picture because nobody would believe her. Then, Ms. DeLuca was asked if she took into account the reasonableness of Ms. Battista's response in light of Ms. McKenna's response that Ms. Battista seemed consumed by the chat conversation.

Ms. DeLuca is then asked as to the severe and pervasiveness of the actions therein within her role of an investigator. Ms. McKenna is the reasonable woman; Ms. Battista is not. As the Board cited throughout the charges, they repeatedly said this was public. If only the two women saw the chat, then, it is not public. If the two woman saw the same snippets of the chat initially, the question is, ultimately, the Board of accusing these people of engaging in sexual harassment, and is framing a charge that they're guilty of sexual harassment. If the conduct is so severe and pervasive that a reasonable woman would just choose to look elsewhere, its relevant and probative. As such, the Board cannot prove the charge that this was public. The question is, did you consider whether Ms. Battista's reaction was mainstream or idiosyncratic ***(DeLuca Tr. 279:9-297:13).*** Even Supt. O'Malley admits that no other teacher, but Ms. Battista, stated that they could not concentrate/could not hear the presenter ***(O'Malley Tr. 85:23-86:2).***

When asked of the two people that viewed the screen, did he take into consideration that one was offended and one was not, and how Ms. Battista came to see what was on the screen via her cellphone pictures, the Supt. conveyed that was all he needed ***(O'Malley Tr. 113:2-114:7). See additional commentary within the legal analysis.***

As to Count Five, comments as to unidentified employees in the training, Van Pelt disagrees that the chat was visible to Ms. Battista and others. No other person, but Ms. Battista, made this claim. Van Pelt never named any individual therein. His comments would be considered vague at best therein ***(Van Pelt Tr. 162:9-17 and 239:3-17).***

As to Count Six, inappropriate and offensive comments between each other, Van Pelt offers that no participant within the chat was offended by each other's comment ***(Van Pelt Tr. 162:18-24).***

In summary to these Counts, Ms. DeLuca conveys that the presenter was not offended. Ms. Beams was not offended, Ms. Patuco was not offended, every other district employee was not offended, nor were parents offended as to her affirmative action investigation. Only after the fact complaints were conveyed by some parents to Ms. Beams, however, neither she nor Ms. DeLuca conveyed these to Mr. Van Pelt ***(DeLuca Tr. 202:7-25:19).***

As to Charge II, Disruption of Professional Development Training, Van Pelt relies on his previous comments, especially ***Exhibit TVP 7***, wherein Ms. DeLuca's and the Principal's interviews of the teachers in attendance showed no one but Ms. Battista indicated any disturbance.

As to Charge III (Failure to Pay Attention), Van Pelt asserts that he did pay attention. There may have been short moments of keyboarding time during the 2.5 hour training. As those moments occurred, Van Pelt still paid attention to the training program ***(Van Pelt Tr. 239:18-240:9).***

As to Charge IV, Misuse of the District's Computer Network, Van Pelt denies and relies on his previously cited testimony

As to Charge V, Masturbating in or around Board Property, Van Pelt offers discrepancies as to his interview with Ms. DeLuca as well as the discrepancies within her report ***(TVP Exhibit 6)***. In addition, he objects to the language within this charge to be "presumably" to masturbate ***(Van Pelt Tr. 162:25-163:164:1)***. As the Arbitrator notes, this must be proven**.** Also, the Board attempts to *"pile on"* by attempting to link a far fetched allegation of a "sticky substance" on gloves left in Van Pelt's classroom.

As to Charge VI, Violations of District Policies, Van Pelt "does not recall" any specific policy presentations by his Principal, Ms. Cavuto. Van Pelt does admit to signing the policy awareness document but notes that there was never any District follow up at all ***(Van Pelt Tr. 164:2-165:2).*** Ms. DeLuca, when questioned herein, states that *she never discussed any of these policies with Mr. Van Pelt, she never checked (she did not look into it) if Van Pelt's principal discussed any of these policies at a faculty meeting* ***(DeLuca Tr. 208:3-209:25).*** Also, Supt. O'Malley states, upon testifying as to the ***Use of Computer Policy (Board Exhibit 24)***, these policies were not distributed to teaching staff members, nor was there specific training as to what not to do with the computers ***(O'Malley Tr. 77:1-80:4).***

As to harassment, Ms. DeLuca disagrees as to what she needs to know about harassment. She states that she needs to know the Board policy. There in no "reasonable woman" standard within the policy. One must question Ms. DeLuca's training of same when there is consensual participation in conduct. Ms. DeLuca indicated that she took her original handwritten notes, then

transposed same into her report.

Specific thereto, 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 ***(Battista Tr. 130:8-9; Deluca Tr. 269:14-270:17)*** Ms. Battista told her she was wearing a red dress in the Training. However, Ms. Battista was wearing a red sweater ***(Battista Tr. 130:8-9; Deluca Tr. 269:14-270:17).*** 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, not a red dress ***(Deluca Tr. 265-7 to 267-3).*** The inconsistency between Ms. DeLuca's alleged written notes and her typed notes are compromised.

Van Pelt denies violating the affirmative action policy and relies on his previous testimony herein. In addition, Ms. Deluca was supposed to investigate whether Respondents violated the Board's affirmative action policy ***(Board Exhibit 20)***. On her own, without the Board's direction, Ms. Deluca, in her report, suggested additional Board policies that she felt Respondents had violated ***(Deluca Tr. 200:20- 202:6).*** Within said policy is the mandate that "The Board shall provide professional training to all certificated and non-certificated school staff members on a continuing basis.....". That has not happened ***(Board Exhibit 20, page 2, para. 3).***

It is noted that the Board's focus was on the sexual harassment claims of Ms. Battista. There was no evidence to sustain that charge against Van Pelt. The conduct during the training was neither severe or pervasive which had the effect of "unreasonably altering or interfering with work performance or creating an intimidating, hostile or offensive environment..." ***(Board Policy***

***3362/Exhibit 21).***

With respect to Count 4 , Violation of Code of Ethics Policy , the Superintendent testifies as to ***Board Exhibit 22, the policy***. He bases his statement of a violation as to, "the educator shall observe 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" ***(O'Malley Tr. 42:1-19)***. Other than this statement, the Board does not offer anything into evidence to prove this charge. In addition, there has been no evidence produced that any "reasonable person" would have found the actions of Van Pelt to be hostile and offensive and there has been no citing of "repeated malicious conduct". As stated within the policy, there has been no "deliberate actions", "intentional actions", "exclusions", "denials", "misrepresentations", or any "disclosures of pupil information".

As to Count 5, Violation of Inappropriate Staff Conduct Policy, this policy, ***Board Exhibit 23***, was cited against Van Pelt referring to conduct, including the use of emails or social networking sites "that is directed and/or available to pupils or for public display". Van Pelt's role in what he thought was a ***private chat*** did not result in the above requisite conduct. This chat was not accessible to anyone who did not have the specific address. But for Ms. Battista's idiosyncratic conduct and her perception that she was being singled out, there would not have been anyone who saw/knew about the statements within the chat.

This Charge cannot be sustained as their proofs do not confirm the allegation of insubordination and misconduct, in light of the fact that the Charge maintains that Respondents'

communications "were available to pupils and for public display." This is not true. There has been no evidence produced that any "reasonable person" would have found the actions of Van Pelt to be hostile and offensive and there has been no citing of "repeated malicious conduct".

The Board positions the same conduct as multiple violations. This is not so

Count 6 alleges a violation of the healthy workplace policy. As to ***Board Exhibit 25/Policy 3351***, the requirement therein is, "employees interact with each other with dignity and respect". The policy cites the conduct of an 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".

There has been no evidence produced that any "reasonable person" would have found the actions of Van Pelt to be hostile and offensive. The proofs herein indicate that the chat was neither severe nor pervasive, and was not accessible to the public (one needed to have the specific address of the chat). Ms. Battista's actions, as described herein, indicate that she was unreasonable and idiosyncratic in her actions.

The Board positions the same conduct as multiple violations. This is not so. Therefore, the Board cannot sustain its Charge of insubordination and misconduct against Van Pelt.

With respect to Count 7, New Jersey case law clearly demonstrates, when teacher usage of school computers has been found to violate board policies, the violation of the policies, on its own, is not sufficient to support terminating the teacher's employment. The Board positions the same conduct as multiple violations. This is not so. Therefore, the Board cannot sustain its Charge of

insubordination and misconduct against Van Pelt.

Charge VII alleges a violation of the collective bargaining agreement. Van Pelt amplifies that the District reliance on his block schedule is flawed. He did not send the emails during student instructional time. When questioned, Ms. DeLuca admitted that ***she did not check*** into the accuracy of her claim as Van Pelt's student instructional time can change on a daily or minute to minute basis ***(Van Pelt Tr. 165:3-167:2 And 263:10-269:19).***

In another bite at the apple, the Board called Ms. DeLuca as a Rebuttal Witness. There can be no confusion as to Ms. DeLuca's testimony. She did not check Mr. Van Pelt's schedule for any deviation or disturbance to the normal schedule as she alleged Van Pelt sent these emails during instructional time. Therefore, Charge Seven should not be sustained, as well as not be included in any pattern of alleged discipline as by the Board in Charge Eight.

As to the final Charge VIII, Pattern of Unbecoming Conduct, Insubordination and/or other Just Cause over a Protracted Period of Time, Van Pelt relies on his representations herein, as well as emphasizing that the three (3) events actually cited by the Board within the Tenure Charges against him, are ministerial, incomplete (Van Pelt's missing response to the absent note dockage) and Remote in Time. Therefore, the Board has not met its burden of proving any pattern whatsoever.

The Board alleges that Mr. Van Pelt has been engaged in a course of misconduct extending over a protracted period of time, such that, his pattern of misconduct, jointly and severally, constitutes unbecoming conduct and manifestly demonstrates his unfitness to serve in a position of educational leadership, warranting his dismissal. More specifically, the Board cites within the Charge, "All of the allegations and facts set forth in the above Background Information, Charges and

Counts are incorporated by reference as if fully set forth herein." ***(See Charge VIII, lines 1-2).***

A complete review of the Background Information, Charges and Counts reveal only 3 cited allegations of Van Pelt's allegedly "imperfect record of employment, which Van Pelt vigorously rejects. These three citations are ministerial, incomplete, not disciplinary in nature, and remote in Time, to be further discussed herein, and, therefore, do not create any pattern of misconduct, whatsoever.

The Board then states, referring to these 3 allegations, "Perhaps, most troubling is that the foregoing disciplinary action taken against Mr. Van Pelt has not served to modify and/or improve his conduct moving forward. Rather, it appears to have emboldened him, particularly in light of his initiation of and participation in the egregious conversation that lies at the heart of the herein Charges". Most important to this issue of establishing a pattern against Van Pelt, is that the Superintendent did review Van Pelt's personnel file, as well as reviewing the personnel file of Van Pelt with the Board attorney. For the Board to exclude the listed incidents/allegations from the Charges is a blatant omission. The Board cannot be permitted to "back fill" this grave error of omission. They had access to any and all of Van Pelt's personnel documents (O'Malley Tr. 16:20-23).

As to this Charge, the Pattern, the arbitrator, during a lengthy colloquy, stated that each charge must be proven. Should the charge be proven, then the arbitrator will consider a penalty. If the charge is not proven, there would not be a penalty imposed (***Van Pelt Tr. 24:8-28:5).***

In the State of New Jersey, a tenured teacher shall not be dismissed from his or her position or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct, or other just

cause." N.J.S.A. 18A:6-10. 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. In re: Tenure Hearing of Randall N. Kavet, Dist. of the City of New Brunswick, Middlesex Cty., OAL Docket Nos. EDU 13695-09 and EDU 1539-10, (Aug. 19, 2010). Van Pelt argues that it is questionable if the Board is able to prove unbecoming conduct, however, it is clear that the Board fails to meet the high threshold to establish termination as a penalty.

The Fulcomer case establishes the test as to the penalty in matter such as the one at bar. In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967). The Court broke the test down to two elements: (1) Did the employee engage in conduct unbecoming a teacher? and (2) If so, does the misconduct proven warrant the penalty of termination of employment or some lesser penalty? The following factors are to be considered when deciding the proper penalty under the Fulcomer standard:

- 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.

Id. at 422.

When reviewing the above factors, it is clear that the Board fails to meet its burden for conduct unbecoming as well as the high bar required to terminate. As noted above, the Board cannot meet the Fulcomer standards

The Board, during the hearing, attempts to establish an allegation that Van Pelt was recommended for an increment withholding ***(Board Ex. 36).*** The Board's exhibit did not show any discipline or record of an increment withholding. The exhibit was only a recommendation. This was eight years ago for an allegation not involving students or instruction. The Board did not choose to list this within the charges against Van Pelt.

The nature and gravity of the offense under review of all circumstances is again to be viewed in Van Pelt's favor. The remote in time offenses have been debunked above as mere window dressing by the Board in an attempt to establish a pattern that doesn't exist. The actual alleged offenses all relate from the chat.

It should be noted in Van Pelt's favor that this chat was at a voluntary training session away from any and all students. There are absolutely no allegations that Van Pelt or any of the respondents interacted inappropriately towards or in front of any student. The discussion took place within the context of all consenting adults who presumed that such discussion was private. No comments were made to any individual outside the consenting friends.

The most serious allegations resulting from the chat were as to certain comments regarding class of students; comments toward the Superintendent and certain jokes/commentary with sexual innuendos. Privacy is an essential theme in this case. Despite the Board's self-serving policies

entered into evidence, there is case law that establishes that Van Pelt had a legitimate expectation of privacy. The computer policy ***(Board Ex. 21)*** is a broad overreaching policy that does not necessarily address all contingencies. While the entire chat clearly did not have advanced educational purposes, portions were in relation to the training session and the discussions stemming from such instructor commentary. As such, there is an issue whether some content within the overall discussion violated such policy.

It has been found that a breach of policy with regard to use of computers does not necessarily justify an employer's claim of ownership to personal communications and information accessible therefrom or contained therein. Stengart v. Loving Care Agency, Inc. 408 NJ Super 54, 70 (App Div. 2009).

Computers are provided in almost all areas and types of employment. Computer use and communication through such communication is common. In the neighboring jurisdiction of New York, the Court in Thyroff recognized that a computer setting constitutes little more than a file cabinet for personal communication. Thyroff v. Nationwide Mut Ins. Co, 8 N.Y. 3d 283 (2007).

The court stated that even while a legitimate business purpose could support a search of such computer, when an employer examines documents stored on a computer it's akin to rifling through a folder containing an employee's private papers or reaching in and examining the contents of an employee's pockets. Stengart at 69.

A policy imposed by an employer purporting to transform all private communications into company property merely because the company owned the computer used to make such private

communications during work hours furthers no legitimate business interest. Id. At 71. The only legitimate interest for the company is that the employee may be engaging in business other than company business (i.e.: personal matters during work hours), however the right to discipline or terminate does not extend to the confiscation of the employee's personal communications. Id.

It is undisputed that the chat in question was meant and believed to be a private conversation between the participants. Van Pelt has acknowledged that portions of the chat were not related to educational purposes. Aside from this general fact, the content of the chat should not be a part of the consideration for discipline as it would breach his right to privacy.

That being said, it is fair to say that participating in other personal matters during the training session is a wrongful act, it is certainly not an act that would raise to the level of imposing serious discipline. If this is the case, then a floodgate of discipline should open to every teacher who uses his or her cell phone in any way (including Ms. Battista) during working hours.

It is only the content of the chat which the Board is relying on as the crux of its argument for discipline against Van Pelt. Regardless, if the chat haven was provided by the school, it is clear that the participants had an expectation of privacy and as such the information within the chat should not be considered negatively against Van Pelt. It was clearly established at the hearing that one needs the specific chat address to have access thereto.

The facts at hand are akin to four teachers having a private discussion with no intention of broadcasting these thoughts outside the individuals participating. Despite the Board's efforts to establish the chat room as "accessible to the public", it was exposed as wrong with the admissions

that one would have to know the group name in order to access the chat. The required group name is not available on Google or any public information. The only way to have the group name is to be an invited participant or an uninvited individual peering over the shoulders of the invited individuals as Ms. Battista.

Enforcing any discipline based on Ms. Battista's actions is ratifying a quasi-police state in the schools where other teachers, administration and students are encouraged to spy on their peers private conversations in hopes of uncovering any type of off the cuff commentary to be used against the targeted individuals.

In its tenure charges as well as throughout the proceedings, the Board alleges that Van Pelt's conduct constituted "sexual harassment". While the Board alleges that such harassment allegations were based upon the Board policy, ***Board Exhibit 21***, it is clear that such policy language mirrors the legal case law standard for sexual harassment as outlined in Lehman v. Toys R Us. As such, it is logical to analyze the facts at hand against the legal standard for sexual harassment. Lehmann v. Toys 'R' Us, Inc., 132 *N.J.* 587 (1993).

As there are no allegations of quid pro quo harassment, the issue is whether the actions of Van Pelt created a hostile work environment. In order to state a claim for hostile work environment sexual harassment, a female plaintiff must allege conduct that occurred because of her sex and that a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an intimidating, hostile, or offensive working environment. Id.

For the purposes of establishing and examining a cause of action, the test can be broken down into four prongs: the complained-of conduct (1) would not have occurred *but for* the employee's gender; and it was (2) *severe or pervasive* enough to make a (3) *reasonable woman* believe that (4) the conditions of employment are altered and the *working environment is hostile or abusive*. However, the second, third, and fourth prongs, while separable to some extent, are interdependent. One cannot inquire whether the alleged conduct was "severe or pervasive" without knowing *how* severe or pervasive it must be. The answer to that question lies in the other prongs: the conduct must be severe or pervasive enough to make a reasonable woman believe that the conditions of employment are altered and her working environment is hostile. Id at 604.

The fact patterns of many cases suggest, however, that most plaintiffs claiming hostile work environment sexual harassment allege numerous incidents that, if considered individually, would be insufficiently severe to state a claim, but considered together are sufficiently pervasive to make the work environment intimidating or hostile. Id.

Rather than considering each incident in isolation, courts must consider the cumulative effect of the various incidents, bearing in mind "'that each successive episode has its predecessors, that the impact of the separate incidents may accumulate, and that the work environment created may exceed the sum of the individual episodes.'" Burns v. McGregor Elec. Indus., 955 F.2d 559, 564 (8th Cir.1992) (quoting Robinson v. Jacksonville Shipyards, 760 F.Supp. 1486, 1524 (M.D.Fla.1991)).

Therefore, a plaintiff in a hostile work environment sexual harassment case establishes the requisite harm if she shows that her working conditions were affected by the harassment to the point at which a reasonable woman would consider the working environment hostile. Id.

A hypersensitive employee might have an idiosyncratic response to conduct that is not, objectively viewed, harassing. Allegations of such non-harassing conduct do not state a claim, even if the idiosyncratic plaintiff perceives her workplace to be hostile, because the complained-of conduct, objectively viewed, is not harassment, and the workplace, objectively viewed, is not hostile. Id at 613.

The Board attempts to establish a violation of sexual harassment through both the content of the chat as well as its effect on Ms. Battista.

Our courts have also noted that "it will be a rare and extreme case in which a single incident will be so severe that it would, from the perspective of a reasonable woman, make the working environment hostile," but it can occur. The New Jersey Supreme Court ruled in Taylor v. Metzger, 152 N.J. 490 (1998), that a supervisor's reference to an African-American subordinate as a "jungle-bunny," to her face and in front of witnesses, was determined to be one of those "rare and extreme cases" envisioned by the Lehmann Court where one incident could create a hostile working environment.

In that case, however, the kind of racial slur used by the employee's supervisor was an egregious manifestation of bigotry and unlawful discrimination known to our culture; it was viewed as the "extreme case" where an isolated incident might be sufficiently severe or pervasive to state an actionable claim. Though Taylor was a race discrimination case, it can be imputed to a sexual harassment hostile working environment.

Normally, a plaintiff is required to adduce evidence of "numerous incidents" which, taken together, could create the requisite degree of hostility. To be actionable as pervasive harassment,

conduct must be extreme. Courts consider the totality of circumstances, including the "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance and whether it unreasonably interferes with an employee's work performance. Harassment is pervasive when incidents of harassment occur either in concert or with regularity. Andrews v. City of Philadelphia, 895 F2d 1475. Our courts have characterized pervasive harassment as "a gauntlet of sexual abuse". Mentor v. Vinson 477 U.S. 57(1986). It must be more than a single non-extreme circumstance. (cf. Taylor, supra.)

The case at bar simply does not rise to the level of severe and pervasive. Despite the failed attempt to connect to non-similar incidents from years ago, the charges are based upon the chat which was a one-time private event.

The contents of the chat were essentially innuendos and double-entendres. When viewed in context with the testimony of the respondents, it is clear that the content was a poor attempt at witty banter amongst friends in an attempt to one up each other. The majority of the comments were not graphic on its face, with many comments having to be looked up in order to learn their meaning. Unlike the Taylor case there were no comments made directly to anyone that was not a willing participant. It certainly does not rise to the "rare and extreme case" as cited by Taylor. As the chat does not rise to the severe and pervasive standard, Van Pelt could not have committed sexual harassment.

The second flaw in the Board's case as to sexual harassment is the reasonable woman standard. While not specifically cited in the policy, the reasonable woman standard is an integral part of any sexual harassment analysis. The standard would not make sense without it as there would

be no comparator to distinguish acceptable conduct, akin to the obscenity, "I'll know what's obscene if I see it" argument from a long ago era.

As there must be a reasonable woman standard, Ms. Battista is the quintessential "hypersensitive employee" referenced in the Lehman case. In most matters the Court needs to guess in order to see what the reaction of other women put in such a witnesses position would think. This is not the case here as other women interviewed observing the same commentary and behavior as Ms. Bautista were not concerned about it at all.

Ms. McKenna, who was sitting right next to Ms. Battista showed absolutely no concern with the chat. She even described Ms. Battista as "consumed" by the chat. ***(Board Ex 45)***. True sexual harassment victims are trapped by their harassers with no choice but to be exposed to the behavior. This is unlike Ms. Battista who had multiple choices that day to avoid exposure to the chat. Ms. Battista could have simply focused her attention on the presentation. She chose to focus on the chat which could not be viewed without her repositioning herself ***(Battista Tr. 126:4-127:24)***. She also chose to leave the room (due to being supposedly upset) and finally after being away from the supposed harassment, voluntarily returns to the room. Ms. Battista even went through the trouble of using her IPhone to zoom onto the screen (which would not have been visible otherwise), and took several pictures. ***(Board Ex 7)***. Finally despite choosing to return, the testimony about her over the top reaction to the chat simply must be characterized as hyper-sensitive.

If ten individuals were in the same position as Battista, it is fair to say that only she would react in the way that she did. According to the investigation notes, twenty-three other individuals

at the training were not disrupted. The fact that Ms. McKenna had no such reaction in any way brings credence to this characterization of hyper-sensitivity.

The Courts have stated that behavior that may be socially inapt and, no doubt, annoying, does not approach sexual harassment. Godfrey v. Princeton 196 NJ 178 (2008). The Court in Godfrey went so far as to state that "persons who are socially tone deaf are not, by that characteristic, necessarily the equivalent of sexual harassers. To allow the Law Against Discrimination to replace such basic human interaction trivializes the purpose for which the LAD was established." Id.

While Van Pelt fully admits that portions of the chat were inappropriate, there was no sexual harassment. The chat does not rise to the level of severe or pervasive nor would a reasonable woman in Ms. Battista's position have felt that the work environment was hostile based on such acts. Portions of the discussion may have been socially inapt but certainly not harassing. There is no legitimate reason for Ms. Battista to have the extreme reaction that occurred and as such proves herself to fall short of the reasonable woman standard.

In conclusion, this factor must also be viewed in favor of Van Pelt as the allegations do not rise to the level of nature and gravity to support further discipline.

One of the focuses of the "outrage" as to the chat are the references to the special education students. The testimony of all the Respondents was consistently clear that any and all comments regarding these students were in effect mocking the instructors insulting reference to the students as "lows". Van Pelt reacts strongly, stating in the chat stating "how many times is she going to

encourage us to use the phrase 'lower group kids'". For a complete recitation, ***see Factual Basis, section one, the Training Session.***

There was ample testimony during the proceedings of the offensive statements by the instructor regarding the "categorization" of students. This was offensive to Van Pelt and the other respondents. Van Pelt states, "What the presenter was putting forward struck a nerve in me....She was pitching a selling point ..... stating, you can label your kids *low*, and they won't see it." ***(TVP Tr. 97:9-98:1; 217:3-19 and 212:13-214:21).***

Based on the ridiculousness of the categorization statements by the instructor, Van Pelt made the various statements attributed to him regarding special education students. The Board attempts to take these statements out of context but all of respondents testimony clarified that these statements were made in response to these statements by the presenter. In addition, the mistakes in interpretation by Ms. DeLuca completely exacerbated this situation. For a complete recitation as to DeLuca's misinterpretations, ***see Factual Basis, The Investigation.***

There is no evidence of any discomfort or injury on anyone besides Ms. Battista who has been established as hypersensitive and should not be in equation. While it is regrettable that the Superintendent has hurt feelings over some portions of the chat, it is not enough of a basis for Van Pelt to lose his career. The Board supplied no direct evidence of parental, teacher or student concern with Van Pelt.

In summary to these Counts, Ms. DeLuca conveys that the presenter was not offended. During Ms. DeLuca's investigation, she spoke with Engrade's attorney, the employer of the presenter. The attorney informed Ms. DeLuca that the Presenter was not disrupted in any way during

the training session and was not aware of any disruption therein ***[DeLuca Tr. 243:1-25]*****,** she did not know if the Superintendent was offended, Ms. Beams was not offended, Ms. Patuco was not offended, every other district employee was not offended, nor were parents offended as to her affirmative action investigation.

Only after the fact complaints were supposedly conveyed by some parents to Ms. Beams, however, neither she nor Ms. DeLuca conveyed these to Mr. Van Pelt ***(DeLuca Tr. 202:7-205:19).*** It also should be noted that these supposed parent complaints were double hearsay and not authenticated by any credible direct testimony, though the opportunity was there for the Board to present such to the arbitration.

In sum, there was no written or verbal evidence presented by the Board that Van Pelt's continued employment would have a negative effect on the maintenance of discipline and the proper administration of the school system. As a result thereto, this final factor is in favor of Mr.Van Pelt's return to his classroom.

When reviewing the above factors based on the Fulcomer test, it is clear that the punishment of terminating Van Pelt is excessive. Van Pelt is an excellent teacher who made a mistake of having an inappropriate chat with his friends at the wrong time. No students or individuals were harmed as a result of this act. There is no evidence presented that there would be any cause for concern or outrage if Van Pelt was returned to the class room. Van Pelt expressed *extreme remorse* for his inappropriate, ill-timed comments in reaction to the presenter's expressions of labels for students with disabilities ***(TVP Tr. 98:1-99:23).*** As to Van Pelt initiating the "backchannel discussion", he

again expresses extreme remorse and "would delete it in a heartbeat". And, he has expressed to every individual along the line (his) regret. ***(TVP Tr. 103:13-25)***.

In response to Ms. DeLuca's testimony that he was not remorseful, Van Pelt stated, "It's not true". He continued by conveying, "The notion of, you know, we're sorry only because we got caught of this widespread testimony about a lack of remorse on all individuals. My contention is two part with this notion that DeLuca testified "Short of falling to our knees and resigning...in tears, I don't know what we could have done to express remorse to satisfy Ms. DeLuca" Van Pelt doesn't know how else he could have expressed remorse to satisfy the Board's understanding of his regret, aside from being honest and trying to cooperate to the fullest extent, which he did, as well as deeply apologizing for any offense that he made (TVP Tr. 129:9-130:14).

Van Pelt admits to the posts in reference to Supt. O'Malley. Van Pelt states, "what I said was regrettable again and this is an incomplete answer. I expressed my apologies for making that statement". Van Pelt also expressed to Ms. DeLuca that that's not in keeping with his character. Not only do (I) regret it, (I) felt it was cowardly ***(Van Pelt Tr. 139:19-140:4).*** This Van Pelt representation was not present within Ms. DeLuca's document.

Van Pelt concluded the DeLuca interview by stating ***his regret and*** remorse, commenting on his late brother who had special needs, as well as his disabled step-son. He also conveyed to DeLuca that this would never happen again and he understood that it was ill-worded and absolutely regrettable. ***(Van Pelt Tr. 142:3-143-16)***. This also ***did not make it into Ms. DeLuca's notes***.

Van Pelt has already been suspended and lost valuable time in his career. He also has suffered an economic impact based upon the suspension. His suspension of 120 days, without pay, has already cost Van Pelt $38,000.00. Any further suspension without pay will cost him approximately $10,000.00 per month. Any increment withholding will be at a loss of several thousands of dollars for one or more years.

As such, it is respectfully requested that there are alternative penalties that could be imposed rather than termination. Upholding the 120 day unpaid suspension without pay would be a tough, but fair, punishment under the circumstances.

The Board bears the burden of proving such charges by the preponderance of evidence. In re Polk License Revocation, 90 NJ 550, 560 (1982); I/M/O Tenure Hearing of Marrero, 97 N.J.A.R 2d (EDU) 104 (1997). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro Bottling Co., 26 NJ 143 (1962). Preponderance is the greater weight of credible evidence in the case; that is, the evidence not necessarily having the greater number of witnesses but rather the evidence having the greater convincing power. State v. Lewis, 67 NJ 47 (1975).

Van Pelt's record outside the classroom is also remarkable working with "struggling" students, and their academic proficiencies ***(TVP Tr. 85:22-87:5 and 88:22-90:17)***. Van Pelt has been recognized by the State of New Jersey for its SGP rating system. In fact, in the two years that the State has done this, Van Pelt has been the ONLY teacher in his school to achieve a rating of "highly effective" ***(TVP Tr. 86:25-87:10 and 88:12-21)***.

Any findings must be well founded in reason and logic. Lesniewski v. W.B. Furze Corp., 308 NJ Super 270 (App Div 1998). After reviewing the detailed factual basis above, it is clear that the Board has not met this burden.

In addition to the Fulcomer test, arbitrators have also imposed a "just cause" standard In answering whether the termination was for just cause, in general, "just cause … requires that before an employee is *disciplined* that employee should know of the existence of a pertinent rule, that the rule is reasonably related to the business of the employer, and the employee knew or should have known the possible consequences of the violation of the rule." Linden Bd. of Educ. v. Linden Educ. Ass'n ex rel. Mizichko, 202 N.J. 268, 278 (2010)

As Van Pelt is essentially charged for a private conversation, it is his position that there was no specific existence of this rule. There was also testimony as to the lack of presentation and guidance as to the policies in this matter. While Van Pelt acknowledges that portions of the chat were inappropriate and unrelated to educational purposes, he was clearly unaware of the severity of the implementation of such punishment regarding same.

During the course of the proceeding and within the charges, the Board attempts to establish a supposed "pattern" based on other as well as remote prior incidents. As stated earlier, the incidents were mischaracterized by the Board and do not rise to any level that should be considered in this arbitration.

In addition, the Board had the opportunity and did in fact address these incidents in the past. Although double jeopardy is a criminal concept and did not apply, the concept that an appropriate

penalty was already meted out, precluded the District from raising the same conduct again. In re Tenure Hearing of Jill Buglovsky, Randolph Township Board of Education, Agency Docket No. 265-9/12 (issued December 21, 2012) quoting: In the Tenure Hearing of Wachendorf, OAL Docket No: EDU 6860-04, decision of Administrative Law Judge May 3, 2005.

In Buglovsky, it was determined that "The Board cannot now retry Ms. Buglovsky based on conduct transpiring over three years ago, which did not involve harm or realistic potential harm to students, and was resolved at that time by an official reprimand. The Arbitrator rejected an alleged "pattern of misconduct" by Buglovsky thereby precluding use of a prior reprimand for that purpose as well. Supra.

As such, the Board is not able to institute a "pattern" against Van Pelt based upon these prior incidents.

Unbecoming conduct is a term which encompasses conduct which "destroys public respect for government employees and competence in the operation of public services". Karins v. Atl. City, 152 NJ 532 (1998).

When reviewing such cases of unbecoming conduct it is clear that there is a high threshold: repeated warnings for a teacher being directly verbally abusive and ridiculing students (using terms as "geek, dork and jerk" directly to students); a teacher distributing a secure test to students and then denying it when questioned[1]; a teacher engaged in corporal punishment with students; a teacher who participated in a scheme to defraud the State Health Benefits System common theme in these cases

1 In the Matter of the Tenure Hearing of Vincent Martone, State Operated School District of the City of Jersey City, Hudson County, C#650-97 (12/19/98)

is a teacher who has gone beyond the bounds of common decency and exhibited a total disregard for fulfillment of the responsibilities of his position as well as his welfare for his students.

The allegations against Van Pelt even taken at face value, do not rise to a level close to the threshold established. There were never any instances as to jeopardizing any safety or security of the students and faculty. The Board has not proven any evidence of destruction of public respect for Van Pelt.

When reviewing comparable cases, there are many examples of public employees charged with conduct far beyond what is alleged herein, but were not terminated from tenured positions. Many of the relevant cases illustrate that violating policy, including a computer policy in of itself, is not grounds for termination.

When reviewing the cited cases, all have a factual basis more serious than a private chat amongst friends. All of the above kept their job. Van Pelt should be given the same chance.

Based on the above, Van Pelt respectfully requests that any punishment be limited to time served as to his unpaid suspension. Van Pelt has shown great remorse and is eager to return to his life's calling of educating.

## OPINION

After considering the documentary and testimonial evidence, the undersigned concludes that Tyler Van Pelt is guilty of Charges I- Counts 1,2, 3, 4, 5, 6, III, V, VI- Counts 1,2, 4, 5, 6. 7, and VII. Charges II, IV, VI-Count 3 VIII 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 teachers 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 Van Pelt executed this form on September 11, 2014 (BX17). Thus, he acknowledged that he was aware of the policies, that he would review them and conform to them.

In sum, Respondent Van Pelt was *on notice* both procedurally and substantively of the Board's policies central to these charges. More important, he agreed to review the policies, to be conversant with the policies and to conduct himself 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 Van Pelt acknowledged his responsibility to comply with them.

Van Pelt argued that the Board must have a legitimate business reason for enforcing the rules. That argument has no merit here because that Board had legitimate business reasons for adopting the policies. None of the policies are irrelevant to the *business* of running a school district. Moreover, there is nothing in the record to indicate that anyone at anytime challenged the legitimacy of the policies. Thus, how can enforcing those policies that relate to the management of the school district be anything but a legitimate business reason?

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.

Suffice it to say, Boards of Education are expected to create policies for the District. Part of their mandate as elected officials is to do so.

The *business* of the District is to offer an educational program to the children in the school district. The implementation of the policies is relevant in terms of managing the District. It is

difficult to understand how Van Pelt does not recognize that the policies at issue here are legitimate interests in that they define appropriate professional conduct and set forth rules about the use of District equipment. Does he not recognize that his comments about various specific individuals and groups of individuals constitute violations of legitimate Board policies?

Van Pelt characterized the Board's policies as being self-serving. The term *self-serving* connotes a self-enhancement effort. There is no basis for the suggestion that the Board, individually and collectively, enacted policies that were personally beneficial.

Van Pelt may not appreciate the implementation of the policies. However, the policies are appropriate. There will be a full discussion of the applicability of the policies cited in the charges.

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 an 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 Van Pelt 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. Van Pelt argued that the content of the chat was taken out of context. The record indicates that the entire chat was retrieved and placed in evidence. There was no objection raised as to the completeness of the document. Thus, the chat was not taken out of context. The transcript was the complete context. To the extent that these matters are included in the Charges and Specifications, they will be addressed below.

A section of this portion of the charges deals with Van Pelt's employment record. This issue will be dealt with below.

**Charge I**

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

The immediate reason for the service of disciplinary charges is that the chat was held in a public place and was seen by one of the attendees at the training, Alysia Battisa. Ms. Battista complained about the chat and the District, pursuant to its polices and rules, addressed the complaint.

As noted in each of the counts, the chat comments made Ms. Battista sufficiently uncomfortable that she was unable to benefit from the training. She came to the training for appropriate professional reasons and the char prevented her from achieving her goal

While the above is expressed in each of the counts, it will not be repeated. However, it is applicable to each of the Charge I counts.

**Count 1** concerned inappropriate comments about the Endgrade trainer, Sara Bleekinger. Van Pelt was charged with a course of misconduct toward Ms. Bleekinger. It stated that the group chat was foul, demeaning, offensive, harassing and sexual in nature. It cited 15 specific comments made by Van Pelt 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 Van Pelt's comments were included in the charges served on him.

It must be noted that Van Pelt'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 identifiable or no longer employed by the Board. In any event, their participation was limited and minor as compared to the three charged teachers.

When Van Pelt's 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 Van Pelt's comments in and out of context with the total chat were inappropriate.

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

As will be discussed in greater depth below, Van Pelt and his 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. The Board policy states it always has the right to examine that which is on the District owned computer's hard drive. Under the circumstances, the chat was public and the employer, the school district, had the right to view a chat that was not engaged in for educational purposes. In short, there could be no expectation of privacy.

The fact that Van Pelt thought that the chat was private is of no moment. Van Pelt claimed that one of the people who is a member of the staff that is engaged in computer technology, Mr. Platvoet, told him that he and the others did have a right to privacy. Platvoet testified and denied making such a statement. This subject will be elaborated on in the section devoted to Van Pelt's defenses. Assuming that he even thought about it at the time of the chat, regardless of what Van Pelt thought at the time of the chat, thinking something does not make it so.

Moreover, as is true of most of Van Pelt's defenses, there is no evidence that he or anyone else even considered the question of privacy or the consequences of engaging in it at the time of the chat.

Van Pelt's 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 the 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 Van Pelt had no expectation of privacy.

Much was said about Van Pelt's remorse for his conduct. While he in fact made certain comments about his remorse for having participated, his defense suggests that he has not taken responsibility for his participation in the chat.

Van Pelt initiated the chat and invited others to join him. He referred to the proposed chat as *his personal wiseass backchannel discussion.* He never intended for the chat to be other than what it was. He always had the option of logging out of the chat if it developed in ways unlike what he intended ir to be. As the initiator of the chat, he could have ended it.

He did neither, suggesting that the comments were not, in his view, inappropriate until he was called to task for it. When he was held accountable, he raised numerous meritless defenses. Much more will be said about the defenses in a section of the Opinion related specifically to them.

In addition, Van Pelt made a significant number of the comments in the chat transcript. Many of them were crude, vulgar and surprising given his level of education and his profession. His comments were not disputed.

Once the content of the chat became known, Van Pelt 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 Van Pelt's comments were disruptive and had a negative impact in 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.

Van Pelt indicated that he made these comments in response to Bleekinger referring to a *low group.* He suggested that he was offended by the term *low group.* He added this brother had special needs and resented the thought that his brother would be described in such a way.

There is no way that Van Pelt can justify his comments. Even if he did feel offended, a proposition that the undersigned has difficulty accepting, if he really believed that Bleekinger's comments were improper, why would he not address her resentment like an adult and a professional. Under those conditions, he would have either privately or publicly expressed his displeasure.

He did not do so because, from the outset, Van Pelt considered the chat to be his *personal wiseass backchannel discussion.* He never intended the chat to be related to professional and/or educational matters. If he thought his comments were funny, no rational reader of the transcript would laugh.

Once again, even if Van Pelt had been offended by Bleekinger's characterization, his 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, Van Pelt has neither the credentials nor the standing to refute the use of an accepted term. He is entitled to have an aversion to it but he does not have the right to object to it by making the comments he made.

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

To the extent that the chat was public, it had a negative effect on Alysia Battista. She was understandably made to feel uncomfortable. As noted above, the chat was public and Battista was exposed to offensive comments that interfered with her ability to benefit from the training.

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

**Count 3** alleges that Van Pelt made inappropriate comments about Dr. O'Malley, the Superintendent of Schools. A review of the transcript reveals that Van Pelt's comments indicate his

reference to Dr. O'Malley as *little Richard* as well as his doubts about the Superintendent's ability *to pull chicks.* Van Pelt made other offensive comments.

However his comments must be read in combination with Lechelt's statements. They comment about his appearance. They are replete with sexual innuendo and suggest that his hiring practices are based on sexual issues and, therefore, are less than ethical and professional.

His comments were unacceptable. When put in the context of Lechelt's comments about the Superintendent and his responses to them, they become even more offensive. Van Pelt is guilty of Charge 3.

**Count 4** addresses comments that Van Pelt 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 about Battista 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.

Van Pelt responded to Lechelt's comments by indicating *dsl* ( a term defined as *dick sucking lips).* Many of the comments in the exchange between Lechelt and Van Pelt were sexual in nature.

What is as distressing about Van Pelt's *dsl* comment was his effort at the hearing to characterize it as a reference to a computer technology phrase. This response was part of the context of extreme remorse. The context in which *dsl* was stated clearly had nothing to do with technology

and everything to do with a disgusting sexual reference. The comments about Battista rose to the level of unbecoming conduct. Van Pelt is guilty of Count 4.

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

As was true of the comments made about Ms. Bleekinger, Ms. Battista and Dr. O'Malley , the comments attributed to Lechelt and Van Pelt were offensive, crude and sexual in nature. Van Pelt seized on an apparently mature woman. He responded to a Lechelt comment about the woman by indicating *been there and done that* and followed that with *had her in her fucking prime.*

These comments were grossly offensive. They were also discriminatory with respect to the woman as well as to older people in general.

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) and his response acknowledging same. Van Pelt commented about *eating chicken* ( a reference to oral sex), references to Van Pelt's personal sexiness and replete with sexual fantasies.

Evidently, Van Pelt went to the rest room and returned and when he did so he commented about *getting the baby batter off the brain.* This comment refers to male ejaculation. This comment will become relevant in connection with Charge V.

A review of the comments is sufficient to conclude that they constituted unbecoming conduct. Van Pelt is guilty of Count 6.

**Charge II**

This charge is limited to a single count. It alleges that Van Pelt was insubordinate and guilty of unbecoming conduct in that he 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 of the trainer, Sara Bleekinger, she made her presentation in an uninterrupted manner. Thus, it is difficult to conclude that Van Pelt and others disrupted the training per se.

That is not to suggest that Alysia Battista was not upset by the contents of the chat. 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.(Battista).

However, 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. As will be noted below, the fact that the woman sitting next to Battista did not react negatively to the chat does not suggest that Battista's response was unreasonable.

The undersigned hastens to add that an absence of disruption of the training session does not obviate the conclusion that Van Pelt was guilty of misconduct. As noted in the findings to Charge I, he was guilty of misconduct. Specifically in Charge I Counts 1, 3, 4, and 5, Van Pelt 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, he is guilty of additional misconduct.

However, it cannot be said that Van Pelt disrupted the training session. If the actions of Van Pelt and his 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 is one of a single count of misconduct. Van Pelt 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, Tyler Van Pelt 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 Van Pelt in the context of the terms of several Board policies.

In this charge, Van Pelt 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. Van Pelt was paying attention to the chat for virtually the full 2 ½ hour duration of the session. The total time he was involved in the chat precluded his paying attention to the content of the training. Moreover, the maximum time between chat comments was four minutes. Van Pelt's attention was on the chat and not the training.

Finally, Van Pelt was on duty during the training. The session took place at a time when he would have been teaching. He had a professional obligation to make every effort to improve his teaching services by paying attention to the trainer. Instead, he opted to engage in an offensive, crude and grossly immature exercise of exchanging highly inappropriate comments on a chat.

Based on the record created, the Arbitrator concludes that, for practically the full length of the training session, Van Pelt did not pay attention and did not make appropriate efforts to benefit from instruction that was designed to improve his teaching. As such, Charge III must be sustained.

**Charge IV**

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 IV, the Arbitrator points out that Charge VI 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 IV is dismissed.

**Charge V**

Van Pelt was charged with masturbating in or around Board property. The basis of this charge is related to a comment that Van Pelt made during his interview by Ms. DeLuca.

Ms. DeLuca questioned Van Pelt about the comment when she interviewed him. The transcript of the interview (DX14) indicates that Van Pelt explained that the expression refers to men masturbating before going on a date. The end of his response indicates that he denied masturbating when he went to the rest room on the day of the training and then added *at least not that time.*

Ms. DeLuca reasonably took the comment to mean that Van Pelt denied masturbating on Board property on the day of the training but admitted doing so at other times.

It is uncontested that, during the chat, Van Pelt made a comment about *getting the baby batter off the brain.* This phrase was previously defined as a reference to masturbation and ejaculation.

Van Pelt vigorously denied making such an admission. Since there was no one in the room, the question becomes which of the two people is credible.

On the one hand, De Luca has been found to be credible and forthright throughout the hearing. Moreover, she had no reason to fabricate. Van Pelt claimed that Ms. DeLuca was not credible due to lack of retention of her handwritten notes of his interview after word processing them. This argument will be considered in the section.

As to Van Pelt, it is patently clear that Van Pelt made the *baby batter* comment during the chat. Since De Luca wanted Van Pelt to explain the comment, she asked Van Pelt to explain it.

Van Pelt's answer, relative to the origin of the quote, was not disputed. However, he denied admitting that he masturbated on Board premises at times other than the date of the training.

It is not credible that De Luca's report was accurate with respect to everything about the quote except for the admission. Given its crudeness, it is difficult to believe that Van Pelt made the original comment during that chat. However, he made other comments during the chat that were equally inappropriate. Thus, the *baby batter* comment is consistent with the offensiveness of many of his other comments.

Moreover, he did not deny his explanation of the quote. Yet he would expect the undersigned to believe that the entry in Ms. DeLuca's report concerning this matter is accurate except for the admission.

Furthermore, the record suggests that Van Pelt made other statements that stretch credulity. De Luca did not, In short, De Luca's version of the Van Pelt's admission to having masturbated on Board property is credited. Thus, Van Pelt is guilty of Charge V.

**Charge VI**

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

Charge VI 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 Van Pelt 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, Van Pelt was *on notice* about each policy (BX18). This document (BX18) 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.

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

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

A second observation to be made is that Van Pelt and his 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 Van Pelt made some, not all, of the inappropriate comments. However, he was the one who initiated the chat and dubbed it his *Personal Wiseass Backchannel Discussion.* That being said, had he become concerned about his commitment to honor District policies, he would have either terminated the chat or, at the very least, logged off of the chat and, in so doing, disassociated himself from it. He did not do either and must now be held accountable for his 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 Van Pelt 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 include 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 of unreasonably altering or interfering with work performance or creating an intimidating, hostile, or offensive working environment, the employee shall have cause for complaint.
>
> The sexual harassment of any employee of this district is strictly forbidden. Any employee or agent of 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 undersigned read the cited case and concludes that it is applicable to the portion of the instant policy that deals with physical and verbal sexual advances. The facts in *Toys 'R' Us* relate to physical and verbal 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.

Therefore, *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. They 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. Its policy in this regard is appropriate.

With the above analysis having been completed, the undersigned must now consider whether Van Pelt 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 he did so through direct comments, by responses to the comments of others and by participating in the group chat from beginning to end. He directly commented about Bleekinger, Battista and Dr. O'Malley in highly offensive language. He made comments about *backchannel discussions* with Bleekinger. The record suggests that *backchannel* refers to anal sex. He also engaged in verbal sexual fantasies about her. He took part in comments about Dr. O'Malley that dealt with his sexual practices and hiring methods. His *dsl* comment concerning Battista alluded to oral sex. In sum, Van Pelt made numerous other sexually offensive comments. Thus, Tyler Van Pelt violated the Board's policy proscribing sexually offensive speech. Therefore, he is guilty of Charge VI 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 Van Pelt's comments were about previously identified people, some of them concerned unidentified participants at the training. The comments were disparaging of women, special needs students, lesbians and older people (BX13). He cannot credibly assert that he 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, he is guilty of Charge VI 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.

Van Pelt has already been found guilty of Counts 1 and 2. He 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, Van Pelt 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 VI 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. Van Pelt's participation in the group chat was inconsistent with both of these principles.

Van Pelt 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 Van Pelt was involved the chat was limited to the time spent in inputting the comments. This argument is invalid and inappropriate. It suggests that he may have spent 15-20 minutes actually inputting his entries in the chat.

It is highly disingenuous to assert that the chat lasted 150 minutes but that Van Pelt was involved in the chat for 15 or 20 minutes. That implies that the was focused on the training material for 130-135 of the 150 minutes. That suggests that he spent no time reading the other participant's *contributions* to the chat and that he spent no time watching his computer monitor 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 he is sincerely remorseful for his 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 Van Pelt violated this policy. Thus, Van Pelt is guilty of Charge VI 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 Van Pelt, were, to say the least, inappropriate and discriminatory.

What makes Van Pelt even more culpable is the fact that he is the brother of a special needs person. If such a teacher is not offended by negative statements about students like his brother, who will be?

Suffice it to say that Van Pelt violated the Inappropriate Staff Conduct policy. He is culpable of Charge VI 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.

As has been documented above, the record indicates that Supt. O'Malley was the subject of numerous comments to his appearance, hiring practices and his purported sexual practices. The comments were graphic and crude. The treatment that he received from Van Pelt and the others in the group chat was prototypical of what was proscribed in the policy.

Van Pelt made numerous offensive comments about various additional individuals. Therefore, there was *repeated malicious conduct*.

Therefore, he violated this policy. As such, Van Pelt is culpable of Charge VI 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:
>
> Item 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 Van Pelt, there can be no question that he used the District's computers in a manner that was violative of this policy. There is no way that an educational purpose can be ascribed to the 2 ½ hour chat. 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.

Van Pelt, as one of participants in the chat, violated the policy concerning the use of District computers and computer networks. Thus, he is guilty of Charge VI Count 7.

**Charge VII**

Charge VII alleges that Van Pelt violated the CBA and that his doing so constituted insubordination and unbecoming conduct. Specifically, Van Pelt was the union building representative and he was charged with conducting union business at times when he was should have been teaching.

The relevant language in the CBA is found in Article VI Section C. It states as follows:

> **School Visitations by Association Representatives**
>
> Representatives of the Association, the Middlesex County Education Association, the New Jersey Education Association, and the National Education Association, shall be permitted to transact official Association business on school property at all reasonable times with the approval of the principal and/or Superintendent, provided that doing so shall not interfere with or interrupt school operations.

Charge VII is comprised of five counts. Each one alleges that Van Pelt sent emails related to union activities at time when he was expected to be teaching.

**Count 1** indicates that Van Pelt sent such emails on September 11, 2014 at 2:00pm and 3:01pm (BX28). The District produced Van Pelt's schedule (BX32). September 11, 2014 was a Thursday and Van Pelt was scheduled to teach a Math class at 1:49-2:34pm and a Science/Social studies class at 2:36-3:21pm.

Therefore, the emails were sent during Van Pelt's teaching time.

**Count 2** states that Van Pelt sent such an email at 2:14pm on September 17, 2012 (BX29). September 17, 2014 was a Wednesday and Van Pelt was assigned to teach a Math class at 1:49-2:34pm (BX32). Thus, this email was sent at a time when Van Pelt was supposed to be teaching.

**Count 3** asserts that Van Pelt sent an email dealing with union affairs at 2:10pm on September 18, 2014 (BX29). His schedule shows that Van Pelt was expected to be teaching a Math class on that Thursday (BX32). Thus, the email was sent at a time when he was scheduled to teach.

**Count 4** charges Van Pelt with sending union related emails at 12:13 and 3:22pm on Thursday, October 23, 2014 (BX30). His schedule indicated that Van Pelt had a Literacy/Math class at 12:15-1:00pm and a Science/Social Studies class at 2:36-3:21pm.

The 12:13pm email was sent when Van Pelt was supposed to be teaching. The 3:22pm mail was sent one minute after the end of the 2:36-3:21pm period. However, the CBA states that such business may be conducted within the school at reasonable times but only with the approval of either the principal or the Superintendent. There is no evidence that such approval was ever requested or granted.

**Count 5** states that Van Pelt sent emails at 9:38am and 10:05am during the Endgrade training session on October 23, 2014 (BX31). The Endgrade training was scheduled at times when Van Pelt would ordinarily been teaching Literacy and Gym classes. Moreover, the training was a District program and the terms of Article VI apply here.

The defense offered by Van Pelt was that his schedule changes day to day and, at times, hour by hour. He claimed that one of the classes he was scheduled to teach on October 23, 2014 attended

an assembly program and that he was free to send the email. He added that the District did not meet its burden of proof because no one determined if Van Pelt's schedule was changed.

Ms. DeLuca appeared as a rebuttal witness and indicated that there were no changes in the schedule on any of the dates and times noted in Charge VII. She noted that the charges were proven.

Van Pelt offered nothing in the way of evidence, other than his self-serving testimony, in support of his assertion. The District provided evidence relative to Van Pelt's schedule. It cannot prove that the schedule had not been changed on the day in question. It is virtually impossible to prove a negative.

It was Van Pelt's burden to show that the schedule had been modified. He did not satisfy that burden.

The Arbitrator adds that Van Pelt argued that Ms. DeLuca's rebuttal testimony was giving her *a second bite of the apple*. That characterization was inapt and reflects a lack of understanding of the nature of rebuttal testimony.

Van Pelt claimed that the class in question went to an assembly. Ms. DeLuca rebutted the statement by stating that there were no assembly programs at the times when the emails were sent. The rebuttal testimony was proper and created additional evidence of Van Pelt's poor credibility.

In short, Van Pelt is guilty of Charge VII Counts 1-5.

**Charge VIII**

The District charged Van Pelt with a pattern of unbecoming conduct over a protracted period of time. This charge focuses largely on the reprimands and the withholding of a salary increment previously. These measures reflect on disciplinary actions previously imposed on Van Pelt.

It is well settled that employees may not be penalized twice for the same misconduct. The effect of this charge would be to do just that.

However, this is not to say that that the earlier disciplinary actions are irrelevant. They are considered for purposes of determining the appropriate penalty to be imposed.

In this particular setting, both the Fulcomer and the Just Cause standards call for a consideration of the charged employee's disciplinary history. Consistent with these approaches, Van Pelt's disciplinary record will be considered at the appropriate time.

However, this charge calls for the consideration of this record during the process of determining the scope of Van Pelt's misconduct. That cannot and will not be done. Therefore, Charge VIII is dismissed.

## ANALYSIS OF THE DEFENSES

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

He acknowledged that some of the facts in this matter are undisputed. However, he urged that he has a very good record and that he has expressed sincere remorse for his actions.

He stressed that an application of the *Fulcomer* standards suggests that termination is unjustified in this case.

At the same time that Van Pelt makes the above statements in his own defense, he sees his actions as adding humor to the training session. As will be further discussed, he stressed that Alysia Battista acted improperly by looking at Lechelt's computer monitor and reading the contents of the chat. He further stated that the Board was creating a *police state* by responding to Battista's complaint. As will be seen, Van Pelt's defenses were not limited to these issues.

However, the two paragraphs above stand in contrast to each other. The first one seems to assume responsibility for his actions and simply suggests that a penalty short of termination would be appropriate. The second paragraph trivializes his misconduct in a number of ways. It leads the undersigned to doubt the sincerity of his remorse and his assumption of responsibility.

He objected to Ms. DeLuca's interview record by stating that her transcription of the notes she took at the interview into a printed document somehow rendered the printed interview record invalid.

It is true that Ms. DeLuca did not retain her handwritten notes. There is no rule compelling her to do so. Van Pelt's criticism was that she discarded the handwritten notes without Dr. O'Malley's approval.

This defense is meritless. The interview was conducted in the absence of a court reporter or a recording device. Ms. DeLuca could have written anything in her notes at the time of the interview and Van Pelt would have had no reason to know what she wrote. Thus, she could have

transcribed her handwritten notes, regardless of their content. Under those circumstances, would the presence of the handwritten notes made the printed copy more reliable?

Further, Van Pelt denied some of the specific statements in the report. He would have made the same denials even if the handwritten notes had been preserved.

The undersigned's findings relative to this issue were based on a credibility assessment of De Luca and Van Pelt. As a consequence, the Arbitrator credited Ms. DeLuca's testimony.

Ms. DeLuca was the subject of another of Van Pelt's assertions. She appeared as a rebuttal witness for the District. On Van Pelt's direct examination, in response to Charge VII, he claimed that there had been an assembly on October 23, 2014 and that he had been relieved of his teaching assignment at that time. Ms. DeLuca investigated this claim and appeared as a rebuttal witness to state that there was no assembly on that date.

Van Pelt characterized her appearance as a rebuttal witness as DeLuca being given *a second bite of the apple.* Such a statement is patently inaccurate and reflects an ignorance of established practice and procedure. In addition, it suggests that the proceeding was somehow biased in favor of the District. This argument is unseemly and reflects more on the maker of it than it does on the hearing.

Finally, Van Pelt criticized Ms. DeLuca because she recommended that Dr. O'Malley impose a serious penalty on him. She did make a recommendation to Dr. O'Malley. Her stature and her role in this matter suggests that she had the authority to recommend a penalty. She did not make the decision- Dr. O'Malley did. It is not clear what the basis of the objection was.

Van Pelt also objected to the fact that neither Dr. O'Malley nor Ms. DeLuca considered his teaching record. None of the charges concern Van Pelt's actual teaching and it is understandable that they would have considered the relevant facts and his disciplinary history rather than his classroom performance.

In this connection, Van Pelt suggested that, since his teaching per se was not the subject of disciplinary charges, he could not and should not have been served with the instant charges. His view is not valid.

Van Pelt's conduct in all areas of his employment is relevant. He is charged herein with misconduct, not incompetency. The charges are appropriate procedurally and substantively.

Van Pelt made a conscious effort to demonstrate that he has added to the tone of the school through his efforts with underachieving students. This training program was designed for the benefit of students.

The Arbitrator is taken by Van Pelt's lack of insight into his own actions. Did he not realize that the training might have given him additional skills with which he could help his students? By contrast, did he believe he knew all there was to know and, therefore, had no need to make an effort to learn as much as he could during the training.

The undersigned will discuss Van Pelt's belief that he had a right to privacy. However, the comments that he made during the chat were made in a public venue. Anyone passing by could have seen her computer screen. The fact is that the chat was seen by Alysia Battista. Rather than

recognizing that Battista read the chat in a public setting, Van Pelt excoriated Battista as being snooping on a private chat..

Aside from the public nature of the chat, there are other issues that militate against the privacy argument. Van Pelt asserted that the chat was inaccessible to others. Despite all of the claims that a right to privacy attached, even if there was a legal basis for a right to privacy, it was waived by the public nature of the chat.

Thus, even if one credits Van Pelt's theory of privacy, he waived it by conducting the chat in a public space. The computers and the network belong to the District. Based on Board policy, the District had the right to confiscate the computers and to examine its contents. So much for the chat being inaccessible to others. Had Van Pelt read the policy, he would have been aware of its contents.

If Van Pelt seriously believed that he had a right to privacy under the facts of this case, he is extremely misguided. Before engaging in the conduct that placed him in a position that could lead to his dismissal, he needed to have the curiosity needed to determine the extent of her liabilities.

It is difficult to credit the argument that Van Pelt believed that he really had a right to privacy. He knew or should have known the District's policy concerning the use of its computers and computer networks. He had to know that the chat substantively violated various Board policies as well as common decency. The Arbitrator concludes that this defense is contrived and should be afforded little weight.

A second area of Van Pelt's defense concerned Alysia Battista. He portrayed Battista as the villain. He claimed that Battista snooped on him and his chat cohorts and became the equivalent of an *informer.* Therefore, in Van Pelt's view, she reported the misconduct.

It should be added that Van Pelt viewed the District's response to the complaint as creating a *police state.* These two comparisons lay Van Pelt's insight into his own misconduct bare.

In his efforts to denigrate Battista, Van Pelt referred to her in ugly sexually offensive terms. His *dsl* comment stands out. This term was defined as *dick sucking lips.* That definition makes sense in the context of the chat. Lechelt had just commented that Battista, through a nervous mannerism, picked at her lips and that her lips became swollen. Van Pelt's response was *dsl.*

He argued that *dsl* is a computer technology term. The Arbitrator is aware of it, however, in context, it had nothing to do with technology and everything to do with oral sex.

Van Pelt 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.*

Van Pelt 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 Van Pelt to indicate *mea culpa* without trying mitigate the misconduct by in some way blaming Battista for the situation in which he currently finds herself.

Another significant aspect of Van Pelt's defense is his allegedly being offended by Bleekinger's reference to some special needs students as being in the *low group.* As indicated above, Van Pelt'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 Van Pelt believed that he had a serious philosophical difference with Bleekinger, did he really think that making offensive and discriminatory comments about special needs students was the appropriate way to address the issue?

Van Pelt's purported reaction to *low group* suggests a possible sensitivity to this issue. Perhaps his sensitivity stems from the fact that his brother has/had special needs. That possibility might be understandable. What defies understanding is his justifying his sensitivity while deriding what may have been Battista's sensitivity to a chat that was laden with overtly and extremely offensive statements.

The undersigned adds that the last paragraph is laden with conditional language. That is so because of other Van Pelt statements that stretch the truth.

Van Pelt argued that the chat was private because of FERPA issues. This claim is also 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 Van Pelt's failure to understand the seriousness of this matter and his propensity for contriving reasons for clearly inappropriate conduct.

It also suggests that his remorse is not sincere. The defenses he employed are transparently flawed and are offered in lieu of taking responsibility for his actions.

Van Pelt suggested that he 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? This question is posed in the context of Dr. O'Malley having read the transcript of the chat multiple times.

Here again, Van Pelt expressed regret for his comments. It is difficult to conclude that he would have initially made very offensive comments that went to the heart of the Superintendent's professionalism and integrity. Given the nature of the comments and Van Pelt's other expressions of remorse, the Arbitrator questions the sincerity of Van Pelt's expression if remorse in connection with Dr. O'Malley.

As to Charge VI Count 1, Van Pelt observed that, under *Toys 'R' Us,* he 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.

Here again, the Board policy is clear and unambiguous. The Board's policy proscribed sexually offensive language (as set forth in Paragraph 1 of the policy).

*Toys 'R' Us* is a case that addresses physical and verbal advances. This kind of sexual harassment is covered by Paragraph 2 of the policy.

Van Pelt was accused of sexually offensive language. Therefore, the terms of Paragraph 1 are applicable. In short, *Toys 'R' Us* has limited relevancy here.

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.

Van Pelt claimed that many of her comments are not reflected in DeLuca's report. However, at the end of the interview, DeLuca specifically provided Van Pelt with an opportunity to make any additional comments. Evidently, Van Pelt 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.

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 serious provable credibility issues raised in connection with DeLuca.

The same cannot be said relative to Van Pelt. As detailed above, and as will continue to be shown, Van Pelt's responses to various issues have lacked credibility and consistency.

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 DeLuca conducted a fair and comprehensive investigation of the instant matter. This is fundamental to a finding of *Just Cause*.

One of the defenses raised by Van Pelt is that these charges were brought as a result of anti-union animus. There is no evidence to support such a claim.

Van Pelt challenged the District's reference to his union activities. The reference to his union role was not made in a vacuum. Charge VII concerns his conducting union business during teaching time and/or without the authorization of the principal or the Superintendent.

Interestingly, essentially the same charges were brought against Maria Weber and Maryellen Lechelt. According to the record, they have no official involvement with the union. Is Van Pelt suggesting that the District brought disciplinary charges against two other people in order to charge him? How does he explain many of the facts are undisputed and that he and the other teachers engaging in the chat have been found guilty of many of the charges?

It is significant to note that Van Pelt asserted that he is remorseful for some of his actions. What is he remorseful about if the charges were a ruse to further some unknown agenda to punish him for his union activities? This issue represents one more example of Van Pelt's lack of credibility and unwillingness to assume responsibility for his actions.

Van Pelt made much of his theory that his prior disciplines have no relevancy and his prior loss of a salary increment should not be considered. While the undersigned dismissed Charge VIII, that finding was based on the fact that teachers should not be disciplined twice for the same misconduct.

There was a further reference to the Fulcomer standards. One of them specifically calls for a recitation of prior disciplinary actions.

The same is true of whether the charged teacher was ever denied a salary increment. Thus, the Fulcomer standards, which Van Pelt argued should be given significant weight, require consideration of issues that Van Pelt says are irrelevant here.

It must be added that these factors were given consideration in the companion cases. Those teachers benefitted from the analysis. Is the Arbitrator being asked to consider the Fulcomer standards only when it is beneficial to a charged teacher?

This matter is continuing evidence of a lack of consistency in Van Pelt's arguments. It further weakens his credibility.

Van Pelt's treatment of Alysia Battista was especially noteworthy. Consistent with his declaration that the District was establishing a *police state* through its follow up on Battista's complaint and its implementation of its own policies, he characterized Battista's actions as being part of a *big brother* venture and that paying attention to her complaints encourages teachers to *spy* on each other.

He apparently believes that there was little wrong with the chat. Is he suggesting that Battista was fabricating the nature of the chat? Is he implying that viewing offensive and discriminatory conduct in a public and reporting it is *big brother?*

His *co-chatters* clearly understood that the chat was improper. They may not have appreciated Battista's reporting it, but they did not argue that Battista was somehow unethical or immoral for doing so.

Van Pelt was in the hearing room throughout the hearing and heard all of the testimony. Perhaps he paid as much attention to what the other charged teachers said as he did to Sara Bleekinger's training session.

Van Pelt claimed that the chat caused no harm to either Battista or Dr. O'Malley. The Arbitrator has found the chat to have been crude, offensive and discriminatory. Van Pelt argued that Battista was the only one who complained about it.

Thus, in his view, unless many people complain, the single complainant should not be afforded the protections offered by Board policies. The reality is that of the approximately 25 attendees at the training, other than the participants in the chat, evidently only two people saw it, Battista and the woman sitting next to her.

The woman sitting next to Battista chose to ignore it. Battista could not or would not do the same. Following Van Pelt's logic, the fact that one person ignored precluded another one from being offended to the point that it interfered with her ability to benefit from training that she sought.

The fact that Van Pelt could not even consider the possibility that Battista was emotionally injured by the vulgarity of the chat says more about Van Pelt than it does about Battista.

Van Pelt does not believe that Dr. O'Malley was injured. He went so far as to indicate that Dr. O'Malley's feeling may have been hurt.

Does Van Pelt seriously think that casting aspersions on Dr. O'Malley's sexual activities and Van Pelt's participation in a chat that suggests that Dr. O'Malley's hiring practices are improper and based on sexual considerations are not injurious to his professional standing? Are the results of the chat to be summarized as Dr. O'Malley having his feelings hurt?

Once again, Van Pelt's inconsistencies are mind-boggling. Van Pelt expressed great remorse and contrition when he testified and then argued that the injury suffered by the Superintendent was limited to *hurt feelings.*

Van Pelt, when he testified, said that Mr. Platvoet, a District employee involved in computer technology, assured him that the chat would be private. Platvoet was called as a rebuttal witness and denied making such a statement.

What was the result? Van Pelt proceeded to attack Platvoet's technical knowledge. Platvoet was not called to testify as a computer expert. The District called him to confirm or deny what he (Platvoet) allegedly told Van Pelt. When Van Pelt did not get the answers he wanted, he treated Platvoet in the same way he treated Battista.

Van Pelt produced a character witness, Christian Pederson. He testified in positive terms about Van Pelt being an upstanding individual. On cross-examination, he was asked if he was

aware of Van Pelt's prior disciplines. He stated that he had no knowledge of them. He then conceded that had he known about these matters, he would not have appeared as a character witness on behalf of Van Pelt.

Van Pelt's treatment of Pederson suggests that his credibility is so poor that he did not even give a person who was willing to help him a clear picture of the person who he is trying to help. If Van Pelt is willing to withhold crucial information from people trying to help him, how much more true of his interactions with people trying to hold him accountable.

A review of the defenses offered by Van Pelt reveals that they are contrived, irrelevant and, in very large measure, meritless. What is equally disturbing is the evidence he produced of his own lack of credibility, terribly poor judgment and disregard for the damage that he does to others.

## THE *FULCOMER* STANDARDS

The Board is seeking the termination of Van Pelt's services as a teacher. He 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 the 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 case 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 Van Pelt be terminated, the District would be required to report the dismissal to the State Board of Examiners for the possible revocation of his teaching certificates. It is reasonable to conclude that a termination in this case would dramatically increase the likelihood of Van Pelt's teaching career being ended in New Jersey and probably in other states.

2. The longevity of Van Pelt's career.

Tyler Van Pelt has been a teacher in New Jersey for about fifteen years. He is a senior teacher and, under certain circumstances, could be given the consideration not afforded teachers with many fewer years of effective service.

However, Fulcomer does not suggest that length of service precludes the discharge of senior teachers. It is simply one factor among others to be considered when determining if termination of services is appropriate.

3. Van Pelt's overall teaching record.

Van Pelt's teaching record is devoid of negative comments. However, the only evaluation he provided in which he was rated on a scale of *Developing* to *Distinguished* was for the 2013-14 school year. His overall rating was *Accomplished.* This rating was second from the top rating.

He provided evaluation for 2012-13, 2009-10, 2008-09 and 2007-08. Those evaluations were much less structured and the evaluations were not pursuant to the scale used in 2013-14. The comments about Van Pelt's performance were reasonably positive and he was recommended continued employment by the school district.

Noticeable by their absence were the evaluations for 2011-12 and 2010-11. No reason was given for their for not being produced. This gives pause for the Arbitrator to consider why two evaluations in a seven year sequence were missing.

4. Van Pelt's teaching ability

A review of Van Pelt's evaluations reveals that there is little evidence of limited teaching ability. With the possible exception of the two missing evaluations, te has been consistently rated positively both as a provisional and a tenured teacher.

5. Whether there was an absence of prior discipline affecting Van Pelt during his employment.

Van Pelt has been disciplined on a number of occasions. He was reprimanded in January 2006 for the improper use of the District's email system. It should be noted that it took several memos from the superintendent for Van Pelt to meet with her over the matter. It required a threat of being charged with insubordination before a meeting was scheduled (DX33). Thus, aside from Board policy, Van Pelt was well aware of the need to use District networks only for educational purposes

An element in the above matter suggests conduct with respect to a Superintendent the lessens one surprise about Van Pelt's treatment of Dr. O'Malley.

While it was not subject of discipline, in October 2006, Van Pelt was held to have intimidated and threatened an assistant principal by stating *if I had a dog that shit over and over on my carpet, I would get rid of it.* (DX34). This suggests that Van Pelt's resorting to crude and offensive language in a professional setting was not out of character with him when he did so during the chat during the training.

Van Pelt was given formal reprimands in June and September 2007 (DX36 &37). The June reprimand was for being in possession of beer during or after the graduation ceremonies as well as for acting belligerently in the school's office the following day.

The September reprimand was for his failure to provide a signed Technology Agreement and Appendix A of the *Alcohol and Drug Free Workplace* (DX37). Is this not similar to Van Pelt's disregarding Board policies in the instant matter?

In June 2012, Van Pelt was reprimanded for failing to provide sufficient certification to suggest that an absence was due a medical illness (DX38).

Last, Van Pelt's former wife was District employee. In June 2008, he was arrested and charged with domestic violence. His wife was issued a Temporary Restraining Order. As a result, Van Pelt entered into a Consent Order banning him from being in contact with his former wife. The domestic violence took place while he was off duty. However, in order for it to comply

with the Consent Order, the District was required to transfer Van Pelt to another school. Thus, Van Pelt's off duty violence impacted on the District's ability to manage its schools (BX46)

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

In August 2007, Van Pelt had a salary increment withheld

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

The misconduct described herein is very serious. He was part of a group of teachers who violated several important Board policies. He made numerous arguments in defense of his actions. As noted above, they were unpersuasive and were given little weight.

8. Evidence as to provocation, extenuation or aggravation.

Van Pelt claimed that he was provoked by certain comments made by Bleekinger. about special needs children. This claimed provocation is without merit.

9. Any harm or injurious effect which Van Pelt'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, Van Pelt's lack of remorse and assumption of responsibility indicate that he would repeat his misconduct were he to be reinstated. This would result in the need for the Superintendent to devote unreasonable resources to Van Pelt's supervision

## JUST CAUSE

Van Pelt argued that the District lacked Just Cause to discharge him. Just cause is a term of art and stems from *Enterprise Wire,* 46 LA 359 (1966). There are seven tests associated with a determination of whether the Just Cause standards were satisfied. A discussion of those standards follows.

1. Was the employee forewarned of the consequences of his actions?

At its core, Van Pelt was alleged to have breached five Board policies. Van Pelt was on annual notice of the policies and, on September 11, 2014, acknowledged in writing that he was expected to review numerous policies, including the ones relevant here, and to abide by them (DX17).

These policies are part of the instant record. A review of the text of the policies reveals that most of them explicitly state that violation of the policies subject the person who breaches them to discipline. The other policies make it clear that violations of the policies will not be tolerated.

Thus, Van Pelt knew or should have known the contents of relevant Board policies. He also knew or should have known that breaching the policies could lead to discipline being imposed.

2. Were the rules/policies reasonably related to business efficiency and employee performance?

These policies relate to the manner in which employees are expected to respect the rights of

others to have a work environment that is free from offensive and discriminatory conduct of others in the workplace. One of the policies regulates the use of employer owned computers and networks.

All of these policies relate to business efficiency in that they are needed to maximize the productivity of employees. They also prevent the abuse of District equipment by limiting the use of the equipment to educational purposes. Education is the business of a school district and the employees can be expected to conduct themselves and to use District equipment to further the educational process. Violations of these policies deter the actualization of the District's educational program.

3. Was an effort made to determine if the employee was guilty as charged?

The instant matter was received and was promptly investigated. The charged employees were interviewed by Ms. DeLuca, the District's Affirmative Action Officer, in fewer than 30 days from the date of the training session at which the misconduct took place. Ms. DeLuca interviewed Van Pelt and his responses were taken down in handwritten form and then transcribed to a printed document.

Other attendees were interviewed by their principals. If it became apparent that they were not guilty of misconduct or knew nothing about the misconduct, they were not interviewed by Ms. DeLuca.

4. Was the investigation fair and objective?

Ms. DeLuca could not identify all of the attendees and some resigned and were no longer employees of the District The three people who participated in the chat were interviewed by Ms.

DeLuca. The interview questions were related to the chat and the interviewees were afforded the opportunity to explain their actions and to express their remorse.

The approach taken by Ms. DeLuca was consistent and focused on the specifics of the chat. Some of the terms used by the interviewees were slang and they were asked to define those terms. In sum, the investigation was fair and objective.

5. Was there substantial evidence of guilt?

The text of the chat was downloaded from the computers. Thus, it is unchallenged that the transcript of the chat is an accurate reflection of the comments made. Those comments formed the basis for the charges. Thus, the guilt of the employees was proved by substantial evidence.

6. Were the rules/policies applied fairly and without discrimination?

The policies were applied to all of the chat participants equally. They were the only employees who were guilty of the instant misconduct.

There were another person who violated the policies. He resigned shortly after the misconduct came to light. Thus, everyone who was purportedly guilty was charged and the same penalty was sought for all three of them.

7. Was the discipline related to the seriousness of the offense and the employee's past record?

Van Pelt violated several Board policies. He was in notice that he was required to abide by them.

His violation of the policies resulted on his use of sexually offensive offense language concerning a significant number of identified and unidentified people. His misconduct resulted in Alysia Battista being upset such that she could not benefit from training that was designed to improve her skills and those of other people.

He seriously denigrated Dr. O'Malley. The chat might have demeaned him professionally and damaged both his and the District's reputation for appropriate hiring and promotions.

He also violated the CBA by conducting union business at times when he was to be engaged in professional activities. His misconduct in this regard was not a singular occurrence. He exacerbated the issue by making a claim that he could not substantiate that a class that he was scheduled to teach was attending an assembly program.

Therefore, his misconduct was serious and rises to the level of unbecoming professional conduct. This must be placed in the context of his prior record.

As detailed in the section devoted to the Fulcomer standards, Van Pelt's record suggests that he has been the subject of prior warnings and reprimands. In addition, he also engaged in off duty conduct that impacted on the District in that it needed to transfer him to another school in order for a Consent Order to be honored. Moreover, as noted above, Van Pelt's conduct resulted in his having a salary increment withheld.

Given the seriousness of the misconduct and in the light of Van Pelt's disciplinary history, the District had Just Cause to discipline him and to seek his termination.

## CONCLUSIONS

The first two paragraphs of Van Pelt's arguments reflect his reflections on his assessment of his own culpability. He thinks he did nothing wrong and believes that these charges are improper since other people are to blame for the chat and its aftermath. After all is said and done, Van Pelt does not hold himself accountable for his own misconduct.

A review of the *Fulcomer* and Just Cause standards persuades the Arbitrator that the Board was justified in serving disciplinary charges on Tyler Van Pelt. While he has expressed remorse, it is apparent that these expressions lack sincerity and his remorse s for having been discovered for having engaged in very serious misconduct.

He superficially accepted responsibility for his actions. However, when his statements are closely examined he finds fault with Alysia Battista, Margaret DeLuca, Sara Bleekinger and even Don Platvoet.

But for his own actions, he would not be in his current situation. It is entirely clear that he does not accept responsibility for his own actions. He initiated the chat and played a major role in setting its tone. He, on his own, violated valid and rational Board policies. Instead of admitting his guilt and accepting the consequences, he chose to try to hold others responsible.

What distinguishes Van Pelt from the two other chat members, is his record. He tried to characterize his prior misconduct as being remote in time. That is not true and, in addition, as noted above, there are similarities between these charges and the earlier misconduct.

It is evident that Van Pelt believes that he did little that was wrong. In that context and in the presence if having been disciplined in the past such that he should know that employers are

entitled to have employees who act in a professional, appropriate and mature manner. Thus, the Arbitrator concludes that were Tyler Van Pelt to be reinstated, it is very likely that he would repeat the kind of misconduct that preceded this proceeding.

Counsel for the parties researched 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.

Finally, at the outset, the District moved to have Van Pelt's Answer to the Sworn Charges and his application for an extension to file said Answer deemed untimely. Its application to the Arbitrator sought to have Van Pelt summarily dismissed. Given the above findings, that application need not be addressed at this time.

Thus, the Arbitrator finds that appropriate penalty to be imposed on Tyler Van Pelt is termination of his services as a teacher in the Edison Township school district. Therefore, based on the above, the undersigned makes the following

## AWARD

1. Tyler Van Pelt is guilty of Charge I -Counts 1, 2, 3, 4, 5, 6, Charge III, Charge V,Charge VI-Counts 1, 2, 4, 5, 6, 7 and Charge VI.I

2. The following charges are dismissed: Charge II, Charge IV, Charge VI- Count 3 and Charge VIII.

3. The penalty imposed on Tyler Van Pelt is termination of his services as a teacher in the Edison Township school district.

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