

**STATE OF NEW JERSEY DEPARTMENT OF EDUCATION  
BUREAU OF CONTROVERSIES AND DISPUTES  
TENURE HEARING**

In the Matter of the Arbitration Between  
STATE OPERATED SCHOOL DISTRICT,  
CITY OF CAMDEN

**Petitioner**

AND

NAMIBIA BURKE

**Respondent**

Agency Docket: 333-11/14

**OPINION**

**AND**

**AWARD**

**ARBITRATOR:** GERARD RESTAINO, ASSIGNED BY THE NEW JERSEY  
DEPARTMENT OF EDUCATION IN ACCORDANCE WITH CHAPTER  
26, P.L. 2012 AND C. 18A:6-17.1

**APPEARANCES:**

FOR THE CLAIMANT:  
BENJAMIN TERIS, ESQ.  
GLADYS NATICCHIONE  
DEBORA YAX  
THERESA REESE  
LAURA BOYCE

COUNSEL FOR CLAIMANT  
SECRETARY TO PRINCIPAL  
CLERK 2A, H/R DEPARTMENT  
EMPLOYEE SERVICE MANAGER  
PRINCIPAL, COOPER B. HATCH SCHOOL

FOR THE RESPONDENT:  
CRISTAL HOLMES-BOWIE  
NAMIBIA BURKE  
JULIA BENJAMIN  
CLAUDIA CREAM

COUNSEL FOR RESPONDENT  
RESPONDENT  
PARENT  
RETIRED PRINCIPAL

## **PROCEDURAL BACKGROUND**

On September 18, 2014, State Superintendent, Paymon Rouhanifard, sent a Certificate of Determination to Namibia Burke, hereinafter referred to as the Respondent. That Certificate of Determination with charges of excessive absenteeism was sent to Ms. Burke on September 22, 2014, and she responded to the charges on October 8, 2014

On November 14, 2014, the Petitioner determined there was probable cause to credit evidence in support of the charges and notified the Respondent of their determination to certify tenure charges with the Commissioner of Education. They also determined that effective December 1, 2014, in accordance with N.J.S.A. 18A:6-14 the Respondent should be suspended without pay.

On November 17, 2014, Louis Lessig, counsel for the Petitioner, submitted tenure charges to David C. Hespe, the then Acting Commissioner of Education in accordance with N.J.S.A. 7A:45. Crystal Holmes-Bowie, counsel for the Respondent, submitted a response to the tenure charges.

On December 12, 2014, M. Kathleen Duncan, Director of the Bureau of Controversy and Disputes at the Department of Education notified the undersigned that he had been appointed Arbitrator in the instant matter. The letter indicated, *"Please be advised that, following receipt of Respondent's answer on December 2, 2014, the above-captioned tenure charges have been reviewed and deemed sufficient, and if true, to warrant dismissal or reduction in salary."*

Furthermore, she indicated that the charges were referred to the undersigned pursuant to N.J.S.A. 18A:6-16, as amended by P.L. 2012, c.26.

Hearings were held on January 23 and 30, 2015 at the offices of Brown and Connery, counsel for the Petitioner. The parties submitted post-hearing briefs on March 2, 2014.

On February 3, 2015, the undersigned requested an extension of time to submit the award in this matter. That request was granted by M. Kathleen Duncan, Director of the Bureau of Controversy and Disputes at the Department of Education, and my award would be due on or before April 30, 2015.

### **SUMMARY OF FACTS**

The Respondent began working in the Camden School District in 1999 when she was hired as a teacher for grades K-8. At that time she was assigned to the Parkside School and taught Language Arts Literacy. For the years 2003-2006 she taught grade 4, and for the years 2006-2011 she taught grade 3.

Parkside School closed in 2011, and the Respondent was assigned to the Cooper B. Hatch Family School where she taught third grade. In 2013-2014 she was again assigned to teach third grade at the Cooper B. Hatch Family School. In August of 2014, the Respondent received an assignment to again teach third grade at the Cooper B. Hatch Family School.

The years at issue in the instant matter are 2010-2011, 2011-2012, 2012-2013, and 2013-2014. At the Parkside Elementary School for the 2010-2011 school year, the Respondent's Principal was Claudia Cream. During the 2012-2013 school year at the Cooper B. Hatch Family School, the Respondent's Principal was Norris Bacon, Jr. During the 2013-2014 school year, the Respondent's Principal was Laura Boyce.

The record reflects that each of the Principals submitted documentation to the Respondent about her absences, and her tardiness.

In May of 2010 the respondent and her then Principal, Claudia Cream, agreed to an attendance improvement plan, which continued into the 2010-2011 school year.

David M. Corvi, Principal of the Forest Hill Elementary School, submitted a Certification which indicated that he was Principal of the Forest Hill Elementary School for the entire 2013-2014 school year and that during that school year, the Forest Hill Elementary School opened its doors at 8:15 a.m. That Certification was signed on February 24, 2015. As evidenced by Exh. R-2, the Respondent requested and received five (5) bereavement days from December 17-21, 2013, due to the death of her brother. As evidenced by Exh. R-3, the Respondent was on an FMLA leave from February 27, 2013 through March 23, 2013. Furthermore, as evidenced by Exh. R-9, the Respondent was on jury duty on December 4, 2012.

The Collective Negotiations Agreement (CNA) between the parties references sick leave and temporary leaves of absence. Article XII – Sick Leave, establishes that all teachers shall be entitled to thirteen (13) accumulated sick leave days as of the first official day of the school year, whether or not they report for duty that day. Unused sick leave days shall be accumulated from year to year with no maximum limit. Additionally, up to three (3) days of accumulated sick leave may be utilized as family leave days.

The record reflects that on January 15, 2014, the Respondent was injured while breaking up a fight between two students. From that day to February 13, 2014, she

received physical therapy from Worknet Occ Med-Camden. After each workup, she was allowed to return to work without restrictions.

These are the essential, uncontroverted facts in the matter at bar and the issue now comes to me for resolution.

## **POSITIONS OF THE PARTIES**

### **For the Petitioner**

The Petitioner argued that they provide teachers with generous leave benefits and that they have proven that the Respondent abused her leave time over the past four (4) school years *“with a shameful pattern of excessive absenteeism and tardiness to which she offers no credible excuse.”* During that time period, the Respondent admitted that she was absent a total of 95.5 days and late a total of 159 days and also admitted that her supervisors consistently counseled and warned her of her absenteeism and tardiness. The Petitioner argues that they have established through credible evidence and testimony that the Respondent’s excessive absenteeism and tardiness has damaged the continuity of instruction of her students. Based upon the Respondent’s history, the Petitioner contends that:

*“It is extremely doubtful she would improve if given the opportunity. Accordingly, the tenure charges against the Respondent must be sustained as the School District has proven her excessive absenteeism and tardiness constitute conduct unbecoming a school employee, incapacity, and/or other just cause warranting her permanent dismissal from employment. Any other result would be detrimental to the students of the School District.”*

During the 2010-2012 school year, while at Parkside Elementary School and working with Principal Claudia Cream, Ms. Cream notified the Respondent that her absenteeism and tardiness was a problem. The record reflects that the Respondent's absences consisted of sixteen (16) sick days and one (1) personal day, and she was late twenty-six (26) times. Ms. Cream issued a Teacher Evaluation Observation Report dated March 1, 2011, (see Exh. P-3) in which indicates that the Respondent received an unsatisfactory rating for failure to maintain and have available written lesson plans; failure to monitor student progress and utilize intervention strategies; failure to complete and use records and reports; failure to be prompt with routine written assignments and written reports; and failure to demonstrate responsibility for punctuality in the performance of assigned duties. On June 17, 2011, Ms. Cream submitted an Annual Performance Report for Tenured Teaching Staff to the Respondent (see Exh. P-4), in which she indicated "*Attendance and punctuality at work is unacceptable.*"

In May of 2010, Ms. Cream and Respondent signed an Individual Attendance Improvement Plan, indicating that it was developed jointly and agreed upon.

In the 2011-2012 school year, the Respondent was at the Cooper B. Hatch Family School and her Principal was Norris Bacon, Jr. The Petitioner argues that the Respondent's excessive absenteeism and tardiness did not improve and, in fact, got worse. During this school year, the Respondent was absent seventeen (17) days and late forty-one (41) times. There were no personal days taken during that school year. Gladys Naticchione, secretary to the principal at the Cooper B. Hatch Family School, testified that teachers are allotted ten (10) lateness grace periods on a yearly basis. For example an employee's pay is docked for any lateness that exceeds five (5) minutes or

a lateness of five (5) minutes or less that exceeds the ten (10) grace periods. Thirteen (13) of the Respondent's lateness of five (5) minutes or less were beyond the allotted grace periods.

During the 2012-2013 school year at Cooper B. Hatch Family School, the Respondent was absent thirty and a half (30.5) sick days, used one (1) personal day, utilized five (5) bereavement days and five and half (5.5) absences were docked from her pay because she was in excess of her allotted sick leave time. She was also late fifty-eight (58) times during that school year.

On February 26, 2013, Mr. Bacon issued the Respondent a letter of reprimand for chronic absenteeism and tardiness (see Exh. P-6). He indicated that as of February 22, 2013, the Respondent had been absent sixteen (16) days and late seven (7) times. That reprimand informed the Respondent that consistent absenteeism or tardiness is unacceptable and subject to a disciplinary warning.

During the 2013-2014 school year, the Respondent was absent fourteen (14) days of which two were personal days and three and a half (3.5) days were absences that were docked from her pay for being in excess of her allotted sick time. During that year she was late thirty-four (34) times. During that school year her Principal was Laura Boyce, who was new to the school system. Ms. Boyce testified that she consistently counseled and warned the Respondent about her excessive absenteeism and tardiness during the course of the school year both verbally and in writing. On November 21, 2013, Ms. Boyce issued the Respondent a letter of reprimand about her excessive absenteeism (see Exh. P-16). On February 6, 2014, Ms. Boyce also indicated that the Respondent had an insufficient amount of substitute plans in the main office (see Exh.

P-8) and on April 9, 2014, she again informed the Respondent that she did not have any substitute plans in the main office.

The Petitioner argues that the tenure charges against the Respondent for excessive absenteeism and tardiness must be sustained and references that excessive absenteeism and tardiness may constitute incapacity, unbecoming conduct, or other just cause sufficient to warrant dismissal. The Petitioner argues that through credible evidence and testimony, the circumstances of the Respondent's absences and lateness detrimentally impacted the continuity of instruction and how she persisted despite being given ample warning and opportunity to improve.

The School District has proven that it considered the number of Respondent's absences and lateness and the circumstances of same when they prepared the tenure charges.

The Petitioner argues that Respondent "*vaguely blamed each of the twenty-six (26) days she was late to work because of marital problems.*" The Petitioner argues that is simply not credible because "*the Respondent had the opportunity during direct examination to elaborate on why marital problems precluded her from arriving at work on time but provided no detail whatsoever.*" The Petitioner also argues that the Respondent admitted it is her professional responsibility to arrive at work on time. However, she failed to fulfill that responsibility during the 2010-2011 school year.

The Petitioner argues that the Respondent's absences during the 2011-2012 school year were extended weekends as they fell on a Monday or a Friday and that the doctors' notes contained in the record only account for five and one half (5.5) of the seventeen (17) sick days Respondent took during that school year. The Respondent



testified that many of her absences during the 2011-2012 school year were attributable to tonsillitis, but none of the notes in the record reference tonsillitis. The Petitioner argues that even if all of the Respondent's absences during the 2011-2012 school year were attributable to tonsillitis, the Respondent testified that she chose not to have her tonsils removed, which would have lessened the number of her absences. The Respondent never testified that any of her absences during the 2011-2012 school year were attributed to a debilitating illness or injury.

Again, the Respondent used the vagueness of marital problems as a reason why she was late to work forty-one (41) days during the 2011-2012 school year. The Petitioner continues to argue that this excuse is not credible and the Respondent never elaborated on her marital problems or why those marital problems precluded her from arriving at work on time.

The Petitioner argues that they considered the circumstances of the Respondent's absences and tardiness during the 2012-2013 school year. Even excluding the five (5) days Respondent took due to the death of her brother and an eighteen (18) day leave of absence she took for coping with depression, she was still absent nineteen (19) days that school year. Of those absences, six (6) fell on Monday or Friday and three (3) fell next to a holiday or administrative closing.

For the 2013-2014 school year, the Respondent still blamed her marital problems as the reason why she was late fifty-eight (58) times during that school year. In defense of her position, the Respondent argued that during the 2013-2014 school year, some of the days that she was late were due to the fact that she was talking to Ms. Boyce about school-related matters. However, Ms. Boyce credibly testified that the comments to

Respondent in the morning were made in passing and would not have caused her to be late. The Petitioner argues that the Respondent's attempt to blame Ms. Boyce is a weak attempt to validate her tardiness.

The Petitioner has proven that the Respondent's excessive tardiness disrupted her students' education, resulting in a diversion of resources and had a detrimental impact on student behavior. Ms. Boyce testified that the Respondent's excessive absenteeism and tardiness did have a detrimental impact on the continuity of instruction. In fact, Ms. Boyce testified that the Respondent's students math scores on the New Jersey Assessment of Skills and Knowledge (NJASK) were lower than the other elementary students at Hatch Family School. In fact, the evidence submitted by the Petitioner shows that Respondent's students' suffered due to her absenteeism and tardiness. Fourteen (14) of the eighteen (18) of the Respondent's students who took the NJASK scored less than proficient in Language Arts and Literacy and eleven (11) scored less than proficient in math. (See Exh. R-1 at NB2-NB4).

Ms. Boyce also testified that the Respondent's excessive absenteeism and tardiness negatively impacted student behavior – which again would impact the continuity of instruction. Ms. Boyce also testified that the *“school district only has a limited opportunity to instruct the students and needs as much instructional time as possible to maximize student achievement.”* The Petitioner argues that every time the Respondent was late, students lost instructional time to which they were entitled.

The Petitioner argues that the testimony of Julia Benjamin in support of the Respondent was perjurious as Ms. Benjamin's daughter was in the fifth grade during the 2010 school year and was no longer attending Parkside School. Even though Ms.

Benjamin testified that her daughter was in Respondent's third grade class for 2010-2011, the record clearly established that she was not. The Petitioner asks that Ms. Benjamin's entire testimony be stricken from the record.

The Petitioner has proven that it provided Respondent with ample warning – both written and verbal – that her excessive absenteeism and tardiness was unacceptable and could result in disciplinary action, but she still failed to improve. The Petitioner strongly argues that the appropriate penalty for Respondent's excessive absenteeism and tardiness is dismissal from employment. The Petitioner further argues that during the four year period the Respondent was absent or late to work an astonishing total of 254 times. Putting that number into perspective, there are approximately 180 days in a school year, which means the Respondent was either late or absent well over the equivalent of an entire school year. The Petitioner argues that withholding the Respondent's increment would be an insufficient penalty as it is not a necessary precursor to dismissal and she has already shown that financial penalties have no impact upon her. Moreover, the Respondent has not offered any credible evidence indicating that her attendance or punctuality will improve if she were to be returned to work. In fact, there is no basis to believe that she can be reinstated without negatively impacting the continuity of instruction for her students as she has done for the past four (4) school years.

Accordingly, the Petitioner asks that the Respondent's excessive absenteeism and tardiness constitutes incapacity, unbecoming conduct, or other just cause warranting permanent dismissal from employment.

**For the Respondent**

The Respondent argues that the Petitioner has failed to prove the charges by a preponderance of the evidence. In addition, the Respondent contends that her record does not justify dismissal.

The Respondent does not deny the number of absences or tardiness identified in the Petitioner's records; however, her position is that *"the absences were taken for legitimate reasons, for which she provided documentation to the Petitioner, which it accepted."* Furthermore, the Respondent admits that there has been an issue with her tardiness; however, she submits there were reasons beyond her control with respect to the tardiness.

She has been a teacher in the District since 1999 and has an elementary K-8 Certificate, Supervisor Certificate and Principal Certificate. She has primarily taught third grade with an emphasis in Language Arts Literacy, and she has a Bachelor's degree in communications and two Master's degrees, one in Administration and one in elementary K-8 curriculum education.

The Respondent argues that Ms. Boyce's testimony about her abilities and impact upon students and teachers directly contradict the testimony of Ms. Cream who supervised her for ten (10) years, including the 2010-2011 school year. She acknowledges that her attendance was discussed with Ms. Cream in 2010-2011, and she admits to receiving an attendance improvement plan that was in part authored by her. She also acknowledges the memo from Mr. Bacon in the 2012-2013 school year and recalls receiving a memo in or about November 2013 from Ms. Boyce regarding attendance.

The Respondent strenuously argues that outside of those notices she did not recall meeting with Ms. Boyce to discuss attendance except when the Principal would stop her on the way into the school main office to tell her she was late.

The Respondent testified that she believed she did not abuse her leave time because she was out for valid reasons such as illness, bereavement or her children's illnesses. Moreover, she frequently provided doctors' notes. (See Exhs. R-2/R-8). The Respondent argues that in providing the doctors' notes, she often went beyond the requirements for providing those when she would have been out of work for more than three (3) days. (See Exh. R-6 and B-120 and R-8 and B-61). When she was out beyond her allotted sick time, she requested and was granted an FMLA leave. (See Exh. R-3). She also testified that her illness was frequently attributed to tonsillitis and that she had surgery in December 2014 to remove her tonsils and expects to continue to be in good health.

The Respondent contends that even though Ms. Boyce testified at length about perceived difficulties she had with the Respondent, *"none of those allegations were raised as tenure charges for inefficiency or unbecoming conduct, nor should they be considered here."* She further argues that all of her actions with the Principal were professional and respectable, if not agreeable, to Ms. Boyce. The Respondent further contends that the Petitioner attempted to characterize her email communication with Ms. Boyce as unbecoming conduct when in fact Ms. Burke would copy others on emails where there is no policy or prohibition against such conduct. When Ms. Burke's email responses question certain practices of Ms. Boyce, it was characterized as

unprofessional and disrespectful, yet there is nothing in the record to establish such an allegation.

The Respondent argues that the school where she drops off her children is up the street from Hatch School, admitting the fact that children are not to be left alone in the school without an adult before 8:15 a.m. She also testified that there is no before school care in the Forest Hills School where her children attend. She must drop her children off to their classes and get back to her own school and check in by 8:25 a.m. The Respondent further testified that she was required to drop her children off by 8:25 a.m. Nevertheless, she understands that the current Principal of her childrens' school will certify that children may be left at the school unattended by a parent or guardian by 8:15 a.m. However, this would allow for only ten (10) minutes to drop off her children at school or with their teachers, drive to her school, park and report to the second floor office for check-in to avoid being late. She does admit that her attendance and her tardiness needs improvement.

However, her marital difficulties frequently contributed to her frequent lateness, which has also been resolved by her recent divorce granted on or about December 2014.

In spite of all of these difficulties, the Respondent's former Principal, Ms. Cream, characterized her as an excellent teacher. Ms. Cream testified that she has served as a Principal for over thirty (30) years in the School District, including the last ten (10) during which Ms. Burke was assigned to her school. Ms. Cream testified that she did not believe the charges against Ms. Burke were appropriate and also testified that when staff were tardy she allowed them to make up the time with students, by tutoring them

for example, after school. While this was voluntary, Ms. Burke did participate in tutoring students after school. Additionally, Ms. Cream testified that where she noted in Ms. Burke's evaluation about her attendance and referenced the attendance improvement plan, it was merely an effort to bring it to the staff member's attention. Those comments were simply to inform Ms. Burke what the record reflected, and it was not to be punitive.

Contrary to that practice of Ms. Cream, *"Ms. Boyce testified that she did not know, nor did she care to know, the reasons for tardiness and absence and that her only concern was the effect upon the students."* Ms. Cream also testified that the Respondent maintained direct contact with parents of her students with respect to learning and disciplinary issues. The Petitioner argued that there was difficulty with student behavior when the Respondent was not present; however, it was clarified that the students' behavior issues arose primarily during specials or sessions where the students were taught by other staff. In fact, when Ms. Boyce noticed that the *"Respondent was checking on her students while they were at the special, she was scolded and had to justify to the Principal her reason for doing so."*

The Respondent testified that she checked on students as suggested in professional development training and that if necessary she would check in with students at their homes and required and maintained regular contact with parents. The Respondent is from the community, lives in it, and is familiar with the students and the parents as indicated by her relationship with Ms. Benjamin, a mother of six students who matriculated through and are presently in the District.

The Respondent admits that she received notice of the attendance issues from her Principals, yet there was no evidence presented of disciplinary action taken for a

violation of the attendance policy prior to these tenure charges. She argues that N.J.S.A. 18A:6-10 requires that no person who acquires tenure may be dismissed or reduced in compensation, except for inefficiency, incapacity, unbecoming conduct, or other just cause. The Petitioner has the burden to prove the allegations by a preponderance of the credible evidence, and they have failed to do so.

The Petitioner is attempting to characterize the Respondent as having unbecoming conduct and creating poor morale; however, that assertion is made by Ms. Boyce only because no other staff members who testified for the Petitioner supported allegations of any improper, unprofessional or unbecoming conduct.

Respondent argues that while she did use her sick leave, there are only 3.5 days for which she was docked in 2013-2014 for which she would not have sick leave or personal time to cover it. (See Exh. P-2). She was docked for 5.5 days in the 2012-2013 school year. However, during those days she had taken FMLA, which was approved by the District. (See Exh. R-3). The Petitioner has attempted to present a pattern of absences; however, the record clearly and unequivocally establishes that the Respondent presented a doctor's note indicating that she had been seen by a doctor or a physician's assistant for illness. In fact, she submitted twenty-eight (28) doctors' notes to the District over the period in question.

The Respondent argues that while she used the time allotted to her, she denies abusing her sick leave time but was forthcoming by admitting that she had a problem with tardiness. The allegations presented do not rise to the level of unbecoming conduct necessary to prove the tenure charges by a preponderance of the credible evidence.



## **DISCUSSION AND ANALYSIS**

The issue before me is to determine whether or not the Petitioner has proven its charge that the Respondent's absenteeism and tardiness was so excessive that it constitutes incapacity, unbecoming conduct, and/or other just cause warranting permanent dismissal from employment. What this case is not about is the issue of lesson plans. There was testimony in the record and documentation submitted about the Respondent's lesson plans not being in the main office when they were supposed to be and her inability to get those lesson plans into the main office properly. That is absolutely irrelevant to the matter before me because the statement of charges submitted by State Superintendent Rouhaniford, only references chronic and excessive absenteeism and lateness. The lesson plans have nothing to do with the instant matter. All of the documentation submitted based upon memos that Principal Boyce sent to the Respondent are irrelevant because the charge before me, as evidenced by the November 17, 2014, packet of materials sent to the Commissioner of Education by counsel for the Petitioner stated, *"I, Paymon Rouhaniford, State Superintendent of the Camden City School District, do hereby charge that Nambia Burke, a tenured employee of the District, should be permanently dismissed from employment for chronic and excessive absenteeism."* The Petitioner certainly can argue if the Respondent is not at work or is tardy to work there is a direct correlation between student learning. It is obvious that if a teacher is not in the classroom then learning will not take place. It is basically a symbiotic relationship. Students are in a classroom to learn, but they need a teacher to be in that classroom.

The Petitioner wove in tardiness as part of its argument and arguably absenteeism/tardiness do in fact go hand-in-hand with whether or not an individual, and in this case the Respondent, is properly performing her teaching duties or is flagrantly violating the requirement to be in the classroom and teach students.

The following chart shows the Respondent's absences and tardiness for the period of 2010-2011 through 2013-2014:

<u>YEAR</u>	<u>ABSENCES</u>	<u>TARDINESS</u>
2010-2011	17 (includes 1 personal day)	26
2011-2012	17 (all sick days)	41
2012-2013	30.5, plus 1 personal day, 5 bereavement days, 5.5 absences - pay was docked) 42 days in Total	58
2013-2014	14 , plus 2 personal days, 3.5 absences - pay was docked 19.5 in Total	34
<b>TOTAL</b>	<b>95.5</b>	<b>159</b>

The five (5) bereavement days must be deducted from the total days absent because she is entitled by the Agreement to utilize bereavement days and, additionally, the December 4, 2013, jury duty day must also be deducted from the total. Therefore, the Respondent was absent from work **89.5 days during that four year period or 22.34 days per year.** (Emphasis applied). Respondent's 159 days being tardy divided by 4 shows that the Respondent was tardy 39.79 days each year during that four year period.

The testimony of Gladys Naticchione, the secretary to the Principal at the Hatch Family School illuminates the method utilized for marking a teacher late. Ms. Naticchione testified that the grace period ends at 8:30 a.m. She testified that the sign-

in book is open between 8:25 and 8:30 a.m. She records a lateness after 8:25 a.m. Each teacher is allowed ten (10) lateness's per year with a five (5) minute grace period. If you go beyond the five (5) minute grace period (8:25 and 8:30 a.m) it does not count toward the ten (10). If you are late eleven (11) days, then you are docked pay. The record reflects that the Respondent was late 159 times and some of those were a few minutes and some of those were more five (5) minutes. Nevertheless, she was late. If we deduct the ten (10) per year and accept that every one of those lateness's was five minutes or less we come out with a different number. Subtracting 40 days from the 159 days creates a number of 119 days divided by 4 which results in the Respondent being late 29.75 times per year.

The Petitioner has an absolute right to mandate that teachers will be in the classroom on time to teach students. We all will agree that occasionally someone will be late to school and that is why there is a grace period. It is interesting that this District does provide a grace period where many districts do not. If a teacher has to be at work at 8:25 a.m. and a teacher comes in at 8:26 or 8:27, they are late in many school systems. Here, this District has given the teachers a grace period. In spite of the grace period established by the Agreement, the Respondent still was late 29.75 times a year, taking into account the ten (10) day period for each year that the District has in its policy.

The Petitioner's argument that the Respondent's absences due to tonsillitis is more compelling and credible than the Respondent's testimony that she had her tonsils removed in December 2014. She was suspended with pay in September of 2014, and tenure charges were filed against her in November of 2014, and she was suspended

without pay effective December 1, 2014. No matter how I look at this, the surgery was after the Respondent had been suspended without pay and tenure charges were filed against her. It is not a credible argument. In fact, it is a horrible argument. The Respondent, a professional individual with three college degrees (a Bachelor's and two Masters') had a tonsillitis problem and did not have surgery. That led to her being absent from work. That is on her, not on a marital problem.

The marital problem issue cannot be controlling in the instant matter because nothing was presented other than she had a marital problem. I fully recognize that the Respondent probably felt uncomfortable about discussing personal issues and did not want to do so during the hearing. Nevertheless, if you are going to raise an issue in defense of why you are absent or late (mostly late) because of marital problems, then you have to be more explicit and explain what you meant about marital problems. Here, the Respondent chose not to do so.

The most vexing problem I have in this matter is the utilization of Ms. Claudia Cream versus Ms. Laura Boyce. Ms. Cream testified she was no longer a Principal or employee of the District. Whatever professional relationship she had with the Respondent cannot be controlling or overshadow the professional relationship Ms. Boyce had with the Respondent. However, even though Ms. Cream testified to her approach to working with teachers, nevertheless she, in fact, informed the Respondent about her attendance issues.

In fact, the second page of Exhibit P-3, which is a conference form, Ms. Cream informed the Respondent that improvement is needed in reporting to work on time and attendance. That document is dated March 16, 2011. On June 17, 2011, (see Exh. P-

4), Ms. Cream indicated that her attendance and punctuality at work is unacceptable. That document referenced that the Respondent had been absent sixteen (16) days and was late twenty-six (26) times. Exhibit P-5 is the individual attendance improvement plan jointly developed and agreed upon by Ms. Cream and the Respondent on June 22, 2011. In that document, Respondent agreed to have better time management, leave the house with more time to account for any delays, making leave on time a priority, and leave work on time to focus on home responsibilities.

Even though Ms. Cream talked about a different approach to working with teachers than Ms. Boyce testified to, the fact remains that Ms. Cream did notify the Respondent that her attendance and punctuality were unacceptable and had to improve. On February 26, 2013, Mr. Norris Bacon, the Principal of the Cooper B. Hatch Family School, sent a memo to the Respondent concerning attendance policy. That memo indicated in part,

*"Our records indicate that as of February 22, 2013, you have been absent a total of 16 days and late 7 times.*

*Given your number of absences and lateness, you are hereby requested to submit an improvement plan that will address how you intend to improve both your absences and latenesses. This improvement plan is due in my office by the close of business March 6, 2013."*

The record does not reflect if the improvement plan was submitted by the Respondent to Mr. Bacon.

On November 25, 2013, Ms. Boyce sent a memo to the Respondent concerning tardiness. That memo indicated in part,

*"Lateness to school greater than five minutes will result in docked pay. In addition, any tardies of five minutes or less will result in docked pay once a staff member surpasses the ten grace tardies allowed by the contract. Continued tardiness will result in disciplinary action."*

That memo also indicated at the bottom that the Respondent was tardy five minutes or less eight times and was tardy more than five minutes once.

On November 21, 2013, Ms. Boyce sent another memo to Ms. Burke also dealing with attendance in which she stated,

*"...our school-wide attendance goal for this year is 96%.  
The purpose of this memo is to notify you that your attendance is currently below the 96% goal."*

The Respondent's statistics up to that point for the 2013-2014 school year were 4.5 absences with an attendance rate of 91.2%. Since the goal was 96% and the Respondent was only at 91.2%, there is a difference of 4.8%.

The above clearly and unequivocally establishes that three separate Principals all commented about attendance and lateness. Even though the Respondent believes that the testimony of Ms. Cream was helpful to her in the area of attendance and lateness, candidly it was not helpful because as a result of her lateness in the 2010-2011 school year, the Respondent agreed to an attendance improvement plan. Why would you agree to an attendance improvement plan if there is no attendance problem?

It is commendable that the Respondent acknowledges her absences and lateness's and asks for an opportunity to go back to work because she believes she has addressed those issues and will continue to address them. Unfortunately, that is not the record before me. Since 2010-2011, there has been a consistent absence and lateness pattern. It certainly appears to me that Ms. Boyce has a different approach to dealing with teachers than Ms. Cream had. Nevertheless, that is also irrelevant because I am not here to evaluate the methodology that any administrator employs working with teachers. The Respondent consistently reported to work late and was consistently

absent. I deducted the number of days that should not be counted such as bereavement and jury duty, but we still have a considerable number of days where the Respondent was out from work, which does negatively impact upon the students.

The focal point of Ms. Boyce's testimony is that if the teacher is not in the classroom or is late to the classroom, it has a negative impact upon students in that classroom. I don't know of any statistics that would say that is not accurate. I have talked about the symbiotic relationship, and I cannot in good conscience put aside the charges against the Respondent and put her back to work.

There is nothing in the record for me to mitigate against the absences and lateness's of the Respondent.

For the foregoing reasons and having duly heard the proofs and allegations of the parties, I Award the following:

**AWARD**

The Petitioner has met its burden by establishing that the Respondent was excessively absent and late to work during the time period of 2010-2011 through 2013-2014. Accordingly, the tenure charge shall be upheld and she shall be dismissed from employment with the State-Operated School District of the City of Camden.

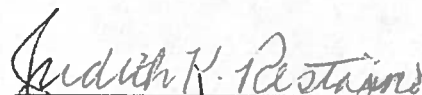
Dated: March 30, 2015

  
Gerard G. Restaino, Arbitrator

State of Pennsylvania)

County of Wayne) ss:

On this 30<sup>th</sup> day of March, 2015, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.

  
Judith K. Restaino

Notary Public  
Lake Twp., Wayne County  
My Commission expires on November 10, 2017