NEW JERSEY DEPARTMENT OF EDUCATION

Agency Docket No.: 57-3/19
Ralph H. Colflesh, Jr., Esq.
Arbitrator

IN THE MATTER of TENURE CHARGES AGAINST

JILL MARIA

by

THE LAWRENCE TOWNSHIP SCHOOL DISTRICT in the COUNTY OF MERCER

Appearances
For the District:
Jeffrey R. Caccese, Esq.
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Moorestown, New Jersey
For Jill Maria:
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DECISION AND AWARD

Pursuant to NJSA 18A:6-16 the undersigned Arbitrator was appointed to hear and determine the above captioned matter which was appealed to arbitration by Jill Maria ("Ms. Maria") after the Lawrence Township School District Board of Education ("the District" or "the Board") terminated her for reasons of law.

A hearing was conducted on May 13, 2019 in the offices of the District, Lawrence, New Jersey. At that time and place, both parties had an opportunity to call and confront witnesses and

produce non-testimonial evidence. There being no procedural objections material to the case, this matter is ready for adjudication on its merits.

Background:

There are no disputed facts in this matter. Ms. Maria was hired as a special education teacher by the District (NT 71), and she was granted tenure on or about September 1, 2005. She has taught sixth grade special education the last three years at the Lawrence Township Intermediate School. On December 18, 2018 she was placed on administrative leave after the District was told she had been arrested. Although Ms. Maria had not informed the District of her arrest, the District believed reporting was required by law. At the time she was placed on leave she had only taught for about two months in the 2017-2018 school year, having returned from an approved leave of absence to attend her son's severe disabilities which include cerebral palsy. (NT 73).

By her own admission Ms. Maria had been arrested on or around January 7, 2017 in Pennsylvania. (NT 25 74). It is uncontroverted that the District has a policy requiring teachers to report arrests. (NT 51; BX 7) and that Ms. Ms. Maria had signed for receipt or knowledge of the policy. (NT 99-100). However, at hearing she explained she did not believe a report was necessary and that to avoid possible loss of her job she followed her criminal attorney's advice and accepted a plea agreement on August 7, 2018 (NT 74, 75). The plea agreement was also not reported.

Unfortunately, on December 3, 2018 Ms. Maria was stopped again by police in Pennsylvania, this time for a traffic violation. (NT 76). After being stopped, she was detained for a violation of her earlier plea agreement that required her to meet with her probation officer as scheduled. *(Id*.). That failure had prompted a bench warrant for her arrest. (NT 78). Although the bench warrant was only discovered by police after they did a look up (NT 82), it was also found that Ms. Maria was driving on a suspended license. (NT 84).

Ms. Maria was released from jail the following morning. (*Id*.). She did not report this arrest to the District, either. (NT 89). As with her first arrest, Ms. Maria explained her failure was due to the fear that if she reported the incident arrest, she would be fired. (NT 89).

Ms. Maria's legal difficulties eventually reached Sean Fry ("Mr. Fry")), the District's Director of Personnel and Administrative Services, who was informed in early December 2018 by Ms. Maria's principal. (NT 17). After contacting both the District's Superintendent and the leadership of Ms. Maria's union (NT 17), Mr. Fry met with Ms. Maria, a union representative named Lori Boggs ("Boggs), and Ms. Maria's principal, Cindy Westhead ("Westhead") on December 19, 2018. (NT 19). After a very brief time with Mr. Fry, the latter three left his office. Boggs soon returned with Ms. Maria and announced the latter would not be answering any questions at that time, but wanted the opportunity to consult with legal counsel. (NT 21; 41, 42) Apparently undeterred, Mr. Fry told Ms. Maria he needed her to tell him if she had recently been arrested and if there were any prior arrests that she had not reported. (NT 21, 23). Mr. Fry told Ms. Maria that if she did not answer he would suspend her. When Ms. Maria continued to refuse (NT 23)[1], Mr. Fry notified her she was suspended with pay, pending the District's investigation. (NT 22; BX 2). He further agreed to meet her request and schedule a second meeting to which she could bring representation. (NT 44). Despite a written assurance from Mr. Fry, that meeting never was scheduled. (NT 44; 53; 55).

The District's review of Ms. Maria's arrest and court records disclosed she had been arrested on January 7, 2017 and agreed to a plea arrangement for simple assault. Additional charges of unlawfully possessing a controlled substance, use or possession of drug paraphernalia, and harassment were not prosecuted. (NT 25; BX 3). The District also examined and took into consideration certain letters of discipline critical of her in-school conduct that were in Ms. Maria's personnel file (NT 31-32, 35, 37; BX 6). Contemporaneous with those letters and at all times of record, Ms. Maria' annual evaluations and performance reports all documented satisfactory or proficient work (NT 40; RX 1-17), and the record discloses no issue with Ms. Maria's care for student safety or any complaints from parents about her in-school performance. (NT 65-66).

Nevertheless, once Mr. Fry had confirmed her arrests, the instant tenure charges were filed with the Board.

[1] At hearing, Ms. Maria testified that she had been advised not to answer Mr. Fry's questions by her Union representatives. (NT 91).

The Tenure Charges Brought by the Board:

The District brought three charges against Ms. Maria's tenure status on February 22, 2019 based on three grounds provided in NJSA 18A: 6-10:

1. Other Just Cause for tenure removal because Ms. Maria failed to report her arrest and conviction for the 2017 offense and, by the District's information and belief, also failed to report her 2018 detention as required by law;
2. Conduct Unbecoming by (a) being insubordinate in refusing to answer Mr. Fry's questions on December 19, 2918; (b) having a prior disciplinary history that included insubordinate conduct with the District;, and, (c) being untrustworthy in regard to her obligation to be truthful and her overall professional judgment.
3. Incapacity by virtue of the previously stated acts of nonfeasance and malfeasance.

On March 13, 2019 the Board upheld the Charges and suspended Ms. Maria without pay, pursuant to NJSA 18A: 6-14. On March 18, 2019 the Board delivered the Charges, with a related Statement of Evidence, a Certificate of Determination, and Proof of Service upon Ms. Maria to the New Jersey Department of Education, Office of Controversies and Disputes. On March 27, 2019 Ms. Maria's counsel filed an Answer to the charges with the Office, and on April 8, 2019 the Office notified all parties that the Charges and Statement of Evidence were enough, if true, to warrant dismissal or reduction in salary, subject to the determination of the undersigned.

Arguments of the District:

The District begins by characterizing tenure as a measure designed to protect against arbitrary dismissal rather than a fortress that defies termination for all but extremely serious infractions. *Spiewak v. Rutherford Bd. of Educ*., 90 NJ 63, 73 (1982). In no way was tenure intended to protect staff from improper performance, according to the Board. *In re Tenure Hearing of Giglio,* EDU 11457-2003, Initial Decision (August 9, 2004). In the instant case, the

Board argues, the removal of Ms. Maria's tenure is founded upon her failure to report an arrest, conviction, and sentence—and on her insubordination, poor judgment and deceit.

Turning to its charge of unbecoming conduct, the District recognizes it is an elastic term that includes behavior which tends to destroy public respect for public employees and confidence in public services. *Giglio, supra*; *Karins v. Atlantic City*, 152 NJ 532, 554 (1998), The Board claims that no particularized rule needs to be violated for unbecoming conduct to be found. Rather, unbecoming conduct occurs when implicit standards of good behavior are violated by one who is supposed to observe best practices and behavior as a function of his or her office. (*Id.,* citing *Hartman v. Police Dep't. of Ridgewood*, 258 N.J. Super. 32, 40 (App Div. 1992).

In this case, the Board says that Ms. Maria violated NJAC 6A:9B-4.3 (c) (1) which expressly requires teachers to inform districts of their arrests within fourteen days of the occurrence, and any disposition within seven days. NJAC 6A: 9B-4.3 (c)(2). Failure to comply with either directive is just cause for revocation of certification. NJAC 6A:9B-4.3(c).

The Board points out that such failure has been found to constitute conduct unbecoming even when, as in this case, there was evidence the accused did not know of the reporting obligation. *In the Matter of the Tenure Hearing of Bessellieu*, (EDU 4766-12, Initial Decision (December 3. 2011), *modified on other grounds*, Comm., (January 15, 2013). The same is true, the District points out, even where there is evidence that the employee did not believe an arrest had been effectuated. *In the Matter of Tenure Hearing of Guarni*, EDU 08705-06, Initial Decision (June 5, 2007), *adopted,* Comm. (July 23, 2007). And, even failure to report on the advice of counsel has been found a violation of the regulations. *Fikentscher v. Ramapo College*, HEC 03339-09, Initial Decision (Dec. 14, 2009).

In Ms. Maria's case, she raised no such defenses. Instead, she said she had gotten the District's policy requiring compliance with the regulations, was aware she had been arrested, and remained silent not on the advice of an attorney but because she feared for her job.

The District's next charge, insubordination, is substantiated the District says, on two factual grounds, both of which amount to just cause for tenure removal under NJAC 6A:9B-4.3(c). *Guarini, supra*; *Bessellieu, supra*; *Fikentscher, supra*. The District points out that no overt disrespect or disobedience is necessary for a finding of insubordination, *Tenure Hearing of*

Duran, EDU 6754-06 and EDU 6957-06, Initial Decision (May 17, 2007), *adopted,* Comm., (July 5, 2007) and that a simple non-compliance with regulations or lawful orders constitutes insubordination. *In the Matter of the Tenure Hearing of Toorzani*, EDU09713-11 Initial Decision, (December 28, 2011), *adopted (*February 9, 2012). Consequently, the District argues, Ms. Maria's failure to report her arrests, although passive in nature, were acts of insubordination.

Similarly, however, the District notes that Ms. Maria engaged in active insubordination when she refused Mr. Fry's instruction at their December 19, 2018 meeting to admit or deny she had been arrested. The District cites *Bessellieu, supra*, for the proposition that advice from her union representative not to answer cannot protect Ms. Maria from a finding of insubordination. The fact is, the, District says, she admittedly did not report her arrests out of concern that she would lose her job and even her claim that she was uncertain about the status of her detention in 2018 is insufficient to excuse her for not obeying Mr. Fry's command. *Guarni, supra*.

Finally, the District asserts, Ms. Maria's conduct has proven an incapacity to serve as a teacher and therefore should her tenure should be revoked. Although the status of incapacity is not precisely defined, *In re Grossman*, 127 NJ Super. 13, 28 (App. Div. 1974), the District says the term should be given a reasonable and sensible interpretation and considered in conjunction with just cause for tenure removal. *Grossman, supra*. Among factors to be considered in weighing incapacity is the effect a teacher's presence in the classroom might have on students. The District holds that Ms. Maria's arrest, the fact of her non-disclosure, her insubordination, *Grossman, supra*, and her failure to tell the truth when asked renders her incapable of being a trusted classroom presence.

Moreover, the District would have entries in her disciplinary file reinforce the notion of her incapacity to work as a teacher because those entries—which Ms. Maria admittedly did not contest—make reference to her "poor judgment," "issues of insubordination [and] leaving students and the school grounds." These notations, the District argues, affirm the view that Ms. Maria simply lacks the capacity to be an education employee.

In light of the foregoing, the District contends that removal is the only appropriate response. The District asserts there is evidence Ms. Maria cannot be rehabilitated and that her present conduct is so serious as to merit termination. *In re Hermann*, 192 NJ 19, 33 (2007)

("progressive discipline is not a necessary consideration…when the misconduct is severe, when it is unbecoming to the employee's position, or when application of the principle would be contrary to the public interest"); *In re Stallworth*, 208 NJ 182, 196-197 (2011). The District again points to the four letters of discipline in Ms. Maria's file, this time as evidence that the District had imposed progressive discipline in the form of written warnings or counselings, all of which put Ms. Maria on notice that she had to conform to all of the District's directives and policies. Those progressive measures put her on notice that the District would not tolerate non-compliance with its lawful requirements, thus serving the purposes of progressive discipline which are to admonish and offer an opportunity for reform. That having occurred, the District reasons, there is no place for any penalty here but removal.

Arguments of Ms. Maria:

Countering the District's position that tenure can be lost for less than the gravest failings, Ms. Maria emphasizes that tenure can *only* be removed for inefficiency, incapacity, unbecoming conduct, or other just cause, NJAS 18:A6-10, and these must be found by a preponderance of competent, credible evidence. *Atkinson v. Parkesian*, 37 N.J. 143, 149 (1962). There being no record nor charge of inefficiency, Ms. Maria focuses on the District's reliance on unbecoming conduct and insists that before such a finding can be entered, a tribunal must examine the nature and gravity of the alleged offense, the impact of the offense on the teacher's career, any extenuating or aggravating circumstances, and the harm the conduct may have had on the administration of the teacher's district. *In re Falcomer*, 93 NJ Super. 404, 422 (App. Div.1967). Where unbecoming conduct is discerned, the penalty must turn on whether the teacher can continue working without harm to the operation of the school district. *Grossman, supra*; *In re Young,* 202 NJ 50, 66 (2010). The decision on all these matters is for the trial tribunal "de novo", Ms. Maria avers, without deference to the Board's own findings contained in its Statement of Evidence.

Ms. Maria also urges the application of progressive discipline, a concept she cites as having been approved both administratively and judicially. *West New York v. Bock*, 38 N.J. 500 (1962); *IMO Tenure Hearing of Owen Newson*, *State Operated School District, City of Newark*,, DOE Dkt. No. 276-9/12; *In re Arnold Borero, City of Newark*, 2009 WL 3816616 (NJ Admin).

Here, Ms. Maria observes, the District has adopted progressive discipline in its own policies. (RX 20).

Continuing on that theme, Ms. Maria cites a number of decisions where teachers were not stripped of their tenure even in cases of flagrant misbehavior such as striking pupils, *Boyd, supra;* utterance of racially insensitive remarks, *IMO the Tenure Hearing of George Mamunes, Pascaack Valley Regional School District,* Comm. Of Ed. Dec. No. 208-00; *In the Matter of the Tenure Hearing of Barbara Emri,* Comm. Of Ed. Dec. No 371-02; reference to a parent in front of a class as a "dyke," *IMO the Tenure Hearing of Poston,* Comm. Of Ed. Dec. No. 362-06; displays of temper, *IMO Tenure Hearing of Adam Mierzwa*, Comm. Of Ed. Dec. No. 283-08; *IMO Tenure Arbitration of Richard Vicenti*, DOE DKT. No. 255-14; sexually inappropriate discussions or words, *IMO Tenure Hearing of Kimberlh Geurds*, Comm. Of Ed. Dec. No. 267-10 *IMO Tenure Hearing of Henry Allegretti*, *School District of the City of Trenton*, Comm of Ed. Dec. No. 96-00; leaving pupils unattended, *IMO Tenure Hearing of Victoria Jakubiak*, Comm. Of Ed. Dec. No. 33-99; *IMO Tenure Hearing of Carmen Quinones*, 1996 NJAR 2d (EDU) 649).

Ms. Maria especially focuses on *IMO Tenure Hearing of Martin Lieb, School District of the Town of West Orange, Essex County,* 1985 SLD 933 where a teacher was not removed after a conviction for lewd conduct and *IMO Tenure Removal Hearing of Brenda Bruni*, NJ DOE No. 207-9/17 where a teacher was arrested for possession of drug paraphernalia.

Finally, turning to incapacity, Ms. Maria argues that charge is restricted to an inability to perform and not to situations in which a district simply claims the teacher is unwanted or unsatisfactory. There is no evidence she is incapable of teaching; in fact, Ms. Maria says, the collection of observations and annual evaluations in evidence speaks loudly to her competence. (RX 1-17). Turning to the four letters of reprimand in her file, Ms. Maria notes their exclusion from the record in terms of proof of what they assert and the absence of any testimony about the events underlying their issuance as well as the lack of any further discipline based on their alleged events. In all years of record, she emphasizes, she received satisfactory or proficient summative evaluations.

Turning more specifically to the charges, Ms. Maria concedes only her <u>failure to report</u> one arrest, in contravention of NJAC 6A: 9B-4(3). She underscores that the regulations merely provide that such a failure "*may* be deemed just cause." NJCA 6A:9B-4.4, a clear indication that a tribunal is free to ignore a district's decision to terminate an employee for such a failure.

Although she admits she did not report her 2017 arrest, she argues the arrest, which occurred in Pennsylvania, had no nexus with her work as a New Jersey teacher and should be seriously discounted in importance.

As for her second encounter with Pennsylvania police, in December 2018, Ms. Maria characterizes that as a detainment—not an arrest--because she had not complied with a term of her probation and therefore had become the subject of a bench warrant. Despite being taken into custody and jailed for several hours before being released the next day, Ms. Maria argues there was no arrest—within the meaning of the regulation—to report. Of note, she maintains, there was no criminal complaint lodged against her that precipitated the 2018 jailing, and therefore the incident was outside the reporting requirements of NJAC 6A:9B-4.3 (c) which requires reporting of arrests "for any crime or offense."

Addressing the charge of insubordination, Ms. Maria says that although she was not prepared to speak to Mr. Fry at their meeting on December 19, 2018, she asked him for a second meeting that day and was assured that a second meeting would be arranged at which she would have counsel. (BX 2). Instead, she was charged and suspended without pay without being given a chance to speak again with anyone in the District since the second meeting was never conducted. Further, Ms. Maria sees Mr. Fry's representation of a second meeting as a form of condonation of her silence on December 19, 2018, a silence she says she was prepared to break at their second meeting. She argues she cannot be found to be insubordinate as to her refusal to answer Mr. Fry's inquiries on December 19, 2018 when he gave the clear indication a second meeting would be conducted.

Denying the incapacity charge, Ms. Maria points out that the only ground for that accusation is her failure to report as required by NJAC 6A:9B-4.3 (c). That failure, even if upheld by the undersigned, she reasons, does not render her in any fashion incapacitated from serving the District's students. The District's attempts to buttress this charge with inadmissible letters of reprimand from her personnel file fail because the District never claimed the contents of the letter, if true, touched on her capacity to teach.

Lastly, Ms. Maria returns to the *Fulcomer* case to argue that it presents "factors" which must be considered before a teacher is terminated for a disciplinary infraction. The first factor is the gravity of the teacher's offense, a quality that is missing here, Ms. Maria argues, because there was no harm done to the District by her failure to report and nothing about that failure that would threaten the operation of the District. Second, under the *Falcomer* analysis for the sufficiency of just cause, the impact of the offense on the District and on the teacher's career should be weighed. Ms. Maria says her failure should have no impact on the District but termination would destroy her ability to work in her profession, possibly leading to the suspension or revocation of teaching certificates by the State. In addition, she would be ineligible to benefit from pension contributions made by or obligated from the State. Third, as held in *Falcumer*, there is an extenuating circumstance that influenced her decision not to report her 2017 arrest and that was the humiliation and shame she would surely suffer and her fear she would lose her job. Additionally, Ms. Maria continues to claim she did not know of the District's reporting requirement or the regulations mandating the same. Fourth, Falcomer requires an examination of the impact the teacher's delinquency had on the district. Here,Ms. Maria contends, her failure to report had absolutely no effect on the operation of the District and the District has offered no proof that it had.

Opinion:

My review of the record convinces me this case turns on only one of the District's charges, *viz,* that Ms. Maria was guilty of unbecoming conduct by failing to report her arrest on January 7, 2017[2] *and* her arrest on December 18, 2018. Further, it is also clear that pursuant to her earlier arrest, she had not reported her entry of plea and sentence of 24- months probationary supervision to the District. As recited above, the failure to report arrests and disposition of criminal charges is a violation of NJAC 6A:9B-4.3 (c) (1), and the failure to report an arrest *may* be grounds for termination according to NJAC 6A: 9B-4.4.

[2] At the time the Charges were drawn, the District only had information and belief that the January 7, 2017 arrest had occurred. The record amply demonstrates that it did in fact occur, and I believe the Charges can be read as incorporating the failure to report that arrest and disposition of charges on which the arrest was made as an fact in this proceeding.

There is no question that she did not report either arrest, and that she knew she was to report at least the first arrest and disposition.

The responsibilities attending Ms. Maria's second arrest are not as glaringly obvious but only because it was pursuant to a bench warrant issued for her failure to appear as scheduled before her probation officer. Although Ms. Maria refers to the December 18, 2018 incident as a detainment, it had both the hallmarks of and justification for an arrest because the existence of a bench warrant required police to arrest her. Moreover, she was held in a cell for at least several hours after being taken into custody. It is difficult to consider this incident as something less than an arrest within the meaning of NJAC 6A:9B-4.3(c) (1) and having observed Ms. Maria's testimony at hearing I am persuaded she is more than smart and knowledgeable enough to know she had, in fact, been arrested.

As for the District's other charges of conduct unbecoming and incapacity, there is nothing in the record to support either as an independent or even related cause for her termination.

The unbecoming conduct allegation is explained in the Board's charges as insubordination, an offense which the Board correctly argues does not necessarily have to include a direct, personal, and public refusal to follow orders. Yet the very fact that the concept of insubordination exists indicates it is a separate offense from others and cannot be sustained solely because a rule has been violated. Moreover, aside from the failure to report her arrests, the District rests its insubordination charge on four disciplinary notices placed in her record. Yet no competent admissible evidence was presented as to the underlying complaints in the notices. It is hornbook law that although hearsay and other evidence that would be inadmissible before a court can be admitted for limited purposes in administrative proceedings, such evidence cannot be considered when offered to prove a dispositive fact. Here, the District attempts to not only prove a dispositive fact but attempts to then extend that fact to the conclusion that Ms. Maria is deceptive, lacks professional judgment, and is an untrustworthy guardian of children. This conflation is unreasonable even were the letters of reprimand admitted. This is especially obvious considering that in each school year in which the letters were filed the District evaluated her as satisfactory or efficient and refrained from withholding a salary increment.

The other branch of the District's insubordination charge is Ms. Maria's failure to respond to Mr. Fry's question at their meeting on December 19, 2018. I fully concur with the District that Mr. Fry had a right (and obligation) to question Ms. Maria, and she had a responsibility to answer him. However, given that her failure to answer at that time was insubordinate, that fault was immediately expiated when Mr. Fry agreed to re-schedule the meeting so Ms. Maria could confer with and be accompanied by counsel before answering his questions. This certainly signals a strong implication that she could defer answering. Having suspended her with pay, Mr. Fry would be expected to schedule the next meeting, but that was never done. To have implied Ms. Maria had a chance to answer later and then not give her that chance, the District cannot be heard to accuse her of insubordination for not answering on December 19.

Similarly, the incapacity charge is meritless. Like insubordination, incapacity has a special meaning and is generally restricted to situations in which a teacher cannot perform because of physical limitations, confinement, or legal restraints on performance such as a loss of licensure. As with the insubordination charge, the incapacity complaint is a conflation of Ms. Maria's failure to report her arrests and disposition with the letters of reprimand in her file, and the incapacity charge must fall for the same reason as the insubordination charge.

That leaves the question of what penalty is appropriate for failing to report the two arrests and disposition. At hearing I resisted efforts by the District's counsel to explore the underlying causes of Ms. Maria's arrests, fearing that inquiries into them would distract from the essential question of her guilt or innocence on the precise charges brought by the Board against her tenure. At this juncture, however, it is necessary to refer to those charges for the very reason District counsel so eloquently urged their consideration at hearing.

As District counsel argued, the public policy behind the arrest and disposition regulation is the need to know behavioral tendencies that might render public school employees unsuited for their positions. This is of utmost importance given the nature of pupil-teacher relationships and responsibilities teachers have for their students. Having entered the teaching profession, teachers take on a willingness to have their out-of-school conduct examined where there is

evidence of some wrongdoing. This is not a gratuitous extension of control over out-of-school life; it is necessary safeguard when alarms are sounded.

Arrests are such alarms, and although a district has no right to suspend or terminate simply based on an arrest, the fact of arrest alerts a district to possible jeopardy and justifies an inquiry into the basis for the arrest. A district cannot fulfill this responsibility without knowledge the arrest has occurred. Thus, NJAC 6A:9B-4.3 (c) (1) was adopted and NJAC 6A:9B-4.4 provides enforcement for failure to comply with the former regulation and provides a district *may* deem a failure to report as just cause for tenure removal.

The question is whether such removal is justified in this case. At this point, I think not, based on the totality of the circumstances and the guidance provided under *Fulcomer, supra.*

The circumstances are gleaned from the reports of Ms. Maria's arrests and disposition of the first one. That arrest was for a number of charges, all but one—simple assault—having been dropped by the Commonwealth of Pennsylvania.

The nature of the 2017 assault charge is not of record, but a sentence of 24 months reporting probation strongly suggests that the underlying conduct was not of a serious nature. The second arrest was on a bench warrant for not complying with the terms of her probation to which she had agreed in connection with her first arrest. That non-compliance consisted of Ms. Maria's failure to meet with her probation officer at an appointed time.

There is no suggestion in the record that either the first or second arrest was for conduct that involved children. However, as stated above, the District had a right to know the nature of Ms. Maria's assault charge so that it could properly evaluate her continuation as a teacher and—if necessary—bring charges against her based on what it found.

Application of the *Fulcomer* factors guide my application of the above circumstances to the question of removal. Two of the four factors clearly favor dismissal: (1) the nature and gravity of the offense and (2) the harm or injurious effect the conduct may have had on the District. As explained above, the failure to disclose the first arrest denied the District a timely opportunity to investigate the bases for the arrest. That denial was serious given the District's responsibility for the safety of its youngsters and vigilance over inclinations that might make staff members unqualified to care for pupils. The other two *Fulcomer* factors weigh against dismissal because I find Ms. Maria's long and evidently acceptable service to the District an

important mitigating factor and further find dismissal to pose an absolutely destructive effect on her career and future employment opportunities.

Based on the foregoing considerations of the charges presented to the Commissioner, I do not find that Ms. Maria's tenure should not be removed on the charges as written, notwithstanding her unacceptable failure to report her arrests and probation status. Instead, she should be reinstated without backpay or benefits as of the first day similarly situated staff members are to report for the 2019-2010 school year. Further, upon her return to service whatever yearly increment would be owed her for service in the 2019-2020 school year shall be withheld.

Nothing herein should be construed as denying the District the right to bring charges based on unbecoming conduct grounded in the conduct that led to Ms. Maria's arrest in January 2017. That conduct was not the subject of the instant charges, most likely because Ms. Maria refused to disclose it when questioned in December 2018, and the District's desire to promptly act on that refusal and the other allegations presented in the above charges.

Award:

Ms. Maria's tenure shall not be removed on the charges presented to the Commissioner. She should be regarded as having been suspended without pay or benefits until the first day of the 2019-2020 school year on which similarly situated staff are to report. At that time she shall be reinstated without backpay or benefits and whatever yearly increment would be owed her for service in the 2019-2020 school year shall be withheld.

7/22/19

Ralph H. Colflesh, Jr., Esq. (digital signature)
Ralph H. Colflesh, Jr., Esq.