

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of Tenure Charges Against Frank Fuzy, III:

WESTFIELD BOARD OF EDUCATION

Petitioner,

- and -

FRANK FUZY, III

Respondent.

Agency Dkt. No.
4-1/19

**OPINION
AND
AWARD**

**Before
Joyce M. Klein
Arbitrator**

Appearances:

For the Petitioner:

Derlys M. Gutierrez, Esq.
Adam S. Herman, Esq.
Adams Gutierrez & Lattiboudere, LLC

For the Respondent:

Ty Hyderally, Esq.
Jennifer Vorih, Esq.
Ty Hyderally & Associates, P.C.

Pursuant to N.J.S.A. 18A:6-16, as amended by *P.L. 2012, c. 26* ("TEACHNJ"), the tenure charges brought by the Westfield Board of Education (the "Board" or "Petitioner") against Frank Fuzy ("Fuzy" or "Respondent") on December 27, 2018 and were referred to me by the Director of the Bureau of Controversies and Disputes, Department of Education, on January 24, 2019 for a hearing and decision. On February 15, 2019, I denied in part and granted in part, Mr. Fuzy's Motion to Dismiss the charges. Specifically, Charge Number One, paragraph "e" was dismissed with prejudice. I deferred ruling on Charge Number Six and the remainder of the Motion to Dismiss was denied. After delay due to change in Mr.

Fuzy's counsel, I conducted a pre-hearing conference on May 28, 2019 at the State Board of Mediation in Newark, NJ. I conducted hearings at the State Board of Mediation in Newark, NJ on July 8, July 9, July 15, July 31, August 5, August 13, August 15 and September 13, 2019. Post-hearing briefs were received on November 15, 2019, whereupon the record was closed. Multiple extensions of time to provide Respondent a chance to obtain new counsel, conduct the hearing and issue the award were granted by the Director of Controversies and Disputes, Department of Education with the final extension requiring that the award be issued by December 16, 2019.

At the hearings, the parties argued orally, examined and cross-examined witnesses, and introduced documentary evidence into the record. Testimony was received from Dr. Margaret Dolan, Superintendent of Schools; Lillian Gail Alston, high school teacher and President of the Westfield Education Association (WEA); Lorie Swanson, teacher and WEA representative and negotiating officer; Jennifer Ullrich, disabilities teacher; Eileen DeFabio, paraprofessional; Kathryn Ciullo, paraprofessional; Michael Seiler, retired teacher and former WEA President; David Duelks, Principal of Tamaques School; Marcus DePontes, security/emergency management consulting employee; Maryanne Rodriguez, NJEA Field Representative; Mary Elena Fuzy, third grade teacher and Respondent's wife; Victor Alfonso, friend; Jeanne Jensen, school nurse and health educator; Patricia Doyle, paraprofessional; Jonathan Blitt, parent; A.V., student; B.V., student, Binaifer Vesuna; parent and Respondent Frank Fuzy.

RELEVANT POLICY

Discipline Board Policy 3150

The Board of Education directs all teaching staff members to observe statutes of the State of New Jersey, rules of the State Board of Education, policies of this Board, and duly promulgated administrative rules and regulations governing staff conduct. Violations of those statutes, rules, and policies will be subject to discipline.

The Superintendent or designee shall deal with disciplinary matters on a case by case basis. Discipline measures will include verbal and written warnings as appropriate and will provide, whenever possible, for progressive penalties for repeated violations. Penalties may include suspension, withholding one or more increments, and dismissal.

In any event disciplinary action is contemplated, notice will be given to the teaching staff member in clear and concise language or the specific acts and omissions upon which the disciplinary action is

based; the text of the statute, policy or rule that the member is alleged to have violated; a date when the member may be heard and the administrator who will hear the matter and the penalty that may be imposed.

The policy cites N.J.S.A. 18A:25-7; N.J.S.A. 18A:27-4; N.J.S.A. 34:13A-1; and N.J.S.A. 34:19-1.

CHARGES

The tenure charges brought against Frank Fuzy on or about December 27, 2018 allege that he engaged in conduct unbecoming a public employee and other just cause. The tenure charges are produced in pertinent part below:

CHARGE NUMBER ONE

- b. Mr. Fuzy has frequently commented to other staff members that he owns multiple guns, including an AR-15.
- c. Mr. Fuzy has also informed staff members that he keeps a gun in the glove compartment of his car.
- d. Mr. Fuzy has stated that he would run out to his car if he needed to use a gun.
- e. In 2016, Mr. Fuzy made the following comment to a staff member: “don’t be surprised if one day I come back here and take care of some people.”
- f. Mr. Fuzy frequently posts about guns on social media outlets.
- g. Mr. Fuzy also shows pictures of guns to staff members.
- h. As such, Mr. Fuzy’s comments and actions regarding guns have served to create an atmosphere at the school whereby other staff members are intimidated and fearful of imminent harm.
- i. Indeed, staff members have advised that as a result of Mr. Fuzy’s comments and actions, they routinely look over their shoulder when they walk on the school premises.
- j. In January 2018, Mr. Fuzy made specific threatening comments to another staff member in connection to a request by the school principal that Mr. Fuzy observe another classroom teacher.
- k. Mr. Fuzy expressed anger about being asked to participate in the observation.
- l. Mr. Fuzy subsequently refused to cooperate with the observation.
- m. When discussing the fact that the principal wanted him to participate in the classroom observation, Mr. Fuzy commented to this staff member that he is “six feet tall, weight 230 pounds and has 26 guns.”

- n. In his anger towards the school principal and the school, Mr. Fuzy repeated the statement about his height, weight and ownership of guns approximately seven times.
- o. About one month after Mr. Fuzy's latest threatening comments about guns, a mass shooting occurred at a high school in Parkland, Florida.
- p. Initial reports out of Parkland, Florida indicated that the gunman used an AR-15 style semi-automatic rifle.

CHARGE NUMBER TWO

- b. During the Spring of 2017, a live deer was located on the school property
- c. In response to seeing the deer within an enclosed section of the school property, Mr. Fuzy turned to another staff member and stated that he wished the deer would escape and injure students, so that his principal would "look bad."
- d. Mr. Fuzy subsequently opened the gate and let the deer out.

CHARGE NUMBER THREE

- b. Between September 2017 and January 2018, Mr. Fuzy picked up a student, S.G., by her feet.
- c. Mr. Fuzy's inappropriate conduct was witnessed by other students and caused embarrassment for S.G.

CHARGE NUMBER FOUR

- b. Between September 2017 and January 2018, Mr. Fuzy embarrassed and disparaged S.G. in front of her entire class.
- c. Specifically, when S.G. attempted to ask Mr. Fuzy a question during class, Mr. Fuzy turned to the entire class and stated: "if she has to ask questions it must mean that she was not paying attention."

CHARGE NUMBER FIVE

- b. Mr. Fuzy has yelled at his students.
- c. In addition, Mr. Fuzy has stated the following to his students: "what are you stupid?"
- d. Mr. Fuzy's behavior and comments have caused students to cry.
- e. Mr. Fuzy's inappropriate conduct was witnessed by other students and staff members.

CHARGE NUMBER SIX

- m. The Board's Superintendent stated in her January 24, 2018 letter to Mr. Fuzy that: ". . . During your suspension, you are not permitted on Board property and you should refrain from any contact with staff, students, or the families of students."
- n. Mr. Fuzy has repeatedly and consistently contacted staff from the date of the letter to the present time; specifically, he has requested that staff members cooperate with a private investigator and/or that they support him and speak well of him.
- o. Moreover, Mr. Fuzy has left voicemails for some staff members telling them not to believe the nonsense that they may have heard about him, then asking them to contact him with what they have heard, and stating, in March and April 2018, that he would be returning to Tamaques School by Mid-May 2018.
- p. In April, 2018, Mr. Fuzy contacted at least one staff member, telling that person that he was out because he talked about guns and "taking care of the principal" and the district overreacted. The staff member shared the information from Mr. Fuzy with other members of the staff which heightened their fear and anxiety. Mr. Fuzy has repeatedly contacted parents to ask them to write letters of support and endorsement for him. A number of parents let the principal know that they were extremely uncomfortable with the request, and that the contact made them feel anxious and unsafe.
- q. Mr. Fuzy entreated the Superintendent to allow him to attend a district daughter/daddy event, and contacted her multiple times for a response. She did suspend the terms of her restrictions as stated in the January 24, 2018 letter for that one event, but Mr. Fuzy abused the privilege.
- r. Specifically, the Superintendent made it clear to the Fuzy family that their daughter, a kindergarten student at Lincoln School which houses all of the district's kindergarteners, would not be attending Tamaques School as a 1st grader (the Superintendent determines placement based on enrollment for all out of district students.) Therefore, there was no reason for the student to attend any events for incoming Tamaquest students and, under no circumstances should Mr. Fuzy have been at Tamaques School; yet, in April, Mr. Fuzy purposely chose Tamaques as the school where he and his daughter attended the incoming Brownies' daughter/Daddy event. While at the event, Mr. Fuzy told a number of students and parents that he would be returning in mid-May. This caused great anxiety and fear in parents, students, and the staff who learned about his statement.
- s. When the Superintendent attended a teacher of the year celebration at Tamaques on May 8, 2018, teachers and parents

told her that they were afraid for their safety and the safety of their children if Mr. Fuzy returned.

BACKGROUND

Frank Fuzy is a tenured member of the Westfield School District (“Board”), teaching third grade at the Tamaques School for approximately 23 years. During that time, Mr. Fuzy has enjoyed “effective” or better evaluations and has received commendations including being named New Jersey’s Agricultural Teacher of the Year in 2013 for his work in starting a garden at the Tamaques School. In the comments to his summative evaluation for the 2016-2017 school year. Mr. Duels wrote that Mr. Fuzy’s “school year proved to be positive and successful with respect to ... [his] personal and professional growth.”

Mr. Fuzy does not have an unblemished disciplinary record having received a four-day suspension and he was placed on a corrective action plan (CAP) to address anger management issues in 2014 after throwing Post-It notes at a student and hitting her in the face. Mr. Fuzy successfully completed the requirement of the CAP including the required counseling.

According to Mr. Fuzy he owns five guns, three handguns and two rifles. Mr. Fuzy has completed background checks and all of the weapons are legally owned and licensed. Mr. Fuzy testified he uses these weapons exclusively at shooting ranges and does not hunt. David Duels, principal of Tamaques School testified that Mr. Fuzy showed him photographs of guns on his cell phone and asked if Mr. Duels shot. Mr. Duels recalled feeling uneasy and asking if Mr. Fuzy had a safe for his guns.

Jennifer Ullrich, was a resource room teacher at the Tamaques School during the 2017-2018 school year. She spent about thirty minutes of each school day in Mr. Fuzy’s classroom. She described him as “always really worried that David Duels, our principal was going to come in and observe him.”

In December of 2017, Principal David Duels completed an observation of Mr. Fuzy teaching a math lesson. Mr. Duels’ observation included several “positive takeaways” as well as the comment that Mr. Fuzy was “making strides in terms of planning, but Mr. Duels “would like to see more growth with respect to preparation and delivery.” Mr. Fuzy responded to this evaluation and both he and Mr. Duels agreed that it would be a good idea for Mr. Fuzy to observe peers teaching a math lesson. Apparently, Mr. Fuzy believed that Mr. Duels would make suggestions as to which teachers he should observe and Mr. Duels was under the impression that Mr. Fuzy would select which peers to observe and report back to him.

As a result, on Friday, January 12, 2018 at 4:47 p.m. at the end of a day when Mr. Fuzy was out sick, Mr. Duelks emailed Mr. Fuzy to see whether he had a chance to conduct peer observations:

As per your request and my endorsement, have you conducted any peer observations during a full math lesson to date? As recommended, you are to alert me of who and when and what your big takeaways were. If you're having a hard time finding a few teachers in-house, I can certainly arrange for you to visit another school.

When Mr. Fuzy received this email, he was confused because he was waiting for Mr. Duelks to suggest someone for him to observe. Mr. Fuzy testified that he believed Mr. Duelks was insinuating that he had been insubordinate by not observing another teacher when the confusion stemmed from a misunderstanding about who would select the teacher(s) to be observed. After receiving this email, at 6:41 p.m. the same day, Mr. Fuzy forwarded it to Lisa Quackenbush, a member of the WEA who assisted teachers who wished to respond to observations, with the following note:

I was out today. I went to medi merge last night and was diagnosed with pneumonia. I even submitted a doctor's note and this is what I get. If you remember I asked him who I should go watch and even put it in my rebuttal. If this doesn't show that I am clearly being harassed I don't know what would. I'm ready to either meet with him and the union or a lawyer. The reason I'm getting sick is because of this treatment. Suggestions?

On Monday, January 15, 2018, a school holiday, at 7:41 p.m., Mr. Fuzy sent a second email to Lisa Quackenbush:

Can you please discuss my response to be written with Gail. I'm only with my phone putting my daughter to sleep. I need to reply to him tomorrow. I'm not concerned that even Gail emailed me that she would call today at 6 but didn't. I'm the one with everything on the line and she couldn't call after saying she would and knowing my situation. Tomorrow will be ...[another] stressful start.

Mr. Fuzy explained that WEA President Lillian (Gail) Alston had said she would call him at 5:00 p.m. and she did not. Later that evening, at 9:13 p.m., Mr. Fuzy forwarded Mr. Duelks' January 12, email to Ms. Alston and Ms. Quackenbush with a long rambling and angry message complaining about Mr. Duelks. The message began:

I received the below email from David [Duelks] on Friday knowing that I was not in school and had submitted a doctor's note. I had the onset of pneumonia. Not only do I feel that it was uncalled for to email me know[ing] that I was ill, but as discussed with Lisa [Quackenbush] at the time of writing my response the whole write up was unrealistic.... Despite the fact that as a supervisor he should have suggested someone in the first place and never did, I receive[d] the email below questioning if I have observed anyone.

This is just one example that can illustrate that his intentions are not just. Past that, I have walked into my room several times since the PTO email mistake and found him sitting on my windowsill simply staring at us while we walked in.... The entire second floor watches him come and go from my room. No reasons are given, no hellos are exchanged, just enough presence to make me uncomfortable. This all started with the email that accidentally went from venting between colleagues to the PTO. It was followed by a meeting which Dominic attended with me, then turned into a letter sent a week later to yourself and Dr. Dolan which in itself contained tiny threats that were just easy enough to make out but nothing concrete.

I have been trying to start each day new. Trying to keep my head up high and the best I can. However, the pressure of his walk ins, silent treatments, and not knowing what he will do next is beginning to wear on my family, my health and my career. It's hard to teach and teach well when you know that someone's intentions are to cause you harm. There is certainly no good that can come out of the way I am being treated.....

Mr. Fuzy continued by complaining that he was being intimidated and harassed and the Association had not given him proper support

The next morning, on January 16, 2018 at 6:44 a.m., when Ms. Alston had not called him back, Mr. Fuzy contacted the New Jersey Education Association (NJEA) via email to complain that he needed "more support and guidance than I am currently receiving." Mr. Fuzy continued, "I feel that I am being harassed and intimidated in my workplace." According to Mr. Fuzy he received a response to his email from the NJEA about two hours later and then he spoke with Ms. Alston that evening.

That same day, Mr. Duelks conducted an additional observation of Mr. Fuzy teaching a math lesson and this observation was more positive.

Also on January 16, 2018, at about 11:30 a.m., Ms. Alston forwarded Mr. Fuzy's January 15 email to Ms. Dolan. Later that evening Mr. Fuzy and Ms. Alston

spoke twice in quick succession, with the first call beginning at 5:37 p.m. and lasting 26 minutes. The call was dropped and the second call began at 6:03 p.m. and lasted 19 minutes.¹ According to Ms. Alston, Ms. Quackenbush spoke with Mr. Fuzy about her suggestions. Mr. Fuzy was not receptive, so Ms. Alston spoke with him.

According to Mr. Fuzy, Ms. Alston asked him why he had contacted the NJEA and he explained that he “reached out to her many times, tried to contact her and she didn’t get back to ...[him]” and he wasn’t getting the help he needed. Mr. Fuzy noted that Ms. Alston brought up the prior discipline over the post-it note issue and said it labeled him as having anger issues. Mr. Fuzy objected, telling Ms. Alston that he had been evaluated privately by a psychologist and had seen a behavior management doctor and have been “cleared”. According to Mr. Fuzy he had done everything the District had asked of him.

During the course of their conversation, they discussed that Mr. Fuzy and Mr. Duelks “didn’t see eye to eye”. Ms. Alston suggested that perhaps Mr. Fuzy should transfer to another elementary school so that he would have “peace of mind” and wouldn’t view Mr. Duelks’ coming into his classroom as an “act of harassment.” At that point, Ms. Alston described the conversation as going “sideways” and Mr. Fuzy became very angry and asked why he should leave because he’s been there 23 years. According to Ms. Alston Mr. Fuzy then told her how tall he was, how much he weighed and how many weapons he owned. Specifically, Mr. Fuzy repeated to Ms. Alston several times that he was five feet, ten inches tall and weighed 220 pounds and had 21 guns. Ms. Alston characterized the conversation as “one-sided” with Mr. Fuzy doing the talking.

Mr. Fuzy acknowledged that he said, “I’m 5-10. I’m 210 pounds. I do own firearms and many people take that the wrong way.” Mr. Fuzy acknowledged that he could have repeated himself during the conversation and explained that he was trying to convey that people see him as “threatening or being angry” and in doing so, it’s as if he’s tough doesn’t have feelings. In other words, Mr. Fuzy sought to convey the message that one shouldn’t “judge a book by its cover”. Mr. Fuzy acknowledged that he assumed Ms. Alston misunderstood him and viewed him negatively because he owns firearms. Mr. Fuzy denied that he was speaking in a threatening fashion. Mr. Fuzy testified that he “was not happy about the way ...[he] was being treated at Tamaques and ...[he] felt that a lot of ...[his] math observations were inaccurate.”

¹ Ms. Alston contradicted herself repeatedly about the timing of these events, and failed to remember whether she spoke to Mr. Fuzy for 45 minutes before or after she sent the January 16 2018 email to Dr. Dolan.

After the conversation, because she was concerned, Ms. Alston called Mike Seiler, who was on medical leave but had been WEA president for 25 years. Mr. Seiler, who described the call as Mr. Fuzy telling Ms. Alston he's bigger and stronger than Mr. Duelks and has guns at home, viewed the comments as a threat and advised her to call the police or speak with Dr. Dolan. Ms. Alston also called Carol Feinstein, then the NJEA field representative for the WEA and Ms. Feinstein also advised her to call the superintendent. Ms. Alston also spoke with Lori Swanson, the WEA building representative for the Tamaques School. Ms. Swanson told her the conversation "needs to be taken very seriously" and reported to Dr. Dolan. After these conversations, Ms. Alston reported her conversation with Mr. Fuzy to Dr. Dolan who listened and replied that she would get back to her. At Ms. Alston's request, Mr. Seiler emailed Dr. Dolan on Sunday, January 21, 2018 urging Dr. Dolan to take some action perhaps including having Mr. Fuzy submit to a psychiatric evaluation.

Dr. Dolan described her concern after Ms. Alston told her about the phone conversation she had with Mr. Fuzy where he was very agitated and repeatedly mentioned his height, weight and ownership of several guns. At this point, Dr. Dolan asked Barbara Ball, the Director of Human Resources to begin an investigation into Mr. Fuzy's conduct.² Dr. Dolan also reported the conversation to the police who conducted an investigation and advised her that Mr. Fuzy had four or five legally registered guns.

The next morning, at 7:03 a.m. January 17, 2018, Mr. Fuzy sent a draft email response to Ms. Quackenbush and Ms. Alston for preview before sending it to Mr. Duelks. At 8:02 a.m., Ms. Quackenbush replied, "perfect".

On Thursday, January 18, 2018 at around noontime, Ms. Alston visited Mr. Fuzy in his classroom to discuss his observation with him. During that visit, Ms. Alston commented on how well it was decorated since she doesn't often have the opportunity to visit elementary school classrooms. She also noted that the classroom was furthest from the main office and suggested that Mr. Fuzy stay in his classroom to avoid Mr. Duelks.³

² As part of that investigation, the Board received a number of emails from parents that were not supportive of Mr. Fuzy. The Board considered these communications and included allegations in those emails in the formation of the tenure charges. Those emails, are relevant to the extent that the Board considered them in drafting tenure charges. Absent corroborative testimony or other evidence, those emails are not sufficient to prove any of the charges against Mr. Fuzy.

³ Ms. Alston recalled that this meeting occurred before the 45 minutes of phone conversations, rather than afterwards. Mr. Fuzy's phone records establish that the phone conversations with Ms. Alston occurred on January 16, 2018 and Ms. Alston visited Mr. Fuzy's classroom on Thursday, January 18, 2018. Specifically, Mr. Fuzy sent Ms. Alston an email that evening and thanked her for coming "today" and Mr. Seiler sent an email on to Ms. Dolan on January 21, 2018 referring to Ms. Alston's meeting with Mr. Fuzy on Thursday, which was January 18, 2018.

According to Ms. Alston, Mr. Fuzy was upset with Mr. Duelks because he thought that he should not have to observe a teacher who has been teaching for only five years and who didn't yet have family responsibilities and had time to work early and late in the day. Ms. Alston recalled that Mr. Fuzy said "he didn't have time for that."

When Mr. Duelks learned of Mr. Fuzy's repeated statements to Ms. Alston about his height, weight and guns, he was scared. Mr. Duelks found it nonsensical for Mr. Fuzy to express such hostility towards him. According to Mr. Duelks, a few weeks before Mr. Fuzy's suspension, Ms. Ullrich showed him a text message from Mr. Fuzy accusing Mr. Duelks of "messing with his livelihood.". The combination of Mr. Fuzy's text to Ms. Ullrich and Ms. Alston's conversation heightened Mr. Duelks' concern.

Lori Swanson, then the Tamaques School Building Representative for the Association characterized her professional relationship with Mr. Fuzy as "adversarial" and indicated that he generally did not agree with her advice. Ms. Swanson testified that she was "truly afraid" and explained "if he's that angry, he's not going to just come after my principal. He's going to come after me too." Ms. Swanson was concerned that Mr. Fuzy "hated" her and noted that he had made negative comments about her on Facebook in association with an approved vacation she had scheduled and an email she sent about contract negotiations. According to Ms. Swanson, over the years, Mr. Fuzy boasted about going shooting and owning guns but never had a threatening conversation with her when he mentioned guns. Nonetheless, Ms. Swanson was sufficiently concerned after Ms. Alston's conversation with Mr. Fuzy that she began walking to her car at the end of each workday with Mr. Duelks.

According to Ms. Swanson, some teachers and paraprofessionals at Tamaques, including Ms. Ullrich, Ms. Eileen DiFabio and at least four others told her they were afraid of Mr. Fuzy.

Mr. Fuzy was suspended with pay effective January 24, 2018 which the District continue its investigation.

Superintendent Dolan explained why she determined to file tenure charges against Mr. Fuzy as follows:

It became very, very apparent in the conversations with staff members both paraprofessionals and teachers that there were a number of teachers who felt unsafe in Tamaques School specifically because of Mr. Fuzy.

They went – some of them went out of their way not to interact with him. Others made sure they did their work at home so they weren't

in the building outside of school hours. Some were just uncomfortable. And people—there were people who were afraid especially after they had been either – he had spoken to them about guns or – or expressed anger in some way.

That was very evident and we only became aware of that in the investigation after I received the phone call from Gail Alston but it was evident that there were people who... felt intimidated by Mr. Fuzy in that building.

So then Parkland happened in Florida, and people who were already nervous became more nervous.

Dr. Dolan acknowledged that Mr. Fuzy had previously posted statements and pictures about guns on social media and there was no reason to discuss these postings with him because it was his right to make such postings about his hobby regarding guns.” Dr. Dolan distinguished between such postings and his comments to Ms. Alston.

In determining to bring tenure charges against Mr. Fuzy, Dr. Dolan focused on Mr. Fuzy “losing his temper and in anger, talking about how many guns he had and then finding out that when we did an investigation that this isn’t the first time guns were mentioned and this isn’t the first time that ... people felt intimidated in the school...”

Paraprofessional Eileen DeFabio works with Mr. Fuzy at lunch and recess. Mr. Fuzy discussed his guns and where and when he went to the shooting range. Mr. Fuzy would discuss his guns and his attendance at the shooting range when he got a new gun or when he went to the range. On one occasion, Mr. Fuzy told Ms. DeFabio that he kept a gun in the back of his truck. Mr. Fuzy denied ever telling anyone that he kept a gun in his vehicle or on school property. Ms. DeFabio was friends with Mr. Fuzy on Facebook and recalls that he posted photographs of guns either in the case or on a table and posted pictures of the targets he shot at. Mr. Fuzy’s conversations about guns made Ms. DeFabio “a little uncomfortable” because she is not a “fan of guns”. Also, Ms. DeFabio explained:

Mr. Fuzy could get very frustrated and aggravated in—with situations and there’s always in the back of your mind people that, you know, have a tendency to get aggravated – it’s a little fearful; that, you know. There’s a gun in the back of the car and they’re aggravated so it’s—you’re a little—you have your guard up. I had my guard up.

Ms. DeFabio continued:

Well, I was just very concerned that... he would never get frustrated enough where he felt like he needed to use it at Tamaques.

Ms. DeFabio testified that she was afraid of Mr. Fuzy because she has observed him get very agitated, frustrated and defiant. She recalled a few instances that where Mr. Fuzy's comments about guns or that he owned guns, made her afraid.

Paraprofessional Karen Ciullo worked one on one with a student assigned to Mr. Fuzy's class in the 2017-2018 school year. Mr. Fuzy told her he had guns including a handgun.

Ms. Ciullo recalled that Mr. Fuzy would sometimes complain about not sleeping well and on the days when he did not have a good night's sleep he would appear "frazzled" and that would set the tone for the children for the school day. Ms. Ciullo recalled that on one occasion, Mr. Fuzy raised his voice with the class because they didn't get their books out quickly enough.

Ms. Ciullo expressed her discomfort with Mr. Fuzy saying:

...it's just disturbing to me sometimes to think that someone who has a hobby of handguns which is fine—hobbies are hobbies—but also is openly taking prescription medications and just, you know, would come in and I would just never really know what kind of personality we were getting, ... it really would concern me a lot that the two were mixing in someone's personal life.⁴

Several members of the staff of the Tamaques School, including Ms. Ciullo, Ms. DeFabio, Special Education teacher and building delegate Sharon Contreras indicated that they would be concerned, afraid or reluctant to continue working at the school if Mr. Fuzy returned.

On one occasion in the spring of 2016, Principal Duelks wanted an outdoor recess while Mr. Fuzy preferred that recess should be indoors that day. Recess was outside and Mr. Fuzy came up to Ms. DeFabio and was very upset that Mr. Duelks had called for an outside recess and there were some deer in front of the building. Mr. Fuzy commented that he "wanted the deer to ... come into the back field and hurt just one student" because it would prove that outdoor recess was the

⁴ Ms. Ciullo testified that Mr. Fuzy told her on at least one occasion that he was going to take a Valium because the children stressed him out. During the hearing, counsel for the Board noted that Mr. Fuzy was closing his eyes and asked if he was under any medication that would prevent him from answering her questions. Mr. Fuzy said he was not. Mr. Fuzy acknowledged that he used Diazepam (Valium) and Adderall regularly to treat a health condition.

wrong decision. Mr. Fuzy denied ever wishing a child would be hurt by a deer at Tamaques School.

As recess ended that day, Mr. Fuzy went and put his hand on the gate. Ms. DeFabio believed that Mr. Fuzy was going to open the gate to let the deer into the yard. Ms. DeFabio asked the custodian to lock or shut the gate and then told the gym teacher to keep her eye out because there were deer on the property. Mr. Fuzy denies opening a gate to let a deer in so that it could harm students.

Ms. Ciullo also recalled Mr. Fuzy make comments about a student's ethnicity, saying "I can't believe I have to call this kid's mom. You, know she's Asian.... This shouldn't be happening." Mr. Fuzy also made similar comments to Ms. Ciullo about an Indian student.

Ms. Ullrich described Mr. Fuzy as berating student C.W. saying that "she's Asian. She's supposed to be smart." According to Ms. Ullrich, Mr. Fuzy would embarrass C.W. when she picked her nose instead of simply suggesting she use a tissue.

Ms. Ciullo recalled another incident where something spilled and Mr. Fuzy asked the nearest student to grab some paper towels and the student misunderstood and handed Mr. Fuzy a tee shirt. Mr. Fuzy said to the student, "are you stupid? I need paper towels." The child who brought the tee shirt was crying. Mr. Fuzy did not recall this incident and denied ever calling a student "stupid".

Several witnesses testified to Mr. Fuzy's good character including students A.V. and B.V. A.V. testified that Mr. Fuzy helped her parents arrange for her to keep up with her school work when she was out of the country for a month during the school year. B.V. testified that Mr. Fuzy helped her with spelling and math and that she nominated him for an award. Binaifer Vesuna, a parent of students who had been in Mr. Fuzy's class in past years testified that he helped her younger daughter in her struggle with language arts. Ms. Vesuna also described Mr. Fuzy's quick action while on a field trip to the Liberty Science Center to keep the group together and safe in a large unruly crowd. Jonathan Blitt, is parent of children who attended Tamaques, including a child who was in Mr. Fuzy's class for the 2017-2018 school year. Mr. Blitt found that Mr. Fuzy was supportive and encouraged his child's growth in language arts in particular. On the approximately four or five brief occasions that Mr. Blitt saw Mr. Fuzy interacting with students, it was "with respect and kindness and encouragement." None of these witnesses were in Mr. Fuzy's classroom regularly during the 2017-2018 school year.

Victor Alfanso, who teaches fifth grade at Tamaques, often stopped in Mr. Fuzy's classroom during his prep period for a few minutes to allow Mr. Fuzy to step out to use the rest room if he needed to. Mr. Alfanso referred to Mr. Fuzy as the "recess guy" who addressed security issues, such as a strange adult walking

through the recess area. Jeanne Jensen worked at Tamaques as the school nurse and health educator until 2014. Ms. Jensen described Mr. Fuzy as a good teacher who got down to the students' level to talk to them. Ms. Jensen emphasized the State recognition Tamaques received for the garden Mr. Fuzy started and worked in with children. Mary Elena Fuzy, Mr. Fuzy's wife, testified that Mr. Fuzy was supportive and helpful when she was new to teaching third grade. Patricia Doyle, who worked as a paraprofessional in Mr. Fuzy's classroom several years ago described it as organized and well run. Ms. Doyle also worked in Mr. Fuzy's classroom in the 2017-2018 school year for approximately 15 minutes at the end of the school day, which she described as chaotic in the way most classrooms are at the end of the day.

Marcus DesPontes, of StoneGate Associates, a security/emergency management consulting firm provides emergency planning services, including security assessments, updating the emergency management plan, meeting with the local police department and staff training for the Westfield School District. Staff training provided by StoneGate includes emergency management training for teachers including evacuation, shelter in place and lock-down training based on best practices for active shooter situations.

When Mr. DesPontes conducted teacher training at Tamaques during the 2017-2018 school year, Mr. Fuzy approached him before the training and asked if he was a gun owner. They discussed guns and going to the shooting range. Mr. DesPontes noted that this was unprecedented in his experience.

Maryanne Rodriguez, NJEA Field Representative testified that Mr. Fuzy visited the NJEA's Trenton office. As a matter of practice, Ms. Rodriguez was notified because she is Mr. Fuzy's Field Representative. After Ms. Rodriguez was called, she tried to speak to Mr. Fuzy by telephone but was unable to reach him. Ms. Rodriguez noted that it is unusual for members to visit the NJEA's Trenton office.

DISCUSSION

N.J.S.A. 18A:6-10 provides that no tenured employees of the public school system "shall be dismissed or reduced in compensation ... except for inefficiency, incapacity, unbecoming conduct, or other just cause." The District bears the burden to establish that it met this standard.

The New Jersey Supreme Court has defined "unbecoming conduct" as conduct "which has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services." In re Young, 202 N.J. 50, 66 (2010) (quoting Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (citation omitted). The New Jersey Supreme Court further defined "unbecoming conduct" as that which violates "the implicit standard of good behavior which

devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Bound Brook Bd. Of Ed. v. Ciripompa, Dkt. No. A-57-15, ___ N.J. ___ (February 21, 2017) (quoting Karins v. City of Atlantic City).

The Board asserts that it has established by the preponderance of the credible evidence that Mr. Fuzy is guilty of conduct unbecoming and other just cause and his employment should be terminated. Specifically, the Board asserts that Mr. Fuzy engaged in unbecoming conduct when he made repeated threatening comments to his union president about his principal. Emphasizing that the concept of “unbecoming conduct” encompasses a variety of categories of inappropriate behavior by tenured teachers the Board cites the “elastic” standard cited in In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960), as “any conduct that adversely effects the morale or efficiency of the [District] . . . [or] which has the tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.” Additionally, the Board points to the concept that unbecoming conduct “may be based primarily on a violation of an implicit standard of good behavior.” Newark v. Massey, 93 N.J. Super. 317, 323 (App. Div. 1967).

The Board continues citing several opinions of the Commissioner of Education emphasizing the teacher as a role model. Specifically, the Board cites the Commissioner’s reasoning as applied to impressionable elementary school students, pointing out that “they teach, inform, and mold habits and attitudes, and influence the opinions of their pupils.” In re Tenure Hearing of Tordo, Jackson School District, 1947 S.L.D. 97, 98-99.

Applying these standards to this matter, the Board asserts that Mr. Fuzy’s repeated threatening statements referencing guns in January of 2018 constitute conduct unbecoming and warrants his removal from his tenured position. Specifically, the Board points to the evidentiary record and points out that Mr. Fuzy, in a fit of anger, made threatening comments to Ms. Alston in connection with a request by Principal Duelks that Mr. Fuzy observe another classroom teacher. The Board emphasizes a conversation between Ms. Alston and Mr. Fuzy where he repeatedly told Ms. Alston that he was five foot ten inches, weighed 220 lbs. and had 21 guns. Ms. Alston recalled that she was very “worried and concerned” because Mr. Fuzy kept “repeating the same thing over and over again.”

The Board emphasizes Ms. Alston’s concern that these threatening comments could result in something being carried out by Mr. Fuzy. The Board cites Ms. Alston’s testimony that she was concerned about Mr. Fuzy’s anger, his threatening statements and his explicit and repeated reference to his guns. As a result, the Board notes that Ms. Alston determined to set aside her role as president of the local education association including Mr. Fuzy, in order to protect the safety and welfare of the principal and other staff and students by reporting Mr. Fuzy’s comments to Principal Duelks and to Dr. Dolan.

The Board notes Ms. Alston initially thought that Mr. Fuzy simply needed to vent but when he kept repeating the same comment over and over again, she became concerned. Specifically, Ms. Alston testified:

I became concerned because with all the media we've been exposed to with shootings . . . as an educator share that information to me was uncomfortable. Why would he even share that with me.

The Board points out that after Ms. Alston's conversation with Mr. Fuzy, she called Mr. Seiler, Ms. Feinstein, NJEA Representative and Ms. Swanson, all of whom urged her to call Dr. Dolan. The Board continues to cite Ms. Alston's testimony that:

I can understand him being upset by his evaluation. . . . In the past . . . maybe his evaluations were different and maybe his present administrator was looking to take education in a different way but for him to share that information about his weight, his height, what he possessed, that was none of my business and he made it my business.

The Board also cites Mr. Fuzy's testimony acknowledging that he told Ms. Alston about his height, weight and gun ownership when they were discussing his evaluation. The Board asserts that Mr. Fuzy's explanation for these comments was that he wanted Ms. Alston to:

Understand that I am a person and that, you know, it's - - - it's not easy that I'm seen this way. Don't judge a book by its cover. So, I just wanted her to get a better perspective of who I was and, you know, that I was not happy about how I was being treated at Tamaques and I felt that a lot of my math observations were inadequate.

The Board asserts that this statement as to why he repeated his height, weight and the number of guns he owned repeatedly during his conversation with Ms. Alston show that he was angry at Principal Duels about his math evaluation and that his comment to Ms. Alston was intended to be intimidating and threatening. The Board asks rhetorically "what reasonable person would make such a statement in connection with a math lesson observation." The Board asserts that Mr. Fuzy's conversation with Ms. Alston was even more troubling when considered in light of his frequent initiation of conversations about guns.

The Board points to the testimony of its security consultant that before a presentation, Mr. Fuzy approached him and began talking about guns. The security consultant testified, according to the Board, again that this is the first time in his many years of giving presentations to school employees that a participant

approached him to talk about guns. The Board emphasizes that Mr. DePontes indicated that he was sufficiently concerned that he reported the comments to the District's administration.

The Board argues that Mr. Fuzy's comments and actions about guns have created an atmosphere at the Tamaques School where other staff members are intimidated by him and fearful of imminent harm. The Board suggests that Mr. Fuzy's threats in January of 2018 were sufficiently outrageous and raised memories of the tragedy that struck Columbine High School. The Board suggests that Mr. Fuzy's frequent discussion of guns in an angry manner including while describing himself versus the school principal is at minimum deplorable and unbecoming for a teacher. The Board notes the unfortunate reality that school shootings are on the minds of school employees, parents and students every day. The Board cites the testimony of Mr. Blitt that:

There was a person who was apprehended with a handgun in their lap in – in the parking lot of Tamaques [at] end of last year . . . but school shootings, of course, occurred long prior to that.

* * * * *

We are all quite familiar with the fact that there was a gunman captured recently at Tamaques . . . I am saying school safety has become an issue; that we talk to our children on a regular basis ever since the very first school shootings.

The Board argues that it does not matter whether Mr. Fuzy had any intent to carry out the threat he suggested to Ms. Alston. The Board emphasizes that Mr. Fuzy was angry about his evaluation, made threatening comments to the WEA president in a conversation that had nothing to do with guns, shootings or gun ownership; but instead an observation of a lesson. Specifically, the Board points out the topic of the discussion between Ms. Alston and Mr. Fuzy was the Principal's recommendation that Mr. Fuzy observe another teacher to get ideas about how to teach. The Board emphasizes that Mr. Fuzy interjected into that conversation his height, his weight and his guns.

The Board likens threats of violence in reference to guns to the equivalent of yelling "fire" in a private movie theater. The Board emphasizes that Mr. Fuzy made these threatening remarks to the Association President who was so concerned by these statements that she set aside her obligation to advocate for him so that she could make sure students and staff were safe. The Board asserts that it is clear Mr. Fuzy acted in an inappropriate and unwarranted manner and his threatening comments and references to guns constitute conduct unbecoming. For this reason, the Board asserts Mr. Fuzy cannot be permitted to continue to be a teacher.

The Board asserts that Mr. Fuzy also engaged in conduct unbecoming when he threatened to permit a deer to come onto school property at the risk of injuring a student. Specifically, the Board asserts that in the Spring of 2017, a live deer was located on school property and after seeing the deer within an enclosed section of the school property, Fuzy told Ms. DeFabio that he wished the deer would escape and injure students so that Principal Duelks “would look bad.” Citing Ms. DeFabio’s testimony when the Tamaques school had a deer on the property and Mr. Fuzy suggested an indoor recess, Principal Duelks called for outdoor recess and in response Mr. Fuzy said to Ms. DeFabio he wanted the deer to come into the back field and “hurt just one student, that’s all it would take, just to prove it was the wrong call and that it should have been indoors.” The Board asserts that Mr. Fuzy’s first priority as a teaching staff member should be to ensure that his students are safe.

The Board would place this conduct in context citing a 2014 incident where Mr. Fuzy threw a pad of Post-It notes at a student. The Board cites this instance and points to Mr. Fuzy’s conduct in January of 2018 when he contacted the Union in anger about Mr. Duelks because Mr. Duelks sent Mr. Fuzy an email late on a Friday afternoon. The Board contrasts Mr. Duelks email which it characterizes as “polite, short and to the point” asking a question of Mr. Fuzy in an unthreatening fashion. In response, Mr. Fuzy was sent “into a furor” over a relatively gentle observation and commentary about Mr. Fuzy’s teaching. The Board points out that in response to this email, Mr. Fuzy “went into a tirade with various union representatives, even going to the union hierarchy and reaching out to the NJEA, not just to the local union.” The Board suggests that if Mr. Duelks recommendation for improvement generated threats of violence, the Board wonders what might happen next. The Board suggests that the administration of the Westfield Public School District could not feel safe making recommendations for any improvement to Mr. Fuzy if he were to return to work. The Board emphasizes that Mr. Fuzy acknowledged his statements to Ms. Alston and does not dispute his comments. For these reasons, the Board asserts that a finding that Mr. Fuzy is not fit to serve as a teacher and must be removed from his tenured teaching position is necessary.

The Board argues strenuously that the proper penalty for Mr. Fuzy’s unbecoming conduct is removal of Mr. Fuzy from his tenured position. Citing I/M/O Tenure Hearing of Curtis Robinson, State Operated School District of the City of Paterson, 2008 WL 3819075, July 25, 2008, and I/M/O Tenure Hearing of Jacque L. Sammons, School District of Blackhorse Pike Regional, 1972 S.L.D. 302, 321, the Board quotes from the Blackhorse Pike Regional decision as follows:

[teachers] are professional employees to whom people have entrusted the care and custody of tens of thousands of school children with the hope that this trust will result in the maximum educational growth and development of each individual child. This

heavy duty requires a degree of self-restraint and controlled behavior rarely requisite to other types of employment.

The Board also cites several other tenure decisions where teachers engaged in unbecoming conduct involving threats. Those decision include I/M/O Tenure Hearing of Theresa Lucarelli, Board of Education of the Borough of Brielle, Monmouth County, 1997 N.J. AGEN LEXUS 258; I/M/O Tenure Hearing of Demetrio Surace, Comm'r. #387-13 (November 1, 2013); I/M/O Tenure Hearing of Lisa Radzik, School District of the Township of Woodbridge, Middlesex County, #321-14 (August 4, 2014).

In each of these instances, the Board emphasizes the teacher failed to meet their obligation as a teacher and a public employee to set an example for students. In this instance, the Board contends Mr. Fuzy's actions are sufficiently flagrant and egregious to warrant termination. The Board emphasizes that Mr. Fuzy displayed inexcusable anger after being asked to observe another teacher, a common occurrence at the Tamaques School. Further, the Board emphasizes that Mr. Fuzy's anger was again apparent in his conversation with Ms. Alston where he made repeated comments about his stature and guns with respect to his principal. The Board argues strenuously that Mr. Fuzy's threatening statements created a fearful work environment. The Board maintains that no public school district should be required to employ a teacher who callously threatens another person with firearms particularly at this time where school shootings are almost ordinary.

Further, the Board argues that Mr. Fuzy is guilty of conduct unbecoming by making inappropriate comments to students. The Board cites testimony during the hearing that Mr. Fuzy berated students in an inappropriate reference to their ethnicity including telling a student that since she is Asian, she is "suppose to be smart." The Board also cites evidence presented showing that a student brought Mr. Fuzy a t-shirt to clean up a spill and he replied, "this is a t-shirt. Are you stupid? I need paper towels." The Board points out that Mr. Fuzy made these comments and statements after having been put on notice that he would be subject to discipline up to and including termination if he had further inappropriate interaction with students.

Respondent Frank Fuzy asserts that the tenure charges against him should be dismissed. First, Mr. Fuzy argues strenuously that the record shows a lack of substantial credible evidence in support of the charges. Respondent asserts that the Board relied substantially on hearsay and flawed testimony and with respect to several of the charges presented no testimony in its efforts to impugn Mr. Fuzy's name and reputation. Respondent asserts that the Board's actions have required him to be out of work for almost two years and derailed his career.

Respondent would apply the factors articulated by the Appellate Division in In re Tenure Hearing of Fulcomer, 93 N.J. Super. 404 (App. Div. 1967). Those

factors include: (1) “the nature and gravity of the offenses under all of the circumstances involved,” (2) “any evidence as to provocation, extenuation or aggravation,” (3) “any harm or injurious effect which the teachers conduct may have had on the maintenance of discipline and proper administration of the school,” (4) “the teaching record and the ability of the teacher,” (5) “the teacher’s disciplinary record,” (6) “consideration as to the impact of the penalty on [the teachers] teaching career, including the difficulty which would confront him if the teacher dismissed for unbecoming conduct in obtaining a teaching position in this State.” Id. at 421-422.

Turning first to the “nature and gravity of the offenses under all of the circumstances involved” Respondent emphasizes that he lawfully purchased and owns firearms which he uses in his hobby. Citing the testimony of Ms. Swanson and Ms. Ciullo, both witnesses described Mr. Fuzy’s mention of guns as casual conversation.

Respondent emphasizes that the tenure charges don’t actually mention a direct threat against Principal Duelks or that Respondent spoke with or interacted with Mr. Duelks in a threatening manner. Additionally, Respondent asserts that the Board has failed to meet its burden on proof. Respondent cites Ms. Alston’s testimony which changed frequently as well as the timeline which establishes that Ms. Alston spoke with Mr. Fuzy after she forwarded the email to Superintendent Dolan. According to Respondent, this timeline impeaches Ms. Alston’s testimony as to her reason for forwarding the email and supports Mr. Fuzy’s suggestion that Ms. Alston forwarded the email after he contacted the NJEA. Further, Respondent points out that Ms. Alston’s one-on-one visit to Mr. Fuzy’s classroom occurred after the telephone call and suggests that Ms. Alston would not have visited Mr. Fuzy’s classroom by herself if she had been afraid of Mr. Fuzy.

According to Respondent, the remaining charges are either not proven or have only flawed proof or present only hearsay testimony.

Turning to the factor of provocation, extenuation or aggravation, Respondent asserts that Ms. Alston forwarded Mr. Fuzy’s January 15, 2018 email to Superintendent Dolan a few hours after learning that Mr. Fuzy had filed a complaint with the NJEA. Respondent contends that Ms. Alston forward Mr. Fuzy’s email to Ms. Dolan in retaliation for his complaint to the NJEA. In support of this theory, Respondent points to Ms. Alston’s question to Mr. Fuzy wanting to know why he went over her head to the NJEA and contacted them. Further, Respondent points out that after speaking with him on the phone Ms. Alston phoned Superintendent Dolan to inform her of her conversation with the union member. For this reason, Respondent asserts that both Ms. Alston’s email and telephone call to Superintendent Dolan which led to these tenure charges were in retaliation for Mr. Fuzy’s having “gone over her head” to the NJEA. Respondent maintains that the animus of the WEA against Mr. Fuzy can also be found in the email from

former President Mike Seiler to Superintendent Dolan which led to the Board suspending Mr. Fuzy.

Addressing the harm or “injury effect,” Respondent’s conduct “may have had on the maintenance of discipline and proper administration of the school,” Respondent highlights the distinction between Mr. Fuzy’s reference to his height, weight and gun ownership in his conversation with Ms. Alston and any direct threat of harm to Mr. Duels. Respondent emphasizes that there is no allegation that Mr. Fuzy ever directly threatened Mr. Duels or approached Mr. Duels and did something threatening to him.

Addressing the teaching record and ability of the teacher, Respondent contends this factor weighs heavily in favor of dismissal of the charges. To that end, Respondent cites testimony of many staff members, students and parents reflecting that Mr. Fuzy is a dedicated teacher, that he cares for his students and that he goes above and beyond. Respondent also cites Mr. Fuzy’s teaching record as well as positive feedback for his performance including being named New Jersey Agricultural Society’s Teacher of the Year in 2013 for his work developing the school garden. Respondent would also cite Mr. Fuzy’s 22 years of work as a third-grade teacher at the Tamaques School and his consistent, positive performance evaluations.

Addressing Mr. Fuzy’s disciplinary record, Respondent acknowledges his discipline in November of 2014 which resulted in a corrective action plan (CAP). Respondent notes that Mr. Fuzy completed and fulfilled all terms of the CAP and successfully participated in counseling. Respondent notes Mr. Fuzy has received no discipline and was not investigated for any of the allegations included in the tenure charges. Respondent also asserts that these allegations should be stricken because the Board did not comply with its own mandatory disciplinary policy with respect to any of the allegations included in the tenure charges.

Respondent notes the obvious impact of upholding the tenure charges on Mr. Fuzy’s teaching career in that it would cause irreparable harm to his professional future. Respondent also notes that in addition to making it difficult if not impossible for Mr. Fuzy to continue his teaching career, upholding tenure charges can result in removal of his teacher license. Based upon this and the other Fulcomer factors, Respondent urges dismissal of the tenure charges.

Relying on previous tenure cases, Respondent points out that Mr. Fuzy’s actions were not subject to progressive discipline and notes that progressive discipline should be imposed before bringing tenure charges. Citing In re Tenure Charges of Leonard Yarborough, State Operated School District of the City of Newark, Essex County, New Jersey, DOE Docket No. 259-9/15-12/14 at pg. 15 (May 24, 2016), Respondent points out that “[u]nfitness to remain a teacher can be demonstrated by a single incident if it is serious enough while less serious

matters could be subject to progressive discipline.” Respondent also cites In re Tenure Hearing of John Vingara, Somerset County Vocational Technical School District, Somerset County, DOE Docket No. 121-4/16 at 56 (January 17, 2017); In Re Tenure Hearing of William Carr, School District of Carlstadt-East Rutherford Regional High School, Bergen County, DOE Docket No. 142-6/15 (February 1, 2016); In Re Tenure Hearing of Kimble Wright, State Operated School District of Newark, Essex County, DOE Docket No. 328-10/15 (January 28, 2016).

Respondent asserts that comparison of Mr. Fuzy’s situation to other tenure cases shows that the tenure charges should not have been initiated against Mr. Fuzy. To that end, Respondent cites numerous tenure cases where tenure charges were not substantiated or where the penalty was found not to be found proportional to the discipline imposed when compared to similar offenses for other public employees. Also citing numerous New Jersey tenure cases where the charges were upheld but removal of tenure was not found to be the appropriate penalty Respondent alleges that removing Mr. Fuzy is too severe a penalty. IMO Tenure Hearing of Edith Craft, School District of the Twp. Of Franklin, Somerset County, Comm. Of Ed. Dec. No. 366-11 (2011); IMO Tenure Hearing of George Mamunes, Pascack Valley Regional High School District, Bergen County, Comm. Of Ed. Dec. No. 208-00 (2000); In re Tenure Hearing of Gilda Nicole Harris, State Operated School District of the City of Jersey City, DOE Docket No. 342-11/14 & 379-12/14 (Oct. 2, 2015); IMO Tenure Hearing of Adelpia Poston, School District of the City of Orange Twp. Essex County, Comm. Of Ed. Dec. No. 362-06 (2006); IMO Tenure Hearing of Richard Vincenti, State Operated School District of the City of Paterson, DOE Dkt. No. 255-14 (2014); In re Tenure Hearing of Mark Boyle, Pittsgrove Township Board of Education, Salem County, DOE Docket No. 208-9/13 (Dec. 23, 2013); In re Tenure Hearing of Maryellen Lechelt, Edison Township Board of Education, DOE Docket No. 360-12/14 (June 30, 2015); In re Tenure Hearing of Leslie Ann Ramos, School District of the City of Elizabeth, Union County, DOE Docket No. 261-9/14 at 18 (Jan. 5 2015); and In re Tenure Hearing of Penny Keough, School District of the City of Burlington, Burlington County, DOE Docket No. 119-4/16 (Dec. 15, 2016). Respondent contrasts these situations with those where the Board met its burden of proving instances of corporal punishment against numerous students, slapping a handicapped child with an open hand and other abusive behavior against students including violating laws, cursing at children in the classroom and unacceptable instances of sexual interaction with students where removal of tenure in an appropriate penalty. Respondent points out that Mr. Fuzy’s conduct does not come close to that of teachers in those cases and suggests bearing in mind that “many educational employees make decisions that in retrospect could have been wiser. This is not the standard for stripping tenure and terminating employment.” In re Tenure Hearing of Penny Keough, School District of the City of Burlington, Burlington County, DOE Docket No. 119-4/16 (Dec. 15, 2016). As a result, Respondent urges that the tenure charges be dismissed and that Mr. Fuzy be returned to the classroom and made whole for losses in seniority, benefits and that

his record be expunged of all disciplinary actions related to this matter. Finally, Respondent asserts that the charges evidences such an egregious effort to “smear” Mr. Fuzy that exemplary damages including but not limited to the reimbursement of Mr. Fuzy’s legal expenses should be awarded.

Initially, Respondent asserts that all of the charges should be dismissed in their entirety because the District did not follow the procedural requirements of its disciplinary policy in that it did not provide notice that discipline was contemplated and the resulting due process that is detailed in Board Policy 3150. It is not disputed that the District did not apply the provisions of its Policy prior to filing these tenure charges. However, the provisions of TEACH NJ, including N.J.S.A. 18A:6-11 and 18A:6-16, as amended by *P.L. 2012, c. 26*, provide for written notice of charges, and thereafter, written statement of the charges, the opportunity to provide a written response followed by a *de novo* hearing before a member of the panel of arbitrators maintained by the Commissioner of Education pursuant to N.J.S.A. 18A:6-17.1. These statutory requirements provide sufficient due process and procedural protections in excess of those included in Board Policy 3150. The failure to follow the requirements of the School District’s disciplinary policy is not cause to dismiss tenure charges. I now turn to the specific charges.

CHARGE NUMBER ONE

The first charge focuses on Mr. Fuzy’s ownership of guns coupled with his comments to various teachers and paraprofessionals about his guns including his repeated comments to Ms. Alston about his stature and his gun ownership that led to these proceedings.

Turning first to the allegation in charge 1b that Mr. Fuzy has frequently commented to other staff members that he owns “multiple guns, including an AR-15,” there is no dispute that Mr. Fuzy owns firearms. It is undisputed that Mr. Fuzy has commented to staff members that he owns multiple guns, though the record does not establish that he owns an AR-15. Ms. DeFabio, Ms. Ciullo, Ms. Ullrich and Ms. Swanson all testified that Mr. Fuzy told them he owned guns. Mr. Fuzy has acknowledged owning rifles, but has not specifically acknowledged owning an AR-15 assault rifle. The record does not otherwise reflect that Mr. Fuzy owns an AR-15, but does establish that he owns multiple guns.

Charge 1(c) alleges that, “Mr. Fuzy has also informed staff members that he keeps a gun in the glove compartment of his car.” Ms. DeFabio testified that Mr. Fuzy once told her he kept a gun in the back of his truck. Mr. Fuzy denied ever telling anyone that he kept a gun in his vehicle or on school property.

Although Ms. DeFabio could not recall when in the past three years Mr. Fuzy told her that he kept a gun in his vehicle, the comment made her uncomfortable and it stuck with her. I credit Ms. DeFabio's testimony that Mr. Fuzy told her kept a gun in his truck or SUV. While the specific allegations of the charge are not substantiated, but I find that Mr. Fuzy made a statement about keeping a gun in his vehicle. Such a statement by itself does not establish misconduct, but has some relevance to the record as a whole.

The allegation in charge 1(d) that "Mr. Fuzy has stated that he would run out to his car if he needed to use a gun" is not supported by the record.⁵ The allegations in charge 1(f) that, Mr. Fuzy frequently posts about guns on social media outlets and in 1(g) that "Mr. Fuzy also shows pictures of guns to staff members."

Ms. DeFabio was friends with Mr. Fuzy on Facebook and recalls that he posted photographs of guns either in a case or on a table and posted pictures of the targets he shot. Mr. Duels recalled that Mr. Fuzy showed him a photo of a firearm on his cellphone.

Dr. Dolan acknowledged that Mr. Fuzy had previously posted statements and pictures about guns on social media and there was no reason to discuss these postings with him because it was his right to make such postings about his hobby regarding guns.

The record does not establish that Mr. Fuzy used social media or photographs of firearms to issue any threat including a threat of violence to any member of the school community. While this charge is substantiated, it does not, on its own establish any misconduct.

Charges 1(h) through 1(p) alleged that Mr. Fuzy, though his comments and actions, has created an atmosphere where "other staff members are intimidated and fearful of imminent harm" including by making angry and threatening comments about his stature in connection with guns and gun ownership.

These allegations are at the heart of the tenure charges. The record establishes that Mr. Fuzy had two phone calls with Ms. Alston, with the second call resulting from the first call being dropped. The record further establishes that during these calls Mr. Fuzy made repeated comments about his height, weight and gun ownership. Mr. Fuzy acknowledged these repeated comments, though there are differences in his reported, height, weight and the number of guns he owns. At issue is whether these comments should be construed as threatening or, as Mr. Fuzy would have it, as his effort to explain that his physical appearance and seeming toughness mask his feelings.

⁵ Charge 1(e) was dismissed on February 15, 2019.

Because the Board relied in large part upon Ms. Alston's account of these phone calls in its determination to bring tenure charges, the Respondent argues strenuously that Ms. Alston's changing testimony with regard to the date when this conversation occurred and the chronology of events undermines the credibility of her testimony regarding the content of the phone conversation. Specifically, Ms. Alston initially testified that she met with Mr. Fuzy in his classroom on January 15, which was a school holiday. Ms. Alston later testified that it must have been on January 12, which was a day when Mr. Fuzy was out sick. Ms. Alston also testified that she met with Mr. Fuzy in his classroom before their phone conversations and before she read and forwarded his January 15, 2018 email to Dr. Dolan. The documentary record establishes that Ms. Alston received Mr. Fuzy's angry and inflammatory email on January 15, 2018 which was sent at 9:13 p.m. either later that night or early on January 16 and forwarded it to Dr. Dolan at 11:30 a.m. on January 16, 2018. The record also establishes that Mr. Fuzy emailed the NJEA at approximately 6:41 a.m. that same day. Ms. Alston and Mr. Fuzy spoke in the evening on January 16, 2018 and Ms. Alston visited his classroom on Thursday, January 18, 2018.

Ms. Alston did not recall the chronology of events accurately, but this is not sufficient to establish that Ms. Alston's entire recollection of the phone calls is inaccurate. In this instance, the statements that concerned Ms. Alston, Mr. Fuzy's repeated statements about his height, weight and ownership of multiple guns are corroborated by Mr. Fuzy, even though Ms. Alston apparently did not accurately recall Mr. Fuzy's height, weight or how many guns he owned.

This dispute did not begin with the phone calls between Mr. Fuzy and Ms. Alston. Rather, this dispute began when Mr. Fuzy was upset that Mr. Duelsk emailed him after the end of the January 12, 2018 school day, when Mr. Fuzy was out sick, in follow up to their discussion about his observing other math teachers. It is apparent that this email was a simple follow up by Mr. Duelsk that included a misunderstanding about who would select the teacher(s) who Mr. Fuzy would observe. The email asked, "[a]s per your request and my endorsement, have you conducted any peer observations during a full math lesson to date?" Mr. Duelsk continued offering to arrange the peer observation if Mr. Fuzy preferred. Mr. Fuzy testified that he believed Mr. Duelsk was insinuating that he had been insubordinate by not observing another teacher. Later that evening at 6:41 p.m., when he forwarded the email to Ms. Quackenbush from the WEA, he stated "[i]f this doesn't show that I am clearly being harassed I don't know what would." Mr. Fuzy continued, "I'm ready to either meet with him and the union or a lawyer. Plainly, Mr. Fuzy perceived Mr. Duelsk's simple straight-forward, non-accusatory follow up email as harassment.

January 12, 2018 was the beginning of a three-day weekend as Monday, January 15, 2018 was a school holiday. The record does not reflect what occurred

over that weekend, until the evening of January 15 when Mr. Fuzy emailed Ms. Quackenbush at 7:41 p.m. complaining that Ms. Alston had not called him when she said she would and stating, "I'm the one with everything on the line and she couldn't call after saying she would and knowing my situation." The record does not reflect that Mr. Fuzy needed to take any action other than to clear up the misunderstanding about who would suggest teacher(s) for his peer observation.

The record does not reflect whether Mr. Fuzy received any response in the next few hours, but at 9:13 p.m., Mr. Fuzy forwarded Mr. Duelks' email to both Ms. Quackenbush and Ms. Alston with a long, rambling and angry email complaining about Mr. Duelks. In that email, Mr. Fuzy stated that Mr. Duelks' intentions were "not just" and were designed to cause him "harm". Mr. Fuzy accused Mr. Duelks of making "tiny threats" and staring at him when Mr. Duelks was in his classroom.

The next morning at 6:44 a.m., when Ms. Alston had not called him back, Mr. Fuzy emailed the NJEA complaining that he was "being harassed and intimidated in my workplace". Based upon the record to this point, Mr. Fuzy's reaction to Mr. Duelks' January 12, 2018 email shows agitation, anger and impatience that he had not received a response over the three-day weekend. Later that morning, Ms. Alston forwarded Mr. Fuzy's January 15, 2018 email to Dr. Dolan.

The subsequent phone calls between Mr. Fuzy and Ms. Alston took place with this background of an escalating series of emails over the weekend suggesting that Mr. Duelks' routine follow up email constituted harassment and intimidation. During this phone call, Ms. Alston raised the incident with the Post-It notes and told Mr. Fuzy that he had been "labeled...as having anger issues." Ms. Alston also testified that when she suggested that Mr. Fuzy consider transferring to another school where he would not need to be concerned about Mr. Duelks, he became very angry and asked why he should leave. In response to this, Mr. Fuzy began reciting his height, weight and the number of guns he owned. While the testimony about his exact height, weight and the number of guns he claims to own has varied, both Ms. Alston and Mr. Fuzy testified that he mentioned his height, weight and gun ownership multiple times. After consulting with various Association officials, Ms. Alston reported this conversation to Dr. Dolan.

Respondent makes much of Ms. Alston's failure to accurately recall the dates and chronology of her conversations with Mr. Fuzy and her visit to his classroom and suggests that her report of the conversation is retaliatory and should be discounted in its entirety. Ms. Alston, however, reported her conversation to Dr. Dolan, the crux of which has been substantiated to the extent that Mr. Fuzy has acknowledged repeating his height, weight and gun ownership multiple times. Dr. Dolan proceeded to direct that an investigation be conducted. Dr. Dolan described her concern after Ms. Alston told her about the phone conversation she had with Mr. Fuzy where he was very agitated and repeatedly

mentioned his height, weight and ownership of several guns.

The conversation between Ms. Alston and Mr. Fuzy, together with Mr. Fuzy's emails, particularly on January 15, 2018, illustrate a teacher who is angry at his principal and in expressing his anger, referred multiple times to both his stature and his gun ownership. That Mr. Fuzy passed a background check and his gun ownership is licensed and sanctioned is beside the point. Dr. Dolan and the School District are responsible to maintain a safe and secure environment for students, staff and parents in its schools. Ms. Alston, the colleagues she consulted and Dr. Dolan all considered Mr. Fuzy's repeated statements about his stature and gun ownership in response to a discussion of an in-class observation that included an agreement that Mr. Fuzy observe another math teacher to be a threat. This, coupled with his increasingly angry and agitated emails asserting that Mr. Duels was harassing him raised cause for concern.

Ms. Swanson who was the Association's building representative at Tamaques testified that she felt "truly afraid because [she] felt like if this is something – if he's that angry, he's not going to just come after my principal. He's going to come after me too."

Ms. Swanson testified:

. . . there just had been things in the news and—and I think that this whole idea of school shootings was becoming more—I don't want to say common but common, and I just—I felt like if I didn't say something and do something that it would be on my shoulders ... I said to her – I felt I was afraid to go into that building when he was there and I remained afraid even when he was out of the building.

Mr. Duels testified that when he learned of Mr. Fuzy's repeated statements about his height, weight and guns, he was scared. According to Ms. Swanson, after she learned of Ms. Alston's phone conversation, she and Mr. Duels would leave school at the same time and walk out together as a precaution.

Several members of the staff of the Tamaques School, including Ms. Ciullo, Ms. DeFabio, Special Education teacher and building delegate Sharon Contreras indicated that they would be concerned, afraid or reluctant to continue working at the school if Mr. Fuzy returned.

Ms. DeFabio testified that she feared Mr. Fuzy because:

Mr. Fuzy could get very frustrated and aggravated in—with situations and there's always in the back of your mind people that, you know, have a tendency to get aggravated – it's a little fearful; that, you know. There's a gun in the back of the car and they're

aggravated so it's—you're a little—you have your guard up. I had my guard up.

Ms. DeFabio continued stating that she was “very concerned that...he would get frustrated enough” to use his guns at Tamaques.

Ms. Ciullo expressed her discomfort with Mr. Fuzy saying:

...it's just disturbing to me sometimes to think that someone who has a hobby of handguns which is fine—hobbies are hobbies—but also is openly taking prescription medications and just, you know, would come in and I would just never really know what kind of personality we were getting, ... it really would concern me a lot that the two were mixing in someone's personal life.

In determining to bring tenure charges against Mr. Fuzy, Dr. Dolan focused on Mr. Fuzy “losing his temper and in anger, talking about how many guns he had and then finding out that when we did an investigation that this isn't the first time guns were mentioned and this isn't the first time that ... people felt intimidated in the school...”

Mr. Fuzy's repeated statement to Ms. Alston about his height, weight and gun ownership must be viewed in the context that Mr. Fuzy exhibited signs of anger and unpredictability that, when coupled with repeated mention of guns, gave many staff members at Tamaques cause for concern. When Mr. Fuzy's repeated statement about his height weight and gun ownership are viewed in light of the increasingly angry and disproportionate emails he sent over the weekend of January 12-15, 2018, it becomes more difficult to view this repeated statement as anything but a generalized threat. Even if Mr. Fuzy believed that Ms. Alston was neglecting her responsibilities to him as an Association member with a potential concern for his livelihood, there was no basis to bring a repeated statement about his stature and his gun ownership into the discussion of his concerns about Mr. Duels and an agreement between the two that he would observe another teacher's class.

The allegations in Charge Number One are substantiated to the extent that Mr. Fuzy made generalized threatening comments to another staff member in connection to a request for an update on an agreement between the school principal and Mr. Fuzy that he would observe another a math class. When discussing the principal's January 12, 2018 email about Mr. Fuzy's participation in a classroom observation, Mr. Fuzy commented repeatedly to Ms. Alston detailing his height, weight and gun ownership. Further, Mr. Fuzy's comments and actions regarding guns have served to create an atmosphere at the school where several other staff members are intimidated and fearful of imminent harm.

Mr. Fuzy's threatening comments in association with Mr. Duelks cannot be taken lightly in an era when school shootings and active shooter drills are all too common.⁶ Under such circumstances, any threat, whether actual or implied, that could lead to harm of anyone in the school community and "breaches the obligation of a teacher to be a role model to students and to comply with the implicit standard of good behavior" required of a teacher. See, Bound Brook, supra.; Karins v. City of Atlantic City, supra.

CHARGE NUMBER TWO

In Charge Number Two, a deer was located on school property and Mr. Fuzy turned to another staff member and stated that he wished the deer would escape and injure students, so that his principal would "look bad."

In this charge, the Board refers to an incident when, in the spring of 2016, Mr. Fuzy wanted recess to be indoors, but Mr. Duelks determined that it would be outside that day. Many deer live in and frequent the area near the Tamaques School and that day there were some deer in front of the building. According to Ms. DeFabio, Mr. Fuzy was upset that recess was outside and commented to her that he "wanted the deer to ... come into the back field and hurt just one student" because it would prove that outdoor recess was the wrong decision.

As recess ended that day, Ms. DeFabio observed Mr. Fuzy put his hand on the gate and she believed that Mr. Fuzy was going to open the gate to let the deer into the yard.

Mr. Fuzy denied ever wishing a child would be hurt by a deer at Tamaques School. Mr. Fuzy denies opening a gate to let a deer in so that it could harm students.

The record does not reflect that Mr. Fuzy took any action to let deer in the same area with children. Ms. DeFabio was a credible witness and it is possible that Mr. Fuzy has forgotten that he made a comment suggesting that he wished to prove Mr. Duelks made the wrong decision in determining that recess would be outside that day. Such a comment is further evidence of his animosity towards Mr. Duelks, and on its own, might warrant discipline short of dismissal. Charge Number Two is substantiated to the extent that it further establishes Mr. Fuzy's animosity towards Mr. Duelks.

⁶ While discussing his conversations with his children about security in school, Mr. Blitt, a parent, recounted an incident that occurred during the pendency of these tenure charges where a man was found sitting in a car with a handgun in his lap at the Tamaques School.

CHARGE NUMBER THREE

In this charge, the Board alleges, that “between September 2017 and January 2018, Mr. Fuzy picked up a student, S.G., by her feet”. Although Dr. Dolan testified that this allegation was brought to her attention, the record does not include testimonial or other direct evidence establishing that that this alleged incident occurred. Charge Number Three has not been substantiated and is dismissed in its entirety.

CHARGE NUMBERS FOUR AND FIVE

In Charge Number Four, the Board alleges that between September 2017 and January 2018, Mr. Fuzy embarrassed and disparaged S.G. in front of her entire class. The charge alleges specifically that, “when S.G. attempted to ask Mr. Fuzy a question during class, Mr. Fuzy turned to the entire class and stated: ‘if she has to ask questions it must mean that she was not paying attention.’”

In Charge Number Five, the Board alleges that Mr. Fuzy as stated to his students, “what are you stupid?” Further the Board alleges that this conduct and comments have caused students to cry.

Ms. Ciullo and Ms. Ullrich both worked in Mr. Fuzy’s classroom for portions of the school day in the 2017-2018 school year. Ms. Ciullo recalled Mr. Fuzy make comments about a student’s ethnicity, saying “I can’t believe I have to call this kid’s mom. You, know she’s Asian.... This shouldn’t be happening.” Mr. Fuzy also made similar comments to Ms. Ciullo about an Indian student. Similarly, Ms. Ullrich described Mr. Fuzy as berating student C.W. saying that “she’s Asian. She’s supposed to be smart.” According to Ms. Ullrich, Mr. Fuzy also embarrassed C.W. when she picked her nose instead of simply suggesting she use a tissue.

Ms. Ciullo recalled another incident where something spilled and Mr. Fuzy asked the nearest student to grab some paper towels and the student misunderstood and handed Mr. Fuzy a tee shirt. Mr. Fuzy said to the student, “are you stupid? I need paper towels.” This caused the child who brought the tee shirt to cry. Mr. Fuzy did not recall this incident and denied ever calling a student “stupid”.

The testimony of Ms. Ciullo and Ms. Ullrich is consistent and establishes that Mr. Fuzy did not always exercise the restraint necessary for a teacher and, on at least one occasion called a student “stupid” and engaged in stereotyping a child with Asian ethnicity. Mr. Fuzy may not recall these instances, but, the testimony of Ms. Ciullo and Ms. Ullrich is consistent and similar. I credit their testimony. I

find the specific allegation in Charge Number Four is not substantiated by the testimony, but the allegations in Charge Number Five are proven. While Mr. Fuzy's conduct in calling a student "stupid" is serious and warrants discipline, it is not, by itself, sufficient to warrant tenure charges. Charge Number Five lends support to the allegations that Mr. Fuzy does not engage in the self-restraint necessary for a teacher of elementary school students.

CHARGE NUMBER SIX

In this charge, the Board alleges that the Superintendent advised Mr. Fuzy in his January 24, 2018 letter of suspension that, [d]uring your suspension, you are not permitted on Board property and you should refrain from any contact with staff, students, or the families of students." The Board alleges that in April, 2018, Mr. Fuzy "contacted at least one staff member, telling that person that he was out because he talked about guns and 'taking care of the principal' and the district overreacted." The Board asserts that Mr. Fuzy has consistently contacted staff and suggested that he would be returning to Tamaques School by Mid-May 2018 and made statements to staff that increased fear and anxiety. Further, the Board alleged that Mr. Fuzy was given permission to attend the daughter/daddy dance at Tamaques and Mr. Fuzy abused the privilege by again telling those present that he would be back in May. Additionally, the charges provide that "[w]hen the Superintendent attended a teacher of the year celebration at Tamaques on May 8, 2018, teachers and parents told her that they were afraid for their safety and the safety of their children if Mr. Fuzy returned."

In response to Respondent's Motion to Dismiss Charge Number Six, I declined to rule on that portion of the Motion and determined that the issues raised by both parties "must be determined based upon the factual record."

None of the several allegations in Charge Number Six are supported by direct evidence. There is no testimony supporting the allegation that Mr. Fuzy "contacted at least one staff member, telling that person that he was out because he talked about guns and 'taking care of the principal' and the district overreacted." Nor is there direct testimony asserts that Mr. Fuzy has consistently contacted staff and suggested that he would be returning to Tamaques School by mid-May 2018. Likewise, there is insufficient evidence that Mr. Fuzy attended the daughter/daddy dance at Tamaques and told those in attendance that would be back in May. Dr. Dolan did not attend that event and has no first-hand knowledge of what occurred. With respect to Dr. Dolan's testimony that at the teacher of the year celebration at Tamaques on May 8, 2018, teachers and parents told her that they were afraid for their safety and the safety of their children if Mr. Fuzy returned, no parents testified as to their concern if Mr. Fuzy returned to the classroom. Nor is there evidence that parents wrote letters expressing their concern if Mr. Fuzy returned to the District. There is insufficient evidence to support the allegations in Charge Number Six and it is dismissed in its entirety.

In sum, I find that Charge Number One is sustained to the extent that Mr. Fuzy made repeated threatening statements about his height, weight and gun ownership in association with his concerns that he was being harassed by Principal Duelks. I find Charge Number Two is sustained to the extent that it establishes animosity toward Mr. Duelks, but does not, by itself, support tenure charges. I find Charge Number Five is sustained to the extent that Mr. Fuzy called a student stupid and caused that child to cry.

I find that there is insufficient evidence supporting the allegations in Charges Number Three, Number Four and Charge Number Six and they are dismissed in their entirety.

Respondent asserts that the penalty of removal is not supported by the record and principles of progressive discipline should be applied if any discipline is warranted. Mr. Fuzy has already received progressive discipline. In 2014, Mr. Fuzy received a four-day suspension, was placed on a CAP and sent for anger management counseling after throwing Post-It notes and hitting a child in the face. While Mr. Fuzy successfully completed the CAP and the anger management counseling, this record establishes that Mr. Fuzy has not been fully successful at controlling his temper with students, teachers and other staff. As a result, Mr. Fuzy's conduct has led to calling students "stupid", inappropriately reducing students to tears; and most importantly discussing his height, weight and guns in a threatening manner in a conversation where he was stressed and angry.

That threat was in response to a routine follow up email from Mr. Duelks. Mr. Fuzy's conversation with Ms. DeFabio about deer on school grounds reinforces Mr. Fuzy's animosity towards Mr. Duelks. This conduct, when taken together, is not conduct that can be condoned and continued in an elementary school environment.

After the Post-It note incident, Mr. Fuzy was on notice that he needed to exercise self-restraint and control his anger in the school setting and provided with counseling to help him do so. Despite completing the requirements of the CAP, Mr. Fuzy has been unable to exercise sufficient self-control to the point where he has, in an angry and agitated state, made repeated generalized threatening statements about his stature and gun ownership in a conversation about a routine follow-up email from Mr. Duelks. Mr. Fuzy's inability to restrain his comments such as calling a student stupid and embarrassing another student, would not, on their own support the penalty of removal, but serve to reinforce that Mr. Fuzy's current lack of self-restraint when under stress is not appropriate in the position of a teacher and role model for elementary school students.

There is no doubt that Mr. Fuzy has been an effective teacher. Mr. Fuzy has a uniform record of good achievement for his approximately 23 years at the

Tamaques School. Parents and former students attested to the gains students made in his classes. Colleagues have attested to his teaching abilities, care for the Tamaques School, establishment of the garden and supervision of recess and other achievements. Nor is there doubt that Mr. Fuzy has many supporters within the school district.

None of these achievements can outweigh or mitigate the impact of Mr. Fuzy's threatening statements regarding his stature and his firearms. These statements, whether made as threats or for more benign reasons, were justly viewed as threatening. Repeated statements about stature and gun ownership made by a school teacher in anger during a conversation about his principal at a time when schools, including those in the Westfield School District, have regular security training that includes active shooter training cannot be discounted or ignored.

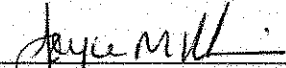
The Westfield School District properly considered its obligations and responsibility to Mr. Fuzy and to the safety and security of the school community including Mr. Duels, teachers, staff, students and parents at the Tamaques School. The Westfield School District had good cause to determine that it cannot expose the staff, students and parents at the Tamaques School to the risk posed by Mr. Fuzy's repeated and angry threatening statements. Mr. Fuzy's threatening statements referencing guns, coupled with his repeated expressions of anger disproportionate to the situation, constitute unbecoming conduct warranting Mr. Fuzy's dismissal.

Accordingly, I find that the Board has established that Respondent Frank Fuzy has engaged in unbecoming conduct that supports his dismissal from his position as a tenured teacher for the Westfield School District.

AWARD

The Westfield Board of Education had just cause to dismiss Frank Fuzy from employment.

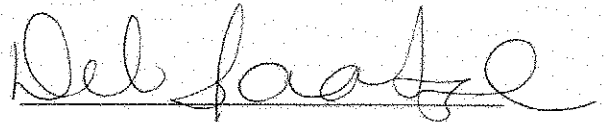
Dated: December 16, 2019
Ocean Grove, New Jersey



Joyce M. Klein

State of New Jersey }
County of Monmouth } ss:

On this 16th day of December, 2019, before me personally came and appeared Joyce M. Klein to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.



DEBORAH A. JACOBSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires June 22, 2023