

**STATE OF NEW JERSEY DEPARTMENT OF EDUCATION
Agency Docket No.: 140-6/19**

In the Matter of the TENURE Hearing between

**The EAST ORANGE BOARD OF EDUCATION,
ESSEX COUNTY, NEW JERSEY**

PETITIONER

and

SHARONDA ALLEN,

RESPONDENT

BEFORE: **Ira Cure, Esq.
Arbitrator**

APPEARANCES

For the Petitioner School District:
George J. Frino, Esq.
Paul Miller, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP

For the Respondent:
William P. Hannan, Esq.
Oxford Cohen, P.C.

OPINION and AWARD

Pursuant to *N.J.S.A., 18A:6-16*, as amended by *P.L. 2012, c. 26* and *P.L. 2015, c. 109* (“TEACHNJ”), the tenure charges brought by the East Orange Board of Education, Essex County (“Petitioner” or “Board” or “District”) against Sharonda Allen (“Allen” or “Respondent”) were referred to me for a hearing and decision. The charges were filed with the New Jersey Department of Education (“DOE”) on or about June 11, 2019. An answer was filed by Ms. Allen with the DOE on or about July 1, 2019. I was appointed to

hear this dispute on July 8, 2019. On July 29, 2019, the Respondent filed a motion to dismiss the tenure charges because of the Board's purported failure to provide information required by *N.J.S.A. 18a:6-17.1(b)(3)*. I conducted oral argument on August 22, 2019, and in an order I denied the motion on August 22, 2019 adjourning scheduled hearing dates. Hearings were rescheduled and held at the New Jersey State Board of Mediation, 2 Gateway Center, Newark New Jersey on September 24, 2019 and October 7, 2019.

Both parties were afforded a full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. The hearings were transcribed. The parties submitted briefs and the record was closed as of November 22, 2019. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in the preparation and issuance of this Opinion and Award.

George J. Frino, Esq. and Paul Miller, Esq. of the firm of DeCotiis, FitzPatrick, Cole and Giblin, LLP represented the Board. William P. Hannan of the firm of Oxfeld Cohen, P.C. represented Ms. Allen.

THE ISSUE:

The issue for arbitral determination is:

Has the Board established that Ms. Allen engaged in misconduct alleged in the charge brought against her? If so, what shall be the penalty?

THE CHARGE

I, Dr. Kevin R. West ("Dr. West"), of full age and capacity, having been duly sworn by the undersigned authority, depose and say as follows:

I am the Superintendent of Schools for the East Orange Board of Education ("Board"). The Board maintains administrative offices at 199 Fourth Avenue, East Orange, New Jersey, 07017. I am charged with the general oversight of the East Orange School District ("District") and all employees serving therein. During all times relevant herein, Sharonda Allen ("S.A.") has been a teacher within the District at East Orange Campus High School ("EOCHS") and Patrick F. Healy Middle School ("Healy Middle School"). I am familiar with all of the facts and circumstances surrounding the Sworn Tenure Charges against S.A.

Based upon the Sworn Statement of Evidence, I hereby charge S.A. with conduct unbecoming and other just cause for dismissal, including but not limited to insubordination, pursuant to N.J.S.A. 18A:28-5 and 18A:6-10.1, et. seq.

BACKGROUND COMMON TO ALL CHARGES

Sharonda Allen ("S.A."), a tenured teacher, is responsible to conduct herself in a professional and appropriate manner, to follow the directives of her supervisors, and to comply with all District protocols and policies. S.A., however, has consistently failed to perform the foregoing duties and responsibilities, and worse, has demonstrated an unwillingness and, or perhaps an inability, to improve, correct and modify her behavior, despite multiple opportunities to do so. On multiple occasions dating back to 2015, S.A. has displayed unprofessional, inappropriate, and most recently, dangerous behavior in her interactions with students, and insubordinate behavior in her interactions with supervisors. Despite prior progressive discipline including a disciplinary-based increment withholding in 2015, and a two-week suspension in 2019, S.A. continues to act in a manner which constitutes insubordination and conduct unbecoming.

Between January 29, 2019 and January 31, 2019 Ms. Allen conducted herself in a manner that was insubordinate to her direct supervisor, Principal of EOCHS Dr. Ronald Estrict ("Dr. Estrict"), and to the Superintendent of Schools Dr. Kevin West ("Dr. West"). (See Exhibit 1). On or about January 29, 2019, in her capacity as Sophomore class advisor she appealed Dr. Estrict's denial of her request for a Sophomore class meeting. The appeal to Dr. West was denied and it was explained in writing that each grade level has one class meeting per quarter, and that the Sophomores already had theirs for the second quarter. S.A. refused to take "no" for an answer and engaged in an accusatory and confrontational back in forth with Dr. West, as follows.

On or about January 31, 2019 S.A. sent an email rebutting the denied request, stating that Dr. West's and Dr. Estrict's actions constituted "educational malpractice,

inequitable treatment", and "criminal" "retaliation". S.A. went on to question Dr. West's and Dr. Estrict's "sensitivity" and accuse them of engaging in a "conspiracy to sabotage" her and the entire Sophomore class. She then threatened her superiors with litigation, and essentially attempted to blackmail them into granting her request by stating "If my request is not immediately granted, I will take this action as retaliation, and I will move this grievance to the next level, exhausting all administrative remedies".

Dr. West responded to S.A. in a professional and constructive manner, again explaining the policy permitting only one class meeting per quarter, again explaining the rationale for the denial, and informing her of the grievance procedure.

Within just over an hour, S.A. wrote back to Dr. West, copying Dr. Estrict, again accusing both of retaliation, stating that the "denial is purely retaliation for not taking the abuse of administration here at the EOCHS...retaliation against those who do not bow down to the mismanagement here at EOCHS". She went on to call Dr. Estrict "incompetent, inept, inequitable, unfair, and super unprofessional." She then argued against the reasoning of her superiors and stated that the reasons were false, thereby essentially calling her superiors liars. She again requested the Sophomore class meeting and went on to tell Dr. West "You cannot continue to support a flawed decision... if I have clearly clarified to you" the flaws in reasoning behind the denial. Finally, she accused Dr. West of being unfair, incompetent, and engaging in illegal nepotism, stating as follows:

I would expect that a fair and competent leader would see all the facts presented... if not, I will know and be clear about the nepotism that is illegal, based on fraternal connections, is alive and well in this School District".

Dr. West patiently responded to S.A.'s attack, explaining to S.A. that he has the authority to approve or deny any request for any meeting made by a staff member, and instructing her to "please move forward and adhere to the final decision [...] regarding this matter". Dr. West reminded S.A. that "[f]ailure to do so is grounds for insubordination and conduct unbecoming" and that there is a grievance process she must follow if she feels she is being mistreated or if she feels "there is nepotism and all of the various other allegations [she] made".

Later that afternoon, S.A. responded to Dr. West in a rambling diatribe of an email, threatening and accusing him follows:

The behavior of you and this administration is unbecoming, unprofessional, unfair, nepotistic, disrespectful, and demeaning after you detailed the made up rules about Class meetings, and then turned around and stated that you would stand by their erroneous decision

to still deny a cycle 3 meeting, as per their own new made up rules.

If you don't understand why this is illegal, then I would refer you back to New Jersey Administrative Code Title 6:6A. You are making a threat about insubordination, while you are not even adhering to the rules that you presented. You can't say that there can be a meeting per cycle, then encourage administration to make up their own rules as they go along, retaliating against a State employee, who also lives in this city.

I am highly offended by your threats of grounds of insubordination, while you promote the mismanagement of this school. You are not utilizing your training as a leader in an equitable manner and well as functioning with nepotistic motives, which is conduct unbecoming and illegal. As a principal, you are not supposed to be an unquestioned, uncorrected dictator. You told me to inform you of any cases of inequity, but now you take sides with this corrupt behavior, even after you pointed out the so-called cycle meeting schedule. I clarified to you that the meeting would be during cycle 3, but you still lean to the wrong side and expose the nepotistic protection you are giving to this flawed administration.

Based on your own statements, you violated the protocol and procedures that you said that you stand by, which are not in writing and made up. Competent leadership requires written rules, if not, this argument would not stand up for this administration in a court of law. You are now promoting behavior that is wrong and bad for the reputation of this School District. There are safeguards in place so that this nepotistic behavior is checked in public domains and I will ensure that this incident is widely publicized and publicly responded to.

The next board of Education Meeting February 12, 2019, and please be clear that the Sophomore parents will be informed of your nepotistic conduct in this matter, and you will be put on notice of these offenses. I will again exhaust all administrative remedies in this matter, and I will be moving this matter to your unprofessional, favoritism, and cronyism.

Dr. West instructed her to "Please cease and desist with your disrespectful, combative

and confrontational behavior immediately.” Finally, she did, but only until the next day (February 1, 2019) when the two met to discuss the investigatory findings and consequential discipline resulting from an incident that occurred between S.A. and a student on December 5, 2018. On that day, she threatened freshman student S.B. during an assembly at East Orange Campus High School (“EOCHS”). An investigation was conducted whereby it was confirmed that multiple witnesses, both students and teachers, reportedly observed Allen yelling verbally abusive language and threats of physical violence several times in S.B.’s face. Specifically, the teacher was in S.B.’s “personal space” yelling the following: **“Shut up”, “Shut the fuck up”, “I will get you jumped”, “You don’t know me”, “I will get one of these big niggas to jump you” and “Watch your back at Campus”.** (Exhibit 6).

As memorialized in a memo titled “Notes from meeting with Dr. Kevin West and Ms. Sharonda Allen Friday February 1, 2019 at 1:00 PM” (Exhibit 2), the meeting began with Dr. West providing a summary of the incident that took place and the decision to suspend her for two weeks. He further informed her that due to student safety concerns, she would be transferred to a different school within the District at the conclusion of her suspension. The transfer was not punishment or discipline but a precaution in response to student safety concerns, as the incident involved her threatening physical violence against a Sophomore student. Dr. West handed her a letter outlining the findings, the disciplinary action, and the notice of transfer. S.A. interrupted Dr. West to comment as follows:

- 1 Dr. West does not have administrative authority to provide her with the letter;
- 2 It was illegal for him to suspend her because the Board had not met or approved the suspenswn (sic);
- 3- The letter was retaliation and a witch-hunt based on the email that she sent Dr. West the day before.

S.A. refused to acknowledge receipt of the letter via signature and refused to accept the transfer because she “did not do anything wrong.” She then accused Dr. West of altering the investigation report and indicated that she would reach out to the investigator herself. (Exhibit 6). She then threatened “You don’t know my reach. Councilwoman [...] is sponsoring my Valentine’s event. The mayor will not support this [...] They will not agree with my removal. I am sure that parents will contact you and students will protest[...] Be prepared for the amount of people at the Board meeting.”

Dr. West concluded the meeting by handing Ms. Allen four (4) District policies that she had violated: Inappropriate Staff Conduct, Healthy Workplace Environment, Use of Electronic Communication, and Civility. (Exhibit 2). Finally, she was told to refrain from speaking to parents and students regarding the matter out of respect to S.B.’s rights to privacy and confidentiality.

Instead of heeding the directive of Dr. West, S.A. organized a school-wide student walk out in protest of her suspension and transfer. The walk-out was to take place during class time, thus participants would have to cut class to attend. S.A. disseminated and publicized flyers and social media posts in support of the walk-out (Exhibit 3). She communicated with students and parents via social media encouraging them to participate in the protest on her behalf and insisting that they call the mayor demanding her immediate return to EOCHS. Essentially, S.A. attempted to influence students to break school rules and cut class to riot against the administration and in support of her. She attempted to use political connections to retaliate against and undermine Dr. West in response to his imposition of discipline.

As if all the above was not enough, S.A. violated the privacy and jeopardized the safety of Sophomore student S.B. She wrote to a student via Facebook Messenger as follows:

S.A: [Student K.N.] said that the boy told her that he lied about the incident just to get me in trouble

Undisclosed Student: Who's the boy and we're gonna report this

S.A: S----- B----

Undisclosed Student:

Bet!!! (Exhibit 4).

It is clear that S.A.'s intent in releasing the student's name was either to have S.B harassed, intimidated, or bullied into recanting his statement, or, to have him retaliated against by way of physical harm. Ultimately, the Messenger thread was screenshotted and posted on an undisclosed student's Instagram Story with the caption "Who know S----- B----?" Thereafter, S.B. feared for his safety at EOCHS to such an extent that he resorted to transferring out of EOCHS and enrolling at another high school in the District. When interviewed, his mother stated that she "feared for her son's life". Despite this fear, he and all witnesses never recanted their statements and reaffirmed that S.A. threatened and verbally abused S.B on December 5, 2018 (Exhibit 5).

The District has issued progressive discipline in response to multiple instances of misconduct over the course of the last several years. Prior to the December 2018 incident and consequential suspension, S.A. was disciplined by way of increment withholding for the 2015-2016 school year in response to at least two instances of conduct unbecoming. (Exhibit 7). On or about April 30, 2015 there was an altercation between S.A. and a female student. Furthermore, due to S.A.'s failure to properly supervise students she chaperoned on an overnight field trip in October 2014, several students engaged in prohibited activity. In response, she made disparaging and inappropriate remarks of a sexual nature in front of everyone

on the field trip, and, among other things, allegedly smelled a male student and stated that he "smelled like sex". Moreover, there were funds missing from the field trip accounting logs; S.A. was the organizer.

I hereby charge Sharonda Allen with unbecoming conduct and/or other just cause for dismissal, including insubordination, pursuant to N.J.S.A. 18A:28-5 and 18A:6-10.1, et. seq.

CHARGE I¹
**UNBECOMING CONDUCT,
INSUBORDINATION, AND
OTHER JUST CAUSE**

While employed as a teacher in the East Orange School District, S.A. repeatedly violated the public trust by acting insubordinately and/or engaging in conduct unbecoming. Specifically, S.A.'s inappropriate interactions with students, her displays of complete disrespect for her supervisors, her total disregard for the directives of her supervisors, and her complete ignorance of District policies and protocols are evidenced, as follows:

Count One

On or about Tuesday, January 29, 2019, at 9:49 AM, S.A. wrote an email to her supervisors including but not limited to Dr. Estrick and Dr. West that rises to a level of insubordination warranting removal.

Count Two

On or about Thursday, January 31, 2019, at 8:54 AM, S.A. wrote an email to her supervisors Dr. Estrick and Dr. West that rises to a level of insubordination warranting removal.

Count Three

On or about Thursday, January 31, 2019, at 11:44 AM, S.A. wrote an email to her supervisors Dr. Estrick and Dr. West that rises to a level of insubordination warranting removal.

Count Four

On or about Thursday, January 31, 2019, at 1:02 PM, S.A. wrote an email to her supervisors Dr. Estrick and Dr. West that rises to a level of insubordination warranting removal.

Count Five

On or about Friday, February 1, 2019 at 9:00 AM, during a meeting with

¹ Exhibits attached to the charges have not been appended, and will be discussed if relevant in the body of this Opinion and Award.

Superintendent of Schools Dr. Kevin West, S.A. behaved in a manner that constitutes insubordination, conduct unbecoming, and violates multiple Board policies

Count Six

During the period of her suspension (between February 1 and February 19, 2019) S.A. violated Board Policy by way of inciting student misconduct in the form of cutting class for a school wide protest on her behalf, i.e. a "walk-out", at EOCHS.

Count Seven

During the period of her suspension (between February 1 and February 19, 2019) S.A. violated Board Policy 3283 by way using social media to inappropriately communicate with students.

Count 8

S.A. jeopardized the safety of student S.B. by way of releasing his name to another student with the intent to have him harassed, intimidated, bullied, or worse, as retaliation for her suspension.

CONCLUSION

Each of the foregoing allegations, as well as the Sworn Statement of Evidence and all accompanying documents attached thereto, are incorporated by reference, as if fully set forth herein.

In aggregate, the foregoing actions and inactions exhibited by Sharonda Allen amount to unbecoming conduct, insubordination, and/or other just cause for dismissal. Sharonda Allen has received appropriately progressive discipline in response to numerous instances of misconduct over the course of the last several years, and dismissal via tenure charges is now the only appropriate recourse. By virtue, thereof, it is evident that S.A. has engaged in a course of misconduct extending over a period of time, such that, her pattern of misconduct, jointly and severally, constitutes unbecoming conduct and insubordination, and manifestly demonstrates her unfitness to serve in a position of educational leadership, thus warranting her dismissal.

FACTS

A. Background

Dr. Kevin West (“West”) is the superintendent of schools in the District. (Tr. 13). There are four high schools within the District. (Tr. 28). The events giving rise to this proceeding occurred at Campus High School (“CHS”). (Passim). CHS is a comprehensive school with approximately 1600 students in grades nine through twelve. (Tr. 25). CHS has students that are high performing, average performing and who have challenges academically. (Tr. 26). Dr. West characterized the District as “urbanized” noting that there are concerns regarding violence among students. (Tr. 30). The CHS principal is Dr. Ronnie Estrick (“Estrick”). (Tr. 138). District policies are uploaded to the District’s website. Dr. West testified that teachers are directed to the website in order to review those policies. Principals are also directed to review policies with teachers, and teachers are asked to acknowledge that they reviewed certain but not all policies. (Tr. 33, 142, 155-156).

Ms. Allen has been employed by the Board since 2003 and has been assigned to CHS since 2011. (Tr. 226). Ms. Allen has taught the following subjects at CHS: World History, Sociology, African American History, United States History and Economics. (Tr. 227). Ms. Allen has the following pedagogic certifications: Kindergarten through Elementary Certification, Kindergarten through 12 Social Studies Certification, and a Supervisor’s Certification. (Tr. 227). She has generally received “effective” ratings as a teacher. (Respondent’s Exs. 6-10). In addition to her teaching duties, Ms. Allen was the advisor for the class of 2021. During the relevant 2018 to 2019 school year, this meant that Ms. Allen was the advisor for the Sophomore class. (Tr. 228).

Ms. Allen's conduct while employed at CHS has been investigated on several occasions, and some of the investigations of her conduct has resulted in discipline². On May 7, 2015, CHS Assistant Principal Felecia Duggins ("Duggins") issued a memorandum to Ms. Allen in which Ms. Duggins concluded that Ms. Allen used "inappropriate language, interfere[ed] in the instruction of students, and disrupt[ed] . . . the learning process." (Board Ex. 18). As a result, the East Orange Board of Education withheld Ms. Allen's salary increment for the 2015-2016 school year, and placed Ms. Allen on probation for conduct unbecoming. (Board Ex.19).

B. The December 5, 2018 incident with SB

As will be seen, the events giving rise to this proceeding are closely related to an incident that occurred on December 5, 2018. The record shows that, on December 5, 2018, Ms. Allen had an altercation with a ninth-grade student, "SB", at a school assembly. SB failed to follow Ms. Allen's directions to stop talking and was belligerent. In response, Ms. Allen in front of both student and teacher witnesses said the following: "Shut up", "Shut the fuck up", "I will get you jumped", "You don't know me", "I will get one of these big niggas to jump you" and "Watch your back at Campus." As a result of complaints from SB's mother, the Board hired a private detective to investigate the December 5, 2018 incident. (Tr. 19, 21). While the investigation was ongoing, on January 11, 2019 Dr. West met with Ms. Allen, SB and SB's mother. In a memorandum dated February 28, 2019, addressed to the Director of Labor Relations for the Board, Dr. West expressed misgivings about the way Ms. Allen conducted herself at the January 11, 2019

² I am specifically excluding from my analysis allegations that Ms. Allen acted inappropriately while chaperoning a student trip in October 2014. Although serious allegations of misconduct were made against Ms. Allen in connection with the trip, there is no evidence in the record that discipline was imposed, and Ms. Allen testified that she never saw the memo describing the events. (Tr. 293, Board Ex. 14).

meeting. In his memorandum, Dr. West noted that SB apologized to Ms. Allen for telling her to “get out of his face.” As recounted in the memorandum, Dr. West asked Ms. Allen if she had something to say. Dr. West stated that Ms. Allen went into a discourse about how much she loves students at CHS, and how she demands respect. According to Dr. West, Ms. Allen never apologized to SB and the lack of apology infuriated SB’s mother. Dr. West noted, however, that Ms. Allen attempted to hug SB’s mother because they apparently knew each other outside of the school context. With respect to the attempted hug, Dr. West described SB’s mother as looking at Ms. Allen like Ms. Allen “was crazy.” Dr. West stated that Ms. Allen gave SB a “half-hearted apology.” Ms. Allen also assured SB that he would be safe at the school. Prior to the end of the meeting, SB’s mother described Ms. Allen as “ghetto,” and Dr. West stated that he wrapped up the meeting by asking SB if he felt safe, and SB said that he did feel safe. (Board Ex.9).

Thereafter, on February 1, 2019, following the conclusion of the investigation, Dr. West convened a meeting with Dr. Estrick, Assistant Superintendent Dr. Deborah Harvest (“Harvest”), Ms. Greadington, the President of the East Orange Educational Association (“Association”), and Ms. Allen. At the meeting, Dr. West informed Ms. Allen that the private detective hired by the District to investigate the December 5, 2018 incident corroborated allegations made by SB and SB’s mother that “Ms. Allen made several threats to a student [SB], got in the student’s face, and used profanity.” (Board Ex.4). (Board Ex. 4 is a copy of typewritten notes of Dr. West’s impressions of Ms. Allen’s behavior). As a result of the findings of the private detective, Dr. West suspended Ms. Allen for two weeks with pay³.

³ At the hearing in this matter, I limited questioning concerning the December 5, 2018 incident because neither Ms. Allen nor her Union grieved the suspension. I made the following statement into the record: “The incident occurred on December 5. It was described in charge specifications brought by the Board. I will accept those charges and specifications as true because it resulted in a two-week suspension for Ms.

The February 1, 2019, Notice of Suspension stated: “Your behavior demonstrated a total disregard and disrespect for the position as a teacher, the student that you made inappropriate comments to, and the school district.” (Board Ex. 6). Ms. Allen did not grieve her suspension. (Tr. 317). In addition, Dr. West transferred Ms. Allen to another school⁴.

Dr. West decided not to bring tenure charges against Ms. Allen as a result of the December 5, 2018 incident and chose instead to utilize progressive discipline in order to correct Ms. Allen’s behavior. (Tr. 61-62). Dr. West also testified that he directed Ms. Allen to “keep the matter [of the December 5, 2018 incident] confidential.” (Tr. 131). Dr. West stated:

So the reason why I said, “Don’t disclose this, “ was because the boy [SB] was already feeling very unsafe, especially with the comments you saw inside of there where he stated that she said she was going to get some big N’ers in the school to take care of this kid.

So he was already intimidated by that. I didn’t want his name out there. I didn’t want anybody discussing that because that kid even though Ms. Allen was moved out of there, the student at that point was still in the building, and he basically said there was a culture where she had these big N’ers that would go and take care of her situations for her.

So this kid was almost shaking at the table when he came in with his mother to tell me about this story. That was why I left him in the building, but I removed her out of there. I didn’t want this culture to be festering. And I definitely didn’t want the other student body – students to attack this kid.

Allen.” (Tr. 17).

⁴ The transfer itself - not the suspension – was the subject of a petition filed by the Association with the New Jersey Public Employment Relations Commission (“PERC”) bearing docket #: TO-2019-007. *N.J.S.A.* 34:12A-27 prohibits transfers of school employees for disciplinary reasons. PERC has jurisdiction to determine if a suspension was primarily disciplinary. On September 26, 2019 PERC, on a date in between the first and second days of hearing in this proceeding, ordered the District to return Ms. Allen to her position at CHS. PERC made no finding regarding the suspension. (Respondent’s Ex. 17).

(Tr. 132-133). Dr. Estrick corroborated Dr. West's statement that the Superintendent had directed Ms. Allen to keep SB's name confidential. (Tr. 182-183). Ms. Allen admitted that Dr. West directed that she not disclose the reasons for her suspension, because Dr. West "knew it would be disruptive." (Tr. 312). Ms. Allen concluded that any difficulties she had with SB had been resolved at the January 11, 2019 meeting. (Tr. 251, 313-314).

C. Events leading to the filing of Tenure Charges

Following her suspension, one of Ms. Allen's students – KB - complained to her mother ("SH") about the suspension and transfer. SH communicated with Ms. Allen about fighting on behalf of Ms. Allen and protesting the suspension at a school board meeting. (Tr. 209). Ms. Allen also communicated with students and urged at least one student to contact KB's mother. (Tr. 44-46; 205-206; Board Ex.3). Communications among the students occurred on Instagram. In addition, a flyer was distributed in support of Ms. Allen. (Board Ex.3). There is no evidence that Ms. Allen posted this material on social media, however, Ms. Allen did take part in several Facebook Messenger conversations with students. In one statement protesting her suspension, Ms. Allen urges a student to: "Call the mayor and demand that I be put back at campus by this Tuesday!!!!" (Emphasis in the original). In yet another social media exchange with Student PS, Ms. Allen specifically identified SB. The exchange on Facebook Messenger went as follows:

Ms. Allen: KB [a student] said that the boy told her that he lied about the incident just to get me in trouble.

PS: Who's the boy and we're going to report this

Ms. Allen: SB [she in fact used SB's full name]

PS: Bet

(Bd. Ex. 3). Ms. Allen admitted that she utilized Facebook Messenger to identify SB because it was not publicly known that SB had lied⁵ about the December 5, 2018 incident. In response to a question as to why Ms. Allen provided SB's name, Ms. Allen testified: "Because this person was upset about me being transferred out and wanted to have it reported to the authorities to make sure that school officials and everyone knew that the student was absolutely lying about the situation." (Tr. 283, 327). However, Ms. Allen is apparently relying on statements from KB who testified only that SB told her that "he felt bad that [Ms. Allen] was transferred. He didn't mean for it to be blown out of proportion, and it was a misunderstanding." (Tr. 219-220). Not that SB admitted to lying.

Following Ms. Allen's posting on Facebook Messenger, the material in Board Exhibit 3 was also posted by a student on Instagram, a more public site. This resulted in SB being approached by other students. SB's mother "furiously" informed Dr. West that SB had been approached by other students, and that SB had been identified on Instagram. (Tr. 126-127). In addition, Ms. Allen's supporter, student KB admitted that she confronted SB, and testified that other students had also confronted SB⁶. (Tr. 224). Because of his concerns for SB's safety resulting from the identification of SB's full name on social media, Dr. West transferred SB to another school. (Tr. 126-127, Board Ex.2). As a result, Dr. West recommended that tenure charges be brought against Ms. Allen. (Tr. 58-60). Dr. West testified:

The tenure charges came up more so because of the fact - - when you look at the fact that the kid was threatened, and then his name was out there and given out to the public for

⁵ Ms. Allen's statement that it was not publicly known that SB lied fails to account for the fact that the December 5, 2018 incident had been corroborated by numerous witnesses.

⁶ Several days after Ms. Allen was suspended, there was a student assembly during which KB spoke vociferously in support of Ms. Allen's. KB rose up on a chair, and as a result of this conduct, KB was suspended from school for three days. (Tr. 218-219).

somebody to retaliate against this kid. This was really where the tenure charges, we felt that it was just conduct unbecoming, almost inciting a riot by asking people to come out and support her, leave school to do that.

(Tr. 59).

Dr. West concluded that Ms. Allen's communications with students and parents on social media was a violation of the District's Social Media Policy. Policy 3283 states in pertinent part:

Social Networking websites and other Internet-Based Social Media Electronic Communications Between Teaching Staff Members and a Student

- a. A teaching staff member is prohibited from communicating with any student through the teaching staff member's personal social networking website or other Internet-based website. Communications on personal websites are not acceptable between a teaching staff member and a student.
- b. A teaching staff member shall not accept "friend" requests from any student on their personal social networking website or other Internet based social media website. Any communication sent by a student to a teaching staff member's personal social networking website or other Internet-based social media website shall not be responded to by the teaching staff member and shall be reported to the Principal or designee by the teaching staff member.
- c. If a teaching staff member has a student(s) as a "friend" on their personal social networking website or other Internet-based social media website they must permanently remove them from their list of contacts upon Board adoption of this Policy.
- d. Communication between a teaching staff member and a student through social networking websites or other Internet-based social media websites is only permitted provided the website has been approved by the Principal or designee and all communications or publications using such websites are available to every student in the class; every member of the co-curricular activity and their parents; and the Principa1 or designee.

(Department Ex. B-22, East Orange Board of Education Policy 3283-Electronic

Communications Between Teaching Staff Members and Students, Adopted October 14, 2014). Ms. Allen testified that she was not given training concerning this policy, and that she never acknowledged receiving the policy. (Tr. 290).

D. Other charges against Ms. Allen

As noted above, during the 2018-2019 school year, Ms. Allen was the Sophomore class advisor. While the investigation of the December 5, 2018 incident was ongoing, Ms. Allen had a dispute with Dr. Estrict concerning Dr. Estrict's refusal to allow Ms. Allen to conduct a meeting of the Sophomore class. Ms. Allen testified that a CHS vice-principal had given her permission to conduct that meeting. (Tr. 243-244). In a series of emails from January 29 to January 31, 2019, Ms. Allen pressed her case for an additional meeting to both Dr. Estrict and Dr. West.

As the email exchange between Ms. Allen and Dr. West and Dr. Estrict continued, Ms. Allen became increasingly angry, and in addition to other statements, Ms. Allen called Dr. West "unbecoming, unprofessional, unfair, nepotistic, disrespectful and demeaning." (Board Ex.5).

In response, Dr. West directed Ms. Allen to "cease and desist with your disrespectful, combative and confrontational behavior immediately. It is conduct unbecoming." Ms. Allen did not respond to this final email sent by Dr. West. Dr. West indicated that he would not have pursued tenure charges against Ms. Allen based on those emails alone.⁷ (Tr. 59).

⁷ Dr. West testified: "I have to say that [the tenure charges] came up not because of the situation with the emails, of her being disrespectful and that kind of thing, had nothing to do with it, because I left that alone." (Tr. 59).

However, the District included a recitation of this email exchange in charging Ms. Allen with unbecoming conduct.

POSITIONS OF THE PARTIES

A. The District's Position

The District contends that the only acceptable penalty for Ms. Allen's actions is termination. In reviewing the record evidence, the District concedes that a tenured public-school employee cannot be dismissed "except for inefficiency, incapacity, unbecoming conduct, or other just cause." (District's Brief at 17, citing *N.J.S.A.* 18A:6-10; *In re Young*, 202 N.J. 50, 66 (2010)).

The District maintains that Ms. Allen behaved in a manner unbecoming to her position and was insubordinate. Having reviewed the standards for finding that a teacher engaged in unbecoming conduct or was insubordinate, the District primarily relies on two cases: *In re Tenure Hearing of Roth*, No. A-5742-11T2, 2013 N.J. Super. Unpub. 2013 WL 3284128 (App. Div. July 1, 2013) and *In re Harriman*, No. A-1386-12T3, 2014 N.J. Super Unpub. 2014 WL 940943 at *1 (App. Div. Mar. 12, 2014). The Roth case concerned a verbal exchange between the teacher and a special education student in which the teacher threatened to "kick the ass" of the student. The ALJ recommended that the teacher be suspended, but the Commissioner decided to terminate the teacher's tenure. The Commissioner concluded that the mitigating factors in the record did not outweigh the gravity of the teacher's conduct. (District's Brief at 19-21).

Similarly, in *In re Harriman*, the Appellate Division determined that the

Commissioner appropriately deprived a teacher of tenure where that teacher was found to have acted inappropriately towards the executive director of the New Jersey State Interscholastic Athletic Association, defied administrative directives, and violated school policy regarding contacting parents. (District's Brief at 22-24).

The District contends that its decision to bring tenure charges against Ms. Allen was consistent with the holdings in both *In re Roth* and *In re Harriman*. The District maintains that Ms. Allen routinely and willfully disregarded the directives of her superiors.

The District notes that following the February 1, 2019 meeting during which the results of the investigation of the December 5, 2018 incident were shared with Ms. Allen, and Dr. West both suspended and transferred Ms. Allen, Dr. West instructed Ms. Allen to refrain from discussing the matter with students and parents. (District's Brief at 24, citing District's Ex. B-4, Tr. 131-133, 182-183). The District notes that despite these warnings, Ms. Allen communicated with both parents and students through social media to organize a protest on her behalf. The District argues that this communication violated the District's Social Media Policy. The District posits that it could not function effectively if teachers routinely protested every personnel decision outside of the formal grievance procedure.

The District argues that Ms. Allen's most egregious conduct concerned her violation of Dr. West's directive not to discuss the December 5, 2018 incident and her disclosure of SB's name on social media. The District contends that Ms. Allen jeopardized the safety of SB. The District notes that once SB's name was disseminated on social media, SB reported to the District that he felt unsafe and had been approached by other students. The fact that other students had approached SB was in part confirmed by the testimony of student KB. This prompted SB's mother to demand that SB be transferred

from CHS.

The District points out that it applied progressive discipline to Ms. Allen and maintains that despite Dr. West's efforts to curb and correct Ms. Allen's behavior, the District had no choice but to bring tenure charges against Ms. Allen.

The District also points to Ms. Allen's emails regarding Dr. Estrick's decision to deny Ms. Allen's request to conduct a Sophomore class meeting. The District quotes Ms. Allen's emails and concedes that by themselves they do not constitute sufficient grounds for termination. The District argues, however, that these emails demonstrate Ms. Allen's lack of respect for her superiors.

The District also cites Ms. Allen's overall disciplinary record as justifying her dismissal.

B. Respondent's Position

Ms. Allen contends that the District has not met its burden of proof in order to justify sustaining the tenure charges against her. (Respondent's Brief at 37-38, citing *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967); *IMO the Tenure Hearing Between the South Hackensack Board of Education and Christopher Masullo*, Dkt. No 1-17 (April 8, 2017)).

1. Counts 1-4

Initially, the Respondent analyzes Counts 1-4 of the charge concerning the emails sent by Ms. Allen to Drs. West and Estrick regarding her request that she be permitted to have a meeting with the Sophomore class. Ms. Allen contends that she presented compelling reasons for requesting a second meeting and characterizes at least her initial email as having "clearly explained her reasons for wanting the meeting." (Respondent's

Brief at 39). The Respondent argues that she had a first amendment right to criticize the decisions of the administration. (Respondent's Brief at 39, citing *Green Township Education Association v. Rowe*, 382 N.J. Super. 525, 534 (App. Div. 2000)).

The Respondent notes that Dr. West informed the Respondent that she could file a grievance and that, once Dr. West directed her to "cease and desist," the Respondent complied with Dr. West's directive. Therefore, the Respondent contends, that there was no insubordination, because the Respondent obeyed Dr. West's directive and did not schedule the Sophomore class meeting.

Further, the Respondent states that Dr. West recognized that the emails underlying Counts 1-4 could not form the basis of a tenure charge. The Respondent asks that these four counts be dismissed.

2. *Count 5*

The Respondent next argues that the Board has failed to prove the allegations of Count 5. Count 5 concerns Ms. Allen's behavior at the February 1, 2019 meeting and alleges that Ms. Allen engaged in "in a manner that constitutes insubordination, conduct unbecoming, and violate[d] multiple Board policies." The Respondent argues that the Board policies that were purportedly violated were never specified.

The Respondent analyzes the memorandum prepared by Dr. West following the February 1, 2019 meeting. The Respondent argues that Dr. West seemed most aggrieved by the fact that Ms. Allen interrupted him while he was talking. The Respondent posits that this cannot be unexpected in the context of a labor-management meeting, where Ms. Allen was facing the possibility of discipline,

The Respondent also notes that Dr. West was concerned that Ms. Allen was

upset that he was going to transfer Ms. Allen away from CHS. The Respondent notes, however, that Ms. Allen's position was vindicated by PERC. PERC found that Ms. Allen was improperly transferred from CHS⁸. (Respondent's Ex. 17).

The Respondent also takes issue with Dr. West's challenge of Ms. Allen's assertion that the issues concerning the December 5, 2018 incident were resolved at the January 11, 2019 meeting which was attended by SB and SB's mother. The Respondent characterizes Ms. Allen's position as "not unreasonable." (Respondent's Brief at 42). Other items contained in Dr. West's notes state that Ms. Allen refused to sign an acknowledgement of receipt of a letter of discipline, and that she predicted parents would support her at an upcoming meeting of the Board. The Respondent characterizes Ms. Allen's actions and statements as permissible behavior.

The Respondent also points out that, at the end of the February 1, 2019 meeting, Dr. West states in his notes that he provided Ms. Allen with the following Board Policies: 1) 3281 Inappropriate Staff Conduct; 2) 3351 Healthy Workplace Environment; 3) Use of Electronic Communication and Recording Devices; and 4) Civility Policy. The Respondent notes that Dr. West did not provide Ms. Allen with a copy of the Social Media policy.

The Respondent also argues that Dr. West did not order Ms. Allen to refrain from talking to students and parents about her suspension and transfer, but only "requested" that Ms. Allen refrain from such discussions. Therefore, the Respondent contends Ms. Allen was not insubordinate nor had she engaged in conduct unbecoming.

3. Count 6

⁸ As noted above, PERC made no finding concerning the propriety of Ms. Allen's suspension.

The Respondent next argues that the Board presented no competent evidence that Ms. Allen incited student misconduct in the form of encouraging students to cut class in order to participate in a school-wide student walkout. The Respondent argues that none of the social media postings introduced into evidence nor any testimony contained references to cutting class or urging students to participate in a walkout.

4. *Count 7*

The Respondent contends that Count 7 concerning communications on social media should also be dismissed. The Respondent maintains that Ms. Allen was never trained on Policy 3283 governing social media. The Respondent points out that Dr. Estrict testified that certain policies are deemed so important that teachers are asked to sign acknowledgements of receipt. (Respondent's Brief at 45, citing Tr. 156). The Respondent notes that there is no evidence that Ms. Allen ever signed for Policy 3283.

While conceding that Board policies are available on the District's website, the Respondent notes that there are hundreds of policies on the website and maintains that it is unreasonable for the District to expect that teachers would be familiar with all of the policies uploaded to the website without specific training. The Respondent reasons that an employer cannot demonstrate that it had just cause to discipline an employee for violating a policy unless it can also establish that the employee had knowledge of the policy. (Respondent's Brief at 39, citing Elkouri and Elkouri, *How Arbitration Works*, 7th Ed. at 15-70)).

The Respondent also contends that Dr. West and Dr. Estrict misidentified the platforms utilized on the Social Media postings contained in Board Exhibit 3. The Respondent notes that Ms. Allen was never interviewed about the screen shots posted

on social media. Although Ms. Allen admits that she identified SB in the Facebook Messenger conversation, the Respondent denies that she had anything to do with the Instagram posting.

Regarding the content of the social media posts, the Respondent contends that there is nothing inappropriate in her urging students to support her cause by calling the mayor. The Respondent contends that Ms. Allen was not suggesting that students engage in wrongful conduct, and that, at most, she referred students to KB's mother.

5. Count 8

The Respondent recognizes that Count 8, in which she is accused of "jeopardiz[ing] the safety of student SB by way of releasing his name to another student with the intent to have him harassed, intimidated, bullied, or worse, as retaliation for her suspension" is the most serious charge against her. The Respondent admits that she gave SB's name to Student PS, but did so only after PS expressed a desire to report that SB lied to school administrators concerning the December 5, 2018 incident.

The Respondent notes that the hearing in this proceeding was the first time that she had the opportunity to explain what happened, because neither Dr. West, Dr. Estrick or other investigators ever interviewed her about that social media posting. The Respondent contends that Dr. West and Dr. Estrick ascribed speculative meanings to particular words in the social media postings, and that it was inappropriate for these administrators to impute violent tendencies to Student PS.

The Respondent describes her identification of SB as a "momentary lack of judgment" but contends that there is no evidence that she wanted to have SB

“harassed, intimidated, bullied or worse.” Ms. Allen states that during her conversation with Student PS she told Student PS that she heard from Student K “that the boy told her that he lied about the incident just to get me in trouble.” (Respondent’s Brief at 51). The Respondent vigorously argues that she disclosed SB’s name to Student PS in order to allow the students supporting her to report the information she had received that SB lied about the December 5, 2018 incident. The Respondent argues that there is no credible evidence that SB was confronted by any students after SB’s name was posted. Respondent’s Brief at 53).

The Respondent characterizes the evidence that SB reported being harassed to his mother, who in turn reported it to Dr. West as “double hearsay.” The Respondent insists that it was necessary to have SB’s lie reported. The Respondent characterizes her efforts to explain the December 5, 2018 incident to the administration as falling on deaf ears. The Respondent also notes, that at the time of her suspension and transfer, she was directed not to report to any “District facility.” She therefore posits that as such she had no way of directly reporting the fact that SB’s prior statements were inaccurate.

The Respondent also maintains that she was not aware of and did not encourage PS to post SB’s name on Instagram. Ms. Allen contends that the first time that she became aware that SB’s name had been posted on Instagram was when she was served with the tenure charges. Therefore, Ms. Allen maintains, it was impossible for her to report to anyone that SB’s name was publicly posted. The Respondent also notes that neither SB nor SB’s mother testified.

Finally, the Respondent argues that the Board did not merely allege that Ms. Allen acted improperly by releasing SB’s name, but that she did so with the intent to have SB

harassed, intimidated or bullied. The Respondent argues that in order for this charge to be sustained every element of the charge must be proven, and therefore Count 8 should be dismissed.

6. Discussion of Penalty

The Respondent contends that she has been a “very successful educator inside and outside the classroom.” (Respondent’s Brief at 53). The Respondent notes that I had the opportunity to observe Ms. Allen’s passion and expertise for improving the lives of her students.

The Respondent points to the allegations of Counts 1-4 concerning Ms. Allen’s efforts to schedule a class meeting as evidence of her passion. The Respondent also points to the devotion of students to Ms. Allen, such as KB who were devastated by the decision to transfer and suspend Ms. Allen.

The Respondent concedes that Ms. Allen has been previously disciplined, and that the allegations contained in Count 8 are the most serious. However, the Respondent reiterates her contention that there was no evidence that she ever intended to harass or otherwise harm SB.

Finally, the Respondent maintains that, if I find there is just cause for discipline, the penalty should not be removal. The Respondent notes that if Ms. Allen is removed from tenured employment it could be devastating to her career.

DISCUSSION

A. The Legal Standard

The Education Tenure Act governing teacher tenure provides in pertinent part:

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state . . .

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

N.J.S.A. 18a:6-10.

Tenure is a “statutory right that may not be forfeited or waived.” *Spiewak v. Rutherford Bd. of Educ.*, 90 N.J. 63, 77 (1982). Tenure is designed to protect employees from dismissal “for unfounded, flimsy or political reasons”. *Wright v. Bd. of Educ. Of E. Orange*, 99 N.J. 112, 118 quoting *Zimmerman v. Newark Bd. of Educ.*, 38 N.J. 65, 72 (1962). Although an employee’s lack of fitness may be “demonstrated by a series of incidents” it is well established that a single “flagrant” act may be sufficient to remove a tenured teacher from his or her position. *In re Tenure Hearing of Harriman*, No. EDU 3510-12 (Initial Decision Aug. 31, 2102), *adopted*, No. 408-12 (Comm’r Oct. 12, 2012) citing, *Redcay v. State Bd. of Educ.*, 130 N.J.L. 369, 371 (Sup. Ct. 1943), *aff’d*, 131 N.J.L. 326, 327 (E. and A. 1944).

In order to find that an employee engaged in conduct which merits removal, that

employee is “entitled to an evaluation of the conduct in terms of its relationship to the nature of the office itself, and in that context, an appraisal of the actual or potential impairment of the public interest which may be expected to result from the conduct in question.” *Sch. Dist. Of Parsippany-Troy Hills v. Hess*, 97 N.J.A.R. 2D (EDU) 34, 45 (citations omitted). Charges of unbecoming conduct are determined on a “case-by-case basis.” *Santiago v. Bd. of Educ. Of Elizabeth*, No. EDU 7135-98 (Initial Decision Aug. 16, 2000) (slip op. at 4), *aff’d sub nom. In re Tenure Hearing of Santiago*, No. 330-00 (Comm’r Oct. 2, 200d), *aff’d o.b.*, No. 54-00 (State Bd. Mar 9, 2001).

In *In re Tenure Hearing of Fulcomer*, 93 N.J. Super. 404 (Super. Ct. App. Div. 1967), the Court established a number of factors that should be considered when deciding whether a teacher should be dismissed for unbecoming conduct. Those factors include: 1) the nature and gravity of the offenses under all the circumstances involved; 2) the teacher’s attitude – i.e. whether the acts were premeditated, cruel, or done with intent to punish; 3) any evidence as to provocation, extenuation or aggravation. In *Fulcomer*, the Court recognized that there may be circumstances which should be considered which may mitigate any penalty to be imposed on a respondent teacher. These factors include: 1) the teacher’s ability, record and length of service⁹; 2) the teacher’s disciplinary record; and 3) the “impact of the penalty on the [teacher’s] career, including the difficulty which would confront him as a teacher dismissed for unbecoming conduct, in obtaining a teaching position in the State.”

⁹ *Fulcomer* involved allegations of corporal punishment. The Court noted that the Respondent’s “teaching record was good and his teaching ability unquestioned. [The Respondent] had not been disciplined in any manner by the Board prior to the date of the incidents” in question.

B. The *Fulcomer* Factors Applied to Ms. Allen

The allegations against Ms. Allen reflect discrete areas of behavior and will be discussed *seriatim*.

1. Counts 1-4

Counts 1-4 concern the series of increasingly vituperative emails that Ms. Allen sent to both Dr. Estrick and Dr. West following Dr. Estrick's denial of Ms. Allen's request to have a Sophomore class meeting. Taken as a group, the emails can only be characterized as intemperate. Nevertheless, I conclude these Counts have not been sustained.

First and most importantly, Dr. West himself testified that he would not have brought tenure charges against Ms. Allen based on these emails alone. Second, as the Respondent argues, the emails exemplify Ms. Allen's passion for her students and her role as Sophomore class advisor. Third, while Ms. Allen could have used less strident language in responding to Dr. West and Dr. Estrick, she was clearly arguing in good faith for her students. Finally, when Dr. West directed Ms. Allen to "cease and desist" she did so. To give Ms. Allen the benefit of the doubt, I will not sustain the tenure charges contained in Counts 1-4 of the Charge.

2. Count 5

Count 5 states:

On or about Friday, February 1, 2019 at 9:00 AM, during a meeting with Superintendent of Schools Dr. Kevin West, S.A. behaved in a manner that constitutes insubordination, conduct unbecoming, and violates multiple Board policies.

This count arises from Ms. Allen's behavior at the February 1, 2019 meeting with Dr. West where Dr. West informed Ms. Allen that she would be both suspended and

transferred. While Ms. Allen's behavior again may have been intemperate, I conclude that Ms. Allen's behavior did not rise to the level of conduct unbecoming or insubordination.

As the Respondent notes, this conversation took place in the context of a labor management meeting in which Ms. Allen was facing significant discipline. Arbitrators "are reluctant" to uphold discipline for improper behavior in this type of setting, because it unduly interferes with the employee's ability to defend herself. See, Elkouri and Elkouri, *How Arbitration Works*, 8th Ed. at 5-74.

In addition, as the Respondent contends, much of Dr. West's dissatisfaction arose from the fact that Ms. Allen was protesting her removal from CHS. As noted above, Ms. Allen's position was correct, and the District violated *N.J.S.A. 34:12A-27* when it transferred Ms. Allen for disciplinary reasons.

Also, to the extent that Dr. West concluded that Ms. Allen violated his orders directing Ms. Allen not to speak about this incident the Respondent is correct in arguing that it interferes with her right to mount a defense. However, Ms. Allen's violation of Dr. West's direction not to disclose SB's name will be discussed below.

Accordingly, for the foregoing reasons, Count 5 is dismissed.

3. *Count 6*

Count 6 provides:

During the period of her suspension (between February 1 and February 19, 2019) S.A. violated Board Policy by way of inciting student misconduct in the form of cutting class for a school wide protest on her behalf, i.e. a "walk-out", at [CHS]

Count 6 alleges that Ms. Allen attempted to incite student misconduct by

encouraging students to cut class. While there is much evidence in the record to show that Ms. Allen was in contact with both students and parents during her suspension, and that she urged students and parents to protest at Board meetings and to contact the Mayor of East Orange, there is nothing in the record that supports the conclusion that Ms. Allen urged students to cut class or to walk out.

It is true that at a meeting of the Sophomore class held after Ms. Allen was suspended, KB stood on chair and demanded that Ms. Allen be returned to CHS. KB testified that this was a spontaneous gesture on her part. (Tr. 218-219).

Accordingly, there is no evidence that Ms. Allen encouraged a student walkout or any other form of student misbehavior. Therefore Count 6 is dismissed.

4. Count 7

Count 7 provides:

During the period of her suspension (between February 1 and February 19, 2019) S.A. violated Board Policy 3283 by way of using social media to inappropriately communicate with students.

Count 7 alleges that Ms. Allen violated the Board's policies governing social media. Board Policy 3283 contains clear and precise directions to teachers that they are not to "accept 'friend' requests from any student on their personal social networking website or other Internet based social media website." There is no doubt that Ms. Allen's communications with PS and other students on Facebook Messenger violated this common-sense policy. It also exemplifies poor judgment on Ms. Allen's part to actively seek student support.

However, there is no evidence that the District ever provided Ms. Allen with the contents of this policy, beyond referring her to the District's website which contains

voluminous policy provisions. Even when Dr. West concluded the February 1, 2019 meeting and handed certain policies to Ms. Allen, Board Policy 3283 was not among them.

It is a fundamental principal of just cause that before discipline may be imposed, the employee should be aware both of the rule and the penalties that may be imposed. J. Grenig & R. Scanza; *Fundamentals of Labor Arbitration*, § 7.03, citing *Grief Bros. Cooperaage Corp.* 42 LA 555 (1964). There is no evidence that Ms. Allen was ever informed about the contents of Board Policy 3283, and therefore no evidence that Ms. Allen was instructed regarding restrictions on social media contacts. Accordingly, Count 7 must be dismissed.

5. *Count 8*

Count 8 provides:

S.A. jeopardized the safety of student S.B. by way of releasing his name to another student with the intent to have him harassed, intimidated, bullied, or worse, as retaliation for her suspension.

Both the District and the Respondent acknowledge this is the most significant charge in this proceeding. There is no dispute that Ms. Allen clearly identified the full name of SB to Student PS. While this identification purportedly occurred on Facebook Messenger which is supposed to be for private communications, Student PS or some other student then identified SB on the more widely disseminated Instagram platform where other students could learn SB's full name. The result of identifying SB is that SB's mother became fearful for SB's safety and requested that SB be SB's transferred from CHS to another school.

The Respondent describes her identification of SB as a "momentary lack of

judgment” and, in part, justifies her disclosure of SB’s name as necessary so that students could report the fact that SB lied about the events of December 5, 2018 resulting in Ms. Allen’s suspension and transfer. I find this testimony to be incredible.

As noted above, I ruled in this proceeding that both sides were going to have to abide by the District’s decision to suspend Ms. Allen for two weeks. That meant that both the District and the Respondent were precluded from relitigating the December 5, 2018 incident. For tactical reasons, both parties attempted to evade that ruling. However, both sides are precluded from asserting that the events of December 5, 2019 did not occur as set forth in the Charge. It strains credibility for Ms. Allen to now assert that she disclosed SB’s name because SB admitted to another student that he was lying about the December 5, 2018 incident in which Ms. Allen was found to have uttered profanity and threats to SB. Ms. Allen was intimately involved in the December 5, 2018 incident and its contours were confirmed by both student and teacher witnesses.

If Ms. Allen wanted to make an argument that SB lied, she should have grieved her two-week suspension in February of 2019, and not provide a post-hoc rationalization for disclosing SB’s name in this proceeding. The most that Ms. Allen can glean from the record is KB’s testimony that SB told her that: “he felt bad that [Ms. Allen] was transferred. He didn’t mean for it to be blown out of proportion, and it was a misunderstanding.” (Tr. 219-220). There is no evidence that SB admitted that he lied to get Ms. Allen in trouble or that he had any motivation to do so.

The Respondent also argues that there is no evidence that Ms. Allen intended to harass, intimidate or bully SB, and that there was no evidence that SB suffered any consequences as a result of his name being disclosed. However, KB testified that prior

to the posting both she and at least one other student that she knew about approached SB. It is also clear that, as soon as SB's mother learned that SB's name appeared on social media that she contacted Dr. West and arranged for SB's transfer from CHS. I conclude that by disclosing SB's name, Ms. Allen intended to put undue pressure on SB, a ninth-grade student and to have SB intimidated.

In addition, Ms. Allen clearly violated Dr. West's injunction not to discuss this case with parents or students and was thus insubordinate. I am sympathetic to Ms. Allen's efforts to rally students and parents on her behalf, and I dismissed Counts 5 and 6 because the allegations in those Counts amounted to undue interference with Ms. Allen's speech and due process rights. Nevertheless, involving students in her defense showed poor judgment. Once Ms. Allen disclosed SB's name in defiance of Dr. West's order, Ms. Allen crossed a line and is guilty of the allegation of insubordination and conduct unbecoming.

Accordingly, I sustain Count 8.

6. The Penalty

Having concluded that the District has met its burden in proving the allegations contained in Count 8, I next must determine the appropriate penalty. In this case, the District seeks the ultimate penalty of dismissal. Even where disciplinary charges are sustained, Arbitrators are empowered to impose a range of penalties. *See, e.g.; IMO the Tenure Hearing Between the South Hackensack Board of Education and Christopher Masullo*, Dkt. No. 1-17 (April 8, 2017). The record must be analyzed to determine if there are enough mitigating factors to reduce the ultimate penalty of dismissal. *Id.*

In weighing the overall record, I am forced to conclude that Ms. Allen should be terminated. I recognize that Ms. Allen is an effective teacher who, in the course of her career, has provided great service to the District, her students and her community, and who has inspired a lot of passion and loyalty. Nevertheless, there are aspects of her record that are extraordinarily troubling.

She has a record of previous discipline for using “inappropriate language, interfering in the instruction of students, and disrupting. . . the learning process.” (Board Ex. 18). This discipline administered in 2015 resulted in the loss of a salary increment and placement on probation. As a result of the December 5, 2018 incident, Ms. Allen was suspended for two weeks for using truly horrific language in speaking to SB. Dr. West consciously applied the principles of progressive discipline in Ms. Allen’s case.

Unlike the Respondent in *Masullo, supra*, I do not find that Ms. Allen has expressed any remorse for her actions. As noted above, Ms. Allen testified that she was justified in disclosing SB’s name so that students could report SB to school authorities for lying. Ms. Allen apparently was not concerned for SB’s safety, nor did she feel obligated to follow Dr. West’s direction not to identify SB. Nor at any time did Ms. Allen acknowledge her own responsibility for her actions.

In addition, although I have dismissed Charges 1-4 concerning emails sent by Ms. Allen to Dr. West and Dr. Estrict, the contents of those emails were clearly intemperate and do not support a reduction in the penalty of dismissal.

I am also mindful of the fact that if Ms. Allen is to be terminated, there is a very strong likelihood that her license to teach within the state of New Jersey will be endangered. Nevertheless, in light of all the circumstances of this case and Ms. Allen’s

overall disciplinary record, it is my view that she can no longer be an effective teacher in the East Orange School District.

Based on the above, I render the following:

AWARD

The undersigned Arbitrator having been designated pursuant to *N.J.S.A., 18A:6-16*, as amended by *P.L. 2012, c. 26 and P.L. 2015, c. 109* (“TEACHNJ”) hereby issues and AWARDS as follows:

For the reasons set forth in this Decision and Award, the Arbitrator finds

1. **The EAST ORANGE BOARD OF EDUCATION, ESSEX COUNTY, NEW JERSEY has not proven by a preponderance of the evidence the allegations contained in Counts 1, 2, 3, 4, 5, 6, and 7 of the Charges preferred against the Respondent Sharonda Allen;**
2. **The EAST ORANGE BOARD OF EDUCATION, ESSEX COUNTY, NEW JERSEY has proven by a preponderance of the evidence the allegations contained in Count 8 of the Charges preferred against Respondent Sharonda Allen and has proven that the Respondent has engaged in conduct unbecoming of a teacher, and was insubordinate;**
3. **The penalty of dismissal is upheld.**

Dated: December 27, 2019

SS:Ira Cure
Ira Cure

State Of New York)
)
County of Kings)

On this 27th day of December 2019 before me personally came and appeared Ira Cure, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged that he executed the same.

Notary Public