

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

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In the Matter of Arbitration Of
Certified Tenure Charges Between

**THE RANDOLPH TOWNSHIP
BOARD OF EDUCATION,**

Docket No. 265-9/12

Petitioner,

OPINION & AWARD

-and-

Issued: December 21, 2012

JILL S. BUGLOVSKY,

Respondent.

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ARBITRATOR:
Joseph Licata, Esq.

HEARING INFORMATION

Date: November 20 and 21, 2012

Time: 10:00 a.m.

Location: Randolph Township Board of Education

APPEARANCES

FOR THE RANDOLPH TOWNSHIP
BOARD OF EDUCATION

Marc H. Zitomer, Esq.

Schenck, Price, Smith & King, LLP

FOR JILL S. BUGLOVSKY

Sanford R. Oxfeld, Esq.

Oxfeld Cohen, P.C.

INTRODUCTION

On August 17, 2012, Dr. David Browne, Superintendent of the Randolph Township School District (“District”) filed nine (9) tenure charges of unbecoming conduct and/or other just cause for dismissal against Jill Buglovsky, a school teacher assigned to the District’s Shongum Elementary School. Dr. Browne supported the tenure charges with a sworn statement of evidence as well. (See Tenure Charges, Exhibit J1 and Sworn Statement of Evidence, Exhibit J3). On that date, the Board Secretary served Ms. Buglovsky with the charges and evidence.

On or about September 11, 2012, after consideration of the charges, evidence and Ms. Buglovsky’s certified response, the Board found probable cause to credit the evidence warranting Ms. Buglovsky’s dismissal and passed a resolution to certify the tenure charges. As a result, on or about September 12, 2012, the charges were certified to the Commissioner of Education, together with a Certificate of Determination pursuant to N.J.A.C. 6A:3-5.1(b)(6). Additionally, the District suspended Ms. Buglovsky without pay for 120 days, pursuant to N.J.S.A. 18A:6-14.

On or about September 26, 2012, Ms. Buglovsky filed an Answer to the tenure charges with the Commissioner of Education. (Exhibit J2). The matter was subsequently transferred to arbitration for disposition, pursuant to N.J.S.A. 18A:6-16, et. seq. and the Labor Arbitration Rules of the American Arbitration Association. The arbitration hearing commenced on November 20, 2012 and concluded the following day, November 21, 2012. Both parties had a full and fair opportunity to present witness testimony and

documentary evidence. Richard Walsh, a computer technology consultant, Michael Neves, Business Administrator, Dr. Browne and Derrick Davenport, computer technician testified on behalf of the Board. Michael Patrick, a Physical Education/Health teacher and Ms. Buglovsky testified on her behalf. In addition, the parties introduced the following exhibits.

<u>EXHIBIT NO.</u>	<u>DATE/DESCRIPTION OF DOCUMENT</u>
JOINT EXHIBITS	
J1	Sworn Tenure Charges (September 13, 2012).
J2	Answer to Tenure Charges (September 26, 2012).
J3	Sworn Statement of Evidence (August 17, 2012).
J3, Tab A	Email correspondence between Ms. Buglovsky and J.C., dated February 12, 2009 (4 pages).
J3, Tab B	Email correspondence between Ms. Buglovsky and J.C., dated February 13, 2009 (4 pages).
J3, Tab C	Email correspondence between Ms. Buglovsky and J.C., dated February 16, 2009 (2 pages).
J3, Tab D	Email correspondence between Ms. Buglovsky and J.C., dated February 25, 2009 (5 pages).
J3, Tab E	Email correspondence between Ms. Buglovsky and J.C., dated February 27, 2009 (3 pages).
J3, Tab F	Email correspondence between Ms. Buglovsky and J.C., dated March 1, 2009 (3 pages).
J3, Tab G	Email correspondence between Ms. Buglovsky and J.C., dated March 6, 2009 (6 pages).
J3, Tab H	Email correspondence between Ms. Buglovsky and J.C., dated March 30, 2009 (6 pages).
J3, Tab I	Email correspondence between Ms. Buglovsky and J.C., dated

	April 11, 2009 (10 pages).
<u>EXHIBIT NO.</u>	<u>DATE/DESCRIPTION OF DOCUMENT</u>
JOINT EXHIBITS (Cont'd)	
J3, Tab J	Email correspondence between Ms. Buglovsky and J.C., dated April 15, 2009 (17 pages).
J3, Tab K	Email correspondence between Ms. Buglovsky and J.C., dated April 21, 2009 (10 pages).
J3, Tab L	Correspondence from Michael Neves, Business Administrator/Board Secretary, to Ms. Buglovsky, dated April 27, 2009 (1 page).
J3, Tab M	Computer screenshots of email correspondence between Ms. Buglovsky and J.C., dated September 3, 4, 8, 9, 10, 11 and 15, 2009, respectively (10 pages).
J3, Tab N	Computer screenshots of email correspondence between Ms. Buglovsky and J.C., dated October 2, 14, 15, 20, 22 and 27, 2009, respectively (7 pages).
J3, Tab O	Computer screenshots of email correspondence between Ms. Buglovsky and J.C., dated November 3, 4, 9, 12, 16 and 18, 2009, respectively (6 pages).
J3, Tab P	Computer screenshots of email correspondence between Ms. Buglovsky and J.C., dated December 7, 8, 10, 11 and 17, 2009, respectively (5 pages).
J3, Tab Q	Email correspondence between Ms. Buglovsky and J.C., dated January 4-5, 2011 (4 pages).
J3, Tab R	Email correspondence between Ms. Buglovsky and J.C., dated June 9, 2011 (5 pages).
J3, Tab S	Email correspondence between Ms. Buglovsky and J.C., dated June 22, 2011 (1 page).
J3, Tab T	Email correspondence between Ms. Buglovsky and J.C., dated March 28-29, 2012 (2 pages).

<u>EXHIBIT NO.</u>	<u>DATE/DESCRIPTION OF DOCUMENT</u>
JOINT EXHIBITS (Cont'd)	
J3, Tab U	Report of Internet use prepared by Rick Walsh, District Technology Supervisor, for the period March 9, 2012 through April 26, 2012 (8 pages).
J3, Tab V	PowerPoint presentation prepared by Rick Walsh, District Technology Supervisor, entitled, "Security Investigation – Employee JB" (35 pages).
J3, Tab W	PowerPoint presentation prepared by Rick Walsh, District Technology Supervisor, entitled, "Security Event – Employee Jill Buglovsky", dated April 23, 2012 (4 pages).
J3, Tab X	Ms. Buglovsky's Class Schedules for the 2008-2009, 2009-2010, 2010-2011 and 2011-2012 school years (4 pages).
J3, Tab Y	Randolph Board of Education Policy No. 2361, "Acceptable Use of Computer Network/Computers and Resources" (5 pages).
J3, Tab Z	Randolph Board of Education Policy No. 3321, "Acceptable Use of Computer Network(s)/Computers and Resources by Teaching Staff Members" (3 pages).
<u>RESPONDENT'S EXHIBITS</u>	
R1	Copy of Personnel file maintained by the Randolph Township School District re: Jill Buglovsky (nee Kaufman).
R2	Annual Evaluation Summaries (2003-2004 and 2004-2005).

On December 7, 2012, the representatives filed their respective post-hearing summations upon which the record was closed. Both parties were expertly represented in this proceeding.

SUMMARY OF THE POSITION OF THE PARTIES

The Position of the Randolph Township School Board

The Board filed nine (9) tenure charges against Ms. Buglovsky, alleging that she committed unbecoming conduct due to, among other things: (1) her extensive misuse of the District computer network; (2) the vulgar and immoral nature of her communications while using the District network; (3) her attempt to deceive District administrators investigating her alleged improper use of the District network; (4) her violations of District policies and (5) the fact that she failed to fulfill her responsibilities as a teacher when she used the internet during the school day, both during instructional and non-instructional time.

The Board sets forth a string of precedent established by administrative law judges and the Commissioner of Education allegedly supporting the Board's dismissal of Ms. Buglovsky. In In re the Revocation of the Certificate of Richard Voza, OAL Dkt. No. EDE 6989-10, Cmm'r Dkt. No. 2-3/12A (2012), it was alleged that a teacher received and responded to sexually explicit emails while using the school district's computer network. In the emails at issue, the teacher, Voza, spoke about a sexual relationship the teacher was having with a married college secretary, that he had "her bent over the desk," "humping seniors," commented about a female acquaintance not being "shy about rug munching," spoke of having a "hard-on," discussed having threesomes, and, in a series of emails with a female acquaintance, discussed masturbation using a "toy" and described

the graphic sexual activities he envisioned occurring between the two of them. Voza also exchanged emails about a female student in his high school class having genital warts.

With regard to Voza's email activities, the Administrative Law Judge ("ALJ") charged with adjudicating the matter noted that "[s]exually charged materials and exchanges between involved individuals pertaining to their sexual activities simply do not belong on any school computers." Voza, supra, OAL Dkt. No. EDE 6989-10 at 15. The ALJ further noted that "[t]eachers are role models for students. In that sense, they carry a greater responsibility to act correctly than the typical public employee." Id. at 16.

According to the ALJ:

While it may be argued that it is generally not the concern of the public employer what private activities a public employee, even a teacher, engages in, there are even limits to that principle and indeed these are being tested more frequently in this age of omnipresent technology. If Mr. Voza chose to correspond as he did here but on his personal computer, and he did not receive such correspondence at school, it might not be an issue. But he chose otherwise and paid a price for doing so. Id. at 16.

Taking into account Voza's activities and, noting the fact that he mentioned students in his emails, the ALJ ordered that Voza's teaching certificate be revoked. The ALJ's decision was affirmed by both the State Board of Examiners and Commissioner of Education.

Similarly, in In re the Revocation of the Certificates of Dean Howarth, OAL Dkt. No. EDE 4479-07, Agency Dkt. No. 9-12/09A (2010), it was alleged that while teacher Dean Howarth was employed as a special education teacher in the Maple Shade School District, he sent and received numerous emails from his school email account over the

course of a number of school years and during the school day. The emails, some of which were exchanged between Howarth and Mr. Voza, supra, referenced graphic sexual activity or contained inappropriate pictures. Howarth claimed that the emails were “jokes,” although he acknowledged that the District’s acceptable internet use policy prohibited the exchange of such emails. Howarth also modified his computer so that, upon receipt of specific emails later deemed to be inappropriate, the email would automatically be removed from his District email inbox and saved to his computer hard drive. In doing so, Howarth not only wished to save the emails but remove them from the district server.

The Administrative Law Judge found that Howarth’s conduct violated the district’s acceptable use policy and “clearly amounted to unbecoming conduct.” Howarth, supra, OAL Dkt. No. EDE 4479-07 at 43. The ALJ further held that Howarth’s actions “were a flagrant misuse of district resources and showed a lack of judgment and a failure to comply with the heavy duty of self restraint and controlled behavior imposed on a teacher” and that his conduct “is reprehensible and violates a sacred trust with his students.” Id. The ALJ ordered that Howarth’s teaching certificates be revoked, as his actions constituted conduct unbecoming a teaching staff member and he is “unfit to discharge the duties and functions of a teacher.” Id. at 45.

In Pemberton Bd. of Educ. v. Darlene Donahue, OAL Dkt. No. EDU 4379-03, Agency Dkt. No. 177-6/03 (2006), tenure charges were filed against a teacher for unbecoming conduct based on her alleged usage of the district’s computer to access

pornographic materials and to send various emails “containing inappropriate, obscene, lewd or vulgar language to another employee.” Id. at 1. Specifically, Donahue not only attempted to access various pornographic websites, but emailed another district employee in order to coordinate an extra-marital affair. For example, Donahue sent emails using the district network and told her colleague that: “I’ll meet you at the ballfield for a little playing!!!???” and that “you got my motor running!!! Vrooom Vrooom . . . I can’t wait to show you how much.” Id. at 13-14. The ALJ found that based on her conduct, Donahue had engaged in conduct unbecoming a public school teacher and was sufficient to justify her dismissal. The ALJ’s findings were affirmed by the Commissioner of Education, State Board of Education and ultimately, the Appellate Division of the Superior Court. In re Tenure Hearing of Donahue, 2008 N.J. Super. Unpub. LEXIS 1429 (2008).

The State Board of Examiners, in considering whether Donahue’s conduct warranted the revocation of her teaching certificates, also found that she committed conduct unbecoming a public school teacher and that, even though no students were exposed to the offending material, such was only a matter of happenstance and did not lessen the severity of her actions or the potential for harm. See In re Matter of the Certificate of Donahue, Agency Dkt. No. 0708-208 (St. Bd. of Exam., 2009). See also, In re Tenure Hearing of Gregory Gomes, OAL Dkt. No. EDU 4161-02, Agency Dkt. No. 148-5/02 (2002) (teacher who used school computer to access pornographic and adult websites in violation of district’s acceptable internet use policy and committed conduct unbecoming a teaching staff member).

Even when the issue of whether a teacher's actions constitute unbecoming conduct is before an Arbitrator, as in the present matter, it has been found that a teacher's misuse and abuse of the school district's network and email rise to this level. In 2011 AAA LEXIS 168 (Golick, 2011), a teacher was found to have committed unbecoming conduct when he, among other things, authored a series of emails to the school principal which portrayed an inappropriately intimate relationship between the two and made reference to matters of a sexual nature. For example, the emails stated: "My privates are killing me, should I be concerned," "I hope you get a good nights sleep. I hope Monday comes as fast as you do," and "Hey beautiful, want to get naked?" The teacher also informed the principal, using his district email account, that he created a Gmail.com account for the principal so that they did not have to use the district email system and thus could continue to email undetected by district monitoring. Id. at 22-23.

Although the teacher claimed that the emails were innocuous, the Arbitrator found that "no amount of professed "context" removes Teacher's emails to Principal from the realm of "improper" to the sphere of "innocuous. On their face, and by any objective analysis, the emails are filled with unmistakable romantic and sexually suggestive overtures. There is not just one or two or three or four," but that the emails were exchanged with "increasing boldness, frequency and familiarity." Id. at 42-43. The Arbitrator found that the teacher "knew or should have known that he had no privacy protection or expectation of privacy when he opted to use the district email system for his correspondence with the principal. His sexually charged emails were effectively mailed

to the world at large, and neither his “intention” that they be private nor the principal’s claim that they were not unwelcome is material to the teacher’s gross lapse of professional judgment.” Id. at 44.

Additionally, the Arbitrator noted that the teacher’s emails were not only sent on the district’s computer system, but during the school day, which meant that the teacher “was not devoting his full attention to his job.” Id. at 45. The Arbitrator also found that “the sheer volume of the teacher’s non-school-related bawdy double-entendre laced email sets the conduct apart from any occasional lapse that can happen to any otherwise conscientious teacher.” Id. For these and other reasons, the Arbitrator found that the teacher’s conduct was “conduct unbecoming on a grand scale” and that the teacher “knew or should have known that his conduct would reflect poorly on the school system and was hardly an example worthy of emulation by students,” despite the fact that the teacher was an effective and well-respected teacher. Id. at 46. However, the Arbitrator noted that the teacher’s conduct “so undermines the teacher’s stature as to render the educator ineffective and not respected.” Id. (emphasis in original). Because the teacher demonstrated “astonishingly poor judgment in violation of clear policy,” the Arbitrator found that he committed unbecoming conduct warranting his dismissal. Id. at 47.

Similarly, courts in other states have also determined that a teacher’s misuse of the school district’s computer system constitutes unbecoming conduct. See, e.g., Robinson v. Ohio Dept. of Educ., 2012 Ohio 1982 (Ohio Ct. App., Montgomery County 2012) (Teacher who viewed single email containing inappropriate content and pictures

committed unbecoming conduct); Peru Cent. Sch. Dist. Bd. of Educ. v. Stephney, 9 Misc. 3d 927 (N.Y. Supp. Ct. 2005) (Second grade teacher who viewed pornographic material on school computer guilty of unbecoming conduct).

With the foregoing in mind, according to the Board, testimony and documentary evidence introduced at the hearing proved that, during the course of her employment with the Board, Ms. Buglovsky engaged in a pattern of inappropriate use of the District computer network and email system beginning in the 2008-2009 school year. At that time, Ms. Buglovsky exchanged thousands of unprofessional and inappropriate emails with “J.C.,” an individual with whom she planned to have an extramarital affair. Ms. Buglovsky’s emails with J.C. were sent during school hours over the school computer network using Ms. Buglovsky’s school email account. In the emails, Ms. Buglovsky referenced graphic sexual activities, drug use, and at times, touched upon her work in the District. In fact, Ms. Buglovsky went so far as to invite J.C. to her office at the school, on the same day as scheduled parent-teacher activities, in order to engage in a sexual liaison. This action alarmed District officials who reasonably thought that J.C. would be on school grounds without authorization in response to Ms. Buglovsky’s invitation.

After meeting with Ms. Buglovsky, her union representative and then-Director of Human Resources, Ann Marie McGoldrick, Business Administrator Michael Neves issued a reprimand to Ms. Buglovsky for her conduct. Mr. Neves also informed her that continued misuse of the District computer network would result in further action being taken against her employment. Despite the strongly worded reprimand and comments by

these administrators, Ms. Buglovsky continued to use the District network for personal reasons in subsequent school years.

In fact, after having received the reprimand and while she was aware that the District was monitoring her District email use, Ms. Buglovsky attempted to subvert District network monitoring when she continually logged in to the District network account of her fellow teacher. Ms. Buglovsky did so in order to access her personal Hotmail.com and Gmail.com email accounts so that she could continue her relationship with J.C. Ms. Buglovsky's dishonest actions were clearly orchestrated to willfully deceive the District and allow her to continue her inappropriate use of the District computer network undetected by District monitors. See 2011 AAA LEXIS 168 (Golick, 2011), supra, (Among other things, teacher created a Gmail.com account in order to evade detection of emails); Howarth, supra (Teacher committed unbecoming conduct by sending inappropriate emails, engaging in misuse of his school's network and surreptitiously removing inappropriate emails from his school inbox); Donahue, supra (Teacher committed unbecoming conduct by, in part, wasting District network resources and sending inappropriate emails); Gomes, supra (same).

Finally, Ms. Buglovsky's pattern of inappropriate use of the District computer network culminated during the 2011-2012 school year. At various times during that school year, Ms. Buglovsky browsed shopping websites and other non-school related internet content for an extended period of time. Several of these instances were during times when Ms. Buglovsky was assigned to teach class or had supervisory responsibility

for elementary school students. Ms. Buglovsky admitted, both at the hearing and in her written responses to the subject tenure charges, to engaging in the vast majority of the conduct as alleged.

Simply put, the actions taken by Ms. Buglovsky, particularly given the extent of her admittedly improper conduct and the content of her emails, which were sent using the District network, demonstrate that she is patently unfit to perform the functions of a teacher. Certainly, Ms. Buglovsky's conduct is clear evidence of her blatant disregard for District policies, procedures and administrative directives. Ms. Buglovsky's actions resulted in a detrimental impact on the District and its students, particularly being that she browsed the internet while she was supposed to be teaching and that she allowed students to use her computer, where they could possibly access her emails or internet sites. More importantly, she disregarded internal warnings and indications that her computer behavior was unacceptable and in clear violation of District policy.

Accordingly, the Board submits that it has sustained its burden of proving that Ms. Buglovsky has committed conduct unbecoming a teaching staff member, conduct to which Ms. Buglovsky herself has admitted. Furthermore, Ms. Buglovsky's conduct is of such an egregious nature that it is more than sufficient to warrant her dismissal from her teaching position.

The Position of Jill Buglovsky

Counsel for Ms. Buglovsky argues that the Board's tenure charges are based primarily on conduct that she unwittingly engaged in during the 2008-2009 school year

and for which she received an official reprimand. Reference is made to "the Sword of Damocles." Having taken action against her on April 27, 2009, Ms. Buglovsky's employment cannot be subject to the whims of future administrators and/or future superintendents of schools, who, in reviewing her past record, were later dissatisfied with the District's action three years ago, and now Damocles' Sword is dropping down to execute Ms. Buglovsky. Counsel sets forth and then replies to the reasoning underlying Dr. Browne's determination to issue tenure charges against Ms. Buglovsky.

First: Graphic, profane emails that numbered in the thousands. While Dr. Browne cannot claim that any students saw any one of them, all of them (and, in fact, no one did) had the potential to be exposed; at least this was Dr. Browne's statement. The District has not hidden the fact that it is going to rely upon the tenure charges involving Richard Voza and Dean Howarth, OAL Docket No: EDE 4479-07, decided by the Administrative Law Judge on July 20, 2009. In that matter, the two teachers involved both sent and received numerous pornographic pictures on their school accounts. That immediately should serve to alert the Arbitrator as to the significant difference between that case and Ms. Buglovsky's matter where there is no pictorial evidence whatsoever, other than the innocuous photo of Ms. Buglovsky using her Ipod. Further, this is no pornography.

It must be noted that it was the excessive viewing of pornography online during classroom time, as well as their visiting a strip joint during the workday and the disturbing email exchanges between Voza and Howarth that led to their terminations.

Here, there are no pictures, the disturbing events occurred all prior to April 2009 and, at no time, did Ms. Buglovsky leave school to visit an inappropriate location.

The Commissioner has time and time again referred to behavior having impact on the students as a cause to terminate a teacher's employment. In the tenure case of Jennifer O'Brien, OAL Docket No: EDU 05600-11, decided by Administrative Law Judge Bass on October 28, 2011, the teaching staff member posted on Facebook the statement that she was not a teacher, but rather she was a warden for future criminals. Significantly, none of Ms. Buglovsky's inappropriate emails were ever spread throughout the internet, as was the comment in the O'Brien matter. The Administrative Law Judge concluded that the comments were highly disruptive to the educational environment as demonstrated by the massive amount of publicity that those comments received. The Administrative Law Judge noted that although the Ms. O'Brien's record was unblemished, Ms. O'Brien did not express any understanding of the chaos that she caused, nor did she express any sorrow or true contrition. This case turned on the teaching staff member's failure to understand how her comments could be understood in an urban setting, coupled with her complete failure to apologize and the tons of publicity that her posting received, all of which doomed her. That must be contrasted with the facts in the instant matter. There is no student involvement. There was no publicity prior to the District filing tenure charges. And, as the Arbitrator saw firsthand, Ms. Buglovsky is totally contrite, did express true sorrow and is only seeking to get back into the classroom to be with her kids.

Gregory Gomes, OAL Docket No: EDU 4161-02, decided by the Administrative Law Judge on November 1, 2002, is another case in which the teaching staff member used a school computer on school time to view pornography while at work. It was demonstrated that he accessed numerous porn sites in the classroom and in the library. His computer had been set up so that the students were able to view the sites. The Administrative Law Judge found that the repeated viewing of pornography, including teenage pornography (20 different sites at 44 different times) constituted just cause.

A similar case is the tenure charges involving Darlene Donahue, OAL Docket No: EDU 4379-03, decided by an Administrative Law Judge on March 10, 2006. Ms. Donahue, like Mr. Gomes, viewed pornography during school hours while she was employed as a middle school Librarian. She visited over 50 sexually-explicit websites and she sent three emails to a gym teacher which included sexually-explicit photos.

Finally, in regards to the pornography cases, the Arbitrator is directed to the case of Robert Grundfest, OAL Docket No: EDU 5326-98, decided by an Administrative Law Judge on March 29, 2000. In this matter, as the Administrative Law Judge did not believe the testimony of the District's chief witness (a student), despite the nature of the pornographic allegations against Mr. Grundfest, the charges were dismissed.

That brings us to perhaps the most important cases that are close to being on point. The Arbitrator is asked to pay close attention to the case involving Desly Getty, OAL Docket No: EDU 08750-08, decided by an Administrative Law Judge on June 4, 2009. In that matter, Ms. Getty had received a letter of reprimand for her exhibition of lack of

attention to her class and her failure to adequately access her priorities. "She presented to the students the image of a distracted, uninterested and essentially absent teacher." Seven and a half months later, the District's filed tenure charges included the same allegations against Ms. Getty as she had received in her letter of warning. Ms. Getty argued that double jeopardy should apply and that she should not be charged with the same offense for which she had previously been given a warning. Holding that double jeopardy only applies in criminal cases, the Administrative Law Judge refused to apply a double jeopardy. However, the Administrative Law Judge cited In Re Fulcomer, 93 NJ Super 404 (App Div 1967) and Redcay vs State Board of Education, 139 NJL 369 (Sup Ct 1943) and noted that factors in determining the appropriate sanction, not only include the details of the alleged violations, but also a teacher's overall record (which would include the previous warning for the same issue). In Fulcomer, the Court held:

Although such conduct certainly warrants disciplinary action, the forfeiture of a teacher's right after serving for a great many years in the New Jersey school system is, in our view, an unduly harsh penalty to be imposed under the circumstances . . . Consideration should be given to the impact of the penalty on appellant's teaching career, including the difficulty which would confront him, as a teacher dismissed for unbecoming conduct, in obtaining a teaching position in this State, would result in jeopardy to his equity rights in a Teacher's Pension Fund . . ."

The Administrative Law Judge in Getty also noted that, contrary to the Board's assertion, progressive discipline does apply in tenure matters. Further, In the Matter of the Tenure Hearing of John Guarni, OAL Docket No: EDU 8705-06, Administrative Law Judge decision June 5, 2007, citing Fulcomer, the Commissioner held:

Where a tenured employee violates applicable standards, the decision as to whether remove tenure or impose a lesser sanction must be made with due recognition of the appropriate factors, including any prior disciplinary action.

In the Tenure Hearing of Wachendorf, OAL Docket No: EDU 6860-04, decision of Administrative Law Judge May 3, 2005, a similar determination was made that:

In the end, the issue of the degree of sanction to be imposed is, whether in a civil service or a tenure case, a matter to be determined following a careful evaluation of all the relevant factors, including the nature of the circumstances of the proven violation of rules, statutes, policies, responsibilities, standards and the like as well as the underlying policy concerns implicated by the violation, and the employee's prior employment and disciplinary history.

Applying that to Ms. Getty and considering the fact that she had already received a warning for the very same conduct, the Administrative Law Judge concluded:

But her removal from tenure for what occurred here would amount to a gross distortion of the events into much, much more than they were. In large part, the school principal and the acting superintendent properly dealt with Getty in January. An immediate reprimand was warranted and issued. A teacher of merit and experience was called on the carpet and no doubt further embarrassed by being reprimanded for what she agreed was a mistake of judgment.

It can thus be seen that, although double jeopardy is a criminal concept and did not apply, the concept that an appropriate penalty was already meted out, precluded the District from raising the same conduct again.

Finally, in this regard, reference must be made to In the Matter of Philip Maraviglia. Mr. Maraviglia and others pled guilty to violating a criminal statute in that he and others were found guilty of disturbing a school board election and taking part in a fraud to subvert the outcome of the election. He was given two years

probation, 120 hours of community service and received a fine. First, the Commissioner of Education decided the tenure matter and found Mr. Maraviglia guilty of conduct unbecoming a teacher for fraudulently casting and aiding others in casting illegal votes in a Newark school board election. The penalty imposed is significant:

Finding Mr. Maraviglia's conduct egregious and unprofessional, the Commissioner directed a seven-month unpaid suspension from Mr. Maraviglia's tenured teaching position, which period shall include 120-day unpaid suspension already served, and forfeiture of his increment for the 1998-99 and 1999-2000 school years.

After Mr. Maraviglia suffered a criminal penalty and after Mr. Maraviglia suffered a penalty from the Commissioner of Education, which included a seven-month unpaid suspension and the forfeiture of his increment for two school years, the matter then went to the State Board of Examiners. The State Board of Examiners found that the offense of tampering with the outcome of the school election affected Mr. Maraviglia's credibility of a role model to students. To that end, it suspended his license for an additional year. However, he did not lose his job. He did lose two increments. He did lose two years of teaching. But, he did not lose his job.

In the present case, according to Counsel, what occurred after April 2009 for the ensuing three years may not have been entirely proper but, certainly, those emails were not graphic and were not profane and no student could have had access to their emails. Acknowledging that in this regard Dr. Browne is indeed correct, the Arbitrator is asked to review the email from September 9, 2009 at 1 PM from Ms. Buglovsky, again

using her hotmail account under her name, to J.C. (See Tab M). After discussing that she would be dressing up as a policewoman for Halloween, J.C. made a comment that he would love it if she were a policewoman and wrote a ticket up for him. Ms. Buglovsky's response is clearly a double entendre. She stated, "I would give you much more than just a ticket!" The Arbitrator is asked to note that there is a major distinction, if there was any proof of student access to the emails which there is not, between the type of language that Ms. Buglovsky used before the letter of warning, which included words that no student should see and for which she was already disciplined and these double entendres which, even if an elementary school student saw them, contained no inappropriate language, no inappropriate words and the student would have no idea of the nature of the comment. Again, an unseen double entendre is markedly different from pornographic pictures viewed by students on a computer screen. Yet, that is the comparison being used by the District.

Ms. Buglovsky testified that she allowed students, especially those who were injured, to use her laptop computer (located in the gymnasium) to play games and Ms. Buglovsky went to great lengths to make sure that the students had no access to her emails and the District provided no evidence to the contrary.

Second: Ms. Buglovsky was using an alias to avoid the District tracking her inappropriate computer usage when she was sending objectionable emails. Dr. Browne went further and claimed that she was not using an alias when she was sending unobjectionable emails. Counsel notes that the testimonies of both Ms. Buglovsky and

Mr. Patrick establish that both before and after April 2009, up to the current time, Ms. Buglovsky simply had bad luck with her computer. A number of times it simply broke for no apparent reason. She was unable to use it for no apparent reason. And Mr. Patrick, who has some computer fluency, was required to fix her computer repeatedly. If the District's claim about her attempting to hide her identity had any validity whatsoever, perhaps she would have created an alias, used a nickname or even put down "phys ed teacher". She did none of that. In all of her emails she specifically used her name and her own hotmail account but used Mr. Patrick's computer with his approval. There was no attempt to use an alias, and no attempt to use somebody else's computer. When her computer worked, she used her computer, when her computer did not work, she used Mr. Patrick's computer.

Third: Ms. Buglovsky impermissibly used Mr. Patrick's network identity. Clearly had the District spoken to Mr. Patrick before filing tenure Charge Three, it would know that Mr. Patrick gave his express permission to Ms. Buglovsky every time she used his computer. It is not so much that the charge has no validity that is so troublesome, it is the fact that there was no investigation done before the charge was filed that is tremendously upsetting and was only listed to encourage the Arbitrator to come to an incorrect result.

Fourth: Dr. Browne claimed that he felt *he was* compelled to file tenure charges *was* because of emails involving alleged drug usage. While this may have indeed, if Dr. Browne's testimony is to be believed, been of a concern to him, nowhere is it found in the

tenure charges. Further, as Ms. Buglovsky testified, again with no opposition and no rebuttal, she is bipolar and, accordingly, she neither drinks nor uses drugs and, in fact, cannot do so. Moreover, there is absolutely no evidence that she was ever seen drinking or using drugs or was ever under the influence.

Fifth: The next reason that Dr. Browne articulated for being compelled to file tenure charges was because of another email in which a staff member's child thanks Ms. Buglovsky for sharing drinks with her. To the extent that there was an investigation, Dr. Browne concluded that the child was not yet 21 and, therefore, he claims he did his due diligence. Again, this allegation, for whatever reason, never found its way into the tenure charges. More significantly, again because of Ms. Buglovsky's medical condition, she does not drink and Dr. Browne never spoke to the mother of the child in question. Dr. Browne is referring to the email found in Exhibit V dated May 14, 2010. Significantly, there was no corroboration for this, it is blatantly untrue, and the District would know this if it had spoken to the student's mother. And, again, the notes on the bottom of the page are mere speculation from Mr. Walsh, the so-called computer expert.

Sixth: Online shopping. Again, this is another example of the District simply trying to reach too far. Note should be made by the Arbitrator that the Superintendent of Schools did not list her online shopping as one of the reasons he felt that tenure charges should be filed against Ms. Buglovsky. Second, again, this is a rush to judgment. The District included times when Ms. Buglovsky had no classroom responsibilities and, in fact, a day when it was bring-your-daughter-to-school day (and

the type of websites visited are clearly the type of websites that her daughter was visiting on the day in question). Mr. Patrick testified that when he and Ms. Buglovsky had no breaks at various times, especially during warm-ups, one teacher might give another teacher a little time off. This was testified to without dispute. This is entirely consistent with the pattern exemplified by the internet records concerning shopping. It is always for a succinct period of time, five, ten, no more than fifteen minutes. Further, the shopping issue is clearly a bootstrapping issue. There was never any concern with Ms. Buglovsky's classroom performance. Again this is another example of the District's rush to judgment, doing no investigation, not realizing that this was bring-your-daughter-to-school day. Or it was the District's attempt to improperly try to convince the Arbitrator of misconduct which simply does not exist.

Seventh: Ms. Buglovsky was allegedly dishonest to Superintendent Browne during the meeting of April 27, 2012. Dr. Browne claims that Ms. Buglovsky told him that she had been a "model citizen". Ms. Buglovsky disputes making that claim and tenure charges do not rise or fall on the degree to which a tenured teaching staff member is a model citizen.

Thereafter, Dr. Browne was asked whether he would want Ms. Buglovsky teaching his daughter and the answer he came up with was no. While that undoubtedly is true, that Dr. Browne would not want Ms. Buglovsky teaching his daughter, that has nothing to do with her ability as a teacher and, more importantly, that is not a basis

for a tenure charge. It is not the Superintendent of Schools' subjective judgment that can cause a tenure charge to be sustained. It is the facts of the matter.

If Dr. Browne does not want Ms. Buglovsky, who holds a Masters Degree in Education, to teach his daughter, he is doing so despite the absence of any negative statement in her evaluations, all of which are found in Exhibit R1. Counsel also asks the Arbitrator to note that for some reason the District did not provide page 3 of the January 30, 2012 observation, the commendations section, just as the District cannot explain the absence of a 2010 final summative evaluation. Yet for these lapses no administrator has faced disciplinary action while Ms. Buglovsky's job is on the line for performing her job at all times in a superlative fashion.

One of the most recent evaluations of Ms. Buglovsky from Laura Hernandez is dated January 25, 2011. Under the area of Commendations/Recommendations, it reads as follows:

The following was discussed at our post-observation conference:

- It was apparent that Ms. Buglovsky has developed a positive rapport with her students.
- Ms. Buglovsky has an awareness of the strengths and difficulties of her students' abilities.
- A strong knowledge of the lesson's content was demonstrated by Ms. Buglovsky.
- Students would benefit from more wait time when Ms. Buglovsky poses questions pertaining to the lesson.
- When questioning students, Ms. Buglovsky should allow students to answer before supplying the answers herself.

While it is acknowledged that the final two points are basically standard administrative suggestions, the overall positive nature of the observation cannot be discounted.

Likewise, the final annual summary that Ms. Buglovsky received before her termination, from Ellen Kessler (another administrator) dated June 6, 2011, contains the following comments:

The results of the cardio stations revealed excellent progress from September to June. In fact, her [Ms. Buglovsky] proudest accomplishment was her students' excellent results at the annual District Field Day Event. Health lessons were also part of Ms. Buglovsky's effective teaching, educating all level students on healthy choices including fitness, food and exercise. Ms. Buglovsky worked collaboratively with her team partner [Mr. Patrick] to create a program that was differentiated and individualized to meet the needs of all students. One of her greatest challenges was in providing instructions for the triple classes.³ With great planning and sharing of responsibilities, she and her co-teacher were able to turn this hardship into a successful instructional practice.

Ms. Kessler then included under Professional Development Ms. Buglovsky's other professional activities, i.e., "Character Education Committee (SECD)", the Scheduling Committee, the Social Committee, the District Field Day Committee, PTA member, and attendance at students' recreational sports games. In short, Ms. Kessler's formal summative evaluation closely supports Ms. Buglovsky's testimony about the incredible involvement she had throughout the District. Ms. Kessler stated that Ms. Buglovsky "also organized participation in the Cystic Fibrosis Walk, joining together as a community to support a fellow classmate."

Counsel for Ms. Buglovsky highlights all prior evaluations and observations dating back to Ms. Buglovsky's date of hire in 2002. He notes that each and every

observation and evaluation was satisfactory or above, she never “needed improvement” and she was commended for her rapport with, and caring for, her students. Why Dr. Browne would not want his daughter to be taught by a teacher whose in-class performance is beyond superlative, as reflected by the observations and evaluations of many administrators over the entire length of her employment, is subject to conjecture. Perhaps the answer can be found in Ms. Buglovsky's testimony that when she met with Dr. Browne in 2012, he referred back to the 2009 issues and stated that he felt that she should have been terminated in 2009. His comment was something to the effect of, looking at the 2009 letter of discipline, that that was ridiculous and that she should have received much more of a penalty.

Lastly, Counsel observes that Ms. Buglovsky was totally contrite, did express true sorrow and is only seeking to get back into the classroom to be with her kids. The Arbitrator has viewed Ms. Buglovsky. He has listened to her testimony intently. He has seen her genuine remorse, her acknowledgment of the misbehavior, her goal to get her job back and the importance to her of her getting her job back.

If the goal of the Board of Education in Randolph is, as constitutionally mandated of every Board of Education, to provide a thorough and efficient education, it cannot be disputed that the students in Shongum School and the Randolph School District will receive a more thorough and a more efficient education with Ms. Buglovsky being returned to the classroom, albeit having received a penalty from this Arbitrator, such as the withholding of an increment, which has never been meted out to

her previously, and she is entitled to progressive discipline. Consequently, Counsel requests that discipline short of termination be imposed upon Ms. Buglovsky and suggest that the appropriate penalty is that she does not get salary for 120 days that she has been suspended under the school laws and that she have an increment withheld in perpetuity for her performance in the 2011-12 school year.

RELEVANT POLICY

POLICY –

RANDOLPH
BOARD OF EDUCATION

TEACHING STAFF MEMBERS
3321/PAGE 1 OF 3

Acceptable Use of Computer Network (s) / Computers and Resources
By Teaching Staff Members

3321 ACCEPTABLE USE OF COMPUTER NETWORK (S) / COMPUTERS AND RESOURCES BY TEACHING STAFF MEMBERS

The Board recognizes that as telecommunications and other new technologies shift the manner in which information is accessed, communicated and transferred that those changes will alter the nature of teaching and learning. Access to telecommunications will allow teaching staff members to explore databases, libraries, Internet sites, bulletin boards and the like while exchanging information with individuals throughout the world. The Board supports access by teaching staff members to information sources but reserves the right to limit in-school use to materials appropriate to educational purposes. The Board directs the Superintendent to effect training of teaching staff members in skills appropriate to analyzing and evaluating such resources as to appropriateness for educational purposes.

The Board also recognizes that telecommunications will allow teaching staff members access to information sources that have not been pre-screened using Board approved standards. The Board therefore adopts the following standards of conduct for the use of computer network (s) and declares unethical, unacceptable, inappropriate or illegal behavior as just cause for taking disciplinary action, limiting or revoking network access privileges, instituting legal action or taking any other appropriate action as deemed necessary.

The Board provides access to computer network (s) /computers for administrative and educational purposes only. The Board retains the right to restrict or terminate teaching staff member's access to the computer networks) /computers at any time, for any reason. The Board retains the right to have the Superintendent or designee monitor network activity, in any form necessary, to maintain the integrity of the network (s) and ensure its proper use.

Standards for Use of Computer Network (s)

Any individual engaging in the following actions declared unethical, unacceptable or illegal when using computer network (s) /computers shall be subject to discipline or legal action:

- A. Using the computer networks/computers for illegal, inappropriate or obscene purposes, or in support of such activities. Illegal activities are defined as activities which violate federal, state, local laws and regulations. Inappropriate activities are defined as a violation of generally accepted social standards for use of publicly owned and operated communication vehicles.
- B. Using the computer network (s) /computers to violate copyrights, institutional or third party copyrights, license agreements or other contracts.
- C. Using the computer network (s) in a manner that:
 - 1. Intentionally disrupts network traffic or crashes the network;
 - 2. Degrades or disrupts equipment or system performance;
 - 3. Uses the computing resources of the school district for commercial purposes, financial gain or fraud;
 - 4. Steals data or other intellectual property;
 - 5. Gains or seeks unauthorized access to the files of others or vandalizes the data of another user;
 - 6. Gains or seeks unauthorized access to resources or entities;
 - 7. Forges electronic mail messages or uses an account owned by others;
 - 8. invades privacy of others;

9. Posts anonymous messages;
10. Possesses any data which is a violation of this policy; and/or
11. Engages in other activities that do not advance the educational purposes for which computer network (s) /computers are provided.

Violations

Individuals violating this policy shall be subject to appropriate disciplinary actions. Discipline includes but is not limited to:

1. Use of the networks) /computers only under direct supervision;
2. Suspension of network privileges;
3. Revocation of network privileges;
4. Suspension of computer privileges;
5. Revocation of computer privileges;
6. Suspension;
7. Dismissal;
8. Legal action and prosecution by the authorities; and/or
9. Any appropriate action that may be deemed necessary as determined by the Superintendent and approved by the Board of Education.

N.J.S.A. 2A:38A-3

Adopted: 21 January 2009

FINDINGS

The Shongum Elementary School serves students in the Randolph School District from kindergarten through fifth grade. During Jill Buglovsky's employment as a

physical education teacher, Dr James Sheerin served as Interim Superintendent up to July 1, 2011. Dr. David Browne was appointed as his successor. From January 1, 2010 to July 1, 2011, Dr. Browne served as Assistant Superintendent. When Dr. Browne took over as Superintendent, Jennifer Fano was appointed as Assistant Superintendent. Laura Hernandez and April Lowe served in succession as Shongum Elementary School Principals. In different capacities, Michael Neves, School Business Administrator, Alphonse Falco, Jr., Director Health/Physical Education, and Ann Marie McGoldrick, Human Resource Services were each involved with Ms. Buglovsky's continued employment.

The District hired Buglovsky in 2002 as a physical education/health teacher. Dr. Browne and Mike Patrick, co-Physical Education/Health teacher collectively testified as to Ms. Buglovsky's high proficiency as a physical education teacher at Shongum Elementary School. On cross-examination, Superintendent, Dr. Browne testified that Ms. Buglovsky's evaluations were largely positive and that she properly related to her K through 5 students. As a tenured certificated teacher, Ms. Buglovsky is evaluated once annually. Prior to achieving tenure, Dr. Browne noted that Ms. Buglovsky, like all non-tenured teachers, is evaluated three times annually. Ms. Buglovsky's evaluations over the course of ten years were each notably positive. In fact, she never received even a "needs improvement" rating. Ms. Buglovsky earned a Masters Degree in Education in May of 2009.

In addition, Ms. Buglovsky testified that, despite her relatively low seniority, she was assigned to mentor several student teachers from 2006 through the school year ending in 2012. Mr. Patrick, who has worked with Ms. Buglovsky since 2004, described her as having a great relationship with the students and commented that “kids love her”. Ms. Buglovsky described her love for her profession as “her passion”. According to Ms. Buglovsky, she has strived for ten years to help students stay healthy, happy and safe. She described the past two and one-half months of suspension as painful in terms of being away from her chosen profession and the students whom she had taught.

Against this backdrop, the District charged Ms. Buglovsky with not adhering to District policy pertaining to use of the District’s Network and computers over a period spanning almost three school years, i.e., from September of 2009 through April of 2012. The District’s computer technology witness, Richard Walsh, is a certificated English Teacher (K-12). During his employment by the District (1985-2009), he served as a technical coordinator and instructed students in computer technology. As computer technology developed from the 1990s to 2009, Walsh was directly involved in purchasing the District’s first computers, setting up security, establishing wireless networks, etc. In addition, as the Network Administrator, it was Walsh’s responsibility to assure compliance with, among other laws, the federal Children’s Internet Protection Act (“CIPA”). In compliance with the mandates of CIPA, Walsh explained that he installed hardware and software to protect the security of the District’s Network, to monitor the amount of time that teachers, non-instructional staff and students spent on the internet, to

track sites visited, to send an alert if certain language was being used during email exchanges, and to enable the District to monitor individual computers, including the ability to take snapshots of individual computer screen(s) in real time.

The District first adopted Policy #3321 “Acceptable Use of Computer Network(s)/Computers and Resources by Teaching Staff Members” on January 1, 2009. The Policy is a two page recitation of both legal and non-legal jargon. It contains both specific and catchall provisions. It subjects “individuals” to discipline or legal action for among other things, using the network/computers for obscene activities, defined as “a violation of generally accepted social standards for use publicly owned and operated communication vehicles” (Par. A.) . . . “Forges electronic mail messages or uses an account owned by others” (par. C.7.) . . . “Engages in other activities that do not advance the educational purposes for which computer networks/computers are provided”(par. C. 11.). In addition, the Policy includes a subsection entitled, “Violations”, which advises the teacher that he or she could be subject to disciplinary action including, but not limited to, suspension or revocation of computer and/or network privileges, suspension or dismissal from employment and/or referral of the matter to legal authorities. (Exhibit J3, Tab Z).¹ Of note, the Policy does not include an official reprimand as a potential disciplinary penalty. Based on this record, Ms. Buglovsky appears to be the first alleged violator of the Policy to face substantial disciplinary consequences. Buglovsky testified

¹ Policy 2361, Exhibit Y, appears to more readily apply to student behavior, as opposed to teachers and other staff.

that she was essentially ignorant when it came to fully understanding the workings of social media and computer technology.²

Ms. Buglovsky took a maternity leave of absence from April 15, 2008 to April 1, 2009. The record does not reflect that Ms. Buglovsky was provided with a copy of the aforementioned Policy during her maternity leave. After Ms. Buglovsky gave birth to her only child, Buglovsky's husband apparently decided to pursue his own interests. The two temporarily separated in 2010 and ultimately divorced in 2012. However, in 2009, Ms. Buglovsky faced the challenge of raising her firstborn child in a state of marital discord. As evidenced by several email communications in this record, during her maternity leave, Buglovsky experienced both depression and panic attacks.³ Somewhere in this mix, Ms. Buglovsky essentially took a break from reality by becoming emotionally dependent on a married physical education teacher, J.C., who moved to Virginia at some point in 2009. The dependency was mutual, as demonstrated by the email communications. With a geographical divide in place, the two engaged in phone conversations, including phone sex and a similar email relationship. From the email communications in the record, it appears that the two shared a physical encounter in March of 2009.

Although using her home computer, Ms. Buglovsky accessed her private email accounts via the District's Network and thereby furthered her email affair with J.C.

² As late as March of 2012, Buglovsky admits in an email communication that she does not know how to use Facebook. Throughout the past few years of her employment, Buglovsky repeatedly depended on Mike Patrick, a co-Phys. Ed. Teacher and Derrick Davenport, a computer technician for several issues related to her ability to connect to the internet, computer "freezes" and printer problems.

³ Eventually, Buglovsky was diagnosed with bipolar disorder and Obsessive Compulsive Disorder. She was prescribed medications.

during her maternity leave. By doing so, Buglovsky unwittingly tossed all her skeletons out of her closet and onto the District's Network server to be flagged sooner or later by Network security. On April 23, 2009, a half-day for students, Mr. Walsh, by way of the security software program he had installed, became alerted to the following 8:48 a.m. email exchange between Ms. Buglovsky and J.C.

From: J.C.

Sent: Thursday, April 23, 2009 12:01 PM

To: jbuglovsky@rtnj.org

Subject: RE: [BULK] RE:

Yeah I got myself going too and I had to take care of that....thank you baby you were great!

Subject: RE: [BULK] RE:

Date: Thu, 23 Apr 2009 10:18:06 -0400

From: JBUGLOVSKY@rtnj.org

To: J.C.

Well you just got my Jilly juices flowing!

Postmaster

From: J.C.

Sent: Thursday, April 23, 2009 10:09 AM

To: jbuglovsky@rtnj.org

Subject: [BULK] RE:

What a fantasy that would be....I would sneak up behind you and kiss your neck while sliding my hands down the front of your pants....feeling your warm wet goodies. Then I would slip off your panties and bend you over the desk, dropping to my knees I would lick and taste you from behind, licking and tasting all your jilly juices....once your soaking wet I would keep you bent over your desk and slide myself into you...both pulling your hair and grabbing your hips so I can penetrate you hard. And after our time together I finally pull out and cum all over you...I would love to take sick days like this all the time...

Subject:

Date: Thu, 23 Apr 2009 08:48:34 -0400

From: JBUGLOVSKY@rtnj.org

To: J.C.

I guess your not going to work. Today is take your daughter/son to work day. You should have brought the boys in with you. I put Deandra in day care. She's to little and needs to much attention for me to bring her into work this year. It's Deandra's first birthday! Born at 6:18! My little girl is growing up so fast. I cleared my desk off for you. See you in a few hours. I'll leave my office door open for you. Come on in, I'll be waiting for you!!!
Rediscover Hotmail.

Walsh testified that he believed that Ms. Buglovsky was sending an actual invitation to J.C. to have sex in her office. Mr. Neves testified that he was similarly concerned after Walsh showed him a copy of the email exchange. Ms. Buglovsky testified that J.C. was in Virginia on April 23, 2009 and that the communication was fantasy-based. My reading of the April 23, 2009 email exchange and other email exchanges between the two corroborates Ms. Buglovsky's testimony on this score. The email exchange was fantasy-inducing only and consistent with 99.99% of their actual relationship.

In addition, at that time, Mr. Walsh also showed Neves an email chain commencing on March 1, 2009 whereby J.C. and Ms. Buglovsky discuss meeting at "Barb's" house and having sex on March 14, 2009. In the same email chain, and again ignorant of any risk to her personal privacy, Ms. Buglovsky asks J.C. what drugs he has done. J.C. replies by listing a litany of drugs he has consumed followed by references to oral sex. Ms. Buglovsky replies that she has done ecstasy, smoking, dust, K, angel dust and coke, expressing a strong preference for ecstasy. Ms. Buglovsky then offers the possibility that the two could use ecstasy during sex. This part, I find, was not fantasy based, but reflected one of several addictive behaviors exhibited by Ms. Buglovsky up to

that point in time. In total, Walsh showed Neves approximately 12,000 personal/sexual email communications from 2008 to April 23, 2009.⁴

With the time of the feared April 23, 2009 rendezvous approaching, Mr. Neves called Ms. Buglovsky into a meeting. According to Mr. Neves, he met with Ms. Buglovsky, Ms. McGoldrick and Ms. Buglovsky's Building Representative, Beth Bauer. Interim Superintendent Sheerin, however, did not attend the meeting. Mr. Neves informed Ms. Buglovsky that the District, by way of monitoring, had tracked a voluminous amount of inappropriate email communications involving J.C. that constituted an inappropriate use of District's Network and computers and could have constituted grounds for termination. During the November 20, 2012 arbitration hearing, Neves recalled that, on April 23, 2009, he advised Ms. Buglovsky that if she engaged in those activities again she would be terminated from employment. Neves admitted that the meeting was called because Mr. Walsh had retrieved one year of sexually graphic email exchanges between J.C. and Ms. Buglovsky, including a communication thought to be a prelude to an actual sexual encounter between the two on school property. Neves testified that he was unaware that J.C. was in Virginia on April 23, 2009.

Ms. Buglovsky testified regarding her perception of what was said to her during the meeting. According to Buglovsky, she was warned about accessing her private email accounts by way of the District's Network to send sexually inappropriate email communications to J.C. Ms. Buglovsky steadfastly maintained throughout cross-

⁴ For the purpose of Walsh's analysis, each thread in a chain of email communications was counted as one communication.

examination that she was not admonished for using the Network to briefly send or read non-sexual, personal email communications during non-instructional or free time, and that she continued to do so after the meeting, as she did before the meeting. Considering the conflict in testimony over a meeting that transpired over three years ago, I found significant the wording of the April 27, 2009 official reprimand executed by both Mr. Neves and Ms. Buglovsky. Also relevant is Ms. Buglovsky's subsequent course of conduct after the reprimand with knowledge now acquired that her computer was being monitored. The official reprimand states:

Dear Ms. Buglovsky:

On Thursday, April 23, 2009, Ms. McGoldrick and I met with you and your REA representative to inform you that administrative monitoring of your e-mail on the school district's computer system has found evidence that you have violated Board Policy No. 3321 "ACCEPTABLE USE OF COMPUTER NETWORK(S)/COMPUTERS AND RESOURCES BY TEACHING STAFF MEMBERS".

More specifically, you have been found to have been using the school district computer systems for "inappropriate purposes" within the meaning of Section A. of Policy No. 3321. In addition, you have been found to have violated Section C.11. of the Policy by engaging in activities that "do not advance the educational purposes for which computer network(s)/computers are provided".

Please be advised that this letter constitutes an official reprimand and shall be placed in your permanent personnel record.

Thank you for your attention in this matter.

Michael Neves

cc: Ms. April Lowe
Employee personnel file

On cross-examination, Mr. Neves acknowledged that the official reprimand (Exhibit J3, Tab L) does not reference a discussion about imposing the penalty of dismissal from employment for committing a future violation. Rather, the letter of reprimand refers Ms. Buglovsky to Policy #3321 with the presumed expectation that Ms. Buglovsky was capable of fully understanding that Policy and conforming her behavior subsequently thereto.⁵

I will next address Ms. Buglovsky's use of the District Network and computers following the April 27, 2009 official reprimand. During the first half of the 2009-2010 school year, Ms. Buglovsky accessed her personal email accounts by way of the District's Network through the username and password of Mike Patrick, her fellow physical education teacher. Conversely, during the same timeframe, Buglovsky accessed her Microsoft Office email account (used for work purposes primarily) by way of inputting her own username and password. At times, Buglovsky often logged on to the District network under her own username and password to conduct District business then, perhaps minutes later, she would log off and log back on using Mr. Patrick's identity. Mr. Walsh testified that such vacillating use belied any claim by Ms. Buglovsky that her computer and/or login account was not functioning properly.

The District captured various computer screen shots of email correspondence between Ms. Buglovsky and J.C. throughout September, October, November and

⁵ As stated previously, Policy No. 3321 is a multi-page mix of legal and non-legal jargon; it sets forth specific prohibitions coupled with a catchall provision. It does not reference an official reprimand as a potential penalty. Instead, the Policy speaks of imposing a suspension or dismissal from employment.

December of 2009 (Exhibit J3, Tabs M-P and Exhibit J4, flash drive SHGYM-01A, “Alias”) wherein Buglovsky accessed her private Hotmail account via the District network under Mike Patrick. She also accessed her Hotmail.com account for the same purpose at various times in October, November and December of 2009, including, but not limited to, October 2, 14, 15, 22, 27 and 29, 2009, November 3, 4, 9, 12, 16 and 18, 2009, and December 7, 8, 10, 11 and 17, 2009, among other dates. (Exhibit J3, Tabs M-P, Referenced emails from September, October, November and December, 2009). According to Mr. Walsh, there were over 20,000 separate screen captures documenting Ms. Buglovsky’s personal use of Hotmail.com or Gmail.com during the period of September, 2009 through December, 2009, all of which were accessed while the computer was logged on to the District network under Michael Patrick’s identity. A significant number of these emails were exchanged during school hours. (e.g., Exhibit J3, Tabs M-P for a representative sample; Exhibit J4, Folder “Screenshots”, for a complete account of each screen capture).

For example, in an email chain dated September 3, 2009, commencing at 12:32 p.m., J.C. discusses his assignments apparently as a physical education teacher as well. In addition, J.C. informs Ms. Buglovsky at 12:39 p.m. that he wife has to work Friday and Sunday night and states... “Of course, Chris (then Ms. Buglovsky’s husband) probably doesn’t have a game and she’ll be at a concert Saturday night.” Although Ms. Buglovsky did not initiate the personal portion of the communications she replies at 12:44 p.m., “I don’t have his schedule in front of me, but I think you are right. The team

is away so Chris will not be going to the games over the weekend. He will be going to the games Monday.” At 12:47 p.m., Ms. Buglovsky writes to J.C., “So, are you going to get an answer this year? Take control, show them who’s in charge!” (referring to a work-related issue facing J.C.). After Ms. Buglovsky explains to J.C. her household chores awaiting her arrival from work, J.C. replies to Ms. Buglovsky’s previous email, stating, in pertinent part, “So, now they think I’m going to do more... Bullshit, I shouldn’t have done it last year.” To which, Ms. Buglovsky replies at 12:55 p.m., “Attaboy, put your foot down! Don’t take this the wrong way, but you turn me on when you get pissed.” J.C. replies at 1:01 p.m., in pertinent part, “I want to punch someone, that’s how pissed I am, if you saw how angry I was you would jump me!” Ms. Buglovsky replies at 1:03 p.m., “I love it. I can hear the anger through your writing. I will jump on you no matter what!”

On September 4, 2009 at 10:55 a.m., Ms. Buglovsky emails J.C. inquiring about his interview as a high school teacher and commenting, “I’m being selfish I don’t want you to go to the HS because I will not have you every day during our lunchtime.” I comment here that this email is significant because it shows the timing of Ms. Buglovsky’s and J.C.’s regularly-scheduled email and/or phone chats.

On September 10, 2009, Ms. Buglovsky logs in as Mike Patrick on the District's Network and uses her private Hotmail account to discuss with J.C. personal/medical concerns that she has including an upcoming medical procedure. This communication continues throughout the second and third week of September of 2009. After the

completion of the medical procedure discussed on September 24, 2009, Ms. Buglovsky, signing on as Mike Patrick, states to J.C.: “It’s been awhile for me too. I’ve been so sick and exhausted this past month. I haven’t even been able to use my brush!”

On October 15, 2009, Ms. Buglovsky and J.C. exchange a communication about a role-playing fantasy with J.C. (where Ms. Buglovsky would be dressed up as a police woman, her intended Halloween costume). In response to J.C.’s reference about Ms. Buglovsky giving him a ticket, Ms. Buglovsky replies, “I would give you more than a ticket!” In all of these instances, I find, Buglovsky is clearly dancing around the rim of the volcano without falling in with respect to the spirit of the April 27, 2009 official reprimand. Buglovsky testified that she did not believe that she was violating the 2009 admonition because, in her opinion, she was not exchanging sexually graphic emails with J.C. From a subjective standpoint, I believe Ms. Buglovsky’s claimed ignorance without crediting it as a defense. On October 15, 2009, Buglovsky writes to J.C., “I had a dream about you last night.” J.C. replies, “Oh, that’s a good one . . . can you tell me more. I’d really like to know.” Buglovsky answers, “Can’t, at work. But you were great!” This exchange undoubtedly corroborates Ms. Buglovsky’s subjective understanding of the line in the sand drawn at the April 23, 2009 meeting. After November of 2009, Buglovsky ceased any sexually implicit or sexually non-obvious email communication with J.C.

At the hearing, Mr. Walsh testified that Ms. Buglovsky, upon accessing the District network using the “mpatrick” identity, used Hotmail.com or Gmail.com to converse with J.C. Ms. Buglovsky’s use of the District Network in this manner occurred

nearly every day from September of 2009 through December of 2009.⁶ Ms. Buglovsky's continued heavy emotional dependence on J.C. during the first half of the 2009-2010 school year may have led her to protect her communications with J.C. by using her own identity to send District-related emails and then mpatrick to send personal emails to J.C. moments later.

Conversely, this ostensible protective action by Buglovsky falls out during the second half of the 2009-2010 school year. Mr. Walsh testified that Ms. Buglovsky did not use her District identity to send emails to J.C. during the 2009-2010 school year. However, in email communications spanning April 29, 2010 through June 2, 2010, Ms. Buglovsky conspicuously accesses the District's Network using her own username and password to exchange numerous non-sexual, personal communications with J.C. (Exhibit J3, Tab V). Thus, to the extent there is any attempt to "cover her tracks," I find that such activity is limited to the period September through November of 2009, almost three years prior to the filing of tenure charges.

The Board also accuses Ms. Buglovsky of deceit based on Mr. Walsh's testimony and related investigative report wherein he characterizes the manner of Ms. Buglovsky's speech as the use of code, "thusly subordinating the intent of the [April 23, 2009] meeting." For example, Mr. Walsh viewed the following May 14, 2010 email

⁶ See, e.g., Exhibit J4. Screen captures in folder entitled "Screenshots", subfolder "SHGYM-01A", documenting Ms. Buglovsky's District internet use during the period September, 2009 through December, 2009, with particular reference to the following file numbers as a representative sample of same: (1) 090909_074205- 090909_131211, (2) 090923_073619 - 090923_085846, (3) 090925_083450 - 090925_105256, (4) 091006_071152 - 091006_072750, (5) 091027_084402 - 091027_115446, (6) 091102_121731 - 091102_123958, (7) 091111_120523 - 091111_121811, (8) 091202_070034 - 091202_070409 and (9) 091208_114432 - 091208 - 114651.

communication by Ms. Buglovsky to J.C. as code: “Sorry for cutting you off so soon the other evening. We need to finish our meeting. There’s a lot to cover in that unit. Maybe a phone call today to set up another meeting.” J.C. replies, “I will not be in my trailer this afternoon nor should use my cell phone. My next available moments are Saturday evening and Sunday morning, not sure how that works for you but I also need to look at my schedule too.”

While I agree with Mr. Walsh that Ms. Buglovsky and J.C. are speaking in a discrete manner, I disagree that she is doing so to subvert the intent of the April 23, 2009 meeting. On the contrary, Buglovsky’s “use of code” under her own username more accurately reflects her genuine take of the April 23, 2009 meeting, i.e., that she was prohibited from engaging in sexually explicit email communications with J.C. During this timeframe, Ms. Buglovsky does not engage in any of the entendred-laced banter evidenced by the September through November of 2009 email communications with J.C., discussed above, and she communicates using her own identity. Accordingly, the record does not sufficiently evidence intent on the part of Ms. Buglovsky to evade review of her email communications after December of 2009.

With respect to the use of the District’s Network to send generalized or non-sexual email communications to J.C., Ms. Buglovsky testified at the hearing that such email usage is prevalent among staff members during brief moments of non-instructional time or during duty-free periods. Ms. Buglovsky testified that both before and after her maternity leave she genuinely believed that such use either was not prohibited or at least

not enforced. The Board did not challenge her testimony on this score and it is clear that Ms. Buglovsky's Network usage was under individualized scrutiny. This record contains no evidence of Mr. Walsh's review of other staff members' emails or even that he has undertaken such a review. The District did not take disciplinary action against Ms. Buglovsky during the 2009-2010 school year. On the contrary, the District bestowed a positive annual evaluation on Buglovsky.

With respect to the 2010-2011 school year, the District's evidence shows a marked reduction in the type and frequency of email communications between J.C. and Ms. Buglovsky. Under Exhibit J3, Tab Q, January 4 and 5, 2011 email communications are captured. The conversation begins on January 4, 2011 at 12:12 p.m. with a single question from Ms. Buglovsky, i.e., "How are you?" On January 5, 2011, at 8:00 a.m., J.C. replies, "I am doing well... how about yourself?" At 8:31 a.m., Ms. Buglovsky informs J.C. that her daughter "is talking so much." After one more exchange about their kids, Buglovsky inquires whether J.C. has a girlfriend, however, that conversation ends quickly. At 11:42 a.m., Buglovsky replies, "just trying to be nice."

Under Exhibit J3, Tab R, a June 9, 2011 conversation is captured. At 10:30 a.m., Ms. Buglovsky asks J.C., "How are you? How's work and home life?" At 11:48 a.m. and 11:54 a.m., respectively, Ms. Buglovsky reveals that she and her husband are now separated and inquires of J.C. "Can we talk? I still think about you!" J.C. replies, "Sure we can talk, but won't you get in trouble for using your school email? And of course I still think of you from time to time." At 12:07 p.m., Ms. Buglovsky replies "So when can

we talk.” The District took this exchange as signifying an understanding that both J.C. and Buglovsky knew that Buglovsky was prohibited from personal use of the District Network. I disagree. J.C.’s commentary actually supports Ms. Buglovsky’s testimony that she told J.C., consistent with her understanding, that she was prohibited from accessing her email accounts through the District Network to transmit sexually inappropriate emails with J.C. J.C. and Buglovsky had been emailing one another for over two years at this point. J.C.’s never before stated concern, “won’t you get in trouble for using your school email” is made directly in response to Ms. Buglovsky expressing a desire to inform J.C. in detail of her feelings for him and/or in what manner she still thinks of him. Buglovsky asks J.C. to call her at that time. J.C. replies, “I can’t call right now.”⁷ At 12:45 p.m., Buglovsky asks J.C. “would you be with me again?” At 12:50 p.m., Buglovsky again asks, “Can’t you call...I’ll say everything.” When J.C. informs her that he cannot call at that time, Buglovsky responds, “Well...I miss you! Hope we can talk soon.”

Under Exhibit J3, Tab S, a single email communication is captured on June 22, 2011 wherein Ms. Buglovsky states to J.C. “Have a nice summer!” I have also reviewed the screenshots encompassing the 2010-2011 school year, i.e., SHGYM Office 01 “mpatrick” and SHGYM Office 10 jbuglovsky. The District did not take disciplinary action against Ms. Buglovsky during the 2010-2011 school year. On the contrary, the District bestowed a positive annual evaluation on Buglovsky.

⁷ The District did not allege that this communication took place during class time or that teachers were banned from receiving personal calls at work during lunchtime.

With respect to the 2011-2012 school year, in September of 2011, for the first time, Mr. Walsh installed a user license popup agreement, the type one sees when accessing the internet from a hotel's wireless network. Curiously, the license requires user acceptance of the terms of Policy 2361, and not Policy 3321 as a condition of using the District Network. During the 2011-2012 school year, Ms. Buglovsky taught physical education classes from 9:08 a.m. through 12:08 p.m. on Mondays through Thursdays. She then had a scheduled break from 12:08 p.m. to 1:08 p.m. According to Ms. Buglovsky, in lieu of free time, she performed stipend-compensated extra duties in the cafeteria and at recess. She also performed daily stipend-compensated bus duties in lieu of morning preparation time from 8:08 a.m. to 9:08 a.m. and after her 3:08 p.m. physical education class.

Due to her choices, Buglovsky did not have a meaningful personal break throughout the entire school day. Mr. Patrick partnered with Buglovsky in a team-teaching format which combined two or three classes. Two classes were combined for six periods on Monday through Wednesday and for two periods on Thursdays. Both Mr. Patrick and Ms. Buglovsky testified that their respective offices were located inside the gymnasium facing one another. Mr. Patrick testified, as did Ms. Buglovsky, that the two shared certain duties during the team-teaching process. For example, Ms. Buglovsky would take the lead in performing warm-up exercises with students, whereas Mr. Patrick would take the lead in the main physical education activities that followed. Because neither Mr. Patrick nor Ms. Buglovsky had any significant scheduled break time, the two,

without authorization, would relieve one another for a quick coffee break or to use the restroom facilities. During such unauthorized breaks, Buglovsky checked her email and, at times, briefly visited shopping websites.

Ms. Buglovsky testified that the two had placed a round table inside the gymnasium that was equipped with a laptop computer for instructional purposes. Mr. Patrick testified regarding the use of technology such as iPods, Smart Boards, etc. During the second marking period (winter months when students are not taken outside for exercise), Mr. Patrick and/or Ms. Buglovsky would teach health classes in a thirty-minute block. A Smart Board was used to present slideshows on nutrition, safety and the functioning of the human body.⁸ Mr. Patrick gave examples of accessing YouTube to show the class activities that he was unable to physically perform himself, such as juggling or the Chinese yo-yo”. Both Mr. Patrick and Ms. Buglovsky testified to the use of Ms. Buglovsky’s iPod to play music to enhance the students’ performance of physical activities during gym class.

On or after April 23, 2012, Mr. Walsh, pursuant to a spot check, came across a security alert to the phrase, “My Baby at Work” with an attachment. The attachment is a photograph of Ms. Buglovsky working an iPod device in gym class while four young female students play with hula hoops. Mr. Patrick admitted taking the photograph and apparently it was sent to Larry Cataldo, Jr. who, in turn, emailed the photograph to Ms. Buglovsky, commenting, “My Baby at Work.” Ms. Buglovsky then, replies, “I was

⁸ According to Mr. Patrick, the Smart Board software was installed by Leon Johnson during the 2009-2010 school year.

drawing you at that time!”⁹ After reviewing the photograph and email communication, Mr. Walsh brought the issue to the attention of Jennifer Fano, Assistant Superintendent. Pursuant to their discussion, Mr. Walsh then researched Ms. Buglovsky’s internet use for the period March 9, 2012 through April 26, 2012. (Exhibit J3, Tab U). Mr. Walsh also prepared a chart comparing Ms. Buglovsky’s internet use during the aforementioned timeframe with her class schedule, i.e., “free” versus “class time”.

A representative sample of screen captures for the period March 9, 2012 through April 26, 2012, reveals that Ms. Buglovsky conspicuously used her own network identity to browse shopping sites. She did so briefly during the school day at times. For example, on Friday, March 15, 2012, during non-instructional time (referred to by Walsh as “Free Time”) Ms. Buglovsky accessed the internet from 8:53 a.m. through 8:57 a.m., at which time she was online shoe-shopping. During free time, Ms. Buglovsky played Freeride games from 12:26 p.m. through 12:36 p.m. Freeride games are for kids. It is not clear from this record whether Ms. Buglovsky enjoys these games herself and/or was previewing them for her students and/or daughter’s use. On March 20, 2012, Ms. Buglovsky accessed the internet during her free time from 12:29 p.m. through 1:03 p.m., at which time she viewed, among other things, websites related to internet searches and Morris County Livings information. (Exhibit J4, “Screenshots”, Subfolder “SHGYMOFFICE – 10/jbuglovsky” at files 120315_085307 – 120315_123647; 120320_122944 – 130330).

⁹ At the hearing, the District withdrew Charge No. 8 which was pertaining to the April 23, 2012 photo and email communication.

Mr. Walsh further testified that he compared Ms. Buglovsky's teaching schedule for that school year, Exhibit J3, Tab X, with her internet usage to determine if her online activity took place during assigned instructional time. Mr. Walsh then created a chart of Ms. Buglovsky's internet usage for the representative period of March 9, 2012 through April 26, 2012, indicating when her internet use was during class time or not. (Exhibit J3, Tab U). A review of Mr. Walsh's chart and Ms. Buglovsky's schedule reveals that on at least five (5) separate days during this seven (7) week period, Ms. Buglovsky accessed the internet when she was assigned to teach a class. On March 22, 2012, during a combined 5th Grade class with Mr. Patrick, Ms. Buglovsky accessed the internet from 2:19 p.m. through 2:39 p.m. to review information about birthstones. Buglovsky was searching for a birthstone for her daughter's then upcoming fourth birthday. (Exhibit J3, Tab X and Exhibit J4, "Screenshots", "SHGYMOFFICE – 10/jbuglovsky" at files 120322_141856 – 120322_143928).

On Friday, March 23, 2012, Ms. Buglovsky accessed the internet from 1:56 p.m. through 2:19 p.m., and browsed websites for Target, Payless Shoes, Wal-Mart and Kohl's at the same time she was scheduled to teach by herself 2nd and 5th grade classes, respectively. (Exhibit J3, Tab X and Exhibit J4, "SHGYMOFFICE – 10/jbuglovsky" at files 120323_135647 – 120323_141939).

On Wednesday, March 28, 2012, Ms. Buglovsky was assigned to teach a 3rd Grade Class from 9:38 a.m. to 10:08 a.m. and a combined 4th Grade Class with Mr. Patrick from 10:08 a.m. through 10:38 a.m. Ms. Buglovsky visited websites for Wal-Mart and Toys

R'Us from 10:00 a.m. through 10:23 a.m. (Exhibit J3, page 4 and Exhibit J4, Tab X at page 4, "SHGYMOFFICE – 10/jbuglovsky" at files 120322_141856 – 120322_143928).

Similarly, on Wednesday, April 4, 2012 from 1:10 p.m. through 1:20 p.m., Ms. Buglovsky was assigned to teach a combined 2nd Grade Class with Mr. Patrick but was instead browsing the website "www.babycenter.com."

On Thursday, April 26, 2012, from 11:51 a.m. through 12:03 p.m., Ms. Buglovsky accessed "My Little Pony" websites when she was assigned to teach 1st grade. (Exhibit J3, Tab X and Exhibit J4, "SHGYMOFFICE – 10/jbuglovsky" at files 120404_131050 – 12404_132047 and 120426_115112 – 120426_120345). Ms. Buglovsky testified that her daughter was using the laptop during bring your child to work day (the fourth Thursday in April annually). This specification is dismissed.

Ms. Buglovsky also indicated that on Friday, April 20, 2012 from 11:26 a.m. to 11:48 a.m., she allowed a 1st grade student not participating in gym class to use her laptop computer so that she could keep busy with Princess Clipart. Ms. Buglovsky testified that it would be impossible for a student to access her private email account while playing internet-based games on the District's Network. The student would have to leave the website, enter the staff email account and type in Ms. Buglovsky's password (which she did not share with her students) in order to access her email account. While Ms. Buglovsky testified that she supervised students on her computer, she could not fully explain whether she was not also supervising the remainder of her class at the same time when her attention was diverted to the students using the computer. During team

teaching with Mr. Patrick, however, such a task would be more easily managed, if permitted in the first instance.

Lastly, during the 2011-2012 school year, the District captures a lone, lunch time email between Ms. Buglovsky and J.C. (Exhibit J3, Tab T). It is clearly a surprise check-in email between two individuals no longer in regular contact with one another. J.C. does most of the writing essentially pining to Buglovsky about his troubles. Buglovsky informs J.C. of her recent divorce and he reciprocates with similar information about his marital status. The email communication ends with Ms. Buglovsky inviting J.C. to call her if he would ever like to talk.

Dr. Browne testified that after Ms. Fano made him aware of the April 23, 2012 photograph/email, discussed above, he asked Ms. Buglovsky to report to his office with an Association representative for in interview. According to Ms. Buglovsky, she showed Ms. Fano and Dr. Browne her cell phone and iPod. She informed both of them that she used the iPod for music during physical education classes. Mr. Patrick corroborated Ms. Buglovsky's use of the iPod to play music during gym class to facilitate or enhance gym activities. Dr. Browne asked Ms. Buglovsky if she had misused the District's Network since her official reprimand in 2009. According to Dr. Browne's testimony of November 20, 2012, he recalls Ms. Buglovsky stating, "I've been a model citizen." Ms. Buglovsky did not recall making that statement. Rather, Ms. Buglovsky testified that Dr. Browne was upset about the leniency shown by Mr. Neves to Ms. Buglovsky on April 23, 2009, commenting that she should have received more than "a slap on the wrist." According to

Dr. Browne, Ms. Buglovsky's Association representative implored her to tell Dr. Browne the truth about her computer usage since April 23, 2009. After the April 23, 2012 meeting, Dr. Browne then had Mr. Walsh review Ms. Buglovsky's network/computer usage since April 23, 2009, as discussed previously.

Dr. Browne held a second meeting with Ms. Buglovsky, Ms. Fano and Association Representative Bauer. According to Dr. Browne, he confronted Ms. Buglovsky, "with her betrayal", i.e., comparing Ms. Buglovsky's "model citizen" statement during that meeting with the aforementioned results of Mr. Walsh's investigation. Dr. Browne discussed his concern over the graphic nature of the email communications previously exchanged between Ms. Buglovsky and J.C. and the potential for students to view the emails. Dr. Browne acknowledged that Ms. Buglovsky maintained that she used Mr. Patrick's computer when she was experiencing difficulties logging on to her computer. Dr. Browne opined that Ms. Buglovsky's evaluations were not important to his final determination to recommend tenure charges against Ms. Buglovsky because she did not improve her behavior since the issuance of the official reprimand on March 23, 2009 (which Dr. Browne considered her opportunity at progressive discipline).

According to Dr. Browne, based on the results of Mr. Walsh's investigation, he formed the following concerns:

- Dr. Browne was concerned that a student could potentially see a graphic email from J.C. to Ms. Buglovsky (or vice versa).
- Ms. Buglovsky demonstrated intent to use the login password of Mr. Patrick in order to avoid detection of her own inappropriate use of District network/computers.

- Ms. Buglovsky demonstrated a pattern of accessing the District's Network as Mr. Patrick in order to retrieve and send personal emails to J.C. through her private email accounts.
- Ms. Buglovsky sent “thousands” of inappropriate email communications to J.C.
- Ms. Buglovsky visited numerous shopping sites during class time instead of teaching.
- Ms. Buglovsky lied to Dr. Browne during the April 23, 2012 meeting by stating that she did not misuse the computer/network since April 23, 2009.

Dr. Browne was additionally concerned about Ms. Buglovsky's statements about drug use especially in her capacity as a physical education teacher. He also stated his concern over an email from the 20-year-old daughter of a staff member thanking Ms. Buglovsky for drinking with her. Dr. Browne formed a conclusion that Ms. Buglovsky was not the type of person who should be teaching young children, as he phrased it, “I wouldn't want this person teaching my daughter.” Both the filing of certified tenure charges and this arbitration proceeding ensued pursuant to N.J.S.A. 18A:6-16 et. seq.

DISCUSSION

In the State of New Jersey, a tenured teacher shall not be dismissed from his or her position or reduced in compensation “except for inefficiency, incapacity, unbecoming conduct, or other just cause.” N.J.S.A. 18A:6-10. The burden of proof in a discharge case rests with the employer to prove, by a preponderance of the credible evidence, that the factual allegations are true, and that the penalty imposed is just. *Elkouri and Elkouri, How Arbitration Works, 5th Edition, pages 930, et. seq.* “Preponderance” may be

described as the greater weight of credible evidence in the case, not necessarily dependent on the number of witnesses, but having the greater convincing power, State v. Lewis, 67 N.J. 47 (1975).

In light of the foregoing, I will address Charges One through Nine and the propriety of the dismissal penalty. Charge One (pertaining to Ms. Buglovsky's 2008-2009 emails over the District's Network) is dismissed as having been fully resolved by the April 27, 2012 official reprimand, a legally significant disciplinary consequence under Title 18A. While prior disciplinary actions can serve as a basis for an increased penalty in a future case, absent a valid pattern of misconduct charge, a prior penalty cannot serve as the basis for future disciplinary charges. See, West New York v. Bock, 38 N.J. 500 at 523; Elkouri and Elkouri, How Arbitration Works, 5th Ed., pages 923-925. The Board cannot now retry Ms. Buglovsky based on conduct transpiring over three years ago, which did not involve harm or realistic potential harm to students, and was resolved at that time by an official reprimand.

While the constitutional protection against double jeopardy applies to criminal cases, both arbitrators and administrative law judges borrow and incorporate that principle in removal cases under a just cause or good cause standard. For example, Arbitrator Leo Killian found that a hospital could not reprimand a nurse and place her on probation several days after it had already warned her for a single offense of complaining about inadequate staffing (Auburn Faith Community Hosp., 66 LA 882). Arbitrator Pearce Davis held that an employer improperly suspended employees for one week for

failure to wear safety device where three weeks earlier the employer had orally reprimanded them for the same offense (Stauffer Chemical Co., 59 LA 414). Such an application of just cause or good cause has been recognized in the educational setting involving non-instructional personnel. In the Matter of Ricky Porter 2007 WL 1876056 (N.J. Adm.), an Administrative Law Judge found that because the appellant, a school employee, had been formally reprimanded for his absences in 2004 in January 2005 the District could not remove him later based on the same offenses. In upholding the ALJ's determination, the Merit System Board (now Civil Service Commission) reasoned:

The ALJ indicates that the appointing authority could have disciplined the appellant in 2004 for his absences and could have sought a resignation not in good standing for the appellant's absences of greater than five days, but it did not seek such discipline. Further, the ALJ found that the appointing authority had failed to institute progressive disciplinary measures to correct the appellant's conduct. With regard to the appointing authority's contention that the ALJ erred in determining that the charges should be dismissed because the appellant had already received discipline for these incidents, the Board finds the ALJ's analysis and conclusions in this regard to be appropriate. The January 12, 2005 document referred to as a "counseling reprimand," clearly indicates that the letter was addressing the appellant's excessive absences in 2004. The Board has previously rejected appointing authority's attempts to impose double punishment for the same offense and found that it was improper to revive a stale charge in an attempt to impose a greater penalty at a later date. See, In the Matter of Victor Onwuzuruike (MSB, decided August 9, 2006) (The Board reversed the removal of an employee, finding that he had previously been disciplined for the incidents at issue, via official written reprimands that were placed in his personnel file by his supervisor. The Board, thus, rejected the appointing authority's attempt to impose double punishment for the same offense and its attempt to revive a stale charge to impose a greater penalty.) See, also, In the Matter of Christopher Eutsey (MSB, decided February 14, 2001); In the Matter of Stuart Range (MSB, decided May 27, 1997). In this regard, the Board notes that it considers the letter outlined above as discipline and will reject the appointing authority's attempt to impose further punishment at a later date. With regard to the appointing authority's assertions that the

appellant's conduct was egregious in nature and that the appellant should be resigned not in good standing due to absences of greater than five days on two separate occasions, the Board finds that these arguments are without merit based on the previous discipline for the same actions. The Board suggests that if the appointing authority finds such actions egregious and worthy of harsher sanctions or wishes to impose a resignation not in good standing, it should do so before imposing other discipline for the same offenses. Further, it is good practice to impose disciplinary charges contemporaneously to the offenses committed, and not six months to a year after the alleged improper conduct.

Although teachers are held to a higher standard than other school employees, this does not mean that they suffer less due process protections in removal cases. Not surprisingly, the Commissioner of Education has recognized the proper relationship between past discipline and new charges. In the Tenure Hearing of Wachendorf, OAL Docket No: EDU 6860-04, decision of Administrative Law Judge May 3, 2005, a similar determination was made that:

In the end, the issue of the degree of sanction to be imposed is, whether in a civil service or a tenure case, a matter to be determined following a careful evaluation of all the relevant factors, including the nature of the circumstances of the proven violation of rules, statutes, policies, responsibilities, standards and the like as well as the underlying policy concerns implicated by the violation, and the employee's prior employment and disciplinary history.

Applying that to Ms. Getty and considering the fact that she had already received a warning for the very same conduct, the Administrative Law Judge concluded:

But her removal from tenure for what occurred here would amount to a gross distortion of the events into much, much more than they were. In large part, the school principal and the acting superintendent properly dealt with Getty in January. An immediate reprimand was warranted and issued. A teacher of merit and experience was called on the carpet and no doubt further embarrassed by being reprimanded for what she agreed was a mistake of judgment.

In the present case, I find that the April 27, 2009 reprimand resolved Ms. Buglovsky's inappropriate use of the District Network up to, and including, that point in time. It also resolved any issue that could have been contemporaneously raised regarding Buglovsky's fitness for duty, drug use, alleged in-class sexual activities, etc. The District had every opportunity to fully and timely address Buglovsky's 2008-2009 conduct and it did so by way of issuing an official reprimand on April 27, 2009. Consequently, I am compelled to infer that the District would not have imposed an entry-level disciplinary action on Ms. Buglovsky on April 27, 2009 if it truly believed that Buglovsky was having sex in her classroom, or if it truly believed that Buglovsky was impaired due to drug use. Indeed, in light of what the 2008-2009 email communications revealed about Ms. Buglovsky's then imbalanced personal life, nothing precluded the Board from ordering Buglovsky to undergo a professional evaluation and/or to submit to a drug test as a condition of her return to work from leave. It did not do so.

For these reasons, I reject the District's attempt to now – three years later -- retry Ms. Buglovsky for her 2008-2009 conduct, which was dealt with by the District on April 27, 2009 by way of an official reprimand. It is noted that a significant portion of the District's post-hearing brief outlines the sexually graphic email communications participated in by Ms. Buglovsky during her maternity leave that formed the basis for the official reprimand. The District's brief also continues with numerous citations to cases where tenure charges or dismissals were sustained based upon the actions of educators similar to Ms. Buglovsky's but taking place on school computers, or involving an on-the-

job affair by coworkers, or broadcasted via social media for the outside world to know. These cases are clearly distinguishable from Ms. Buglovsky's use of her home computer to access the District's Network (or internet gateway) and then her private email accounts.

Based on the foregoing, I opine that the official reprimand issued in 2009 can be used for only two legitimate purposes in this tenure dismissal proceeding: (1) as prior discipline for purposes of determining a disciplinary penalty, if any, and (2) to judge the credibility of Ms. Buglovsky's stated understanding that she was verbally warned not to use the District Network to access her private email accounts for the purpose of exchanging sexually explicit communications. For the reasons stated under Charge Nine (below), I reject the District's allegation that Buglovsky engaged in a "pattern of misconduct" thereby precluding use of the reprimand for that purpose as well.

Charge Two (encompassing Ms. Buglovsky's September 2009 through November of 2009 personal emails, some containing implicit sexual communications) is sustained with respect to the few implicitly sexual email communications, but attenuated due to the passage of time and Ms. Buglovsky's demonstrated good behavior thereafter. The Charge is dismissed with respect to Buglovsky's sending or reading of personal emails of a non-sexual nature. In the final analysis, I am not convinced that the Board imparted clear notice to Ms. Buglovsky that she would face any significant disciplinary consequence for her use of the District Network to view or send non-sexual emails from her private account during non-instructional or free time.

The District could have succinctly summarized Policy #3321 to read, for example, “Personal or non-educational use of District computers, the District network and your District email account is strictly prohibited. Violators will face disciplinary action up to, and including, dismissal from employment.” Instead, as discussed, the District adopted Policy #3321, which is unduly complex, especially if the District simply intended it to mean what I have set forth above. Based on the wording of Policy #3321, the wording of the April 27, 2009 letter of reprimand, the core facts giving rise to the April 23, 2009 meeting, Ms. Buglovsky’s conspicuous course of conduct regarding the sending of generalized personal email communications over the Network -- both before and after the reprimand -- and Ms. Buglovsky’s unchallenged testimony that “everyone does this” (referring to sending generalized personal emails), I find and conclude that the District did not meet its burden of proving that it imparted clear notice to Ms. Buglovsky regarding (1) her use of the Network to exchange generalized personal email communications with J.C., or anyone else for that matter or (2) the consequences for doing so.

Lastly, to the extent the District seeks disciplinary action based on Buglovsky’s brief, but regular, use of the Network during non-instructional time, I find and conclude that the District should have brought these concerns to light during or, at the latest, following the 2009-2010 school year. In the Matter of Ricky Porter, *supra*, the Merit System Board addressed both the fundamental unfairness associated by trying an employee twice for the same offense and by the resurrection of alleged offenses

occurring in years gone by:

With regard to the appointing authority's assertions that the appellant's conduct was egregious in nature and that the appellant should be resigned not in good standing due to absences of greater than five days on two separate occasions, the Board finds that these arguments are without merit based on the previous discipline for the same actions. The Board suggests that if the appointing authority finds such actions egregious and worthy of harsher sanctions or wishes to impose a resignation not in good standing, it should do so before imposing other discipline for the same offenses. Further, it is good practice to impose disciplinary charges contemporaneously to the offenses committed, and not six months to a year after the alleged improper conduct. [emphasis supplied].

Since 2009, the District was specifically monitoring Ms. Buglovsky's computer. Ms. Buglovsky was made aware of this fact during the April 23, 2009 meeting. By allowing Buglovsky's personal usage to continue without intervention, one must question that, if Ms. Buglovsky's personal email communications during the 2009-2010 and 2010-2011 school years were of such grave concern, why did the District not act sooner? One must also question what message was sent to Ms. Buglovsky after she received no discipline and a positive evaluation relative to the 2009-2010 school year? Similarly, one must question what message was sent to Ms. Buglovsky after the 2010-2011 school year after she received no discipline and a positive evaluation? In my opinion, the District's belated concern over Ms. Buglovsky's generalized use of the Network to send non-sexual personal email communications is best left for a counseling session with Ms. Buglovsky when she returns to work (discussed, *infra.*). For all these reasons, I dismiss Charge Two with respect to Buglovsky's use of the Network to send personal, non-sexual emails as she had done in the past.

Charge Three (accusing Ms. Buglovsky of vacillating use of identities depending on the nature of email communications during the 2009-2010 school year) is sustained, in part, and dismissed, in part. I note that this finding of guilt is markedly attenuated due to the passage of time and Ms. Buglovsky's demonstrated good behavior thereafter. I dismiss the Charge to the extent it alleges that Ms. Buglovsky did not have Mr. Patrick's permission to use his computer whether or not he was already logged in. Conversely, apart from the timing of the Charge, the District's allegation further loses force with respect to the second half of the 2009-2010 school year. Mr. Walsh testified that Ms. Buglovsky did not use her District identity to send emails to J.C. during the 2009-2010 school year. This statement is not accurate. In email communications spanning April 29, 2010 through June 2, 2010, Ms. Buglovsky conspicuously accesses the District's Network using her own username and password to exchange numerous non-sexual, personal communications with J.C. (Exhibit J3, Tab V). Thus, to the extent there is any attempt to "cover her tracks," I find that such activity is limited to the period September through November of 2009, almost three years prior to the filing of tenure charges.

The Board also accuses Ms. Buglovsky of deceit based on Mr. Walsh's testimony and related investigative report wherein he characterizes the manner of Ms. Buglovsky's speech as the use of code, "thusly subordinating the intent of the [April 23, 2009] meeting." For example, Mr. Walsh viewed the following May 14, 2010 email communication by Ms. Buglovsky to J.C. as code: "Sorry for cutting you off so soon the other evening. We need to finish our meeting. There's a lot to cover in that unit. Maybe

a phone call today to set up another meeting.” J.C. replies, “I will not be in my trailer this afternoon nor should use my cell phone. My next available moments are Saturday evening and Sunday morning, not sure how that works for you but I also need to look at my schedule too.”

While I agree with Mr. Walsh that Ms. Buglovsky and J.C. are speaking in a discrete manner, I disagree that she is doing so to subvert the intent of the April 23, 2009 meeting. On the contrary, Buglovsky’s “use of code” under her own username more accurately reflects her genuine take of the April 23, 2009 meeting, i.e., that she was prohibited from engaging in sexually explicit email communications with J.C. During this timeframe, Ms. Buglovsky does not engage in any of the entendred-laced banter evidenced by the September through November of 2009 email communications with J.C., discussed above, and she communicates using her own identity. Accordingly, I reject Charge Three, to the extent it accuses Ms. Buglovsky of intent to evade review of her email communications after December of 2009.

Charge Four (encompassing non-sexual or generalized personal emails during the 2010-2011 school year) is dismissed for the reasons stated under Charge Two, above concerning Ms. Buglovsky’s use of the Network to send non-sexual, personal emails during the 2009-2010 school year.

Charge Five (encompassing Ms. Buglovsky’s lone email communication with J.C. during the 2011-2012 school year) is dismissed for the reasons stated under Charge Two, above (otherwise a *de minimis* violation of Policy #3321). If anything, the lone email

communication captured is consistent with Buglovsky's significantly improved behavior and what she reasonably perceived as permitted use by other staff members.

I sustain Charge Six (encompassing Ms. Buglovsky's internet browsing over the period March 9, 2012 through April 26, 2012). I note that four out of the five instructional occasions involved combined classes with Mr. Patrick and her activity is captured essentially for the duration of the unauthorized break that she and Mr. Patrick would typically take. The District did not produce any evidence of Ms. Buglovsky leaving students without other supervision. Most likely, I infer that Ms. Buglovsky and other staff members performing stipend-related duties similarly engaged in mutual relief in the case of bathroom usage or other exigencies. However, taking a break to browse the internet is not an acceptable defense. While Ms. Buglovsky was engaged in this activity during team teaching, she could not have devoted her full attention to her students even if Mr. Patrick was taking the lead with respect to warm-ups or activities following warm ups. If anything is clear from this record, Ms. Buglovsky overcommitted her time to the District and, instead, she should have opted for a duty-free lunch in order to attend to her personal life (using her own internet device and mobile data plan). Accordingly, I will sustain Charge Six.

Charge Seven is dismissed because it sets forth no new or additional factual specifications.

Charge Eight was withdrawn at the arbitration hearing, but noted to the extent that it influenced the filing of tenure charges.

Charge Nine (asserting a pattern of misconduct) is dismissed because the District was monitoring Ms. Buglovsky's computer (and Mr. Patrick's) for three years and, yet, it took no disciplinary action after the 2009-2010 or 2010-2011 school years. Even if it were equitable to permit such a far reaching retroactive review under the nomenclature of "a pattern of misconduct", the District has not established a true pattern of misconduct. Ms. Buglovsky moved away from sending sexually explicit or implicit emails with J.C. (after a few comparatively innocuous slips ending in November of 2009) and her exchanges dramatically diminished in frequency during the 2010-2011 and 2011-2012 school years. As stated previously, I am not convinced that Buglovsky was adequately warned about general use of the Network to send brief personal email communications during non-instructional or free time, she received positive evaluations in each and every year, and the 2012 allegations of internet browsing present a completely new violation of Policy #3321. Thus, for these reasons, I dismiss Charge Nine.

In terms of an appropriate penalty, if a preponderance of the evidence supports the disciplinary allegations, an employer must also show that the penalty imposed is just in light of factors, such as, (1) the gravity of the offense; (2) the employee's overall record and length of service; (3) proper notice of rules and penalties; (4) adherence to progressive discipline, if applicable; (5) whether there has been lax enforcement of rules; and (6) whether the employer's actions or failure to act contributed to the disciplinary offense(s). *Elkouri and Elkouri, How Arbitration Works*, 5th Edition, pages 930, et. seq. Perhaps the easiest explanation of my determination to modify the dismissal penalty has

to do with separating Buglovsky's 2008-2009 personal conduct (for which she received an official reprimand) together with the stale, but sustained charges from the 2009-2010 and 2010-2011 school years from her 2011-2012 violations of Policy #3321.¹⁰

Taking an unauthorized break to browse internet shopping sites on five occasions during team teaching (or by use of the in-class laptop when teaching alone) does constitute Conduct Unbecoming a teacher. For those brief periods, Mr. Patrick cannot be expected to intently supervise each student in a combined class format. Although the record is not informative, even if Mr. Patrick assumed the lead role with respect to gym activities, Ms. Buglovsky's commitment and focus during this time runs to the same students, to observe, detect misbehavior, prevent gym-related injuries, etc. During these times, even if using the in-class laptop, Buglovsky was inherently distracted from carrying out her commitment to both the District and to her students. During stipend-related activities, e.g., monitoring the cafeteria, the same holds true, even if other staff members are also present. Although it is evident that other similarly situated teachers, including Mr. Patrick, take breaks to use the bathroom or grab a cup of coffee, browsing the internet is neither justifiable nor understandable. Accordingly, I conclude that Ms. Buglovsky's internet browsing is a serious offense, it did create the potential for harm to students in a combined gym class, and she is deserving of a major disciplinary sanction.

¹⁰ By including within the tenure charges' review package the distasteful details of Ms. Buglovsky's personal life, as uncovered in 2009, in my opinion, it is easy to see how the Superintendent and Board members would be unable to avoid an emotionally or morally-based determination to seek Ms. Buglovsky's removal from employment. To a certain extent it does seem evident that the Board's 2012 determination to file tenure charges was unduly prejudiced by Ms. Buglovsky's personal proclivities (up to April 23, 2009) in tandem with the perceived lenient treatment shown to Ms. Buglovsky by Mr. Neves on April 27, 2009.

In opting for a substantial suspension and combined increment withholding, I must part company from Dr. Browne's opinion that Ms. Buglovsky's evaluations were not important to a final determination to recommend tenure charges, because she did not improve her behavior since the issuance of the official reprimand. Not only did the official reprimand lead to an immediate improvement in Ms. Buglovsky's behavior, i.e., the cessation of sexually explicit email communications, she also discontinued pushing the envelope so to speak after November of 2009, with respect to the double entendre communications. If an official reprimand could bring about that much change in Ms. Buglovsky's behavior involving the most egregious violations on record at a time when her personal life was in its greatest state of disarray, then why would I conclude that Ms. Buglovsky would not change her behavior if substantially penalized for browsing the internet during brief periods of team teaching or during an unauthorized break from monitoring the cafeteria with other staff members present?

Indeed, progressive discipline is squarely embraced by Policy #3321, as it speaks to penalties ranging from suspension of computer privileges, supervised computer privileges only, loss of computer privileges, suspension from employment, dismissal or possible criminal prosecution. Bearing in mind that Ms. Buglovsky received an official reprimand, a comparatively minor penalty not even expressly listed in Policy #3321, I fail to see how the combination of a long term suspension, coupled with an increment withholding, will not bring about the complete Policy #3321 reformation of an otherwise valued teacher with ten years of service to the District.

Additionally, the inordinate passage of time allowed by the District between April 27, 2009 and the filing of tenure charges in 2012 only served to show that Ms. Buglovsky has been working to improve upon herself personally, e.g., seeing a therapist and taking medications for latently diagnosed mood disorders, discontinuing consumption of alcohol, discontinuing the partnering of her personal life and the District's Network, and ending her troublesome marriage in 2012. With increasing personal stability, it is apparent that Ms. Buglovsky will only become a more valued individual to those students and others whom are dependent upon her.

Finally, what lends support to a modified penalty is the District's own evaluation of Ms. Buglovsky at the end of the 2010-2011 school year. On June 6, 2011, Administrator Ellen Kessler, under Part I, "Evidence of Effective Teaching", states, "Mrs. Buglovsky worked collaboratively with her team partner (Mike Patrick) to create a program that was differentiated and individualized to meet the needs of all students. One of her greatest challenges was in providing instruction for the triple classes. With great planning and sharing of responsibilities, she and her co-teacher were able to turn this hardship into a successful instructional practice."

Under Part II, "Professional Development Plan and Activities", the following is stated:

Mrs. Buglovsky's Professional Development Plan included not only the fitness program mentioned above, but also the implementation of technology into her lessons. This was accomplished through the use of Smart Board technology and tools, as well as on-line games and Discovery Education video streaming to aid in multi-modal teaching of athletic skills

and exercise techniques. The application of sports vision concepts to help improve student performance was also a goal.

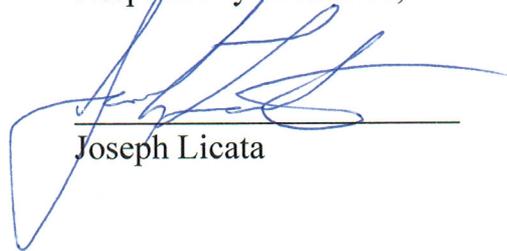
The evaluation reflects that Ms. Buglovsky's proudest accomplishment was demonstrated by her students' excellent results at the annual district Field Day event. Health lessons were also part of Ms. Buglovsky's effective teaching, educating all level students on healthy choices including fitness, food and exercise.

Based on the foregoing, I find and conclude that the Board has demonstrated Ms. Buglovsky's violation of Policy #3321 (whether it be couched as Unbecoming Conduct or Other Just Cause for discipline) with respect to Tenure Charges Two, in part, Three, in part, and Six. The District withdrew Charge Eight. The remaining Charges are dismissed. The penalty of dismissal is modified to a suspension and an increment withholding relative to the 2011-2012 School Year. The Board is directed to reinstate Ms. Buglovsky commencing the first day of school following the currently pending holiday break. If Ms. Buglovsky needs personal time during the school day, as it appears she does, then it is highly advisable that she not perform stipend-related activity during her lunch period. I adjust this matter accordingly.

AWARD

Based on the foregoing, I find and conclude that the Randolph Township Board of Education has demonstrated, in part, just cause to discipline Jill Buglovsky under N.J.S.A. 18A:28-5 with respect to Tenure Charges Two, in part, Three, in part, and Six. The Board withdrew Charge Eight. The remaining Charges are dismissed. The penalty of dismissal is modified to a suspension without pay and increment withholding relative to the 2011-2012 School Year. The Board is directed to reinstate Ms. Buglovsky commencing the first day of school following the currently pending holiday break.

Respectfully submitted,

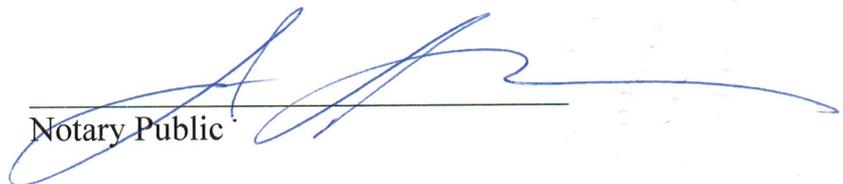


Joseph Licata

Dated: December 21, 2012

State of New Jersey)
):SS
County of Bergen)

On the 21st day of December, 2012, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.



Notary Public

JAMES JISOO KIM
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES AUGUST 22, 2016