STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of the Tenure Hearing of:

GLENN CIRIPOMPA,
SCHOOL DISTRICT OF THE BOROUGH
OF BOUND BROOK, SOMERSET COUNTY

Agency Docket #177-7/14

Walt De Treux, Esq., Arbitrator

Exhibits and Briefs Received: 5/15/17
Decision Date: 6/16/17

Appearances: For the School District – Robert J. Merryman, Esq., APRUZZESE McDERMOTT
For the Respondent – Arnold M. Mellk, Esq.; Edward A. Cridge, Esq. and Gidian R. Mellk, Esq. (on brief), *MELLK O'NEILL*

Procedural History

On July 14, 2014, the Bound Brook Board of Education considered tenure charges against Bound Brook High School math teacher Glen Ciripompa. The charges alleged conduct unbecoming a teacher related to Respondent's inappropriate use of the District's computer network and his District-provided computer and IPad (Count I) and inappropriate interactions with female staff members (Count II). The Board of Education found merit to the charges and certified the charges to the New Jersey Commissioner of Education. An arbitrator was assigned to hear the charges, and hearings were conducted in September 2014. On October 20, 2014, the Arbitrator issued an Award finding that the District proved the allegations in Count I, but failed to prove the allegations in Count II because Respondent's interactions with the female staff members did not "meet the generally recognized definition of *hostile environment sexual harassment.*" *(emphasis in original)* As to Count I, the Arbitrator found that the District had not

shown that the charges "justify the removal of Respondent from his tenured teaching position." His finding was based, in part, on the testimony of a psychiatrist, who testified that Respondent "understood his lapse in judgment and was extremely unlikely to engage in the behavior again." He reduced the disciplinary penalty to a suspension without pay of 120 days.

The District filed an action in the Superior Court of New Jersey to vacate the Award. On January 8, 2015, the Court responded affirmatively, vacating the Award because the Arbitrator erroneously considered the conduct under New Jersey's sexual harassment laws, improperly excluded evidence related to a Twitter posting that prompted the District's investigation into Respondent's computer use, and allowed and relied on testimony from the psychiatrist. The Court remanded the case to be heard by a different arbitrator.

The Superior Court was reversed by the Appellate Division on October 29, 2015, and the Award was reinstated. On February 21, 2017, the New Jersey Supreme Court reversed the Appellate Division. The Award was once again vacated and remanded to a different arbitrator.

After the initial remand, the undersigned Arbitrator was appointed to hear the case, but the matter was held in abeyance pending the appeal process. After the Supreme Court decision, the arbitration process resumed. The parties agreed to forego further hearings. Instead, they submitted the transcripts and exhibits from the earlier hearings, excluding the testimony of the psychiatrist and admitting the previously-excluded Twitter post. The parties filed briefs in support of their respective positions, and the matter was submitted to the Arbitrator for a decision.

Statement of Relevant Facts

During the 2013-14 school year, a teacher/coach in the School District reported to then-Assistant Superintendent Daniel Gallagher that a student/athlete had told him about a Twitter posting that indicated Bound Brook teacher "Mr. C" (as Respondent is often called) was "sending out nudes." Dr. Gallagher instructed the Director of Technology to retrieve Respondent's laptop computer. The laptop was turned over to Dr. Gallagher, who conducted a search and found "probably a hundred or more emails with photos attached." The photos included pictures of "[n]aked women, body parts. Sexual body parts."

Dr. Gallagher reported his findings to the Superintendent, who instructed him to contact the Bound Brook Police Department. The police and the local prosecutor's office arrived at the school and took possession of Respondent's laptop and IPad. Dr. Gallagher retrieved copies of the emails and photos from the District's server. The District submitted into evidence 183 pages of emails and photos that were of a sexual nature. Only a few were sent during the school day, but all were sent or received on the District's computer network through Respondent's laptop or IPad.

During the same school year, the District investigated several complaints from female staff members regarding interactions with Respondent that they deemed inappropriate and made them feel uncomfortable.

ESL teacher Kristin Brucia testified that Respondent would "come up behind me and whisper that I looked nice that day or it was a nice dress or something close to my ear quietly." On Valentine's Day two years earlier, he had bought carnations from students for a fundraiser and had them delivered to her by students with anonymous notes. Later in the day, he sent her

an email revealing that he had purchased the carnations and wishing her a nice Valentine's Day. She thanked him for the flowers, but told him she had a boyfriend. Before Mother's Day one year, he told her he was sending his wife to a spa for the day and asked if she wanted to bring her sons to a play date with his son. She declined.

Special Education teacher and softball coach Alexandra Shafi reported to the Athletic Director that Respondent, in the presence of two students, asked her if she "wanted to go out with him after the softball game." She refused, and he asked again. She replied no again. Later that day, he attended the softball game for a short period of time, which gave her "an eerie feeling."

Music teacher Marian Stewart testified that Respondent made her "uncomfortable" when he made a joking comment, in the presence of a student, implying that her pants were too tight.

Art teacher Elizabeth Levering testified that Respondent overheard her conversation with a co-worker about her boyfriend's work travel. Respondent approached her and offered his assistance "if I needed anything while the boyfriend was away." Another time, while she was hanging art projects, Respondent "was in my personal space a little bit" and told her "how good I looked in a pair of jeans."

The discovery of sexually related emails on his computer and IPad and the reports from female staff members of inappropriate interactions led the District to file the tenure charges for conduct unbecoming a teacher.

Issue

Has the School District of Bound Brook Borough established the allegations of conduct unbecoming against Respondent Glenn Ciripompa as set forth in the tenure charges? If so, do those charges warrant dismissal? To what remedies are the parties entitled?

Relevant Board of Education Policies

3321 – ACCEPTABLE USE OF COMPUTER NETWORKS/COMPUTERS AND RESOURCES BY TEACHING STAFF MEMBERS

***

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 network(s)/computers for illegal, inappropriate or obscene purposes, on in support of such activities. Illegal activities are defined as activities which violate federal, state, local laws and regulations. Inappropriate activities are defined as those that violate the intended use of the network(s). Obscene activities shall be defined as a violation of generally accepted social standards for use of publicly owned and operated communication vehicles.

***

Violations

Individuals violating this policy shall be subject to appropriate disciplinary actions as defined by Policy No. 1350, Discipline which includes but are not limited to:

1. Use of the network(s)/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.

3362 – SEXUAL HARASSMENT (M)

…Offensive speech and conduct are wholly inappropriate to the harmonious employment relationship necessary to the operation of the school district and intolerable in a workplace to which the children of this district are exposed.

Sexual harassment includes all nonwelcome sexual advances, requests for sexual favors, and verbal or physical contacts of a sexual nature that would not have happened except for the employee's gender…

The sexual harassment of any employee of this district is strictly forbidden. Any employee or agent of this Board who is found to have sexually harassed an employee of this district will be subject to discipline which may include termination of employment…

4281 – INAPPROPRIATE STAFF CONDUCT

***

School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils…

***

The Commissioner of Education had determined inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Therefore, school staff members are advised to be concerned with such conduct which may include, but are not limited to, communications and/or publications using e-mails, text-messaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.

A school staff member is always expected to maintain a professional relationship with pupils and school staff members shall protect the health, safety and welfare of school pupils…

Analysis and Decision

Respondent did not testify at the arbitration hearing. Accordingly, the evidence and testimony offered by the School District is uncontroverted. The issue, therefore, is whether the proven conduct constitutes conduct unbecoming a teacher; and if so, does it warrant dismissal? In the appeal of the first arbitration award in the present case, the New Jersey Supreme Court addressed the standard for unbecoming conduct as follows,

> "A charge of unbecoming conduct requires only evidence of inappropriate conduct by teaching professionals. It focuses on the morale, efficiency, and public perception of an entity, and how those concerns are harmed by allowing teachers to behave inappropriately while holding public employment." *Bound Brook Board of Education v. Ciripompa,* 288 N.J. 4, 14 (2017)

Count I – Network/Computer Use

There is no real dispute that Respondent's use of the School District computer and IPad and the District's computer network to send and receive emails of a sexual nature, including naked photos, is inappropriate conduct by a teaching professional and constitutes conduct unbecoming. Although Respondent argues that his conduct does not warrant dismissal, he does not challenge the conclusion that he engaged in unbecoming conduct. Even though he does not contest the charge of conduct unbecoming, it is necessary to highlight the number and nature of those emails to appreciate the severity of Respondent's infractions.

The District submitted 183 pages of inappropriate emails and emailed photos. Respondent notes that only 4 emails were sent during the school day (another 13 were received during the school day), and none were sent when Respondent had students in the classroom. But whether they were sent during or outside the school day, the fact remains that

all the emails were sent or received on a District computer and IPad and on the District's network in clear violation of the Acceptable Use Policy.

The emails were directed at contacting and engaging sex partners through craigslist or other websites and included Respondent and the potential sex partners exchanging naked or near naked photos. I see no reason to repeat in this Award, which will become public, the exact quotes from the emails. But in many instances, Respondent contacted the potential sex partners, and they asked him to verify his age and identity through certain websites. In at least one case, a woman quoted prices for her services; and in others, the potential sex partners and/or Respondent described the sexual activities in which they wanted to engage. Many of the emails included naked pictures of the potential sex partners and pictures of Respondent.

The District Policy on Acceptable Use of Computer Network(s)/Computers clearly prohibits any use for illegal, inappropriate, or obscene purposes. Although, as noted, at least one potential sex partner quoted prices for her services, the District cannot show that Respondent's computer activities were illegal in any way. The police and prosecutor were called into the case, and the record does not indicate that Respondent was ever charged with criminal activity. The emails, however, are clearly inappropriate and obscene as defined by the Policy.

"Inappropriate activities" indicate any activities "that violate the intended use of the network(s)." The Policy states, "The Board provides access to computer network(s)/computers for administrative and educational purposes only." Solicitation of sex serves no administrative or educational purpose for the benefit of the District or its students.

"Obscene activities" are defined as "a violation of generally accepted social standards for use of *publicly owned and operated* communication vehicles." *(emphasis added)* If Respondent engaged in these activities through his own computer, the District would arguably have no basis for discipline absent some greater nexus to the workplace. But Respondent sent these emails and photos on District computers and on the District network for his own purposes. It seems obvious to state that the use of the District computers and network to engage in personal behavior of a sexual nature is in violation of generally accepted social standards, and therefore, constitutes "obscene activities" under the Policy.

Respondent's use of the District's computer network and computers for these purposes is inappropriate conduct for a teaching professional and in violation of the Acceptable Use policy. For these reasons, I find that the District has established the allegation of conduct unbecoming in Count I of the tenure charges.

Count II – Interaction with Female Staff

Respondent challenges the assertion that his interactions with female staff members Brucia, Shafi, Stewart, and Levering were inappropriate and constituted conduct unbecoming.

The Inappropriate Staff Conduct Policy requires staff to "be appropriate at all times" when completing their professional responsibilities. It focuses mainly on interaction with students, but cautions that staff "shall not engage in inappropriate language or expression in the presence of pupils." The Sexual Harassment Policy recognizes "[o]ffensive speech and conduct" as "wholly inappropriate;" and it defines sexual harassment to include "unwelcome sexual advances" and "verbal or physical contacts of a sexual nature."

Respondent violated those policies in his interactions with female staff. Respondent would come up behind Brucia and whisper comments about her physical appearance or dress. If he was simply complimenting her, his behavior may be viewed innocently. But the fact that he came up to her from behind and whispered "close to my ear quietly" is more indicative of contact of a sexual nature. He also sent her carnations with his identity unknown to her but known to the students who sold the carnations and had to deliver them to Brucia – an inappropriate expression in the presence of the students in violation of the Inappropriate Conduct Policy. Finally, he suggested a play date between their sons because he had send his wife away for the day – a suggestion that could reasonably be taken as an unwelcome sexual advance when considered in light of his other inappropriate behavior toward Brucia.

Despite Shafi's "eerie feeling," Respondent's attendance at her softball game does not violate any policy, particularly since he did not engage in any inappropriate activity at the game. But he asked her out on a date in the presence of students – another clear violation of the Inappropriate Staff Conduct Policy. It may be acceptable to ask her out, but it was wholly inappropriate to do so in front of students.

Similarly, he made a joking reference to Stewart's tight pants, which should not have been done in front of a student. The student questioned Stewart as to the meaning of Respondent's comment, which drives home the point that the behavior was inappropriate in front of the student and was in violation of the Inappropriate Staff Conduct Policy.

Respondent's offer of assistance to Levering while her boyfriend was away is subject to interpretation. It may be a kind offer of help, or it may be an unwelcome sexual advance, depending on how it was said and intended. There is not enough evidence to label it a violation

of policy. But his comment about how good she looked in jeans while standing "in [her] personal space" is similar to his quiet whisper into Brucia's ear. The context and substance of the comment suggest an unwelcome sexual advance or contact of a sexual nature in violation of the Sexual Harassment policy.

The policies define and regulate appropriate conduct among and between staff. Violations of the policies, by definition, constitute inappropriate conduct by a teaching professional. Accordingly, I find that the District has established the allegation of conduct unbecoming in Count II of the tenure charges.

Appropriate Disciplinary Penalty

The egregiousness of Respondent's behavior should be evident. Entrusted with the education of high school students and expected to further the mission of the School District, he used District resources and equipment for his own personal use and in a manner that would be offensive to students, parents, and the public. He engaged in personal and private matters on the District's time and over the District's computer network. The exchange of naked pictures and the search for sex partners have no place in an educational setting. He blatantly disregarded and repeatedly violated District policies. His interactions with female co-workers were unwelcome, made them feel uncomfortable, and caused them to try and avoid him during the school day. Because of the number of times he used the computer for inappropriate reasons and the number of times he conducted himself inappropriately with female staff, his behavior cannot be attributed to a lapse in judgment. Rather, his conduct demonstrated a

pattern of willful violations of policy and an astounding lack of any sense of boundaries for a teaching professional who is well-trained in the appropriate conduct expected of him.

Respondent cites *In re Fulcomer,* 93 N.J. Super. 401 (App. Div. 1967) for its holding that a determination of penalty requires consideration of the nature and gravity of the offense under all the circumstances involved; any extenuating or aggravating circumstances; and the harm or injurious effect the conduct may have had on the maintenance of discipline and the proper administration of the school system. (at 422) The paragraph above adequately captures the serious nature and gravity of the Respondent's infractions. He has offered no mitigating circumstances or other justification or explanation for his behavior. And as the District argues, he has shown no remorse for his actions. The repetitive nature of the violations serve as aggravating circumstances. And his actions had an injurious effect on the maintenance of discipline and the proper administration of the school. Respondent's actions led the District to conduct an investigation that led to an embarrassing and shocking discovery, compelled the District to contact local police and prosecutor, would tend to negatively affect the public's view of the District and its administration and staff if it learned of the conduct, and revealed the uncomfortable and humiliating situations in which he placed female staff in the presence of students.

Courts have held that focus in determining the penalty should be on the employee's fitness to discharge the duties and functions of his position. *In re Grossman,* 127 N.J. Super. 13, 29 (App. Div. 1974); *In re Young,* 202 N.J. 50 (2010). Respondent's computer activities, repeated numerous times in willful disregard of the Acceptable Use Policy, call into serious question his fitness as a teacher. His lack of any sense of boundaries and his abdication of his

professional responsibilities as an educator make his judgment suspect. Respondent's absence of remorse does not offer any reason to conclude that he will not engage in similar behavior in the future. His interactions with his female colleagues reinforce the questions about his judgment, sense of responsibility and propriety, and ultimately, his fitness as a teacher.

Respondent contends that the Acceptable Use Policy mandates progressive discipline. But its reference to the sanctions that may be imposed for computer/network misuse is not couched in terms of a progressive disciplinary approach; but rather, it is a listing of the possible sanctions for such misuse from supervised computer privileges to criminal prosecution, depending on the nature or severity of the conduct. It makes clear that "any appropriate action" may be taken by the District.

In the present case, due to the egregiousness of Respondent's conduct and the repeated nature of the violations in willful disregard of District policies, dismissal is an appropriate penalty.

For these reasons, I find that the tenure charges in Counts I and II warrant dismissal.

Award

The School District of Bound Brook Borough has established its allegations of conduct unbecoming in Counts I and II of the tenure charges against Respondent Glenn Ciripompa. The charges are sufficient to warrant dismissal.

Walt De TReux

WALT De TREUX

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of the Tenure Hearing of:

GLENN CIRIPOMPA,
SCHOOL DISTRICT OF THE BOROUGH
OF BOUND BROOK, SOMERSET COUNTY

Agency Docket #177-7/14

Walt De Treux, Esq., Arbitrator

Exhibits and Briefs Received: 5/15/17
Decision Date: 6/16/17

Affirmation

I, Walt De Treux, affirm that I am the individual who executed this Decision and Award.

Walt De TReux
_____
WALT De TREUX