

Pursuant to Referral By the Commissioner of Education  
State of New Jersey  
Before Timothy J. Brown, Esquire

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**In the matter of:**

**The Tenure Hearing of Frank Flood** :  
: :  
**Cumberland County Technical** : **Agency Docket No. 97-5/13**  
**Education Center** : :  
: :  
**Cumberland County** :

**Decision and Award**

**Appearances:**

**On behalf of Cumberland County Technical  
Education Center, Cumberland County:**

Mitchell H. Kizner, Esquire  
Flaster Greenberg  
1810 Chapel Avenue West  
Cherry Hill, NJ 08002

**On behalf of Frank Flood:**

Ned P. Rogovoy, Esquire  
Madison Square Complex  
782 S. Brewster Road, Unit 6A  
Vineland, NJ 08361

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## **Introduction**

This matter arises from tenure charges of conduct unbecoming a staff member against Frank Flood, (Respondent) by the Cumberland County Technical Education Center, Cumberland, County (the District) and a June 10, 2013 referral of the tenure charges to the undersigned by the New Jersey Department of Education, Bureau of Controversies and Disputes pursuant to N.J.S.A. 18A:6-16 as amended by *P.L. 2112, c. 26*.

The hearing in this matter was conducted on July 10, 2013 in Vineland, New Jersey. All parties were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Witnesses were sequestered. Respondent Frank Flood was present for the entire hearing and testified on his own behalf. At the close of the hearing on July 10, 2013, the parties presented oral closing argument and the dispute was deemed submitted.

This Award is made following my careful consideration of the entire record in the matter including all relevant exhibits, arguments and my observations of the demeanor of each witness.

## **Issues**

This matter presents the following issues:

- (1) Has the District met its burden of establishing the truth of its conduct unbecoming tenure charges against Respondent, and, if so, do the proven charges warrant dismissal?

## **The Tenure Charge**

On May 9, 2013 the District's Board Secretary certified charges against Respondent of conduct unbecoming a staff member. The supporting Charge referenced

three cases involving Respondent and High School students at the shared time technical school, and stated that:

Case 1: January 18, 2013, Student, 11<sup>th</sup> Grade, Millville Senior High School

During the morning of January 18, 2013, Mr. Flood and his A.M. students were involved in small group work. Mr. Flood was working with a grouping of students (approximately 6) in an area of the shop. A student (C. R.) Was working in this group. During this time, C. R. was pushed by Mr. Flood and fell back into a piece of equipment. This fall caused a bruise to form on his leg. C. R. did not report this until returning to his home school due to the discomfort he was feeling. The student visited the school nurse at Millville Senior High School. C. R. told the nurse that he fell into a machine after being pulled by the teacher. The examination of the nurse revealed a three-inch large hard area with an abrasion and skin discoloration on the student's right thigh. The home school contacted CCTEC Administration via phone and e-mail after making contact with the parents of the student. Mrs. R[---], parent, also contacted Mr. Cruet stating that she received a phone call from the school nurse at Millville Senior High School letting her know that her son had a bruised leg from falling in Mr. Flood's AM Carpentry class when Mr. Flood grabbed him.

C. R. Was brought back to CCTEC by his parents so that he could relate his story to Administration. Mr. Cruet, Principle of CCTEC and I met with C. R. and his parents. C. R. stated that he was shocked at the push and had no idea why Mr. Flood would push him in that way. He stated that he and another student were talking and "messing around with a tape measure." He demonstrated the push on his father for Mr. Cruet and I. When asked why he thought Mr. Flood would do something like that, he responded that he had no idea and was shocked by the whole incident. Two additional students were around this area at the time and both were interviewed separately and relayed the same occurrence of Mr. Flood pushing C. R. (Student Statements, 1A)

Mr. Flood was brought into the office with union representation. When told the incident, he did not respond in any way. He was told that he was immediately suspended with pay and was escorted out to collect his things.

The Board of Education approved the suspension of Mr. Flood at its January 24, 2013 meeting. Mr. Flood and his attorney sent forward and a statement on January 24, 2013 in advance of the board meeting. The letter included Mr. Flood's details of the story. (1B) During the January Bcard

Meeting, Mr. Flood and his attorney attended to represent Ms. Mr. Flood's side of the story. He did admit making contact with the student.

The Board wanted to investigate the matter further so an additional meeting was scheduled for February 7<sup>th</sup>, 2013.

During the February 7th, 2013 meeting, Mr. Flood again attended with his attorney Mr. Rogovoy. Additional students and staff were interviewed and their accounts were presented. Mr. Rogovoy asked questions and was provided with answers. Mr. Flood became very agitated during the meeting and stated that he didn't know why he was fighting for his job again

The Board took action to continue the suspension with pay during the February 7th, 2013 meeting.

Case 2: March 29, 2012, Student, 12<sup>th</sup> Grade, Millville Senior High School

Mr. Flood and his class were working in the small ranchers they were building on the property of CCTEC. Student J. M. was in the front doorway of the home on the front porch area. Mr. Flood asked the student to enter the house. The student refused saying he was trying to get some air. Mr. Flood again asked him to enter the house. The student and Mr. Flood exchanged words, with the student continuing to refuse to come into the house. Mr. Flood then reacted and pushed the student down a flight of stairs using both hands on the student's chest.

The student immediately reported to Administration what had occurred. Statements were written by the student, J. M., and 3 other student witnesses and in all the statements the students agreed on the incident. (Student Statements 2A)

Mr. Flood was called into Mr. Cruet's office to have him account for his side of the story. Mr. Flood wrote the following statement on a piece of paper and handed it to Mr. Cruet, "Jonathan misbehaved." (2B)

Mr. Flood provided a written statement on April 5th during a meeting with the Superintendent (2 C). In the statement Mr. Flood writes "I moved him out of the door for safety." Mr. Flood was suspended with pay on April 3rd, 2013. (I have also included summary of events for review (2C-1.)

The Board met on April 26, 2012 to determine Mr. Flood's return. The Board determined that prior to Mr. Flood's return to active employment, he was to undergo a psychological fitness for duty examination. His suspension was continued at this time.

During the summer of 2012, a Board -selected professional, Dr. Glass, met with Mr. Flood and also administered a series of tests on May 23, 2012. Doctor Glass provided a lengthy report that is attached along with the notes of the Superintendent (2D and E)<sup>1</sup>. Dr. Glass determined that Mr. Flood was to see another medical professional for a series of visits. Dr. Glass's report was memorialized in a contract between Mr. Flood and The CCTEC Board (2F). Mr. Flood was to attend weekly counseling sessions by a board certified psychiatrist, licensed Ph.D. level psychologist, or a Licensed Clinical Social Worker. At the conclusion of the counseling, Dr. Glass would assess if Mr. Flood could return to work. The board would then determine if they would re-instate Mr. Flood.

Mr. Flood attended seven sessions with LCSW, Diane Gruszewski. She worked with Mr. Flood on the concepts of cognitive distortions, communication techniques, meditation and mindfulness. Dr. Glass reviewed Diane's reports and submitted the attached report (2 G.) Dr. Glass recommended that Mr. Flood not be returned to the classroom and that he should seek more appropriate treatment. Dr. Glass goes on to state, "He continues to hold on to his belief that his behavior is fine and appropriate under the circumstances and that he did not wrong, or that this was totally the faulty of other administrators who did not exercise their authority correctly, then the likelihood of recurrence of inappropriate and damaging behaviors remains high and Mr. Flood would not belong in the classroom has an educator." On September 10, 2012, the Board took action to continue the suspension and require that he attended more sessions with Ms. Gruszewski.

Diane Gruszewski provided the Board with an October 3, 2012 report (2H.) In the report she states that Mr. Flood was fit to return to work and resume his duties but that he continue with therapy after his return to work to assist with the transition back to the work environment.

On November 14, 2012 the Board received correspondence that Mr. Flood had completed his therapy sessions and no further sessions were needed (2I.)

Case 3: October 1, 2004, Student 12<sup>th</sup> Grade, Vineland High School

Mr. and Mrs. D[---] composed and sent a letter to Ms. Barbara Gantwerk, Director of the Office of Special Education, NJ DOE. The letter was written in regard to their son (B. D.) The letter stated that on October 1, 2004 their son was in Mr. Flood's Carpentry Class. It went on to explain that toward the end of the class, Mr. Flood kicked B. D. three times. The

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<sup>1</sup> The parties stipulated that the contents of this and other referenced reports by Glass and LCSW Gruszewski would not be considered by the undersigned. Accordingly, the contents of such reports have not been considered by the undersigned.

parents went on to express how Mr. Flood admitted to kicking their son three times and even demonstrated it in a meeting with Administration. (Included for your reference is the initial letter of complaint, dated October 18, 2004 and the statement of the student. 3A 1-2)

Dr. John Burns, Assistant Principal, was the first Administrator to investigate. He composed a memo to Mr. Flood regarding the incident (included for your reference. 3 Me) Dr. Burns stated, "At a parent conference later that day you (Mr. Flood) freely admitted that this had occurred." The occurrence was making physical contact with a student three times.

Mr. Flood prepared a written statement (included for your references 3C) where he does admit to having a verbal exchange with the student and states "to emphasize my authority, in a sense of camaraderie, I crossed my right foot behind my left leg and brushed the student's lower right calf. He repeated the move twice.

On October 27, 2004, the Board of Vocational Education met and considered the matter of behavior. The Board passed a resolution approving the Superintendent's decision to suspend Mr. Flood without pay for five days. In addition, the Board approved adding classroom management to Mr. Flood's professional improvement plan. The Board passed a Resolution regarding this matter, which is attached (3 D).

Mr. Flood did appeal the decision but was denied the appeal by Mrs. Barber, Superintendent.

### **Facts**

Respondent is a certified teaching staff member employed by the District as a carpentry instructor teaching both high school students and adults in AM and PM classes at the Technical Education Center. Respondent has 18 years of experience as a carpentry instructor and began working for the District in or about 2003. Evidence of discipline in Respondent's disciplinary record is limited to the three incidents identified in the above-quoted charges.

Substantial evidence was offered by the parties relating to each of the three "cases" referenced in the District's charges. For purposes of this matter, and having

carefully considered all of the evidence and arguments relating to those incidents, I find that although the evidence does not establish each and every fact set forth in the charges, the District has met its burden of establishing that Respondent engaged in conduct warranting the discipline Respondent received relating to the 2004 and 2012 incidents. The majority of evidence at hearing related to the most recent “case” that resulted in the current suspension of Respondent and the filing of the instant tenure charges; the case involving Respondent’s conduct of January 18, 2013.

### **Events of January 18, 2013**

As a consequence of being bused in from four different high schools, students arrived at Respondent’s morning class on January 18, 2013 on a staggered schedule between 8:00 and 8:20 AM. Respondent explained that they were working on the concrete unit of instruction and were constructing wooden rubric cubes to represent the volume of a cubic yard (including cubes representing scale ratios of 1:1, 1:2 and 1:4) to be presented at an upcoming open-house. According to Respondent the largest two cubes were assembled with glue and dowels but because of its small scale, the 1:4 scale cube required the use of glue and brads nailed with a nail gun to hold it together. He recalled that January 18 was the first day for using the nail gun. The students in the class that morning were separated in small groups, with four students being placed in Respondent’s group.

Respondent recalls that while he and his group of students were beginning the small cube assembly process, one of the students, KC, requested to use the bathroom, leaving three students in the group; SM, CW and CR. Respondent recalled he was facing

the worktable and the three students were behind him looking over his shoulders as he worked. He recalled that at a critical point in the assembly process and shooting the nail gun his attention was drawn to the student on his left side, CW, who was looking behind Respondent and smirking at CR. Respondent testified that he put the nail gun down and turned to his right to see what was going on. Respondent testified that "I felt I had contact with someone" and that by the time he had turned around CR was stumbled back. He asked CR if he was OK and the student responded yes. Respondent then gave CR the nail gun and the lesson continued. On cross-examination Respondent testified that he had no idea why the student was stumbling, that he assumed the student hit one of the machines because he heard a noise and that he asked CR if he was all right. According to Respondent, CR replied that he was all right and thereafter the student took a turn with the nail gun, and made no complaint throughout the remainder of the class.

Respondent testified that the first time he became aware that there was a problem that day was after lunch when the school's principal Mr. Cruet asked Respondent who had fallen down in his class that morning, a question to which Respondent answered that no one had fallen down.

According to student CW, he was standing over Respondent's left shoulder at the time of the January 18 incident and observed CR making faces behind Respondent's back and Respondent responding by using his right hand - side arm -and pushing CR into a table saw. CW testified that there was no nail gun involved that morning and that when he saw Respondent push CR he was "shocked." CW explained that he had never seen a teacher touch a kids before led alone push a kid. Even though CR was misbehaving, CW

testified, the situation could have been handled differently. CW recalled that Respondent's contact with CR was hard enough to push the kid a few feet back and hit the table. Again, CW testified, he did not expect Respondent to act in such a way and was shocked at the event.

CW confirmed that he was asked about the incident by "a lady" whose identity he did not recall at the time of the hearing and that after he told the lady what he observed the lady asked him to write down what had happened.

Student CR testified that he was standing behind Respondent, to the teacher's right side as the teacher was working on the cube. CR does not recall a nail gun being involved. In any event, CR admitted that as Respondent was trying to teach, CR was messing around with a tape measure. CR admitted he was misbehaving. The student recalls that Respondent, with the upper back part of his right arm, sort of hooked and pushed CR, causing CR to lose his balance and fall into the corner of a plainer machine about three feet away. CR hit his upper right thigh and testified that he caught himself and so did not fall to the ground. According to CR he did not instantly feel pain because he was shocked. Before this happened no one has ever laid a hand on him; not his dad or any teacher, he explained. He did not know what Respondent was doing to him at the time. CR testified that although he believes his falling into the machine was an accident, he also believes Respondent's pushing him in the first place was not an accident.

CR admitted that he did not complain about pain to any teacher for the remaining 45 minutes or so of the class and that after he returned to Millville High School (his home school) he became aware that his leg hurt as he was climbing stairs. He then went to the school nurse, was observed with a three-inch diameter black and blue welt on his thigh

and reported what had happened. The nurse made CR call his parents and reported the matter to Millville High School administration.

Patrick Cruet is principal of CCTECH and learned of the January 18 incident from a phone call from the Millville High School nurse, soon followed thereafter with an angry phone call from the parents of CR. Later that afternoon Cruet had a meeting in his office of CR and his parents and Superintendent Diane Elliott. Cruet also spoke with teaching aide Michael Denelsbeck who was in the carpentry room teaching another group of students at the time of the Riggins incident and asked if the aide had observed or heard a student fall in the classroom that day and Denelsbeck responded that he had not. CR supplied a written statement on that same day providing:

I was talking to my friend C[---]. Messing around with a tape masher. And flude got mad or some thing and whint back with his hand and pushed me in to a planer.

Cruet and Elliot, also met with Respondent and his Union representative in Cruet's office on January 18. When Elliot told Respondent of the report the school had received from CR, Respondent offered no response.

Elliott also met individually with the three other students in Respondent's January 18 carpentry group and learned that one student, KC, was in the restroom and the time of the incident, and that the other two students substantially confirmed the version of events reported by CR. Within a few days Elliott asked each of the students to submit a written statement describing what happened on January 18. In response, student SM wrote:

We were working on our project and [CR] was fooling around with [CW] and the Mr. Flood put his arm around [CR] and started spinning him around and then flung [CR] into the metal machine in the center of the room. Mr. Flood went on like nothing happened. [CR] was complaining his leg was hurting.

Student CW wrote:

[CR] was making faces behind Mr. Floods back, Mr. Flood reacted by pushing him to the side which made him collide into a piece of equipment

Superintendent Elliott credited the version of events offered by the students and Respondent was suspended with pay and a January 24, 2013 meeting of the School Board was scheduled to address the situation. Respondent and his attorney attended the January 24 meeting, provided Respondent's version of events – including an admission that Respondent “came into some kind of contact with the student although it wasn't a tremendous contact” - and presented the view that the student had not complained about anything happening or any injury for a lengthy period and that the statements of students received by the District were totally incongruous.

Following the January 24 Board meeting Superintendent Elliott conducted further investigation, including a review of pictures of the carpentry room with student witnesses and interviews of the teaching aide and others who may have been in the room at the time of the incident. A second School Board meeting was held on the matter on February 7, 2013, again attended by Respondent and his counsel, at which time the investigation was described, and Respondent was provided the opportunity to ask questions and make statements. Following the February 7, 2013 meeting, the Board determined to file tenure charges against Respondent.

## **Positions of the Parties**

### **Respondent**

Respondent argued that the Vo-tech environment is different from a regular school environment; it is more like an adult work-site than a high school classroom and such should be considered when assessing Respondent's conduct. Respondent's job is to prepare students for the working world, for the environment of real world job-sites. Also important in any assessment of Respondent's conduct is the doctrine well established by the New Jersey Supreme Court that that a single act of impropriety should not ruin an individual's career. Respondent is a good teacher, and it should be recognized that in 2004, a time when Respondent did not have tenure, in response to the parent complaint relating to his horseplay with a student the District could have simply not renewed Respondent's contract. Instead of doing so, the District reacted in a manner reflecting the conclusions that Respondent suffered a single act of bad judgment and that the student's parents had over reacted. Thereafter, reflecting the good teacher that he is, Respondent had a spotless record for eight years.

In regard to the 2012 incident, Respondent acted to manage the job-site and seek assistance to deal with the involved student's disruptive conduct from the administration, but his sought-after assistance that was not available. Thereafter Respondent reasonably acted to "quell a disturbance" as the law permits him to do; and did so in a manner that did not cause injury.

Moreover, the Respondent continued, Respondent clearly "paid the price" for his alleged bad conduct in 2004 and 2012; he met all of the demands and conditions imposed upon him by the District and was put back to work by the District because he successfully

corrected his conduct. Having paid the price, it is fundamentally unfair to require Respondent to be punished a second time now for his conduct of 2004 and 2012; the District should not be permitted to punish a teacher twice for the same incidents.

The only issue fairly and legitimately presented in this case, Respondent argued, is whether or not Respondent's conduct on January 18, 2013, standing alone, is sufficient to support his termination. The record evidence establishes that it was not. Respondent credibly testified that he did not even know why CR had stumbled and did not purposefully make contact with the student. The evidence establishes that although Respondent may have looked to his right and caused his arm to touch student CR, he did not intentionally harm the student. Even CR admitted such. Additionally, the evidence is inconsistent as to into what machine and where CR may have stumbled, and what may have caused CR's bruise. In this latter regard, CR complained to no one about pain or his stumble while he was at CCTEC; not his classmates, Respondent, other instructors in the room or school administrators, and his first complaint was well after the fact and in another school.

Respondent's long career as a good teacher should not be ended based upon wholly inconsistent reports of conduct that was, at most, an inadvertent incident. The District has not met its burden of showing that Respondent engaged in the conduct the District alleges and Respondent should be returned to his teaching position.

**The School District**

The School District asserts that the evidence supports its tenure charges. Respondent has established a pattern of unacceptable physical contact with students. Respondent admitted to student physical contact on each of the three occasions relied upon by the District. In 2004 he admitted he kicked a student even after the student asked that he not do so. In 2012 Respondent admitted to pushing a student, and in the most recent incident, respondent admitted there was contact between his arm and student CR. Respondent was given notice of the important rules involved in 2004, and although it is correct that he did not further violate the policies involved again until 2012, some eight years thereafter, the District maintained, his third violation of these important policies was less than a year after his second. The District should not be expected to have to await Respondent's fourth violation of the policy against physical contact with students to terminate Respondent. Respondent had no right to kick a student repeatedly in 2004, no right to push a student in 2012 and no right to push a student in 2013. In this later regard, the District asserted, Respondent's conduct on January 18, 2013, conduct taking place only four months after his return to work following his suspension for his 2012 conduct, was not the "inadvertent" event he claims. Rather, common sense dictates that if Respondent simply turned around to see what was going on, the student would not have been propelled into a nearby machine. The record establishes that whether or not he intended the student to fall into a machine, Respondent intentionally pushed CR.

Under the circumstances, the District concluded, the District has good reason to terminate Respondent.

## **Discussion**

Considering the full record in this matter including all testimony, evidence and argument of the parties, I conclude that the District has met its burden of showing unbecoming conduct to support the termination of Respondent.

The District has established that it provided Respondent adequate notice of the policies involved and of the consequences for violating the policies; that the District conducted adequate investigations into the three “cases” cited in its charges and that in each case Respondent was provided sufficient opportunity to present his arguments and side of the story. As indicated above, I find that as to the 2004 and 2012 incidents, the District had sufficient cause to conclude that Respondent engaged in the violations of policy alleged. Although I agree with Respondent that the 2004 incident should have little weight on the tenure issue presently presented, I find that such an incident nevertheless bears some weight as it certainly establishes Respondent’s long established knowledge of the important policies at issue.

As to Respondent’s argument that Respondent has “paid the price” for his alleged 2012 conduct and should not now be punished a second time for the incident, I find that such prior discipline is relevant to the propriety of the discharge presently at issue. In such regard, it is widely recognized that discipline is corrective in nature; that considerations of fairness and due process require that for all but the most egregious single incidents of conduct employees should be subject to discipline that places the employee on notice of the rules and encourages the employee to correct his or her bad conduct. Such encouragement usually informs the employee that further incidents of similar conduct in the future will result in progressively harsher discipline or discharge. Although the

application of progressive discipline thereby considers the past discipline of an employee, it does not, contrary to Respondent argument here, result in repeated discipline of an employee for conduct already the subject of prior discipline. Similarly, and contrary to what Respondent would have the undersigned do here and in the absence of contractual language to the contrary, the progressive discipline process does not recognize that once an employee has suffered his or her discipline (or in Respondent's words already "paid the price") for an incident of bad conduct that the slate is wiped clean. An employee's disciplinary history is a legitimate consideration in determining the propriety of discipline.

With these underlying considerations in mind, I find that the merits of this case are determined by a resolution of credibility conflicts between Respondent and student witnesses as to what actually occurred on January 18, 2013, and the application of progressive discipline within the context of Respondent's disciplinary history.

### **Credibility**

The difference between the January 18, 2013 incident as described by students CR and CW and the incident as described by Respondent are considerable. Respondent asserts the incident was a non-event, a simple turning to his right to see what was going on and an unintended slight contact with CR - an incident hardly warranting an impression upon his memory. On the other hand, the students presented testimony of an event of considerable significance; a deliberate incident that left them with indelible impressions of conduct by a teacher that shocked them. In regard to the nature of the January 18, 2013 incident, I find that consistent with the testimony of CR and CW, the

record establishes that the January 18, 2013 incident involved a significant, intentional, assertive physical contact by a teacher upon a student.

An inadvertent contact with another resulting from simply turning around will not likely send the recipient of the contact stumbling for any distance. In resolving credibility, the District is correct in its argument that common sense should not be ignored. In assessing credibility, it is well established that a finder of fact may apply his or her general knowledge of the world and common-sense logic as to what is likely to occur under any particular set of circumstances. In this matter, giving due consideration to common sense supports a finding that Respondent's contact with student CR was intentional.

I also make such a finding of intentional contact by Respondent based upon my crediting of the testimony of students CR and CW and discrediting the testimony of Respondent. Respondent has significant incentive to recall the incident in a light that best serves his interest. When offering testimony on the incident Respondent gave detail of matters occurring before and after his contact with CR, but offered only vague comments about actual instant of contact itself. For example, he painted a detailed picture that he was engaged in a serious matter with a potentially dangerous nail gun, implying without specifically stating that any conduct toward CR in which he may have engaged was reasonable under the circumstances. But inconsistently, when it came to the contact with the student itself, Respondent offered little, and what he did offer was inconsistent. For example, he first testified that as he turned around he came into contact with CR and when he completed his turn he saw CR stumble and asked him if he was OK, but later testified in a manner indicating he did not see CR fall into a machine, that he assumed

such because he “heard” the student hit something. Respondent offered no explanation of how he could have on the one hand seen the student stumbling and asked him if he was OK and on the other hand not seen the student fall into the machine. Considering his demeanor and testimony, I find that Respondent attempted to avoid testifying about facts that he believed could be interpreted against his interests.

In contrast to the equivocal testimony of Respondent, students CR and CW were direct in their testimony about the most probative facts of the incident. Although both students were hazy about which machine CR fell into and whether to describe Respondent’s contact with CR as a pull or a push, there was no hesitancy or doubt reflected in either witnesses’ testimony that Respondent deliberately contacted CR with a backward, hooking motion of his right arm, causing the student to twist and stumble. Both students testified that they were shocked at the conduct of the teacher; a reaction I find to be a likely response for students witnesses such an incident. In addition to the open and cooperative manner in which the students testified, each admitted his own conduct that placed himself in an unflattering light; each admitted that he was misbehaving at the time, with CR going so far as to admit that he was disrupting Respondent’s lesson. Importantly, there was no evidence offered to so much as hint as to any reason either student witness would lie about Respondent. The record is devoid of evidence of prior animosity of either student toward Respondent or of Respondent toward either student. Similarly, neither student showed any pleasure in his testimony against Respondent. I find that notwithstanding some confusion on their parts as to the location of the machine into which CR fell in what can fairly be described as a jumbled and

cluttered room, both student witnesses testified truthfully about the January 18, 2013 incident.

Accordingly, I find that on January 18, 2013 Respondent intentionally pushed student CR causing the student to fall into a nearby machine and bruise his thigh; a significant violation of important District policies designed to protect the well being of its students.

### **Appropriate Discipline**

Respondent's misconduct of January 18, 2013 was serious and was not excused by circumstances or conduct of the involved students. Contrary to the argument of Respondent, I am not persuaded that a separate, real-adult-world-job-site standard should be applied to teacher conduct toward students in a Vo-tech environment.

Applying the principals of fairness underlying the concept of progressive discipline, although it is reasonable and fair to recognize the mitigating nature of an employee's good conduct for a long period following discipline, as I have done here relating to Respondent's eight years of performance after his 2004 discipline, it is also fair to consider the substantial and serious nature of Respondent's 2012 conduct and the exceptionally short period of time between his return from discipline relating to that conduct and the January 18, 2013 incident at issue here. Considering the timing of this serious conduct in relation to Respondent's return to work only four months earlier; a return to work following (1) an incident involving Respondent having physical contact with a student, (2) an extended period suspension and (3) substantial corrective effort by the District, I find that the District appropriately determined that progressive discipline of

Respondent had run its course and that discharge was warranted. Under the circumstances, the District should not be compelled to further employ Respondent.

### Award

The District has satisfied its burden of establishing the truth of its conduct unbecoming tenure charges against Respondent and that the proven charges warrant dismissal.

The charges are sustained.

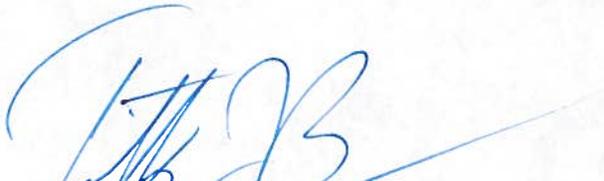
Dated: July 29, 2013



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Timothy J Brown, Esquire  
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket case No. 97-5/13 relating to tenure charges against Frank Flood on Monday, July 29, 2013.



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Timothy J Brown