STATE OF NEW JERSEY COMMISSIONER OF EDUCATION

IN THE MATTER OF THE ARBITRATION OF THE TENURE CHARGE	DOE DOCKET NO. 8-1/14
between	
HAMILTON TOWNSHIP BOARD OF EDUCATION,	**OPINION**
Petitioner,	**AND**
-and-	**AWARD**
LORETTA YOUNG,	
Respondent	

BEFORE: MICHAEL J. PECKLERS, ESQ., ARBITRATOR

DATE(S) OF HEARING: March 20, 2014; April 3, 2014; April 4, 2014; April 10, 2014; April 28, 2014

DATE OF AWARD: May 2, 2014

APPEARANCES:[1]

For the Petitioner:

Joseph F. Betley, Esq., CAPEHART SCATCHARD, P.A.
Angela Belmont, Vice Principal Steinert H. S. (March 20, 2014)
Frank Ingargiola, Principal Steinert H.S. "
Joseph Slavin, Director of Administration "
Dr. James Parla, Superintendent of Schools "
Student M.S. [via subpoena] (April 3, 2014); (April 10, 2014)
Student M.B. " "
Student J.C. " "

[1] In the interest of confidentiality, only the initials of the student witnesses who testified have been used both for appearance purposes as well as in the body of this AWARD. M.C. was permitted to testify over the objection of Respondent for impeachment purposes only.

Student M.C. [via subpoena] (April 10, 2014)

For the Respondent:

Edward Cridge, Esq., WILLS O'NEILL & MELK, ESQS.
Loretta Young, Respondent
Ashley Reeves, Student Teacher [via subpoena] (April 4, 2014)
Frank Gatto, Guidance Counselor " "
Student K.S. " "
Student J.D. " (April 28, 2014)

I. BACKGROUND OF THE CASE

Loretta Young is a tenured career educator with the Hamilton Township School District ("the District") with approximately five (5) years of unblemished service. At all times that are deemed relevant for the purposes of the instant proceeding, Ms. Young worked as a Student Assistance Coordinator[2] ("SAC") at Steinert High School. On December 13, 2013, Superintendent of Schools Dr. James Parla preferred tenure charges against Ms. Young to the Commissioner of Education, pursuant to N.J.S.A. 18A:6-10 *et seq.* and N.J.A.C. 6A:3-5.1 (b).

These were based upon the grounds of UNBECOMING CONDUCT AND MISBEHAVIOR, with the allegations charging that Ms. Young: directed that an exchange of marijuana and money occur between two students who were in her presence; permitted the students to leave her presence; did not report to the

---

2 The SAC position has at various times in the course of the hearings also been referred to as "Student Assistance Counselor." Both titles should be viewed as interchangeable herein, and Dr. Parla also noted that "Substance Abuse Counselor" is sometimes used.

school administration that the student who received the marijuana in the exchange was in possession of the marijuana on school premises; was not truthful with school administration about the circumstances of the incident when interviewed about it on October 30, 2013, in that the story she told on October 30, 2013 contradicted what she told Vice Principal Angela Belmont and Principal Frank Ingargiola in their respective meetings with her on October 23rd and 24th. *See,* PETITIONER EXHIBIT 1.

On December 16, 2013, the Interim Board Secretary Peter Frascella served Ms. Young with a copy of the tenure charges along with the Board's STATEMENT OF EVIDENCE pursuant to N.J.S.A. 18A:6-17.1. Mr. Cridge also received a copy of the same via email. Thereafter, on January 7, 2014, the Hamilton Township Board of Education considered the tenure charges, finding that there was probable cause to credit the evidence in support of the charges and that the tenure charges, if true, warrant the dismissal or reduction in salary of Ms. Young.

That same date, Mr. Frascella executed the CERTIFICATE OF DETERMINATION, per N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1 & 5.2. On January 13, 2014, the tenure charges and supporting documentation were transmitted to Kathleen Duncan, Esq., Director Bureau of Controversies and Disputes, New Jersey State Department of Education. By notice dated January 16, 2014, Director Duncan acknowledged receipt of the Board's certified tenure charges and directed Respondent Young to file a written response within fifteen

(15) days of the date the charges were filed with the Commissioner, along with proof of service upon the District. On January 28, 2014, Mr. Cridge filed an ANSWER on behalf of Ms. Young, with a copy forwarded to Board Counsel Betley.

In a correspondence to the undersigned dated February 10, 2014, Director Duncan advised that the matter had been referred to me for hearing and determination, pursuant to N.J.S.A. 18A:6-16 as amended by *P.L.* 2012, c. 26. A separate letter was also sent to the parties notifying them that following receipt of Respondent's answer on January 29, 2014, the captioned tenure charges had been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary as well as of my appointment as Arbitrator.

In anticipation of the appointment, on February 6, 2014, I had written to the parties offering potential dates for a conference call and hearing, and advising that in the event interrogatories were to be propounded, they should be limited to 25, with no subparts. The conference call was held without incident on February 19, 2014. On February 24, 2014 a confirming letter was sent to counsel memorializing a discovery schedule which would include the exchange of documents, and answers to interrogatories. On March 10, 2014, I executed a PROTECTIVE ORDER, which *inter alia* provided for the submission by Petitioner of certain student records to Respondent; that all such documents would be prominently marked CONFIDENTIAL by the party producing them; and that these documents would not be disclosed to persons other than the parties, their

counsel, and retained experts and consultants. Notification letters were also forwarded to the parents of the affected students by Board counsel.

On notice to the parties, hearings in the case were thereafter convened on March 20, 2014, April 3, 2014, April 4, 2014, April 10, 2014 and April 28, 2014. With the exception of the April 10, 2014 hearing, which took place at the Reynolds Middle School, all hearings were held at the Hamilton Township Board of Education Offices, 90 Park Place, in Hamilton, New Jersey. At that time, counsel were afforded a full opportunity to introduce relevant and admissible documentary evidence; to engage in oral argument; and to undertake the examination and cross-examination of sequestered witnesses who testified under oath.

A number of witnesses testified in response to subpoenas issued by counsel at my direction on March 24, 2014 (Respondent) and March 28, 2014 (Petitioner). A verbatim transcription of the proceedings was provided by GUY J. RENZI & ASSOCIATES. Ms. Young was present in the hearing room at all times, with the exception of when an Executive Session was convened to discuss evidentiary issues. In lieu of closing argument, post-hearing briefs were submitted, with the record declared closed as of April 29, 2014. This AWARD is rendered within forty-five (45) days of the start of the hearing, as mandated by N.J.S.A. 18A:6-17.1.d.

II. FRAMING OF THE ISSUE

Whether the Board has proven the allegations of conduct unbecoming set

forth in the tenure charge by a preponderance of the credible evidence, and if not, then what shall the proper remedy be?

III. RELEVANT STATUTORY LANGUAGE

P.L. 2012, Ch. 26 (TEACHNJ) ACT

* * *

8. N.J.S.A. 18A:6-16 is amended to read as follows;

* * *

> If, following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator pursuant to section [23] 22 of P.L. 2012 Ch. 26 for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

* * *

9. N.J.S.A. 18A:28-5 is amended to read as follows:

> 18A:28-5. a. The services of all teaching staff members employed prior to the effective date of P.L. 2012, c. 26 (C. 18A:6-117 *et al.*) in the positions of teacher, principal, other than administrative principal, assistant principal, vice-principal, assistant superintendent, and all other school nurses including school nurse supervisors, head school nurses, chief school nurses, school nurse coordinators, and any other nurse performing school nursing services, school athletic trainer and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect and school business administrators shared by two or more school districts, shall be under tenure during good behavior

and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of Article 2 of Chapter 6 of this Title, after employment in such district or by such board for:

* * *

[23] 22. (New Section)

* * *

b. The following provisions shall apply to a hearing conducted by an arbitrator pursuant to N.J.S. 18A:6-16, except as otherwise provided pursuant to P.L. , c. (C (pending before the Legislature as this bill):

(1) The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case;

* * *

(3) Upon referral of the case for arbitration, the employing board of education shall provide all evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. At least 10 days prior to the hearing, the employee shall provide all evidence upon which he will rely, including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employing board of education or its representative. The employee shall be precluded from presenting any additional evidence at the hearing except for purposes of impeachment of witnesses.

Discovery shall not include depositions, and interrogatories shall be limited to 25 without subparts.

c. The arbitrator shall determine the case under the American Arbitration Association labor arbitration rules. In the event of a conflict between the American Arbitration Association labor arbitration rules and the procedures

established pursuant to this section, the procedures established pursuant to this section shall govern.

d. Notwithstanding the provisions of N.J.S. 18A:6-25 or any other section of law to the contrary, the arbitrator shall render a written decision within 45 days of the start of the hearing.

e. The arbitrator's determination shall be final and binding and may not be appealable to the commissioner or the State Board of Education. The determination shall be subject to judicial review and enforcement as provided pursuant to N.J.S. 2A:24-7 through N.J.S. 2A:24-10.

f. Timelines set forth herein shall be strictly followed; the arbitrator or any involved party shall inform the commissioner of any timeline that is not adhered to.

g. An arbitrator may not extend the timeline of holding a hearing beyond 45 days of the assignment of the arbitrator to the case without approval from the commissioner. An arbitrator may not extend the timeline for rendering a written decision within 45 days of the start of the hearing without approval of the commissioner. Extension requests shall occur before the 41st day of the respective timelines set forth herein. The commissioner shall approve or disapprove extension requests within five days of receipt.

* * *

IV. POSITIONS OF THE PARTIES

Petitioner Hamilton Township Board of Education

I. INTRODUCTION

Q. At some point in time did Ms. Young say anything about bringing J. C. down to the office?

A. Yes. She asked if we can get J. C. down to her office.

Q. Did she say why she wanted J. C. down to her office?

A. To fix the conflict going on between them.

Q. And when you say conflict going on between them, what do you mean?

A. About the marijuana. M. S., Tr. April 3, 2014, p. 12.

"I remember Ms. Young saying to resolve it, she said you hand him-you give her the money back and you give him the weed back." M. B., Tr. April 3, 2014, p. 52

"*I didn't think."* Loretta Young, Tr. April 4, 2014, p. 141.

"That day created a lot of discourse with all that went on and I really cannot say--the kids would remember better than I would." Loretta Young, Tr. April 4, 2014, p. 166.

"*Oh What a Tangled Web We Weave When First We Practice to Deceive."* Walter Scott, Marmion, 1801.

The above citations from the testimony provided in this tenure hearing, combined with the famous quote from Walter Scott, succinctly illustrate what happened on October 22, 2013 in the office of the Respondent, Ms. Loretta Young, at Steinert High School, as well as the aftermath when the Respondent's attempt at revisionist history unraveled. M.B. testified "I thought what goes on in there and is said there stays in there." Tr. April 3, 2014, p. 57. "Mrs. Young said I can get you all in trouble ... and G.H. replied, you know you wouldn't do that, you love us too much." Tr. April 10, 2014, p. 21 (M.C. quoting G.H.).

As the Board alleged in its Tenure Charges, Ms. Young set in motion and presided over a disjointed version of street justice (or, at least justice within the confines of her office, where students felt comfortable trading back marijuana for cash with no fear of being turned in by Respondent because "what goes on in there stays in there") in which she brokered a resolution of a drug deal gone bad

between two students, J. C. and G. H. However, her efforts to sweep the controversy of the "skimped" bag of marijuana under the rug--to make this "go away; you give the money back; you give the drugs back and get out of here..."--as Dr. James Parla observed (March 20, 2014, p. 182-183), became unhinged when the student she allowed to leave her office with the illegal drugs (J. C.) was later caught in possession the next period.

Furthermore, the Respondent's rambling and confusing attempt to explain away her failure to report the drug transaction immediately to administration exposes the underlying inconsistency in her story. It was never the intent of Ms. Young to report any student to administration or police as to what happened in her office during 6th period. As far as she was concerned, the matter was settled -- G. H. had her money back as well as her routine lecture on not smoking pot, and J. C. had his marijuana back. Crisis resolved. End of story.

It was only after Respondent was told that J. C. was caught in possession that the cover-up wheels started churning. Ms. Young quickly had to think of a way to deal with her allowing a drug transaction to take place (and permitting a student to leave her office holding a bag of marijuana) not only under her watch but at her direction. Her first reaction was avoidance, hoping the issue would never come up. Her failure to inform administration--any member of administration--as she walked back and forth and forth and back from her office to the Main Office due to not wanting to be "rude" or feeling out of the loop is inconceivable, illogical and unbelievable.

However, the next day, as the story of the drug deal and J. C. getting caught went viral within the Steinert student body, avoidance was no longer viable. Ms. Young had to make it appear that she made a good faith effort to contact administration. The alleged inaccessibility of Vice Principal Angie Belmont and Principal Frank Ingargiola (as well as the other Vice Principal in the building, Duane Robinson) became the ticket. The next day, when asked to confirm what administration had been hearing from students that Ms. Young was present when this drug/money exchange occurred and actually arranged for it to take place, she attempted to justify her actions to Vice Principal Belmont by asserting she (Ms. Young) was conducting a private sting operation in trying to catch J. C. as a dealer.

This explanation was repeated to Principal Ingargiola the next day. Upon being placed on administrative suspension (P-8) and realizing that explanation may not work, Ms. Young changed her story, denying that she ever told the administration that she wanted to catch J. C. as a dealer. Rather, during the October 30, 2013 interview and having counsel at her side, Ms. Young's new narrative unfolded as her simply witnessing a spur of the moment transaction between J. C. and G. H. within seconds of the bell ringing with no forewarning and no opportunity to react, followed by claims of being beaten to the punch to report J. C. by another student, A. H., all within a backdrop of a generally disinterested and preoccupied administration. As Mr. Ingargiola observed, this is where the story "diverged" from attempting to catch J.C. as a dealer into a spontaneous exchange of marijuana for money, the bell rings seconds later, and

the students rush out without any time for Ms. Young to take any action. Tr. March 20, 214, pp. 119-120.

Moreover, and knowing she was being accused of facilitating a drug deal, that her position as a tenured teaching staff member was in jeopardy, and that the October 30, 2013 interview (with counsel present and top level administrators in attendance) was the shining moment to set the record straight and save her job, Ms. Young makes no mention of a student (M. S.) being the one who suggested the cash refund for the marijuana.

The Respondent's attempt to throw M. S. under the bus for the first time in these proceedings, and her convoluted excuse of not wanting to appear as if she was blaming someone else back on October 30, 2013 (April 3, 2014, p. 172-173), brings the web of deceit and cover-up to full circle. It is telling that not one question was posed to M.S. on cross examination as to her, rather than Ms. Young, being the author of the suggestion to J.C. and G.H. to do the exchange.

The inquiry as to M.S. centered on whether she was under the influence of any illegal substances and whether she spoke to any of the other witnesses prior to her testimony. One would think that if the primary defense of one of the key elements in the tenure charge is to point an accusatory finger at a student for suggesting the refund, at least one question would have been asked of that student along those lines. M.S., for only being 15 years old, raised a very poignant question when she was recalled on rebuttal: "But what I don't understand how come out of nowhere I am being blamed for this right now? How

come I am being told right now that it was my idea to exchange marijuana?" Tr. April 10, 2014, p. 10.

The Board will not engage in a blow by blow account of the testimony of each witness. The Arbitrator took extensive notes, and a transcript is available. Rather, we will break down the events and compare and contrast the testimony from the witnesses of the Board and Respondent in sequential order, offering analysis at relevant timelines as to why the charges should be sustained, and why Ms. Young's version should not be accepted. As will be noted, the testimony of the Board's witnesses, in particular the testimony of the student-witnesses who had no axes to grind, no biases and no dog in the fight, was consistent, forthright and unequivocal. These witnesses put the pieces of the puzzle as to what went on in Ms. Young's office on October 22, 2013 together in a neat, concise picture.

In contrast, the Respondent and her supportive witnesses were all over the place, creating more holes in Ms. Young's version of events than existed previously. The most recent appearance of J. D., as well as Respondent's intern, Ashley Reeves, as a subpoenaed witness were a waste of everybody's time. J. D. had little or any knowledge of what transpired in Ms. Young's office since she was only there for 2-3 minutes of the entire period, although her recollection of when the controversy over the skimped bag and the subsequent drug transaction taking place a good 15 minutes before the period ending (as opposed to seconds before the bell ringing as suggested by Respondent) is consistent with the

Board's witnesses. She saw and heard nothing that was relevant.

Likewise, Ms. Reeves brought nothing to the table, other than the fact that she failed to corroborate Ms. Young's testimony about Ms. Young's interaction with Principal Ingargiola and his alleged promise to call Ms. Young. Additionally, Frank Gatto was completely wrong on the critical issue of the timing of the events. His unsolicited statement that Ms. Young had a "sense of urgency" about her when he arrived unexpectedly at Ms. Young's office appeared rehearsed and canned.

And despite emphasizing his long standing professional relationship with Ms. Young, it is peculiar that there was not one question posed by Mr. Gatto of Ms. Young, not an ounce of curiosity, as to what the sense of urgency entailed. Common sense dictates there would have been some inquiry by Mr. Gatto. On the other hand, his statement as to the credibility of K. S., the star collaborative witness for Ms. Young, was revealing to say the least. As predicted by Mr. Gatto, the testimony of K. S. is unworthy of belief for a variety of reasons that will be explained below. The Board will then discuss why, even considering Ms. Young's record and the absence of prior disciplinary actions, her actions rise to the level of a capital offense in which dismissal is the only appropriate remedy.

II. SEQUENTIAL REVIEW OF TESTIMONY

TUESDAY, OCTOBER 22, 2013

A. BEGINNING OF 6TH PERIOD

The various student witnesses and Ms. Young were uncertain as to the exact identity of the individuals who were in Ms. Young's office at the start of 6th period and where they were physically located. This is most likely due to the unstructured setting of the office where students can drop in or out at any time with no sign-in procedure. We do know that G. H. and M. S. were there at the beginning of the period, along with K. S. and M. C. We also know from M. C. that she was in Ms. Young's office escorting K. S. and providing moral support due to K. S.'s emotional issues she was having that day (which was also confirmed by Mr. Gatto). April 10, 2014, p. 16-17.

It is undisputed that while in Ms. Young's office, G. H. raised concerns about being skimped in her marijuana buy from J. C. Ms. Young admits that the topic of an illegal drug sale between G. H. and J. C. was being raised as she facilitated the group discussion. Tr. April 4, 2014, p. 104; pp. 149-151. M. S. and M. C. both stated that it was Ms. Young who suggested that J. C. be summoned to her office so that the conflict between the G. H. and J. C. over the short bag of marijuana would be "fixed." (P-3; P-9). Specifically, M. S. testified:

> *Q. At some point in time did Ms. Young say anything about bringing J. C. down to the office?*
>
> *A. Yes. She asked if we can get J. C. down to her office.*
>
> *Q. Did she say why she wanted J. C. down to her office?*
>
> *A. To fix the conflict going on between them.*
>
> *Q. And when you say conflict going on between them, what do you mean?*
>
> *A. About the marijuana.*

Q. And between them is J. C. and G. H. is that correct?

A. G. H., yes.

Q. Do you know -- who did Ms. Young say or direct to get J.C. down to the office?

A. She didn't direct anyone. G.H. volunteered to text him and she did.

Q. Did you see that text?

A. No, I did not.

Q. And it was your understanding that this -- that this directive to bring J. C. down to the office was to fix the issue between G. H. and J. C. about the marijuana, correct?

A. Correct.

Q. Was there a suggestion by Ms. Young to have G.H. text J.C. to come down to Ms. Young's office?

A. No, she did not tell her to text him. She volunteered.

Q. But Ms. Young wanted J.C. down to her office?

A. Yes. April 3, 2014, p.12-13.

See also, M. C.'s testimony in Tr. April 10, 2014, p. 20:

Q. What do you recall Ms. Young saying about this--these complaints of G. H. saying she didn't get enough weed?

A. She was just saying well, you know, you shouldn't be smoking. And she suggested that they exchange--exchange the money and the weed back.

M. S.'s testimony at the hearing on April 3, 2014 and again on April 10, 2014 was consistent with her interview with administration on October 30, 2013 (P-3) and with her Certification (part of P-1). Her recollection is also on all fours with the testimony of M. C. as to whose idea it was for J. C. to appear in Ms.

Young's office during 6th period. Tr. April 10, 2014, pp. 20-21. Similarly, the text message received from J. C. that indicated his presence was requested by Ms. Young logically follows from M. S.'s and M. C.'s testimony that it was Ms. Young who wanted J. C. in her office. Tr. April 3, 2014, p. 82.

In fact, M. S. and M. C. have been the only consistent witnesses on that issue. Efforts to attack M. S.'s credibility by insinuating that she was on drugs or that she got together with J. C. to concoct a story to bring down a teacher who got her friend (J. C.) in trouble were fruitless. It was not Ms. Young who was suspected of "ratting out" J. C. Rather, it was A. H., the boyfriend of G. H. J. C. and M. S., even assuming they had vindictive motives, took it out on A. H., not Ms. Young. Simply put, M. S. has no reason to lie, she had no emotional, substance abuse and/or disciplinary baggage, she had nothing against Ms. Young and she even indicated she liked Ms. Young. In fact, if the Respondent continues down the path of blaming the entire drug transaction in her office on her raw speculation of a conspiracy between G. H. and her jealous boyfriend, A. H., to set up J. C., query how that conspiracy includes M. S.? Putting that conundrum aside, M. S.'s demeanor during the hearing was calm and unemotional, she showed no bias toward any party, her answers were to the point and she never swayed from her story. She did not speak to anyone else about her testimony, and no flaws in her version were revealed during cross examination. Similarly, there was no reason for M. C. to lie about hearing Ms. Young suggest to having J.C. come to her office to settle the issue regarding the short bag of marijuana. M. C.'s version was in harmony with M. S. and there was

no showing or even a suggestion that some kind of a conspiracy existed. Like M. S., M. C. had no history of any kind of substance abuse, disciplinary history or run-ins with Ms. Young that would cause her credibility to be in doubt.

Her reaction during rebuttal testimony to being belatedly indicted as the one who suggested that an exchange take place between G. H. and J. C. was exactly what one would expect from someone who is falsely accused at the last minute, and her comment that why is this being raised now is remarkably astute.

B. ARRIVAL OF J. C. AND M. B. DURING 6TH PERIOD-THE EXCHANGE

The circumstances of the arrival of M. B. and J. C. in Ms. Young's office are important in exposing the underlying credibility issues with the Respondent's account of events. According to Ms. Young, two students she had little or no prior knowledge of show up out of nowhere, but they are immediately welcomed into an intense group discussion on a disputed sale of marijuana involving one of these same students accused of being the seller. This explanation simply does not wash. To the contrary, it is more logical that J. C.'s appearance was anticipated since it was Ms. Young who summoned his presence. Why else would he be immediately included in the group discussion concerning G. H.'s complaints of being shorted?

What happened next as to the exchange between J. C. and G. H. is disputed by Ms. Young. The Arbitrator heard divergent testimony as to this critical event. Four students (M. S., M. B., J. C. and M. C.) all with differing

backgrounds and all with different reasons for being in Ms. Young's office, testified that it was Ms. Young who suggested, brokered, facilitated and/or presided over the exchange. In deciding whose version should be given move weight, we note the following:

1. None of the student witnesses were interviewed together or spoke to one another before or after any interview with administration or the Board's attorneys. No undue pressure was placed on any student to give administration what they wanted to hear. Nor did they communicate with each other regarding the substance of their testimony for the tenure hearing. There was no attempt to gang up on or to act in concert to get their stories straight to bring down a disliked teaching staff member.

2. Although having diverse backgrounds, the student witnesses for the Board have no motivation to lie, embellish or exaggerate their account of what happened in Ms. Young's office regarding the exchange. There are no reasons to even the score or retaliate against Ms. Young, or to save their own necks in fear of some kind of discipline. This includes J. C. The Respondent will attempt to dismiss J. C. as unworthy of belief due to his underlying involvement in the drug transaction. However, and as noted above, J. C. paid his dues. He came clean and is serving his punishment. There were no promises given to J. C. that his return to Steinert would be dependent on his testimony. Moreover, J. C.'s ire was and is directed at a fellow student, A. H., for turning him in. Whatever the speculation is as to the motive of A. H. to inform school district officials that J. C.

was in possession, the fact remains that J. C. never blamed Ms. Young for his arrest and expulsion from Steinert.

3. While there may have been minor differences between chairs and couches and who was sitting where, all of the Board's student witnesses were consistent in the core element of who directed the exchange -- Ms. Young. In particular, M. B., who displayed considerable intelligence, maturity, sincerity and straight-forwardness on the witness stand and was simply along for the ride, stated:

> *A. Okay. Ms. Young asked what happened and I remember G.H. saying he skimped me, and J.C. denied it, and they were going back and forth; yes you did, no you didn't.*
>
> *Q. This is J.C. and G.H. going back and forth?*
>
> *A. Uh-huh.*
>
> *Q. You have to say yes or no. You can't say uh-huh.*
>
> *A. Yes, sir.*
>
> *Q. Thank you. So after J.C. and G.H. are going back and forth, what happened next?*
>
> *A. I remember because this surprised me, she went to her purse and pulled out the bag and said "this isn't skimped?" In a question kind of way.*
>
> *Q. And when you say "she" that is G.H., correct?*
>
> *A. Yes.*
>
> *Q. And you saw her pull out the bag of marijuana?*
>
> *A. Uh-huh.*
>
> *Q. Have to say yes or no.*

A. Yes, sir.

Q. You'll get used to it. When G.H. pulled out the marijuana and she said -- you said she held it up? You have to say yes or no.

A. Yes, sir.

Q. And when she said "this isn't skimped" in a question, she was saying that to J.C.; is that correct?

A. Yes, sir.

Q. Did J.C. say anything back?

A. He just smiled.

Q. After G.H. pulled out the bag of marijuana, what did Ms. Young do, if anything?

A. I am not sure if this happened exactly right after she pulled it out, but maybe a minute tops. I remember Ms. Young saying to resolve it, she said you hand him -- you give her the money back and you give him the weed back.

Q. And when she is saying this, who is she speaking to?

A. G.H. and J.C. April 3, 2014, p. 51-53.

M. S. recalled the exchange as follows:

Q. In your certification, paragraph four on the second page it talks about what you told Ms. Belmont and I will read it so we know where it is. It says "I asked Ms. Belmont why she was questioning me, and she said, why don't you ask Ms. Young she was there for the whole thing. I explained that Ms. Young directed the exchange of money and marijuana between two other students, J.C. and G.H. which took place in Ms. Young's presence on October 22nd." Is that a true and accurate statement?

A. Correct. Tr. April 3, 2014, p. 22; P-1; P-3.

M. C.'s recollection was similar to M. S. and M. B. J. C. also added that Ms. Young was not going to tell anyone, leaving the impression that everything

was fine. This is consistent with M. C.'s testimony of the remark by G. H. in that G. H. knew Ms. Young would not report them or get them in trouble since she "*loved us too much.*" (Tr. April 10, 2014, p. 21). Along the same lines, if Ms. Young was sincere in her threat to report G. H. and J. C. to administration right away, why would G. H. stay behind in Ms. Young's office after 6th period knowing that Ms. Young was going to report her as being in possession? Why would she even pull out the marijuana unless she would be immune to any punishment from Ms. Young?

In addition, note M. B.'s account of the statement by Ms. Young--"*I **can have** you all arrested.*" (April 3, 2014, p. 54), as opposed to "I will have you all arrested." This supports the Board's overall charge that Ms. Young had no intent to report anybody regarding the possession/sale of marijuana after the white wash of the bad deal that she facilitated. J. C.'s relevant testimony is as follows:

> *Q. And tell us what happened when you went into Ms. Young's office and you sat down?*
>
> *A. At first they were talking for a little bit, everyone, then Ms. Young said I heard you sold G.H. weed, and I was like yeah, I did. And then G.H. said I skimped her. And I didn't know I did, because I didn't know I did. And then she took out the bag and Ms. Young told me that I should give her money back and take the weed back, and so I did. And then she told me that we could all get in trouble because she could call the cops.*
>
> *Q. When you say "she" who is that?*
>
> *A. Ms. Young. And then we just talked normally because we thought everything was going to be fine.*
>
> *Q. When you say we thought everything was going to be fine, what gave you that impression?*

A. Because she said she wasn't going to tell anyone.

Q. She said that to you? Ms. Young said that?

A. Yeah, she said it to everyone. R. April 3, 2014, pp. 86-87.

It should also be noted that the testimony of M. B., M. S. and J. C. was elicited without leading questions on direct and held up and was not damaged during extensive cross examination.

4. Consistency is also the key in looking at previous statements of the student witnesses and their testimony at the hearing. M. S. and M. B. have been steady throughout these proceedings, from their interviews with Steinert administration (P-2; P-3), their certifications in support of the tenure charges (included in P-1), their calm, controlled and evenhanded testimony on direct and unwavering performance on cross examination.

5. In contrast to the steadiness of the student witnesses of the Board, Ms. Young's chameleon-like version of events has already been noted. Further, her demeanor during direct and cross was suspect. Her denials rang hollow. She appeared flustered. She was confused as to basic factual events. She was evasive in her answers on cross. She admitted to being under stress due to "a lot of discourse" and that the kids "would remember better than I would." Tr. April 4, 2014, p. 166. Further, she admitted she "was reeling... not being herself... not in a regular state of mind." Tr. April 4, 2014, pp. 196-197.

Illustrative, her explanation that J. C. and G. H. could have been talking

about cigarettes when they discussed G. H. being owed money is not worthy of belief, since she begrudgingly acknowledged the students were in fact discussing a short sale of a controlled dangerous substance minutes beforehand. Tr. April 4, 2014, pp. 159-161. She admitted she "misspoke" during her October 30, 2013 interview when she claimed the exchange happened within seconds of the bell ringing. April 4, 2014, p. 178. She claimed this misstatement was due to "nervousness" and "emotion." Id.

6. The belated attempt to pin either the idea of J. C. coming to Ms. Young's office to settle the short bag of pot or the suggestion of the actual exchange on M. S., when that key element was never mentioned on October 30, 2013 or even explored during the cross of M. S., is feeble at best and pathetic at worst. The justification for not mentioning M. S. as the culprit is perplexing to say the least: "*It would sound like I was blaming it on somebody else and not opening up to what I was being accused.*" Why Ms. Young felt she was now free to blame M. S. at the tenure hearing due to the absence of exonerating witnesses is equally confusing, particularly since the Respondent was free to subpoena any witness who she believes would support her claim. Tr. April 4, 2014, p. 174. Perhaps her statement, *"[T]his is my last chance..."* better explains the desperation inherent in the present attempt to pass responsibility onto an innocent student.

7. The efforts to divert responsibility from Ms. Young to M. S. for the facilitation of the exchange were initially spearheaded by K. S., who six months later now remembers it was "one of the students," either M. B. or M. S., who

suggested simply doing a re-trade of the marijuana for the money. Tr. April 4, 2014, p. 83. K. S. claimed it was definitely not Ms. Young. Id. As is the case with Ms. Young, K. S. should not be believed by the Arbitrator for a variety of reasons:

a. The Respondent's own witness, Frank Gatto, in completely unsolicited testimony, stated K. S. cannot be believed:

> *A. Sometimes to be honest with you, sometimes she didn't always tell me the truth, so.*
>
> *Q. So K. S. has a reputation of being untruthful at times?*
>
> *A. Yeah, I mean it is a young person with issues. I don't know if I would put it that way, but a young person with issues.*
>
> *Q. You said sometimes she doesn't tell you the truth?*
>
> *A. True.*
>
> *Q. Right?*
>
> *A. Yeah, I did. That's why I had to check up on her in the first place.* April 4, 2014, p. 52

b. At the time she was interviewed on October 30, 2013 by Ms. Belmont and Mr. Ingargiola (R-18), K. S. told the administration that, "*someone* said just give him the weed back and give her the money back and we just let it go." [emphasis added] She then stated, "I am not sure who said that." Six months later, K. S., as she twirled her hair on cross examination in an obvious tell-tale sign of anxiety due to the underlying misrepresentation, claims her memory is slowly coming back ("*like even now I am kind of starting to remember a little bit.*" April 4, 2014, p. 84). As an experienced Arbitrator who knows memories fade as time passes and

observed K. S.'s demeanor during her testimony and her kiss of Respondent immediately afterwards, K. S.'s explanation as to why she is all of a sudden certain it was not Ms. Young is suspicious at best and must not be accepted.

c. The inclusion of the language, "...*and we just let it go*..." in the quote from K. S. during her interview with Steinert administration (R-18) is peculiarly something that a person in authority would say, not a student. Why would a fellow student say something along those lines? The only person in the room who was in a position to "let something go" was the Respondent. Moreover, it is strikingly similar to the testimony of M. S. and M. C. as to what was said by Ms. Young before J. C. and M. B. entered Ms. Young's office, and on point with what M. S., M. B and J. C. attribute to Ms. Young after they arrived.

d. K. S. had a dog in the fight, so to speak. She loved Ms. Young. She was K. S.'s favorite teacher, and she would not do anything to hurt her. Tr. April 4, 2014, p. 74. Furthermore, her bias in favor of Respondent was evident from the very beginning. When asked by Mr. Ingargiola during her interview on October 30, 2013 what happened in Ms. Young's office on October 22, 2013, the first words out of K. S.'s mouth were that she did not want to get Ms. Young in trouble. Tr. April 4, 2014, p. 77. That was and remains K. S.'s motive. The Board submits that K. S. heard the same thing the other students heard from Ms. Young's mouth, and feigned lack of knowledge to protect her favorite teacher.

e. K. S. testified that "*I believe she [Ms. Young] was on the phone*" when the drug exchange took place after J. C. and M. B arrived in the office. No other student testified to a phone call being received during the drug exchange. Even Ms. Young admitted K. S. was wrong in that regard. April 4, 2014, p. 165.

f. During several points in her testimony, K. S. admitted to not remembering things or not paying attention to what was going on in the office due to her preoccupation with a project she was doing on the computer as she sat with her back to the group. For example, K. S. testified on direct: "*I don't really remember too much because it was awhile ago. I was doing my project on the computer.*" April 3, 2014, p. 68. Similarly, on cross, K. S. stated:

> *Q. And you were paying attention to your project, right?*
>
> *A. Yeah, it wasn't really my business.*
>
> *Q. You weren't paying attention to what the people were saying back and forth, were you?*
>
> *A. Not really.* April 4, 2014, p. 75
>
> *****
>
> *Q. Again, you weren't paying attention?*
>
> *A. No, not really.* April 4, 2014, p. 81

This testimony is in contrast to the specific recollections of J. C., M. S. and M. B. who were all fully engaged in the discussion with Ms. Young.

C. BELL RINGS AT END OF 6TH PERIOD AND INTO 7TH PERIOD

The timing of events after the exchange between J. C. and G. H. is critical in understanding the incredulous nature of Ms. Young's assertion that she had every intent and in fact tried to alert the administration of the drug exchange and that J. C. was now carrying. We already know that Ms. Young gave false information to the administration on October 30, 2013 as to the timing of the sale vis-à-vis the bell ringing for the end of 6th period. We know from the testimony of the students, Ms. Belmont, Frank Gatto and from Ms. Young herself that there was a 15-25 minute gap in which nothing was done to report the transaction, which Ms. Young admitted was shocking to her and unprecedented in her career.

Ms. Belmont put it close to 30 minutes, with about 5 minutes during 6th period followed by approximately 25 minutes until she called Ms. Young. Tr. March 20, 2014, pp. 24-25. This is consistent with the time line suggested by J. D. as well. There was no personal visit to the office. No request from a colleague to get the cavalry here right away. No email. Not even a phone call to the Main Office. Not even a request from J. C. to hand over the bag of marijuana. Ms. Young's excuse for not even asking J. C. to hand over the bag of marijuana – "he was a big boy," is equally suspect. Tr. April 4, 2014, p. 186. J. C. had no history of threatening behavior toward Respondent or any other teacher for that matter. He did not engage in any threatening or menacing behavior in the office during 6th period. To the contrary, he appeared relaxed and laughing over the entire exchange. Ms. Young additionally did not have any negative encounters with J. C. prior to the incident.

It was only after Ms. Belmont's call to Ms. Young informing Ms. Young that J. C. was caught did Ms. Young attempt to do anything, and that effort was limited to consoling J. C. (Speaking of which, Ms. Young does not explain why she did not tell Ms. Belmont of the exchange during that same phone call. She had Ms. Belmont's undivided attention.) During this same time frame, A. H. informs Principal Ingargiola that J. C. is in possession, J. C. is located and pulled from his 7th period class, questioned by administration, asked to empty his pockets, the marijuana is discovered, the police are summoned, and J. C.'s father is called.

All the while, Ms. Young has done nothing to report the events in her office, since she had no intention of doing anything. As far as she was concerned, the bad drug deal had been righted. G. H. was no longer complaining *ad nauseam* about not getting her money's worth. Ms. Young was the "Cleaner." She specifically told the students nothing was going to happen to them by saying, "I *could* have you all arrested." And G. H. stayed in her office, presumably with not a care in the world of being reported to have marijuana in school because she knew Ms. Young would not turn her in.

The back and forth visits to the Steinert Main Office with no real attempt to inform Ms. Belmont, Mr. Ingargiola or any other administrator in the building of the events in Ms. Young's office are troubling. The sense of urgency observed by Mr. Gatto certainly did not permeate Ms. Young's actions upon reporting to the Main Office to console J. C. A desire not to appear rude cannot be accepted

as a rational explanation. Nor is the failure to go up a flight of steps to Mr. Robinson's office to alert him of the transaction, even assuming Ms. Belmont was too busy.

Concern with Mr. Gatto worrying over when she would return (April 4, 2014, p. 195-196) certainly should not have trumped the crisis that was at hand. Nor is it rational for Ms. Young to have left instructions with a 16 year old student who just got caught in possession of drugs in school to reach out to Ms. Belmont. (To her credit, Ms. Young admitted she should have called Vice Principal Belmont. Tr. April 4, 2014, p. 203). That was Respondent's professional responsibility, as it was to seek to confiscate the marijuana from J. C. from the very beginning.

Even putting aside the Respondent's facilitation of a drug deal, what happened in Ms. Young's office--a drug exchange in open view—deserved the utmost, immediate attention of administration, and there is no excuse for Ms. Young not to have called the Main Office instantly upon the exchange to alert them that J. C. was currently in possession, and G. H. was also in possession of a CDS in school. To allow the group discussion to continue without taking that step, or to not have run to the Main Office and parked herself outside of Ms. Belmont's doorway and demanded immediate attention, is unbecoming conduct in and of itself. Even assuming Ms. Belmont was busy, not locating another administrator at once was improper as well. Interestingly, the purported exchange with Mr. Ingargiola in which he promised to call Ms. Young was not

corroborated by Ms. Reeves. The Respondent stated that Ms. Reeves was present during that communication. Tr. April 4, 2014, p. 120.

Assuming that exchange took place, for Ms. Young not to have insisted that Mr. Ingargiola stop whatever he was doing and listen to what Ms. Young observed in her office is equally as egregious as not interrupting Ms. Belmont on two separate occasions. Indeed, the failure to bring the drug exchange to the attention of her supervisors the moment it happened, along with the "sense of urgency" observed by Mr. Gatto, is better explained as a feeling of panic on the part of the Respondent upon finding out that her attempt at sweeping the drug deal between G. H. and J. C. under the rug of confidentiality of Ms. Young's office quickly became unglued when J. C. was nabbed as a result of a tip from A. H.

WEDNESDAY, OCTOBER 23, 2013

It was during this first conversation between Ms. Belmont and the Respondent that Respondent admitted to what the students had been reporting about Ms. Young presiding over and facilitating the exchange of marijuana between J. C. and G. H. in her office the previous day and wanting to catch J. C. dealing rather than in possession. Tr. March 20, 2014, p. 32-34; P-4; P-5; P-6; P-7. Ms. Young's dismissal of Ms. Belmont "misconstruing" her comments brings to mind the famous "misremembering" quote from former Boston Red Sox pitcher Roger Clemens. It should also be noted that nothing was said by Ms. Young to Ms. Belmont that it was a student (M. S.) that made the suggestion of J. C. and

G. H. doing an exchange. Nor was there any mention of having to find a fellow teacher to baby sit two crying students in her office, or a throwing of the marijuana back to J. C. seconds before the bell ringing.

THURSDAY, OCTOBER 24, 2013

Again, Ms. Young admitted to arranging the exchange of marijuana between the students in the presence of Ms. Belmont and Mr. Ingargiola, allowing a student to leave her office in possession, and not reporting the matter to administration on the premise that J. C. had already been caught. Tr. March 20, 2014, p. 38-39; p. 102-104; P-4: P-5; P-6; P-7. Nothing was said as to G. H.'s possession, however.

As was the case on October 23, 2013, the idea that M. S. being the promoter of the exchange was never raised. Ms. Young's response to the credible, consistent testimony of these two administrators is again that she was "misconstrued." Respondent does not point to any bias, ulterior motive or bad blood held by Ms. Belmont or Mr. Ingargiola that would taint their testimony. In fact, Mr. Ingargiola's recent hiring as principal gives him the benefit of a clean slate. Given the ever-changing stories of the Respondent, compared to the uniform, specific, unvarying testimony of Ms. Belmont and Mr. Ingargiola (See P-4; P-5; P-6; P-7) that was not rocked under cross examination, and juxtaposing that comparison with what was being reported by the administrators as to what was said by Ms. Young was on point with what the students were saying, the Arbitrator must give more weight to Ms. Belmont and Mr. Ingargiola. The attempt

made to muddy Mr. Ingargiola's credibility by suggesting he was engaged in witness tampering was a low blow especially given the testimony by Mr. Gatto that Mr. Ingargiola's interaction with him was totally appropriate. Tr. March 20, 2014, pp. 146-149; Tr. April 4, 2014, p. 33.

WEDNESDAY, OCTOBER 30, 2013

As we have seen, the Respondent's account of what happened in her office on October 22, 2013 has taken several wrong turns and indeed u-turns, culminating in the most recent attempt to blame M. S. As Mr. Ingargiola stated, this is when the story "diverged." We will not re-explore the failure to mention M. S. during Ms. Young's interview on October 30. That issue has been dealt with above. Similarly, Ms. Young has already admitted she "misspoke" during that interview regarding the timing of the exchange of drugs for cash, although she insists the marijuana was thrown by G. H. Suffice it to say that the denial that Ms. Young never said anything to Ms. Belmont or Mr. Ingargiola about wanting to catch J. C. as a dealer is left hollow, and the reason why two administrators would both misconstrue the same explanation remains unanswered.

III. THE BOARD HAS SUSTAINED ITS BURDEN OF ESTABLISHING UNBECOMING CONDUCT, AND DISMISSAL IS THE ONLY APPROPRIATE PENALTY

The totality of the evidence presented establishes that the Board sustained its burden on the tenure charges for unbecoming conduct and other just cause against Ms. Young in facilitating, brokering, directing, controlling

and/or supervising an exchange of marijuana for cash in her office with no intent to report the exchange to administration, followed by a promise to the students they would not get in trouble. When the student who was inexplicably allowed to leave her office and into the hallways of Steinert carrying marijuana subsequently got fingered for the possession, Ms. Young set in motion a series of bizarre excuses, false explanations to administration and changing stories culminating in the belated fairy tale that a student was the one who suggested the trade.

The Arbitrator is well versed in the relevant statutory language governing the new process by which arbitration is the forum for resolving tenure charges. See In re Jersey City School District v. Adele Stapleton, DOE Docket No. 284-9/12. Stapleton is also instructive in providing guidance on the relevant factors to be considered in imposing a penalty in a tenure proceeding: the nature and gravity of the offense, any extenuating or aggravating circumstances; and the harm or injurious effect the conduct may have on the proper administration of the school system, citing In re Fulcomer, 93 N. J. Super 404, 422 (App. Div. 1967).

Teachers serve as role models to children, and they are responsible for the children's welfare, care and custody. See also Board Policy 3280, Liability for Pupil Welfare (P10), and Board Policy 3281, Inappropriate Staff Conduct (P-11) (Both policies are attached for the Arbitrator's convenience.) As such, teachers are held to a high standard of conduct in and out of the classroom. State Bd. of Examiners v. Charlton, 96 N.J.A.R. 2d (EDE) 18 (1996); In the Matter of the Certificates of Cheryl Sloan, 2012 WL 2520387 (N.J. Adm.)

(6/15/12); Saunders v. N.J. Dept. of Ed., 91 N.J.A.R. 2d (EDE) 12 (1991); In the Matter of the Tenure Hearing of Theresa Lucarelli, 97 N.J.A.R. 2d (EDE) 537 (1997).

The Board seeks the Respondent's dismissal based upon unbecoming conduct and other just cause. The term "unbecoming conduct" is an "elastic" standard that is determined on a case-by-case basis. It has been "broadly defined to include any conduct "which has a tendency to destroy public respect for [government] employees and competence in the operation of [public] services.'" Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998). A finding of unbecoming conduct "may be based primarily on a violation of an implicit standard of good behavior." In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960).

We anticipate that the Respondent may argue that a lesser disciplinary sanction is warranted. The positive evaluations from Respondent's personnel file that will most likely be cited do not vitiate the unbecoming conduct of Ms. Young. While progressive discipline is generally applicable in an analysis of the proper penalty to be imposed, there are situations where immediate removal is appropriate. In a Civil Service context, an Administrative Law Judge stated:

> While the concept of progressive discipline is normally utilized, appellant's actions in this matter were so flagrant as to require removal. It is clear based upon the testimony in this matter that appellant cannot and will not accept direction or control from his supervisors. For him to attempt to harass and intimidate his supervisors in the manner testified herein justifies his removal from public office. Pennoh

v. North Princeton Developmental Center, 96 N.J.A.R. 2d 28 (Sept. 19, 1995)

Here, we are dealing with a controlled dangerous substance in a public school within the backdrop of strong legislative statements against drug use among school children. The New Jersey Legislature, through the adoption of several statutory and administrative provisions, has vigorously and forcefully spoken in favor of a broad-based, proactive response by public school districts in combating substance abuse among students. N.J.S.A. 18A:37-2, which sets forth the various infractions that warrant suspension or expulsion from school, specifically lists the possession, consumption or being under the influence of alcoholic beverages or controlled dangerous substances on school premises as a separate infraction deserving discipline. See N.J.S.A. 18A:37-2(j).

The legislative history of this provision reveals that its enactment was motivated to address the problem of youth/alcohol abuse, especially in schools. Senate Education Committee Assembly No. 689--L. 1981, c. 59. P. G. v. Board of Education of the Borough of Woodcliff, OAL Dkt. No. EDU 7495-03 (Commissioner of Education June 26, 2006). Moreover, Chapter 40A of Title 18A is devoted entirely to educational programs, curriculum guidelines, in-service training programs, and prevention and treatment programs addressing the abuse of alcohol and other drugs by pupils. N.J.S.A 18A:40A-1 through 40A-25. Indeed, the school law statutes mandate that every local board of education:

> Shall, pursuant to guidelines developed by the Commissioner of Education, in consultation with the Commissioner of Health, establish a comprehensive

> substance abuse intervention, prevention and treatment referral program in the public elementary and secondary schools of the district. The purpose of the program shall be to identify pupils who are substance abusers, assess the extent of these pupils' involvement with these substances and, where appropriate, refer pupils and their families to organizations and agencies approved by the Department of Health to offer competent professional treatment. Treatment shall not be at the expense of the local board of education.
>
> Each school district shall develop a clear written policy statement which outlines the district's program to combat substance abuse and which provides for the identification, evaluation, referral for treatment and discipline of pupils who are substance abusers. Copies of the policy statement shall be distributed to pupils and their parents at the beginning of each school year.

See N.J.S.A. 18A:40A-10.

Similarly, N.J.S.A. 18A:40A-16 and 40A-17 call for every local board of education to establish parent training and outreach programs to provide substance abuse education and assistance for parents of pupils in the school district who believe their child may be involved in substance abuse. Again, the statutory commands are broad in scope. Pertinent regulations from the New Jersey Administrative Code found at N.J.A.C. 6A:16-3.1 through 16-4.3 also provide detail on the parameters of the Board's obligation to have a "comprehensive program for the prevention, intervention, referral for evaluation, referral for treatment, and continuity of care for student alcohol, tobacco, and other drug abuse in the [public schools]." N.J.A.C. 6A:16-3.1(a).

Additionally, N.J.S.A. 18A:40A-12 states that if any teaching staff

members believe that a student may be under the influence of drugs, alcohol or steroids, the teaching staff member must report this observation to the principal, which sets in motion a mandatory medical examination, drug testing, and referral to a substance awareness counselor upon return to school.

Consistent Legislative statements relevant to the responsibility of local boards of education in the community-based battle against drug and alcohol use by students can be further found in the passage of L. 2005, c. 209, allowing school districts to randomly drug test students who participate in extracurricular activities, including interscholastic sports and students who possess school parking permits. The Legislative findings and declarations supporting random drug testing was stated in N.J.S.A. 18A:40A-22:

> The Legislature finds and declares that there are many school districts within the State with a growing problem of drug abuse among their students. The Legislature further finds that federal and State courts have held that it may be appropriate for school districts to combat this problem through the random drug testing of students participating in extracurricular activities, including interscholastic athletics, and students who possess school parking permits. The Legislature also finds that a random drug testing program may have a positive effect on attaining the important objectives of deterring drug use and providing a means for the early detection of students with drug problems so that counseling and rehabilitative treatment may be offered.

The above language is especially significant since it trumpets the Legislative directive placing public school districts on the front lines in the war against drug and alcohol use by school-aged children. However, the actions of

the Respondent turn these Legislative mandates on their head. Her facilitation of the drug/cash exchange to make the controversy go away is contrary to the proactive, vigorous, front-line approach that is required of all teaching staff members. Her brokering of the refund between G. H. and J. C., combined with the whole canard that she was going to report the students but for Ms. Belmont and Mr. Ingargiola being too busy, demonstrates such an egregious display of poor judgment and obfuscation that removal is the only appropriate remedy.

Her failure to report the transaction violates Board Policy 3280. Her interactions with students such that they felt free to engage in a drug trade at her direction without fear of being turned in violates Board Policy 3281. She simply cannot be trusted to return to any professional position in Hamilton Township, and she has lost all respect and confidence with students, parents, staff members and administration in the handling of very delicate, very intense situations of illegal drug use among students. As stated by Dr. Parla, her allowing J. C. to leave her office with marijuana in his possession puts J. C. and the entire student body of Steinert at risk and was completely unacceptable. Tr. March 20, 2014, p. 181-182. As to Respondent's actions, Dr. Parla noted:

> *A. Totally inappropriate. I was astonished by it. That it appeared to me that Ms. Young was made aware of a student that had, was in possession of illegal drugs, and that another student was upset because she felt that she didn't get her monies worth, so to speak, and the way to make this go away; you give the money back, you give the drugs back and get out of here. That was my sense of it.*
>
> *And to me, for that to occur, is really a disservice to our students and to our job to, you know, to educate*

> *kids into doing the right thing and making sure that they understand the right from wrong.* March 20, 2014, p.182-183.

For all of the above reasons, the Tenure Charges must be sustained, and Respondent must be removed from her tenured position.

Respondent Loretta Young

The Board of Education certified tenure charges against Loretta Young, an SAC with more than seventeen years of exemplary and unblemished service to the students of the Hamilton Township School District. Those charges alleged that, on October 22, 2013, Ms. Young attempted to rectify a dispute over a marijuana sale between two students by directing or suggesting that the purchaser return the marijuana to the seller for a refund. The charges further alleged that, after this exchange took place in her office at the Steinert High School, Ms. Young failed to report the incident to School administration.

It is not disputed that two students exchanged marijuana for money in Ms. Young's office on October 22, 2014. As the evidence demonstrated, and, as set forth, *infra*, it is clear that this exchange was neither directed nor sanctioned by Ms. Young. Rather, completely unbeknownst to Ms. Young, the exchange was premeditated by G. H. (the purchaser) and her boyfriend, A. H., as an act of retribution against J. C. (the seller) for J.'s inappropriate comments about G. Further, the evidence demonstrated that Ms. Young's actions in seeking to bring the incident to the attention of School administration were reasonable under all of

the circumstances. For all these reasons, the tenure charges should be dismissed, and Ms. Young reinstated to her position as a SAC in the Hamilton Township School District.

The Board has stipulated that Ms. Young's prior record of service in the Hamilton Township School District is unblemished. Tr. March 20, 2014, p. 175. Beyond the lack of any prior disciplinary history, Ms. Young's documented record of service has been highly commendable. She was described by her former Vice Principal, Roberta Schectel, as "one of the most dedicated, caring professionals I have encountered during my tenure as a vice principal at Steinert High School." RESPONDENT'S EXHIBIT 1. She was likewise described as a "dedicated professional and an asset to our school district" by Director of Secondary Education Michael Gilbert. RESPONDENT EXHIBIT 2. These endorsements have been corroborated by her observations and evaluations:

- She does a wonderful job of helping our students who have problems related to alcohol or drugs. Her ability to counsel her students and provide them with the necessary resources has been excellent...It is evident that Ms. Young has a strong desire to help people. RESPONDENT'S EXHIBIT 7.

- Ms. Young is one of the most dedicated members of the Steinert community I have encountered. The word "no" is simply not a part of her vocabulary. We are proud to have her as part of our team. RESPONDENT'S EXHIBIT 8.

- Ms. Young continues to be an effective and humanistic counselor dedicated to meeting the needs of our students. RESPONDENT'S EXHIBIT 12.

- Ms. Young is greatly appreciated by her school and community as she provides a valuable service to the Hamilton Township School District while performing her duties in a highly commendable manner. RESPONDENT'S EXHIBIT 13.

- [Ms. Young's] interactions with students are positive and respectful; actively promoting positive student-student interactions....She complies fully with the Anti Bullying laws and timelines. She refers to her community resources and is adhering to the New Jersey State Guidelines, Administrative Codes, and Board Policy procedures. RESPONDENT'S EXHIBIT 14.

SUMMARY OF TESTIMONY OFFERED BY RESPONDENT

1: Ashley Reeves

Ashley Reeves is a student at Rider University who is studying to be a School Counselor. As part of her course of studies, she engaged in a practicum at Steinert High School from September through October, 2013. She testified that she was present in Ms. Young's office on October 23, 2013, and witnessed a conversation between Ms. Young and Ms. Belmont. She recalled that Ms. Belmont had come to Ms. Young's office to hear her account of what had happened, and to explain to her that she had not handled things correctly. Tr. April 4, 2014, p. 10. She did not recall everything that Ms. Young said to Ms. Belmont during the conversation. Tr. April 4, 2014, p. 11. Ms. Reeves further testified that, in her experience with Ms. Young, Ms. Young appropriately addressed drug and alcohol issues with students. Tr. April 4, 2014, p. 20.

2: Frank Gatto

Frank Gatto is a School Counselor who has worked at Steinert for 20 years: for 17 of those years, he has been a colleague of Ms. Young's. Tr. April 4, 2014, pp. 23-24. Describing Ms. Young's effectiveness as an SAC, he explained:

> Well, know you, she's very talented, not only is she bringing the professional end of the SAC counselor

> trying to get them help with being on drugs and things like that. Outside activities she is very good, does a lot of things in the township, different pride organizations. You know, we have had some students overdose and have died and foundations have started. She has been very active in that. She's been tremendous. I mean, she's been almost like a grandmother to a lot of those kids and that's critical because a lot of those students have come from very dysfunctional homes, no parents there. Many of their parents are on drugs also, it gets kind of complicated. I have worked with her. I was also the Peer Leadership Director for many years and she used to come up with us at Camp Mason and teach the kids, our peer leaders, how to identify things within the school to help students. Sometimes students in a peer level will come-- or peer leaders of drug issues like that, and she really, would talk and really taught them how to identify situations where they could refer to any school counselor, principal get help in any school.

Tr. April 4, 2014, pp. 27-28.

Mr. Gatto testified that, on October 22, 2013, he stopped by Ms. Young's office while looking for K.S., who had not reported to her fifth period class. When he arrived at Ms. Young's office, he found two students, G.H. and A.H., sitting and talking. Ms. Young told him: "I need to go talk to Administration, would you sit here?" Tr. April 4, 2014, pp. 29-31. After Ms. Young asked him to watch the office, Mr. Gatto sat there until she returned: "[b]asically, what happened I sat there and she came back and she said well, they are busy in the office and I am going to have to go back down again. She said do you have time? And I said sure. I sat there again. And she came back again. Tr. April 4, 2014, p. 32. He recalled that, while he did not discuss the issue with Ms. Young, she left her office with a sense of urgency. Tr. April 4, 2014, p. 32.

3: K.S.

K.S. is a sixteen year old student who attended Steinert High School during October, 2013. She was present in Ms. Young's office on October 22, 2013, during her 6th period lunch. She was working on Ms. Young's computer when she saw G. and J. exchange marijuana and money "out of the corner of her eye." She did not hear Ms. Young say anything to the students (i.e., to direct the exchange) prior to the marijuana exchange taking place. Tr. April 4, 2014, pp. 65-69. Though she was in Ms. Young's office prior to the arrival of J.C., she did not hear Ms. Young instruct anyone to call J. down to her office. Tr. April 4, 2014, p. 72.

4: Loretta Young

Loretta Young holds a Master's Degree and a Certification in counseling. She has been employed by the Hamilton Township School District for five years. Prior to that, she was employed by the Mercer County Council on Alcoholism and Drug Addition, and, in that capacity, worked as a SAC at Steinert High School. In total she has worked at the School for more than seventeen years. Tr. April 4, 2014, pp. 89-91. As a SAC, Ms. Young counsels students with substance abuse issues, and assists them in obtaining out-of-school assistance where necessary. While the conversations which she has with students regarding their drug or alcohol issues are confidential as a matter of law, she is aware of her obligation to report any illegal activity which she observes in the School. Tr. April 4, 2014, pp. 91-94.

Ms. Young testified that students can see her during their lunch periods. She testified that she hosts a "lunch bunch:" students come to her office during their lunch periods and work on personal growth exercises as a group. Tr. April 4, 2014, pp. 97-98.

On October 22, 2013, Ms. Young recalled that a group of students were in her office during sixth period lunch, which ran from 11:30 a.m. through 12:16 p.m. She recalled that, at the beginning of the period, G.H. and M.S. were present in her office, along with K.S. Later, in the last quarter of the period, J.C. and M. B. came into the office Tr. April 4, 2014, pp. 100-102.

Prior to the arrival of J. and M. Ms. Young testified that K. S. was working on a project on her computer. M. S. was having a discussion with G. H.: Ms. Young heard G. complaining to M. that J. C. had "overcharged" her. Ms. Young then explained to G. that she was dealing with a drug dealer and that drug dealers are dishonest, and that she should not be dealing with him. She did not say anything to G. H. about trying to "resolve" the issue: "it has nothing to do with my job with what I do." Tr. April 4, 2014, pp. 103-105. Ms. Young further testified that she did not take any action (i.e., have J. summoned to her office) in response to overhearing the conversation. Tr. April 4, 2014, p. 105.

Later in the period, J. C. arrived at her office, accompanied by M. B. Ms. Young recalled that she welcomed them and continued with the group activity. After they had arrived, G. said to J. "you owe me money:" the two argued, and Ms. Young heard someone say "why don't you just pay her the money and give

him the pot." While Ms. Young was not certain which student said this, she emphatically denied that she made this statement. Tr. April 4, 2014, pp. 106-109.

After this took place, Ms. Young testified that J. took $10.00 out of his pocket. G. then pulled a bag out of the front pocket of her jeans and threw it at J. Tr. April 4, 2014, pp. 109-110. Upon seeing this take place, Ms. Young told J. and G. that they could be arrested: "[t]his is an illegal transaction of an illegal drug and it certainly would include a police action." Tr. April 4, 2014, pp. 110-111.

Prior to G.'s removing the marijuana from her pocket, Ms. Young had no idea that she had marijuana on her person. She was "shocked" by what had happened, and stated that she had to report the incident to the School's Administration. Tr. April 4, 2014, pp. 111-112. Within minutes of this happening, the bell rang, and J. left her office. Ms. Young did not try to stop him, because she did not want to prompt any kind of confrontation with J. Shortly after the bell rang, Ms. Young received a phone call from Angela Belmont, asking her to come down to the main office. G. H., who had been joined by A. H., was still in her office. She asked Frank Gatto, who had just arrived at her office, to stay with the students so that she could go down to the main office. Tr. April 4, 2014, pp. 112-115.

When she arrived, Ms. Belmont had people in her office, and Ms. Young did not want to interrupt her, expecting to talk with her after she had finished. She had a conversation with J. C., who was in the main office, and who told her that he knew A. H. had reported him for having the marijuana. Ms. Young told him

that she would explain what had happened in her office. She also explained the procedure that he would have to follow, i.e., having his parents called, and submitting to a drug test. After her conversation with J., Ms. Young again saw that Ms. Belmont was busy, so she returned to her office. She subsequently returned to the main office; however Ms. Belmont was still occupied. Ms. Young recalled that she would not typically prepare a memorandum or email in connection with such an incident: "we meet in person and work as a team, and they do-they write up all the paperwork. I don't write up any paperwork. The only paperwork that I do is when a student returns to school. The SAC never does that." Tr. April 4, 2014, pp. 115-118.

Later in the afternoon of October 22, 2013, Ms. Young encountered Mr. Ingargiola. She told him "we need to talk" and he agreed. Ms. Young said, "I am free right now, can we talk," and Mr. Ingargiola told her he would call her. Tr. April 4, 2014, pp. 118-119. Similarly, on the morning of October 23, 2013, Ms. Young attempted to speak with Mr. Ingargiola, and he again told her that he would "call her." Tr. April 4, 2014, p. 120.

Later that day, Ms. Young met with Ms. Belmont. She did not ask her if she wished to have union representation present with her at the meeting. Tr. April 4, 2014, p. 122. Ms. Young testified that Ms. Belmont's testimony with respect to their conversation on October 23, 2013 was inaccurate. Specifically, Ms. Young denied that she told Ms. Belmont that she wanted to "catch" J. "as a drug dealer." Tr. April 4, 2014, pp. 129-130. She further denied that she told

administration that she wanted to "catch" J. as a drug dealer, or that she had told J. and G. to exchange marijuana for money, at her meeting of October 24, 2013 with Principal Ingargiola and Ms. Belmont. Tr. April 4, 2014, pp. 133-136.

5: J.D.

J. D. is a senior at Steinert High School. On October 22, 2013, she was in Ms. Young's office for a brief period of time. She recalled hearing G. H. say "I want my money back." Tr. April 28, 2014, pp. 15-18. She did not hear Ms. Young say anything about a marijuana exchange. Tr. April 28, 2014, pp. 20-23. She recalled that while she was in Ms. Young's office, she was talking to Ms. Young and M. S., and not paying attention to G. and J. She left Ms. Young's office approximately 15 minutes before the end of the sixth period. Tr. April 28, 2014, pp. 18-19.

LEGAL ARGUMENT
THE BOARD HAS FAILED TO PROVE UNBECOMING CONDUCT

POINT ONE
THE APPLICABLE STANDARD

In the State of New Jersey, a tenured teacher shall not be dismissed from his 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. The District bears the burden of proving the charges upon which it

relied by a preponderance of the competent, relevant and credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962); In re Polk, 90 N.J. 550 (1982). "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). The evidence must be such as to lead a reasonably cautious mind to a given conclusion. Bornstein v. Metro Bottling Co., 26 N.J. 263 (1958).

Therefore, the tribunal must "decide in favor of the party on whose side the weight of the evidence preponderates, and according to the reasonable probability of truth." Jackson v. Del., L., and W. RR, 111 N.J.L. 487, 490 (E. & A. 1933). For reasonable probability to exist, the evidence must be such as to "generate belief that the tendered hypothesis is in all human likelihood the fact." Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div. 1959). Preponderance may also 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).

A tenured employee may not be lightly removed. Tenure protects teachers from arbitrary dismissal for "unfounded, flimsy or political reasons." Spiewak v. Rutherford Bd. Of Educ., 90 N.J. 63, 73 (1982). It is designed to aid in the establishment of "a competent and efficient school system" by affording teachers a measure of security in the ranks they hold after years of service. Viemeister v. Prospect Park Bd. Of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949).

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.*

Unbecoming conduct is broadly defined as any conduct which adversely affects the morale or efficiency of the governmental unit or which has a tendency to destroy public respect for government employees, and confidence in the operation of public services. *See* Karins v. City of Atlantic City, 152 N.J. 532, 554 (1998). In the field of education, the touchstone of the charge is whether the teacher is fit to discharge the duties and functions of his position. Laba v. Newark Board of Education, 23, *N.J.* 364, 384 (1957).

Unfitness to remain as a teacher may be demonstrated by a single incident of unbecoming conduct if sufficiently flagrant, though in less serious matters progressive disciplinary measures may be appropriate. In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967). Because teachers serve as role models for their students, and are charged with their care and education, the public is entitled to expect that they will fulfill their roles with a high degree of responsibility. *See* Saunders v. New Jersey Dep't of Educ., 91 N.J.A.R. 2d (EDU) 12, 14.

Despite the duties of restraint and self control inherent in the teaching profession, school law decisions have long recognized that teachers are sensitive to the same emotional stresses as all other persons. A teacher's effort to maintain an even demeanor stand in sharp contrast to the often exasperating, frustrating nature of the profession. *See* In the Matter of the Tenure Hearing of Juan Cotto, (Comm. Of Ed. Dec. Docket No. 210-6/97). Where not cruel, premeditated, or vicious, a teacher's rash, inappropriate action—even involving inappropriate physical contact—does not mandate removal from tenure. Matter of Tenure Hearing of Boyd, 93 N.J.A.R. 2d (EDU) 445 (teacher who struck a student not removed from tenure). Similarly, numerous, relatively minor instances of treating students inappropriately may not warrant removal from tenure. *See* In the Matter of the Tenure Hearing of Barbara Emri, OAL Dkt. No. EDU 4579-00 (teacher who engaged in unbecoming conduct on more than 20 occasions in her dealings with students— including the use of racial slurs – not removed from tenure).

As set forth in Points Two and Three, *infra*, the Board has failed to prove that Ms. Young directed students to exchange marijuana for money in her office. Even if this had been the case, however, prior case law demonstrates that the severe sanction of removal would not be warranted. Where well-intentioned, and undertaken in good-faith and in furtherance of their pedagogical or other duties, even severely misguided actions on the part of teaching staff members do not warrant removal from tenure. *See, e.g.,* In the Matter of the Tenure Hearing of Erica Mercorelli, 2010 WL 3618684 (teacher who used words including "fuck,

suck, tits, ass, balls, dick, cunt, shit, pussy, dam (sic), asshole. God-dam (sic), fuck you," in sixth grade classroom as examples of words "not to use" not removed from tenure); In the Matter of the Tenure Hearing of Kimberly Geurds, 2010 WL 8020416 (teacher not removed from tenure where she demonstrated urination technique in her fifth grade classroom, instructed her class about the purpose of douche bags,; used the words "penis" and "vagina;" and used the words "shit," "nuts" or "balls.").

In this case, there is no allegation that any action of Ms. Young was malicious, or undertaken with the intent or even contemplation of jeopardizing her students or the orderly operation of the School. Rather, at most, she is alleged to have attempted to address and resolve a dispute between two students in a well-meaning, but seriously misguided manner. This being the case, both Ms. Young's exemplary prior history, and precedent, demonstrate that regardless of the findings of fact reached in this case, her removal would not be warranted.

POINT TWO
THE BOARD HAS FAILED TO PROVE THAT MS. YOUNG DIRECTED THE EXCHANGE OF MARIJUANA

For all the reasons set forth, *infra*, the Board has failed to prove that Ms. Young directed J. C. and G. H. to exchange the marijuana in her office on October 22, 2014.

A: The Exchange was Pre-Planned

The Board's allegation that Ms. Young directed G. H. and J. C. to

exchange the marijuana and the money in her office is contradicted by an analysis of essentially undisputed testimony in this case: specifically, testimony demonstrating that A. H. and G. H. planned the exchange before it took place.

It is undisputed that A. H. was G. H.'s significant other, and that he was unhappy with statements that J. had made about G. It is further undisputed that A. was not in Ms. Young's office when the exchange took place. Furthermore, while the second-by-second sequence of events (i.e., how much time passed between the exchange of marijuana and the ending of sixth period) has been the subject of differing testimony, it is essentially undisputed that the exchange took place at some time within the last five minutes of sixth period.

Mr. Ingargiola testified that on October 22, 2013, A. H. approached him and asked to speak with him in private. During the conversation, A. relayed to Mr. Ingargiola that J. C. had given marijuana to his girlfriend, G. H., and that she had given back the marijuana to J. A. was "not specific" as to the time that this transaction took place; however, A. approached Mr. Ingargiola to provide him with this information some time towards the end of sixth period. Tr. March 20, 2014, pp. 89-92. Mr. Ingargiola testified that he instructed Vice Principal Duane Robinson to bring J. C. to the office. They brought him to the conference room and closed the door, and asked him if he was in possession of anything that he should not have in school. According to Mr. Ingargiola, J. reached into his pocket and produced a "ten-dollar" bag of marijuana. Tr. March 20, 2014, p. 92.

Ms. Young and Mr. Gatto both testified that A. was in Ms. Young's office

shortly after sixth period came to an end. Mr. Ingargiola testified that he had a conversation with A. which from start to finish must have taken at least several minutes. After this conversation, A. walked to Ms. Young's office, where he was present shortly after sixth period ended.

This timeline, and testimony, can only lead to one conclusion: A. H. knew that G. H. would be returning the marijuana to J. C. before the exchange took place. This being the case, it necessarily follows that G. intended to place the marijuana in J.'s possession before he arrived at Ms. Young's office.

Under these circumstances (the transaction having already been preplanned), it would be (among other things) an incredible coincidence for Ms. Young to direct G. towards her predetermined course of action. The more likely explanation, of course, is that Ms. Young provided G. with no such direction.

B: The Contemporaneous Statements Belie A Directed Exchange

While the Board's student witnesses, to an extent, offered testimony in support of the Board's allegation that Ms. Young directed the exchange of marijuana and money, their actions, and statements made contemporaneous to the incident, strongly suggest that this was not, in fact, the case.

First, upon being called into the main office after leaving Ms. Young's office, J. C. made no mention whatsoever that Ms. Young had directed him to accept marijuana from G. Indeed, there is no indication that he even mentioned Ms. Young, or G., when he interacted with Duane Robinson, Angela Belmont,

Principal Ingargiola, or the School Resource Officer. Tr. April 3, 2014, pp. 93-96. Indeed, J. requested to speak with Ms. Young because he was upset about getting into trouble. Tr. March 20, 2014.

It makes no sense whatsoever that a student facing disciplinary action (or criminal charges) for marijuana possession in school would not attempt to explain, having full opportunity to do so, that he had been directed to accept the marijuana by a teacher. It cannot be gainsaid that the first reaction of anyone in that situation would be to attempt to allay blame in this way. Since this did not happen, the more likely explanation is that those circumstances did not exist.

Second, both M. B. and M. C. testified that after the marijuana and money were exchanged, Ms. Young looked at J. and G. and stated words to the effect of "you could both be arrested" or "you are both in trouble." Tr. April 3, 2012, pp. 54-56; Tr. April 10, 2014, p. 21. It would be nonsensical for Ms. Young to tell the two students to exchange the money and marijuana, and then immediately reverse course, and threaten them with disciplinary or legal action. M. stated concern that Ms. Young's admonishment might apply to him, and his request to her for reassurance to the contrary, demonstrates that she did not make this statement in jest. Rather, as Ms. Young also testified, she said this to G. and J. because she was shocked at what they had done, and knew that there would be consequences.

C: The Board's Student Witnesses Were Not Credible

Inconsistency is the hallmark of incredibility. Because the statements of

the Board's student witnesses were all inconsistent with respect to what happened at the end of the sixth period in Ms. Young's office on October 22, 2013, the Board has failed to prove that Ms. Young directed an exchange of marijuana.

Each of the Board's student witnesses prepared a diagram of Ms. Young's office, including the placement of the furniture, and the students, at the time of the marijuana exchange. All four diagrams are different.

RESPONDENT'S EXHIBIT 26, prepared by M. S., depicts her and G. H. seated on Ms. Young's couch, flanked by J. C. and M. B., sitting in chairs on opposite sides of the couch. RESPONDENT EXHIBIT 27, prepared by M. B., depicts G. and J. sitting next to each other on the couch, with M. sitting in a chair. M.S. is not pictured. In RESPONDENT EXHIBIT 28, prepared by J. C., G. and M.S. are seated together on the couch; however, J. D. is seated between them. In RESPONDENT EXHIBIT 29, prepared by M. C., J. and M. are seated on the same side of the couch, and another student, O. L., is also depicted to the left of the couch. Effectively, there is no consistency between the Board's witnesses as to who was where when the marijuana exchange took place.

The Board's student witnesses also offered differing accounts of what Ms. Young allegedly said around the time the marijuana was exchanged. While M. B. and M. C. testified that Ms. Young told J. and G. that they would "get in trouble" or that they could "be arrested" as the result of the marijuana exchange, M.S. offered no such testimony. Rather she claimed that after the exchange, Ms.

Young went to work on her computer. PETITIONER EXHIBIT 3. J. C. alleged that after the exchange, Ms. Young said, to everyone present, that while the students could get in trouble, they would not get in trouble, because "she was not going to tell anybody." Tr. April 3, 2014, p. 87. If such an outrageous statement had actually been made, it is inconceivable that none of the other witnesses to the statement would remember it.

In her October 30, 2013 statement to Mr. Ingargiola and Ms. Belmont (P-3), M.S. did not say that Ms. Young had directed any exchange of marijuana: that allegation did not arise until she signed a Certification prepared by administration. As set forth, *supra*, J. C. reported none of the actions which he attributed to Ms. Young in his testimony to administration on October 22, 2013, when they might have exonerated him for being in possession of marijuana.

Simply put, the Board has failed to present a consistent, credible account of what took place in Ms. Young's office on October 22, 2013. Contrarily, Ms. Young has credibly explained that the marijuana exchange was made without her prior knowledge or direction, and that she took reasonable remedial action after the exchange took place.

D: The Board's Allegations of Statements Made by Ms. Young Were Not Credible

Because the statements which the Board has attempted to attribute to Ms. Young were completely undocumented, and allegedly elicited in clear violation of

her *Weingarten* rights, they should be deemed excluded from evidence in this matter, and, in any event, completely incredible.

After speaking with students on October 23, 2013, Ms. Belmont testified that she spoke to Ms. Young, asking her why she had not informed her of the events in her office the preceding day. According to Ms. Belmont, Ms. Young stated words to the effect that "you don't understand, I wanted to catch J. dealing, not simply in possession."

Ms. Belmont further claimed that Ms. Young told her she didn't believe it was necessary to report the incident, since A. H. had already done so. Tr. March 20, 2014, pp. 32-33. Ms. Belmont did not remember any other details of her October 23, 2013 conversation with Ms. Young. Tr. March 20, 2014, p. 34. Ms. Belmont testified that she did not recall anyone else being present in Ms. Young's office when the meeting took place. Tr. March 20, 2014, p. 60.

Despite the fact that she had concerns about Ms. Young's conduct, and believed that her conversation with Ms. Young could result in disciplinary charges being brought against her, she did not so inform Ms. Young. She further did not request that Ms. Young prepare any written statement as a result of their conversation. Tr. March 20, 2014, pp. 61, 64. Indeed, there is no contemporaneous documentation (notes, statement, etc.) of any kind memorializing this discussion. Tr. March 20, 2014, p. 64.

Ms. Belmont's testimony is contradicted by the testimony of Ashley

Reeves, who, while not remembering all of the specifics of the conversation, testified that she was present during this meeting between Ms. Young and Ms. Belmont. More significantly, Ms. Belmont provided no explanation as to why she did not prepare any contemporaneous documentation of this meeting, or why she did not ask Ms. Young to prepare such documentation. She testified that she was concerned enough about this meeting to bring it to the attention of Mr. Ingargiola and Director of Curriculum and Instruction Mike Gilbert. Tr. March 20, 2014, pp. 35-36. This being the case, the absence of any documentation is concerning.

According to Ms. Belmont, Mike Gilbert spoke with Superintendent Parla, and directed her and Mr. Ingargiola to re-question Ms. Young about the incident of October 22, 2013: "you need to call Loretta in first thing in the morning and question her regarding the entire situation about what happened down there." Tr. March 20, 2014, pp 36-37.

Even more inexplicably, even though they were directed by Central Administration to interview Ms. Young in order to investigate potential misconduct on her part, neither Mr. Ingargiola nor Ms. Belmont took any contemporaneous action to document the October 24, 2013 meeting which they held with her. According to Mr. Ingargiola, there was "no reason" that this was the case. Tr. March 20, 2014, p. 129. When first asked, Mr. Ingargiola indicated that he did not say anything to Ms. Young regarding her right to have union representation present at this meeting. Tr. March 20, 2014, p. 105.

When asked a second time, however, he revised his answer, and stated that he did tell her she would be entitled to bring representation to the meeting. According to Mr. Ingargiola, Ms. Young indicated that her representative would likely be Frank Gatto: however, he was not called, and the meeting was not stopped so that he could be present. Tr. March 20, 2014, pp. 105-106. There was no testimony that Mr. Ingargiola or Ms. Belmont offered to stop the meeting so that Mr. Gatto could be summoned, as is required by *Weingarten*.

Given the apparent seriousness with which the Administration viewed the allegations against Ms. Young, the failure of both Ms. Belmont and Mr. Ingargiola to either take notes at this meeting, or to ask Ms. Young to prepare any statement as to what had taken place in her office, renders their allegations as to Ms. Young's statements both uncorroborated, and incredible.

Moreover, had Ms. Young's *Weingarten* rights been honored, her representative would have been able to testify and contradict--or corroborate--the statements attributed to her by Administration. Simply put, Mr. Ingargiola and Ms. Belmont could have documented, and arranged for a third-party witness, to Ms. Young's alleged statements. Their inexplicable failure to take either of these basic investigatory actions requires that their allegations of statements made by Ms. Young be disregarded.

For all these reasons, the Board has failed to demonstrate, by a preponderance of the competent, credible evidence, that Ms. Young directed or facilitated the marijuana exchange, and the tenure charges should accordingly be

dismissed.

THE BOARD HAS FAILED TO PROVE THAT MS. YOUNG ENGAGED IN CONDUCT UNBECOMING A TEACHER BY FAILING TO REPORT THE INCIDENT

The Board argues that Ms. Young failed to take sufficient action to report the incident which took place in her office, and that this failure amounts to conduct unbecoming a teaching staff member. For the reasons set forth, *infra*, this is not the case.

Preliminarily, it is undisputed that the marijuana which was the subject of the incident in Ms. Young's office was confiscated from J. C. within a class period of the incident in Ms. Young's office. Moreover, Ms. Young was aware that this was the case by the time she received the phone call from Angela Belmont at her office. As Dr. Parla testified, the purpose of the applicable Board policy RESPONDENT EXHIBIT 19 is to "ensure that any incidents of violence, vandalism, alcohol or other drug related abuse are reported to the Principal, and that those incidents can be addressed as soon as possible." Tr. March 20, 2014, p. 190.

In this case, A.H. reported J.'s possession of marijuana to Principal Ingargiola before J. even had the marijuana, and it was immediately confiscated. Effectively, the issue **was** addressed "as soon as possible."

In his testimony, Dr. Parla further opined that, in his opinion, a report of a drug incident would be timely if it was made "within the school day." Tr. March

20, 2014, p. 188. Here, the incident happened at approximately 12:15 p.m. Tuesday, October 22, 2013, and Ms. Young discussed the incident with Ms. Belmont beginning at approximately 12:16 p.m. the following day. Tr. March 20, 2014, p. 32. As such, Ms. Young discussed the incident with Ms. Belmont within the timeframe of a single full school day. Importantly, since administration was already aware that marijuana had been in the building, and the marijuana had been recovered, time was no longer of the essence with respect to Ms. Young's report. This is apparent from Ms. Young's attempts to speak with Mr. Ingargiola about the incident on the afternoon of October 22, 2013, and on October 23, 2013, and his cursory statement that he would "get back to her."

As Ms. Belmont acknowledged, Ms. Young should not have attempted to restrain J.C. from leaving her office, nor should she have attempted to physically take the marijuana from him. Moreover, since she had students in her office, she could not simply leave those students unattended to follow Jordan after he left her office. Tr. March 20, 2014, p. 72-73. As Ms. Young testified, she was "shocked," by the incident, and her first thought was that she needed to make a report to administration.

As Ms. Young made clear, she attempted to discuss the incident in her office with Ms. Belmont not once, but twice on the afternoon of October 22, 2013. On those occasions, when she went to Ms. Belmont's office, she found that Ms. Belmont was busy, and she did not wish to interrupt her. Since the marijuana had already been seized, and the School Resource Officer apprised of the situation,

Ms. Young's decision not to interrupt Ms. Belmont was entirely reasonable: the most emergent aspect of the situation (i.e., unsecured marijuana in the school) had already been addressed. Ms. Belmont acknowledged that "all" of her days were busy days, and that it was possible that Ms. Young would have found her occupied when attempting to speak with her that afternoon.

As Frank Gatto testified, Ms. Young exhibited a "sense of urgency" when she asked him to watch his office so that she could go down to the Main Office at the School. When she returned to her office, she told him that Ms. Belmont was busy, and that she was going to have to return to her office a second time. Mr. Gatto's testimony credibly corroborated Ms. Young's version of the actions which she took following the incident of October 22, 2013.

Even if, *arguendo*, Ms. Young should have interrupted Ms. Belmont, or otherwise made some type of additional report about the incident in her office on October 22, 2013, the totality of the circumstances demonstrates that her actions were not so dilatory or otherwise unreasonable as to rise to the level of conduct unbecoming a teaching staff member. For this reason, the tenure charges should be dismissed.

CONCLUSION

For all the reasons set forth herein, the Tenure Charges filed by the Hamilton Township Board of Education against Loretta Young should be dismissed, and Ms. Young reinstated to her position.

V. STATEMENT OF THE CASE

It is a generally accepted premise that tenure laws were originally enacted and designed by our legislature to establish a "competent and efficient school system," and to protect teaching and other staff from dismissal for "unfounded, flimsy or political reasons." *See generally* Viemeister v. Prospect Park Board of Education, 5 N.J. Super. 215, 218 (App. Div. 1949); Spiewak v. Rutherford Board of Education, 90 N.J. 63 (1982). The statutory status of a tenured individual should accordingly not be lightly removed. See In re Tenure Hearing of Claudia Ashe-Gilkes, City of East Orange School District, 2009 WL 246266 (January 12, 2009), *adopted* by the Commissioner of Education (May 28, 2009).

As the moving party in this tenure removal case, the District embraces the initial burden of making a *prima facie* showing that it has satisfied or established the sufficiency of the subject charges by a preponderance of the credible evidence. *See* Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); In re Tenure Hearing of Grossman, 127 N.J. Super. 13, 23 (App. Div. 1974 *cert. denied* 65 N.J. 292 (1974)); In re Phillips, 117 N.J. 567, 575 (1990); In re Polk, 90 N.J. 550 (1982); Atkinson v. Parsekian, 37 N.J. 143 (1962); *see also* State v. Lewis, 67 N.J. 47 (1975) (defining *preponderance* as the "[g]reater weight of the credible evidence in the case."); Bornstein v. Metropolitan Bottling Co., 26 N.J. 263, 275 (1958); Spagnuolo v. Bonnet, 16 N.J. 546, 554-555 (1954).

of the circumstances, the nature of the act(s), and the impact on her career. *See* In re Fulcomer, 93 N.J. Super 404, 421 (1967). Parenthetically, in deciding the correct quantum of discipline in the event that tenure charges are sustained, a scheme of progressive discipline is generally applied. *See generally*, West New York v. Bock, 38 N.J. 500 (1962); I/M/O Tenure Hearing of Owen Newson, State Operated School District, City of Newark, DOE Docket No. 276-9/12 (Pecklers, January 10, 2013); *see also*, I/M/O Tenure Hearing of Gilbert Alvarez, OAL Docket No. EDU 10067-09 (March 5, 2010); Green Brook School District v. Fodor, OAL Docket No. EDU 07135-08 (January 12, 2009); In Re Tenure Hearing of Wesley Gilmer, State Operated School District of the City of Newark, 2011 WL 2237628 (May 6, 2011) *adopted by the Commissioner of Education* (July 28, 2011); School District of the City of Newark, Essex County, v. Stanley Slovney, OAL Docket No. EDU 1269-84 (1984).

That said, there is no dispute that a single *cardinal* violation may serve as the basis for the removal of a tenured teacher with an otherwise unblemished disciplinary record. *See,* Fulcomer, *supra,* at p. 421 ("We hold no brief for the teacher's conduct in this case. Other proper means were available to him to maintain discipline or compel obedience. Nor have we any doubt that unfitness to remain a teacher may be demonstrated [*** 26] by a single incident if sufficiently flagrant.") [*citing,* Redcay v. State Board of Education, 130 N.J.L. 369 (Sup. Ct. 1943), affirmed o.b. 131 N.J.L. 326 (E & A 1944)]. Furthermore, the evidence needed to meet a board's burden is not to be taken frivolously and must be viewed on a case by case basis. In the Matter of Ziznewski, School District of

Township of Edison, Middlesex County, OAL Docket No. EDU 4727-08 (May 5, 2010).

Upon a careful analysis of the evidence of record, with full consideration afforded to the respective positions and supporting case citation, I find that Petitioner's prefatory showing was not successfully rebutted by Respondent, requiring that the instant tenure charges be **SUSTAINED**. The material facts of the case are both disputed and undisputed, and on balance any credibility determinations weigh heavily in favor of the District, with the following findings of fact made:

> 1) Loretta Young attended Farleigh Dickinson University, and the College of New Jersey as well as Georgian Court. She holds a Master's Degree in Counseling, and is also certified by the State of New Jersey as a Student Assistance Coordinator. Tr. April 4, 2014, pp. 90-91.
>
> 2) Ms. Young has been employed by the Hamilton Township Board of Education for a period of five (5) years, and prior to that worked for the Mercer Council on Alcoholism and Drug Addiction, which had contracts with the Hamilton schools for twenty (20) years. *Ibid.*
>
> 3) All told, she has worked in the Hamilton Township School District either as an employee of the County or the District for eighteen (18) years, all of which have been spent at Steinert High School. At all times that are relevant for the purposes of this proceeding, Ms. Young held the SAC position at Steinert. *Id.*, at 91.
>
> 4) The role of the SAC is to do assessments on students, to see what level of care they need. The SAC may provide some counseling, or make referrals for students who need outside counseling, inpatient care, or anything of that nature. The SAC works with the entire population of the school community, including teachers, administrators and the nurse. The SAC also is charged with chairing the Core Team, which in addition to the foregoing also includes a Child Study Team representative. In all these roles, the

primary focus of the SAC is substance abuse by the students. *Id.*, at 92.

5) All conversations with students concerning alcohol or drug use or related topics are considered confidential. Some examples of exceptions to this general rule would be discussions with students who have suicidal ideations and are considering harming themselves; students who are contemplating harming others; reporting illegal activity concerning students. *Id.*, at 93-94.

6) The Hamilton Township Board of Education has adopted a number of policies that are related to these critical concerns. These include:

- 3280 LIABILITY FOR PUPIL WELFARE

  Teaching staff members are responsible for supervision of pupils and must discharge that responsibility with the highest level of care and prudent conduct. All teaching staff members of the district shall be governed by the following rules in order to protect the well-being of pupils and to avoid any assignment of liability to the Board of Education or to a staff member personally in the event a pupil is injured.

  The Superintendent shall prepare such regulations as may be required to enforce the following rules:

  * * *

  9. A teaching staff member must immediately report any instance of substance abuse, violence, vandalism, accidents, or suspected child abuse in accordance with Policy Nos. 8442, 8461, and 8462.

- 8461 REPORTING VIOLENCE, VANDALISM, ALCOHOL AND OTHER DRUG ABUSE (M).

  * * *

  Any school employee who observes or has direct knowledge from a participant or victim of an act of violence or the possession and/or distribution of alcohol or other drugs on school grounds, and any

school employee who reports a pupil for being under the influence of alcohol or other drugs, according to the requirements of N.J.S.A. 18A:40A-12 and N.J.A.C. 6A:16-4.3, shall file a report describing the incident to the School Principal in accordance with N.J.S.A. 17-46. The report shall be on a form adopted by the Board to include all of the incident detail and offender and victim information that are reported on the Electronic Violence and Vandalism Reporting System (EVVRS).

■ 3281 INAPPROPRIATE STAFF CONDUCT

The Board of Education recognizes its responsibility to protect the health, safety and welfare of all pupils within this school district. Furthermore, the Board recognizes there exists a professional responsibility for all school staff to protect a pupil's health, safety and welfare. The Board strongly believes that school staff members have the public's trust and confidence to protect the well-being of all pupils attending the school district.

In support of this Board's strong commitment to the public's trust and confidence of school staff, the Board of Education holds all school staff to the highest level of professional responsibility in their conduct with all pupils. Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district.

The Board recognizes and appreciates the staff-pupil professional relationship that exists in a school district's educational environment. This policy has been developed by this Board to provide guidance and direction to avoid actual and/or the appearance of inappropriate staff conduct and conduct unbecoming a school staff member toward pupils.

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. School staff shall not engage in inappropriate conduct toward or with pupils. School staff shall not engage or seek to be in the presence of a pupil beyond the staff member's professional responsibilities. School staff shall not provide transportation to a pupil in their private vehicle or permit a pupil into the private vehicle unless there is an emergency or a special circumstance that has been approved in advance by the Building Principal/immediate supervisor and the parent/legal guardian.

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 is 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 to protect the health, safety and welfare of school pupils. A staff member's conduct will be held to the professional standards established by the New Jersey State Board of Education and the New Jersey Commissioner of Education. Inappropriate conduct or conduct unbecoming a staff member may also include conduct not specifically listed in this Policy, but conduct determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education, an arbitration process, and/or appropriate courts to be inappropriate or conduct unbecoming a school staff member.

School personnel, compensated and un-compensated (volunteers), are required to report to their immediate supervisor or Building Principal any possible violations of this Policy. In the event the report alleges conduct by the Building Principal or the immediate supervisor, the school staff member may report directly to the Superintendent or

> designee [central office administrator]. In addition, school personnel having reasonable cause to believe a pupil has been subject to child abuse or neglect as defined under N.J.S.A. 9:6-8.10 are required to immediately report to the Division of Child Protection and permanency in accordance with N.J.A.C. 6A:16-11.1 and inform the Building Principal or immediate supervisor after making such report. However, notice to the Building Principal or designee need not be given when the school staff member believes that such disclosure would likely result in retaliation against the child or in discrimination against the referrer with respect to his/her employment.
>
> Reports may be made in writing or with verbal notification. The immediate supervisor or Building Principal will notify the Superintendent of Schools of all reports, including anonymous reports. The Superintendent or designee will investigate all reports with a final report to the Superintendent of Schools. The Superintendent or designee may, at any time after receiving a report, take such appropriate action as necessary and as provided for by law. This may include, but is not limited to, notifying law enforcement, notifying the Division of Child Protection and Permanency in accordance with N.J.A.C. 6A:16-11.1 and/or any other measure provided for in the law.
>
> This Policy will be distributed to all school staff and provided to staff members at any time upon request.

7) There are many different ways that students may interact with the SAC. There are students who have some type of substance abuse. Either they have been found under the influence of or in possession of illegal drugs or alcohol. Those students are taken care of by the administration, and are sent out for a drug test. When they return, they are put on a contract which states that they must see the SAC. Generally, a Substance Awareness Subtle Screening Inventory (SASSI) will be given by the SAC, which tells a lot about the students, their use of drugs and the level of care that is required. Additionally, there are students that the SAC may need to see as a result of the Core Team referral, who have their own issues with substance abuse or it could be a family situation. A plan

will then be made up in conjunction with the guidance counselor. A teacher may refer a student to the SAC by filling out a referral sheet. Finally, students may self-refer either by completing a form after going to the guidance counselor or nurse, or simply stopping in to see Ms. Young. Tr. April 4, 2014, *Id.*, at 94-96.

8) There are times when more than one student would be in Ms. Young's office. Termed the "lunch bunch," these are students that have lunch at that period who will come to the SAC office. Some professional growth type of exercise will then be done. ALATEEN meetings (for young people who have substance abuse in their families) are also held there. *Id.,* at 97-98.

9) On Tuesday, October 22, 2013, M. S. was in Ms. Young's office during the entire 6th period lunch. When M. S. walked in, she proceeded to sit on the couch with G. H., who was already there. Ms. Young was sitting at her desk facing M. S. and G. H. After speaking about her boyfriend with Young, G. H. told the SAC about a conflict she had with J. C., who had skimped G. H. on a bag of marijuana. At some point in time, Ms. Young asked if they could get J. C. down to the office to fix the conflict that was going on about the marijuana. G. H. then volunteered to text J. C. to have him come to Ms. Young's office. Tr. April 3, 2014 at pp. 9-12; Tr. April 10, 2014, at pp. 19-20.

10) While sitting at 6th period lunch with M. B. and C. W., J. C. received a text message from G. H. telling him that Ms. Young wanted him to come down to the office to settle this. J. C. then told M. B. to come with him as they weren't doing anything. Upon J. C. and M. B. arriving at Ms. Young's office, M. S. and G. H. were there sitting on the couch. J. C. then sat down on a chair to the right of G. H. and M. B. in a chair to the left of M. S. At that time, Ms. Young was sitting at her desk a few feet away. Tr. April 3, 2014, at pp. 82-86; 44-46.

11) After the others were talking a little bit, Ms. Young said to J. C. "I heard you sold G. H. weed," and J. C. responded, "[y]eah, I did." G. H. then said that J. C. had skimped her and took out the bag and said "[t]his isn't skimped?". Ms. Young then told J.C. that to resolve it he should give her money back and take the weed back. J. C. then handed G. H. the money, with her handing him the pot. *Id.* at pp. 87-88; pp. 14-15; pp. 50-55; Tr. April 10, 2014, at pp. 9-10; 20-21; Tr. March 20, 2014, at p. 31.

12) Ms. Young then pointed with an arm motion at J. C. and G. H. and told them that they could get in trouble and arrested

because she could call the cops. G. H. said that Ms. Young would never do that, because she loved them too much. At that point, M. B. got nervous and said he had nothing to do with this, with Ms. Young responding that he was not going to get into trouble and to calm down. After the marijuana was exchanged for the money, the students just talked normally, because they thought everything was going to be fine, as Ms. Young said she was not going to tell anyone. After five or ten minutes, the students left when the period ended. *Ibid.*

13) After leaving Ms. Young's office, about 20-25 minutes into 7th period, J.C. was approached by Vice Principal Robinson who told him to come down to the main office and to bring his book bag. After being told that the administration had heard he was selling weed in school, J. C. produced the marijuana. J. C. later talked to Vice Principal Belmont and eventually, Ms. Young while in the conference room. The SAC told J. C. that everything was going to be all right and that she did not want all of them to get into trouble. Arrangements were then made to have his dad take J. C. to Rednor-Risi to have a drug test completed. As a result of this incident, J. C. was removed from Steinert High School and at the time of his testimony was attending the Rubino Alternative School. Tr. April 3, 2014, at pp. 80; 89-91.

14) Prior to this action, at the beginning of 7th period between 12:40 and 12:45 p.m., Principal Ingargiola had advised Vice Principal Belmont that it had just been reported to him by G. H.'s boyfriend A. H., that J. C. was in possession of marijuana. Ms. Belmont waited until J. C. was brought down to the office by Vice Principal Robinson and then went back into her office, while Principal Ingargiola was in the conference room with Mr. Robinson and J. C. After they conducted the search, Officer Holman was brought into the conference room, and Mr. Ingargiola told Ms. Belmont that J. C.'s parent needed to be contacted. Because J. C. was visibly upset and based upon established protocol in dealing with anyone suspected of illegal drug possession, he was asked if he would like to speak to Ms. Young. When he said yes, Ms. Belmont left. Tr. March 20, 2014, at pp. 21-24; 28; 89-92.

15) After leaving the conference room, Ms. Belmont phoned Ms. Young's office and reached her. She told the SAC that J. C. was down in the office and just pulled out a bag of marijuana, we have him for possession, and he would like to speak with you. Ms. Young's comment was, "[y]es, I have two students down here crying." After the vice principal asked if she could come up when she was available, Ms. Young said, "[y]es I will." Upon arriving at

the main office, Ms. Young did not indicate anything that had happened during 6th period to the vice principal or mention the involvement of G. H. *Id.*, at 24-26.

16) The next morning, October 23, 2014, the H. and H. families came into school at 7:30 a.m. and asked to speak with Ms. Belmont. The vice principal brought them all into the conference room, and was presented with printouts from some tweets of some very threatening remarks from Steinert students regarding A. H. "snitching." A copy of a police incident report number was also provided. *Id.*, at pp. 27-29; *see also*, RESPONDENT EXHIBIT 25.

17) Proceeding to identify as best she could the students involved from their tag names, Ms. Belmont started to call those students down to find out why they were threatening A. H. One of the students who was interviewed was M. S., who was interviewed some time after 8:00 a.m. on October 23rd. Tr. March 20, 2014, at p. 29; pp. 95-97.

18) M. S. reasoned that it was not right that they should snitch on each other as it was a private deal and that J. C. was a good person. When Ms. Belmont asked M. S. how she knew that there was a snitch after receiving a partial explanation, the student said "[w]hy are you asking me all these questions, Ms. Young was right there." *Id.*, at pp. 30-31; 99.

19) After interviewing a few more students and finishing her lunch duty, Ms. Belmont left the cafeteria at around 12:16 p.m. and walked over to the Media Center to see if Ms. Young was in her office and she was. Ms. Belmont reported to her that she had talked to a few students that morning, who were complaining that the SAC was in the office when the exchange took place between the two students. Ms. Young informed the vice principal that she was. Ms. Belmont replied that the students had left her office in possession of marijuana and this happened yesterday, but she was coming to the SAC now. Ms. Young was then asked why she did not come to Ms. Belmont or report it. Ms. Young replied something like, "I didn't have to A. H. already reported it." A later comment was then passed that "I wanted to catch him as a dealer not just in possession". The conversation concluded with Ms. Belmont telling Ms. Young that she would discuss the matter with Mr. Ingargiola. *Id.*, at pages 32-34; 100.

20) Later in the afternoon, Ms. Belmont informed the principal that she had spoken to Ms. Young and that the SAC corroborated that the exchange took place in her office in front of several

students, and that she said her intent was as soon as J. C. left, she wanted to catch him as a dealer, not in possession. After asking the vice principal to repeat what she had just said, Mr. Ingargiola immediately called Dr. Gilbert, the director of Curriculum and Instruction. Dr. Gilbert advised that he would speak with the superintendent, Dr. Parla and get back to them. When he called back, the director instructed them to call Ms. Young in the first thing in the morning and question her regarding the entire situation. *Id.,* at pages 35-37.

21) On October 24, 2014, Mr. Ingargiola interviewed Ms. Young in his office in the presence of Ms. Belmont and Mr. Robinson. They told her that she would be entitled to bring a Union representative with her. At the time, she indicated that it would likely be Fred Gatto. Mr. Gatto did not come to the meeting, however, and Ms. Young did not indicate that she would like the interview stopped. The SAC explained that G. H. was upset that she had received a light bag of marijuana that she had paid for, and that J. C. was the one who sold it to her. As G. H. was talking Ms. Young said "[l]et's just take care of this now." J. C. then entered the office and he gave back the money and G. H. gave back the marijuana, according to the SAC. When questioned about why she did not report it to the administration, Ms. Young said that it had already been reported, as A. H. had already come down to the office. When Ms. Belmont observed that the child left the room in possession of marijuana, Ms. Young's answer was, "[y]ou don't understand. I wanted to catch him as the dealer, not just in possession of marijuana." *Id.,* at pages 37-41; 102-106; 128.

22) On October 28, 2013, Superintendent of Schools Dr. James Parla sent Ms. Young a correspondence which cited applicable Board policies and notified her that she was being placed on suspension with pay, effective that date. *See,* PETITIONER EXHIBIT 8.

23) On October 30, 2014, an interview of Ms. Young took place at the Hamilton Township Board Offices. In attendance were Ms. Young and her counsel Mr. Cridge, Mr. Betley, Dr. Parla, Mr. Slavin, Mr. Ingargiola, and Ms. Wright. At that time, Ms. Young told a similar story about who was present in the room, as well as the nature of the incident. She went on to state, however, that there really was no exchange that she supervised but that this conversation was happening with the kids; that the bell rings or is just about to ring and that G. H. throws the marijuana to J. C. who throws the ten dollars to G. H. and the bell rings immediately. Tr. March 20, 2014, at pp. 118-120; 164-167.

24) On December 13, 2013, Hamilton Township Superintendent of Schools Dr. James Parla preferred tenure charges of UNBECOMING CONDUCT and MISBEHAVIOR against Ms. Young, pursuant to N.J.S.A. 18A:6-10 *et seq.* and N,J,A,C. 6A:3-5.1 (b). *See,* PETITIONER EXHIBIT 1. These incorporated by reference the attached STATEMENT OF EVIDENCE and stated in relevant part:

1. On October 22, 2013, Mrs. Young directed that an exchange of marijuana and money occur between two students who were in her presence.

2. Mrs. Young permitted the student possessing the marijuana and the student who received the money to leave her presence.

3. Mrs. Young did not report to the school administration that the student who received the marijuana in the exchange was in possession of marijuana on school premises despite her having knowledge that the student possessed the marijuana.

4. Mrs. Young was not truthful with school administration about the circumstances of the incident when interviewed about it on October 30, 2013 in that the story she told on October 30th contradicted what she told Vice Principal Angela Belmont and Principal Frank Ingargiola in their respective meetings with her on October 23rd and 24th.

25) On December 16, 2013, Interim Board Secretary Peter Frascella served Ms. Young and counsel with a copy of the tenure charges along with the Board's STATEMENT OF EVIDENCE, per N.J.S.A. 18A:6-17.1. *Ibid.*

26) On January 7, 2014, the Hamilton Township Board of Education considered the tenure charges, and found that there was probable cause to credit the evidence in support of the charges and that the tenure charges, if true, warrant the dismissal or reduction in salary of Ms. Young. The CERTIFICATE OF DETERMINATION, as provided for in N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1 & 5.2 was filed that same date. *Ibid.*

27) On January 13, 2014, the tenure charges and supporting documentation were transmitted to Kathleen Duncan, Esq., Director Bureau of Controversies and Disputes, New Jersey State Department of Education. Receipt of the same was acknowledged

> by Ms. Duncan on January 16, 2014, with Respondent directed to file a written response within 15 days, along with PROOF OF SERVICE upon the District. Counsel for Ms. Young complied by filing an ANSWER on January 29, 2014. *Ibid.*
>
> 28) By letter dated February 10, 2014, Director Duncan notified the undersigned that he had been appointed as Arbitrator, with the matter referred to me for hearing and determination.

In this case, Ms. Young has been charged with unbecoming conduct. In Karins v. City of Atlantic City, 152 N.J. 532, 551 (Coleman, 1997), the Supreme Court of New Jersey addressed this issue with regard to a police officer. The guidance provided is applicable to all public employees:

> New Jersey courts have applied the standard of 'conduct unbecoming' in numerous cases involving the discipline of police officers. For instance, in In re Emmons, 63 N.J. Super, 136, 164 A.2d 184 (1964), the Appellate Division confronted the issue whether [**717] an off-duty police officer's refusal to cooperate and to submit to a sobriety test following an automobile accident constituted 'conduct unbecoming an officer.' *Id.* At 140, 164 A.2d 184. The court observed that '[t]he phrase is a classic one,' that 'has been defined as 'any conduct which adversely affects the morale or efficiency of the bureau ... [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.' *Ibid.* (quoting In re Zeber, 398 Pa. 35, 156 A.2d 821, 825 (1959).

Conduct unbecoming a teacher includes a broad range of behavior that impacts a teacher's ability to perform her duties or otherwise renders her unfit to have the responsibility for the care of children. *See,* I/M/O the Certificates of Cheryl Sloan, OAL Docket No. EDE 5595-11 (2012) [*citation omitted*].

The District provided persuasive authority for the proposition that New Jersey teachers are subject to higher standards of behavior than individuals in other employment, because of the influence they exercise over the students. *See*

generally, I/M/O the Tenure hearing of Theresa Lucarelli, Board of Education of the Borough of Brielle, Monmouth County, OAL Docket No. EDU 10413-95 (1997); I/M/O the Certificate of Cheryl A. Sloan, *supra,* OAL Docket No. EDE 5595-11, 2012 N.J. Agency Lexis 288 (2012) [*citing*] State Bd. Of Exam'rs v. Charlton, 96 N.J.A.R. 2d (EDE) 18, 21 ("That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered [*30] society, cannot be doubted."). [*other citation omitted]. See also*, Cherrie Sue Saunders v. New Jersey Department of Education, OAL Docket No. EDU 1808-91 (1991).

As the foregoing findings of fact reflect, the District has satisfied its *prima facie* showing in support of the instant tenure charges alleging unbecoming conduct on the part of Ms. Young. This established that Ms. Young directed that an exchange of marijuana and money occur between two (2) students who were in her presence; permitted the students to leave her presence; did not report to school administrators that the student who received the marijuana in the exchange was in possession of the marijuana on school premises; and was not truthful with school administrators about the circumstances surrounding the incident.

The testimony of the District's witnesses was credible, straight forward, unequivocal, and not impeached by Respondent. The student witnesses had no apparent motive for bias, and in fact most expressed that they were fond of Ms. Young. Their testimony was internally consistent with their prior STATEMENTS

and externally, with each other. It further supported the District's position that none of the students were interviewed together, or spoke to one another before or after any interview with administration or Board counsel, or were offered any inducement in exchange for their testimony or were threatened.

Likewise, their recollection of events was not marginalized on cross. And it was not established that they were under the influence of any CDL either on October 22nd or the preceding days, or at hearing, notwithstanding Respondent's attempt to show such was the case with J. C. by resort to a tweet which turned out to be the lyrics from a rap song. The testimony of Ms. Belmont and Mr. Ingargiola established that what M. B. and M. S., told them was consistent with their statements and what was reported to administration. Tr. March 20, 2014, pp. 41-47; 107-115. The administrators further elaborated on the disjointed and evolving explanations that were offered by Ms. Young during various formal and informal interviews. The burden is accordingly shifted to Respondent.

ALJ Edward J. Delaney, Jr. provides a working definition of *credibility* in his Sloan decision, discussed above. In his FINDINGS OF FACT, Judge Delaney determines that "[c]redibility is the value that a fact finder gives to a witness's testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and manner in which it 'hangs together' with other evidence.") [citing Carbo v. United States, 314 F.2d 718, 749 (9th Cir, 1963)]. By any measure, the testimony of Ms. Young at the April 4, 2014 hearing was inconsistent and incredible, and upon cross reluctant.

She recalled during direct examination that after J. C. and M. B. arrived in her office, G. H. introduced her to J. C. and described a discussion between the two where G. H. told J. C. he owed her money. When questioned with regard to whether she knew what the conversation was about she demurred that at the time she didn't, and reasoned that it could have been about anything, cigarettes or lunch money. Respondent then recalled, "[a]ha, this must have something to do with being shorted with the pot sale." Tr. April 4, 2014, at pp. 107-108.

Any suggestion that Ms. Young did not realize the discussion over money was related to the drug transaction until later is implausible give her prior testimony: "M. S. and G. H. were having and it was like a side discussion, and G.H. was complaining that J. C. had over charged her and you know, and that's – that was kind of it. And I am not interested in talking about something like that. That's not the purpose of the group." *Id.,* at 104. Concerning her participation in the conversation, Respondent allowed that, "[w]ell, I remember saying to G. H., you're dealing with a drug dealer, and drug dealers are dishonest, so I would suggest that you don't deal with him, and of course, I always tell them you don't smoke pot ..." *Id.,* at 104-105.

Counsel for Respondent has seized upon the inconsistencies in the students' drawings of Ms. Young's office. What is significant, however, is that one of the active participants to the drug transaction, J. C., corroborated the representation of M. S. that she was sitting on the couch next to G. H. with M. B. to her left and J.C. to her right in a chair directly next to G. H. That recollection is

consonant with the drawing of M. B. It is true that the drawing of J.C. has M. D. between M. S. and G. H., however, he supports the rendering of M. S., which placed Ms. Young in close proximity at the side desk, as did that of M. C. Tr. April 3, 2014, at p. 85-87; *see also*, RESPONDENT EXHIBITS 26-29. On balance, these minor inconsistencies are not material.

Ms. Young has also gone to great lengths to attempt to convince me of her concerted attempts to notify the school administration of the illicit drug transaction which had just taken place in front of her. During her direct examination, Ms. Young readily acknowledged her obligation to notify the administration of this event and in fact, claimed that she was shocked by it as this had never before happened. Her inaction in the face of this emergent situation is therefore puzzling and runs counter to the standard of conduct expected of professional educators under District Policy 3281 and existing law.

Notwithstanding the fact that his recollection of the operative time period was faulty, Mr. Gatto emphasized that Ms. Young went to the office with a sense of urgency. That being the case, Respondent's testimony which surfaced for the first time at hearing, that she made multiple attempts to discuss the event with Ms. Belmont and Mr. Ingargiola but did not do so because they were busy rings hollow.

Moreover, even if that were the case and leaving aside the issue of Respondent's obligation to secure the CDL, can any serious argument be made that a reasonable person acting in this age of technology under these

circumstances would not have sent a text message or email that evening when she went home. A call could have been made. There also were lost opportunities to notify the administration when Ms. Belmont called Ms. Young on the phone to ask her to come to the main office after J. C. had been apprehended with the marijuana, and again when Ms. Young responded to the office. As to the former, the District has queried why the vice principal was not told then, as Respondent had her undivided attention.

Ms. Young attempted to explain away why she had not otherwise contacted the school administration once the school day had concluded, and offered that they met as a team with the administration completing the paperwork and not the SAC. Surely then, Respondent must have reported to the main office the first thing on the morning of October 23, 2013, to notify Ms. Belmont or Mr. Ingargiola as to what had happened.

Not so, and the incident was only discussed with Ms. Belmont when the vice principal approached the SAC following the investigation[3] of threatening tweets from the night before, when student M.S. asked "[w]hy don't you ask Ms. Young, she was there."

---

[3] Upon the cross-examination of Ms. Belmont, the issue of the tweets surfaced as Respondent had not been provided with a copy of the same in conjunction with the document request. Tr. March 27, 2014 at pp. 56-57. Petitioner objected to the introduction of the tweets on several grounds. Following an Executive Session, a bench ruling issued that I would perform an *in camera* review of this evidence, and the District produced the tweets in timely fashion. They were then discussed at another Executive Session prior to the start of the April 3, 2014 hearing. A bench ruling was then entered into the record overruling the District's objection to the introduction of the tweets and providing them to Respondent. Tr. April 3, 2014, p. 5. *See also*, TWEETS, RESPONDENT EXHIBIT 25.

What followed was an evolving and tortured depiction of the events of October 22, 2013, with Ms. Young's version changing numerous times. During the October 23rd and October 24th[4] discussions with school administration, Ms. Young acknowledged that she had directed the exchange but urged that she was effectively somehow running a private sting operation to ensnare J. C. as a dealer and not just as a user. That all changed at the October 30, 2013 meeting with District officials, when she was represented by counsel. At that time, the story was sanitized with the position adopted that she had not arranged the exchange and that the students spontaneously threw the CDL and money at each other as the period ended.

Critically, throughout each version of her story at no point did Ms. Young ever posit that student M. S. was in the fact the actor who made the suggestion that J. C. relinquish the money and receive the "skimped" bag of marijuana back from G. H. That allegation was initially made during direct examination at the April 4, 2014 hearing. The stated reason for the material oversight was Ms.

---

4 Respondent raised a muscular *Weingarten* line of questioning at the March 20, 2014 hearing during the cross-examination of Ms. Belmont. The Petitioner objected to the same, as no such arguments had previously been made in the ANSWER, STATEMENT OF EVIDENCE, or INTERROGATORIES, which were ultimately never entered into evidence. After acknowledging the District's objections, I nevertheless permitted the questions in the interest of preventing a collateral attack on the AWARD in the event the charges were sustained. Tr. March 27, 2014, at pp. 61-64. This argument has also been memorialized in Respondent's brief. Counsel, however, misreads the import of NLRB v. Weingarten, 95 S. Ct. 959, (1975), which attaches when an employee requests representation, or that a disciplinary meeting be adjourned until it may be secured if requested by the employee. *See, Discipline and Discharge in Arbitration*, Second Edition, Brand & Biren, ABA Section of Labor and Employment Law, BNA Books, at Chapter 2,II.A.6, pp. 56-57. And even given that arbitrators have sometimes required the employer to advise an employee of these rights, the record demonstrates that Mr. Ingargiola did tell Ms. Young that she had the right to Union representation at the start of the October 24, 2014 interview, but that she declined. Tr. March 20, 2014, at p. 83.

Young's position that "[i]t would sound like I was blaming it on somebody else and not opening up to what I was being accused." When M. S. was then recalled on rebuttal on April 10, 2014, her indignation was palpable when she asked in what substantially constituted an excited utterance — "[b]ut what I don't understand is how come out of nowhere I am being blamed for this right now? How come I am being told right now that it was my idea to exchange the marijuana?" Tr. April 10, 2014, at p. 10.

The conspiracy theory advanced by Respondent, that because A. H. showed up at Ms. Young's classroom at the conclusion of the 6th period class in question because he and G. H. had hatched a plot to have her return the pot finds no support in the record evidence. Rather, the District has conclusively established that it was the SAC who requested J. C.'s presence in her office to "make it right."

Nor do I credit the testimony of K. S. who indicated that it was one of the other students who suggested that the drug transaction be arranged for a variety of reasons. The student's recall of the facts was very limited, as she had admittedly been completing a school project with permission on the computer — "I don't really remember too much because it was a while ago. I was doing my project on the computer." Tr. April 4, 2014, at p. 68. She went on to agree on cross, that she was not really paying attention, as it really wasn't her business. *Id.*, at p. 75.

When interviewed by school administration on October 30, 2013, the initial

question asked of K. S. was whether she knew what was going on. Her immediate response was "I don't want to get Ms. Young in trouble." K. S. thereafter stated that she was unsure of who said "[j]ust give him the weed back and give him the money back and we will just let it go." *See,* RESPONDENT EXHIBIT 18. The testimony of Mr. Gatto also had the unintended consequence of undermining the credibility of K. S., when he allowed that "[s]ometimes to be honest with you, sometimes she didn't always tell me the truth." Tr. April 4, 2014, at p. 52. The testimony of Respondent's witnesses J. D. and Ashley Reeves was of no probative value whatsoever.

As the charges have been established by the District, the remaining question becomes what is the appropriate penalty in the case. As previously detailed, our Appellate Division has provided guidance which indicates that generally when deciding a penalty or sanction in a tenure proceeding relevant factors to be considered include: whether dismissal or something less is appropriate; the nature and gravity of the offense; any extenuating or aggravating circumstances; and the harm or injurious effect the conduct may have had on the proper administration of the school system. In re Fulcomer, 404, 422 (App. Div. 1967).

In addition to the persuasive case citation on the issue of teacher's being held to a higher standard, the Hamilton Township Board of Education relies upon a number of legislative enactments in New Jersey that are designed to safeguard the health, safety and welfare of students under an educator's charge. These

include N.J.S.A. 18A:37-2 (which sets forth the various infractions that warrant suspension or expulsion from school and specifically lists the possession, consumption or being under the influence of alcoholic beverages or controlled dangerous substances on school premises as separate infractions); N.J.S.A. 18A:37-2(j) (legislative history revealing its enactment was motivated to address the problem of youth/alcohol abuse); N.J.S.A. 18A:40A-1 through 40A-25 (mandate that every local Board shall establish a comprehensive substance abuse intervention, prevention and treatment referral program in the elementary and secondary schools of the district); N.J.S.A. 18A:40A-16 and 40A-17 (every local Board to establish parent training and outreach programs to provide substance abuse education and assistance for parents of pupils in the district); N.J.S.A. 18A:40A-12 (any teaching staff member believing a student may be under the influence of drugs, alcohol or steroids must report the observation to the principal, with a mandatory medical examination, drug testing and SAC referral upon return to school); N.J.S.A. 18A:40A-22 (random drug testing of students engaged in extracurricular activities, including interscholastic sports).

District Policy 3281, which Ms. Young violated, underpins these public policy concerns and speaks of school staff members having the public's trust and confidence to protect the well-being of all pupils attending the school district. It goes on to caution that school staff conduct in completing their professional responsibilities shall be appropriate at all times, and that they shall not engage in any inappropriate conduct toward or with pupils. That is exactly what happened in this instance, however.

It is acknowledged that Ms. Young has an unblemished record with the District coupled with excellent evaluations, and that she is very well regarded by her peers and prior administrators. *See generally,* SCHECTEL JUNE 10, 2009 LETTER; GILBERT JUNE 16, 2009 LETTER; TAGGART JUNE 23, 2009; APRIL 1, 2003 OBSERVATION REPORT; OCTOBER 13, 2009 OBSERVATION REPORT; OCTOBER 21, 2009 OBSERVATION REPORT; JANUARY 13, 2010 OBSERVATION REPORT; OCTOBER 1, 2010 OBSERVATION REPORT; JANUARY 5, 2011 OBSERVATION REPORT; JANUARY 13, 2011 OBSERVATION REPORT; FEBRUARY 11, 2011; OCTOBER 12, 2011; NOVEMBER 21, 2011 OBSERVATION REPORT; NOVEMBER 5, 2012 OBSERVATION REPORT; JUNE 18, 2010 ANNUAL PERFORMANCE REPORT; NOVEMBER 26, 2011 ANNUAL PERFORMANCE REPORT; RESPONDENT EXHIBIT'S 1-16.

But in this case, the aggravating factors trump the mitigating. In that respect, as the District has correctly argued, her facilitation of the drug/cash exchange to make the controversy go away is contrary to the proactive, vigorous, front-line approach that is required of all teaching staff members. And her brokering of a refund between G. H. and J. C. combined with her position that she was going to report the students but for the school administration being too busy demonstrates such an egregious display of poor judgment and obfuscation that removal is the only appropriate remedy. These considerations as well as the abject lack of acceptance of responsibility without a scintilla of contrition, elevate this event to that of a cardinal violation for which progressive discipline is not

appropriate. *See,* In re Fulcomer, *supra*, at 421; Pennoh v. North Princeton Developmental Center, 96 N.J.A.R. 2d 28 (September 19, 1995).

In that regard, I have closely read Respondent's case citation and find that it is readily factually distinguishable. Those cases involved admittedly serious transgressions by other educators. However, they do not rise to the level of the offense committed by Ms. Young, which has eviscerated the Hamilton Township Board of Education's ability to ever trust her to perform the duties of the sensitive SAC position again, as Dr. Parla detailed. *See,* In the Matter of the Tenure Hearing of Juan Cotto, (Comm. Of Ed. Dec. Docket No. 210-6/97); Matter of Tenure Hearing of Boyd, 93 N.J.A.R. 2d (EDU 445); In the Matter of the Tenure Hearing of Barbara Emri, OAL Docket No. EDU 4579-00; In the Matter of the Tenure Hearing of Erica Mercorelli, 2010 WL 3618684; In the Matter of the Tenure Hearing of Kimberly Geurds, 2010 WL 8020416.

In conclusion, and based upon the foregoing, the unbecoming conduct tenure charges have been **SUSTAINED**, with Respondent removed from her teaching position. IT IS SO ORDERED.

VI. CONCLUSION

The Petitioner has satisfied its burden of establishing the conduct unbecoming tenure charge by a preponderance of the credible evidence.

AWARD

THE SUBJECT TENURE CHARGES ARE SUSTAINED.

Dated: May 2, 2014
NORTH BERGEN, N.J.

MICHAEL J. PECKLERS, ESQ., ARBITRATOR

STATE OF NEW JERSEY
SS:
COUNTY OF HUDSON

ON THIS 2ND DAY OF MAY 2014, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQ.**, TO BE KNOWN TO ME AND THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

NOTARY PUBLIC

ANGELICA SANTOMAURO
ID # 2387931
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 7/29/2014