STATE OF NEW JERSEY COMMISSIONER OF EDUCATION

IN THE MATTER OF THE ARBITRATION OF THE TENURE CHARGE between **STATE OPERATED SCHOOL DISTRICT, CITY OF NEWARK, ESSEX COUNTY** Petitioner, -and- **JAJUANA VAUGHN,** Respondent	::	DOE DOCKET NO. 336-10/15 **OPINION** **AND** **AWARD**

BEFORE: MICHAEL J. PECKLERS, ESQ., ARBITRATOR

DATE(S) OF HEARING: January 6, 2016; January 25, 2016

DATE OF AWARD: February 22, 2016

APPEARANCES:

For the Petitioner:

Robert Tosti, Esq., PURCELL, MULCAHY, HAWKINS, FLANAGAN & LAWLESS, LLC
Homere Breton, Executive Legal Assistant, Talent Office of Administrative Operation Services, Newark Public Schools

For the Respondent:

Colin M. Lynch, Esq., ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FREIDMAN, P.C.
Jajuana Vaughn, Respondent

I. BACKGROUND OF THE CASE

Jajuana Vaughn is a tenured instructor of the State Operated School

District of the City of Newark, New Jersey, Essex County ("the District"). On August 25, 2015, the District executed a tenure charge against Ms. Vaughn, charging her with conduct unbecoming a teaching staff member by virtue of being AWOL, pursuant to N.J.S.A. 18A:6-11 and N.J.S.A. 18A:6-17.3. After being permitted to file a written statement of position in response to the charge, on October 27, 2015, State District Superintendent Christopher Cerf determined that there was probable cause to credit the evidence in support of the tenure charge, and that such charge if credited, was sufficient to warrant a dismissal or reduction in salary. Ms. Vaughn was then suspended without pay for a period of 120 days, per N.J.S.A. 18A:6-14, with the charges submitted to the Commissioner of Education and concomitantly served upon Ms. Vaughn via Federal Express on October 27, 2015. See, CERTIFICATE OF DETERMINATION.

In a November 23, 2015 letter to counsel, M. Kathleen Duncan, Director of the DOE Bureau of Controversies and Disputes, advised the parties that: "following receipt of the Respondent's answer on November 13, 2015, the above captioned tenure charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by the arbitrator of Respondent's defenses and any motions which may be filed with the arbitrator. The arbitrator shall review those charges which are not dismissed as the result of a motion under the preponderance of the evidence standard."

By separate cover letter that same date, I was advised of my appointment

as Arbitrator pursuant to *P.L. 2012, c. 26* by Ms. Duncan. On December 8, 2015, I conducted a conference call with counsel, at which time a discovery schedule that included the propounding of interrogatories was set down. An initial hearing in the case was originally scheduled for January 6, 2016, but then subsequently cancelled. Oral argument in support of the respective positions was nevertheless undertaken during a conference call that was convened that afternoon.

A hearing took place on January 25, 2016 at the offices of the New Jersey State Board of Mediation in Newark, New Jersey. At that time, counsel were provided with a full opportunity to introduce relevant and admissible documentary evidence; to participate in oral argument; and to engage in the direct and cross-examination of the witnesses who testified under oath. A verbatim transcription of the proceedings was provided by RIZMAN RAPPAPORT DILLON & ROSE. No post-hearing briefs were submitted, and the instant OPINION & AWARD is issued in timely fashion.

II. FRAMING OF THE ISSUE

Has the District satisfied its burden in having the tenure charge established by a preponderance of the credible evidence? If not, what shall the remedy be?

III. STIPULATION

- The basis of the tenure charge is the failure of Ms. Vaughn to properly advise the District of her status following the absences commencing on November 12, 2014.

IV. STATUTORY & REGULATORY CONSIDERATIONS

NEW JERSEY STATUTES ANNOTATED TITLE 18A

18A:6-10 Dismissal and reduction in compensation of persons under tenure in public school system. No person shall be dismissed or reduced in compensation,

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

(b) If he is or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution conducted under the supervision of the commissioner, except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

* * *

18A:6-16 Proceedings before commissioner; written response; determination

* * *

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 22 of P.L. 2012 Ch. 26 (C.18A:6-17.1) 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.

* * *

18A:6-17.1 Panel of arbitrators

* * *

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. 2012, c. 26 (C.18A:6-117 et al.):

(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.

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NEW JERSEY ADMINISTRATIVE CODE, TITLE 6A EDUCATION

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SUBCHAPTER 1. GENERAL PROVISIONS

* * *

6A:3-1.5 Filing and service of answer

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(g) Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, or by the ALJ if the motion is to be briefed following transmittal to the OAL.

* * *

6A:3-5.1 Filing of written charges and certificate of determination

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(c) If the tenure charges are charges of inefficiency pursuant to N.J.S.A. 18A:6-17.3, except in the case of building principals and vice principals in school districts under full State intervention, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following timelines and procedures shall be observed:

* * *

5. Upon receipt of the charge, the Commissioner or his designee shall examine the charge. The charge shall be served upon the employee at the same time it is forwarded to the Commissioner and proof of service shall be included with the filed charge. The individual against whom the charge is filed shall have 10 days to submit to the Commissioner a written response to the charge.

* * *

6A:3-5.3 Filing and service of answer to written charges

(a) Except as specified in N.J.A.C. 6A:3-5.1(c)(5), an individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges. Except as to time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).

1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in this subsection precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided the motion is filed within the time frame allotted for the filing of an answer. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the arbitrator if the motion is to be briefed following transmittal to an arbitrator.

6A:3-5.5 Determination of sufficiency and transmittal for hearing

(a) Except as specified in N.J.A.C. 6A:3-5.1 (c) within 10 days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. Where the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. If the charges are determined sufficient, the matter shall be transmitted immediately to an arbitrator for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3-1.12.

* * *

V. POSITIONS OF THE PARTIES

Petitioner State Operated School District City of Newark

This is a very circumscribed proceeding. The tenure charge basically

refers to a period of time beginning in September of 2014, in which a certain aspect of the District found it unsatisfactory that Ms. Vaughn did not respond to certain AWOL notices. If the District sends out an AWOL notice, it needs a response. Notwithstanding the fact there may be an excuse, it's good to tie those things together and say "[p]lease check with Health Services because they're aware that I'm out due to a serious automobile accident, and I am not in the Bahamas sipping Pina Coladas, as the Arbitrator said. I am ready, willing and able to come back to work when I can."

So this is a very technical case that as a professional, we expect our teachers to respond to notices. The crux of this case is therefore sort of legal verbiage as opposed to reality. The District understands that the term "conduct unbecoming" implies wrongdoing. That's not the case here. We live with the documents and laws that we're given, and the AWOL charge falls under the category of conduct unbecoming. It's not meant as a pejorative term or that she did something wrong, other than the limited scope of the question. From the District's perspective, we have to keep track of our teachers; to know that they come to school; if they are out, when they will come back to school. There can't be a nebulous relationship that extends forever with a current teacher who is not teaching.

In conclusion, the context of this case is that the higher-ups in the Newark Public Schools have people in Trenton who they report to. They have an open position, like Ms. Vaughn's, that extends without date. That is something that is

bureaucratically undesirable and almost forbidden. It is therefore very difficult to have a situation like this, and the District certainly understands and apologizes for people suggesting Ms. Vaughn retire, but that wasn't a formal position of the District. Ms. Vaughn said very eloquently how dedicated she is. There comes a time when that dedication may be interrupted by her health situation. So that is the reason for the charge, which should be taken with that understanding. She comes in peace, we come in peace. But we need to have a school district that operates efficiently and with full knowledge of what happens next week, next month and next year.

Respondent Jajuana Vaughn

The District in this case, and I am not referring to Mr. Breton, is — it's like cutting off their nose to spite their face, in this case. Ms. Vaughn is a dedicated teacher, who originally is from Pittsburgh, Pennsylvania. She was a teacher there and was recruited by the District to come here in 2001. She gave up all the time she had in Pittsburgh to come here to the City of Newark and teach its kids. Since then, she has shown herself to be an asset to the District, and testified to the impact she has had on some of the children of this community. She has successfully done her job and done her part. Ms. Vaughn has performed well. This is not a teacher who absent an injury, would be out of school.

Unfortunately, she has had some injuries starting in 2012. She got injured by a student in a work-related matter previously. Ms. Vaughn came back from

that, fought hard, and came back to work. No sooner had she come back from that, then in November 2014, she was driving home from school and got rear-ended through no fault of her own. This car accident added a new injury to her neck and exacerbated some back problems that she had. Since that time, she has been fighting to get back; had surgeries; and has been rehabilitating.

Ms. Vaughn did get a notice from the District in April of 2015, and she responded. The evidence includes numerous doctor's notes, and status reports that were filed with the District's Health Service's Department. They are stamped "File Received." These say why she is out and how long they anticipate her being out. Ms. Vaughn dutifully supplied these during the period of time she was out. She was told that's where to bring the notices. This is a legitimate injury, and since November of 2014, Ms. Vaughn has been doing everything she can to get back.

Ms. Vaughn explained that teaching is not just a job to her, it's a calling and she wants to make an impact on the kids. She does not want to retire and is too young. Frankly, she's 41 and believes that she's got a lot to offer the kids of this community. The record is pretty clear that when she was given notice by the District about letting them know her status, she did. It is not clear whether the eighth floor is not communicating with the ninth, or the ninth floor is not communicating with the eighth. One thing that is pretty undisputed though, is that she was keeping them advised from the minute she went out in November 2014 until the present. Fortunately, she's getting better, and expects to be able to

return to work. She had surgery in September, and is going to physical therapy. Ms. Vaughn expects and hopes to be back as soon as she is physically able to do so. Hopefully that will be relatively soon.

In conclusion, this is an educator who has been commended for her attendance in the past. Ms. Vaughn has dedicated her life to teaching and to the students in Newark. Under these circumstances presented, the District therefore cannot meet the burden of proving conduct unbecoming, which is a pretty severe charge for what we are talking about for the alleged missteps on the part of Ms. Vaughn. We do not think these were missteps, but even if they were, it would seem that a conduct unbecoming charge would seem to be unduly harsh. Discipline is also supposed to be progressive and there have been no prior increment withholdings. We accordingly ask that the Arbitrator conclude that the District did not meet its burden and that Ms. Vaughn should be returned to her position with the Newark Public Schools.

VI. STATEMENT OF THE CASE

As I have often remarked in other cases, the tenure laws of the State of New Jersey were enacted and designed 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 2, 2009).

N.J.S.A. 18A:6-10 provides that a tenured teacher may not be dismissed or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct, or other just cause..." The District has acknowledged that it bears the prefatory burden of making a *prima facie* showing that it has satisfied or established the sufficiency of the subject tenure charge 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); In re Tenure Hearing of Ziznewski, A-0083-10T1, 2012 WL 1231874 (New Jersey Sup. Ct. App. Div. April 13, 2012) (unreported); 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); see also, In re Polk License Revocation, 90 N.J. 550, 560 (1982); In re Tenure Hearing of Tyler, 236 N.J. Super 478 (App. Div. 1989); In re Tenure Hearing of Marrero, 97 N.J.A.R. 2d (EDU) 104 (Cmm'r of Educ. 1996).

In that event, the burden of production shifts to Respondent to plead and

establish her affirmative or exculpatory defenses. Should that be accomplished, the burden will finally return to the District to rebut this showing with substantial, credible evidence. After a determination has been made of whether the tenure charges have been established, Petitioner is then encumbered with the additional burden of demonstrating that the dismissal of Ms. Vaughn for the charged conduct is warranted. In deciding whether to remove Respondent from her tenured teaching position with the Newark Public Schools, I am required to give due weight to the totality 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 (App. Div. 1967).

In Karins v. Atlantic City, 152 N.J. 532 (1998), the Supreme Court of New Jersey determined the phrase *unbecoming conduct* "is an elastic 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.'" citing, In re Emmons, 63 N.J. Super. 136, 164 A.2d 184 (App. Div. 1990) (quoting, In re Zeber, 398 Pa. 35, 156 A. 2d. 821, 825 (1959); see also, Laba v. Board of Education, 23 N.J. 364, 129 A.2d 271 (1957); I/M/O The Tenure Hearing of Christopher Molokwu, OAL Docket No. EDU 9650-04 (Jones, ALJ). In the case at bar, the District has emphasized that of necessity conduct unbecoming was cited under the statute due to the perceived AWOL status of Ms. Vaughn, but recognized that she has committed no wrongdoing in the traditional sense.

Notice was also taken of Respondent's eloquent testimony regarding her dedication.

Upon my comprehensive analysis of the record evidence, with full consideration of the respective positions, I find that the Petitioner has failed to make the requisite prefatory showing, requiring that the instant tenure charges be **DISMISSED**. The underlying facts of the case are generally not in contention, and are found to be the following:

1. Jajuana Vaughn has been employed by the Newark Public Schools as an elementary teacher since September 2001, when she was recruited from Pittsburgh, Pennsylvania. She is tenured in her position, and at all times that are relevant for the purposes of the case, worked at the Brick Avon Academy. T28.

2. In or about October 1, 2012, Ms. Vaughn sustained a workplace accident, when she was struck with a chair by a special needs student. This eventually required her to take a continuous approved leave of absence commencing on January 16, 2013, until on or about March 25, 2013. See, POSITION STATEMENT, Joint Exhibit 4, at Tab A; T33:14-25; T34:1-3.

3. After returning to work in April of 2013, on or about May 22, 2013, Ms. Vaughn was pulled to the floor by another student. This aggravated her back condition. While she again attempted to teach, the condition of her back would not allow it. Ibid.

4. In the following 2013 – 2014 School Year, Ms. Vaughn was absent on leave from approximately November 14, 2013 until June 30, 2014. On August 28, 2014, the District notified Ms. Vaughn that the prior year's leave was approved, and that her request for an extension of her illness leave of absence from her position at the Louise A. Spencer School would be reviewed accordingly. See, STATEMENT OF EVIDENCE, at Exhibit 1.

5. The requested leave was again acknowledged by the District in a September 19, 2014 letter. Id. at Exhibit 2. Ms. Vaughn was out on sick leave from September 9, 2014 until October 9, 2014. By letter dated October 8, 2014, Respondent was notified by the

District's Chief Talent Officer Vanessa Rodriquez that her further request to extend her leave had been denied as a result of exhausting greater than 12 months of leave time. She was therefore directed to make appropriate arrangements to return to work as soon as possible. Id., at Exhibit 3.

6. On October 14, 2014, Ms. Vaughn was hired to fill a vacancy at the Brick Avon Academy, and reported for work until November 12, 2014.

7. On or about November 12, 2014, Ms. Vaughn was involved in a car accident, when she was rear-ended by another vehicle. The impact of the accident aggravated her pre-existing back injuries, and also caused a new injury to her cervical spine. See, POSITION STATEMENT, Id. at Joint Exhibit 4, Tabs B + C; T35:13-25.

8. Respondent currently has a herniated disc and disc bulge in her neck resulting from the car accident for which she is receiving treatment, in addition to her back injuries. Id., at Tab C.

9. On April 28, 2015, Ms. Rodriquez notified Ms. Vaughn via overnight mail that she had been AWOL since November 13, 2014; should return to work immediately; and was subject to disciplinary action. See, STATEMENT OF EVIDENCE, Id., at Exhibit 4; ATTENDANCE INCIDENT DETAIL REPORT at Exhibit 5.

10. While Ms. Vaughn failed to respond to the April 28, 2015 correspondence directly, she had been in contact with the District's Health Service's Department at all relevant times. See, POSITION STATEMENT, Id., at Tab D. Respondent had also asked them to notify the AOS. T36:18-25; T37:1-25; T38:1-25; T39-42.

11. In February 2015, Ms. Vaughn filed a claim for disability benefits through Unum, which indicated an inability to work beyond March 2, 2015. The medical certification was provided to the District's Health Service's Department. Id.

12. On or about May 4, 2015, Respondent provided Health Services with a letter from her pain management physician, which confirmed her inability to return to her teaching duties until at least May 29, 2015. Id.

13. A subsequent update was submitted to Health Services on May 20, 2015, which memorialized an inability to return to work through June 29, 2015. Id.

14. On August 27, 2015, additional medical updates were furnished to Health Services, which established Respondent's inability to work from July 29, 2015 through September 30, 2015. Id.

15. On September 1, 2015, Ms. Vaughn had surgery on her back, and on September 23, 2015 received injections to her cervical spine to help alleviate some of the pain. Id. at Tab E.

At the outset, I credit the position of Petitioner that it has a significant interest in not retaining positions for a prolonged period of time for instructors who may be unwilling or unable to return to duty following various leaves. That said, by any measure the District has failed to establish that Ms. Vaughn was "AWOL" within the traditional contemplation of that term, and instead has ably relied upon what I perceive as a technical argument in support of the instant tenure charge. It essentially conceded the same in its closing argument while at once recognizing Ms. Vaughn's eloquent and moving testimony concerning her dedication to the children of Newark as well as the long-term effect she has had upon some of them.

It is of course true that Ms. Vaughn did not respond directly to Ms. Rodriquez's April 28, 2015 letter. She should have done so and in a perfect world, that may have saved her from having these tenure charges brought. During her testimony, Respondent acknowledged receiving the correspondence, and explained that:

Q. Do you recall receiving the letter?

A. Yes I recall receiving this letter.

Q. Did you – upon receiving this letter, did you keep the District advised of your status?

A. Yes, I called – at the time, the date that I was given that, I had no ability to move my legs at that time. It was hard for me to get from my bed to the bathroom at that time. So I made a phone call to Health Services and let them know I received a letter, I don't know what to do about this letter.

And I said 'I can't drive and I can barely walk.' What should I do about this letter?

And I asked if my doctor's notes were good enough and I asked Health Services to please communicate with the – and I told them who the letter was from.

And I said 'could you please communicate and give them whatever information they need to just let them know I'm working as hard as I can to get my body back so that I could return as soon as possible?'

And they told me they would communicate the information to the other office.

T42-43.

There is however, no basis in fact for the statement by the chief talent officer that there had been no record of communication with Health Services. Respondent pled numerous affirmative defenses in her ANSWER, most particularly, that the teacher gave the District fair notice of the absences, which were for legitimate reasons. The record indicates and the parties do not dispute that Ms. Vaughn was injured-on-the job when a special needs student struck her with a chair. After receiving treatment, this situation was exacerbated when yet another student pulled her to the ground, reinjuring her back. And when

Respondent again fought back to return to the classroom, the November 2014 car accident took place. This added yet another layer of injuries upon the preceding ones, and ultimately has prevented Ms. Vaughn from returning to work.

Prior to that time, there were no issues with respect to Respondent's attendance, and in fact, the certificates entered into evidence reflect that during the month of March in both 2007 and 2008, she had perfect attendance. See, Respondent Exhibit 1(a); 1(b). Ms. Vaughn likewise received a CERTIFICATE OF APPRECIATION on June 16, 2012 for her support and dedication to the EMBRACING THE COMMUNITY FESTIVAL. Ibid., at 1(c). The Stipulation that was entered at hearing by counsel indicated that the only period at time considered for AWOL purposes was from November 12, 2014 forward.

I note that the District opted to file the tenure charge based on the discrete fact that Ms. Vaughn purportedly failed to respond to the April 28, 2015 letter with a status update, and not based upon incapacity grounds by virtue of her continued absence. It is therefore relegated to the facts as they are. On balance, the evidence demonstrates that Ms. Vaughn kept Health Services informed of her status at all times, including the period following the filing of the tenure charges. Parenthetically, there are numerous medical documents stamped received by the District's Health Department that appear at Tab D of Respondent's POSITION STATEMENT in evidence at Joint Exhibit 4.

In closing, notwithstanding the fact that Respondent failed to communicate directly with Ms. Rodriquez following the April 28, 2015 letter, she was diligent in keeping the District's Health Service's Department fully apprised of her status, which as Mr. Breton confirmed during his testimony was the procedure. Ms. Vaughn's credible and at times compelling testimony on this point was not rebutted, and she continued to express great interest in returning to the classroom.

The remaining question that must be answered is the proper remedy in this case. Respondent testified to her September 2015 surgery, as well as cervical spine injections which have assisted her in getting better. While she has made significant progress toward returning to the Newark Public Schools, she is continuing her rehabilitation and is not yet able to do so. Under these circumstances, she may not be left in legal limbo and I believe the District should be required to place her on an approved medical leave or leaves of absence through June 30, 2016. At that point, the parties may explore their options. She will be however, required to keep both Health Services and AOS fully informed of her continuing treatment and prognosis. IT IS SO ORDERED.

VII. CONCLUSION

Petitioner State Operated School District of the City of Newark has failed to establish the tenure charges of unbecoming conduct by a preponderance of the credible evidence.

AWARD

THE INSTANT TENURE CHARGE BROUGHT AGAINST MS. VAUGHN BY THE STATE OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK IS DISMISSED WITH PREJUDICE. THE ENTIRE PERIOD IN QUESTION SHALL BE RECORDED ADMINISTRATIVELY AS AN APPROVED MEDICAL LEAVE(S) OF ABSENCE THROUGH JUNE 30, 2016. MS. VAUGHN SHALL BE UNDER A CONTINUING OBLIGATION TO PROVIDE BOTH THE HEALTH SERVICES DEPARTMENT AS WELL AS THE AOS WITH ALL RELATED MEDICAL DOCUMENTATION. THIS CONSISTS OF THE ENTIRE AWARD IN THIS MATTER.

Dated: February 22, 2016
NORTH BERGEN, N.J.

MICHAEL J. PECKLERS, ESQ.
ARBITRATOR

STATE OF NEW JERSEY
SS}
COUNTY OF HUDSON

ON THIS 22ND DAY OF FEBRUARY, 2016, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQ.,** TO BE KNOWN TO ME TO BE THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

NOTARY PUBLIC

ZOILA R. VARGAS
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 5/27/20[illegible]