

**COMMISSIONER OF EDUCATION, State of New Jersey**

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IN THE MATTER OF THE PROCEEDING BETWEEN:

Tenured Teacher Lynderia Mansfield

**“Teacher” or “Tenured Teacher”**

and

State-Operated School District of the City of Newark, Essex County

**“Petitioner” or “District”**

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Petition: Dismissal, Tenured Teacher L. Mansfield, by Newark Board of Education  
Agency Docket No: 64-2/16

**AWARD AND OPINION**

Hearings held, Newark, NJ

May 24, June 2, 14, 21, 2016

Transcripts

July 06-12, 2016

Briefs, w/ materials

July 26-28, 2016

Date of Award:

September 26, 2016

**Arbitrator Jay David Goldstein**

**APPEARANCES**

For the Newark School District

**John E. Croot, Esq.,**

Adams, Gutierrez & Lattiboudere, LLC

For Lynderia Mansfield, Tenured Teacher

**Aileen O’Driscoll, Esq.,**

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## INTRODUCTION

The underlying dispute over this dismissal action by the Newark School District arose from multiple incidents alleged to have occurred in the Tenured Teacher's class ['Character Education'] during the 2014-15 school -year. The allegations began with a 2<sup>nd</sup> Grade student complaining to his parent and thereafter moved forward to investigation when similar complaints were heard. Investigations revealed that 'Teacher' had committed multiple infractions; thereafter resulting in charges that her behavior had been, "*inappropriate, irresponsible and unprofessional*". [Board's Brief]

In a related procedural matter, Parties' Counsel mutually reached agreement, thereafter stipulating all evidence in this proceeding would be limited to the 2014-15 School Year. Notwithstanding this limitation the Teacher testified to and her post Hearing Brief itself raises prior history of her employment at the Newark School District;

*"She commenced employment with the NPS in 2003. 6/21/16, 8:22-24. She acquired tenure in her position with the District. In 2013, having successfully defended tenure charges brought against her by the District alleging inefficiency, absenteeism<sup>1</sup> and misconduct, Ms. Mansfield was ordered to be reinstated to a position in the NPS in February, 2013. 6/21/16, 11:6-9; See, IMO Mansfield and the State Operated School District of the City of Newark, (Arb. Gandel), 2/7/13. (J1:53-117)"* [Teacher Brief]

Further chronological background events are summarized here, but are presented in greater detail under the Background, Facts, Party Positions, below this section.

**December 3, 2013**, citing the Teacher's own testimony at arbitration of this matter, the District's Brief also refers to similar prior history (as above, Teacher's Brief); "*Mansfield's most recent assignment as a teacher for Newark Public Schools was at Miller Street School. See Transcript, Volume IV, 9:1-3. She was first assigned to teach at Miller Street School on December 3, 2013. See Transcript, Volume IV, 9:4-6; 14:5-8. Mansfield was assigned by the Principal to teach first grade; at*

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<sup>1</sup> The 2013 charge for absenteeism was sustained, but all other charges were dismissed and she was ordered reinstated to a District position in February, 2013.

*first, as an assistant to another teacher, and then later alone. See Transcript, Volume IV, 21:24-23:3; and 68:18-69:6.”* [Board’s Brief]

**February 7-20, 2014;** the ‘Teacher’ raises a series of concerns she had expressed after the above referenced ‘reinstatement’. [“...*lack of adequate training on curriculum; not receiving teacher information booklet (2 months after returning); lack of observation opportunities; computer trainings; access to evaluation portals, et al*”] [Teacher Brief]

**June 6, 2014;** using this date for Teacher’s *bona fide* leave; “...*she stopped working altogether because she had to take care of a medical issue. See Transcript, Volume IV, 10:1-7; 30:24-32.”*; the District provides no continuity *per se* to its argument(s) with the possible exception of providing a ‘bridge’ between Teacher’s two supervising Principals at Miller School. [Board’s Brief]

**2014-2015;** during this, “... *academic year Lynderia Mansfield, was employed by the Newark, NJ Board of Education (“Board” or “District”) as a tenured teacher of Character Education. This matter stems from tenure charges ... filed against her for Unbecoming Conduct, Incompetence, Insubordination and Other Just Cause pursuant to the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10, et seq.* [Board documents]

**September 2, 2014;** “Apparently, she returned to work in September 2014 and was again assigned to go back to Miller Street School on..., where Principal Cepero was now principal. See Transcript, Volume IV, 10:9-11; 31:7-17, and 21:32; 70:15-71:1 ” [Board’s Brief]

**February 20, 2015;** the Teacher’s Brief [Pg. 5.] alleges, “...*On February 20, 2014, however, Ms. Mansfield was called to the office in response to an anonymous call made to the office of Institutional Abuse Investigations Unit (IAIU). She was transferred to the District’s central offices while the investigation proceeded.* [Teacher Brief, possible typo.in date]

The District uses this 2015 date as a ‘benchmark’ of sorts; alleging that some two weeks prior to it there existed an, “...*anonymous complaint triggering IAIU’s most recent investigation of Mansfield, she met with her former mentor and current Miller Street School Principal Cepero in February 2015 to address B.R.’s [a Student in the Teacher’s class] complaints regarding her inappropriate yelling and treatment of*

*other students, namely two boys who sat at B.R's table during class". [Board's Brief; referencing Transcript, Volume III, 14:1-16 ]*

[Board Brief and Teacher Brief]

**December, 2015;** *"The present tenure charges commenced with the filing of a Notice of Charges on Ms. Mansfield by the District in December, 2015. A letter in lieu of a Statement of Position was timely filed by Ms. Mansfield."* [Teacher Brief]

**February 25, 2016;** *"The District resolved to file the charges alleging conduct unbecoming on or about February 25, 2016. The charges were so certified and filed with the Commissioner of Education. An Answer was timely filed on behalf of Ms. Mansfield."* [Teacher Brief]

**March 24, 2016;** this Arbitrator is appointed to this matter by the NJ State Board of Education.

**April 7, 2016;** pre-Hearing Conference with parties' Counsel and Arbitrator held telephonically.

**May24, 2016;** first Hearing in this matter occurs at the NJ State Board offices in Trenton, NJ. As scheduled, primary purpose was to jointly review DOE records subpoenaed by Teacher.

**June 2 and 14, 2016;** Day 2 and Day 3 Hearings are held.

**June 21, 2016;** Day 4 [Final Hearing] takes place consistent with prior scheduling, earlier 'Stipulations' and is conducted by agreement [Counsel/Arbitrator]. During four (4) hearings, each side had full opportunity to present written exhibits, sworn testimony, cross-examination and rebuttal. Tenured Teacher was present during the evidentiary Hearings [#2, 3, and 4], given opportunity to and did testify in her own behalf. Each Party agreed to written closings and the terms of submission.

**July 06-12, 2016;** the transcribed record of hearing was received in several batches.

**July 22-26, 2016;** by agreed upon schedule [after Parties requested extension] to file closing submissions electronically with the Arbitrator, thereafter mailing same with cited materials to one another and the Arbitrator; both briefs [+ materials] were received between these dates.

**July 28, 2016;** additionally, a potential filing of reply briefs was anticipated and addressed, with the District (solely) requesting same in the appointed time provided. In a conference call with both Counsel present, the District's rationale for filing a Reply brief was heard. Based upon lack of good cause shown District's request was denied by Arbitrator [Teacher's Counsel requested opportunity to rebut/reply if the District were allowed, but the rebuttal request became moot]

The Hearing record was declared closed at this juncture. Prior, several calendar extensions were sought and granted by the NJ, D. of E.; due to protracted hearing schedules, delay in transcript hearing records, and extension requests.

**September 26, 2016;** decision rendered, filed with the NJ COMMISSIONER OF EDUCATION.

### **ISSUE;**

While the District did not stipulate *per se* to the following question posed by Teacher's Counsel, the request is deemed relevant to all proceedings, found to be coherent and thus appearing logical to inquire:

*"...whether the District has proven the tenure charges by a preponderance of the evidence sufficient to warrant termination."* [Teacher's Brief; highlighting for emphasis]

Also, given that her Counsel posed an alternative remedy to the dismissal action taken against the Teacher, the following is a potentially viable question as well:

*'If not, what shall be the remedy?'*

### **BACKGROUND, FACTS and PARTY POSITIONS**

The following background/positions are deemed appropriate for consideration as gleaned from the Parties respective positions;

The District contends: *“This matter involves tenure charges of unbecoming conduct, corporal punishment, insubordination, and other just cause filed against Lynderia Mansfield (hereinafter referred to as “Mansfield”), a tenured teaching staff member employed by the Newark Public Schools (hereinafter referred to as “District”). The District respectfully seeks Mansfield’s removal from employment based upon indisputable evidence presented during the arbitration hearing demonstrating Ms. Mansfield’s pattern of inappropriate physical contact with her second grade students during the 2014-2015 school year, and her failure to cooperate in the District’s investigative interview regarding same.* [Board’s Brief]

By the Teacher: *“Lynderia Mansfield (“Ms. Mansfield”), a tenured employee of Petitioner, the State-Operated School District of the City of Newark (“NPS” or “District”), stands accused of conduct unbecoming.”* [Teacher’s Brief]

Moreover, argues the Teacher; *“Because the record below establishes that the District failed at arbitration to prove by a preponderance of the evidence that Ms. Mansfield has engaged in conduct unbecoming a teacher, the charges should be dismissed in their entirety. In the alternative, Ms. Mansfield urges the Arbitrator to consider the doctrine of progressive discipline and, given the many mitigating circumstances, find in favor of a lesser penalty than dismissal.”* [Teacher’s Brief]

The Board’s views of the educational principles involved appear sound and undisputed; *“A teacher is entrusted with the care and custody of children with the hope that this trust will result in their maximum educational growth and development. Teachers not only impart knowledge regarding reading, writing and math, but they mold habits and attitudes and influence the opinions of their young pupils. Teachers are therefore considered role models and mentors.”* [Board’s Brief]

Each side submitted well-drafted and heavily documented post-hearing Briefs containing their significant 'Points' of view. Carrying the burden of proof the District submitted:

- I. THE DISTRICT HAS PROVEN THE TENURE CHARGES BY A PREPONDERANCE OF THE CREDIBLE EVIDENCE.
- II. MANSFIELD HAS FAILED TO PROVE THAT RETALIATION WAS THE REASON FOR THE TENURE CHARGE HEREIN.
- III. THERE IS NO BASIS FOR CONSIDERING THE TESTIMONY OF THE CHILDREN AS BEING LESS CREDIBLE THAN ANY OTHER WITNESS OR TO NOT CONSIDER THE STATEMENTS MADE BY THE CHILDREN TO IAIU AND DURING THE DISTRICT'S INVESTIGATION
- IV. THE PROPER PENALTY IS THE REMOVAL OF MANSFIELD FROM HER TENURED POSITION

[Board's Brief]

In significantly greater detail, the District explored each of these 'Points' consistent with the evidence presented and its arguments in support thereof. Primary emphasis was placed upon the reliability of testimony at hearing involving the allegations of Teacher's actions in, "Screaming... Withholding of Bathroom Privileges... Inappropriate Physical Contact"; i.e., against the Students in her care. In further support were arguments in favor of the integrity of the investigatory process used to confirm the basis for the District's charges.

Specifically in regard to the investigation was the additional charge that the Tenured Teacher was also guilty of Insubordination, essentially by failing to cooperate with the investigating official [District's Manager of Compliance and Tenure, Ms. Takyi] attempting to meet with her during the interview process. The District's Brief recounted the testimony of both, the Teacher and Ms. Takyi. The District reflects on the testimony of both, charging that she:

*"... did not appear for her interview, not once, but twice, after being directed to do so by her employer, it is undeniable that Mansfield's actions were purposeful and an act of insubordination* [Board's Brief]

In rejoinder to the District's Brief the Teacher's defense(s) rest primarily upon the premise that there was a failure of evidence or proof required at hearing. Thus, the Teacher's 'Points' claim that the District failed to meet its burden of proof:

*I. THE DISTRICT'S FAILURE TO PROVE THE CHARGES AGAINST MS. MANSFIELD BY A PREPONDERANCE OF THE EVIDENCE WARRANTS DISMISSAL OF ALL THE CHARGES*

*II. THE STUDENTS' TESTIMONY IS NOT CREDIBLE, IS UNSUPPORTED, AND INSUFFICIENT TO SUSTAIN THE CHARGES*

*III. DISMISSAL IS UNWARRANTED AND TOO SEVERE A PENALTY UNDER THE CIRCUMSTANCES*

*IV. THE DISTRICT'S CHARGES WERE FILED IN RETALIATION FOR THE AWARD ISSUED IN FEBRUARY 2013 ORDERING MS. MANSFIELD'S REINSTATEMENT AND FOR HER OUTSPOKENESS REGARDING HER REINSTATEMENT IN THE SOUTH WARD AND REPORTING OF THE UNLAWFUL ASSIGNMENT TEACHING OUTSIDE OF HER CERTIFICATION*

[Teacher's Brief]

Continuing in a well-documented Brief, the Teacher argues certain required standards were not followed, i.e., standard of review, seriousness of a teacher's status, etc.:

*"... , a tenured employee's status must be taken seriously, with special attention to the procedures followed by the District. In Re Tenure Hearing of Claudia Ashe-Gilkes, City of East Orange School District, 2009 WL 246266 (Jan. 12, 2209), adopted by the Commissioner of Education (May 28, 2009)."*

[Teacher's Brief]

All of the above arguments, positions and evidence adduced at four (4) hearings were taken into careful consideration. Moreover, each Party concluded its views as follows.

**In summary** of the **Board's Position**, at the 'Conclusion' of its Brief,

*"As outlined above, the statutes and case law are clear. Mansfield, as a teacher, was to serve as a model of appropriate behavior during his daily interactions with students. Instead, Mansfield engaged in a pattern of inappropriate conduct with students, and then was insubordinate when she failed to cooperate in the District's investigation as to whether her actions constituted harassment, intimidation, or bullying. The testimony of the students and two of their parents, along with her pattern of screaming and improper physical contact with students at Miller Street Elementary School, leaves no doubt and no alternative that Mansfield is not fit to serve as a teacher and must be removed from her tenured teaching position"*

[Board's Brief]



**In summary of the Teacher's Position, at the 'Conclusion' of its Brief,**

*“For the foregoing reasons, the tenure charges against Ms. Mansfield should be dismissed and she should be reinstated to a teaching position, together with any back pay, benefits, and emoluments, retroactive to the date the tenure charges were filed against her. Alternatively, in the event that any of the charges are upheld, the mitigating factors warrant a conclusion that progressive discipline be invoked, and a less severe penalty is warranted under the circumstances.”* [Teacher’s Brief]

### **FINDINGS AND OPINION**

A careful review of all evidence presented, including all documents submitted into the record, hand written and transcribed notes of testimony, occurred. This take into account the positions taken and arguments advanced by both parties.

Relevant portions of the statutory sections which the Parties mutually acknowledged being bound to were cited by each side and deemed relevant without further recitation. Those Statutes impose a, “just cause” standard for dismissal also granting a School District the right to issue reasonable rules, orders and regulations which are not conflicting. There has been no challenge to those statutory standards for discipline by either side.

The District seeks justification for the ‘Dismissal’ here. The Teacher responds seeking reinstatement.

#### **Analysis; overview**

At the core of the issue stated above was whether a ‘just cause’ dismissal occurred, whether the penalty was too harsh or, fair under the various guidelines promulgated by authorities cited by both parties. The overriding principle in any such disciplinary proceeding is

whether a good faith showing of just cause was properly enforced. Both sides' briefs referenced these principles.

Beyond the above, further analysis below leads to the decision at the end hereof.

### **Burden of Proof**

As in any matter involving employee disciplinary action, the burden is upon the Employer [here, Petitioner, Newark School District] to establish it had proper cause to take the action and, that an appropriate penalty was meted out under all attendant circumstances. The Tenured Teacher challenged that the standard was not met; contending that the preponderance of evidence by the District was not conclusive or, found wanting.

The Petitioner's case in the Matter of this Tenured Teacher [L. Mansfield] contained four major 'points' (outlined above), three of which were directly related to the evidence presented at hearing(s). The fourth point dealt with the propriety of penalty assigned, which could only attach if all elements of just cause were met by the standards of review.

Moreover the Teacher's own statement of the standard for evidence presented against her gave rise to the appropriate standard of review to be followed here. Citing the law as interpreted by numerous arbitrators, the Teacher's Brief correctly argued that:

*"...preponderance can be characterized as the greater weight of evidence in a case, not necessarily dependent on the number of witnesses, **but having the greater convincing power.** State v. Lewis, 67 N.J. 47 (1975); Spagnuolo v. Bonnet, 16 N.J. 546, 554-55 (1954). [Teacher's Brief]*

This Arbitrator supports that 'characterization' and used the following contributing factors to review the evidence presented.

### **Credibility**

Petitioner District presented the testimony of several eyewitness accounts in what can only be described, even in the broadest of general terms, as abusive. Respondent Teacher

attempted to minimize her culpability by denial that the actions even occurred; testimony (from both the affected children and parents) had the ‘ring of truth’ to it. Moreover, it was vastly supported by internal and external consistencies and, found to be more than sufficient to satisfy the District’s burden. Notable also is that the Teacher did not supply evidence in rebuttal.

An important test of eyewitness sufficiency is whether consistency can be determined by/through the use of witness *sequestration*. This was enforced and occurred here, for all testifying witnesses. Moreover, it is notable here that when an ‘objection’ was repetitiously raised regarding whether these children could comprehend the meaning of ‘truth telling’ or, the taking of an ‘oath’ in that regard; each child was asked to explain the terms. Each child demonstrably and clearly understood both terms and testified accordingly.

Thus it was deemed to be credible and highly usable testimony given by each child and accompanying parent/ accompanying adult. Contemplating the record of this testimony it was persuasive that for a child of that tender age group to testify under oath is itself a very brave deed. Furthermore, having them testify against their Teacher, a supposed role model and mentor was likely an inspiring moment and by itself, a measure of truth telling.

Furthermore, the entire process seemed an unsavory task to each child and, not the least bit hinting of joyfulness or childish delight. Indeed it was likely tantamount to subjecting them to ridicule, embarrassment and/or perhaps feelings of disloyalty and guilt for their own actions. It was after all the suggested premise that an authority figure over them [the Teacher] was simply making an effort to impart ‘appropriate’ discipline, i.e., part of the course methodology for ‘Character Education’.

Thus if we believe that a Teacher of 2<sup>nd</sup> Graders should be permitted to impose discipline by, “*Screaming...Withholding of Bathroom Privileges...Inappropriate Physical Contact*”

perhaps the standard is faulty and/or should be changed. Regardless, the testimony of these children and parents [*et al*] involved was believable and compelling. Thus despite any of the theories posited post-Hearing, suggesting that the testimony described herein was legally defensible, or wanting in any manner, shape or form; such defenses are without merit in this case. Each child [and parent] testified credibly and without guile. They were manifestly clear and without taint of any sort.

#### Sufficiency of the Evidence

Thus, despite the Teacher's testimonial defense [no culpability] for the classroom events described by the District's witnesses as having occurred in /around February of 2015, the evidence was overwhelmingly clear to the contrary. Even the 'reasonable person' could hardly dispute the veracity and thus the credibility of the Students who testified.

#### Unsupported - Corroborated

There was no basis in fact for the defense that this evidence was unsupported. Moreover, the confirming testimony of their parents and an uncle of one [*in loco parentis*] student provided substantial and thus persuasive ratification of nearly faultless and untainted testimony, ['not wanting to attend' this Teacher's class.] Thus taking all manner of evidence, cited authority and argument into consideration provided a basis for finding that the 'unbecoming conduct' described in the charges against this Teacher were proven beyond doubt, plainly by a preponderance of the evidence presented.

Clearly established by the evidence shown, this Teacher violated basic rules of what any enlightened culture should consider as civilized behavior toward children. It should be axiomatic that regardless of any 'written' rules that could or might have been promulgated, certain behaviors should be prohibited in the classroom.

### Raised Voice

Any adult in a position of authority over and ostensibly placed in charge of the care for young children [i.e., these 2<sup>nd</sup> Graders] may on a rare occasion and, acting out of a moment of frustration, raise their voice occasionally. To her defense, the testimony inferred that this Teacher could have expressed herself in what some might say was a loud voice.

However, this Teacher also stands accused of ‘screaming’ at her 2<sup>nd</sup> Grade charges on an ongoing and continuous basis. We heard testimony which demonstrated the likelihood that it was more than an occasion. To have done so in this manner violated behavioral common sense and the basic rights of children under her authority and care, regardless of any rationale offered in her own defense. Even if the allegations of ‘screaming’ were overstated and thus perhaps to be discounted, there was much more.

### Bathroom Breaks

In reply to testimony that she refused requests for bathroom breaks when these young children needed to relieve themselves, this Teacher offered neither rational basis nor specific rationale for her actions. The District elicited clear and convincing evidence of these incidents:

*“The testimony of R.R. and M.B. made clear that Mansfield would withhold bathroom privileges, even in emergencies. In fact, R.R. witnessed another student N.H. urinate on himself in front of the entire class. See Transcript, Volume II, 39:15-21; and 42:5-25. M.B.’s testimony made it clear while Mansfield would permit students to occasionally use the bathroom, she would withhold bathroom privileges for those students who were disrespectful to her. SEe Transcript, Volume II, 114:1-19. Withholding bathroom privileges is not an appropriate method for disciplining young children, but is cruel and unusual punishment that no teacher should be employing against 7 and 8 year old students.*

[Board Brief]

Moreover and although responsible for their basic well-being and ironically, being assigned to educate and stimulate them through “character” development, it is beyond comprehension to imagine how this teacher’s educational methodology would be met by refusing a young child’s request for a bathroom break. In its place, this Teacher had no appropriate

response after listening to testimony that one or more of these children had simply relieved themselves where they stood or sat, when denied a bathroom break by her.

'Grabbing' of Clothing

The charges against this Teacher of having, "grabbed" students by their shirts or other articles of clothing are, similar to the above mentioned behaviors, deemed credible and trustworthy accounts brought to bear by the testimony of children and parental figures who testified in a highly persuasive manner. Such actions by a teacher therefore, are also found to be "Conduct Unbecoming" and again, add to the cumulative nature of the charges brought against this Teacher. The Teacher's reply in this regard was again, either mute or in denial.

Thus in summary fashion regarding the preponderance of the evidence found in the charges, it is more likely than not that this Teacher was culpable of "Conduct Unbecoming". Under traditional arbitral theory and the procedures of the State of New Jersey, it was submitted for the Arbitrator to determine the weight and credibility of the evidence presented.

Most Arbitrators selected to serve on this Panel have heard hundreds of witnesses testify under oath. Determining credibility can sometimes be a daunting task. The testimony elicited in this matter was clear and convincing, providing credibility to the District's case and contrary to the defense.

Consequently for the cumulative reasons raised herein, it is conclusive and thus persuasive that the referenced conduct of this Teacher discussed at length above was inappropriate and unbecoming of any Teacher, Tenured or otherwise. Accordingly, the Newark School District has met its burden of proof for this Tenured Teacher's Dismissal.

### **Mitigating vs Aggravating Circumstance**

The Tenured Teacher's Brief contained a number of references to factors in mitigation of the charges/ penalty. At the conclusion stating: "*...in the event that any of the charges are upheld, the mitigating factors warrant a conclusion that progressive discipline be invoked, and a less severe penalty is warranted under the circumstances.*" That argument was linked to a variety of cited cases which, when reviewed however were not persuasively linked to the record of this Teacher.

While no set rule exists for applying mitigation to a particular set of circumstances, any neutral must be mindful of the gravity of charges which could have such a deleterious effect on an employee as found here. Balancing this is the potential for returning an employee to a workplace environment where, if the charges are deemed credible, there is a potential of ongoing and continued conduct deleterious to young [2<sup>nd</sup> Grade] children. Such factors are found here.

This neutral has in past applied the following mitigation standard generously where an employer was found to have meted out an overly harsh penalty. When a long term employee otherwise having served with distinction and/or a fairly unblemished record, is precipitously accused of a relatively minor infraction or one involving a singular incident of wrongdoing appearing to be out-of-character, then it is persuasive to and becomes incumbent upon the neutral to correct an injustice. Doing so might include converting a discharge to a lesser penalty by invoking progressive discipline, and imposing same upon the employer.

Consequently here it was determined that the charges filed by the Newark School District were appropriate. We cannot adopt the existence of mitigating factors suggested by the Teacher as warranting invocation of progressive discipline for her. Thus, correcting a penalty of termination with a less severe penalty is not warranted under all the attendant circumstances found here.

**Retaliation, res judicata and collateral estoppel:**

As well, 'retaliation' was another primary defense. The Teacher's Brief argued that a blatant and veiled motive for the current charges against the Teacher by the Newark School District existed. Ostensibly it argued that the current charges were only a 'refiling' of prior charges unsuccessfully brought against her for allegedly the same or similar charges previously raised during the 2013 school year. Also that her "outspokenness" after being re-instated previously, now provides the basis of her claim for 'retaliation' in this current set of charges. [Teacher's Brief]

Moreover arguing the theories of Res judicata and collateral estoppel as aggravating factors and thus as a part of her defense against the termination penalty. However, for several reasons clearly evidenced in the record before us it is persuasive that there is no outwardly plausible reason to doubt the veracity of the current charges under either of those theories.

Regardless of the 2013 charges or arbitration outcome [Arb. Gandel, Feb. 2013] resulting in this Teacher's re-instatement to her tenured position, no one can be immune to or immunized against 'fresh' charges, especially ones involving the nature and seriousness of those found herein. Also, these charges are deemed unconnected as having occurred in/around February 2015. A primary requisite of Res judicata is the requirement for an absolute showing that the person is being jeopardized, twice, for the same offense, i.e., the exact, same circumstances.

Here, there has been no showing of such duplication, except for the theoretical position taken in the post-hearing Brief. Moreover and further to the contrary of either *res judicata* or collateral estoppel, it was clearly demonstrated by the Newark School District that it had an absolute and statutorily mandated legal duty (and thus no choice) but to act upon the February 2015 parent/student complaints due to the nature and timetable of events shown here. That action



consisted of requiring a full and fair investigation be held, not only to protect the welfare of the students involved [February 2015], but to insure that any accused teacher be cleared or, held accountable for his/her actions.

In light of the alleged barriers to discipline suggested by the Teacher due to the prior arbitration decision of Arbitrator Gandel, there was no evidence of issue preclusion, either mentioned therein or made reference to by Teacher's Counsel in the current matter. Therefore, each of the preclusion defenses raised are deemed unfounded for multiple reasons.

1. The Newark School District had no choice but to act upon parent/student complaints of inappropriate conduct and/or behavior when brought to its attention in February 2015
2. The fact pattern here, despite any ironic similarities to the incidents that this same teacher was accused of in prior litigated matters, involves a fresh set of incidents. Thus, current charges do not fall under the protections afforded by the preclusion theories of *Res judicata* and collateral estoppel.
3. Moreover and despite the theoretical implications of the defense mentioned above, there was no evidence or proof of retaliation. To the contrary and as established through credible evidence by her new and therefore current Principal Ceparo, he demonstrated having welcomed this Tenured Teacher, first as her Mentor, then as her new Principal.

Thus, other than veiled and vague but unsubstantiated testimony by the Teacher and the theoretical suggestions implied in her brief but also unsubstantiated that [allegedly] by virtue of the Teacher's re-instatement and subsequent complaints about her assigned tasks, there is no finding by the preponderance of evidence that she was the victim of retaliation. This Teacher, like any other, had the right to file a 'grievance' or complaint over her concerns with her assignments at any time after her re-instatement, but did not take full advantage of litigating that right.

Although her concerns over assignments were not the subject of the inquiry placed before this tribunal, there was still no evidence of any wrongdoing by virtue of the interactions between the Teacher and co-workers or supervisory personnel. Again, if she had complaints she also had the experience, ability and resource channels for her to exercise her right to complain. The mere fact of her prior reinstatement did not automatically grant her any extra jurisdictional rights to bypass procedural processes in place for those purposes. Clearly by the District's evidence the Teacher's new Principal [Mr. Ceparo; also a prior Mentor] gave her all appropriate latitude to successfully re-enter her teaching career.

The current circumstances involve factually unconnected incidents occurring in / around February 2015. Accordingly, neither *res judicata* nor collateral estoppel can apply here.

In **summation** of the above, and after careful consideration of all evidence and the arguments in support thereof, it is only conclusive that the Tenured Teacher was properly charged with "Conduct Unbecoming". Moreover, it is persuasive that every conduct-related rule published by a School District was observed and had as its primary purpose the well-being of its students, faculty and any/ all visitors, minimally.

Clear evidence demonstrates that specific rules were in place to safeguard students [especially these young 2<sup>nd</sup> Graders], and equitably enforced against a teacher engaging in behavior of the kind this Teacher was charged with. The preponderance of the clear evidence testified to by the students, parents and her Principal, was more than sufficient to warrant a finding that the charges against this Teacher were proper and thus that the penalty of termination was just.

The presence of two (2) investigations [first by the IAIU and then, the District] initially gave some pause for consideration of the Teacher's claim that the replication of effort had sinister overtones. Yet, the Teacher's claims in this regard were allegations only and lacked proof.

Numerous illustrations of the above were found in the Teacher's Brief, "*During the investigation, counsel for Ms. Mansfield at the time forwarded a copy of the earlier Arbitration Award that was entered and made it known to the IAIU investigator that it was clear to Ms. Mansfield that the District administration was "out for Ms. Mansfield" Id, J1:50-52. Specifically, counsel wrote to the Commissioner of the Department of Children and Welfare, which oversees IAIU, on February 26, 2015, just days after the investigation commenced, and made it abundantly clear that Ms. Mansfield was being targeted by the District following the issuance of the arbitration award." [ Teacher's Brief] Nonetheless, the Teacher's case at Hearing did not follow through to establish proof of retaliation.*

Despite the fact the documents containing these allegations by Teacher were a part of the record, opportunity to hear testimony from others could have occurred but did not. The Teacher's Brief mentioned the existence of prior Counsel who might have shed light on and potentially, erased doubts left open as to the veracity of her defense allegations regarding the process against her. Instead, prior counsel was not called to support her allegations nor was the prior IAIU Investigator [Ms. Pica] called to refute her findings by rebuttal testimony. No such testimony was heard and thus, only sheer allegations stand alone.

Consequently, instead of depending on the Teacher's allegations [her Brief] that the two tiered investigation was flawed i.e., as an, ["...*endless effort to terminate her again. J1:50*] we rely instead on the District's version of events thereafter testified to by its Investigator Michelle Takyi.

*"Ms. Takyi commenced her investigation into the allegations for mishandling of her students against Ms. Mansfield after she received the IAIU investigative report concluding their investigation of Ms. Mansfield. See Transcript, Volume III, 102:6-24; and See Exhibit Board-2, IAIU findings Report to Michelle Takyi dated March 17, 2015."*

[District Brief]

The explanations offered by Ms. Takyi were found to be credible and professional. They described how the IAIU Investigative Report left it entirely to the District to follow up as it saw fit to deal with the issues remaining from the IAIU findings. Also, Ms. Takyi's views demonstrated in great detail how the thoroughness of her full and fair investigation included

numerous interviews [5 students/parents, a supervising Principal] were conducted and which substantiated the testimony of all involved.

### Insubordination

Ms. Takyi also shed light upon the rationale for the District's charge of insubordination when the Tenured Teacher failed to either show up for or attempt to reschedule, two Interviews. In great detail, Ms. Takyi demonstrated the lengths she explored in attempting (twice) to finalize a full and fair investigation by including an interview with the Teacher.

*“Nor did Mansfield ever give any reason for failing to appear for the meeting scheduled by Ms. Takyi for a second time, nor did Mansfield ever contact Ms. Takyi to reschedule this meeting again. See Transcript, Volume III, 113:17-20 [District’s Brief] This version was substantially more believable than the Teacher’s.*

Therefore, whether she exercised some right to not take part or be excluded from the investigation, the Teacher she took no responsibility for her actions and/ or merely ignored a request to participate in the interview process. Thus Insubordination was charged and, self-evident.

### Incompetence

There was no express showing of incompetence, *per se*. While it is arguably incompetent to demonstrate the type of behavior exhibited here, it is not specifically found in the decision below.

### Just Cause

Despite the fact that Teacher’s counsel acted diligently and thus assured that Teacher was well represented, the overwhelming facts here were not in her favor. Additionally, the preponderance of evidence against her was substantially more damaging. The Teacher’s testimony was found wanting, both in its failure to complete gaps between basic allegations made and proofs necessary to justify them and also to explain inconsistencies between her views and that of District witnesses against her. Accordingly, the Teacher’s credibility suffered.

Just cause required that the elements of a fair and progressive discipline had to be applied before the final step of dismissal could be imposed by the District on the Tenured Teacher in this

matter. Discussed at length herein, this included a full and fair investigation of the charges, and careful consideration of any mitigating and/or aggravating circumstances. The evidence is clear as detailed hereunder that all appropriate elements required for a just cause dismissal were present in this case. Thus the burden of proof was met by Petitioner, Newark School District

Despite Teacher seeking progressive discipline as an alternative remedy here, the elements of mitigating factors necessary were not found. Every employee under the protection of 'just cause' has some form of due process available to them. Here, every available protection against an injustice was present.

Taking all manner of evidence, argument and positions of the Parties into full consideration here, there is clear evidence that just cause was served.

Accordingly, the decision in this matter follows.

### DECISION:

Clear evidence as detailed hereunder demonstrated that all appropriate elements for a just cause dismissal of Tenured Teacher Lynderia Mansfield were present in this case. Moreover Petitioner, Newark School District, met its burden of proof by a preponderance of evidence.

Overwhelming and credible testimony from three (3) Students of this Teacher was shown by the District. In addition, corroborating testimony from parents of students lent further credence to the otherwise credible evidence that the District's charges were truthful.

Moreover, when given opportunity to refute, no adequate defenses were raised by the Tenured Teacher to either circumvent or contradict the District's rationale for discipline, the charges, or the penalty of dismissal. Additionally, there was no showing of remorse.

Taking all manner of evidence and argument by both parties into consideration and deliberation, it is the considered opinion of the undersigned neutral that Petitioner Newark School District had the absolute right to have charged Tenured Teacher Lynderia Mansfield with the offenses stated hereunder and to have sought and caused her dismissal thereafter. In view of the above, the penalty of dismissal for this Tenured Teacher is upheld.

No other remedies apply.

*Jay D. Goldstein,*

Jay D. Goldstein, Arbitrator

Dated: 25 September 2016

Jenkintown, PA