

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES
TENURE HEARING

XXX
In the Matter of the Arbitration Between)
HACKENSACK BOARD OF EDUCATION,)
Petitioner)
AND)
ERIC DEERING,)
Respondent)
Agency Docket DOE 38-2/18)
XXX)

OPINION
AND
AWARD

ARBITRATOR: GERARD G. RESTAINO, ASSIGNED BY THE NEW JERSEY
DEPARTMENT OF EDUCATION IN ACCORDANCE WITH
CHAPTER 26, P.L. 2012 AND C. 18A:6-17.1

APPEARANCES:

FOR THE PETITIONER
JOANNE BUTLER, ESQ.
ROSEMARY MARKS
JANET HERNANDEZ KOVANGJI
MELANIE KEENAN

CECIL KING
ANDREA OATES PARCHMENT
T.N., Q.B., D.C., C.H., Q.W., K.P.

COUNSEL FOR PETITIONER
ACTING SUPERINTENDENT OF SCHOOLS
SCIENCE TEACHER @ MIDDLE SCHOOL
SPECIAL ED MATH TEACHER @ MIDDLE
SCHOOL
PRINCIPAL OF MIDDLE SCHOOL
ASSISTANT SUPERINTENDENT
STUDENTS

FOR THE RESPONDENT
ERIC DEERING

RESPONDENT

PROCEDURAL BACKGROUND

The parties in this dispute are the Hackensack Board of Education, hereinafter referred to as the District/Board and Eric Deering, hereinafter referred to as the Respondent/Mr. Deering.

Mr. Deering is a tenured teacher staff member at the Middle School in Hackensack, New Jersey.

This case is presented pursuant to N.J.S.A. 18A:6-16 as amended by P.L. 2012, c, 26 and P.L. 2015, c, 109.

Hearings in this matter were held on May 22 and June 5, 2018. The hearings were held at Hackensack Middle School and Board offices.

Mr. Deering began working as a math literacy teacher in February of 2006 and in 2008 he became a regular mainstream math teacher.

ISSUE:

At the hearing the parties stipulated to the following issue:

Did Mr. Deering engage in behavior which would constitute conduct unbecoming a teaching staff member under New Jersey law, warranting dismissal from his teaching position or other appropriate disciplinary action?¹

CHARGES FILED BY PETITIONER

Tenure Charges Seeking Dismissal on the grounds of Unbecoming Conduct Against Eric Deering, Teacher Hackensack Public School District

Charge No. 1

That on or about October 31, 2017, Eric Deering did utter the following remarks to Hackensack Middle School student T.N.:

¹ Tr.1, 17:6-25; Tr. 1, 18:1-25, 19:1-24

"You're ugly"
"Why are you walking around with that ugly face"
"I would pop you in the face"
"If there wasn't a law stating teachers can't hit students, I would"

Said conduct was unprofessional, outrageous, constituted harassment, intimidation, and bullying pursuant to N.J.S.A. 18A:37-14, and otherwise constitutes unbecoming conduct.

Charge No. 2

That on or about October 31, 2017, Eric Deering did utter the following remarks to Hackensack Middle School student K.P., while said K.P. was receiving instruction from another Middle School Teacher:

"You look ugly with that face"
"Mrs. [K] don't help her she's sitting there all ugly, she needs to help herself"

Charge No. 3

That Eric Deering, who was hired as a teacher in Hackensack Public School District in 2006 has established a pattern of unbecoming conduct commencing in 2007 and continuing through and including the incidents set forth in Charges No. 1 and 2, which prior to the incidents set forth herein, resulted in not less than nine (9) reprimands. The conduct demonstrated in these incidents ranges from defiance and insubordination to a failure to honor student confidentiality and, most disturbingly, violent reactions which have on occasion resulted in improper physical contact with students.

Said conduct was insubordinate, unprofessional, outrageous and unbecoming conduct.

CERTIFICATION

I hereby certify that the foregoing tenure charges prepared in connection with Eric Deering, seeking his dismissal as a teacher in the Hackensack Public School System are true and accurate to the best of my knowledge and belief.

I am aware that any material statement made by me, under oath, which is willfully false, will subject me to punishment.

/s/ Rosemary Marks
Rosemary Marks
Acting Superintendent of Schools

Dated: December 19, 2017

On January 23, 2018, the Petitioner approved a Resolution filing tenure charges against Mr. Deering. A copy of that was forwarded to Mr. Deering or his attorney; and a true copy of the Resolution was submitted along with the tenure charges and a statement of evidence to the Commissioner of education. Acting Superintendent of Schools Rosemary Marks submitted a Certification with a statement of evidence warranting the charges against Mr. Deering.

The statement of evidence includes 11 separate incidents charged against Mr. Deering by school administration, including Principal Andrea Oates-Parchment; Pauline Keller, Assistant Principal; J. Dorsey-Whiting, Principal; Karen A. Lewis, then Superintendent of Schools; Corey Jones, Principal of Hackensack Middle School and Celso King, Principal of Hackensack Middle School. The most serious of all of the charges is based on an incident that occurred on October 31, 2017, between Mr. Deering and specific students. The students who testified at the hearing will only be referenced with their initials.

On January 29, 2018, the Respondent submitted his answers to the tenure charges and all of his affirmative defenses deny any culpability, and they ask that the tenure charges be dismissed.

The Petitioner submitted a three-ring binder with 22 separate exhibits, and many of those exhibits are witness statements of students. There are also Board answers to Interrogatories, Board Disclosures and Disclosures of the Respondent.

The gravamen of the Petitioner's charges is that the action of Mr. Deering constitutes unbecoming conduct. Unbecoming conduct has been broadly

defined as any conduct, *"Which has a tendency to destroy public respect for government employees and competence in the operation of public services."* (City of East Orange Board of Education v. Lewis, 2012 W.L. 569414, decided on February 11, 2012. The instant matter also deals with whether or not the Arbitrator finds other appropriate disciplinary action that may be taken against Mr. Deering short of dismissal. That was referenced in the opening statement by the Petitioner and appears in the transcript as referenced above.

The positions of the parties below will more fully address the charges and evidence in the record to support those charges; or, as it may be, the denial of those charges. The record does reflect that Respondent's counsel asked that Charge 3 be dismissed because he believes it is inappropriate to re-litigate matters that have already been discussed with the Respondent in the past and he sees no reason for it to be continued in this case. The record reflects that the Arbitrator determined that anybody who preferred charges or submitted anything in writing against the Respondent must appear at the hearing to argue that position and at the same time, the Arbitrator will be cognizant of whether or not we are dealing with progressive discipline or res judicata in specific instances.

The transcripts will be referenced as follows: Tr. 1 for May 22, 2018 (pages 1 to 203); Tr. 2 for June 5, 2018 (pages 1 to 84). Reference will also be made to "P" Exhibits, which will be found in Petitioner's Exhibit Book.

POSITIONS OF THE PARTIES

For the Petitioner

Petitioner presented its case in chief based on the testimony of all witnesses as set forth below.

**THE FACTS AS TO CHARGE 1 – CONDUCT UNBECOMING
A TEACHING STAFF MEMBER**

WITNESS T.N. SUMMARY:

T.N. testified at length as to what occurred on October 31, 2017. Her testimony was consistent with her two written statements (see P-11; P-16). Her testimony was also consistent with most of the testimony of the other witnesses.

She testified that during afternoon homeroom she accompanied another student to her locker. As she was walking, Mr. Deering told them to go to their homeroom. She said okay and it was at this point that Mr. Deering said “you’re ugly”. (Tr. 1, 31:8-17). Despite substantial efforts on cross-examination, T.N. reiterated that after Mr. Deering told her to go to her classroom and she said okay, he then yelled that she was ugly. (Tr.1, 50:7-20).

T.N. responded by saying “excuse me”, and T.N. and Mr. Deering exchanged comments back and forth. (Tr. 1, 31:17-19; Tr. 1, 50:24-51). She admitted that she yelled at Mr. Deering, but testified that he was yelling at her as well. She also testified that D.C. tried to get her to leave, but she would not because Mr. Deering had disrespected her. She then went to the Principal’s office with Mr. Deering, but upon arriving they were told that they needed to speak with Ms. Madden, the Assistant Principal, who was not in her office at the time. She also testified that while they were arguing back and forth in the hallway, an eighth grade teacher came to see what was going on. (Tr. 1, 33:21-

34). T.N. testified that Mr. Deering was in her face; she told him to get out of her face, and he was approximately one foot in front of her. There were other students in the hallway, and Mr. Deering left to return to his homeroom after the second bell and told T.N. to write her name down, which she did.

Mr. Deering then returned to walk toward the front office, and it was at this point he said something to T.N. along the lines of "If we weren't in school, I would bop you in the face. I would get some eighth graders to bop you in the face". He then said, "Oh, you are trying act gangster, so many gangsters." (Tr. 1, 37:5-21; 57:14-58; 59:1-6). T.N. believed that Mr. Deering was threatening her. When they did meet with Ms. Madden, Mr. Deering said that he wanted T.N. to get suspended because she was disrespectful. T.N. then went into another office with Ms. Madden and asked if it was okay for a teacher to threaten a student. After Ms. Madden asked what she was talking about, she told Ms. Madden what had occurred and was asked to write a statement about the incident. That statement was introduced as Exhibit P-11. She also testified that even though the word "pop" or "bop" was not in her statement, Mr. Deering did say that to her. She did admit that yelling at a teacher is wrong, but she became mad because Mr. Deering called her ugly. She was also mad that Mr. Deering had told her friend K.P. that she was ugly because she made a face due to cramps.

WITNESS Q.B. SUMMARY:

Q.B. testified that *"while they were walking, T.N. was being loud and as they were passing Mr. Deering's classroom, he said something about T.N. walking around with an ugly face. She testified that T.N. was kind of loud, but*

Mr. Deering got louder as they kept talking. Q.B. also testified that when he was at the top of the stairs and Mr. Deering and T.N. were at the bottom of the stairs, he heard Mr. Deering say something along the lines of "You are lucky I can't hit you because it is not allowed" or something like that. Q.B. testified that it could be interpreted more as a general statement, but T.N. must have taken it a different way. She was approximately fifteen (15) feet away when they were discussing this on the stairwell."

WITNESS D.C. SUMMARY:

D.C. testified that "she and T.N. were walking in the hallway to afternoon homeroom when Mr. Deering called T.N. ugly. (Tr. 1, 77:24-25; P-17). T.N. was not doing anything; she just had a face on. Under cross-examination, D.C. maintained that she and T.N. were walking down the hallway, along with many students, and Mr. Deering out of nowhere called T.N. ugly. She also testified that T.N. started saying things that she shouldn't and that D.C. tried to get T.N. to stop, but she had to leave to get to her homeroom. She testified that T.N. was cursing at Mr. Deering. (Tr. 1, 85:11-12). She was with T.N. when other students told them that Mr. Deering had made comments about T.N. in his homeroom."

WITNESS C.H. SUMMARY:

C.H. testified that "Mr. Deering walked out of his homeroom and told T.N. to go back to homeroom and asked why she didn't go to her classes or homeroom. She also testified that Mr. Deering's voice was kind of loud and that he was puffed up like standing tall to basically show his dominance over her. (Tr.

1, 92:21-23). *She also testified that she had not seen Mr. Deering that mad before. She did testify that T.N. was talking back to Mr. Deering and was cursing. (Tr. 1, 95:2-4).*"

WITNESS Q.W. SUMMARY:

Q.W. testified that *"she heard Mr. Deering say that if there wasn't a law saying he couldn't hit students, he would. She maintained the same description of what happened during cross-examination. She also testified that she wrote her statement (P-19) because Mr. Deering had been hard on her if she did not turn in her homework because he was a strict teacher."* (Tr. 1, 105:2-5).

WITNESS JANET HERNANDEZ KOVANGJI SUMMARY:

Ms. Kovangji testified that it was Mr. Deering's voice that grabbed her attention and not T.N.'s. She could not recall the exact words, but she did hear Mr. Deering yelling so she looked because she was concerned. She was in the hallway, where her students were decorating the classroom door, and the students were distracted so she went to see what was going on. She testified that both T.N. and Mr. Deering were loud, not using a conversational tone. She also testified that Mr. Deering was angry. (Tr. 1, 114:4-6). She also testified that the distance between Mr. Deering and T.N. was approximately one foot, and since T.N. is a lot shorter than Mr. Deering, they were not face-to-face.

She asked Mr. Deering if he would like her to stay with T.N. because he had to go back to his homeroom, and he said yes. Since she could not hold T.N. past the time of dismissal, she brought her into her classroom and asked her to write her name on a post-it and then told her she could go home.

She testified that T.N. was upset, but she did not ask T.N. what had occurred. T.N. volunteered by saying that Mr. Deering called her ugly. She further testified that Ms. Madden later came to her room, and Ms. Kovangji gave her the post-it with T.N.'s name on it, and Ms. Madden responded that T.N. was already in her office.

WITNESS CELSO KING SUMMARY (Principal of Middle School):

Mr. King testified that after learning of the incident and speaking with Ms. Madden, Ms. Madden sent an email to Mr. Deering asking him what happened, and he responded to that request. Mr. King testified that on the following Monday, Ms. Madden and he met with T.N. and her parents, and the parents explained that if T.N. was at fault, then she was at fault, but they were also concerned about the threats by Mr. Deering. Mr. King also testified that after he and Ms. Madden had obtained the names of students who might have additional information, they interviewed those students and took names from them. They also testified that they interviewed Ms. Kovangji because T.N. had mentioned her and that Ms. Kovangji had already intervened in the hallway.

Mr. King testified that he had met with Mr. Deering on two occasions regarding what had happened on or about November 6, 2017, and November 14, 2017. During the November 6th meeting, Mr. Deering denied making any of the comments or engaging any of the alleged behaviors. During the November 14th meeting, Mr. Deering objected to the allegations made by T.N. because they were based on her feelings and should not be viewed as severe or immediate enough to be handled the way it was handled.

Mr. King testified that part of his concern is that the incident must be looked at as regarding feelings, and it does not matter how we as adults interpret things; if a child is made to feel a certain way, this needs to be addressed. He did not tell Mr. Deering that on November 6, 2017, he was cleared regarding the T.N. incident. He did say that he could go back to work, but that the matter was on-going.

He did not tell Mr. Deering or Mr. DiOrio, the HEA representative, that T.N.'s parents were aware that she had disciplinary problems, and had apologized for it, and the matter was resolved. (Tr. 1, 164:11-165:25).

Mr. King testified that even if T.N. purposely went to confront Mr. Deering because she was mad at him for calling K.P. ugly, Mr. Deering's behavior in engaging the way he did with T.N. was not appropriate.

He also testified that he knows that middle school kids can be tough, and teachers need to have a thick skin, because kids will say things and will attempt to antagonize. (Tr. 1, 168:1-6). He continued by referencing that would be a normal situation, but we are still dealing with students and this is the nature of the business. *"If you do not understand that they are kids and learn to always maintain yourself as a professional at the highest level, and it just takes that time if you do slip up, it is being compared to an officer and people always yelling at you. The one time you lose sight of what the nature of the job is, it is not good when you are dealing with kids. With kids you always have to keep that in the back of your mind."* (Tr. 1, 168:15-169:1).

**THE FACTS AS TO CHARGE 2 – CONDUCT UNBECOMING
A TEACHING STAFF MEMBER**

WITNESS CELSO KING SUMMARY:

Mr. King testified that he and Ms. Madden had obtained the names of students who might have additional information regarding the T.N. incident and had interviewed those students and took statements from them. They also learned that Ms. Keenan may have information about the incident after speaking with T.N. and K.P. They testified that when they interviewed Ms. Keenan, her recollection was what she included in her statement, and she did not say anything about Mr. Deering indicating that it was nice of her to help K.P. (Tr. 1, 143:3-18; P-20). He also testified that although it was not in her written statement, Ms. Keenan may have stated that her impression of the comment from Mr. Deering to K.P. concerning K.P.'s attitude was not that she was ugly as a person. He also stated *"that you have to understand that regardless of what they interpret, it is how the student feels is what we go by."*

When Mr. King met with Mr. Deering on November 14, 2017, and discussed the allegations regarding K.P., Mr. Deering could not recall making any such comments. He also testified that he was worried about Mr. Deering's statement to Ms. Keenan about K.P. and that the comment made the student want to cry.

WITNESS Q.B. SUMMARY:

Q.B. testified that he had heard from other students that Mr. Deering had called K.P. ugly while she was in his class.

WITNESS D.C. SUMMARY:

D.C. testified that a little before the incident between T.N. and Mr. Deering, K.P. had told D.C. that Mr. Deering had said that K.P. was ugly.

WITNESS K.P. SUMMARY:

K.P. testified as to what had occurred on October 31, 2016, and about her statement. *"She testified that she was in math and didn't understand the problem and on that day she had cramps. Mr. Deering was like, "Stop, you look ugly with that face and then that hurt me, because, like, it was kind of mean." She went to lunch and one of her friends asked her why she was crying and she told that person who simply said not to listen to him. She also testified that she had not said anything to Mr. Deering before he said she had an ugly face."*

WITNESS MELANIE KEENAN SUMMARY:

Ms. Keenan testified that she provides special education services in Mr. Deering's math class and had written a statement about what happened during that third period math class on October 31, 2017. (See P-20). She testified that there were four students in the group who were always kind of struggling and she testified that she had asked K.P. what she was doing and then said "let's do our work." K.P. then said, "I don't know how to do it." She went to help K.P. when Mr. Deering said something to the effect of, "That is nice you are helping her, but they need to learn for themselves; she is sitting there all ugly." Ms. Keenan also testified that K.P. was not disrupting the class, and was not talking to other girls in her group nor was she talking to Mr. Deering. She was just sitting there. Additionally, Ms. Keenan admitted that she did not know Mr. Deering that well.

**THE FACTS AS TO CHARGE 3 – CONDUCT UNBECOMING
A TEACHING STAFF MEMBER**

WITNESS ANDREA OATES-PARCHMENT SUMMARY:

Assistant Superintendent Parchment testified that she had reviewed the numerous documents contained in P-8. She wrote those documents when she was the middle school principal and was not trying to target Mr. Deering. Most importantly, she was not involved in any feud with Mr. Deering. She did not write the documents found in P-8 motivated by any difference of opinion with Mr. Deering regarding discipline or because he did not do what she wanted him to.

She also testified that before the tenure charges were filed, she did not discuss with Acting Superintendent Marks that she had any ill feelings toward Mr. Deering or that Acting Superintendent Marks should go after Mr. Deering. Additionally, she had no role in the creation of the tenure charge documents.

WITNESS ROSEMARY MARKS SUMMARY:

Acting Superintendent Marks testified that she reviewed the numerous documents contained in Mr. Deering's file, including the documents attached to the sworn statement of evidence. (See P-2 and replicated in P-8). She also testified that the relevance in the instant matter is based on a situation that occurred on October 31, 2017 involving a child responding in a disrespectful manner and even belligerent way to a teacher. She testified that we are teachers and trained professionals for working with every child in our care. The memos show that the incident on October 31st follows the same pattern where there is a child who confronts or responds in what could be considered a disrespectful or belligerent manner, and Mr. Deering's reaction became inappropriate and unprofessional. She also testified that Mr. Deering exhibited that same behavior

when dealing with adults. (Tr. 1, 173:19-22). She also testified that several memos in P-2/P-8 constituted letters of reprimand.

Acting Superintendent Marks testified that past practice in the District is anything that is in a personnel file as a reprimand is written documentation that stays in the personnel file. She testified that the April 29, 2010, memo found in P-2 indicates that Mr. Deering was reminded that he cannot make threatening remarks to a student, and the language was very specific. He was reminded that he has been spoken to in the past about reaction to students.

Acting Superintendent Marks also testified about the job description for teaching staff members, including the obligation to engage in appropriate interaction with students, as teachers are role models for students. Furthermore, based upon the information related to the October 31, 2017, incident, as well as documents relating to incidents from prior years, her rationale for signing the tenure charges was simple; it was conduct unbecoming a teacher, and a teacher does not have the authority to denigrate or demean children. The teacher is responsible for discipline, but when a child becomes belligerent our jobs are not to challenge, to instigate or to confront. Our job at that time becomes the role of a mediator and conflict resolution to de-escalate the situation rather than escalate the situation.

She also testified that if a student is particularly belligerent to a staff member, it is not absolutely okay for the staff member to threaten a student. That would constitute conduct unbecoming. She also testified that even if a student was belligerent using curse words, it would absolutely not be appropriate

for a teacher to engage in a yelling match. In fact, a teacher will never be justified in engaging a student in a back-and-forth argument calling a student ugly or saying she had an ugly face, or threatening the student. That is conduct unbecoming. (Tr. 1, 180:18-181:1).

She also testified that if a student was not particularly engaged in instruction on a given day, it absolutely would be appropriate for one teacher to tell another teacher to not to work with that student or to refer to the student as having an ugly face.

The District contends that the preponderance of evidence presented establishes the truth of the charges against Mr. Deering. The Board references various Commissioner of Education decisions dealing with a teacher being dismissed from his or her position or reduced in compensation because of unbecoming conduct or other just cause.

In support of its arguments, the District presented eleven (11) witnesses to testify to the charges against Mr. Deering which are all detailed *supra*. That testimony is very comprehensive and the evidence is wholly credible. Virtually, all of the testimony given by the District's witnesses has supporting documents and each charge has multiple sources of direct evidence. The District argues that in assessing the credibility of each and every witness the common thread is clear; Petitioner's witnesses stand alone with nothing to gain and much to lose. Throughout the hearing, it was apparent that Mr. Deering and his counsel hoped to convince the Arbitrator that all of Petitioner's witnesses were lying and painting Mr. Deering as a target. The District contends that it is insulting to propose that

the Petitioner orchestrated a conspiracy involving administrative staff, teaching staff, as well as eight students. Mr. Deering testified alone in defense of his charges and he, more than anyone, has the greatest stake in the outcome of the proceedings preserving his livelihood and reputation.

Petitioner contends that none of the District witnesses had any personal motivation to represent the facts relating to the incident on October 31, 2017. Not even T.N., whom Respondent will argue was facing potential discipline for her interaction with Mr. Deering, had any personal motivation to misrepresent the facts. T.N. was already observed by a teaching staff member to have engaged in the shouting match with the Respondent, and had already admitted to that to Ms. Kovangji even before the meeting with the administration. (See P-14).

On the other hand, Mr. Deering, in an effort to save his job, engaged in a series of illogical explanations which were wholly refuted by multiple sources. His testimony that he calmly interacted with T.N. despite her yelling was specifically refuted by the testimony of several witnesses, including Ms. Kovangji.

Mr. Deering is attempting to place all the blame on T.N., while T.N. did not deny being loud and cursing at Mr. Deering. He stated that he was calm throughout, except for a few fleeting seconds. (Tr. 2, 40:21-41:21). This was contradicted by several students, as well as Ms. Kovangji. Mr. Deering's credibility was on the line because of the testimony from other witnesses and his comment that his purpose for protecting T.N. was because "*she could meet violent injury anywhere, anytime, anyplace.*" That comment was contradicted by his own sworn testimony when he testified that T.N. had to "*improve her behavior*

in the building because otherwise she would get in serious trouble or maybe even injured."

His version involving the interaction with K.P. is somewhat different than the testimony in the record from Ms. Kovangji. He testified that K.P. came into the class "mean mugging" and made several statements in this regard (Tr. 2, 24:4-15), none of which was appropriate as a greeting. The curious aspect of this is that Ms. Keenan mentioned none of this in her testimony. Mr. Deering then claimed that K.P. raised her hand for Ms. Keenan's assistance, and he asked Ms. Keenan not to assist because he is trying to get them to be more independent. Mr. Deering also claimed that he said, *"Look, there is no need for your face to be frowning. You are looking ugly in your face. You're mean mugging. You are brining your black cloud."* Again, there was no such confirmation by Ms. Keenan. In fact, Mr. Deering apparently considers those comments to be an appropriate way to speak to a student. He considers ugly to be a figure of speech, thus perfectly acceptable to use. (Tr. 2, 31:3-5). Based on all of the evidence in the record, it would be abhorrent to public policy to allow the Respondent to remain as a teaching staff member.

Petitioner contends that it goes without saying that children need to learn from positive role models, and Mr. Deering, a disrespectful bully, taking out his anger on students and adults, cannot be permitted to remain in the District's employ.

The Petitioner strenuously argues that the Respondent's numerous acts of unbecoming conduct mandate immediate dismissal from his tenured position

“Behavior rising to the level of unbecoming conduct may not be predicated upon a violation of any particular rule or regulation but may be based merely upon a violation of the implicit standard of good behavior which revolves around one who stands in the public eye as an upholder of what is morally and legally correct.”

Petitioner contends that in the instant matter they have established that the Respondent not only engaged in two distinct acts warranting tenured dismissal but historically has engaged in similar actions which constituted unbecoming conduct.

If Mr. Deering were to continue as a teacher in the District, it would be directly contrary to the goals of education in this State. His tenured status cannot insulate him from removal. The facts giving rise to each and every one of the tenure charges require a finding that Mr. Deering can no longer hold a teaching position in the District.

For the reasons set forth herein, as well as those contained in the record of the hearing, the Petitioner demands that the tenure charges certified against Mr. Deering be sustained and that he be stripped of the protection of tenure.

FOR THE RESPONDENT

The Respondent contends that the choice of accepting or rejecting witnesses' testimony or credibility rests with the finder of fact. Moreover, and for testimony to be believed, *“it must not only come from the amount of a credible witness, but it also has to be credible in itself.”* It must elicit evidence that is from such common experience and observation that it can be approved as proper

under the circumstances. A credibility determination requires an overall assessment of the witness' story in light of rationality, internal consistency and the manner in which it hangs together with the other evidence.

Respondent contends that the testimony at the hearing made clear that he did not ever call T.N. ugly and, in fact, T.N. misled administrators in believing so. It is abundantly clear that T.N. was angry at Mr. Deering because she had heard that he had called her good friend K.P. ugly earlier that day. T.N. also told administrators that Mr. Deering called her ugly in an attempt to excuse her horrific behavior and used the term ugly because she was aware of the earlier incident.

T.N. does admit she was in an area where she was not supposed to be when she interacted with Mr. Deering, and it is undisputed that Mr. Deering appropriately told her to return to her classroom. However, *"it is clearly not believable that Mr. Deering would say to T.N. after T.N. agreed to return to her class that she was ugly or ugly in her face."* Mr. Deering was not her teacher and had little interaction with her before that day. T.N. was not truthful when she testified that Mr. Deering called her ugly. It is undisputed that T.N. had a bad day on October 31, 2017. She cursed at Mr. Deering while refusing to follow his appropriate instructions. It is also undisputed that her horrendous behavior continued for a significant period of time. It is also undisputed that Mr. Deering attempted to bring T.N. into the office of Vice Principal Madden because of her outrageous behavior and that attempt was unsuccessful because Vice Principal Madden was not in her office. It is also undisputed that Mr. Deering raised his

voice at T.N. after she continued to act in a horrendous manner toward him and refused to follow his appropriate instructions.

Mr. Deering did not threaten T.N. on the way to the office, and in fact, candidly stated during his testimony that he told her, *“Young lady, you are going to have to improve your behavior in the building because if you continue to do that you are going to get yourself in serious trouble or maybe even injured.”*

Respondent contends that that statement is true and if a young person curses at an adult or another person for a long period of time, then consequences may result in another person acting out in violence. Mr. Deering was attempting to teach a student, and in this case T.N., a real life lesson rather than threaten her. This is unmistakable from the testimony of the witnesses and Mr. Deering himself. T.N. took it as a threat because it fit her agenda to find reasons to excuse her horrific behavior. Like the story about the ugly comment, T.N. also misrepresented what Mr. Deering said to her in the hallway to fit her agenda.

The evidence at the hearing also made it abundantly clear that Mr. Deering never said, *“I will pop you in the face and if there wasn’t a law stating teachers could not hit a student, I would.”* Students gave completely contradictory statements about these allegations. They were simply repeating versions of the stories they had heard from both T.N. and K.P. Some students stated it happened in the hallway, while others said it happened in the homeroom class. However, no one from the homeroom class stated Mr. Deering said anything about T.N. during the class.

Charge 2 of the tenure charges is improper because it misrepresents the events between Mr. Deering and K.P. to indicate that Mr. Deering was trying to bully, intimidate or harass K.P. The District was also aware that Mr. Deering was letting K.P. know that he was not going let her come into his class with a bad or negative attitude and get away with it. The Board knew that K.P. was failing the class, and were also aware that Mr. Deering's approach in the classroom had produced strong results from his students.

Respondent is not sure what Charge 3 is all about because it states violent reactions with improper student contact. However, there was not any testimony about any violent reactions or physical contact. Also, not one witness testified at the hearing with any personal knowledge of any events that were discussed or any memorandums contained in Mr. Deering's personnel file.

The Respondent contends that the evidence brought forth in the hearing did not support the charges and, as such, the District appeared to change its focus to argue that Mr. Deering should be fired for raising his voice to T.N., not utilizing the phone to call the office and using the term ugly with a student.

The Respondent queries four specific issues:

1. Should Mr. Deering lose his job because he raised his voice at a student when the student continued to curse at him and acted insubordinate for a period of time?

2. Should Mr. Deering lose his job because he brought T.N. to the Vice Principal's office because of her outrageous behavior instead of calling the front office to advise of her horrendous behavior?

3. Should Mr. Deering lose his job because he cared enough to tell T.N., a student in obvious need of advice about her attitude that if she didn't improve her behavior she could get in serious trouble or even hurt?

4. Should Mr. Deering lose his job or be suspended for using the term ugly for not bullying or harassment purposes?

The Respondent answers its own questions by asserting that obviously the answer is no because there was no conduct unbecoming exhibited by Mr. Deering. More importantly, the general public will not lose respect for Mr. Deering or the operation of the school if they learned that he raised his voice at a student who continued to curse at him and that he took the student to the Vice Principal's office to suffer consequences for her behavior.

RELEVANT TESTIMONY TO CHARGE 1

TESTIMONY OF MIDDLE SCHOOL PRINCIPAL CELSO KING:

Mr. King acknowledged that T.N. told him she was very upset because Mr. Deering had said something to her friend K.P. in class. (Tr. 1, 142:2-10). Even though Mr. King was concerned about a threat that was made by Mr. Deering in his homeroom, he never talked to any of the students in the homeroom class to see if it actually happened. It didn't concern him that student O.W. reported that Mr. Deering threatened T.N. in the hallway to her face, but T.N. never heard the statement that O.W. said was stated by Mr. Deering.

Mr. King never asked Mr. Deering for the names of any witnesses, and he acknowledged that Melanie Keenan may have told him the statement about ugly was made regarding K.P.'s attitude, rather than that K.P. was an ugly person. He also never scheduled a hearing between Mr. Deering, K.P. or K.P.'s mom regarding the incident. Mr. King also testified that Mr. Deering was not wrong for bringing T.N. to Ms. Madden for disciplinary reasons, and was not wrong to bring her later to the main office.

TESTIMONY OF ACTING SUPERINTENDENT ROSEMARY MARKS:

Ms. Marks testified that she had no personal knowledge of any prior incidents with Mr. Deering, despite what she read in Mr. Deering's file. (Tr. 1, 190:11-25; 191:1-25; 193:1-5). The record reflects that Mr. Deering was not offered any additional training with regard to dealing with unruly students, and she never heard Mr. Deering's side of the story regarding T.N. or K.P. She also testified that none of the documents in Mr. Deering's file indicated a prior letter of reprimand.

TESTIMONY OF T.N.:

"Mr. Deering told her to go to homeroom, and then he yelled out ugly across the hall. No other students were around beside herself and D.C. The last time when we went downstairs, she thinks that's when he was like, if I weren't in school I would bop you in the face; I would get some eighth graders to bop you in the face. The statement she wrote that day to Vice Principal Madden does not mention that Mr. Deering said to her bop or pop her. (Tr. 1, 39:2-4). She was mad that Mr. Deering called K.P. ugly, and K.P. never told her before the incident that Mr. Deering called her ugly. She also testified that she is overprotective with her friends (Tr. 1, 52:8-22). She testified that Mr. Deering never put his hands on her, but he did state, if there wasn't a law that teachers can't hit students, I would."

TESTIMONY OF Q.B.:

“Mr. Deering wasn’t that loud when talking with T.N. and Mr. Deering made the statement that you are lucky that there is a law that you can’t hit a student in the hallway, not in the homeroom.”

TESTIMONY OF D.C.:

“Mr. Deering had a normal voice and never got louder when he said, “Pop you in the face if there wasn’t a law.” When K.P. told D.C. that Mr. Deering called her ugly, D.C. was with T.N. T.N. did curse at Mr. Deering.”

TESTIMONY OF JANET HERNANDEZ KORANGJI:

“Mr. Deering was reprimanding a student when she saw him in front of Ms. Madden’s office.”

The Respondent contends that after conducting its so-called investigation, the first thing that Principal King should have looked into is whether T.N. knew that Mr. Deering used the term ugly toward her friend K.P. earlier the same day. It is hard to believe that a teacher, supervising a hallway, *“would for no reason at all call a child, who is not his student, ugly and why she would be walking around with that ugly face.”* Moreover, it is not plausible that anyone actually believed what occurred on that day. The evidence clearly suggests that T.N. was upset with Mr. Deering because of the earlier comment to K.P. and even told K.P. that she went to Mr. Deering to talk to him about that incident.

The Petitioner wants the Arbitrator to believe that Mr. Deering threatened T.N. to her face only a few seconds before their arrival at Principal King’s office. It does not make sense because it is not true. It is also clear that all students spoke about the events with each other before they submitted their report. The

inconsistencies in their testimony are so plentiful that it would be too time consuming to list.

The Respondent contends that the District clearly did not prove the allegations set forth in Charge 1 of the tenure charges, and all witnesses gave contradictory versions of the statements allegedly spoken by Mr. Deering.

T.N. was not a credible witness, and in fact it appears that Principal King was well aware of the significant disciplinary and credibility issues with her at the time he returned Mr. Deering to the classroom as testified to by Mr. Deering. Also, it defies logic to believe that Mr. Deering just yelled out to T.N. that she was ugly for no apparent reason. It didn't happen, and the Petitioner is well aware of that. Mr. Deering was not out of control when he was dealing with T.N. and witness after witness testified that T.N. was an unruly and disrespectful kid. The fact that he brought T.N. to Ms. Madden's office rather than utilize his phone to call the office is simply a non-issue. In fact, Principal King acknowledged that was the appropriate thing to do.

Is it inappropriate for a teacher to raise his voice at a student? In some instances the answer is yes, and the Respondent does not disagree that it is a teacher's job to calm a situation down and not escalate situations by acting in an unreasonable manner.

T.N.'s conduct did not change outside Ms. Madden's office and she continued to act in a completely unacceptable manner. Mr. Deering raised his voice to let her know that her behavior was unacceptable and in an attempt to get T.N. to stop acting unruly. Raising his voice to T.N. at that moment was not

inappropriate. Moreover, the District did not produce any written policy that states that under no circumstances could a teacher raise his/her voice at a student.

Mr. Deering did not act in an unbecoming manner when he told T.N. that she could get hurt if she continued to act out on occasion in this outrageous manner. The Petitioner appears to ignore the fact that T.N.'s conduct was completely outrageous, and she should have suffered significant consequences for her behavior such as a long-term suspension.

We all know from life experiences that if you act disrespectful and crude to people it may result in the other person becoming violent. Telling a young lady that fact was a life lesson, not bullying or intimidation. The fact that she may have misinterpreted the statement does not change the conclusion that Mr. Deering's conduct does not constitute unbecoming conduct.

RELEVANT TESTIMONY TO CHARGE NUMBER 2

Mr. Deering was not attempting to bully, intimidate or harass K.P. when he used the term ugly with her on October 31, 2017. The District was aware of that fact before filing instant tenure charges. It is also probably the reason that HIB charges were not filed against Mr. Deering and spoken about at the hearing.

Melanie Keenan testified that when Mr. Deering made the ugly comment to K.P., it was about her attitude and not about her. (Tr. 1, 121:1-7). K.P. did not cry after that comment and made it clear to Mr. King and Ms. Madden that Mr. Deering used the term ugly to describe K.P.'s attitude.

TESTIMONY OF ERIC DEERING:

Mr. Deering's testimony at the hearing clearly explains his intention of that day, and that K.P. never spoke to him regarding what he meant by the ugly comment and why he utilized it. She did not cry in his class but she did tell a friend at lunch time who told T.N. that Mr. Deering had called her ugly.

It is debatable whether K.P. misinterpreted the meaning of Mr. Deering's term ugly on the subject date. Respondent believes that is accurate because K.P.'s initial reaction to the comment did not demonstrate that she was upset with the comment, she never expressed displeasure regarding the comment to Mr. Deering, Ms. Keenan or the administration on the day in question. The fact that K.P. later showed sorrow to her friends in the cafeteria does not negate this point. A seventh grade student will exaggerate a situation to bring attention to herself with friends. Self-esteem issues come into play with middle school girls, and they certainly like to be the center of attention. As such, the facts show that K.P. was mad at Mr. Deering, rather than upset with him, regarding the comment. That is an unfortunate part of this case. It is clear that Mr. Deering never intended to offend K.P., and he wanted her to know that he was not going to accept her bad attitude in his class and was not going to allow her to fail this class.

It was his approach to motivate a student who had an "F" in his class, and he wanted to motivate her so she would not fail the class. He felt she had the intellectual capacity to do well in his class. Apparently, that is not being reviewed by the Petitioner at all.

The hearing record establishes that Mr. Deering was an excellent teacher, and his student's test scores on state exams prove that his hard love methods have produced outstanding results from the majority of his students.

Mr. King and Ms. Madden were well aware of the fact that Mr. Deering was talking about the poor attitude of K.P. when he used the term ugly with her, and they knew that because Ms. Keenan told them when she met with them on November 6, 2017. They never told that to Superintendent Marks. In fact, they never informed K.P. of that fact or K.P.'s mother.

The District removed one of their best math teachers and missed an opportunity to teach a child that you need a positive attitude to succeed in life. Mr. Deering's intentions on October 31, 2017, were not to bully or intimidate K.P.; instead he was letting her know he wasn't going to accept her bad attitude and let her fail his class.

The District did not prove the tenure charges. However, if proven, the conduct without any specific disciplinary record did not authorize termination. That is the reason the District suggested suspension in their opening remarks. Mr. Deering has been severely punished already being without pay for several months while dealing with the stress of getting his beloved job back.

It is respectfully requested that Mr. Deering be reinstated with back pay.

DISCUSSION AND OPINION

The record clearly and unequivocally establishes that Mr. Deering believes that Assistant Superintendent Parchment has a personal dislike for him. In fact, that was the genesis of the Respondent's opening argument concerning the

instant matter. The evidence established at the hearing and incorporated into the transcripts establishes that Mr. Deering is a strong disciplinarian and wants to impart proper behavior to his students. He stated that his relationship with Ms. Parchment was not good.² Mr. Deering testified that he always had an issue with how Ms. Parchment dealt with student behavior. He stated, "*She is more of a coddler, which in the long run, doesn't assist the students at all.*" He also testified that during the time Ms. Parchment was at the middle school he had disagreements with her two to four times per year.³

Ms. Parchment testified that she was not involved in any type of a feud with Mr. Deering and also testified about the documents found in Exhibit P-8.⁴ She further testified that she never told Acting Superintendent Marks that the school district should go after Mr. Deering.⁵

Additionally, she testified that the documents were in Mr. Deering's file, but she did not speak to Superintendent Marks about what happened to these documents, they were simply in his file.⁶ Moreover, Ms. Parchment testified that Mr. Deering became a tenured employee while she was the Principal of the middle school.⁷

With respect to the March 17, 2008, two-page memo found in Exhibit P-8, Mr. Deering testified that he never received that memo.⁸ Mr. Deering's approach by simply saying that he never received that memorandum without any backup

² Tr. 2, 9:23-25

³ Tr. 2, 10:1-9

⁴ Tr. 2, 75:9-18

⁵ Tr. 2, 76:11-25

⁶ Tr. 2, 77:15-19

⁷ Tr. 2, 82:17-19

⁸ Tr. 2, 16:2-3

support for that statement is not controlling in this type of a hearing. If he had filed a grievance over the matter, if he had reviewed his file and found something in there that he never saw before, or if he submitted a rebuttal to a memo that would be some type of support for the position he is advancing that he has a problem with Ms. Parchment. However, nothing of the sort was produced. Therefore, the documents introduced by the Employer that are part of the record were not stricken from the record and, in particular, P-8 is a critical factor for the Arbitrator's determination because of the seriousness of the incidents Mr. Deering was involved with in 2008 and thereafter.

Based upon the testimony of Assistant Superintendent Marks, the District has a high degree of comfort as it relates to Exhibits P-2 and P-8 when she testified that when something is placed in your file it is considered a reprimand, and that is the past practice of our District.⁹ However, that high level of comfort has a short life expectancy when you review the prior testimony of Assistant Superintendent Marks where she stated that none of the documents found in P-2/P-8 contains the words letter of reprimand.¹⁰

The only support that can be found for Mr. Deering in the record is the statement from Melanie Keenan, in which she stated it was her opinion that when Mr. Deering made the comment ugly to K.P.. it was about K.P's attitude and that the child did not burst out crying after the statement was made. She just sat there at her work station.¹¹

⁹ Tr. 1, 198:1-10

¹⁰ Tr. 1, 200:21-23

¹¹ Tr.1, 121:3-10

Mr. Deering testified that when K.P. came into his classroom on October 31, 2017, he said, *"Don't come in frowning, you know mean mugging. Nobody did anything to you. It is a term that students use when their faces are frowned up. So mean mugging. I said because no one did anything to you in this particular room. You just arrived. I said you could stay and join in on the activity or you could leave and go somewhere else and get yourself comfortable or do something else. She decided to stay."*¹²

The comment "you are ugly in the face" and "mean mugging" was explained by Mr. Deering as a result of a learned environment from being a young child. He said his mother and grandparents said that to him. He said it is just a figure of speech as far as he is concerned.¹³ He also testified that his mother is a teacher and guidance counsellor in the Hackensack school system and would refer to his attitude as ugly.¹⁴

Even though this was a learned situation from a family environment, it does not necessarily mean that it belongs in a school setting. It may very well be that in her role as a guidance counsellor (which is speculative on my part), that Mr. Deering's mother did reference a student looking ugly with an attitude or having an attitude and not the physical presence. While that again is speculative, Mr. Deering has to recognize that even though this is a learned situation in a specific environment, it does not belong in a school setting unless it is carefully explained to the student. That did not happen here. Mr. Deering did not say to K.P. or T.N. or anybody else what he meant by the term ugly. In fact,

¹² Tr. 2, 24:4-15

¹³ Tr. 2, 27:8-17

¹⁴ Tr. 2, 28:1-5

a careful review of K.P.'s statement, which is found as number 22 in the Board's Exhibit book, K.P. stated, *"Mr. Deering told me that I look ugly with my face. I wanted to cry because that hurt and I was making weird faces because I had cramps. Then I went to lunch and I started crying because that hurt and I told one of my friends."*

Think of the enormity of how that comment relates to a seventh grade student. This is a situation that got completely out of hand by Mr. Deering, and he honestly believed that because he was a teacher in the building and a student did something wrong, or disrespected a teacher, that student has to be disciplined. There is no question in my mind that throughout the two days of hearings, Mr. Deering had an open and notorious disrespect for management authority. The fact is that I am the person who has to make the decision and that is exactly what I saw. It may very well be that Mr. Deering's approach to resolving disciplinary matters has helped students move along. He may have an exemplary record with students passing statewide exams. But that is not the issue before me. The issue before me is what happened on October 31, 2017, and should that incident result in Mr. Deering's termination from employment with the Hackensack school district.

The statement from K.P. does not bode well for Mr. Deering, because he never explained to her what it meant. Save for Ms. Keenan no one else testified as to the context of how the word ugly was used by Mr. Deering. The issue calling T.N. ugly escalated and reached the point where there were two

individuals in the situation, a student/child and an adult. In a school setting, who is the adult?

Mr. Deering cannot go to the level of students. He is the adult in the classroom and has to set that type of an example. As the Superintendent testified, when a situation reaches that point, and there may be belligerence on the part of a student, the role of the teacher is to de-escalate that situation, not bring it up to a higher level. Unfortunately, Mr. Deering brought it up to a higher level. This is not a case of a personal dislike from Ms. Parchment to Mr. Deering. This is a case of Mr. Deering not paying attention to what he was supposed to do for a period of time. For example, Exhibit P-21, dated November 15, 2017, from Mr. King to Ms. Parchment, is a time frame of the incident that occurred with T.N. In the November 14 section, Mr. King's notes reference that: *"In addition, Mr. Deering expressed concern over T.N.'s on-going behavior in the building. He stated that he has had to address her behavior multiple times in the past but did not report any of the previous incidents to administration."*

Mr. Deering testified that he had two incidents with T.N. prior to October 31, 2017, but he did not refer her to the administration.^{15 16} In fact, the record is devoid of any prior action taken by Mr. Deering towards T.N., be it a meeting with her parents and/or school administration.

Mr. Deering cannot have it both ways. He cannot talk about how bad T.N. was with her comments toward him and, then when he had a prior opportunity to begin to address how to correct that inappropriate behavior he ignored the

¹⁵ Tr. 2, 35:14-25

¹⁶ Tr. 2 36:1-9

opportunity to do so. It does not work that way in the real world. In that same Exhibit, Mr. Deering also complained that he should have been given more advance notice that a meeting was going to be held on November 6 and the option of choosing an HEA representative at the meeting. It is kind of late to be raising a procedural objection and a Weingarten defense. It was never raised because there was no procedural objection to be raised.

The argument that Mr. Deering is being set upon by administration and, in particular, Ms. Parchment, is unsupported by persuasive evidence. In fact, it is very disingenuous. There was nothing presented to show that there was an attempt by the District to fabricate tenure charges against Mr. Deering.

The practical imperative of the action taken by Mr. Deering was to put him in the situation he is in now. Mr. Deering has had issues with Administration in the past, as evidenced by P-8. The memo dated March 17, 2008, that he denied receiving does reference that he became defensive and displayed discontent by raising his voice and speaking to Ms. Parchment in a disrespectful tone. She stated, *"Which is your usual reaction when I approach you about matters that may not be pleasant."*

The April 29, 2010, memo from Ms. Parchment to Mr. Deering (see P-8) bullet point 3 states, *"Your response to the student's defiant behavior was inappropriate. You cannot make threatening remarks to a student. You admitted that you said the following to the student: You are lucky I don't slam you against the wall. The student reported that you said, how would you like it if I slammed you against the wall?"* However, and most damaging to Mr. Deering is the

following, also from the April 29, 2010, memo:" During this time, the student's guardian heard the exchange between you and N.H. because she had called her grandmother to the phone." Mr. Deering did not challenge that document; therefore, his acquiescence is an acknowledgement that Ms. Parchment's assessment is accurate and correct.

Furthermore, on November 26, 2014, also found in Exhibit P-8, then Middle School Principal, Corey Jones, stated, "*Students and parents have a right to confidentiality. It is imperative that your professional practice as a teacher ensures that all students are provided with such protections. You are advised to have no further communications in this matter with these students, and you are directed to not discuss student behavior or academic progress with anyone other than parents and school personnel. Any continuation of this type of communication may warrant further action by building administration.*" In a memo dated December 22, 2014, Mr. Jones stated, "*On December 19, 2014, I informed you that student P.S., who was identified in my previous memorandum to you dated November 25, 2014, was transferred out of your class at the request of her mother. The parent indicated that her daughter was fearful of going to your class, which had an adverse impact on her academic performances. Additionally, I inform you that this was the third parent request to have a student removed from your class since the beginning of the school year.*"

Exhibit P-8 goes beyond 2008, it goes up to 2014. Obviously, an argument can be made that the District was remiss in its responsibility of not following through with Mr. Deering to modify his behavior. It appears that never

occurred because the record shows that there was no additional training afforded Mr. Deering to modify his behavior. Nevertheless, that was an option the District had. Clearly, and without reservation, the Petitioner should have imposed progressive discipline on Mr. Deering based upon the totality of P-8. The District as evidenced by some of the documents found in P-8 chose only to indicate that further transgressions may be referred to the central administration. (see April 29, 2010, memo from Ms. Parchment.) The only concise, strong definitive statement about further issues with Mr. Deering can be found in the June 16, 2007, memo from Ms. Parchment where she stated: "*If I have any more reoccurrences of insubordination from you, further action will be considered, including your tenure.*"

The purpose of a progressive discipline system is to serve as a warning to an employee, in this case Mr. Deering, informing him what he had done wrong, and what conduct is expected of him. Additionally, that system is also designed to stop an employee's errant behavior and to allow that employee the opportunity to reform errant behavior. It may very well be that in some instances an employee is so incorrigible that termination is warranted.

A key component of a progressive discipline system is the ability of an employer to suspend an employee. Arbitration cases are legion that have upheld the common sense principle that the loss of earnings is a very viable, effective step that is designed to be more than a simple warning. It establishes that an employer is serious, and in this case will not tolerate continued acts of improper conduct, be it with students, staff and/or administration.

As indicated previously, Mr. Deering created his own problem. He can't come back and start pointing fingers at the people who were involved in this case and attempt to use that as a lynchpin for his defense. Of the varied interpretations that the students gave varied interpretation as to what occurred, the one that I find most outrageous is from D.C. That statement, introduced as P-17, could not possibly be accurate because she stated, among other things, "*I heard that he had told his homeroom that if it was the law he would have hurt her*" as well as she heard that Mr. Deering said that he would pop T.N. in the face, and that T.N. responded that that was a threat. Since D.C. was not present, that is all hearsay. There was no objection to it. She testified, but I didn't give any weight to the document itself because it was hearsay. While there might have been a few things that were not hearsay, nevertheless when you say I heard and you weren't in the classroom that is hearsay, and must be dismissed.

I don't find fault with what Mr. King and Ms. Madden did with regard to the K.P. incident. Of course, you can always look at something and say if you had asked more questions or different people or if you had a meeting with K.P. and her mother/grandparent you might have gotten a different result. Consider the fact that there were already three instances where students were transferred out of Mr. Deering's class because students were fearful of him and believed they would have an academic problem in his class. This is an attitude issue from Mr. Deering that goes back to at least 2007, and it is carried through into 2017.

Again, this entire issue could have been mitigated if Mr. Deering had talked to K.P. and explained the meaning of his comments. Of course, the issue

intensified when T.N. decided to be the champion of all of her friends and confronted Mr. Deering. But it did not have to be a confrontation. As it was being escalated by the students, Mr. Deering should have been the adult in that situation. He was not the adult. He allowed the matter to escalate to the point where he found himself in a terrible situation with tenure charges filed against him and has been out of work since those charges were filed.

His relationship with the students should have been paramount in his mind. For the students to succeed in his class, there has to be a positive relationship between the teacher and the students. That particular day K.P. was not feeling well. To make the statement that he did just exacerbated the situation. Nevertheless, Ms. Keenan's uncontradicted statement about the word ugly gave a coherent reason that she did not believe the Respondent was deliberately attacking K.P. In fact, she testified he was simply referencing K.P.'s attitude.

The Respondent's argument that there is no District policy concerning a teacher raising his or her voice to a student is nothing more than a red herring. That is typical in any type of a case dealing with the potential termination of an employee, but it is not something that will give credence to Mr. Deering's arguments. What is not subject to varied interpretations is that on October 31, 2017, Mr. Deering was not in control of the situation with K.P. in his classroom and T.N. in the hallway. His learned environment is not positive based upon what had occurred on October 31, 2017. This incident took place in a school

setting, not at a ballgame. Therefore, his actions were absolutely outrageous and unprofessional and cannot continue.

There is contributory negligence on both parties because the District did not move forward to offer assistance to offset Mr. Deering's egregious behavior. However, as evidenced by P-8, multiple administrators informed Mr. Deering as to his inappropriate behavior including but not limited to violation of confidentiality, insubordination, students transferring out of his class for fear of his retaliation, and threatening students. Due to the inability of Mr. Deering to modify his inappropriate behavior there must be a strong penalty imposed. He cannot cavalierly return to work as if nothing had occurred.

For the foregoing reasons, and having duly heard the proofs and allegations of the parties, I Award the following:

AWARD

The Petitioner has not proven its case-in-chief for the Respondent to forfeit his tenure but has clearly established that an economic penalty shall be imposed upon Mr. Deering.

Charge No. 1

That on or about October 31, 2017, Eric Deering did utter the following remarks to Hackensack Middle School student T.N.:

"You're ugly"

"Why are you walking around with that ugly face"

"I would pop you in the face"

"If there wasn't a law stating teachers can't hit students, I would"

Said conduct was unprofessional, outrageous, constituted harassment, intimidation, and bullying pursuant to N.J.S.A. 18A:37-14, and otherwise constitutes unbecoming conduct.

CHARGE NO 1 IS SUSTAINED

Charge No. 2

That on or about October 31, 2017, Eric Deering did utter the following remarks to Hackensack Middle School student K.P., while said K.P. was receiving instruction from another Middle School Teacher:

"You look ugly with that face"

"Mrs. [K] don't help her she's sitting there all ugly, she needs to help herself"

CHARGE NO 2 IS SUSTAINED

Charge No. 3

That Eric Deering, who was hired as a teacher in Hackensack Public School District in 2006 has established a pattern of unbecoming conduct commencing in 2007 and continuing through and including the incidents set forth in Charges No. 1 and 2, which prior to the incidents set forth herein, resulted in not less than nine (9) reprimands. The conduct demonstrated in these incidents ranges from defiance and insubordination to a failure to honor student

confidentiality and, most disturbingly, violent reactions which have on occasion resulted in improper physical contact with students.

Said conduct was insubordinate, unprofessional, outrageous and unbecoming conduct.

CHARGE NO 3 IS SUSTAINED IN PART

The lack of progressive discipline being imposed upon the Respondent mitigates against his forfeiture of tenure.

REMEDY

Mr. Deering shall be returned to work with no back pay, and shall lose his step and adjustment increments for the 2018-19 school year. Mr. Deering shall also be required to attend anger management counseling established by the District.

Dated: August 9, 2018


Gerard G. Restaino, Arbitrator

State of Pennsylvania)

County of Wayne) ss:

On this 9th day of August, 2018, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.


Deborah Ann Henneforth

