

COMMISSIONER OF EDUCATION, STATE OF NEW JERSEY

**IN THE MATTER OF THE TENURE
HEARING OF ALBERT D. PORTER
BOARD OF EDUCATION OF THE
CITY OF VINELAND,
CUMBERLAND COUNTY**

**: BEFORE THE COMMISSIONER OF
: EDUCATION OF THE STATE OF
: NEW JERSEY
:
:
: AGENCY DOCKET NO. 104-4/18
:
: OPINION AND AWARD**

BEFORE: CAROL F. LASKIN, ESQUIRE, ARBITRATOR

Appearances: **Board of Education**
Frank DiDomenico, Esquire

Respondent, Albert D. Porter
Kevin McCann, Esquire
Chance & McCann, LLC

Pursuant to N.J.S.A. 18A:6-16, as amended by *P.L. 2012, c. 26* (“TEACHNJ”), tenure charges were brought by the Board of Education of the City of Vineland, Cumberland County (“Petitioner”, “District” or “Vineland”) against Albert D. Porter (“Respondent” or “Porter”) on April 25, 2018. Respondent filed an Answer to the tenure charge with separate defenses on May 8, 2018.

This matter was referred to me by the Bureau of Controversies and Disputes on May 18, 2018, for hearing and decision. The hearings in this matter were conducted on June 26, 2018 and July 16, 2018, at the Board of Education of the City of Vineland. Final submissions were received by late August, whereupon the record was closed.

Thereafter, on September 25, 2018, Respondent applied to reopen the record to include the decision of the Appeal Tribunal, *In The Matter of Albert Porter and City of Vineland Board of*

Education, dated September 13, 2018, issued in reference to Respondent's claim for Unemployment benefits. The District objected, resulting in the undersigned's Ruling, issued October 19, 2018, denying the application.

THE CHARGE

The Sworn Tenure Charge brought against Albert D. Porter, in pertinent part states:

"On January 19, 2018, the Athletic Director for the Vineland School District was advised by two staff members that Albert D. Porter, a tenured social studies teacher at Vineland High School and head coach of the boys' basketball team, was having an inappropriate and improper relationship with a fifteen-year old male freshman student at the high school who is also a member of the boys' basketball team.

The Athletic Director contacted the Principal of the high school who in turn contacted the student's mother. The student's mother granted permission for her son, A.R., to meet with the High School Principal, the Athletic Director and Guidance Counselor. A.R. confirmed that Porter had driven him home from basketball practice and on at least two occasions, on January 17, 2018 and January 18, 2018, Porter drove the student to Porter's home.

A.R. stated that while alone with Porter at his home, Porter applied a cream substance to his bare back. A.R. indicated that Porter referred to this as "blessed cream." When asked if the student had reported an injury to Mr. Porter which required some type of cream, the student replied "No."

The City of Vineland Police Department, as well as the Department of Children and Families, were contacted and each has an ongoing investigation.

Vineland Board of Education Policy #3281, Inappropriate Staff Conduct, specifically prohibits any inappropriate conduct or conduct unbecoming between a staff member and a student. The policy specifically states that, "School staff shall not engage or seek to be in the presence of a pupil beyond the staff member's professional responsibilities." That same policy also prohibits all school staff from providing transportation to a pupil in their private vehicle or even permitting a pupil to drive in their private vehicle. Porter's conduct was in violation of Policy #3281.

Albert D. Porter's conduct was inappropriate, improper and contrary to Board policy and creates just cause for a charge of dismissal.

The conduct of Albert D. Porter as set forth here and above and as summarized, constituted improper and inappropriate conduct with a student and constituted unbecoming conduct and

constitutes just cause for dismissal, pursuant to NJSA 18A:6-10(b).” (J-1)¹

BOARD POLICY

The charge identified Board Policy # 3281 *Inappropriate Staff Conduct - Teaching Staff Members, B-7*. The Policy is nine pages in length. Specific language referenced therein by the District at hearing and in its post hearing submissions articulates,

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

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

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

The Commissioner of Education has determined inappropriate conduct by a school staff outside their professional responsibilities may be considered conduct unbecoming a member. Therefore, school staff members are advised to be concerned with such conduct which may include, but not limited to, communications and/or publications using e-mails, text-messaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.

A school staff member is always expected to maintain a professional relationship with pupils and to protect the health, safety and welfare of school pupils. A staff member's conduct will be held to the professional standards established by the New Jersey State Board of Education and the member may also include conduct not specifically listed in this Policy, but conduct

¹Exhibits shall be referenced as J-Joint, B-Board and R-Respondent.

determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education and/or appropriate courts to be inappropriate or conduct unbecoming a school staff member.” (B-7, emphasis supplied)

ISSUE PRESENTED

Has the Board of Education of the City of Vineland, Cumberland County, met its burden of establishing, by a preponderance of the credible evidence, the tenure charge against Respondent, Albert D. Porter?

If so, does the tenure charge warrant dismissal or a lesser discipline?

BASIC EVIDENTIARY FINDINGS

At hearing, the parties were zealously represented. Each was given a full opportunity to present testimony, written evidence, cross-examine witnesses and submit post hearing briefs.

Petitioner Vineland proffered:

Dr. Mary L. Gruccio - Superintendent
Dr. Joseph Rossi - Executive Director of Personnel
Donald Robbins - Athletic Director
Darya Tomassello - Athletic Trainer
David Reckenbeil - Athletic Trainer

Respondent, Albert D. Porter, testified on his own behalf, in addition to:

Iesha Diggs - Parent
Richard Panas - an Assistant Vice Principal at Vineland High School

Based upon a through review of the record, including all admitted exhibits, testimony, admissions, stipulations, arguments and observations of the demeanor of each witness, I *find* the following as *fact*:²

The City of Vineland, Board of Education, is a comprehensive public school district serving approximately 11,500 students in pre-kindergarten through twelfth grade. Vineland High School,

²Controverted evidence will be identified in *Position of the Parties* below.

North and South, houses ninth through twelfth grade, approximately 2,700 pupils. The majority of the students in the district are eligible for free or reduced lunch.

Albert D. Porter is a certified teacher employed by the district for approximately twenty-two and a half years. He commenced employment in 1976, remaining through 1989. Between 1989 and 2000, Porter was the CEO of the Martin Luther King Academy. In 2000, he returned to Vineland High School serving as a history teacher. For the past ten years, he was assigned to instruct two courses: the *African-American Experience I* and *African - American Experience II*. In addition to academic duties, Porter served as a co-advisor to the Vineland High School Student Government Association, as the advisor to the African American Cultural League, and as a “mentor.” He was also appointed head basketball coach in 2017-2018.

A few years ago, Respondent was awarded *Teacher of the Year*, a process consisting of nominations, by students, teaching peers, and administration, leading to a committee decision and vote. Prior to the 2017/2018 school year, Porter was not the subject of any discipline. Prior to these charges, Porter was well-known and a respected member of the Vineland community. On January 12, 2018, he was honored with the *Dr. Martin Luther King Award* for his commitment to the Vineland community.

Mentor

Throughout his years at Vineland High School, Porter supported numerous students seeking academic/emotional guidance. He took students to college fairs and helped with their submissions of college applications. He was particularly noted for assistance in obtaining admissions for students at historically black colleges. Approximately five (5) years ago, Dr. Thomas McCain, Principal of Vineland High School, removed an academic period from Respondent’s schedule. Instead of the

normal six (6) academic periods of teaching history, the last period of the day was dedicated to assisting all students and to mentioning “at-risk-students.” Parents were notified of and granted permission for Mr. Porter to “Mentor” their child.

The students were identified by teachers, guidance counsel and social workers. Porter worked closely with Guidance. Assistant Principal Richard Panas revealed student A.R. was referred to Porter as a fifteen (15) year old freshman, desiring to be a basketball player, who was “at risk” academically.

A.R.’s mother is a Spanish speaker. She had a work schedule which precluded her from transporting her son. In order to assure she understood A.R.’s issues, Porter obtained assistance from the Bilingual teacher, Sonya Bertini, who translated for Respondent. Ms. Bertini, spoke to A.R.’s mother obtaining permission for Porter to drive A.R. to and from practice and to “mentor” him.

Basketball Coach and Athletic Trainers

In the 2017-2018 school year, Porter was appointed head coach of the boys’ basketball team. He had no prior experience serving either as an assistant or head coach with the District. On November 21, 2017, Athletic Director Don Robbins held the Winter Pre-Season Head Coach meeting, providing each coach with an agenda and Guide. (B-8, B-9) Porter was present.

On or about December 4, 2017, a complaint was raised by the sign language interpreter for a player on the basketball team. (B-10) At the request of a parent, at the end of practice, in addition to the discussion of upcoming games, Porter counseled his players on HIV prevention using sexually explicit language. The interpreter, was very uncomfortable with the message.

After an investigation, Porter agreed to six criteria identified by Dr. Gruccio to retain his position of head basketball coach. These included, *inter alia*, a two-week unpaid suspension, a

written apology to the sign language interpreter, attendance at one counseling session, and a season-long probationary period whereby any inappropriate behavior would result in his immediate dismissal from coaching.³ On December 8, 2017, Porter executed the criteria. (B-12, B-13)

As head basketball coach, Porter was assisted by two (2) unpaid non-staff helpers, William Baumgardner and Mikolai Thompson. At the time of his two (2) week suspension, Porter recommended Baumgardner fill his position. When Respondent was placed on administrative leave on January 19, 2018 Baumgardner earned the position of paid coach. At the end of the winter basketball season, both Baumgardner and Thompson were relieved of further duties.

Darya Tomassello and David Reckenbeil are the athletic trainers at Vineland High School, providing athletic injury management for all athletes of the district. All eligible athletes' names are uploaded into the athletic trainers' computer program, located in the athletic trainers' room. Students are instructed to sign into the program when entering the room. There may be as many as twenty (20) students and staff in the training room at one time. Ice packets are maintained in the room; students are permitted to take these packets without speaking to a trainer.

A.R. was not listed as an eligible athlete in the trainers' system. A.R. never signed in on the computer when he entered the athletic trainer's room. Both Thomasello and Reckenbeil testified they have no knowledge of A.R.

January 2018

The record revealed on Saturday, January 6, 2018 and Saturday, January 13, 2018, Porter picked up A.R. at his home for practice and delivered him thereafter. Porter and A.R. communicated

³The Agreement signed by Mr. Porter applied only to his position as the basketball coach. It was not, in anyway, referenced in the Tenure Charge, J-1. In its Closing Brief, Petitioner references the December 8, 2017 document as a "Last Chance Agreement."

by text. At the bottom of each of Porter's text, the words "what would Jesus do?" appear.

During the school week, basketball practice takes place each day from 2:23 p.m. to 6:00 p.m. A.R., a freshman, practiced in the Freshman gym. After practice, on a number of occasions, Porter drove A.R. home. There is a 6:00 p.m. activity bus available to students after basketball practice.

Iesha Diggs is known as "Basketball Mom." She is the Secretary for team parents, attending nearly every game. In mid - January, on the first day of a fund raiser, she was present at Varsity basketball practice to sell shirts. She revealed A.R. came into the Varsity practice complaining of a bad back. In Ms. Diggs' presence, Porter instructed A.R. to go to the athletic training room. Ms. Diggs disclosed A.R. sat out practice with an ice pack on his back, returning to the training room for additional ice. A.R. never registered in the computer in the athletic training room. (B-6). Ms. Diggs disclosed Porter had successfully "mentored" one of her sons, adding, at practice, the coach always stressed academics to the basketball team.

On January 17, 2018 and on January 18, 2018, the basketball team attended away games. The team returned approximately 8:30 p.m., long after any activity bus was available for students. On both evenings, Respondent admitted he drove A.R. to his condo, located directly across the street from the high school, taking pizza left over from the pre game meeting. While eating pizza, Porter discussed academics with A.R.. Before driving him home, on both occasions, Porter lifted the back of A.R.'s shirt and applied a natural muscle relief lotion. Porter referenced the ointment as "blessed cream" and on cross, expressed his belief that the cream provided a "spiritual benefit." A.R. texted Respondent that the cream was effective.

On the morning of January 19, 2018, Assistants Baumgardner and Thompson reported to Athletic Director Donald Robbins that on the two previous evenings, they followed Porter driving

A.R. to his condo. They called Porter's phone; no one answered. Thereafter, they followed Porter driving A.R. home. Immediately consistent with Board Policy, Athletic Director Robbins notified his superiors, including the Principal, Dr. McCann. (B-2)

Earlier that morning, at 7:54 a.m., Porter emailed Sarah Numberger, A.R.'s French teacher as follows:

"I am attempting to ensure that A..... become a student athlete. Therefore, if you would permit him to make up any assignments that he missed or received a zero it would be helpful. ***I am his mentor and coach.*** Thanks"

At 2:18 pm, Ms. Numberger replied by email:

"Mr. Porter,
A..... may make up his missing assignments. I attempted to speak with him about that today, but security removed him from my room before the end of the period, and before I could have that conversation with him.

On a regular basis in class, A... talks to his friends, put his head down, gets on his phone, and tries to get out of doing work or make excuses for why the work didn't get done. I have tried to be patient, I have tried to be tough but I still do not see the motivation or effort from him that I would like to see. A.... needs to take more initiative to complete his assignments when they are due, and to participate in class without talking back or goofing off. I spend a lot of time redirecting him, only to get nowhere.

If you can speak to him and encourage him to increase his participation and improve his behavior, it would be helpful." (R-4)

In the afternoon of Friday, January 19, 2018, Dr. Joseph Rossi in a meeting with Dr. McCann, Athletic Director Don Robbins, Security Director John Provenzano and Union representatives, presented Porter the following letter:

"I told you that administration had received information concerning your possible inappropriate behaviors with a student. I told you that the police and DYFS were notified and are investigating the matter.

I informed you that, effective immediately, you are on paid, administrative leave. I told you that you may not have contact with any student and that you may not come to Vineland

Public School's property unless summoned by district or legal authorities." (B-1)

After investigation, Porter was not subject to criminal charge. The State of New Jersey, Department of Children and Families, Institutional Abuse Investigation Unit found A.R. was not a "neglected child as defined by statute." (B-3, B-4).

POSITION OF THE PARTIES

The Parties presented arguments at hearing and through post hearing submissions; the essence of each is as follows:

Albert D. Porter

Porter disputes the District's assertion that he had an inappropriate relationship with A.R. The District sanctioned the relationship by requesting Porter be his "mentor." Ms. Ruiz, A.R.'s mother knew and approved of Porter taking A.R. from home on occasions and transporting him to school. Indeed, she was appreciative of Porter's attempts to assist A.R. particularly, because he has no father figure in his life.

Respondent requests the arbitrator to impose a negative inference as the District did not call certain witnesses, particularly Principal Dr. Thomas P. McCann and the Assistant Coaches Baumgardner and Thompson.

Porter believed he was complying with Ms. Ruiz's wishes and not violating school policy in driving A.R. home after practice and after basketball games. On both nights in issue, Porter had no choice but to transfer A.R. home because they arrived home at 8:30 p.m. The district does not provide any transportation after the game.

Porter maintains many coaches and teachers drive the students after practice or after games. Indeed, at hearing, Vice Principal Panis acknowledged Baumgardner also drove a student home -

with permission of her family but without any documentation from the Board.

Upon returning from the away games in January, Porter did not hide. He was aware there were two (2) bus loads of students, parents and at least two (2) assistant coaches present.

Prior to this incident, Porter was respected in the community. The Board's declaration, published by the media, that Porter was having an inappropriate and improper relationship with a 15-year old high school freshman and member of the boy's basketball team, has caused him great emotional pain. Counsel notes,

"In conclusion, Albert Porter is an excellent teacher. He is a seasoned veteran with twenty three and a half unblemished years. He comes in early and leaves late. He is a mentor to his students and does everything he possibly can for the students. The allegations made by the Board of Education are admitted, however it is denied it was inappropriate because Mr. Porter had the permission of A.R.'s mother. He did transport the student, he did take the student to his house. He did applied a cream known as billage natural muscle relief lotion "blessed oil" to A.R.'s back but this is just like applying icy hot which trainers do all the time. It is suggested that any charges against Mr. Porter should be dismissed and he should be returned to the classroom without any penalty at all."

Vineland Board of Education

Petitioner maintains it has established Porter's actions were in violation of Board Policy #3281, revealing unbecoming conduct, inefficiency and other just cause for termination. Specifically, improper and inappropriate conduct with an underage student. Petitioner listed undisputed and admitted facts which establish Porter's violation, these include, *inter alia*,

"II. UNDISPUTED and ADMITTED FACTS

1. Respondent admitted to the incident on December 2, 2018 at which time he inappropriately addressed the boys' basketball team and discussed sexually explicit matters degrading to women.
2. Responded admitted that on several occasions he transported A.R. in Porter's private automobile after either basketball practice or basketball games to A.R.'s home.

3. Porter admitted he contacted A.R.'s mother through an interpreter (Note: A.R.'s mother is a native Spanish speaker) and obtained permission to transport A.R. home after basketball practice or games.
4. Porter admitted he never requested permission from A.R.'s mother to take A.R. to Porter's home.
5. Porter admitted that on two occasions, on January 17, 2017 and January 18, 2018 that he did in fact drive A.R. in Porter's personal automobile from the high school following a basketball game to Porter's condo at Harlen Court Condominiums." (Brief at 3)

The District avers termination is the only appropriate remedy. It considers the December 2017 discussion with the boy's basketball team as another incident of inappropriate student-teacher interaction. Petitioner is also aggrieved Porter did not feel his conduct was improper nor reflect any remorse for his actions. Rather, he blamed his assistants' motivation to become the head coach as the reason for the report.

Attaching Dunkley v. Board of Education Rathaway Township, Docket No. A-1152-16101, decided on March 19, 2018, Petitioner asserts, with a similar fact pattern, the arbitrator determined termination was the appropriate remedy. Dunkley, a certified Special Education Teacher, during two (2) school years, was found to have inappropriately and repeatedly touched 13 year old female special education students.

With regard to Board Policy #3281 *Inappropriate Staff Conduct - Teaching Staff Members*, B-7, counsel exclaimed,

"The policy simply reiterates what to most teachers would be common sense that is, a teacher should not place themselves in a compromising situation with a student.

Even absent the Board Policy, Porter should have known that his conduct was inappropriate and conduct unbecoming. Today appropriately, there is a heightened sensitivity to such conduct. The "Me Too Movement", the outcry against sexual harassment, and priests that are sexual predators within the Catholic Church have made society aware that certain conduct is inappropriate and cannot be tolerated." (Brief at 5)

Moreover, Vineland reasoned Porter's religious spin applying a "blessed cream" is conduct which could influence vulnerable persons, such A.R. Vineland concludes:

"For all the reasons cited herein, the appropriate remedy is termination. Besides violation of Board Policy #3281 in transporting the student in his personal vehicle, Porter's conduct in taking a fifteen (15) year-old to his home with no one else present and then applying cream to the child's back constitutes conduct unbecoming and conduct unacceptable for a teacher. This conduct compounded with the incident of December 2, 1017 raises an issue as to whether or not Porter should have contact with students. The Answer is NO.

The lack of remorse and the complete lack of sense of wrong doing or improper conduct are also extremely troubling. There is a real danger that if Porter is returned to teaching he will repeat this type of conduct.

For all these reasons Porter should be terminated." (Brief at 7)

ANALYSIS

Has the Board of Education of the City of Vineland, Cumberland County, met its burden of establishing, by a preponderance of the credible evidence, the tenure charge against Respondent, Albert D. Porter?

If so, does the tenure charge warrant dismissal or a lesser discipline?

It is axiomatic. New Jersey provides protection to tenured teaching staff members from dismissal or reduction in compensation except for "insufficiency, incapacity or conduct unbecoming such a teaching staff member or other just cause." *N.J.S.A. 18:28-5(b)*. While "conduct unbecoming" is not defined by the statute, it has been considered an elastic standard, determined on a case-by-case basis, embracing a wide range of conduct.

At all times, Vineland maintains the burden of establishing by a preponderance of the credible evidence Albert D. Porter engaged in conduct unbecoming as alleged in the tenure charge, J-1. The rationale for these protections in an evidentiary review is highlighted herein for a finding of unbecoming conduct will forever tarnish the employment history and reputation of Albert D.

Porter. Prior to January 19, 2018, Porter, within the school community, was viewed as an exceptional teacher with an extraordinary ability to “mentor” at-risk students. After January 19, 2018, and the publication of tenure charges, Porter has been perceived, by some, as a pedophile.

Upon consideration of the record, in its entirety, I ***find*** the Board of Education of the City of Vineland, Cumberland County has met its burden of establishing Porter violated Board of Education Policy #3281, *Inappropriate Staff Conduct - Teaching Staff Members*, B-7.

I also ***find***, however, Porter did not engage in an “inappropriate and improper *relationship*” with a fifteen-year-old male freshmen student at the high school who was also a member of the boys’ basketball team.

Violation of the Vineland Board of Education Policy #3281

Porter clearly admitted conduct unbecoming identified in the undisputed and admitted facts on page 11, herein. While having permission from A.R.’s mother to transport A.R., he did not obtain permission to transport him to his personal residence. Porter acknowledges that on at least two (2) occasions, on January 17, 2018 and January 18, 2018, he drove A.R. to his condo. Therein, he applied a natural muscle relief lotion which he considered to be “blessed cream” to A.R.’s back. Accordingly, I ***find*** Albert D. Porter engaged in conduct unbecoming a public school teacher.

Does the finding of conduct unbecoming by Albert D. Porter warrant dismissal or a lesser discipline?

Upon reflection of this record in its entirety, I ***find*** discipline, lesser than termination, to be appropriate. The record presents sufficient evidence to mitigate the discipline.

Mentor

School staff shall not engage or seek to be in the presence of a pupil beyond the staff member's professional responsibilities.

It is clear Porter was valued as a teacher of the *African American Experience*. His ability to communicate with and propel young high school students to perform academically and seek college acceptance was appreciated by administration. Dr. McCann, Principal of Vineland High School, removed a daily academic period from Porter's roster to enable him to have sufficient time to mentor students, including those identified as "at-risk."⁴

This record revealed others in the high school community recognized Porter's role as a mentor. Indeed, the very day he was placed on administrative leave, A.R.'s French teacher responded, with specificity and without question, to Porter's request for information regarding A.R., as his "mentor and coach." (R-4) This record exposed Vineland imparted upon Porter responsibilities and authority different from those of a certified secondary school teacher.

Throughout the District's case in chief, I expected, and was waiting for documentation that Porter held a valid Student Personnel Services endorsement which would cover any assignment by Dr. McCann for Porter to be an official "mentor." Respondent holds a valid instructional certificate with appropriate subject endorsement. I am not persuaded the job functions and responsibilities of a secondary teacher include the assignment of "mentor."⁵

⁴The record was not clear as to how many school years Porter's sixth academic class was replaced with a "mentor" period. The record was clear that the District, during the 2017/2018 school year, identified students for him to "mentor."

⁵When drafting the decision, the undersigned reviewed Vineland Public School's job descriptions of Secondary Teacher #3002 and School Counselor Advisor Secondary #3205. The job titles and scope of each job are copied below. Upon review, a job of a "mentor" is more closely aligned with the duties of a school counselor, requiring Student Personnel Services Endorsement.

JOB TITLE: SECONDARY TEACHER
REPORTS TO: The Principal and assigned supervisor
SUPERVISES: Students
NATURE AND SCOPE OF JOB:
Secondary Teacher

Vineland's counsel raised a reasonable concern over Porter's failure to express sufficient remorse for his conduct. The undersigned, too, is unsettled with Porter's initial lack of recognition that taking a student to his condo violated District Policy. However, throughout many years, Vineland District Board of Education has sanctioned Porter to regularly communicate, one-on-one, with those "at-risk" students, it determined he "mentor." Many of these students, including A.R., were not assigned to his history classes. No evidence was proffered to establish the District supervised Porter activities as a "mentor." Striving to achieve the expectations of the District as a "mentor" does not an inappropriate and improper *relationship* make.

Assumes professional responsibility for providing learning experiences and supervision of assigned students in a supportive and positive classroom climate that develops in each student the skills, attitudes, and knowledge to meet and exceed the State Core Curriculum Content Standards, following the approved curricula and directives of the school. Achieving academic excellence requires that the Secondary Teacher work collaboratively with other members of the school staff and with parents of each student.

QUALIFICATIONS:

The Secondary Teacher shall:

1. Hold a New Jersey instructional certificate in accordance with the requirements of N.J.S.A. 18A:27.1 et seq., and N.J.A.C. Title 6 Chapter 11 with appropriate subject area endorsement(s) for the position held

JOB TITLE: SCHOOL COUNSELOR/ADVISOR SECONDARY

REPORTS TO: The Principal and District Supervisor of Student Personnel Services

SUPERVISES: Students

NATURE AND SCOPE OF JOB:

Assumes professional responsibility for providing comprehensive developmental guidance and counseling services in the areas of educational and career planning, and social and emotional development so that each student develops the skills, attitudes, and knowledge to meet and exceed the State Core Curriculum Content Standards. Working collaboratively with other members of the school staff and with parents, the School Counselor/Advisor Secondary acts as an advocate for the student, arranging for appropriate resources when necessary, and assisting students in understanding the school and its environment, understanding themselves and their relationships with others, understanding their strengths and needs, and planning for future educational and career opportunities.

QUALIFICATIONS:

The School Counselor/Advisor Secondary shall:

1. Hold a valid New Jersey educational services certificate in accordance with the requirements of N.J.S.A. 18A:27.1 et seq., and N.J.A.C. Title 6 Chapter 11 with a student personnel services endorsement (N.J.A.C. 6:11-11.11) and other appropriate endorsement(s) in accordance with the requirements of N.J.A.C. 6:11-10.1 et seq.

Driving students in their Private Vehicle in Violation of Board Policy #3281

School staff shall not provide transportation to a pupil in their private vehicle or permit a pupil into their private vehicle unless there is an emergency or a special circumstance that has been approved in advance by the Building Principal/immediate supervisor and the parent/legal guardian.

Porter, on numerous occasions, drove A.R. in his private vehicle. While Respondent had permission from A.R.'s mother, he did not obtain specific permission, in writing or verbally, from Vineland High School Administration.

It is widely recognized principle that upon discharging an employee based upon a violation of a rule/ policy, the Employee must understand the rule, be adequately warning of its consequences, and the penalty imposed should be consistently implied and enforced in a nondiscriminatory manner, reasonably related to the seriousness of the offense and the past record. This record reveals it has been well-known in Vineland that coaches and teachers drive students in their private vehicles, often without prior notice to administration. Even Superintendent Dr. Gruccio acknowledged, in the past, before society became so litigious, teachers drove students in Vineland.

When imposing discipline for failure to comply with an administrative policy, such as failure to obtain prior permission, requiring employees to submit a form, the undersigned, at hearing, is normally presented with such forms to establish their existence, normal procedure, and the failure of the employee to conform to known requirements . No such evidence was proffered herein.

The District does not provide any transportation for student athletes after 6:00 p.m. Obviously, during every season, student athletes representing Vineland, traveling by bus to away games, may return after 6:00 p.m. On cross, Donald Robbins claimed, during his entire tenure as Athletic Director, he had no knowledge of, nor was ever approached by, students, such as A.R., a

freshmen whose family could not pick him up, requiring assistance from the District for transportation home. I *find* his testimony disingenuous.

The December 2, 2017 basketball practice speech does not support a request for termination

The executed statement of criteria, B-11, developed as a consequence of Porter's discussion on HIV prevention with his team, signed by the district's sign language interpreter, is not a "last chance agreement," as argued by Vineland. At hearing, the District stipulated the agreement related only to coaching, not teaching duties. As such, it exlaimed any "inappropriate behavior," during the season - long probationary period, would result in Porter's removal from coaching. (B-13) On January 19, 2018, Porter was so removed.

Appropriate Discipline

Vineland has established, by a preponderance of the credible evidence, significant discipline should be imposed. Porter indeed violated Board Policy #3281. He transported a fifteen-year-old student to his home, without anyone present, on more than one occasion and applied cream to the student's back. Unlike Vineland, however, the undersigned feels no danger of Porter repeating this type of conduct, upon his return and assignment to duties consistent with a certification of a secondary teacher. Porter should not be assigned an academic period as a "mentor" or otherwise be signaled out by administration to work, one on one, with "at-risk" students.

AWARD

The Board of Education of the city of Vineland, Cumberland County has established Albert D. Porter engaged in conduct unbecomingly. There is sufficient evidence in this record to support discipline less than dismissal:

1. As soon as practical, Albert D. Porter should be returned as a teacher of secondary education, consistent with his subject area endorsement(s).

2. Respondent Albert D. Porter engaged in conduct constituting cause for the imposition of a One Hundred and Twenty (120) day suspension, and the permanent loss of one salary increment.

DATED: 10/29/18



CAROL F. LASKIN, ESQUIRE

STATE OF NEW JERSEY :

COUNTY OF CAMDEN :

I CERTIFY that on October 29, 2018

I, CAROL F. LASKIN, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Decision and Award.

DATED: October 29, 2018 
NOTARY PUBLIC

