In the Matter of the **TENURE** Hearing	)	
	)	
of	)	
	)	**OPINION and AWARD**
JENNY AN	)	
	)	
"Respondent"	)	
	)	
and	)	AGENCY DOCKET NO. 261-10/18
	)	
SCHOOL DISTRICT OF THE TOWNSHIP OF WAYNE, PASSAIC COUNTY	)	
	)	
"Petitioner"	)	
	)	

In accordance with the Teacher Effectiveness and Accountability for Children of New Jersey Act, ("TEACHNJ Act" or "Act") P.L. 2012, Chapter 26 signed into law by Governor Chris Christie on August 6, 2012 the undersigned was appointed as Arbitrator of the dispute described herein.

The hearings were held on December 3, 4 and 20, 2018 at the Board of Education office, Wayne, New Jersey. Both parties were afforded full and fair opportunity to present evidence and argument, to engage in the examination and cross-examination of affirmed witnesses, and otherwise to support their respective positions. A verbatim transcript was made and all witnesses were sworn. Briefs were received on January 18, 2019 as agreed.

BEFORE: Mattye M. Gandel, Arbitrator

APPEARING FOR PETITIONER:

John G. Geppert, Jr., Esq.
Scarinci Hollenbeck

APPEARING FOR RESPONDENT:

Randi April, Esq.
Oxfeld Cohen, P.C.

BACKGROUND:

The matter arose as a result of tenure charges filed against Jenny An, (**Respondent**) a tenured school psychologist, assigned to a child study team working with Pre-K students since the 2007-2008 school year. Her job description, entered into the record of the hearing as Board Exhibit B-5, indicated that she was a member of the basic Child Study Team (CST) and listed fifteen (15) specific job responsibilities. Amongst other job responsibilities, Respondent was tasked with

- Providing consultation to staff and parents
- Working collaboratively with staff
- Serving as a liaison to classroom teachers
- Providing support to parents, students, teachers

On October 22, 2018, the New Jersey Department of Education received the Board's (**District/Board/Employer**) Notice of Tenure Charges filed against Respondent, which were also served on Respondent and mailed to Gail Oxfeld Kanef, Esq. at the Law firm of Oxfeld Cohen, P.C. These Tenure Charges were based upon Conduct Unbecoming and Other Just Cause pursuant to N.J.S.A. 18A:6-10, N.J.S.A. 18A:6-11, N.J.S.A. 18A:6-16, N.J.S.A. 18A:6-17.1 and N.J.A.C. 6A:3-5.1.

According to a letter dated November 5, 2018 from Samantha L. Price, Director, Office of Controversies and Disputes, Respondent's answer to the charges was received on October 26, 2018. The charges were reviewed and "deemed sufficient, if true, to warrant dismissal or reduction in salary. . . . Additionally, the charges have been referred to Arbitrator Mattye M. Gandel pursuant to N.J.S.A. 18A:6-16 as amended by P.L. 2012, c. 26 and P.L. 2015, c. 109."

The Board cited the following District Policies, which it claimed Respondent violated.

Policy No. 3211, Code of Ethics, which in part states that the educator

7. shall not knowingly make false or malicious statements about a colleague.

Policy No. 3212, Attendance, states in part that

A teaching staff member who fails to give prompt notice of an absence, . . . is repeatedly tardy, . . . is absent without authorization, is repeatedly tardy, . . . may be subject to appropriate consequences, . . . which may include . . . dismissal, and/or certification of tenure charges.

Policy No. 3230, Outside Activities, states in part that

. . . staff . . . are advised to refrain from conduct, associations, and speech that, if given publicity, would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school . . . or disrupt the normal activities of the school.

Policy No. 3281, Inappropriate Staff Conduct, states in part that

School Staff's conduct in completing their professional responsibilities shall be appropriate at all times. . .

Inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. . . such conduct, which may include, . . . communications . . . using e-mails, text-messaging, social networking sites, or any other medium . . .

Policy No. 3321, Acceptable use of Computer Network(s)/Computers and Resources by Teaching Staff Members provides in part that

. . .

Any individual engaging in the following actions declared unethical, unacceptable . . . shall be subject to discipline . . .

1. Using the computer network(s)/computers for . . . inappropriate . . . purposes . . .
2. . . .
3. Using the computer network(s) in a manner that:

   . . .

   k. Engages in other activities that do not advance the educational purposes for which computer network(s)/computers are provided.

Violations:

Individuals violating this policy shall be subject to appropriate disciplinary actions . . but are not limited to:

. . .

7. Dismissal

Policy No. 3351, Healthy Workplace, which states in part that

A significant characteristic of a healthy workplace environment is that employees interact with each other with dignity and respect regardless of an employee's work assignment or position. . . Repeated malicious conduct of an employee . . . is unacceptable. . . This unacceptable conduct may include, but is not limited to, repeated infliction of verbal abuse . . . use of derogatory remarks; insults; verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating; or the gratuitous sabotage or undermining of a person's work performance. A single act of such conduct shall not constitute the unacceptable conduct prohibited by this policy unless it is especially severe and egregious.

Rather than restate all the charges, the following is a summary of the charges:

Charge One: Conduct Unbecoming

Respondent has created a hostile work environment . . .

Respondent has falsely stated that she was discriminated against . . .

Respondent stated that she intended to fabricate and file a false complaint . .

Respondent attempted to recruit other District employees to falsely testify on her behalf . . .

Respondent engaged in a pattern of conduct comprising a violation of the implicit standard of good behavior.

Respondent knew or should have known her actions were unprofessional . .

Respondent's actions were potentially harmful to the career, dignity . . of the person against whom she sought to file false charges.

Respondent's actions were disruptive of the efficient operation of the District.

Charge Two: Conduct Unbecoming

Created a hostile work environment

Harassed and intimidated co-workers

Charge Three: Conduct Unbecoming

Insubordination

Failed to follow directives

Charge Four: Conduct Unbecoming

Dishonesty and lack of candor regarding interviews, swiping in/out and obstructive actions.

Charge Five: Conduct Unbecoming

Related to the texts at issue
Deleted texts

Charge Six: Conduct Unbecoming

Violated sign-out policy

Charge Seven: Conduct Unbecoming

Theft of time/Attendance Policy No. 3212

Charge Eight: Conduct Unbecoming

Theft of time related to visiting all the schools she was assigned to

Charge Nine: Conduct Unbecoming

Theft of time through computer use and violation of District Policy No. 3321

Charge Ten: Other Just Cause

Failed to follow instructions
Violated District policies
Inattentive and ambivalent to her duties, co-workers

POSITIONS OF THE PARTIES:

The **School District's position is** that Respondent fabricated a claim of discrimination, took steps to carry out the threat of a false claim and upon discovery, engaged in a further course of action to obfuscate her initial intent. Further, Respondent demonstrated a pattern of disregarding District policies, came and went as she pleased, was late and unprepared for meetings and was disrespectful and insubordinate to her superiors. The District cited the legal standard for defining conduct unbecoming and cases in support of that standard. Bases on these recognized standards, such as destroying

public respect, her effect on the morale and efficiency of the District and her fitness to discharge her duties, the District contended that Respondent's actions severely disrupted the functions of the District both because she deprived the District of her services as psychologist and because of the chilling effect of her threat on administrators.

Further, it is the position of the District that Respondent's lack of candor during the investigation demonstrated a failure to adhere to the high standards of candidness expected of a public educator; that she violated the trust the District place in traveling teaching staff by regularly violating the District's attendance policy and that she failed to adhere to the District's policies regarding ethical conduct toward colleagues, attendance, behavior and the use of public resources.

Moreover, Respondent's threat to file false charges against the principal was such a flagrant act that it supports dismissal as conduct unbecoming independently and in conjunction with the other charges against her. Even if she never intended to follow through with the threat, which is immaterial, the claim to have been a "joke" is not only a single self-serving statement but also demonstrated such poor judgment as to preclude her from further employment in the District and shows that she is incapable of maintaining a professional relationship with administrators in the future.

Additionally, the District contends that during the interview, Respondent had the opportunity to speak candidly but, by her own admission, she lied almost immediately about speaking to co-workers about the investigation and despite her attempt to come clean, three or four minutes later, she came clean only when confronted with the fact that

her interviewers already knew the truth. Her lying means she cannot be trusted to serve any role in the District.

It is the District's position that Respondent was guilty of unbecoming conduct through insubordination by disregarding the Superintendent's directive not to discuss the investigation and by failing to adhere to the District's attendance policy and sign-out and leave policies, of which she was aware through annual training and receipt of the Employee Handbook, though she refused to confirm. Further, testimony was elicited from District witnesses that Respondent violated Board Policies including the Code of Ethics, Inappropriate Staff Conduct, Healthy Workplace Environment and Outside Activities.

Respondent has never expressed a single modicum of responsibility for her actions and this failure compounds the unbecoming conduct and warrants her dismissal. Her defense seems to be that because no supervisor noticed her truancy until she was investigated, she is innocent of any violations but the evidence proved that she violated the system of trust the District must maintain with respect to its traveling employees.

Further, the District asserts that despite the fact that Respondent had no prior discipline, the charge of unbecoming conduct is based on actions sufficiently flagrant to justify tenure revocation, which caused profound disruption in the District and which should lead to dismissal.

Finally, it is the District's position that it met the "seven tests" recognized by arbitrators to prove that it had just cause to terminate Respondent's employment with the District.

Therefore, the District asks this Arbitrator to sustain the charges of Unbecoming Conduct and Other Just Cause and to revoke Respondent's tenure.

Respondent's position is that there is no documented proof to sustain most of the charges; that there is no evidence of online shopping; that there is no evidence of a lunch policy for members of the CST; that there is no evidence that Respondent was informed of any deficiencies with regard to signing-in/signing-out; that there is no evidence that she was informed of any personal deficiencies with her presence in the buildings and that there is no evidence that she was informed of any issues whatsoever with her performance before the Halloween email. Rather, it was only after the text message that the District threw the proverbial "spaghetti to the wall" in the hope that something would stick but conduct unbecoming cannot be proven if the only evidence presented in support of a tenure charges is uncorroborated hearsay.

Further, the Respondent claims that regarding the text exchange, she has taken responsibility for it; that it was foolish, foolhardy and hurtful to Principal Matthew Kriley and that it must be taken within the context of a running group text between colleagues who often blew off steam together. Moreover, it is Respondent's position that all three participants in the text exchange provided inappropriate comments; that none of them disavowed any comments during the exchange; that none of them appeared to be coerced in the exchange and that it was only later that night that Jerry Battifarano, a member of the CST and a participant in the text exchange, believed his job could be in jeopardy so he told Kriley and Rosa Barreira, a friend and colleague, what occurred.

Additionally, while all three disregarded the directive to not discuss the investigation, only Respondent is out of work.

Respondent cited two tenure matters in support of her position that the tenure charges should be dismissed and contends that arbitral law provides that when there is no prior discipline coupled with a single incident of wrongdoing, termination is not the proper punishment. Therefore, Respondent asks this Arbitrator to return her to her former position and, if necessary, to consider progressive discipline in this matter.

OPINION:

On May 10, 2018, the principal of Lafayette school, Matthew Kriley, sent the following email, B-4, to Respondent and copied Patricia Monaco, Respondent's supervisor, and Debra Strauss, a member of the District whose title was not identified during the hearing.

> Jenny,
>
> Please ensure that when you report to Lafayette or any other building for that matter, that you sign in and out in the main office. This is due to matters of security of which I'm sure you're aware.
>
> I see that you signed in today upon your arrival, but noticed that you exited out of the side door.
>
> Thank you for your anticipated cooperation.
>
> Matt

In reaction to that email, the record established that Respondent initiated a text exchange, B-3, between herself and two other members of the Child Study Team (CST), Nancy Linden and Jerry Battifarano, which read as follows:

Respondent: Ducking Matt Kriley
Linden: At Ryerson?
Respondent: Fucking he emailed me and Strauss and patty cuz I went there and signed in and left out the side preK door and didn't sign out. What an ass hat
Linden: Ugh
Respondent: He makes my blood boil. Fucking tiny Napoleon complex on a power trip. Ass
Battifarano: Ha ha ha! He's a little bitch I know
Linden: Jenny you need some Queen to cool off. Lol. These people are all on power trips.
Battifarano: They are that's why I lay low
Respondent: Seriously makes me so mad and to email those two too. I'm going to hib[1] him and say he is discriminating bc I Asian and you will both concur that you heard him call me egg roll or something to that effect.
Battifarano: What?! Wait! What happened!
Linden: Sashima mama
Battifarano: Haha
Respondent: Lol or that!!!

The facts surrounding this text exchange occurring on May 10 and 11, 2018 are not in dispute.

- Battifarano testified that later the night of May 10, 2018 he sent the text to Matthew Kriley, Principal of Lafayette School, and Rosa Barreira, a learning consultant and a colleague.
- Battifarano called Barreira that evening and she told him not go along with the scheme suggested in the text.
- On the morning of May 11, 20018, Kriley called Battifarano and he went to Kriley's office that afternoon and spoke to Kriley and Paula Clark, Director of Human Resources Compliance and Labor Relations. Battifarano gave Kriley the text.[2] Battifarano was visibly upset because of his involvement in the text and his employment, asked to leave school and was told by Kriley not to speak to anyone about this matter. Battifarano left school thirty minutes before the end of the school day.
- Clark forwarded the text to Superintendent Mark Tobak and he placed Respondent and Linden on leave that afternoon.
- Battifarano went to his car and saw messages from Respondent and Linden. Responded to them. Told them he had given the text to Kriley and drove home. When Battifarano was home, Respondent and Linden called him and told him they were en route to his home which was 30-40

[1] HIB stands for Harassment, Intimidation and Bullying and is a process whereby someone reports a person for this unacceptable and very serious behavior.
[2] This text exchange was on Battifarano's cell phone.

minutes away from school. Battifarano did not tell them not to come. They told him that they had been put on administrative leave.

- Though he was told by Barriera that afternoon, not to let Respondent and Linden into his home, he let them in, served them refreshments and they stayed for about one hour to one and one-half hours discussing what had happened and what could happen to them.
- Respondent deleted the text message "the Friday after the text exchange took place." While at Battifarano's home, because she had deleted it, Respondent made a copy of the text message from Battifarano's phone.
- Respondent called Battifarano again on Saturday, May 12, after which time Battifarano blocked any future calls. All three participants had been told not to discuss this matter.
- An investigation took place and Clark interviewed the following individuals: Kriley, Battifarano and Barreira, Respondent and Linden in that order. Taback sat in on the last two interviews.
- Based on the interviews, the District concluded that Respondent had violated several Board policies and subsequently filed tenure charges.
- Linden was disciplined but Battifarano did not receive any discipline.

During the interviews, the Board learned that, in addition to the full details regarding the text exchange and the policies related to that event, which will be addressed later, Respondent have violated two other Board policies: Policy 3212 – Attendance, B-7, and Policy 3321 – Acceptable Use of Computer, B-10.

Clark testified that employees receive the Employee Handbook, B-35, at the beginning of each year; that each principal reviews the policies with staff members and that they are on the District website. However, Respondent was very evasive about receiving the Handbook and about having read the District's policies although she acknowledged that the District operates under Board policies. Despite being employed by the District for ten years, she recalled getting the Handbook possibly only in the 2016-2017 school year; that she believed that she received a District-wide email of the Handbook and that there were references to specific policies like computers and cell

phone use. In response to many questions about seeing polices, Respondent stated that she did not recall. For a ten-year employee these responses were not reasonable.

There were several aspects of the attendance issue. The record established through Board exhibits B-12 through B-34 that Respondent arrived late in the mornings and left early without receiving permission a significant number of times and without signing out. In fact, it was because Kriley was looking for Respondent on May 10, 2018 and could not find her that he wrote the May 10, 2018 email reminding Respondent to sign in and out.[3] Additionally, there was the issue of leaving early to pick up a niece. While Tabak and Clark both testified that Respondent told them during her interviews that she left early fifty times during the school year to pick up her niece, Respondent testified that it was maybe three times and disputed the fact that she told Tabak and Clark it was fifty times.

Regarding the computer policy, which was one of the few policies that Respondent actually acknowledged having been advised of, there was testimony that colleagues saw her using her computer at school for outside purchases. However, there was no documentary evidence of these activities and although Tabak stated that Respondent admitted to shopping on line before the end of the day, Respondent denied the accusation and only admitted to shopping on line for educational materials.

Respondent's position was that no one had advised her that she was violating a policy by not signing out; that she had not been advised that she needed to ask for permission to leave the building early and that, as a member of a traveling team, she

[3] The important factor was that Kriley saw Respondent in the parking lot just after she had left the building without signing out and not whether Kriley actually saw her exit the door.

could have been in many places or even at the home of students when she either signed in late or left early. In essence her defense was that she did not receive proper notice of the alleged violations and, in fact, this Arbitrator must agree. Under normal circumstances, all employees have to receive notice that they are violating a rule and, if a reasonable rule is violated, notice must be given in the form of a warning, a suspension or some lower level of discipline so that the employee would have an opportunity to correct the inappropriate behavior.

Further, this Arbitrator agrees with Respondent that administrators and supervisors have a responsibility to monitor staff activities, to properly notify them if they are violating any policy and to counsel them and then impose discipline, if appropriate. Progressive discipline should be corrective, not punitive. Given the safety issue in schools, the rule of signing in and out is very reasonable. Building administrators must know where staff are for many reasons but especially in cases of emergency, all staff members must be accounted for.

Taken in a vacuum, this Arbitrator would agree that a lower level of discipline would have been appropriate for violations of the Attendance and Computer policies. However, the only reason that the District learned about these policy violations was because of the text exchange, and, in the opinion of this Arbitrator, the text message was so egregious and at the heart of these tenure charges allowing the District to impose the strictest of penalties, even for an employee with a good record.

In regard to the text exchange, the District claimed that Respondent violated the following Board policies:

- Policy 3211 – Code of Ethics, B-6, which stated that the educator "shall not knowingly make false or malicious statements about a colleague."
- Policy 3230 – Outside Activities, B-8, which states that "staff are advised to refrain from conduct . . speech that if given publicity, would materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."
- Policy 3281 – Inappropriate Staff Conduct, B-9, which states that inappropriate conduct will not be tolerated; that staff must be appropriate at all times; conduct outside the professional responsibilities may be considered conduct unbecoming and that staff must be concerned with the use of emails and text-messaging.
- Policy 3351 – Healthy Workplace Environment, B-11, which states that staff must interact with others with dignity and respect and that derogatory remarks, insults are unacceptable conduct. Of significance to this Arbitrator was that the Board and Policy 3351 recognized that "[A] single act of such conduct, referring derogatory remarks or insults, shall not constitute the unacceptable conduct prohibited by this policy unless it is especially severe and egregious."

Clark testified, and this Arbitrator must agree, that Kriley's May 10, 2018 email was very reasonable and not threatening and it was appropriate for him to have included Respondent's supervisor in the email to let her know what others had noted, but apparently had not followed through on, that Respondent was violating Board policies by not signing out and that she was hard to find when needed.

Tabak also testified that the May 10th email was the genesis of this issue; that the District must know where Respondent and others are doing during the day and that there is a new level of concern when there are threats to the safety of staff and students. In this day and age of terrorist attacks, administrators, who have the ultimate responsibility for the safety of the staff and students, must be extra vigilant in enforcing rules related to the whereabouts of personnel.

District witnesses recognized that staff sometimes criticize their superiors; that they sometimes make inappropriate comments and that they sometimes blow off steam

after a certain event. However, while Respondent claimed that she was just blowing off steam and that the text exchange was a joke, this Arbitrator was not convinced.

When responding to a question about why she sent the May 10th text, she acknowledged that she "was upset . . . a little angry that Mr. Kriley . . . complained about my presence in his building." She was further asked if she had a problem with Mr. Kriley prior to sending this text and she responded,

> Not any specific problem. I don't know if it was just me or the team or, you know, the fact that preschool was suddenly placed in his building for the first time that year . . .

However, the text at issue was written after the May 10th email, which addressed the fact that Respondent did not sign out of the building. It had nothing to do with her "presence in his building" or the fact that there was a preschool in Lafayette for the first time. Rather, it was the October 31st email that addressed the fact that the CST had not been at Lafayette since the beginning of the school year. It appeared that Respondent still harbored hostility toward Kriley for over six months because he had sent that October email, which stated in pertinent part that

> [A]s of Tuesday, October 31st, some members of the pre-K CST have not yet visited the classrooms, students, and teachers at Lafayette.

Reading this earlier email and reviewing Kriley's testimony as to why he sent it, this Arbitrator agreed with his testimony that, first of all, it was a friendly reminder and secondly, that as a principal he had a responsibility and an obligation to write to the CST since some of the members of the team had not visited his school during the first two months of the school year.

Respondent acknowledged that she had not visited Lafayette during September or October 2017 and her explanation was that she did not have any students assigned at Lafayette during those first two months. However, Respondent was the only psychologist on the preschool CST and she recognized that the 2017-2018 school year was the first year that there was a Pre-K program at Lafayette school. Despite this knowledge and the fact that there were nineteen students in this new Pre-K program at Lafayette, she contended that she "wasn't concerned" because of the competence of the teachers. Respondent further testified that she was not called to the school regarding a problem with a student but admitted that she did not even stop by the school to see how everything was going with the new program during the first two months of school. Her explanations were unreasonable and unacceptable.

On cross-examination, Respondent was also asked about her reaction to the May 10th email, B-4, and she testified that it made her angry because Kriley chose to include Strauss and Monaco in the email and that it was immediately after receiving this email from Kriley that she texted the CST. As noted above, even if Respondent's supervisor was copied on the email, this Arbitrator could not understand the level of Respondent's reaction to this polite email simply reminding Respondent to sign out from the main office.

Whatever level of shock, dismay and disapproval cited by Board witnesses was completely warranted in the opinion of this Arbitrator. A school district cannot tolerate a staff member threatening to HIB anyone and must be taken very seriously. Respondent claimed it was a joke; that she was blowing off steam but this Arbitrator asks, blowing

off steam because she was reminded politely to sign out when she leaves a building, a very reasonable directive? Battifarano and other Board witnesses acknowledged that teachers sometimes get upset with administrators and blow off steam. However, while Battifarano testified that he was not concerned about the first part of the text when Respondent wrote, "Fucking he emailed me . . . ass hat ... fucking tiny Napoleon complex . . . Ass" but that when Respondent wrote that she was going to "hib him" and that she wanted the other members of the CST to support her false allegations, he was shocked. Of course, he was afraid for his job because he himself had made some inappropriate comments but it was noted that after Respondent made those false allegations he wrote, "What?! Wait! What happened!" indicating to this Arbitrator that Battifarano recognized that Respondent had gone over the edge. Therefore, he went to Kriley that afternoon and reported the text exchange initiated by Respondent. Clearly, the full blame for the unacceptable, inappropriate text was Respondent's.

All three members of the text exchange were told not to discuss the matter. Yet, they all disregarded the directive to not discuss this matter with others, which was considered insubordination. Respondent claimed that tenure charges were filed against her, Linden received some level of discipline but Battifarano was not disciplined. Though this Arbitrator was not asked to assess the level of discipline for the other two people on the text, it was clear that Respondent was the initiator/instigator and wanted the others to back up her claim. Further, it was clear that Battifarno was very upset about what Respondent wrote, felt like Respondent was bulling and bossing him and, most

importantly, he was the only one of the group who reported this incident to Kriley that afternoon.

One does not know if Respondent would have carried out her threat but that is irrelevant. Rightfully so, the Board did not wait around to see if she would file a HIB complaint but rather placed Respondent on leave and immediately began an investigation to gather the facts before it filed the tenure charges.

Respondent cited a prior tenure matter in support of a lower level of discipline. However, this matter can be distinguished from Orleans Sarmiento and the School District of the Township of Saddle Brook Agency Docket # 79-4/17 in that a full and fair investigation was conducted in this matter and that all persons with knowledge of the incident were interviewed. In contrast, this Arbitrator concluded in Sarmiento

> that the Board did not fulfill its responsibility to conduct a fair and through (sic) investigation, did not interview all participants who would have had knowledge of Respondent's behavior in the class, did not give Respondent a copy of the text in question, did not contact Respondent after the investigation was completed as Riscica stated in his November 4, 2016 suspension letter to Respondent, did not select the students to be interviewed in a fair and impartial manner and did not supply the Board (sic) with all the interviews conducted or the evaluations/observations of Respondent with the tenure charges.

Of significance, and another differentiating factor from Sarmiento, was that Respondent's written threat put in jeopardy the reputation, professionalism and livelihood of a school principal and did damage to the District even if Respondent did not have the chance to actually follow through on her threat to HIB him. This in no way could be taken as a joke. To do so would have been irresponsible of the Board.

Finally, Policy 3351 provides that a single act of derogatory remarks would not be unacceptable conduct unless "it is especially severe and egregious." This Arbitrator must conclude that Respondent's behavior involving the text exchange must be considered a severe and egregious act and warrants termination for a single act. To not only threaten to falsely report a principal and to potentially end his career but also to try to coerce coworkers to lie for her and back up her false claim was severe enough on its own for the Board to file tenure charges.

In conclusion, this Arbitrator has reviewed and carefully weighed all the evidence and arguments presented at the hearing and through briefs by both parties even though many facets were not referred to in the Opinion. Considering all the facts, this Arbitrator must decide that Conduct Unbecoming Charges One, Two, Three, Count 1 and c of Four and Five were proven.

In consonance with the proof and upon the foregoing, the undersigned Arbitrator hereby finds, decides, determines and renders the following:

A W A R D

The Board has proven Conduct Unbecoming Charges One, Two, Three, Count 1 and c of Four and Five by a preponderance of the evidence warranting tenure revocation and dismissal of Respondent.

Mattye M. Gandel

Mattye M. Gandel

Dated: February 1, 2019

State of New Jersey)
:SS
County of Essex)

On the 1st day of February, 2019 before me personally came and appeared Mattye M. Gandel, to me known and known to me to be the person described herein who executed the foregoing instrument and she acknowledged to me that she executed the same.

Notary Public

MUSARRAT MOGHAL
Notary Public, State of New Jersey
My Commission Expires
January 20 2022