

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges

**SCHOOL DISTRICT OF THE BOROUGH  
OF DUMONT, BERGEN COUNTY,**

Petitioner,

-and-

**JOHN PODESTA,**

Respondent.

AGENCY DOCKET  
NO.: 38/2/20

**OPINION AND AWARD**

**BEFORE: RUTH MOSCOVITCH, Arbitrator**

**Appearances:**

**For the Petitioner:**

James L. Plosia, Jr.  
Plosia Cohen Law Firm  
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**For the Respondent:**

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This matter comes before me on tenure charges brought under N.J.S.A. 18A:28-5 and N.J.S.A. 18A:6-10, et seq., by Petitioner Borough of Dumont School District, Board of Education, Bergen County (the "District") against Respondent John Podesta. The tenure charges at issue here were certified to the Bureau of Controversies and Disputes by the District on or about February 13, 2020. I was appointed the arbitrator to adjudicate this matter on March 2, 2020.

I conducted a hearing via video conferencing over nine days: May 18, 19, 20, 21, 26, 27, 28, June 1 and 2, 2020. Both sides were represented by counsel and were afforded the opportunity to call witnesses, present evidence, and cross-examine witnesses offered by the opposing party. All witnesses were sworn.

The District presented the testimony of five District employees: Luiz Lopez, District Affirmative Action Officer and a school principal, James Wichmann, Dumont High School Principal, Maria Poidomani, Director of Curriculum, Superintendent Emanuele Triggiano, and Vice Principal Jacqueline Bello. The District offered 35 documents as exhibits: 2 were withdrawn and 33 were entered in evidence. Respondent presented the testimony of three witnesses: Dr. Karen Bennett, Principal of Honiss School; Ruth Keenan, Selzer School Secretary; and Kathleen Podesta, Respondent's wife. Respondent also testified in his own behalf. Respondent offered 7 exhibits: some were withdrawn as duplicative; 3 were entered in evidence. Although no official record of the proceeding was made, I made audio recordings of the proceedings through the video platform, which I made available to the parties. I kept the record open for one week following the last day of hearing for the submission of (a) audio recordings of four conversations between Respondent and Jacqueline Bello; (b) Respondent's summative evaluations for the five years he has been a principal; and (c) for such additional text messages between Respondent and Ms. Bello as the parties jointly identify. The parties submitted post-hearing briefs simultaneously on June 12, 2020 and responsive briefs on June 19, 2020. No objection has been made to the fairness of this proceeding.

## **TENURE CHARGES**

### **COUNT I**

1. Mr. Podesta's inappropriate actions toward Ms. Bello, including physical contact, purchasing of gifts for Ms. Bello, and professions of love for Ms. Bello, constitute conduct unbecoming a tenured principal.
2. Mr. Podesta's inappropriate conduct constitutes conduct unbecoming a tenured employee and mandates the termination of his employment as a tenured employee in the Dumont School District.

### **COUNT II**

1. Mr. Podesta's supervision of and interactions with Ms. Bello have frequently been inappropriate and inconsistent with the duties of a tenured Principal in the Dumont School District.
2. Mr. Podesta has acted in an irrational, mean-spirited, and inappropriate fashion in his conversations about Mr. Wichmann with Ms. Bello.
3. Mr. Podesta's irrational and counter-productive insistence that Ms. Bello have as little contact as possible with Mr. Wichmann was inappropriate, contrary to the best interests of the Dumont School District and constitutes conduct unbecoming a tenured employee in the Dumont School District.
4. Mr. Podesta's retaliation against Ms. Bello for his subjective and incorrect assumption that Ms. Bello was acting in an "insubordinate and disloyal" manner toward him constitutes conduct unbecoming a tenured employee in the Dumont School District. This retaliation included, without limitation, Mr. Podesta's threats to fire Ms. Bello.
5. Mr. Podesta, in his irrational, self-absorbed, and unfair treatment of Ms. Bello, has engaged in conduct unbecoming a tenured employee in the Dumont School District.
6. Mr. Podesta's conduct, as described above, mandates the termination of his employment as a tenured employee in the Dumont School District.

## **ISSUE PRESENTED**

Whether the Board has demonstrated by a preponderance of the credible evidence that the Respondent has engaged in conduct unbecoming a tenured employee. If so, what shall be the penalty?

## **FACTUAL BACKGROUND**

**The District.** The District is located in Bergen County, New Jersey. It operates four elementary schools: Lincoln and Grant, that serve grades K-5 and feed into the remaining two K-8 schools, Selzer and Honiss. There is one high school for the District, Dumont High School (Dumont High). The District is overseen by a Superintendent, Emanuele Triggiano, who reports to the nine-member, elected Board of Education (Board). Each of the District's schools is led by a Principal, assisted by a Vice Principal (VP), or, in the case of the High School, one or more Assistant Principals (AP).

In addition to the Superintendent, the District employs other District-wide supervisors, including Dr. Maria Poidomani, Director of Curriculum. In addition, each VP is assigned District-wide supervisory responsibilities over the four subject matter areas – Math, Science, Social Science, and English – as well as over programmatic areas, including Art and Music. The Superintendent meets with District leaders, including Principals, every two weeks in what are known as Administrative Council (A.C.) meetings. Typically, VPs do not attend unless they are substituting for their Principals.

**The Origin of the Present Charges.** These tenure charges arise out of conduct that Respondent, a tenured elementary school principal in the Dumont School District, directed toward his vice principal, Jacqueline Bello. The charges are

based upon the findings of the District's Affirmative Action officer, Luis Lopez, who conducted an investigation after Respondent went to him on or about September 25, 2019 to complain about Ms. Bello. Respondent's initial complaints were two-fold: that Ms. Bello had made an inappropriate comment about Respondent's Italian heritage, and that she had an inappropriate relationship with the Principal of Dumont High School, James Wichmann. During the course of his investigation, Mr. Lopez heard additional complaints: from Ms. Bello about Respondent and from Respondent about Ms. Bello. To investigate all these complaints, Mr. Lopez spoke to nine District employees, as well as Respondent's wife. A number of these individuals testified before me in this proceeding. Mr. Lopez's findings were contained in a 73-page report he submitted to the District. Mr. Lopez testified in this proceeding and his report was entered into evidence as D. 2.<sup>1</sup>

**Respondent.** Respondent has been employed by the District for approximately 40 years. He attended Jersey City State College, where he received an undergraduate degree in music education and a master's degree in urban education, administration and supervision. His full-time employment as a music teacher began in 1981 at Grant School in the District. In 1996 he transferred to Lincoln School, where he taught music four days per week while he continued one day at Grant. Emanuele Triggiano, the current District Superintendent, was the principal of Lincoln School in 1996 when Respondent started working there. Up until the filing

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<sup>1</sup> In this Background section, I only address those facts that I deem relevant to the disposition of these charges. I make no reference to arguments the parties have made regarding other matters, such as Respondent's divorce years ago or statements by personnel who did not testify in this proceeding.

of the present charges, Mr. Triggiano and Respondent have been close, both as colleagues and outside of work; they and their wives have socialized together.

Respondent first took on District-wide music responsibilities in 1993 when he became the orchestra coordinator for the four elementary schools. In 2010 Respondent became Vice Principal of Selzer School. At that time, the Selzer VP's only District-wide responsibility was supervision of the summer enrichment program. However, that year the administration decided to create a position of Supervisor of Fine Arts. Respondent was given that title in addition to his title of Selzer VP and became responsible for oversight of music and art programs throughout the District. In 2015, Respondent became Principal of Selzer School.

The parties stipulated that during the 40 years Respondent has been employed by the District, there has never been any type of complaint against him, and he has never been reprimanded or disciplined in any way. He has always received positive evaluations. I reviewed the summative evaluations for the four years he was Principal at Selzer; are all positive.

**Respondent's Involvement with Music.** In addition to working as a School Principal, Respondent is also a performing musician. He plays the string bass, among other instruments, and has a band that performs in and around New Jersey. He has often invited work colleagues from the District to attend his performances. Some colleagues have attended, including Ruth Keenan, the Selzer secretary; Ms. Bello was invited but did not attend.

Respondent testified at length about his passion for teaching music and promoting music within the District. He spoke with pride about his efforts to build a

stringed instrument and orchestra program. When he started as a music teacher at Grant School, the program had a small number of students, 24 or 25; when he transferred to Lincoln School, 15 years later, the program was up to 120 students, and almost every student was involved in either playing an instrument or singing in the chorus. By the time he became the VP at Selzer, there were over 100 string players in the district-wide orchestra.

Respondent testified that he also played an active role in supporting the marching band program. This included participating in the band summer camps each August, both in paid and unpaid capacities. He also chaperoned band trips, including one memorable trip in approximately 2013 when the band was invited to perform at West Point. Respondent arranged for two of his band-mates, who were on active duty in the army and played in the army band, to meet and greet the Dumont High students when they visited West Point.

While Respondent served as Music Supervisor for the District from approximately 2011 until 2015, his duties included participation in hiring music teachers and supporting and promoting music programs. When he became Principal at Selzer, he stepped back from his supervisory role over the District-wide music program. However, he continued to participate on some hiring committees for music teaching positions: Dr. Karen Bennett, Principal of Honiss School, usually asked him to sit on hiring committees for music positions at her school because she valued his experience and expertise; Superintendent Triggiano invited him to review resumes and sit in on interviews for other music positions, sometimes after Respondent asked to be involved. Both Respondent and Mr. Triggiano testified that

they had many conversations about the music program: Mr. Triggiano recalled that Respondent was “never happy” about how the music program was being run. Over the years, Respondent had differences with Mr. Wichmann, now the Principal of Dumont High, but formerly a football coach. Respondent identified three areas of difference: (1) when Mr. Wichmann was a coach, he gave preference to the football team over the marching band in terms of access to practice time on the field; (2) Mr. Wichmann proposed that live music be eliminated at elementary school graduations in order to make more room for guests in the gym, where the commencement ceremonies were held; and (3) Mr. Wichmann allegedly told Respondent that a stringed program was “never going to happen” at Dumont High.

**Jacqueline Bello.** At the time of the incidents that gave rise to these tenure charges, Ms. Bello was the VP of Selzer School and the Director of Music and Art for the District. Ms. Bello grew up in Nutley, New Jersey and attended school with Mr. Triggiano’s son Chris. She was educated at Fordham University and received a master’s degree in counseling at Montclair State. She taught for 7 years, primarily middle school math, in Newark and Nutley public schools.

At some point Ms. Bello married and moved with her husband to Long Island. There she worked for SAT/ACT in test preparation and did some college advising. She has three children. Subsequently, Ms. Bello got divorced and moved back to New Jersey with her sons. She had obtained a Guidance Counselor Certificate, and in 2012 the District hired her as a Guidance Counselor at Dumont High; her principal at Dumont High was Mr. Wichmann. During the hiring process, she went through three rounds of interviews, the final interview being with Superintendent

Triggiano and Dr. Poidomani. Ms. Bello had not kept in touch with Mr. Triggiano's son, and the subject of her going to school with him did not come up during the interviews, nor is there any evidence that it played a part in her hiring.

Ms. Bello earned a standard principal's certificate through an alternative route and completed a formal mentorship program run by the New Jersey Supervisors and Principals Association (NJPSA). She was assigned a mentor from outside the District, Dr. Dennis McDonald. In 2016 an Assistant Principal position became vacant at the Dumont High School and Ms. Bello applied, although she had not yet completed all of the steps to be certified. She was given a courtesy interview but was not offered the position.

A VP position at Selzer School also became vacant that year, and Ms. Bello applied for that. She was not selected for that position either. However, the individual who was selected in 2016 gave notice at the end of that year that he did not want to continue in the position, and so in the summer of 2017 there was another search. Ms. Bello again applied, and this time she was the successful candidate.

Ms. Bello began as the VP at Selzer on August 1, 2017. Her official duties included supervising summer enrichment as well as art and music programs for the District, at both the elementary and high school level. For the two years she held the position of VP at Selzer, Respondent, as her Principal, was her supervisor. He was responsible for her annual summative evaluations, and each year he gave her positive evaluations. Up until the end of the academic year in 2019, he had nothing but praise for Ms. Bello. Dr. Poidomani testified that Respondent called Ms. Bello "the best thing that had happened to Selzer," and frequently commented on the

excellent working relationship he had with her, using the phrase “army of two” to refer to their partnership. Mr. Triggiano testified that for those two years, Respondent was “always very positive” about Ms. Bello. Respondent and Ms. Bello both testified to their positive working relationship through those two academic years, using the “army of two” and similar phrases to describe their collaboration.

### **The Summer of 2019**

Beginning in June 2019 and throughout the summer, as will be described below, the working relationship between Respondent and Ms. Bello deteriorated, and the events that form the basis of the present tenure charges took place.

#### **Ms. Bello’s application for a principal position in another District.**

In mid-May, 2019, Ms. Bello learned through a friend, that someone she knew had become the Superintendent of the West Essex School District, was conducting a search for the position of Principal at the West Essex Middle School, and had asked the friend to make sure that Ms. Bello was aware of the opening. West Essex is close to Ms. Bello’s home and would involve a considerably shorter commute. Ms. Bello decided to apply. She called both Mr. Triggiano and Respondent before Memorial Day to let them know. Respondent told Ms. Bello that he would be disappointed if she left, but he wished her well. He understood that this would be a promotion and would be closer to home for her. Ms. Bello testified that Respondent asked her many personal questions, and she was “worried” at the end of the conversation. But she knew that they had worked well together, and she thought the questions, while intrusive, were not inappropriate. Ms. Bello found out in June that she did not get the job.

Respondent spoke to Dr. Poidomani about Ms. Bello's application for the West Essex Principalship. According to Dr. Poidomani, Respondent said he wanted to talk "off the record" and expressed dismay about her having applied. Respondent asked why the District would give tenure to someone who is thinking about leaving. Dr. Poidomani told him, this is what we do – we train vice principals to become principals; she pointed out that Ms. Bello wasn't seeking another job, but this opportunity presented itself, so she applied. At the end of the conversation, Respondent told Dr. Poidomani, "you're right. That's why I always talk to you." Dr. Poidomani thought the whole incident was over.

Mr. Triggiano testified that Respondent also broached the subject of Ms. Bello's application for the principalship with him. At first, Respondent was upset and couldn't understand why Ms. Bello would want to move. Mr. Triggiano told Respondent that everyone has to do what's best for them. Mr. Triggiano got the impression that Respondent may not have wanted Ms. Bello back after she applied. Like Dr. Poidomani, Mr. Triggiano believed that Respondent realized from their conversation that what Ms. Bello had done made sense for her; Mr. Triggiano felt that "it was over," and Respondent had moved on.

Respondent acknowledged that he had conversations with both Dr. Poidomani and Mr. Triggiano about Ms. Bello applying for the West Essex job. Respondent testified that he told both of them he wished Ms. Bello good luck and was going to help her prepare for the interview. Respondent acknowledged that initially he was not happy about the prospect of having to replace Ms. Bello – she had been his third VP in three years: he told Dr. Poidomani, "Maria, you can't catch a

break with these VPs.” However, he figured he would just have to train another VP. When Ms. Bello told him that she did not get the job, he told her he was happy she wouldn’t be leaving. Respondent testified that Ms. Bello told him she was not sorry that she didn’t get the job, because she had “mixed feelings from the beginning.” He says she told him, “I love working for you, I love Dumont. We make a great team. If you’ll have me, I would like to continue to be your VP.” He replied, “Absolutely;” that he wanted her to continue as his VP.

**High School Music Vacancy 2019.** At the very end of the 2018-2019 school year, on June 20 or thereabouts, the marching band teacher at Dumont High informed her principal, Mr. Wichmann, that she was going to be resigning her position. Mr. Wichmann testified that her resignation “caught us by surprise” and posed problems: the marching band season opened the first week in August at band camp; to get a new teacher in place for that required getting a candidate to the Board at its July 19 meeting, only a few weeks away. Ms. Bello testified that the music teacher’s resignation was “stinging because of the timing.” Mr. Wichmann and Ryanne Hutchinson, AP at Dumont High, informed Mr. Triggiano of the vacancy, put together a job posting, and got the job posted externally and internally to all Dumont faculty and staff. Mr. Wichmann also quickly put a hiring committee together, consisting of himself, Ms. Hutchinson, Ms. Bello, and Kyle Bennett, the Dumont High choir teacher. As resumes came in, Ms. Hutchinson began to schedule interviews. With very short notice to everyone on the committee, she scheduled the first interviews for July 9, the Tuesday after the July 4<sup>th</sup> weekend.

Ms. Bello testified, and Respondent confirmed in his direct testimony, that she told Respondent about the music teacher's resignation "right away" on the "same day" that she learned about it. Respondent also agreed that he knew when the job was posted. Ms. Bello recalled that Respondent asked her why the teacher was leaving, and stated that he liked her personally, but not professionally – she had wanted to make several changes that he thought were not in the best interests of the program, including changing the cadence for the marching band. Respondent told Ms. Bello this was an opportunity to get a new person into the position who would move the District toward the objectives he had for the District's music program.

Ms. Bello, Mr. Wichmann, Dr. Poidomani and Mr. Triggiano all testified that the process for filling any vacancy in the District is led by the principal of the school where the vacancy occurs. As Mr. Triggiano testified, the Principal has "total responsibility for his school." Respondent, however, testified that the hiring process was led by the District-wide supervisor of the content area: in the case of music vacancies, the process should be led by the music supervisor, who, in 2019, was Ms. Bello. He testified that when he was the music supervisor, from 2010 to 2015, he was in charge of hiring committees. However, he admitted on cross examination that when he was Selzer Principal he, rather than the subject matter supervisors, put together certain hiring committees that did not even include those supervisors. And he recalled hiring committees at other schools that did not include the supervisors.

On Tuesday, July 9, 2019, Respondent attended an A.C. meeting. Mr. Wichmann, Mr. Triggiano, and Dr. Poidomani also attended this meeting. Mr. Triggiano asked how the search for a new music teacher at Dumont High was

progressing, and Mr. Wichmann reported that the search committee was already reviewing candidates and beginning interviews. Respondent was extremely upset when he heard about the interviews: he wanted to be on the committee. He testified that Mr. Triggiano that morning had handed him a number of resumes of candidates for the music position, and Respondent spoke to Mr. Wichmann to tell him he wanted to be on the committee. Mr. Wichmann replied that the committee had already started and was going to move fast. Several interviews were scheduled for the next day, July 10. Respondent asked to see resumes that Mr. Wichmann had with him; Mr. Wichmann complied. Respondent stated that he would make himself available, "I want to help you."

After Respondent returned to Selzer, he had two lengthy conversations with Ms. Bello that, according to him, "got a little heated." Respondent held Ms. Bello responsible for the fact that he had not been included on the committee and that he had learned about the interviews at the A.C. meeting. To him, this was particularly upsetting because it was a repeat of what he felt had happened in 2017.

In late July, 2017 shortly before Ms. Bello started as Selzer VP and Supervisor of Music and Art, the band teacher resigned, effective August 8. The job was posted, and Mr. Wichmann formed a hiring committee. Respondent testified that he thought Ms. Bello, although brand-new as VP and Music Director, would have known about the search and been in charge. On August 11, 2017, at an A.C. meeting, Respondent learned that the search was going forward, and interviews were being scheduled without his participation. He called Mr. Wichmann and Mr. Triggiano to express a desire to be a member of the committee. He was in fact added to the

committee and participated in all or all but one of the interviews. Respondent considered Ms. Bello's failure to advise him about the formation of the hiring committee in 2017 to be a "breach of loyalty" and of the "chain of command" due a principal from his vice principal.

In 2019, when this issue arose, Respondent felt, as he confided to his fellow principal, Dr. Bennett, that he was being "blind-sided" once again. Ms. Bello explained that she was not leading the search process, Mr. Wichmann was, and she had only learned about the first interview that took place during the A.C. meeting, early that morning or the day before, while Respondent was on vacation.

Respondent called Mr. Triggiano that afternoon to complain about having been left off the committee. He was also upset because he would miss the interviews scheduled for July 10, since he had previously scheduled that as a vacation day. Mr. Triggiano assured Respondent that he could participate and that if he missed the first round of interviews, Mr. Triggiano would include him on the final round, with himself and Dr. Poidomani. Mr. Triggiano also promised to call Mr. Wichmann about the matter.

Mr. Wichmann called Respondent "within 3 minutes" of Respondent ending his conversation with Mr. Triggiano. Mr. Wichmann said, he understood that Respondent wanted to be on the committee, and he was welcome to participate, but the interviews scheduled for July 10 could not be changed.

The afternoon of July 9, 2019, Respondent called Ms. Bello on her cell phone, while she was driving home from work. According to Ms. Bello the conversation was "heated." She testified that Respondent "pretended" he had not known that the

music interview was scheduled for that morning. Ms. Bello was shocked and confused by the call, finding it upsetting, because she knew she had spoken to him about the music interviews that morning when he returned from vacation. In his testimony Respondent agreed that he did have a conversation with Ms. Bello the morning of July 9 in which they discussed the music position; that Mr. Wichmann wanted to move quickly; and that there were going to be interviews. However, he claimed Ms. Bello did not tell him that there would be interviews that very morning.

That evening, at 7:01 p.m., Respondent sent an email to Mr. Wichmann, Mr. Triggiano, Ms. Bello and Ms. Hutchinson. He wrote that after “further consideration and after speaking with [Mr. Triggiano], I would like to AGAIN offer my assistance with the search to find a new music teacher for the high school.” He explained that he had a vacation day scheduled for July 10 and could not participate in the interviews, urged Mr. Wichmann not to rush the process or “sacrifice quality for the sake of expedition,” and asked that the interviews be rescheduled. (D. 25)

Mr. Wichmann understood that Respondent was upset; he and Ms. Bello both interpreted Respondent’s email as “angry” because of his use of capital letters, which is often interpreted in emails as shouting. Mr. Wichmann called Mr. Triggiano to discuss the matter. He explained that it was difficult to schedule interviews in the summer, and one of the scheduled candidates was someone who had been highly recommended. Mr. Wichmann asked Mr. Triggiano if he was required to include Respondent on the committee, to which Mr. Triggiano replied, he was not: “if you want to, you can.”

As he had planned, Respondent took July 10 as a vacation day. Respondent was so upset by the events of the prior day that he spoke to Dr. Poidomani on July 10 from the marina where he was spending the day with his cousin on his boat. The parties disagree on who initiated the conversation, but both Dr. Poidomani and Respondent agreed this was a very lengthy conversation – 45 minutes to an hour long. Dr. Poidomani testified that Respondent was highly emotional: she felt she was “talking someone off the ledge.” He told her he felt that Ms. Bello had “betrayed him” and used that word “over and over again.” Dr. Poidomani told him Ms. Bello had not done anything wrong, that Mr. Wichmann was running the committee, but he said, “You don’t understand, it was a personal thing between us.” He also “bad mouthed” Mr. Wichmann, calling him negative names. Respondent testified that Dr. Poidomani agreed with him during this call that Ms. Bello had messed (“f’d”) up in that she should have called him. Dr. Poidomani denies this. Both sides agree that the conversation ended with Dr. Poidomani urging him to let go of the issue and move on.

**July 11 conversation between Respondent and Ms. Bello.** When Respondent returned to work on July 11, he learned that the interviews had indeed gone ahead as scheduled on July 10 without him. That afternoon, Respondent called Ms. Bello into his office, saying that he wanted to talk to her about the music interviews. According to Ms. Bello, the conversation lasted over an hour, starting around 1:30 or 2:00 p.m. and ending after the staff had left. Ms. Bello knew that Respondent was angry with her and knew from Dr. Poidomani and Mr. Triggiano that Respondent had conveyed to them how upset he was. Ms. Bello wrote a memo

to herself that evening to memorialize the main points of the conversation. (D. 30)

Some of the points she noted were:

- When she was called into Respondent's office, he had what he called her "file" open on his desk, told her he was writing her up and would be placing a letter in her file;
- He had highlighted areas of her evaluation where he had emphasized that she needed to "continue to communicate;" this was a directive that she had "ignored;" she had been "insubordinate;"
- He did not like her "loyalty and relationship" with Mr. Wichmann and feared that it would "drive a wedge" in the relationship between the two of them; he instructed her going forward to tell him about all communications she had with Mr. Wichmann, especially regarding the music department;
- Respondent said that he was "most disappointed" because the two of them had a "close relationship;" he realized that "I love you" and asked if she loved him too; he said that their relationship over the past 2 years was "special" and that he "had a piece of me that [my ex-husband] never had" and that "I had a piece of him that [Respondent's wife] would never have."
- Respondent told her that he was going to recommend that she not get tenure and that she should look for a new job;
- After she apologized for inadequate communication with him, Respondent said he was "pleased that I was agreeable and contrite and therefore would not recommend my firing, but that I would need to earn his trust back and

work to rebuild the relationship. He said he was the boss ... and I should never forget it.”

- After she left his office, while she was packing up to leave for the day, Respondent came into her office and “hugged me tightly for several seconds “placing his head on the side of my face;” “his demeanor had changed, and he was smiling at me.”

In addition to writing the email to herself, Ms. Bello wrote an email that night to an attorney friend whose firm handles workplace sexual harassment claims, asking for advice about “an upsetting incident” that occurred at work that day. That email, too, was entered into evidence. (D. 31)

Ms. Bello testified that she found the meeting particularly upsetting because of the threats to her tenure and her job, and she found Respondent’s comments about love to be “humiliating” and “degrading.” Toward the end of the meeting, Respondent started singing a Billy Joel song to her, “Shameless;” she was familiar with the song, a love song with lyrics that include “I’m thinking about you and you’re thinking about me. I’m shameless, shameless for loving you.”<sup>2</sup> Further, she found

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“Shameless”

Well I’m shameless when it comes to loving you  
I’d do anything you want me to  
I’d do anything at all

And I’m standing here for all the world to see  
There ain’t that much left of me  
That has very far to fall

You know I’m not a man who has ever been  
Insecure about the world I’ve been living in  
I don’t break easy, I have my pride  
But if you need to be satisfied

I’m shameless, baby I don’t have a prayer  
Anytime I see you standing there  
I go down upon my knees

And I’m changing, I swore I’d never compromise

I have never let anything have this much control over me  
Cause I worked too hard to call me life my own  
Yes I made myself a world and it worked so perfectly  
But it’s your world now, I can’t refuse  
I never had so much to lose  
I’m shameless...shameless

You know it should be easy for a man who’s strong  
To say he’s sorry or admit when he’s wrong  
I’ve never lost anything I ever missed  
But I’ve never been in love like this...  
It’s out of my hands  
I’m shameless, I don’t have the power now  
But I don’t want it anyhow  
So I’ve got to let it go

I’m shameless, shameless as a man can be  
You can make a total fool of me  
I just wanted you to know

I am shameless

the hug was more of an embrace than a casual hug, in that it lasted a long time and was unusually tight. Ms. Bello knew that Respondent was a “hugger,” whereas she is not.

Respondent confirms that he had a long conversation with Ms. Bello on July 11, but specifically denied:

- that he told her he loved her;
- that he said he had a piece of her that her ex-husband had never had or that she had a piece of him his wife would never have;
- that he said he was the boss and she should never forget it;
- that she should inform him of all communications she would have with Mr. Wichmann going forward.

Respondent agreed that:

- he had his “Principal’s file” on his desk that he uses to document staff issues; that he told her she had disregarded a “recommendation” rather than “directive” about communications; and that he would have to “memorialize” this, put “something in writing” because “it’s pretty serious;”
- he talked about her “loyalty” and “insubordination;”

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But you convinced me otherwise  
I'll do anything you please

You see in all my life I've never found  
What I couldn't resist, what I couldn't turn down  
I could walk away from anyone I ever knew  
But I can't walk away from you

Shameless...  
Shameless...

Lyrics from Internet

- he engaged in a “salutary hug” – “we hugged each other” – similar to other hugs they had shared in the past;
- he sang part of “Shameless” to her; he did so because she had been apologizing and he didn’t want her to “grovel,” “you have to be shameless – like the Billy Joel song.”

Respondent testified that he had been very upset with Ms. Bello because the same thing had happened in 2017; however, he never intended to put anything in her personnel file – he only wanted to memorialize their conversation. He felt the meeting ended on a positive note, because she apologized, he accepted her apology, and they were going to move on.

**July 12 conversation.** The morning of July 12, Respondent called Ms. Bello into his office, asked her to close the door and continued the conversation from the day before. He apologized for bringing up the “Shameless” song, saying, “Don’t get the wrong idea; I didn’t mean anything inappropriate about that song.”

Ms. Bello told him that she didn’t think he was being fair to her, that she did not understand how she had done anything wrong or was insubordinate, she felt he was “building a case” against her, and she did not want him to put anything in her file. Ms. Bello testified that Respondent continued to say that he had given her a directive and that she should have communicated with him over the July 4<sup>th</sup> weekend about the music interviews. Ms. Bello sent herself another email to memorialize the conversation. (D. 32)

Respondent confirmed much of the substance of the July 12 conversation, except he testified that Ms. Bello initiated the conversation. He agreed that she was

upset that he would put anything in writing and try to get rid of her. Respondent testified he told her it was not his intention to get rid of her, and, anyway, only the Superintendent “can make that call.” He urged her to put the matter out of her mind.

However, to him, July 12 “marked the beginning of this whole thing.” The day before, on July 11, Ms. Bello had been apologetic, but on July 12, she was “a different person” – she had become “emboldened;” she told him she did not think she had done anything wrong. On or about July 16, Respondent drafted a memorandum to Ms. Bello about the meetings on July 11 and 12. (D. 33) He recapped what he thought Ms. Bello had done wrong, both in 2017 and 2019, in failing to keep him informed about music hiring committees and other matters. He did not, however, give this memo to her right away.

**Latter part of July and early August.** For the remainder of July, Respondent and Ms. Bello carried on the District’s business with relatively little conflict. Respondent sat in on the remaining music interviews and the final interviews with Mr. Triggiano and Dr. Poidomani and agreed with the committee’s recommendation of a finalist for the position. Respondent took Ms. Bello out for lunch on her birthday, July 15; they met about school business and discussed the new hire in the music department.

Respondent prepared another memorandum to Ms. Bello on July 24, memorializing a conversation they had the day before about the music department. (D. 34) In that memo, Respondent stated that he would be “involved in the operations of the music department,” and that Ms. Bello valued his experience and

expertise and welcomed his mentorship and partnership. According to Ms. Bello, Respondent gave her both memos, D. 33 and D. 34 on July 26. At that time, she asked Respondent why he was writing her up if they were trying to move past the music department issues. He told her these would go into his Principal's file, and he would just keep them "for his records."

Also, on July 26, Respondent heard Ms. Bello laughing on the phone with someone, while he was making copies on the office copier outside her door. He testified that when Ms. Bello finished her conversation, she told him she had been talking to Mr. Wichmann, and they had been laughing about a staff or faculty member who was driving them crazy.

Ms. Bello took vacation in late July and Respondent did as well, returning August 10 or 11, so they did not see one another for about two weeks, although Respondent texted Ms. Bello about school matters from Florida, where he was vacationing.

**August 12 Conversation.** On Respondent's first day back at Selzer School after his vacation in Florida, he had a conversation with Ms. Bello that lasted well over an hour. Ms. Bello testified that Respondent initiated the conversation; she recorded it on her cell phone, without Respondent's knowledge. The District provided me with an audio recording of the conversation and also had a certified court reporter transcribe it. The transcription runs to 69 pages. Respondent testified that the transcription is accurate, except for the few places where it was inaudible. The parties urged me to listen to the audio recording and I did so.

Early in the conversation, Respondent brought up the laughing conversation between Ms. Bello and Mr. Wichmann back on July 26. Ms. Bello told Respondent that she had now received an invitation to an annual summer barbecue that Mr. Wichmann was holding at home, where he would be celebrating his 50<sup>th</sup> birthday. Respondent then went on to talk, at length, about how much he dislikes Mr. Wichmann and why. Among other things, he said:

- “I don’t want to hear [his] name” (T. at 15);
- “He was the one that caused this monumental – ruined our relationship;” “he caus[ed] this trouble between you and I” (T at 16, 17);
- I don’t understand “why you’re not even the slight bit angry with him or upset with him for causing this because he was the one who shut you down;” “I don’t see how your relationship could be unchanged because of this when ours was turned into turmoil” (Tr. 21);
- “It’s a slap in the face that this son of a bitch caused all of this trouble, turned our world upside down here and you still want to be the sister he never – wished he never had. That’s not okay with me” (T. at 28);
- “If you don’t realize what kind of trouble this guy caused and what kind of trouble he is and what kind of scum he is, then there’s nothing I’m going to say” (T. at 28);
- “[Y]ou don’t think he damaged our relationship, which to me is astounding” (T. at 29);

- “[H]e shouldn’t feel like everything is all right between you, like that, you know, that there’s like nothing happened. Let’s not forget what happened” (T. at 30);
- “I’ll tell you what changed, the fact that I became aware that you – your relationship with him was still like, you know, yuck it up with [J], like the way, you know. That shouldn’t be. To me [JW] is the anti-Christ for the music program ... for the district in general. He’s an asshole. I never liked him. He’s an arrogant son of a bitch. \*\*\* You seem to think this guy walks on water and I can’t stand the sight of him. \*\*\*... this asshole blew the top off of my school with this thing” (Tr. 33-4);
- “I don’t want to hear you laughing and shit with [JW]. [W] is a piece of shit who doesn’t care this much about you and that’s how I feel. It’s an insult. It’s a slap in the face after everything that happened and after all the bullshit that was caused, everybody involved, that, that, that, that he should think that he has that kind of a frigging proximity after what he caused here. He almost caused you your job because I was this close to getting on the phone and telling [ET], look I can’t work with Jackie” (Tr. 34-5);
- “I can’t stand [JW], never could for a plethora of reasons. Arrogant son of a bitch. You ask anyone in this building. They think he’s an arrogant son of a bitch, and he is an arrogant son of a bitch. I had to eat that and then this exploded and now I can’t – I can’t, and I won’t. This is non-negotiable for me. I don’t want to hear his name unless you’re talking about what a piece of crap

he is.... And this is not over between [J] and me. That I can tell you for sure...

\*\*\* ... that piece of shit...He is not welcome here” (Tr. at 40);

- “I’m on a mission now to expose this asshole for what he is, an asshole, and I will and I won’t have to do anything. \*\*\* I won’t have to fire a shot. He’ll do it to himself. He put the noose around his neck with that frigging we’re not going to have live music” (Tr. at 42);
- “I made the mistake of allowing you so much into my head because you’re in my head more than anybody because of the way we do things \*\*\* I mean I think of you in good ways, but when that flip, that switch flips with that asshole, that was it” (Tr. at 51);
- “It’s just infuriating that this happened, he’s the cause of it, and I don’t know how you can say he’s not, but --- and to have that shit in your face. That I’m not good with. That I’m not [inaudible]” (Tr. at 57);
- “I’m not going to allow anyone to disrespect me further than I’ve already been in regards to this” (Tr. at 52);
- “[S]omeone like this [JW] I want to get” (Tr. at 55);
- “[T]here’s going to come a point, and it may come to blows that [JW] and I are going to have that conversation;” Ms. Bello asks, “Why would it come to blows...that’s not something you would have to do as a grown man and a professional. Why would it have to come to blows” Respondent: “Because that’s the way he is. He’s a bully and that’s one way to deal with those” (Tr. at 59) ;
- “[E]very time he screws up, I’m going to be there” (Tr. at 62);

Respondent used certain other notable words and phrases repeatedly throughout this conversation. For example,

- Words to the effect that “to me, it’s very insulting” appear on pages 24, 25, 26, 27, 35, 52, 64;
- Respondent told Ms. Bello that she would not be able to “earn my trust back by carrying the same type of relationship with [JW] and that’s the way it is for me. That’s non-negotiable for me.” (Tr. at 27; see also Tr. at 40, 52);
- Respondent used variations of the words “fuck” in relation to the situation with Mr. Wichmann many times (Tr. at 38, 39, 43, 50); He also used the equivalent word, “frigging”: “He put the noose around his neck with that frigging we’re not going to have live music.”(Tr. at 42); “He’s got the IQ of a frigging golf ball” (Tr. at 43);

When Respondent spoke about how he was “going to get” Mr. Wichmann, he referred to his upbringing: “I wouldn’t have survived living on the street the way I did \*\*\* boxing...” Ms. Bello explained that she did not “process things” in the “same exact Hoboken street fighter way that you do.” (Tr. at 55) She went on to say, “You know, I think it’s a little Italian, too. I think it’s that Italian thing that I don’t have. You, know, I think maybe it might be a little cultural. I don’t know.” To which Respondent answered, ‘I don’t know about that. I’m so far from the Italian culture ... it’s not even funny.” (Tr. at 56) Ms. Bello continued to talk about how she viewed things differently, saying “maybe it’s a little too Pollyanna of me;” to which Respondent replied, you are “white toast.” (Tr. at 58, and from audible recording)

**Remainder of August 2019.** On or about August 15, Ms. Bello went to the High School around 9:00 in the morning. That day, she and Mr. Wichmann were scheduled to visit a school in New Milford to look at their art studio: the District was refurbishing the art room at Dumont High, and the visit was planned to get ideas for that project. Mr. Wichmann testified that Ms. Bello showed up visibly upset. He asked why she was there – it was early, and they had planned that Mr. Wichmann would pick her up at Selzer. She explained that it was not a good day at Selzer, and Respondent was yelling at her about being away. Later that day, after the Milford visit, Mr. Wichmann and his AP, Ryanne Hutchinson, sat with Ms. Bello, who told them that Respondent was angry if she had anything to do with Dumont High; that Respondent had negative feelings about Mr. Wichmann; that he was getting inappropriate, giving her gifts that made her uncomfortable; and that he had given her a “creepy” hug that was long and hard. Mr. Wichmann left Ms. Bello alone to talk further with Ms. Hutchinson for an hour before returning. At some point, whether before or after he left the two women alone, Mr. Wichmann told Ms. Bello words to the effect that she was presenting like a battered woman. When she asked him what he meant, he said that she was stuck in a very inappropriate situation and didn’t know how to get out of it. Mr. Wichmann also asked Ms. Bello if she felt sexually harassed; she nodded yes. He told her she was going to have to talk to Mr. Triggiano and offered that he or Ms. Hutchinson would go with her.

Ms. Bello surreptitiously recorded three additional conversations with Respondent before the end of August, on August 19, 21, and 26. I was provided with audio recordings of those conversations, and transcriptions of all three were entered

into evidence as D. 20, 21 and 22. The conversations on August 19 and 21 were almost entirely about school matters. The conversation on August 26, however, was contentious.

Respondent started out asking why he had not been copied on an email to Mr. Triggiano pertaining to a music proposal. When Ms. Bello replied that Respondent had been aware of the proposal, and that no one else was copied on it, Respondent replied “that makes no difference.” (D. 22, Tr. at 3-4) Respondent then asked why he hadn’t been informed about a meeting Ms. Bello was having with the lunch ladies. She replied that he was aware of this; it was held each year. Ms. Bello said, Respondent had told her she did not need to inform him about “minutia” and asked how she was supposed to know when it was minutia and when it wasn’t. Respondent replied, “That’s your opinion,” “don’t leave anything to chance.” When Ms. Bello replied that she did communicate with Respondent, he pushed back and said, several times, “you’re saying that I don’t hear stuff... \*\*\* Well, what didn’t I hear? \*\*\* you don’t think it’s important that I know about the lunch ladies?” (Id. at 6-8) Ms. Bello ended the conversation by saying, “I’m not doing this. I’m done,” to which Respondent replied, “Yeah, you are done. \*\*\* You are done.” (Id. at 8) Listening to the audio recording, I heard an edge to Respondent’s questions and Ms. Bello’s frustration.

At some point that day, Ms. Bello went to see Dr. Poidomani at the District offices. She told Dr. Poidomani that she was upset about how she was being treated by Respondent: that he was being verbally abusive and cursing, he had begun writing her up, was criticizing her for attending Mr. Wichmann’s barbeque and for

not communicating with him adequately about putting personnel on the BOE agenda. Dr. Poidomani immediately took Ms. Bello into Mr. Triggiano's office to make him aware of her concerns.

Mr. Triggiano testified that prior to August 26<sup>th</sup>, he had been aware from some of his frequent conversations with Respondent – they spoke on the phone maybe 10 times per week -- that Respondent was not happy with Ms. Bello's performance, and that he was "displeased with her friendship" with Mr. Wichmann. Before Dr. Poidomani brought Ms. Bello in to see him, Mr. Triggiano had spoken to Ms. Bello "very infrequently." She told him that day that Respondent was giving her a hard time, starting to write her up, yelling at her and trying to intimidate her.

The next day, August 27, after the A.C. meeting, Mr. Triggiano brought Respondent and Ms. Bello together for a "mediation" session. He asked Dr. Poidomani to be present. Respondent asked if Dr. Bennett could sit in. Mr. Triggiano asked Dr. Bennett if she had any personal knowledge about the issues between Respondent and Ms. Bello. Dr. Bennett said no; she was there simply to support her colleague and because she had had issues with her own VP at one point. Mr. Triggiano allowed her to remain. The session was "pretty lengthy," about an hour. Mr. Triggiano allowed both Ms. Bello and Respondent to speak – they went "back and forth." Respondent said that Ms. Bello was insubordinate, not trustworthy; that she was too friendly with Mr. Wichmann, and she should keep her distance from him. Ms. Bello apologized more than once: for making a reference to Respondent's Italian heritage, and for not communicating more effectively with him, but Respondent said it wasn't a sincere apology. Mr. Triggiano tried to resolve

things: he wanted them to be able to work together professionally. The outcome of the meeting was that Ms. Bello said she was willing to resolve things and move on, while Respondent, somewhat reluctantly, said he would try. Mr. Triggiano made a few changes at the District level to reduce the tension between Respondent and Ms. Bello: first, he removed Ms. Bello from supervising the music department, giving that responsibility to Ms. Hutchinson; second, he assigned Dr. Poidomani to do a formal observation of every VP in the District.

Later that week, Ms. Bello went to Dumont High to meet with Mr. Wichmann, Mr. Triggiano and other high school staff about the opening of the newly renovated art room. Part way through that meeting, Respondent called, demanding that she come back to Selzer and help him with scheduling problems, although she was not usually involved in preparing the schedule. She complied, although she testified she found no problem with the schedule when they reviewed it.

**Events in September 2019.** The new school year began the next week, after Labor Day. Mr. Triggiano did not hear from Respondent or Ms. Bello for two weeks and was hopeful that “everything was resolved.” However, on September 17, Respondent called and asked to see him. Respondent was very upset when he came into Mr. Triggiano’s office. He said, he couldn’t stand to be in the same room with Ms. Bello and that he can’t work with her: “she’s a liar, no matter what she says.” He said, he had tried, but couldn’t “get past this.” Mr. Wichmann’s name came up: Respondent said that Ms. Bello was “too close” and has to be on the phone all the time with him. Mr. Triggiano told Respondent something he had said before to both Respondent and Ms. Bello: if you have a complaint, if there’s something

inappropriate that happened, you need to file a complaint with Luis Lopez, the District's Affirmative Action Officer and we'll investigate it thoroughly.

On September 25, 2019, Respondent went to Mr. Lopez to complain about Ms. Bello. He asked if he could just talk "off the record" about the situation, but, after consulting Mr. Triggiano, Mr. Lopez said, no. If Respondent had concerns, he had to make a complaint, which Mr. Lopez would investigate thoroughly.

Respondent never gave Mr. Lopez a written complaint, although he was asked several times to place his concerns in writing. Mr. Lopez nevertheless initiated the investigation that led to these charges.

**Ms. Bello's Other Concerns.** As noted above, in the course of Mr. Lopez's investigation, Ms. Bello raised concerns about other behaviors of Respondent that she had not shared with Dr. Poidomani or Mr. Triggiano, but which she had, to some extent, shared with Mr. Wichmann and Ms. Hutchinson. Ms. Bello testified that she found these behaviors to be intrusive and inappropriate; she felt they were motivated by romantic or sexual inclinations. They are summarized briefly here.

**Intrusions into Ms. Bello's personal life, particularly when she was out on medical leave.** Ms. Bello testified that Respondent called and texted her excessively, particularly when she was out on medical leave and recovering from major surgery in the spring of 2019. She testified that he asked her to have her mother call him and let him know how the surgery went; Respondent testified that he had not made that request. Of particular concern to Ms. Bello were Respondent's persistent requests to take her out to dinner. Eventually, she agreed to go, but

cancelled that day, giving the excuse that she had to attend *Shiva* for a friend of the family. Respondent and his wife testified that the idea of taking her out to dinner originated with his wife, and that Respondent made that clear to Ms. Bello over the telephone.

**Gifts and hugs.** All of the Selzer employees who testified agreed that the school staff had a tradition of exchanging gifts for birthdays and holidays. There was also testimony from Respondent and the school secretary, Ruth Keenan, that Respondent and other staff were “huggers” and frequently exchanged hugs with their gifts. Ms. Bello testified that she is not a hugger, and she found Respondent’s hugs to be “creepy,” particularly the hug he gave her on August 12, after their long, contentious conversation. Ms. Keenan confirmed that Ms. Bello is not a “hugger,” and she has only witnessed one time that Ms. Bello hugged Respondent – when his dog died.

There was evidence concerning four gifts in particular that Ms. Bello found inappropriate, because they appeared to be given “for no reason,” were unduly personal, and were accompanied by hugs. Those were:

- (1) a necklace with an inexpensive anchor charm: Respondent said he selected the anchor because Ms. Bello had mentioned that anchors were meaningful to her; he gave it to her in March 2019, right before her surgery;
- (2) a bottle opener with an anchor on it: Respondent said he had extra bottle openers and put them on a table for faculty or staff to take; he handed one to Ms. Bello, because of the anchor symbol;

- (3) scented soaps: Respondent had wrapped the soaps in red tissue paper and gave them to Ms. Bello on July 26; he told her that he liked the smell of the soap and she could use it at work; Respondent and his wife testified that they bought a bunch of scented soaps at Marshalls; Respondent testified he and Ms. Bello had discussed soaps that a colleague had at school, and so he thought to give some to her;
- (4) T-shirts: Respondent and his wife bought a number of T-shirts while on their August vacation in Florida; Respondent thought to give one that was left over to Ms. Bello; the shirt had an anchor on it.

### **POSITIONS OF THE PARTIES**

The District argues that it has met its burden to prove the tenure charges by a preponderance of the credible evidence. In particular, (1) Ms. Bello, Mr. Triggiano, Dr. Poidomani, Luis Lopez and Mr. Wichmann were all credible witnesses who testified in a manner that was consistent, supported by contemporaneous memoranda and the recordings Ms. Bello made of conversations with Respondent; (2) Respondent, on the other hand was not a credible witness; in fact, he lied both in the pleadings and in his testimony or was patently unbelievable on several key points, including: (a) not mentioning the song “Shameless” when he spoke to Mr. Lopez, and denying in his answer to the Tenure Charges that he brought the song up; whereas he admitted in this proceeding that he had sung the song to Ms. Bello on July 11 and apologized for doing so on July 12; (b) testifying in this proceeding that “Ms. Bello hugged me all the time,” and stating in his answer to the Tenure Charges that Ms. Keenan “will testify that she witnessed Ms. Bello hugging Mr. Podesta and

initiating the hug on several occasions;” whereas Ms. Keenan testified that she could at most recall a single instance when Ms. Bello hugged Respondent; (c) claiming that Ms. Bello first evidenced “disloyalty” to him and failed to keep him informed about interviews for a music position in August of 2017 so that he had to learn of the matter at an A.C. meeting on August 11; whereas the evidence showed that the music vacancy was not announced until August 8 and only posted thereafter, so it was impossible that interviews were scheduled by that A.C. meeting; (d) claiming in this proceeding that “I don’t hate Mr. Wichmann,” bears him no ill will and could work with him as a colleague if he is allowed to return to his position as Principal at Selzer; whereas Respondent’s hostility to Mr. Wichmann is captured in own words, as recorded by Ms. Bello on August 12, and by Mr. Lopez during his interviews, as well as Dr. Bennett’s testimony that Respondent wanted to rant and complain about Mr. Wichmann during the August 27 mediation, but the Superintendent stopped him; (d) trying to “soft-pedal” his earlier statements that Ms. Bello had engaged in a pattern of lying, disloyalty and betrayal toward him; whereas those were exactly his words to Mr. Lopez; (e) claiming that Mr. Triggiano had a pre-existing relationship and a “soft spot” for Ms. Bello; whereas he did not attempt to contradict or impeach the testimony of both Mr. Triggiano and Ms. Bello that no such relationship existed; (f) claiming that Ms. Bello did not apologize during the August 27, 2019 mediation session, whereas Ms. Bello, Mr. Triggiano and Dr. Poidomani, all were clear that she did; (g) claiming that Ms. Bello had not informed him about the music interviews on July 9, 2019; whereas he admitted that she did talk to him that morning about the process, and she always told him where she was going when she left the school

building; (3) when balanced against the credible testimony of Ms. Bello and the other District witnesses, Respondent's hopelessly contradictory and even dishonest testimony falls far short and cannot overcome the preponderance of the District's evidence that proves his guilt as charged.

Given that the District has proven the tenure charges, the only appropriate penalty is discharge, in that (1) Respondent has demonstrated throughout the investigation of this matter and the hearing herein, that he has not learned a lesson and that the offending behavior will recur; (2) Respondent's attitude has been that of an aggrieved victim who lashes out against anyone who dares to oppose his subjectively perverse view of the world: he turned on his friend, colleague and mentor, Mr. Triggiano, and accused him of bias, inventing a family relationship with Ms. Bello; he turned on Ms. Bello, accusing her of having the temerity to apply for a principalship outside the District, suggesting that she should not receive tenure as a Vice Principal; he further accused her of being emboldened, and exhibiting a lack of loyalty; this is not someone who has or is able to learn from his past mistakes; (3) further Respondent has taken the position throughout this proceeding that his conduct toward Ms. Bello was never inappropriate; despite the evidence and his admission that he frequently acted in a manner that was entirely inappropriate for a senior supervisor toward his subordinate: he sang a love song to her, told her how much he thought about her; asked her out to dinner, gave her presents of a personal nature, such as scented soap, suggesting that she use it at work, hugged her, complained about her work relationship with another principal in the district, and turned on her when she did not agree to cut off all ties of friendship and collegiality

with that principal; and obsessively required her “blind obedience” to him on all matters related to the District’s music program; (4) he has so “poisoned the well” with his profane and vile diatribe against his professional colleague that it is impossible to expect that he and Mr. Wichmann would be able to work productively together in the future; (5) Respondent is a person with an utterly misplaced martyr complex who has refused to accept responsibility for any of his actions. For all of these reasons, the Tenure Charges herein should be sustained, and the Arbitrator should uphold the District’s decision to remove Respondent’s tenure and discharge him from employment.

Respondent, on the other hand, argues that the District has not met its burden to prove the tenure charges, in that (1) while there is certainly evidence of friction between Respondent and his Vice Principal, that friction only last two months, during the summer of 2019 when school was not in session; that friction did not affect the normal operation of Selzer School and both Respondent and Ms. Bello continued to conduct themselves in a professional manner throughout; not a single District employee ever witnessed or heard any dispute between the two of them; (2) whatever conflict there was between the two administrators seems to have been resolved by the end of July, and, although it became an issue again on August 23, 2019, after Respondent returned from vacation; that occurred because Ms. Bello “instigated” and secretly recorded a conversation between the two of them; any further conflict in August was due to Ms. Bello’s failure to copy Respondent on emails pertaining to the lunch ladies; (3) there was no proof that Respondent had a romantic and/or sexual interest in Ms. Bello; Ms. Bello’s allegations were not

supported or borne out by the conversations she secretly recorded with Respondent; further, Ms. Bello never told Mr. Triggiano or Dr. Poidomani of any alleged professions of love, inappropriate sexual or romantic overtures, gifts or invitations; she only raised these allegations after Respondent filed a complaint against her; (4) the investigation conducted by the Affirmative Action officer for the District into Respondent's claims was fatally flawed because (a) Mr. Lopez did not initially interview two important witnesses, Dr. Bennett and Respondent's wife, only doing so after Respondent's counsel asked him to; (b) Mr. Lopez never gave Respondent an opportunity to reply specifically to things said by Ms. Bello, although he gave her that opportunity; (c) the District did not follow its own Healthy Workplace Environment policy which requires the Superintendent to meet with the offender(s) and victim(s) if "the investigation determines conduct prohibited by this policy has taken place" to review the investigation results and to implement remedial measures to ensure such conduct does not continue or recur; instead, at the conclusion of Mr. Lopez's investigation and report, the matter was brought directly to the Board, which adopted these charges; the mediation session conducted by the Superintendent prior to the investigation, does not satisfy the explicit terms of the District's policy; had this matter been properly presented to the parties and ultimatums given to each of them, this matter would have been resolved with a transfer or transfer and perhaps some type of training; (5) it is undisputed that Respondent did not formally attempt to get Ms. Bello terminated (which he lacks the authority to do) or to affect her tenure; (6) while Respondent concedes that he is passionate about the music program, having spent much of his 40 year career in the District building and

nurturing the program, his anger toward Mr. Wichmann was attributable not only to Mr. Wichmann's management of the 2019 music interviews, but also to differences of opinion in the importance of live music in the school; in any event, Respondent is not charged with conduct unbecoming regarding Mr. Wichmann, but only regarding Ms. Bello; further, any anger or hurt feelings that Respondent had regarding the 2019 music interviews had no ill effect on the operation of the school.

Discharge is not warranted in this case because (1) Respondent's conduct, even if he was unduly upset about the music interviews, does not constitute the type of conduct that either "adversely affects the morale or efficiency" of the District or "has a tendency to destroy public respect" for the District; the evidence is uncontroverted that neither the normal operations of Selzer school nor of the District were adversely impacted in any way; (2) Respondent has an unblemished record of 40 years of service in the District with no prior discipline of any type; this record must be taken into consideration when considering the appropriate penalty for misconduct, if there was any involved here; (3) removal of tenure is an extremely severe penalty, which can result not only in loss of employment, but loss of pension; Respondent's ability, record and length of service are all factors that must be considered to mitigate any penalty; (4) even if Respondent's conduct toward Ms. Bello and Mr. Wichmann could be considered "over the top," based upon case law in New Jersey and other decisions, this conduct clearly does not rise to the level of conduct unbecoming, let alone conduct unbecoming that should result in a removal of tenure; in many cases where the employee's conduct was arguably worse than that charged against Respondent, dismissal and removal of tenure were not upheld; (5)

Respondent maintained a dignified and professional demeanor throughout this proceeding, even when witnesses called him a liar; he did not assign any ill motive to other witnesses, even when he disagreed with them, nor did he exhibit anger or agitation. In sum, there are no facts from which it can be determined that there is “just cause” for removal of Respondent’s tenure. In addition, his suspension without pay for 120 days was unjustified. Respondent should be immediately reinstated and receive back pay for all of the time that his salary has been withheld during the pendency of these proceedings.

### **DISCUSSION**

Both parties were ably represented by counsel in this proceeding and had full opportunity to present evidence and make arguments in support of their respective positions. In the preparation of this Opinion and Award, I have given careful consideration to the testimonial and documentary evidence, the legal authorities cited, and the positions and arguments set forth by the parties. For the reasons set forth below, I find the District has proven both Charge I and Charge II, and that Respondent did engage in conduct unbecoming a tenured Principal. I further find that the conduct was egregious, and that removal from his position and loss of tenure is the appropriate penalty.

While each party has raised questions about the credibility of the other side, many of the most significant facts in this matter are undisputed. That Respondent used intemperate and ugly language about a fellow principal in the District to his Vice Principal, that he put pressure on her and chastised her for continuing to work with that Principal, as her job duties required, that he

expressed to her his intense personal feelings, using words and song that were wholly unprofessional – all these facts have been established by uncontroverted evidence. Respondent’s language regarding Mr. Wichmann, a fellow administrator in the District, and which Respondent admits was accurately recorded on August 12 by Ms. Bello, in and of itself was conduct unbecoming and warrants his discharge. That language included:

- profanities: he’s an “asshole,” a “piece of shit,” “a piece of crap,” the “antichrist;”
- insults: “he has the IQ of a frigging golf ball,” he’s an arrogant son of a bitch; he is “scum;”
- and threats: “this is not over;” “I’m on a mission to expose this asshole;” “he put the noose around his neck;” “someone like this I want to get and it may come to blows;” “he’s a bully and that’s one way to deal with those;” “every time he screws up, I’m going to be there.”

Perhaps even more serious were Respondent’s demands that Ms. Bello not speak Mr. Wichmann’s name, “unless you’re talking about what a piece of crap he is,” and his telling her he did not want her to have a good working relationship with Mr. Wichmann: “I don’t want to hear you laughing and shit” with him. These were unprofessional demands that, along with other conversations on other dates, represented pressure from her supervisor to behave toward another administrator in the District in a manner that was contrary to her professional obligations and her personal inclinations toward

civility and comity. Wholly apart from whether these demands were motivated by romantic or sexual inclination, they were unprofessional, inappropriate and constitute conduct unbecoming a tenured principal.

Respondent adamantly denies that he ever told Ms. Bello that he loved her; points out that he never asked to have sex with her; and only touched her by giving her hugs in the office, in a manner that was friendly -- "salutary" in nature -- the same kinds of hugs he gives other Selzer employees. His denials are contradicted by Ms. Bello's testimony, which was very credible and was supported by her contemporaneous memoranda.

Respondent defended giving Ms. Bello gifts unconnected to her birthday or Christmas, by pointing out that his wife had helped him pick them out, and they were meant merely as gestures of friendship. Likewise, he defended his frequent calls to her and his invitation to dinner as examples of concern and friendship, all known to and promoted by his wife. Yet, the evidence is uncontroverted that he spoke at length to Ms. Bello about the "damage," "trouble," "turmoil," and "blowing up" of their relationship. He also told her he had "made the mistake of allowing you so much into my head, because you're in my head more than anybody." And he sang a love song to her, Billy Joel's song, "Shameless," in a context that even he realized was inappropriate, because he apologized the next day. Respondent's testimony that he only sang the song to Ms. Bello, because he didn't want her to "grovel," is not credible. As the District pointed out in its post-hearing brief, this explanation does not match his testimony about the conversation to Mr. Lopez, or in this hearing; indeed, after

talking about “groveling,” he then denied he had used the term. Whether he intended the song as a profession of love or not, it is in fact a love song. Particularly in light of Respondent’s other declarations, Ms. Bello as the recipient of the song, and I as a fact finder, are justified in considering it as such.

Respondent obsessed for over two weeks while he was on vacation and away from the District over the fact that on July 26 Ms. Bello had laughed with Mr. Wichmann over the phone and then explained to him what they had been laughing about. This incident so bothered him that he raised the subject with her the morning of his first day back from vacation, August 12, and took off on an hour-long rant about Mr. Wichmann, her disloyalty, and what he viewed as irreparable damage to their working relationship at Selzer. Whether motivated by romantic or sexual inclinations, this was harassing behavior, prohibited by law and by District policy.

In sum, I find that by his conduct, Respondent crossed the physical and social boundaries that must exist between a supervising principal and his subordinate.

Further, Respondent repeatedly threatened Ms. Bello’s job and her tenure. His accusations of disloyalty and insubordination were all the more inappropriate, since they were aimed at her for doing nothing more than applying for a principalship and performing her job as Supervisor of Music and Art. He spoke against her to District leadership – Dr. Poidomani and Mr. Triggiano, in June and again in August – and directly and repeatedly threatened Ms. Bello over the months in question.

All of these behaviors are grossly inappropriate for a supervising Principal to inflict upon his subordinate Vice Principal. When District leadership learned that Ms. Bello was unhappy with how Respondent was treating her, Mr. Triggiano and Dr. Poidomani convened a mediation session, during which they urged Respondent and Ms. Bello to put differences behind them and work together for the good of their school and the District. Ms. Bello readily agreed, but Respondent was unable to let go of his emotions: he continued to chastise Ms. Bello for interacting with Mr. Wichmann, and the very day he returned from vacation, he once again harangued her, and he then asked Mr. Triggiano to remove her from his school.

Respondent appears to believe that his passion for music and pride in developing a strings program for the District excuse his behavior toward Ms. Bello and Mr. Wichmann. However, once he became principal of Selzer, he had no responsibility for steering the program, and his passion certainly did not entitle him to harass Ms. Bello for performing her professional duties.

Interestingly, it was Respondent's own inability to let go of his feelings toward Ms. Bello that brought matters to a head. He was the one who initiated a formal District investigation by going to Mr. Lopez in September to lodge a complaint against Ms. Bello. That complaint led Ms. Bello to inform the District about Respondent's conduct and to share the memoranda and recordings she had made of their interactions. Had he been able to control his anger and keep his opinions to himself, Ms. Bello would probably not have come forward; she had

kept the details of their interactions to herself, aside from confiding a part of the story to Mr. Wichmann and Ms. Hutchinson in August.

Respondent has argued that these tenure charges are not warranted because Respondent's conduct was limited to a two-month period of time, during which school was not in session. I note that it was Respondent who went to Mr. Lopez in September with complaints, when the new school year was underway. Furthermore, I reject Respondent's argument that the normal operations of Selzer were not affected, and no one observed any conflict between Respondent and Ms. Bello. The fact that Ms. Bello did not launch a formal complaint against his behavior does not mean that she was unaffected: she documented her response at the time, and she sought advice from an attorney whose firm specializes in sexual harassment. Certainly, based upon her own testimony and the testimony of Mr. Triggiano, Dr. Poidomani and Mr. Wichmann, all of whom witnessed her distress, she did, indeed suffer and was harmed by his conduct.

Not only District leadership, but also staff at Selzer knew something was wrong between Respondent and Ms. Bello. Respondent's own witness, Ruth Keenan, the school secretary, knew that there was some "strain" between Respondent and Ms. Bello, and knew that it was due to the music interviews in July, because Respondent told her so, mentioning Ms. Bello. Respondent also told Ms. Keenan he did not "care for" Mr. Wichmann; asked her about the frequency of Mr. Wichmann's calls to Ms. Bello; and expressed the opinion that Mr. Wichmann should have called him. Ms. Keenan knew that Respondent learned about those conversations because Ms. Bello told him about them. While

Ms. Keenan testified that she did not observe any difference in the behavior of either Respondent or Ms. Bello to indicate they were upset during the summer months, she certainly was aware of tensions between them.

Respondent implies that he and Ms. Bello were equally to blame for the “conflict,” describing the situation as one of “friction” between two District employees. I cannot accept this interpretation of the facts that were presented to me. What is abundantly clear is that Respondent alone was responsible for the “friction” between himself and his vice principal: he was the one who brought the subject up repeatedly; he was the one who made demands on her to perform her job as Supervisor of Music and Art in a uncivil and unprofessional manner. And he was the one who spoke of his inability to “get her out of his head” – to stop thinking about their close relationship and how he believed it had been destroyed by Mr. Wichmann. Respondent argues in his post-hearing brief that Ms. Bello was the one who “raised the issue again during the recorded conversation of August 12, 2019,” thus resurrecting issues between the two of them that had died down after early July. However, that interpretation is belied by Ms. Bello’s testimony and by the transcript itself. Respondent was the one who invited her to come into his office to talk on that day, and very early in the conversation Respondent was the one who raised the issue of Ms. Bello’s conversation with Mr. Wichmann on July 26, which he had continued to worry about on his vacation. (See D. 2, Tr. at 13)

Further, this was not a conflict between two peers: Respondent was Ms. Bello’s supervisor, in a position of power over her, and he had a professional

obligation to behave in a non-threatening, supportive manner. In any event, the behavior of the two was not equivalent: his behavior toward his subordinate was way “over the top,” personal and threatening, while her behavior was always polite, professional and restrained. Respondent argues that because he did not have the authority to actually prevent Ms. Bello from getting tenure or to fire her, his threats to “write her up” and to go to Mr. Triggiano to secure her removal from Selzer, were innocent. Again, I cannot agree. As her supervisor, talking to Dr. Poidomani and Mr. Triggiano about denying her tenure because she applied for a job out of the District, was inappropriate. And his threats to write her up, to put negative information in her file, and speaking to Mr. Triggiano about her employment and otherwise removing her from Selzer School were as substantive as they were improper. She did nothing to merit negative censure: the weight of credible evidence establishes that she did inform him of the music interviews on July 9, which, in any case, were not within his purview, but were properly under the direction of Mr. Wichmann as Dumont High Principal. His repeated threats nevertheless to penalize her were retaliatory and harassing and grew more inappropriate as the summer progressed into the fall.

Respondent also argues that the profane and hostile language he unleashed about Mr. Wichmann somehow doesn't count, because he has not been charged with conduct unbecoming toward Mr. Wichmann, only toward Ms. Bello. This is a specious argument. In Count II, the District has charged Respondent with acting in an “irrational, mean-spirited and inappropriate fashion in his conversation about Mr. Wichmann with Ms. Bello.” (Par. 2) The District also

charged that Respondent 's "irrational and counter-productive insistence that Ms. Bello have as little contact as possible with Mr. Wichmann, was inappropriate, contrary to the best interests of the [District] and constitutes conduct unbecoming..." (Par. 3) Thus, Respondent's language about Mr. Wichmann is certainly part of these tenure charges and is part of the evidence that he engaged in conduct unbecoming a District administrator. The fact that he made Ms. Bello listen to his diatribes and pressured her to buy into his view of Mr. Wichmann only exacerbates the inappropriateness of his conduct.

Finally, I find no merit to Respondent's contention that the charges against him are fatally flawed because the District did not hold a second mediation session with him and Ms. Bello after Mr. Lopez completed his investigative report. Respondent cites to the Board's Healthy Workplace Environment Policy. (D. 12) In particular he cites the following language:

If the investigation determines conduct prohibited by this policy has taken place, the Superintendent or designee will meet with the offender(s) and the victim(s) to review the investigation results and to implement remedial measures to ensure such conduct does not continue or reoccur. Appropriate disciplinary action may be taken depending on the severity of the conduct.

First it must be noted that Respondent, himself, did not adhere to this policy. The policy states that an employee who believes inappropriate conduct has been directed at him, "*shall* submit a written report to the Superintendent of Schools." (Id., emphasis added.) Respondent was the person who initiated the investigation by Mr. Lopez, yet, despite repeated requests, he never submitted his complaints in writing. Further, while the policy states that the Superintendent

or his designee will meet with the offender and victim, it does not state that it will meet with them *together*. More importantly, the policy makes it clear that where the misconduct uncovered in an investigation is “severe,” disciplinary action may be taken. That is what the Board decided was appropriate after reviewing Mr. Lopez’s report. The policy does not require a meeting with offender and victim before discipline is initiated. And, as the District has pointed out, Mr. Triggiano did bring Respondent and Ms. Bello together to try to resolve Respondent’s complaints about her. When that proved futile, the Board was within its authority to proceed with disciplinary action after it received Mr. Lopez’s report.

Respondent has cited several cases for the proposition that Respondent’s behavior was less serious than the behavior of other tenured personnel where dismissal was not upheld. I find those cases to be so factually distinct from the present case as to be of no analytical value. First, all but two cases involved tenure charges against teaching personnel; one case involved a computer operator/secretary. As discussed below, principals play a very different role than teachers in a school district. Second, in four of the cases, the misconduct alleged was against students: leaving students unattended in a classroom (*Irvington v. Roca-Rodi (2014)*); swearing, being offensive and/or demeaning (*Paterson v. Vincenti (2014)*); kissing a student on the cheek, taking a student to a play without informing the school (*Pittsgrove v. Boyle (2014)*); yelling at students, making them line up by race (*Jersey City v. Harris (2015)*). The remaining cases included consuming alcohol on the job, which resulted in a last chance agreement (*Greater Egg Harbor v. Zepralka (2015)*); a union rep becoming

abusive toward an administrator while raising a grievance (*Paterson v. McEntee (2017)*); and a technology instructor disconnecting the loudspeaker connected to the school alarm, thus endangering students (*South Hackensack v. Masullo (2017)*). In each case, a substantial penalty was imposed upon the tenured employee, although discharge was not upheld.

The one case cited by Respondent that is most similar factually to the present case is *Monroe Township v. Becker (2020)*. There a tenured Vice Principal was brought up on charges because on one occasion he told a person, “If you call me ‘amigo’ again, I’ll fucking kill you.” The respondent underwent a psychiatric evaluation, which found he did not have a problem with anger management. Because this was a single isolated incident, his ten years of good evaluations mitigated against termination; instead he was ordered to serve a thirty-day unpaid suspension.

Respondent’s position and conduct are in no way comparable to the cited cases. A school principal is in a position of great responsibility. He is not only the academic leader of the school community; he is also responsible for implementing all District policies and modeling behavior that is expected of employees and students. As a supervisor, he is particularly responsible for treating all students, faculty, and staff with respect, dignity and fairness. When, as here, the principal abuses his position to demean and harass others in the District and in his own school, over a period of months, and despite the District’s intervention, that is misbehavior that undermines the essential requirements of his position. Further, unlike the Vice Principal who was threatening and

intemperate on one occasion, here we have more egregious and repetitive conduct that went on for a period of at least two months and evidenced disrespect toward District officials and harassment of a subordinate.

Respondent argues that he should be returned to his position with no penalty at all, except, perhaps, some training. However, Respondent has expressed no recognition that his conduct was inappropriate and no regret or remorse. Thus, he cannot be expected to change. It is indeed unfortunate that after 40 years of unblemished service to the District, Respondent will end his career this way. But his conduct was totally unacceptable. His pursuit of emotional vendettas against Mr. Wichmann and Ms. Bello and his inappropriate expressions of love and pressure on Ms. Bello for a close personal relationship, all constitute conduct unbecoming a Principal and disqualify him from administrative leadership in the District.

With regard to the particular tenure charges, I make the following findings:

#### **COUNT I**

1. “Mr. Podesta’s inappropriate actions toward Ms. Bello, including physical contact, purchasing of gifts for Ms. Bello, and professions of love for Ms. Bello, constitute conduct unbecoming a tenured principal.” This charge is sustained.
2. “Mr. Podesta’s inappropriate conduct constitutes conduct unbecoming a tenured employee and mandates the termination of his employment as a tenured employee in the Dumont School District.” This charge is sustained.

#### **COUNT II**

1. “Mr. Podesta’s supervision of and interactions with Ms. Bello have

frequently been inappropriate and inconsistent with the duties of a tenured Principal in the Dumont School District.” This charge is sustained.

2. “Mr. Podesta has acted in an irrational, mean-spirited, and inappropriate fashion in his conversations about Mr. Wichmann with Ms. Bello.” This charge is sustained.”
3. Mr. Podesta’s irrational and counter-productive insistence that Ms. Bello have as little contact as possible with Mr. Wichmann was inappropriate, contrary to the best interests of the Dumont School District and constitutes conduct unbecoming a tenured employee in the Dumont School District.” This charge is sustained.
4. “Mr. Podesta’s retaliation against Ms. Bello for his subjective and incorrect assumption that Ms. Bello was acting in an “insubordinate and disloyal” manner toward him constitutes conduct unbecoming a tenured employee in the Dumont School District. This retaliation included, without limitation, Mr. Podesta’s threats to fire Ms. Bello.” This charge is sustained.
5. “Mr. Podesta, in his irrational, self-absorbed, and unfair treatment of Ms. Bello, has engaged in conduct unbecoming a tenured employee in the Dumont School District.” This charge is sustained.
6. “Mr. Podesta’s conduct, as described above, mandates the termination of his employment as a tenured employee in the Dumont School District.” This charge is sustained.

