

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION

In the Matter of Tenure Charges Against Yesenia Camilo

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**WEST NEW YORK SCHOOL DISTRICT**

Petitioner,

- and -

**YESENIA CAMILO,**

Ms. Camilo.

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Agency Dkt No.  
189-9/20

**OPINION  
AND  
AWARD**

**Before  
Joyce M. Klein  
Arbitrator**

Appearances:

**For the Petitioner:**

Jaclyn D'Arminio, Esq.  
Florio Perrucci Steinhardt  
Cappelli Tipton & Taylor, LLC

**For Ms. Camilo:**

James R. Zazzali, Jr., Esq.  
Zazzali, Fagella, Nowak,  
Kleinbaum & Friedman

Pursuant to N.J.S.A. 18A:6-16, as amended by *P.L. 2012, c. 26* ("TEACHNJ"), the tenure charges brought by the West New York School District (the "Board" or "Petitioner") against Yesenia Camilo ("Camilo" or "Ms. Camilo") were referred to me by the Director of the Bureau of Controversies and Disputes, Department of Education, for a hearing and decision on September 24, 2020.

A pre-hearing conference was held via videoconference on November 5, 2020. Thereafter, several hearing dates were scheduled and subsequently cancelled due to Ms. Camilo and other members of her family being diagnosed with, and needing to recover from, COVID-19. This delay led to disputes over whether the hearing should be in person or via videoconference. On December

30, 2020, I ruled that Ms. Camilo's "procedural due process rights are not compromised by a virtual or remote hearing" and returned her to payroll on January 1, 2021 provided that she was prepared to proceed to a hearing via videoconference. On February 8, 2021, the parties met to commence the hearing, but only procedural matters were addressed. I conducted hearings via videoconference on March 19 and 25, 2021.

At the hearings, the parties argued orally, examined and cross-examined witnesses, and introduced documentary evidence into the record. Testimony was received from Principal Patrick Gagliardi; Assistant Superintendent of Administrative Services Scott Wohlrab; Assistant Principal Renee Theobald-Rodriguez (Rodriguez); Director of Special Education Services Allan Roth; Special Education District Supervisor Yoleisy Yanez and Respondent Yesenia Camilo.

Post-hearing briefs were received by May 7, 2021, whereupon the record was closed.

### **RELEVANT BOARD OF EDUCATION POLICIES**

Relevant portions of the Board's Policies are reproduced below:

#### **3150 - DISCIPLINE**

The Board of Education directs all teaching staff members to observe statutes of the State of New Jersey, rules of the State Board of Education, policies of this Board, and duly promulgated administrative rules and regulations governing staff conduct. Violations of those statutes, rules, policies and regulations will be subject to discipline.

The Superintendent shall deal with disciplinary matters on a case by case basis. Discipline measures will include verbal and written warnings as appropriate and will provide, wherever possible, for progressive penalties for repeated violations. Penalties may include suspension, withholding one or more increments, and dismissal.

In the event disciplinary action is contemplated, notice will be given to the teaching staff member in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based; the text of the statute, policy, or rule that the member is alleged to have violated; a date when the member may be heard and the administrator who will hear the matter; and the penalty that may be imposed.

**District Policy 3161 – EXAMINATION FOR CAUSE**

The Board of Education may, in accordance with law, require the psychiatric or physical examination of any teaching staff member who shows evidence of deviation from normal physical or mental health.

The Superintendent shall recommend to the Board the examination of any teaching staff member whose physical or mental conditions so departs from normal health as to adversely affect the performance of the member's duties. Any such recommendation must be accompanied by competent evidence. If the Board determines that deviation from normal health has been demonstrated, it may require that the member submit to a physical or mental examination.

A requirement for physical or mental examination shall be made known to the employee by written notice setting forth the nature of the examination required, the reasons for the requirement, and a statement offering the member the opportunity to appear before the Board to explain or refute those reasons provided any such hearing is requested in writing within five working days of the receipt of the notice.

The Director of Human Resources, with reasonable cause may require a staff member to go for a fitness for duty physical examination by a Board approved physician to determine the staff member's ability to perform his/her duties.

This examination shall be at the expense of the school district and the results shall be confidential and only provided to the Director of Human Resources and/or designee.

\* \* \*

. . . The cost of the examination will be borne by the Board if the Board designates a physician or institution from the names submitted from the teaching staff member.

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If the results of the examination show mental abnormality or communicable disease, the teaching staff member shall be placed on sick leave and compensated in accordance with his/her sick leave entitlement, if any, until proof of recovery, satisfactory to the Board, is furnished. No leave of absence granted under this policy shall

exceed the term of the contract of a nontenured teaching staff member or a period of two years in the case of a tenured teaching staff member.

A teaching staff member who refuses to submit to the examination required by the Board and has exhausted the hearing procedures established by law and this policy shall be subject to discipline, which may include the certification of tenure charges to the Commissioner of Education.

**District Policy 3270 – PROFESSIONAL RESPONSIBILITIES**

The Board of Education will establish and enforce rules for the assignment of specific duties to teaching staff members and for the conduct of teaching staff members during the work day.

The Board directs the Superintendent to require the preparation of lesson plans by each teacher that implement the goals and objectives of the educational program. . . .

The Superintendent shall apply uniformly throughout the district, except as may otherwise be provided in this policy, the following additional rules for teaching staff member conduct:

\* \* \*

2. Teaching staff members are expected to attend every faculty meeting unless expressly excused by the Building Principal:

\* \* \*

**District Policy 3280 – LIABILITY FOR PUPIL WELFARE**

Teaching staff members are responsible for supervision of pupils and must discharge that responsibility with the highest levels of care and prudent conduct. All teaching staff members of this district shall be governed by the following rules in order to protect the well-being of pupils and to avoid any assignment of liability to this Board of Education or to a staff member personally in the event a pupil injured.

The Superintendent shall prepare such regulations as may be required to enforce the following rules:

1. Each teaching staff member must maintain a standard of care for supervision, control, and protection of pupils commensurate with the member's assigned duties and responsibilities;

### **District Policy 3281 – INAPPROPRIATE STAFF CONDUCT**

The Board of Education recognizes its responsibility to protect the health, safety and welfare of all pupils within this school district. Furthermore, the Board recognizes there exists a professional responsibility for all school staff to protect a pupil's health, safety and welfare. The Board strongly believes that school staff members have the public's trust and confidence to protect the well-being of all pupils attending the school district.

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

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### **CHARGES**

The West New York Board of Education brought charges against Yesenia Camilo on September 2, 2020 alleging that she engaged in conduct unbecoming a teaching staff member, incapacity, insubordination and other just cause. Those charges state:

### **CHARGE I**

### **CONDUCT UNBECOMING A TEACHING STAFF MEMBER AND/OR OTHER JUST CAUSE REGARDING MS. CAMILO'S INAPPROPRIATE CONDUCT AND FAILURE TO COMPLY WITH BOARD POLICIES**

#### **Count 1**

On September 4, 2019, Ms. Camilo arrived for a professional development day at 9:20AM, this was twenty (20) minutes after the start of the program. Also on this date, Ms. Camilo was observed smoking on school property after the second session of the professional development program began. Finally, when questioned about smoking during the program, Ms. Camilo said, "cono," threw her cigarette on the ground and walked inside the school building.

**Count 2**

On September 5, 2019, Ms. Camilo failed to attend a faculty meeting. An administrator called her classroom, after which she attended this meeting.

**Count 3**

On September 10, 2019, Ms. Camilo announced during CPT that she was leaving, walked out of the school building without permission or signing out, and later told administrators that she left to meet her father outside. After being questioned, Ms. Camilo demanded that her team members tell her who “ratted her out.”

**Count 4**

On September 11, 2019, during a meeting about her actions on the previous day, Ms. Camilo stated to administration that she was late for the meeting because she got lost coming down the stairs and because she thought it was her preparation period.

With regard to her actions in leaving the CPT meeting on September 10, 2019, Ms. Camilo stated that she did not want to walk to the main office to sign out and that she did not say “boo” to her team when she returned to CPT.

**Count 5**

On September 12, 2019, Ms. Camilo called Assistant Principal Renee Theobald-Rodriguez’s (“Ms. Theobald-Rodriguez”) cellphone to request a personal day at 7:58AM. Ms. Camilo should have called at least one hour prior and the request should have been entered in the Board’s attendance application, Frontline.

**Count 6**

On September 13, 2019, Yoleisy Yanez (“Ms. Yanez”) greeted Ms. Camilo, who asked who would be evaluating her. When Ms. Yanez replied that she would be doing the evaluation, Ms. Camilo replied, “I knew you were here to get me in trouble.”

**Count 7**

On September 16, 2019, Principal Patrick Gagliardi (“Principal Gagliardi”) had to look for Ms. Camilo as she did not report to CPT. When he found her, she rambled about trying to reach another teacher and getting confused about her lunch period.

**Count 8**

On October 3, 2019, Ms. Camilo was found outside Ms. Theobald-Rodriguez's office ranting about a "huge animal" in the corner. The "animal" was a small cricket. Ms. Camilo's behavior was erratic and disturbing.

**Count 9**

On or about October 4, 2019, Ms. Camilo told a parent during an Individualized Education Program ("IERP") meeting that she uses food to bribe the student to complete tasks, in contravention of the IEP.

**Count 10**

On or about October 18, 2019, it was discovered that Ms. Camilo removed \$10.00 from an envelope containing student money collected for a class field trip. On the envelope, Ms. Camilo left a note stating, "From the kids money, I took \$10 for food – 10-04-19. YCamilo."

**CHARGE II**

**CONDUCT UNBECOMING, NEGLIGENCE AND INCAPACITY REGARDING MS. CAMILO'S INAPPROPRIATE CLASSROOM CONDUCT**

**Count 1**

On September 11, 2019, during a walkthrough of her classroom, Ms. Camilo was observed standing in a daze with a cleaning spray and rag. She was heard mumbling and standing still. She then uttered something to the paraprofessional in her classroom, and Mr. Diaz started the day's lesson.

**Count 2**

On September 16, 2019, Ms. Camilo left her classroom two (2) minutes prior to the final bell, leaving her paraprofessional to dismiss her class. Upon questioning, Ms. Camilo stated that she stayed until the end of the day and dismissed her class. Upon being informed that security recordings proved that she walked out early, Ms. Camilo stated that she heard the bell and that's why she left the room. When Principal Gagliardi explained that the bell did not ring until two (2) minutes after Ms. Camilo left the room, she initially stated that the hallway was full of people, so she thought the day was over. Upon being informed that security cameras recorded her as the only person in the hallway at the time, Ms. Camilo

replied, "Write me up. What do you want me to say? What do you want me to do?"

### **Count 3**

On September 17, 2019, Ms. Yanez entered Ms. Camilo's classroom after second period had begun and observed that there was no instruction taking place. Ms. Camilo was seated at her desk, appearing ill and told Ms. Yanez to give her a zero. Soon after making this statement, Ms. Camilo got up from her desk and began teaching her class.

### **Count 4**

On October 4, 2019, Ms. Yanez visited Ms. Camilo's classroom to remind her that another teacher planned a lesson to model in her classroom the following Monday. The students in Ms. Camilo's classroom were all on Chromebooks. Some students were listening to music, some were looking at a website with images of the character "Momo." Ms. Camilo was on her cellphone, oblivious to what was occurring in her classroom. Upon speaking with the students, Ms. Yanez determined that most, if not all, of the students were not involved in any instructional activity. After observing for a period of approximately five (5) minutes, Ms. Yanez approached Ms. Camilo, who screamed and threw a pencil, as she had no idea that Ms. Yanez was in her classroom.

### **Count 5**

From the beginning of the 2019-2020 school year until her removal from the classroom, in or about October 16, 2019, Ms. Camilo failed to set up a gradebook in PowerSchool, despite a policy requiring teachers to enter student assignments and grades within seven (7) days of their assignment. Further, Ms. Camilo's gradebook was empty and she failed to enter comments for any students by the deadline for progress reports. Upon questioning, Ms. Camilo stated that she was overwhelmed. Ms. Camilo did not ask for help. Additionally, Ms. Camilo stated that she kept all grades recorded in a paper gradebook and was corresponding with parents. Despite this claim, Ms. Camilo failed to provide any gradebook or correspondence with parents.

## **CHARGE III**

### **INSUBORDINATION AND CONDUCT UNBECOMING FOR FAILURE TO FOLLOW DIRECTIVES**

The foregoing background information, and the facts alleged therein, are incorporated by reference as if fully set forth herein. Yesenia Camilo has engaged



in unbecoming conduct including misconduct, dishonesty, insubordination and other just cause by her acts and omissions relative to his employment by the Board. These acts and omissions, as specifically set forth below, constitute just cause for immediate dismissal due to conduct unbecoming and insubordination.

### **Count 1**

On October 16, 2019, the Board approved a resolution directing Ms. Camilo to submit herself to a Fitness for Duty Examination. On the same date, Ms. Camilo was informed via memorandum from Allan Roth, Esq. of the requirement that she submit to a Fitness for Duty examination. Despite the Board making every effort to assist Ms. Camilo, including arranging for her transportation, Ms. Camilo failed to attend at least two (2) scheduled meetings with the Board assigned psychologist.

To date, Ms. Camilo has failed to submit to same, nor has she initiated an appeal of the directive.

### **CHARGE IV**

#### **CONDUCT UNBECOMING A STAFF MEMBER AND/OR OTHER JUST CAUSE REGARDING MS. CAMILO'S CONDUCT**

The foregoing background information, common to all charges, and the facts alleged therein, are incorporated by reference as if fully set forth herein.

Each of the foregoing charges and counts individually warrant dismissal. Viewed in their totality within the context of the Ms. Camilo's behavior, it is evident that she engaged in a petter of unbecoming conduct, neglect of duty, incapacity and insubordination or other just cause, warranting dismissal. The allegations, jointly and severally, demonstrate her unfitness to continue to serve in a position of trust, warranting her immediate dismissal.

### **BACKGROUND**

Ms. Camilo has been employed as a teacher in the West New York School District since June 18, 2003. Ms. Camilo holds and maintains certificates as a teacher of English as a Second Language, Teacher of the Deaf or Hard of Hearing, Teacher of the Handicapped and Elementary School Teacher. Ms. Camilo enjoyed a record as a teacher in good standing for the first 16 years of her career where she served as a special education teacher at PS-2, an elementary school in the Early Childhood Program in the West New York Public School District ("District"). There, Ms. Camilo worked with young children aged

2 1/2 – 4 years old. Ms. Camilo had a clean record and received generally good evaluations.

In May of 2019, Ms. Camilo learned that she was transferred to a position at the West New York Middle School (“Middle School”). Ms. Camilo was concerned about the transfer and suspected that it was related to local politics. That she was being transferred to a position so different from her previous grade and age level, Pre-K resource teacher to Seventh/Eight Grade Special Education) and to a larger school, concerned Ms. Camilo. She testified that, before she started at the Middle School, she reached out to Principal Patrick Gagliardi for information and/or assistance but received no reply. Mr. Gagliardi stated that the Middle School has no orientation for teachers who transfer from within the District. Mr. Gagliardi was not aware of the age of the students Ms. Camilo taught at her prior school. Mr. Gagliardi testified that Ms. Camilo told him “they should never have transferred me here.”

On the first day of school, which was a professional development day for teachers, Mr. Gagliardi was in the cafeteria corralling teachers to attend the professional development, when he saw Ms. Camilo, outside of the school building by the front doors. According to Mr. Gagliardi, she was about 20 minutes late and was smoking on school grounds where smoking is not permitted. No other staff member who was late to professional development was counseled.

Mr. Gagliardi explained that if staff members wish to smoke, they must either cross the street, away from the main entrance, or go to a designated area in the back end of the garage. He also indicated that there are signs that indicate that there is no smoking on the premises that are posted on the entrances to the school building and near where Ms. Camilo was smoking. Ms. Camilo’s response to Mr. Gagliardi’s finding her smoking outside of the school was to say “conyo” or “damn,” and throw her cigarette on the ground.

Ms. Camilo acknowledged smoking, but testified that she did not believe she was on school property, that she was a good distance from the entrance of the school, and that she was with a group of school employees, who were smoking as well. Ms. Camilo also stated that she did not yell or curse at Mr. Gagliardi. She cursed to express her surprise after Mr. Gagliardi yelled at her in front of the other staff members. Mr. Gagliardi testified initially that he could not recall whether Ms. Camilo was alone or in a group, but later testified that others were late. According to Mr. Gagliardi, he told only Ms. Camilo to put out her cigarette. Mr. Gagliardi agreed with Ms. Camilo’s testimony her cursing was not directed at him and he understood her expression to mean “damn.” A ‘no-smoking on school premises policy’ was announced to staff in the past, but Mr. Gagliardi acknowledged that it was Ms. Camilo’s first day, and that the ‘no smoking’ signs do not delineate where school property starts or ends.

The next day, on September 5, 2019, Mr. Gagliardi noted that Ms. Camilo was late to the first faculty meeting. Mr. Gagliardi viewed the faculty meeting as important because it covered many of the school's protocols and the administrators' expectations. Assistant Principal Renee Theobald Rodriguez (Rodriguez) explained faculty members were notified of the meeting via email. She testified that the only way Ms. Camilo "would have not been made aware [was] if she did not read her email or check the schedule that had been posted in the main office." Ms. Camilo was in her classroom and was called to attend the meeting nearly 20 minutes into the program.

Ms. Camilo acknowledged that she was late to the September 5, 2019 faculty meeting. She explained that she lost track of time setting up her new classroom and that she had expected, based upon her previous school, a PA announcement, for a faculty meeting. Ms. Camilo went to the faculty meeting immediately upon receiving a call from Ms. Rodriguez. Ms. Rodriguez testified that Ms. Camilo apologized for being late; stated that she did not realize she was late and "did come down rather quickly." Mr. Gagliardi confirmed that Ms. Camilo was late, but did attend the meeting.

Five days later, on September 10, 2019, Ms. Camilo was in the middle of her common planning time ("CPT") and told her team that she was hungry and left. According to Mr. Gagliardi, the only time a teacher is permitted to leave a building without permission is during their duty-free lunch, otherwise they are required to sign out in the logbook, even if they step out momentarily. Mr. Gagliardi explained that in the event of an emergency the administration needs to know who is the building.

Neither Mr. Gagliardi nor Ms. Rodriguez saw Ms. Camilo leave the building. Another faculty member, who was in the CPT, told Ms. Rodriguez that Ms. Camilo left to get something to eat. The faculty member reported to Ms. Rodriguez that when Ms. Camilo returned to the CPT she asked "who ratted me out."

Ms. Camilo testified that she had arrived early to that CPT and then left, telling another teacher that she was hungry and had to "go grab a bag" from her father. Ms. Camilo met her father at the entrance to the building and took a bag with supplies and her lunch from him. Ms. Camilo realized later that it took longer than she expected and was not a good idea. Ms. Camilo testified that she did not believe that she would have to sign out under the circumstances.

Mr. Gagliardi and Ms. Rodriguez met with Ms. Camilo on September 11 to discuss her leaving the CPT early on September 10. Ms. Rodriguez reminded Ms. Camilo that if a staff member needs to leave the building, they need to seek permission and sign out. Ms. Rodriguez recalled Ms. Camilo stating that "she had to get something from her father who was right outside the school" and that Ms.

Camilo explained that she had to meet her father to pick up a broom to clean her classroom.

Mr. Gagliardi testified that Ms. Camilo told him that she had left the meeting to meet her father, and that she did not go to the main office to sign out. At hearing, Mr. Gagliardi testified that Ms. Camilo did not sign out because she did not want to talk to people in the office. When Mr. Gagliardi issued a counseling notice on September 18, 2019, he described the incident as follows:

9/10/19 During CPT you announced to the team that you were hungry and that you were leaving. You then walked out of the building without permission and without signing out in the staff log book. It was also reported that upon your return to CPT you asked the team “who ratted you out?”

9/11/19 Met with you regarding the 9/10/19 walking out issue. You had multiple excuses for why you walked out of the building without permission, including that you got lost coming down the stairs, that you thought it was your prep, that you didn’t want to walk that far to the main office to sign the book. When I inquired as to what you said to the team when you returned to CPT, you said that you “didn’t say boo to anyone”.

On September 11, 2019, Mr. Gagliardi was performing a walk through and went into Ms. Camilo’s classroom, he found her standing in an apparent daze, holding cleaning supplies. Mr. Gagliardi “tried to get her attention and she didn’t even recognize that [he] was there.” Her students, he testified, “were doing absolutely nothing.” Mr. Gagliardi noted that Ms. Camilo did not react to his presence in the room but Mr. Diaz, the paraprofessional began handing out worksheets and beginning the day’s lesson approximately five to seven minutes into the start of class time. Ms. Camilo testified that she was about to clean a student’s desk and she was expecting Mr. Gagliardi to speak first.

The next day, on September 12, 2019, at 7:58 a.m., Ms. Camilo called Ms. Rodriguez on her personal cellphone asking to use a personal day. This request was after the 7:00 a.m. deadline for reporting absences and the requested absence was not reported via Frontline, the Board’s attendance application. The procedure for reporting absences was reviewed at the initial faculty meeting and is outlined in the Board Policy. Ms. Camilo explained that she was unable to request the absence properly because she had internet connectivity issues and could not access Frontline. She testified that she could not get through on the backup phone number.

On September 13, 2019, Special Education District Supervisor Yoleisy Yanez testified that she stopped in to greet Ms. Camilo in her classroom. Ms.

Yanez said it was a routine visit not a formal walkthrough, and that she was visiting all of the Middle School special education teachers that day. Ms. Yanez recalled that Ms. Camilo inquired who her evaluators would be. When Ms. Yanez told her she was one of her evaluators, Ms. Camilo stated that she knew Ms. Yanez would get her in trouble and that she had been informed of this by “some people in higher positions.” Ms. Yanez testified that Ms. Camilo continued by attempting to discuss her medical issues. Ms. Yanez ended that discussion because there were students in the classroom.

Three days later, on September 16, 2019, Ms. Camilo was late to her CPT. Mr. Gagliardi explained that missing CPT was concerning, especially for special education disciplines. Fifteen minutes into the period, Mr. Gagliardi found her wandering the halls, rambling about trying to reach another teacher and being confused about her lunch period. Mr. Gagliardi noted that this incident increased his concern regarding Ms. Camilo’s state of mind. Mr. Gagliardi summarized this incident in his September 18, 2019 counseling memo as follows:

9/16/19 Late for CPT. All CPTs on 9/16/19 were scheduled as high priority since the Middle School 504 Coordinator was leading a training for all teams. You were not in attendance at the CPT. In fact, 15 minutes after the CPT began, I went to look for you. I found you walking in the hallway. When I inquired as to your whereabouts, you stated that you were trying to call Ms. Winters and then asked me if she was on vacation. You also mentioned that you lost track of time after the lunch period.

Later that same day, Ms. Camilo left her classroom two minutes before the final bell, leaving her paraprofessional to dismiss her class. Mr. Gagliardi explained that this violated Board Policy. He acknowledged that there are incidents where a paraprofessional may be left in control of a classroom, but a certified teacher was not to leave her classroom without the proper authority and ensuring adequate coverage. Mr. Gagliardi explained further, “she doesn’t have the authority to leave the classroom with those kids attended only by a paraprofessional. It’s not a certified staff member.” Assistant Superintendent of Administrative Services Scott Wohlrab confirmed that paraprofessionals are left in charge of classes when a teacher needs to use the restroom. According to Mr. Gagliardi, someone reported that Ms. Camilo left early, and he viewed the security footage to verify it.

According to Mr. Gagliardi, the next day Ms. Camilo first claimed she had stayed until the end of the day to dismiss her class. When informed that security footage showed otherwise, she indicated that thought she had heard the bell, and that the hallway had been full of people. When again advised that the hallway had been empty, save for her, Ms. Camilo’s only response was “Write me up. What do you want me to say? What do you want me to do?” At hearing, Ms. Camilo clarified

that the sounds of students preparing to leave made her think she heard the bell and that she needed to use the restroom.

On September 17, 2019, Ms. Yanez again visited Ms. Camilo's classroom, this time for a formal walk-through. Ms. Yanez entered the classroom about ten minutes after the start of class and found Ms. Camilo seated in front of her classroom, looking "either sick or upset." No instruction was taking place. Ms. Yanez asked if Ms. Camilo was feeling all right and she responded, "Who sent you? Why did they send you here?" After explaining she was conducting walkthroughs, Ms. Yanez prompted Ms. Camilo to begin her lesson and she replied, "give me a zero." After further prompting Ms. Camilo begin to instruct her students. This interaction was concerning enough for Ms. Yanez to write to Mr. Cardenas in the Board's Human Resources office at the time, regarding her interactions with Ms. Camilo documenting both the September 13<sup>th</sup> and the September 17<sup>th</sup> events.

That letter described this incident as follows:

Around 10 minutes after the second period started, I entered the classroom (Room 322). The students were quietly seated. I did not observe any type of instruction taking place. The teacher was seated at her desk as well, appearing to be very upset or ill. I asked her if she was feeling sick. She responded by questioning the reason why I was there. She also asked, "Why did they send you"? My response was that I was conducting walkthroughs, to which Camilo also added, "You can give me a zero".

I reiterated to the teacher that I was conducting other walkthroughs and that at that point, I needed to observe her working with the class. She finally decided to get up from her seat and to introduce me to her students. She stated: "This my friend Mrs. Yanez...." Then, Mrs. Camilo asked her paraprofessional to hand out copies of the Reading Fluency packet, which consisted of a song, "Seasons of Love", printed on paper. The paraprofessional shared a copy with me.

The first class activity consisted of having the students take turns to read on verse form the song. The following activity was a whole class choral reading. The teacher asked the paraprofessional to time them. All the students and the teacher read the song in unison. The teacher expressed how happy she was feeling because her students were doing much better with their reading fluency. She explained that they had done the same activity the day before, as an opportunity for them to be exposed to the same words again.

On October 3, 2019, Ms. Rodriguez was at her desk when she noticed Ms. Camilo in the hallway waving her arms in apparent distress. When she went to determine the cause, she found Ms. Camilo screaming about a “huge animal.” Thinking that a squirrel or raccoon may have entered the school building, Ms. Rodriguez rushed to investigate. What she found was a cricket, which she promptly stepped on. Ms. Rodriguez characterized Ms. Camilo’s behavior as “bizarre” and that she found it necessary to calm her because “she seemed fearful that she saw a huge animal.” Ms. Rodriguez testified that she discussed the incident with Mr. Gagliardi and reached out to Human Resources.

According to Ms. Camilo, she was not waving her hands, but alerting Ms. Rodriguez that there was a large bug or cockroach in the hallway that might need attention before the students see it and react. Ms. Camilo explained that she was telling Ms. Diaz where the bug was in Spanish. Ms. Camilo said she had her purse in her hands and did not wave her arms. Ms. Camilo testified that she may have referred to the bug as “big cucaracha,” but not as a “huge animal.”

On October 4, 2019, Ms. Yanez made another unannounced visit to Ms. Camilo’s classroom unannounced. When she entered, the students in Ms. Camilo’s classroom were all on Chromebooks and were not engaged in instruction. One student was viewing a website with images of the character “Momo.” Ms. Yanez testified “Momo” is “highly inappropriate” for school and is associated with suicidal tendencies. Ms. Yanez instructed the student to close the website. During this time, Ms. Camilo was speaking with someone on her cellphone and appeared unaware of what was occurring in her classroom. After observing for a period of approximately five (5) minutes, Ms. Yanez approached Ms. Camilo, who screamed in surprise, opened her arms, and threw a pencil. Ms. Yanez recorded her observations in another letter as follows:

On Friday October 4, 2019, after a meeting with the CST and the teachers from House 4, I visited Mrs. Camilo’s classroom. I wanted to remind her that Mr. Jimenez had planned a lesson to model in her class for Monday, and that I was going to be a part of it. It was 9<sup>th</sup> period, around 2:30 pm.

The students were all in their Chromebooks, some listening to music. A couple of students were on a website with pictures of the character “Momo”. One of them had the face of the character drawn on a piece of paper. I asked him to logout because the content was completely inappropriate for school. While all this was happening, Mrs. Camilo was on the phone, apparently unaware of what was going on.

I continued speaking with the students on individual basis, finding out that many of them were not involved in any type of instructional

activity. Around five minutes later, I approached Mrs. Camilo and her reaction was to scream. As she opened her arms due to the surprise, the pencil she had in one of her hands flew across the room. She appeared terrified when she saw me, stating that she had not seen me entering the room.

Also on October 4, 2019, Ms. Camilo took money from a collection envelope containing students' contributions towards an upcoming field trip and left an IOU. According to Mr. Gagliardi, there are no circumstances where a teacher can use student funds and it was a violation of the school's policy and protocol. Ms. Camilo stated her intent to return the funds, and did so. Ms. Camilo explained that she used the funds to purchase snacks for her students as an achievement incentive. She also explained that some of her special education students took medications that suppress their appetite, so she gave them food for snack when they were hungry. Ms. Camilo explained that there was no budget for snacks for middle grades so she used her own money to purchase food for her students. Ms. Camilo paid the \$10.00 back.

On October 8, 2019, Mr. Gagliardi became aware that Ms. Camilo had failed to set up or update her PowerSchool. According to Mr. Gagliardi, she should have set-up PowerSchool when she received her roster of students and updated it regularly to reflect the current progress of her students. Ms. Camilo's gradebooks were empty.

When Mr. Gagliardi met with Ms. Camilo, she stated she was unfamiliar with PowerSchool but had kept all her grades recorded in a paper gradebook. Ms. Camilo never provided a gradebook. Instead, she provided stacks of assignments completed by her students. An examination of these assignments showed that all of them were marked with an "A" even though many were substantially incomplete. Ms. Rodriguez described the work as "juvenile", even when taking into consideration the students' classification as learning disabled.

Mr. Gagliardi issued a letter of reprimand to Ms. Camilo that same day. That letter provides in part"

In conversation with you regarding these concerns, you expressed being unfamiliar with the "system". You stated you haven't used PowerSchool in over nine years. You said, "That's why I told them not to transfer me here." You stated that there was too much paperwork & that you are overwhelmed in this current position. You also stated that, although unfamiliar and overwhelmed, you have not asked one of your three supervisors nor one of your three administrators for assistance with these matters.



Furthermore, you also stated that you have grades for all of your students and that you keep them recorded in a paper gradebook. You stated that although parents are unable to view their children's grades online, you have been in correspondence with the parents through email and written messages and are aware of their children's grades.

When asked to produce your written gradebook and the electronic and/or written correspondence with parents, you were unable to produce anything. On the contrary, you shared piles of worksheets to "prove" your students were working. Once your supervisor and administrators reviewed the worksheets, it was apparent that "grades" were falsified in an attempt to satisfy the administration and that there has not been any feedback to students or parents as to their assignments, performance, grades, progress or lack thereof.

I find it very disturbing and in direct violation of policies, procedures & directives that you do not have any student records documented for the school year. Moreover your attempt to deceive the administration in an apparent coverup of your own negligence is unprofessional.

If you continue to violate policies, procedures or directives, you may be subject to disciplinary action up to and including termination.

Mr. Gagliardi acknowledged that no parent of any of Ms. Camilo's students complained about the lack of PowerSchool information or progress reports. Mr. Gagliardi also acknowledged that the Middle School never received any complaints from students' parents regarding Ms. Camilo in any other fashion.

Ms. Camilo confirmed that that she had not set up a PowerSchool account by October 8, 2019 and acknowledges that she should have done so. Ms. Camilo explained that she had not used PowerSchool since 2013, and had not, in fact, been responsible for entering grades because she had been teaching Pre-K since 2013.

Ms. Camilo testified that she believed that she was teaching her students and that they were learning. Ms. Camilo stated that she realized that she did not have the paper gradebook because it was at home. So, to represent her work and the students' progress, Ms. Camilo produced the student packets/worksheets. Ms. Camilo acknowledged that she added grades and/or comments to the paperwork while she was upstairs because she had three new students added into the class and wanted to demonstrate her work and the work of her students in lieu of the paper grade book. Ms. Camilo explained that she used an unorthodox method of reducing stressors and incentivizing her students with a grade "A" starting point.

A version of the grades also was displayed on the whiteboard in her classroom. Ms. Camilo explained that the “A” has to be maintained, and is not automatic. Ms. Camilo testified that she did not intend to falsify any documents, or to deceive Mr. Gagliardi or Ms. Rodriguez, and that her production of those notes and paperwork was to give them reassurance that she was working hard and her special education students were reading and making progress.

Ms. Camilo explained that she had just completed parent/teacher conferences the week before and communicated and shared student progress with the parents at that time. According to Ms. Camilo, many parents thanked her and expressed their happiness that their children were more eager to do their homework and showing a greater interest in reading. Ms. Camilo did not request training or assistance with PowerSchool.

After finding Ms. Camilo’s empty grade book, Mr. Gagliardi discussed Ms. Camilo’s erratic behavior with Allan Roth, the Administrative Assistant to the Director of Special Services, including the incident where she was found staring off into space, and the incident on October 4<sup>th</sup> where she expressed evident fear of a large animal that turned out to be a cricket. Mr. Roth brought the matter to the attention of the Superintendent who recommended to the Board that it order an “Examination for Cause” or a Fitness For Duty examination. Mr. Roth drafted notice to Ms. Camilo that the Board would consider ordering an Examination for Cause and inviting her to appear. Ms. Camilo was not present. Mr. Roth had also provided notice to the Association.

At the October 16, 2019 meeting, the Board issued a resolution directing Ms. Camilo to submit to an Examination for Cause. Mr. Roth testified that he then drafted a memorandum to Ms. Camilo advising her of the determination and arranging a date scheduling the examination for some time between October 16, 2019 and October 28, 2019. Mr. Roth testified that the original letter had been written over and he was unsure of the event date. Mr. Roth noted that the letter was sent via regular and certified mail, and that it was not returned to him. Ms. Camilo testified that she did not receive the letter but when she saw it, after Tenure Charges were filed, her address was incorrect.

Mr. Roth acknowledged that he cannot prove that she received the letter and that Ms. Camilo’s attorney told him she did not receive the letter. Mr. Roth acknowledged that attorneys for Ms. Camilo told him that his first notice of a Fitness for Duty examination was not received by Ms. Camilo. He arranged for a second appointment on October 28, 2019. Mr. Roth testified that he was advised by both the doctor selected to perform the exam, as well as Ms. Camilo’s then attorney, Mr. Krumholz, that Ms. Camilo attempted to attend the second appointment, but was late. Thereafter, Mr. Roth tried to arrange two more exams for Ms. Camilo. The first in mid-December, and the second on or about January 3<sup>rd</sup>. Mr. Roth testified that the first exam did not go forward due to a

miscommunication with Ms. Camilo's attorney's office. The second did not go forward because of a miscommunication with the doctor's office. Mr. Roth recognized that Ms. Camilo appeared for the January 3, 2019 appointment, but was unable to be seen at that time. Ms. Camilo waited and begged the doctor to complete the examination but that was not possible.

Mr. Roth scheduled a final fitness for duty examination for Ms. Camilo on January 23, 2020. Mr. Roth testified he sent a letter to Ms. Camilo, at her proper address, and copied both her attorney and the examining doctor. When he was notified by the doctor that Ms. Camilo had not attended this examination, Mr. Roth immediately contacted Ms. Camilo's attorney, who did not dispute that she had not appeared or advise that his client had appeared at the examination for cause. According to Mr. Roth, Ms. Camilo's attorney did not provide an excuse for her failing to attend the January 23, 2020 appointment. At hearing, Ms. Camilo claimed that she did not receive notice of that appointment. At this point, the Board did not offer additional dates for the Examination for Cause.

Ms. Camilo asserts that the focus on her was politically motivated. She explained that in the last round of elections she was working for a ticket opposite Mr. Gagliardi and Ms. Yanez. She asserts that this was the reason for her transfer to the Middle School, that she was being sent there to be "taken out," describing Mr. Gagliardi as a "hitman." Ms. Camilo acknowledges that she did not interact with Mr. Gagliardi during the campaign. Ms. Camilo testified that she believed Ms. Yanez was aware of her campaign work, but their few interactions were nonconfrontational.

Ms. Camilo testified that she voiced those concerns to her previous supervisor Joanne Winters, but Ms. Winters offered no assistance. Ms. Camilo also voiced her transfer concerns to Ms. Rodriguez. Ms. Rodriguez confirmed that Ms. Camilo was "very concerned" about her transfer, but she felt it was only about Mr. Gagliardi being a "rule follower," and stated that she offered her support to Ms. Camilo. Ms. Rodriguez acknowledged that she and Mr. Gagliardi had known Ms. Camilo for years. Ms. Camilo testified that she spoke to Ms. Rodriguez in detail of her concerns, including those regarding Mr. Gagliardi and Ms. Yanez, and that the transfer was potentially an effort to "get rid of (her)."

Ms. Camilo testified that she was "overwhelmed" in those first five weeks in the Middle School and she had told Ms. Rodriguez and Mr. Gagliardi. She also testified that she asked for help and support but received no answer to these requests. At hearing, Ms. Camilo acknowledged her own responsibility for those first weeks and believes she could have handled the situation better.

Mr. Gagliardi testified that he did not believe that Ms. Camilo "should lose her job for the behaviors (he) witnessed." He testified to his understanding that

Ms. Camilo's "(tenure) charges were brought about for incidents beyond what (he) documented here."

### **DISCUSSION**

N.J.S.A. 18A:6-10 provides that no tenured employees of the public school system "shall be dismissed or reduced in compensation ... except for inefficiency, incapacity, unbecoming conduct, or other just cause." The District bears the burden to establish that it met this standard.

The New Jersey Supreme Court has defined "unbecoming conduct" as conduct "which has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services." In re Young, 202 N.J. 50, 66 (2010) (quoting Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (citation omitted). The New Jersey Supreme Court further defined "unbecoming conduct" as that which violates "the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Bound Brook Bd. Of Ed. v. Ciripompa, Dkt. No. A-57-15, \_\_ N.J. \_\_ (February 21, 2017) (quoting Karins v. City of Atlantic City).

The Board asserts that Ms. Camilo engaged in insubordination, conduct unbecoming a staff member and/or other just cause regarding her inappropriate conduct and failure to comply with Board Policy. The Board points out that when Ms. Camilo became a teacher in the District, she agreed to "faithfully do and perform duties under [her] employment contract, and to observe and enforce the rules prescribed by the state of New Jersey, the Board and the Superintendent of Schools." The Board asserts that from her first day at the Middle School, she violated this agreement by repeatedly failing to uphold and conform to Board Policy and to the conduct generally expected of a teacher.

The Board emphasizes that Ms. Camilo was late for the scheduled professional development and was smoking on school property in violation of the Board's policies and State law (N.J.S.A. 26:3D-58(b)). The Board acknowledges that this conduct, accompanied by a curse, was insufficient, on its own, to justify discipline. The Board notes that this incident was only the first of many during the first month of school. The Board argues that the combination of events over the course of the first month show conduct unbecoming a teacher.

The Board would reject Ms. Camilo's claim that her violations were minor and she should have been given a chance to improve, asserting that retaining Ms. Camilo in a teaching position would lead to more disturbing behaviors and would cause greater harm to her students.

The Board asserts that Ms. Camilo repeatedly failed to follow appropriate protocols. The Board notes that she was late for important school meetings, including the first professional development day, the first faculty meeting and her CPT meetings. The Board also raises concerns about her behavior when questioned about her lateness. The Board points out that Ms. Camilo either rambled, claimed she got lost, or provided other excuses.

The Board points out that Ms. Camilo also failed to use the proper methods to report her absence by calling Ms. Rodriguez, rather than using Frontline, or calling the backup number. The Board also cites Ms. Camilo's action in taking money from funds marked for a student field trip and asserts that there can be no justification for this action. The Board points to Ms. Camilo's efforts to minimize these lapses because she was unfamiliar with the building and the technology and she intended to and did return the money. The Board emphasizes that, these excuses show that Ms. Camilo took no responsibility for her actions and focused on her belief that the Board would provide training despite her failure to ask for such training. The Board contends that when problems were brought to her attention, she still did not seek assistance or training, but expected that Mr. Gagliardi and Ms. Rodriguez would provide training and any other help with acclimating to the Middle School.

The Board would characterize Ms. Camilo as combative, citing her conduct in leaving the CPT and the leaving the building without signing out or permission. When asked about her conduct leaving the CPT meeting and the building, the Board points out that Ms. Camilo responded by asking her CPT "who ratted me out". The Board points out that this type of communication pits colleague against colleague which contradicts the purpose of CPT, which is to foster cooperation and collaboration amongst members of the same team. The Board notes that Ms. Camilo also tried to discuss her medical issues with Ms. Yanez in the presence of her students which, it maintains, is a violation of Board Policy 3281, Inappropriate Staff Conduct, which provides that "School Staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils."

The Board emphasizes that in a brief period, Ms. Camilo's behavior became erratic and she appeared to be confused, disoriented, in a daze, or generally nonresponsive, even when addressed directly. The Board points to the incident on October 3, 2019 when Ms. Rodriguez saw her in apparent hysterics claiming to have seen a "huge animal", which was a small cricket. The Board notes that Ms. Rodriguez felt the need to calm her, noting that she appeared convinced that she had seen something of significant size.

The Board asserts that each of these incidents, by themselves, could be viewed as temporary lapses in judgment, and had these incidents happened over the length of a career, they might be viewed differently, but these incidents

occurred in a brief period of time. According to the Board, taken together, this conduct shows a teacher failing to meet an implicit standard of good behavior, and unable or unwilling to self-correct.

The Board asserts that Ms. Camilo is guilty of conduct unbecoming, neglect and incapacity regarding her inappropriate classroom conduct. During Ms. Camilo's month at the Middle School, the Board contends that she displayed an inability to conduct herself appropriately with her students. The Board asserts that Ms. Camilo's conduct in front of her students violates Board Policy 3281, Inappropriate Staff Conduct, and limited students' opportunity to be educated appropriately during the first month of the school year. The Board points to the September 13, 2019 incident where Ms. Yanez visited Ms. Camilo's classroom and, in front of her students, she accused Ms. Yanez of trying to get her in trouble and also tried to discuss her medical issues with Ms. Yanez, in the presence of her students.

The Board also cites Mr. Gagliardi's visit to Ms. Camilo's classroom on September 16, 2019, when he found her in a daze with no instruction being performed in her classroom. Further, the Board points to Ms. Yanez' September 17, 2019 walk through where Ms. Camilo was in apparent distress and was not teaching approximately ten minutes into the class period. The Board notes that Ms. Yanez had to prompt Ms. Camilo to start teaching after she suggested that Ms. Yanez "give her a zero" in front of her students. The Board asserts that later that same day, Ms. Camilo left her classroom two minutes before the bell in violation of school protocol. The Board contends that Ms. Camilo's reaction when asked about the incident was to claim that she had not left before the bell, that she had heard the bell or students in the hallway. When presented with evidence to the contrary, the Board emphasizes that Ms. Camilo had no excuse or rational explanation.

The Board points out that when Ms. Yanez visited Ms. Camilo's classroom on October 4, students were on their Chromebooks listening to music and viewing non-instructional content, including inappropriate material while Ms. Camilo was on a phone call and not paying attention to her classroom. The Board notes that Ms. Yanez was in the classroom for approximately five minutes before Ms. Camilo noticed her, screamed, and threw a pencil in apparent surprise.

The Board contends that Ms. Camilo's behavior, particularly in leaving her students improperly attended, are concerning, inappropriate and in direct contravention to Board Policy 3280, Liability for Pupil Welfare which provides that "teaching staff members are responsible for supervision of pupils and must discharge that responsibility with the highest levels of care and prudent conduct."

The Board argues that Ms. Camilo's actions show neglect for her students' safety and their education. The Board asserts that this was compounded by the

discovery that Ms. Camilo did not have an appropriate gradebook and she had not made any entries in PowerSchool, which is designed to keep parents updated on their child's progress. The Board argues that Ms. Camilo should have been aware that she was expected to keep PowerSchool updated, but one month into the school year, she had not set up her PowerSchool gradebook or entered any grades or comments.

Addressing Ms. Camilo's claim that she did not know how to use PowerSchool and had kept a paper gradebook instead, the Board notes that she has not produced a paper gradebook, and instead provided mostly incomplete packets of work where each student received an "A". Acknowledging Ms. Camilo's claim that she used the initial "A" grades to motivate her students and that their true grades would not reflect all "A"s, the Board notes that there is no evidence that she was tracking her student's progress in a way that could be appropriately reported to their parents. The Board cites Mr. Gagliardi's testimony that the result of Ms. Camilo's inability to produce evidence of her instruction that "those kids... really lost a month of school under her tutelage." Based upon the lack of entries in PowerSchool and the Administration's failure to observe any actual instruction being performed by Ms. Camilo in her classroom, Mr. Gagliardi concluded that no instruction was taking place.

The Board charges that Ms. Camilo is guilty of insubordination and conduct unbecoming a staff member and/or other just cause regarding her failure to follow directives.

In addition to the "egregiousness" of Ms. Camilo's conduct, the Board's original concern was her mental health. The Board emphasizes that many of the incidents detailed in the charges caused administrators and supervisors to question Ms. Camilo's fitness for duty. The Board acknowledges that it is odd that a teacher with a 17 year record of good service would suddenly and flagrantly violate so many Board policies and act in a bizarre and confrontational manner so often in such a brief period. So, the Board determined to send Ms. Camilo for a fitness for duty exam, and asserts that her failure to fully cooperate rises to the level of insubordination, or a willful refusal to attend the examination, and conduct unbecoming of a staff member. The Board cites Mr. Roth's testimony that that it scheduled, or attempted to schedule, an examination for cause a total of five times and the examination never occurred. Specifically, the Board cites Mr. Roth's testimony that Ms. Camilo failed to appear to the first exam (scheduled between October 16 and October 28); was late to the second, so that exam could not take place (October 28, 2019); failed to appear at the third (December 16, 2019) due to an alleged error by her attorney; appeared for the fourth (January 3, 2019) but due to an admitted error by the Board was not seen, and finally, completely failed to appear for the fifth scheduling (January 23, 2020). The Board points out that after the fifth attempt, it did not try to schedule another exam and Ms. Camilo did not

ask that one be scheduled for her. The Board notes that Ms. Camilo did not challenge the direction to submit to an Examination for Cause.

Addressing Ms. Camilo's claim that she was not properly notified of the Board's action, that she never received proper notice of the hearing, the result of the hearing, or the scheduling of the early examinations, the Board notes that she failed to appeal on these grounds or seek to preserve these allegations. The Board also notes Ms. Camilo's acknowledgement that she was in contact with Anita Kober, her Union President, and Tom DeSocio, her NJEA Representative, both of whom were fully aware of both Ms. Camilo's rights and the Board's actions during this period. The Board cites Mr. Roth's testimony that he was in communication with Ms. Camilo's Association representatives throughout the process. Addressing Ms. Camilo's claim she was unaware of the October 28, 2019 examination date, the Board cites Mr. Roth's testimony that she had attended that exam, but too late to be examined. The Board points out that Ms. Camilo failed to appear at the January 23, 2020 appointment despite reminders to her attorney. The Board asserts that by January of 2020, Ms. Camilo was aware of and attempted to attend at least two Examinations for Cause and she was aware or should have been aware that her job was on the line. Because Ms. Camilo did not attend the last examination that was scheduled for her, the Board concludes that she "completely failed to cooperate" and thus engaged in insubordination and must be dismissed from her employment.

Finally, the Board asserts that Ms. Camilo engaged in conduct unbecoming a staff member and/or other just cause regarding the totality of her conduct. The Board contends that each charge independently supports Ms. Camilo's dismissal, but also asserts that the charges, when viewed in totality support its tenure charges. The Board emphasizes that in the course of one month, Ms. Camilo was involved in 13 incidents where her behavior violated Board Policy and/or administration rules; was inappropriate in front of students or bizarre and concerning.

The Board emphasizes that the determination regarding whether a teacher has engaged in conduct warranting dismissal from a tenured position requires consideration of the nature of the act, the totality of the circumstances and the impact on the employee's career. (See I/M/O Tenure Hearing of Molokwu, OAL Dkt. No. EDU 9650-04 (December 12, 2005), citing in re Fulcomer, 93 N.J. Super. 404, 421 (App. Div.1967)). The Board cites cases where one incident is sufficient to establish conduct unbecoming and support removal and other cases where a series of incidents supports such removal. Redcay v. State Board of Education, 130 N.J.L. 369 (Sup. Ct. 1943), aff'd o.b. 131 N.J.L. 326 (E&A, 1944); See also, I/M/O the Tenure Hearing of Stephen Fox, OAL Dkt. No. EDU 7955-04 (February 10, 2005). The Board relies on Laba v. Newark Bd. of Educ., 23 N.J. 364, 384 (1975), where the Court established that the touchstone of unbecoming conduct is the teaching staff member's fitness to discharge the duties and functions of his



or her office or position. A finding of unbecoming conduct does not require a violation of any specific rule or regulation, but rather may be based primarily on an implicit standard of good behavior. In re Emmons, 62 N.J. Super. 136, 140 (App. Div. 1960).

Addressing Ms. Camilo's claim that these charges are political retaliation on the part of Mr. Gagliardi and Ms. Yanez, the Board points out that this claim does not explain how any possible scrutiny led her to fail to follow Board Policy, fail to learn the procedures of her new assignment, and act in a manner labeled bizarre and erratic by her superiors. Further, the Board asserts that Ms. Camilo's claim of political retaliation does not explain her failure to cooperate in the Board's efforts to determine her fitness for duty. For these reasons, the Board contends that each of the charges individually warrant dismissal and when they are considered in their totality, Ms. Camilo's termination is supported.

Ms. Camilo asserts that the Board's failure to prove the charges against her by a preponderance of the evidence warrants dismissal of the charges.

In this instance, Ms. Camilo explains that the Board has not proven by a preponderance of the evidence that she engaged in unbecoming conduct. Ms. Camilo maintains that this dispute must be considered with the background that she was transferred from a position and grade level she had excelled at for many years to another position with her certification that required preparation and patience. Ms. Camilo asserts that any failures on her part were performance or efficiency based and not conduct unbecoming. Ms. Camilo acknowledges that she struggled and was overwhelmed in her new position and new school. She claims that rather than provide support, she was scrutinized and targeted. Ms. Camilo asserts that any of her conduct that varied from her previous work history or professional norms was in reaction to the pressure of the new situation. Ms. Camilo asserts that the record reflects only *de minimus* conduct or technical violations of policy and the Board has failed to meet its burden of proof.

Beginning with the First Count, Ms. Camilo asserts that the Board has failed to establish that she was on school property when smoking. Ms. Camilo also points out it was her first day working at the Middle School and she would not have known the boundaries of school property at that time. Ms. Camilo notes that she was the only one written up with a counseling despite the presence of other staff who were smoking.

Addressing the Second Count, Ms. Camilo acknowledged being late a couple of times, she never failed to attend a meeting. Both Ms. Camilo's and Ms. Rodriguez's testimony establish that there was no intent to miss the meeting or be late. Ms. Camilo contends that the Board failed to support its allegation that she left the building, or that she did more than step or reach out of the door for food and supplies. Ms. Camilo notes that the Board presented no direct evidence or

video supporting the Third Count. Ms. Camilo also cites the Board's acknowledgement that no pupil is under a staff member's supervision when in a CPT, so there is no support for the allegation that there was neglect or risk of harm to students.

Ms. Camilo does not dispute that she asked her colleagues in CPT who told on her, but emphasizes that there is no evidence that she left school grounds and she would not need to sign out unless she did so.

Ms. Camilo emphasizes that despite the extensive testimony that she left the building, no witness or video actually saw her leave the building. Ms. Camilo cites Ms. Rodriguez' testimony of Ms. Camilo's contemporaneous statement; that she met her father who was just outside the building.

Addressing the Fourth Count, Ms. Camilo points out that it does not include an allegation of a violation of policy but simply restates what occurred in a meeting with Mr. Gagliardi and Ms. Rodriguez.

Likewise, Ms. Camilo contends that the Fifth Count of Charge I recounts her last minute need to use an absence for a migraine. When her internet was not working and she could not reach anyone on the hotline, she called in her absence. Ms. Camilo asserts that calling Ms. Rodriguez's cellphone was reasonable based upon their working history together and Ms. Rodriguez's policy of handing out her number and requesting staff to call.

Addressing the Charges (Sixth Count of Charge I and Counts Three and Four of Charge II) based upon Ms. Yanez's interactions with Ms. Camilo, a conflict of interest based upon their political backgrounds is raised in defense. Because Ms. Yanez and Ms. Camilo have opposing political loyalties, Ms. Camilo claims that there is a conflict posed by Ms. Yanez's role as Ms. Camilo's primary evaluator and a witness in these Tenure Charges. Ms. Camilo asserts that Ms. Yanez's testimony lacks credibility and should, at a minimum, limit the weight given to her testimony. Ms. Camilo contends that it is unlikely that Ms. Yanez could have conducted her walk through on October 4 in a "very small room" for over ten minutes without being noticed by Ms. Camilo. Ms. Camilo suggests that Ms. Yanez's detailed accounts in all of her emails and complaints and in her direct testimony do not mention Mr. Diaz further undermines her credibility. Ms. Camilo points out that when Ms. Yanez was asked about Mr. Diaz on cross-examination, she seemed startled, rendering her claims not believable.

Ms. Camilo maintains Ms. Yanez's multiple, unannounced visits, ostensibly to "gain (her) trust" seemed to be meant more to undermine her. Ms. Camilo points out that Ms. Yanez, who regularly talked to Mr. Gagliardi before conducting walk throughs, could not remember if she had discussed Ms. Camilo with him before

she made the unannounced September 17 walk through right after Mr. Gagliardi's counseling of Ms. Camilo for the previous day's issue.

Addressing the Seventh Count of Charge I, Ms. Camilo points out that the allegation does not include a violation of any policy and cannot be considered a conduct unbecoming charge. Instead, the count describes Ms. Camilo's demeanor in an attempt to serve or support the eventual effort to have Ms. Camilo sent out for a Fitness for Duty examination.

Ms. Camilo asserts that Count Eight of Charge I is a story about a bug that has been embellished in order to paint Ms. Camilo as erratic. The conduct described is not conduct unbecoming a teacher, but an exaggerated incident with a but, according to Ms. Camilo.

Turning to Count Nine of Charge I, Ms. Camilo argues that the Board failed to present or admit any documentary or testimonial evidence supporting any allegation contained in this Count.

Addressing Count Ten of Charge I, Ms. Camilo admitted to and concedes that she violated the policy. Ms. Camilo explained that the money was not used for personal gain, she had no intent to retain the \$10, and made sure that it was returned, despite the effort that was required to have it returned by her father.

Ms. Camilo maintains that Count One of Charge II seems intended to support the Board's efforts to justify a Fitness for Duty examination. Emphasizing that there is no violation of policy, Ms. Camilo asserts that Mr. Gagliardi also gave conflicting or changing testimony and she explained that she was cleaning up after her special education students and had an awkward moment with Mr. Gagliardi, but did not engage in conduct unbecoming or any other inappropriate classroom conduct.

Turning to Count Two of Charge II, Ms. Camilo acknowledges that this could represent a technical violation of Policy. Ms. Camilo points out that she thought she heard a bell and attempted to explain that, as well as that she had to use the bathroom for those two minutes. The students were not left alone, "unattended," or in any danger of harm. Mr. Diaz was in control and it was not in violation of policy. Otherwise, any trip to the bathroom by a staff member during teaching, could be a potential tenure charge. Ms. Camilo points out that Mr. Diaz was left in control of those same students the next day by Mr. Gagliardi, even though he testified that there was some kind of danger in doing so.

Ms. Camilo points out that this is the first time Mr. Gagliardi employed videotape against an employee and he varied his viewing or access procedure for this one time, not including his disciplinarian. Mr. Gagliardi failed to show Ms.

Camilo the videotape and, for the second time, was unable to recall who reported Ms. Camilo leaving two minutes early.

Ms. Camilo recognized and acknowledged that she left two minutes early and her frustrated responses to Mr. Gagliardi reflect her realization that her response or explanation did not matter.

Turning to the Fifth Count of Charge II, Ms. Camilo admitted at hearing that she failed to enter progress reports into PowerSchool and acknowledged that she should have relearned or gained access to the program sooner. Ms. Camilo explained the mitigating circumstances, including the difference between her responsibilities the previous eight years teaching pre-k and her new requirements at the Middle School. Ms. Camilo asserts that her failures were pedagogical and related to efficiency and performance.

Ms. Camilo points out that she wanted to demonstrate both her and her student's progress when she produced the student packets and was not intending to deceive. Ms. Camilo notes that the fact that her "A" motivation system was written on the whiteboard as well, supports her explanation and suggests that she did not falsify documents.

Ms. Camilo asserts that the Board failed to sustain its burden in the First Count of Charge III by making error after error in its "effort" to have Ms. Camilo tested for fitness for duty. Mr. Roth thwarted Ms. Camilo's Fitness for Duty exam by sending the initial letter to the wrong address and miscommunicating with the doctor's office.

Ms. Camilo emphasizes that she made all reasonable efforts to be tested under the direction and requirements of the Board. While Mr. Roth's testimony confirmed many of his mistakes, Ms. Camilo's willingness to submit to a Fitness for Duty exam, Ms. Camilo notes that it was not her responsibility to pursue the Fitness for Duty exam on her own and the Board did not require her to do so.

Turning to the Fourth Charge alleges that Ms. Camilo's conduct, separately and collectively, warrants dismissal, under the totality of the circumstances, Ms. Camilo asserts that these general allegations are not supported by the record. Ms. Camilo argues that review of the totality of the circumstances shows that her conduct does not warrant dismissal.

Ms. Camilo emphasizes that the charges focus on five weeks and the Board, if it had pedagogical concerns, could have made efforts to support and correct her performance, or it could have established a basis for efficiency charges. Ms. Camilo asserts that if the Board was truly concerned about her mental health or well-being, there were multiple options and resources there as well that could have been provided.

Ms. Camilo argues that dismissal is unwarranted and too severe a penalty under the circumstances. Even if a small portion of Ms. Camilo's conduct was inappropriate, the sanction of dismissal is disproportionate, especially considering Ms. Camilo's transfer to a new school and position. Ms. Camilo notes that the September 18, 2019 Instructional Counseling Notice given to Ms. Camilo states that it was "Non-Disciplinary" and includes many of the incidents that comprise the Tenure Charges. Ms. Camilo emphasizes the Charges are almost entirely based upon what the Board, or its administrators, deemed "Non-Disciplinary." Ms. Camilo asserts that converting non-disciplinary items into tenure charges is disproportionate and appears to be double jeopardy.

Ms. Camilo cites Mr. Gagliardi's testimony that Ms. Camilo should not lose her job for the conduct he witnessed. Mr. Gagliardi acknowledged that the Board based its decision on additional conduct. Ms. Camilo points out that the only additional conduct was the allegation that she refused to submit to a Fitness for Duty Examination.

Ms. Camilo asserts that if a penalty is warranted, then the doctrine of progressive discipline applies. Contending that the Board has failed to prove the tenure charges against Ms. Camilo, she argues that no penalty or sanction should apply. Alternatively, if discipline is warranted, Ms. Camilo asserts it should be progressive and take into account the nature of the appellant's offense, the concept of progressive discipline, and the employee's prior record.

Ms. Camilo contends that the tenure charges against her should be dismissed and she should be reinstated to a teaching position, together with all back pay, benefits, and emoluments, retroactive to the date the tenure charges were filed.

### **CHARGE I**

#### **CONDUCT UNBECOMING A TEACHING STAFF MEMBER AND/OR OTHER JUST CAUSE REGARDING MS. CAMILO'S INAPPROPRIATE CONDUCT AND FAILURE TO COMPLY WITH BOARD POLICIES**

##### **Count 1**

On September 4, 2019, Ms. Camilo arrived for a professional development day at 9:20 AM, this was twenty (20) minutes after the start of the program. Also on this date, Ms. Camilo was observed smoking on school property after the second session of the professional development program began. Finally, when questioned about smoking during the program, Ms. Camilo said, "cono," threw her cigarette on the ground and walked inside the school building.

As the Board, acknowledges, this charge, by itself, would not warrant tenure charges. It is not disputed that Ms. Camilo was smoking, and she may have been smoking on school grounds, but because it was her first day at the Middle School, she was unaware of the limits of the school grounds and where smoking was permissible. Additionally, Ms. Camilo was with other staff members who were also late for professional development and may have been smoking as well. Mr. Gagliardi plainly stated that he was “corralling” the staff to attend the professional development, so apparently many teachers were also late. With respect to Ms. Camilo stating “cono” or “conyo”, which Mr. Gagliardi interpreted as “damn”, both Ms. Camilo and Mr. Gagliardi agree that she was not cursing at Mr. Gagliardi, but merely expressing her disgruntlement with the situation. Additionally, Ms. Camilo received “non-disciplinary” counseling for this incident. Under all of these circumstances, and given the *de minimus* nature of the allegations, Count 1 of Charge I does not support tenure charges.

### **Count 2**

On September 5, 2019, Ms. Camilo failed to attend a faculty meeting. An administrator called her classroom, after which she attended this meeting.

Both Ms. Rodriguez and Ms. Camilo testified that Ms. Camilo was late to the faculty meeting, but came immediately when she was called to let her know she was late. Lateness to a faculty meeting does not support tenure charges.

### **Count 3**

On September 10, 2019, Ms. Camilo announced during CPT that she was leaving, walked out of the school building without permission or signing out, and later told administrators that she left to meet her father outside. After being questioned, Ms. Camilo demanded that her team members tell her who “ratted her out.”

### **Count 4**

On September 11, 2019, during a meeting about her actions on the previous day, Ms. Camilo stated to administration that she was late for the meeting because she got lost coming down the stairs and because she thought it was her preparation period.

With regard to her actions in leaving the CPT meeting on September 10, 2019, Ms. Camilo stated that she did not want to walk to the main office to sign out and that she did not say “boo” to her team when she returned to CPT.

It is undisputed that Ms. Camilo announced that she was hungry and was going to get a bag or something to eat and left the CPT. According to Ms. Camilo, she went to the main entrance to the school where she met her father who brought her a bag with her lunch and some cleaning supplies. Ms. Rodriguez recalled that Ms. Camilo told her she met her father to get a broom outside of the building. Ms. Camilo acknowledges that she should not have left the CPT and that getting her lunch and cleaning supplies from her father took longer than she expected.

Mr. Gagliardi, Ms. Rodriguez and Mr. Wohlrab all testified that teachers were required to sign out if they left the building except during duty free lunch. Mr. Wohlrab explained that a teacher is required to sign out if they are leaving to grab lunch. If this is what occurred, Ms. Camilo should have signed out before leaving the school. But neither Mr. Gagliardi, Ms. Rodriguez or Mr. Wohlrab saw Ms. Camilo leave the school and no one checked the security video to see whether she did so. Ms. Camilo testified that she went to the doorway or right outside of the door to meet her father and get the cleaning supplies and her lunch.

There is insufficient evidence that Ms. Camilo left the school grounds. I note that Mr. Gagliardi did not seek to counsel or discipline Ms. Camilo or any other teacher who was outside of the building when he was corralling the staff to attend professional development.

Addressing the allegation that Ms. Camilo told Mr. Gagliardi that she did not want to walk to the main office and she didn't say "boo" upon returning to CPT, there is some question regarding what Ms. Camilo told Mr. Gagliardi. The substance of that conversation may have concerned Mr. Gagliardi because it was unusual, but it was not evidence of conduct unbecoming a teacher. In any event, given that there is insufficient evidence that Ms. Camilo did more than step outside of the building to meet her father to receive a bag, the allegations in Charges 3 and 4, even if true, do not support tenure charges.

### **Count 5**

On September 12, 2019, Ms. Camilo called Assistant Principal Renee Theobald-Rodriguez's ("Ms. Rodriguez") cellphone to request a personal day at 7:58AM. Ms. Camilo should have called at least one hour prior and the request should have been entered in the Board's attendance application, Frontline.

It is undisputed that Ms. Camilo did not follow the proper procedure to request a personal day. Ms. Camilo was unable to access Frontline due to internet connectivity issues and could not reach a person on the back up line for her last minute absence. Failure to use the proper procedure to request a last minute

personal day on one occasion, while substantiated, is not a policy violation that warrants tenure charges, with or without other more serious charges.

### **Count 6**

On September 13, 2019, Yoleisy Yanez (“Ms. Yanez”) greeted Ms. Camilo, who asked who would be evaluating her. When Ms. Yanez replied that she would be doing the evaluation, Ms. Camilo replied, “I knew you were here to get me in trouble.”

It is not disputed that this conversation occurred. Ms. Camilo’s conduct in making that statement may have been ill advised, but the statement is not one that should lead to termination. Charge 6 does not support tenure charges.

### **Count 7**

On September 16, 2019, Principal Patrick Gagliardi (“Principal Gagliardi”) had to look for Ms. Camilo as she did not report to CPT. When he found her, she rambled about trying to reach another teacher and getting confused about her lunch period.

Similarly, this count supports the Board’s concern for Ms. Camilo’s mental health and supports its determination to send her for a Fitness for Duty examination, but does not support tenure charges.

### **Count 8**

On October 3, 2019, Ms. Camilo was found outside Ms. Theobald-Rodriguez’s office ranting about a “huge animal” in the corner. The “animal” was a small cricket. Ms. Camilo’s behavior was erratic and disturbing.

There is some disagreement regarding whether Ms. Camilo's conduct when she saw the cricket was inappropriate. Ms. Rodriguez described Ms. Camilo's behavior as “bizarre” and testified that she was waving her arms, in distress and “fearful”. Ms. Camilo, noting that Ms. Rodriguez does not speak Spanish, acknowledged that she may have described the bug as a “big cucaracha”, but denies calling it a huge animal. Regardless of exactly what happened, the record supports a conclusion that Ms. Camilo over-reacted to the presence of a cricket or cockroach. As with Counts 6 and 7, this charge does not allege conduct that would warrant tenure charges, but does support a determination to send Ms. Camilo for a Fitness for Duty examination.



**Count 9**

On or about October 4, 2019, Ms. Camilo told a parent during an Individualized Education Program (“IERP”) meeting that she uses food to bribe the student to complete tasks, in contravention of the IEP.

The record does not include any evidence supporting Charge I, Count 9 and it is dismissed.

**Count 10**

On or about October 18, 2019, it was discovered that Ms. Camilo removed \$10.00 from an envelope containing student money collected for a class field trip. On the envelope, Ms. Camilo left a note stating, “From the kids money, I took \$10 for food – 10-04-19. Y. Camilo”

Ms. Camilo did take \$10.00 from student funds to purchase snacks for her class; documented that she did so and returned the money. This conduct was inappropriate. As Mr. Gagliardi testified, using student funds is a violation of the school’s policy and protocol. Ms. Camilo should not have borrowed any student funds. But, she documented the loan and paid it back. No dishonesty or theft was involved, and this incident is not sufficiently serious to warrant tenure charges.

**CHARGE II**

**CONDUCT UNBECOMING, NEGLIGENCE AND INCAPACITY REGARDING MS. CAMILO’S INAPPROPRIATE CLASSROOM CONDUCT**

**Count 1**

On September 11, 2019, during a walkthrough of her classroom, Ms. Camilo was observed standing in a daze with a cleaning spray and rag. She was heard mumbling and standing still. She then uttered something to the paraprofessional in her classroom, and Mr. Diaz started the day’s lesson.

Charge II, Count 1, reflects the walkthrough conducted by Mr. Gagliardi where he observed Ms. Camilo standing in a daze and mumbling with a cleaning rag. Ms. Camilo pointed out that she had been about to clean a student's desk and was waiting to be spoken to by Mr. Gagliardi. Whether or not Ms. Camilo's recollection is accurate, she does not explain why instruction was not taking place and why she appeared to be in a daze. As with several previous charges, the

allegations in Count 1 support the Board's determination to send Ms. Camilo for a Fitness for Duty exam, but do not support tenure charges.

## **Count 2**

On September 16, 2019, Ms. Camilo left her classroom two (2) minutes prior to the final bell, leaving her paraprofessional to dismiss her class. Upon questioning, Ms. Camilo stated that she stayed until the end of the day and dismissed her class. Upon being informed that security recordings proved that she walked out early, Ms. Camilo stated that she heard the bell and that's why she left the room. When Principal Gagliardi explained that the bell did not ring until two (2) minutes after Ms. Camilo left the room, she initially stated that the hallway was full of people, so she thought the day was over. Upon being informed that security cameras recorded her as the only person in the hallway at the time, Ms. Camilo replied, "Write me up. What do you want me to say? What do you want me to do?"

Ms. Camilo did leave her classroom two minutes before the bell rang in violation of Board Policy. Mr. Diaz, Ms. Camilo's paraprofessional remained in the classroom. After this was reported to Mr. Gagliardi, he personally reviewed the security cameras to verify that she had left the classroom early. Ms. Camilo initially denied leaving early, but when told of the footage from the security cameras, she replied in exasperation, "Write me up. What do you want me to say? What do you want me to do?"

The Board makes much of Ms. Camilo leaving her classroom without a certificated member of the staff in control of the classroom. Although administrators testified forcefully about the policy violation of leaving a classroom without a certificated staff member, the next day Mr. Gagliardi authorized Mr. Diaz, the paraprofessional, to remain in control of Ms. Camilo's classroom when he called her to his office to discuss her leaving early the previous day. Under these circumstances, Ms. Camilo's misconduct in leaving her class early, while inappropriate, does not warrant tenure charges.

Of greater concern is Ms. Camilo's initial denial that she left early. While teachers do sometimes need to leave the classroom without prior arrangement, such as, in this circumstance, to use the restroom, Ms. Camilo's denial that she had done so is troubling. However, Mr. Gagliardi determined that both Ms. Camilo's conduct in leaving early as well as her initial denial that she did so, along with other conduct warranted a non-disciplinary counseling. Under these circumstances, the counseling issued by Mr. Gagliardi is sufficient to address the count and tenure charges for these allegations are not supported.

### **Count 3**

On September 17, 2019, Ms. Yanez entered Ms. Camilo's classroom after second period had begun and observed that there was no instruction taking place. Ms. Camilo was seated at her desk, appearing ill and told Ms. Yanez to give her a zero. Soon after making this statement, Ms. Camilo got up from her desk and began teaching her class.

### **Count 4**

On October 4, 2019, Ms. Yanez visited Ms. Camilo's classroom to remind her that another teacher planned a lesson to model in her classroom the following Monday. The students in Ms. Camilo's classroom were all on Chromebooks. Some students were listening to music, some were looking at a website with images of the character "Momo." Ms. Camilo was on her cellphone, oblivious to what was occurring in her classroom. Upon speaking with the students, Ms. Yanez determined that most, if not all, of the students were not involved in any instructional activity. After observing for a period of approximately five (5) minutes, Ms. Yanez approached Ms. Camilo, who screamed and threw a pencil, as she had no idea that Ms. Yanez was in her classroom.

Addressing Counts 3 and 4 together, in both of these instances, Ms. Yanez was concerned and documented the incidents to Human Resources. Ms. Camilo asserts that Ms. Yanez, together with Mr. Gagliardi worked for an opposing local political ticket and their political differences led to a conflict of interest and an effort to undermine her. Ms. Camilo alleges that the frequency with which Ms. Yanez visited her classroom was part of an effort to undermine her because of their political differences. Ms. Camilo testified that she and Ms. Yanez met on the campaign trail, but did not have heated interactions.

Countering Ms. Camilo's allegations about her political differences with Mr. Gagliardi and Ms. Yanez is that Ms. Camilo has challenged the details of her interactions with Ms. Yanez, but has not challenged, the substance their meetings. For example, Ms. Camilo acknowledged that when Ms. Yanez came into her classroom on September 17, 2019, she had just returned from being counseled about leaving her class early by Mr. Gagliardi and had her head down on her desk so that her students would not see that she was crying. Further Ms. Camilo acknowledged her surprise when Ms. Yanez came into her classroom on October 4, but challenges Ms. Yanez's testimony that she could have been there as long as 10 minutes without Ms. Camilo being aware of her presence.

Under these circumstances, there is insufficient evidence that Ms. Yanez sought to undermine Ms. Camilo. Rather, the record establishes that Ms. Yanez's contemporaneous write ups of her observations of Ms. Camilo are, for the most part, accurate. Ms. Yanez's frequent visits to Ms. Camilo's classroom are, as asserted by Ms. Camilo, more frequent than is usual. The first visit, was a beginning of the year visit made to all Middle School special education classes. The September 17 visit was a formal observation. Only the October 4 visit, to issue a reminder, seems out of the ordinary. Under the circumstances of Ms. Camilo's previous concerning conduct, I cannot find this visit to be motivated by anything other than concern for Ms. Camilo's mental health and the education of her students.

It is concerning that on both September 17 and October 4, 2019, when Ms. Yanez visited Ms. Camilo's classroom, Ms. Camilo was distracted and it did not appear that instruction was occurring. Ms. Camilo's primary responsibilities are to her students and to insure their instruction and growth. This incident is an example of a situation where that was not occurring.

#### **Count 5**

From the beginning of the 2019-2020 school year until her removal from the classroom, in or about October 16, 2019, Ms. Camilo failed to set up a gradebook in PowerSchool, despite a policy requiring teachers to enter student assignments and grades within seven (7) days of their assignment. Further, Ms. Camilo's gradebook was empty and she failed to enter comments for any students by the deadline for progress reports. Upon questioning, Ms. Camilo stated that she was overwhelmed. Ms. Camilo did not ask for help. Additionally, Ms. Camilo stated that she kept all grades recorded in a paper gradebook and was corresponding with parents. Despite this claim, Ms. Camilo failed to provide any gradebook or correspondence with parents.

On October 8, 2019, when Mr. Gagliardi began reviewing PowerSchool entries, he became aware that Ms. Camilo had failed to set up or update her PowerSchool. PowerSchool should have been set up at the beginning of the school year when Ms. Camilo received her roster of students and it should have been updated regularly. Ms. Camilo acknowledged that she had not set up PowerSchool because she was not familiar with it. However, she indicated to Mr. Gagliardi, and again at hearing, that she kept her grades in a paper gradebook. No gradebook has been provided to support this allegation.

Instead, Ms. Camilo provided stacks of assignments, many of which were incomplete or wrong, but all of which were graded with an "A". Ms. Camilo provided an explanation for her unorthodox grading method, that all students

began the school year with an A to motivate them. While it is possible that this method of grading could be used, by the fifth week of school, there should be some record of grades other than an "A", particularly for work that is wrong or incomplete. Nor did Ms. Camilo, who acknowledged being overwhelmed by her reassignment to the Middle School, seek assistance with PowerSchool or otherwise take responsibility for making sure that grades and comments were entered into PowerSchool.

Mr. Gagliardi issued a letter of reprimand citing both Ms. Camilo's failure to set up and enter grades and comments into PowerSchool and her "attempt to deceive the administration" by claiming to have a gradebook that was not produced. Ms. Camilo asserted that she did not have the paper gradebook because it was at home, but her failure to produce that gradebook to date suggest that no such gradebook exists. Ms. Camilo's responsibilities as a teacher include tracking and documenting her students' progress. Ms. Camilo's failure to document the progress and grades of her students constitutes neglect of her students and of a basic function of teaching. Ms. Camilo's failure to set up PowerSchool and to comment on and document her student's progress and grades constitutes conduct unbecoming a teacher. While this misconduct supports the Tenure Charges, Ms. Camilo has already received discipline for it.

### **CHARGE III**

#### **INSUBORDINATION AND CONDUCT UNBECOMING FOR FAILURE TO FOLLOW DIRECTIVES**

The foregoing background information, and the facts alleged therein, are incorporated by reference as if fully set forth herein. Yesenia Camilo has engaged in unbecoming conduct including misconduct, dishonesty, insubordination and other just cause by her acts and omissions relative to his employment by the Board. These acts and omissions, as specifically set forth below, constitute just cause for immediate dismissal due to conduct unbecoming and insubordination.

#### **Count 1**

On October 16, 2019, the Board approved a resolution directing Respondent to submit herself to a Fitness For Duty examination. On the same date, respondent was informed via memorandum from Allan Roth, Esq. of the requirement that she submit to a Fitness For Duty examination. Despite the Board making every effort to assist Respondent, including arranging for her transportation, Respondent failed to attend at least two (2) scheduled meetings with the Board assigned psychologist.

To date, Respondent has failed to submit to same, nor has she initiated an appeal of the directive.

Ms. Camilo was directed to attend an initial Fitness For Duty examination by a letter, that was sent to the wrong address. Ms. Camilo has testified that she did not receive the letter. According to Mr. Roth, the letter was not returned to the Board, but he acknowledged that the Board has no proof that Ms. Camilo received the letter. The letter was sent via certified mail, but no acknowledgement of receipt was proffered. Under all of these circumstances, I find that Ms. Camilo did not receive notice of the first appointment for her Fitness for Duty exam.

A second Fitness For Duty exam was scheduled for October 28, 2019. It is undisputed that Ms. Camilo was late for the appointment, and the doctor did not have sufficient time to complete the exam. Ms. Camilo has explained that she was stuck in traffic and called the doctor's office to let them know she would be late.

A third Fitness for Duty exam was scheduled in mid-December. Mr. Roth testified that this appointment did not go forward due to a miscommunication with Ms. Camilo's attorney's office. There is no evidence that Ms. Camilo was involved in this miscommunication.

A fourth Fitness for Duty exam was scheduled for about January 3, 2020. This appointment did not go forward because of a miscommunication with the doctor's office. Ms. Camilo appeared for the January 3, 2019 appointment, but was unable to be seen at that time. Despite Ms. Camilo's efforts to be seen, the examination was not completed. There is no evidence that Ms. Camilo played any role in the miscommunication with the doctor's office.

A final Fitness for Duty exam was scheduled for January 23, 2020. According to Mr. Roth, he sent a letter to Ms. Camilo, at her proper address, and copied both her attorney and the examining doctor. When he was notified by the doctor that Ms. Camilo had not attended this examination, Mr. Roth contacted Ms. Camilo's attorney, who did not dispute that she had not appeared or provide an explanation for her failing to attend the January 23, 2020 appointment. At hearing, Ms. Camilo claimed that she did not receive notice of the last appointment.

At this point, the Board did not schedule an additional appointment for Ms. Camilo and instead determined to file these Tenure Charges. These charges allege that Ms. Camilo failed to attend "at least two (2) scheduled meetings with the Board assigned psychologist", though the record shows that Ms. Camilo can be faulted only for failing to attend the last scheduled appointment on January 23, 2020. In each of the other instances where the examination did not take place, if Ms. Camilo was aware of the appointment, she made every effort to attend. While the Board may have grown impatient with its inability to get Ms. Camilo evaluated for a determination of whether she was fit to return to work, the Board determined

to file tenure charges after Ms. Camilo failed to attend a single appointment for a Fitness for Duty exam where fault can be attributed to her. Given that notice of the appointment was sent to Ms. Camilo's then attorney as well as to her, I am not persuaded that she did not receive notice of the January 23, 2020 appointment. The missed Fitness for Duty exam is a failure to follow a directive issued by the Board that warrants discipline. To the extent that Ms. Camilo missed a single appointment for a Fitness for Duty exam, the Charge III is substantiated.

#### **CHARGE IV**

#### **CONDUCT UNBECOMING A STAFF MEMBER AND/OR OTHER JUST CAUSE REGARDING MS. CAMILO'S CONDUCT**

The foregoing background information, common to all charges, and the facts alleged therein, are incorporated by reference as if fully set forth herein.

Each of the foregoing charges and counts individually warrant dismissal. Viewed in their totality within the context of the Ms. Camilo's behavior, it is evident that she engaged in a pattern of unbecoming conduct, neglect of duty, incapacity and insubordination or other just cause, warranting dismissal. The allegations, jointly and severally, demonstrate her unfitness to continue to serve in a position of trust, warranting her immediate dismissal.

When these tenure charges are viewed in their entirety, many of the charges, including those reflected in the September 18, 2019 counseling letter, do not describe conduct sufficiently serious to support tenure charges that would result in Ms. Camilo's termination. A few instances of tardiness to meetings; smoking on school grounds when no students are present; leaving a meeting to meet her father at the entrance to the building; phoning Ms. Rodriguez directly to seek a last minute personal day; leaving the classroom two minutes before the end of the school day are examples of conduct that warranted counseling and should be corrected, but not instances that justify termination. Nonetheless, these examples, all of which occurred in only a few weeks, when viewed in light of Ms. Camilo's seventeen year career with a good record, serve as justification for the Board's determination to send Ms. Camilo for a Fitness For Duty examination.

Likewise, the erratic behavior documented by Mr. Gagliardi and Ms. Yanez, including standing in the classroom with cleaning supplies, apparently in a daze, sitting at her desk appearing to be upset or ill, talking on the phone and failing to notice Ms. Yanez for several minutes, also support the Board's determination to send Ms. Camilo for a Fitness For Duty examination.

In addition to Ms. Camilo's unusual and erratic behavior, Ms. Camilo engaged in conduct that was potentially neglectful of students' education, including her failure to set up and make entries into PowerSchool, the school's electronic gradebook, and those instances where Mr. Gagliardi and Ms. Yanez entered Ms. Camilo's classroom and found her in a daze, upset or ill, and on the phone not attending to students. In each of these instances, Ms. Camilo's students were not receiving instruction and/or her attention. These are not instances that warrant termination, but they do warrant both correction and assurance that Ms. Camilo is fit to continue in her role as a teacher. Ms. Camilo has received a letter of reprimand for failure to set up and make entries in PowerSchool, but has not received counseling or other discipline for the instances described by Ms. Yanez.

Rather, the Board, upon consideration of Ms. Camilo's conduct from the beginning of the school year through October 16, 2016, properly determined that she should be evaluated by a psychiatrist in a Fitness For Duty examination. For a variety of reasons detailed herein, including an incorrect address, traffic, and multiple miscommunications, the first four attempts to have Ms. Camilo evaluated did not occur, but Ms. Camilo is not at fault for the delays. A fifth and final appointment was scheduled for January 23, 2020 and Ms. Camilo's excuse for her absence was that she did not receive notice of the appointment. As previously discussed, that excuse was not persuasive given that her address was correct and her then attorney had notice of the appointment. At this point, the Board did not seek to reschedule the appointment and ultimately filed tenure charges.

When Ms. Camilo's misconduct is evaluated in its entirety, she received a non-disciplinary counseling for a variety of minor infractions and/or erratic behavior in the first weeks of the school year. It is not appropriate to review the charges addressed by the counseling and weigh them in the evaluation of tenure charges. Mr. Gagliardi has already addressed them with Ms. Camilo. Likewise, Ms. Camilo received a letter of reprimand for her failure to set up and use PowerSchool, so this misconduct, though more serious than that addressed by the counseling, also has been addressed by Mr. Gagliardi. Given the prior non-disciplinary counseling and letter of reprimand issued to Ms. Camilo, both of which are encompassed in Charge IV, this Charge is dismissed.

Ms. Camilo's unusual and erratic behavior as documented by Ms. Yanez has not been the subject of discipline and is properly justification for the requirement that she have a Fitness For Duty exam. However, Ms. Yanez also documented two separate instances where several minutes passed where students were not engaged in instruction or completion of an assignment or a test while Ms. Camilo was at her desk with her head down or on the phone. During that period, Ms. Yanez noted students listening to music and viewing inappropriate material on their Chromebooks. Where, as here, Ms. Camilo's conduct materially affects her students, discipline is appropriate. In this instance, Ms. Camilo twice



neglected her students for a period of several minutes, and in doing so, allowed one or more students to view inappropriate material.

Additionally, Ms. Camilo engaged in misconduct when she failed to follow the directive to attend the January 23, 2020 Fitness For Duty exam. Failure to follow a directive is a form of insubordination and warrants discipline.

When all of the facts and circumstances of this case are considered, Ms. Camilo's misconduct in Charge II, Counts 3 and 4 by neglecting her students and allowing one or more students to view inappropriate material and her misconduct in Charge III, Count 1, to the extent that she failed to attend the January 23, 2021 Fitness For Duty examination warrant discipline, but are not sufficient to warrant termination. This is particularly so given the Board's concern about Ms. Camilo's mental health and well-being. The questions surrounding Ms. Camilo's mental health must be balanced with the Board's need to insure that its teachers assume responsibility for their classes and follow its directives. Withholding Ms. Camilo's increment for the 2021-2022 school year should serve as progressive discipline and to correct Ms. Camilo's conduct and insure that she takes full responsibility for providing instruction and following the Board's policies, and for asking for assistance as needed.

To date, Ms. Camilo has not attended a Fitness For Duty examination as required by the Board on October 16, 2019. Successful completion of a Fitness For Duty examination is required before Ms. Camilo is returned to the classroom. If Ms. Camilo is unable to successfully complete a Fitness For Duty examination, it is expected that the Board will continue to follow the provisions of its Policy 3161– Examination for Cause.

Accordingly, Respondent Yesenia Camilo shall be reinstated pending successful completion of a Fitness For Duty examination. Respondent Yesenia Camilo's increment for the 2021-2022 school year shall be withheld.

**AWARD**

Charge II, Counts 3 and 4 are sustained. Charge III, Count 1 is sustained to the extent that Ms. Camilo failed to attend the January 23, 2020 Fitness For Duty examination. The remaining charges filed by the West New York School District are denied.

Respondent Yesenia Camilo shall be reinstated pending successful completion of a Fitness For Duty examination. Respondent Yesenia Camilo's increment for the 2021-2022 school year shall be withheld.

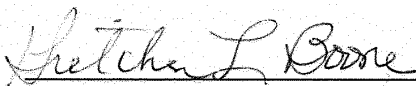
Dated: June 3, 2021  
Ocean Grove, New Jersey



Joyce M. Klein

State of New Jersey     }  
County of Monmouth    }ss:

On this 3<sup>rd</sup> day of June, 2021, before me personally came and appeared Joyce M. Klein to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.



Gretchen L Boone  
Notary Public  
New Jersey  
My Commission Expires 8-24-2022  
No. 50066778