

**ARBITRATION PROCEEDINGS  
BEFORE ARBITRATOR GARY T. KENDELLEN**

\_\_\_\_\_  
In the Matter of the Tenure Hearing )  
Gregory Janicki )  
School District of the Township of )  
Washington, Gloucester County )  
Agency Docket No. 52-2/20 )  
\_\_\_\_\_)

**ARBITRATOR’S  
OPINION AND AWARD**

**COUNSEL:**

For the District Joseph F. Betley, Esq.  
Capehart Scatchard, P.A.

For Gregory Janicki: Matthew B. Wieliczko, Esq.  
Zeller & Wieliczko, LLP

**INTRODUCTION**

On February 3, 2020, the School District of the Town of Washington, Gloucester County, (“the District”) served Gregory Janicki (“Respondent” or “Janicki”), a tenured Music Teacher in the District at its High School, with Tenure Charges (“Tenure Charges” or “T/C”) and a Statement of Evidence alleging eight counts of unbecoming conduct and other just cause in accordance with N.J.S.A. 18A:6-10. On February 21, 2020, Janicki served upon the District a Written Response to the Tenure Charges, a certified Statement of Position and a certified Statement of Evidence. On February 26, 2020, the District filed with the Commissioner a Certificate of Determination crediting the evidence in support of the Tenure Charges and suspended Janicki for 120 days with pay in accordance with N.J.S.A. 18A:6-14.<sup>1</sup> On March 12, 2020, Janicki filed with the Commissioner a Written Response to the Tenure Charges, along with his Statement of Position and Statement of Evidence.

On March 20, 2020, the Undersigned contacted counsel for the District and Janicki and advised that on March 17, he had been referred the instant matter by the Commissioner’s Office of Controversies and Disputes (“Office”) and convened a conference call on April 3 to discuss

\_\_\_\_\_  
<sup>1</sup> Since the expiration of Janicki’s 120 day suspension with pay, he has been and continues to be on a suspension with pay.

procedural issues including the impact of New Jersey Governor Phil Murphy's executive stay at home order due to the Covid-19 health crisis.

On July 24, 2020, Janicki produced his responses to the District's Interrogatories and served his Request to the District for Answers to his Interrogatories.

Various pre-hearing motions were filed by the parties, including motions by Janicki to preclude the District from presenting Washington Township Education Association ("WTEA") representatives as witnesses; to preclude the District from supplementing its evidence with an April 1, 2020 grievance arbitration decision by Arbitrator Arnold H. Zudick ("Zudick Award");<sup>2</sup> and to quash the balance of a subpoena issued by the District seeking certain evidence from Janicki, including recordings made by him.

On August 24, 2020, the Undersigned issued his Determinations of these Pre-Hearing Disputes. The parties and the Undersigned also returned to their attempts to schedule Hearing dates in the context of Covid-19 and its impact upon the Hearing process. During these efforts, Janicki sought to have the proceeding delayed until such time as an in-person hearing could be safely conducted and objected to remote Hearings; on September 25, 2020 the Undersigned issued his Response and Determinations to Reject Janicki's Demand to Hold In-Person Hearings. Thereafter, Janicki sought relief under the Family First Coronavirus Response Act (FFCRA) as to the scheduling of particular Hearing dates; on October 14, 2020, the Undersigned issued his Determination Re: Janicki's employee status under the FFCRA.

### Hearings

On October 16 and 19, 2020, the Undersigned issued Orders and Notices of Hearings by Zoom remote videoconference.

On October 20, 2020, Janicki produced his List of Potential Witnesses with Summaries of their Testimony, along with evidence that may be relied upon at the time of the arbitration hearing.<sup>3</sup>

---

<sup>2</sup> I.e., after the Commissioner had forwarded this matter for arbitration and the District had forwarded Janicki its Statement of Evidence.

<sup>3</sup> Produced separately via email on October 23, 2020 to District counsel and the Arbitrator, but within the 10 day timeframe as provided by N.J.S.A. 18A:6-17.1(b)(3), was the audio file of the January 21, 2020 voicemail message of Superintendent Bollendorf to Respondent Janicki.

Thereafter, Janicki sought that the Zoom Hearings be public and the District asserted the preclusive nature of the Zudick Award, subjects that on December 1, 2020, the Undersigned resolved in his Determinations thereon.

Following the Covid-19 related delays, and because of Covid-19, remote Hearings were held via Zoom on November 6, 12, and 13 and December 2, 9, 11, and 15, 2020. Thereafter, additional scheduled hearing dates of January 21 and 28, 2021 were adjourned because the District filed Amended/Supplemental Tenure Charges.

#### The Amended/Supplemental Tenure Charges

On December 21, 2020, the District certified Amended/Supplemental Tenure Charges, and transmitted them to the Commissioner. On December 28, the Commissioner's Office issued a Notice of Filing of Amended/Supplemental Tenure Charges in Agency Dkt. No. 256-12/20 ("A/STC 256-12/20"). On January 11, 2021, Janicki filed a Motion to Dismiss the Amended/Supplemental Tenure Charges (MTD) in A/STC 256-12/20 and on February 8, the Office referred the amended charges and pending MTD in A/STC 256-12/20 to the Undersigned; it further advised the parties that following receipt of Janicki's MTD in A/STC 256-12/20, the District's filing in A/STC 256-12/20 had been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to the Undersigned's decision on the MTD therein. On March 25, 2021, the Undersigned granted Janicki's MTD in A/STC 256-12/20.

#### Court Order

On February 12, 2021, based upon an earlier filing by the District of a Verified Complaint and Order to Show Cause in the Superior Court of New Jersey Chancery Division,<sup>4</sup> Judge Robert Becker, J.S.C., issued an Order to Confirm Arbitration Award (Court Order) in which the Judge (1) granted the District's application to confirm the Zudick Award; (2) precluded Janicki from repudiating, rejecting, disclaiming, renouncing, contesting and/or challenging the factual findings, credible findings and determination of just cause in Arbitrator Zudick's Award, either through direct examination, cross examination, offering of documentary evidence or arguments of counsel, in the pending tenure arbitration hearing or any other subsequent administrative, judicial or

---

<sup>4</sup> *"The Washington Township Board of Education v. The Washington Township Education Association and Gregory Janicki, Docket No. GLO-C-55-20."*

arbitration proceedings;<sup>5</sup> and (3) ordered the Undersigned to give preclusive effect to the Zudick Award in the instant proceeding.

### Resumed Hearings in T/C 52-2/20 and Post-Hearing

The tenure hearings in T/C 52-2/20 resumed on May 12, 2021 for presentation of Janicki's case therein, at which Hearing he reported his decision not to testify. Accordingly, the Hearing herein closed.

On May 27, 2021, the Undersigned issued his Determination of the parties' dispute regarding tape recordings assertedly made by Mr. Janicki that the District had subpoenaed.

Briefs were submitted by the parties on July 2, 2021.<sup>6</sup> Therein, the District asserts that Janicki was guilty of all of the Tenure Charges it filed against him and should be dismissed, whereas Janicki asserts that the Tenure Charges must be dismissed because the District failed to meet its burden of proving just cause for any discipline and, even if the underlying allegations were proven, the penalty of removal from his tenured position was disproportionate to the alleged conduct.

## INITIAL CONSIDERATIONS

### District Contentions

#### Impact of Court Order

As the Undersigned reported in Fn. 5, the District accompanied its brief with Appendix I in which it listed "Items to be stricken from the record pursuant to Judge Becker's February 16, 2021, Order." Accordingly, in the District's brief, it first asserts that based upon the Court Order, significant portions of the record, particularly the cross examination of certain Board witnesses,

---

<sup>5</sup> In connection therewith, the District accompanied its brief herein with an Appendix I in which it listed "Items to be stricken from the record pursuant to Judge Becker's February 16, 2021 Order."

<sup>6</sup> On July 27, 2021, the District submitted a Reply Letter in which it provided a report on a post-brief case, Kluge v. Brownsburg Community School Corp., 2021 U.S. Dist. LEXIS 129122 (D. In., July 12, 2021) ("Kluge"), that it considers relevant to its tenure charges. The District also requested the Undersigned's leave to offer a response to three points of concern it had with Janicki's brief and Statement of Material Facts.

On July 28, Janicki objected to the District's Reply Letter, arguing that it should not be considered in that the parties' agreement reached at Hearing and the Undersigned's directive issued concerning post hearing submissions were that the issue of reply briefs was to be addressed by the Undersigned, if requested by the parties and deemed necessary by him, whereas the District's Reply Letter brief was unilaterally submitted without leave.

The Undersigned finds, in accord with Janicki's argument, that the District's Reply Letter was submitted in the absence of the District obtaining the Undersigned's determination that the parties would be permitted to file post-brief replies. Accordingly, the District's Reply Letter will not be considered herein.

and certain documents offered into evidence or otherwise filed by Janicki, must be stricken in that he is prohibited from “repudiating, rejecting, disclaiming, renouncing, contesting and/or challenging the factual findings, credible findings” rendered in the Zudick Award. Therefore, the District further asserts, Janicki cannot challenge the factual underpinnings of his own prior discipline and the findings made by arbitrator Zudick when that discipline was put before him, nor can Janicki’s counsel conduct much of the cross examination in which he engaged because they were all prohibited under the Court Order. As a result, the District argues, the Undersigned must give those portions of the cross examination, and of the evidence, pleadings, and exhibits, no probative weight and strike them from the record, as well as give preclusive effect to the Zudick Award. To wit, the District notes, Janicki’s counsel devoted significant portions of his cross examination on issues covered in the Zudick Award, including the March 2016 reprimand letter issued by Business Administrator/Board Secretary Margaret Meehan; Janicki’s April, 2019 failure to attend the Gay Straight Alliance<sup>7</sup> (“GSA”) faculty meetings; and the live-shooter (lock-down) drill in June 2019 during the testimony of Principal Jonathan Strout, Assistant Principal John Savarese and Superintendent Joseph Bollendorf - all of which were matters already resolved against Janicki in the Zudick Award. In addition, the District further argues, Janicki attempted to put documents into the record that he believed vindicated his actions and made statements in his responses to the Tenure Charges that contradict findings in the Zudick Award, all of which the Court Order has since prohibited him from doing. As a result, the District asserts, the Undersigned must give those portions of the cross examination, and of the evidence, pleadings, and exhibits, no probative weight and strike them from the record.

#### Impact of Janicki’s Refusal to Testify

The District next argues that Janicki’s refusal to testify or present any witnesses on his behalf in support of his case is fatal to his defense to the Tenure Charges or to any claim to a lesser penalty. The District points out that Janicki acknowledged under oath on the last day of the hearing that he understood that the Undersigned will make credibility judgments and assess the testimony of the District’s witnesses and proofs without having the ability to hear from Janicki. Accordingly, the District argues, in circumstances in which the employee and/or union has called no witnesses in defense, arbitrators have upheld the disciplinary action based on the employer

---

<sup>7</sup> A District-recognized student group at the High School

simply making out a *prima facie* case to support the discipline, shifting the burden to the accused employee to rebut the employer's proofs. If unsuccessful in this rebuttal, the disciplined employee must accept the consequences. Here, the District argues, Janicki knowingly accepted the risk of his decision.

Accordingly, the District argues, given the decision by Janicki not to testify in his own defense nor present any witnesses in rebuttal of the Tenure Charges, as well as the appropriateness of the penalty, the documentary evidence and testimony presented by the Board's witnesses are unrefuted and establish just cause for Mr. Janicki's termination as a tenured teacher. The District asserts it has not only met its burden of establishing a *prima facie* case in support of all eight of the Tenure Charges by a preponderance of the evidence, but has also shown that Janicki has continuously engaged in unprofessional and discriminatory behavior and, moreover, shows no evidence of interest of changing his intolerant attitude toward gay and transgender students and colleagues.

The District next argues that Janicki's failure to present testimony in support of his case has a further negative impact on his defense: there is nothing in the record to support the assertions and denials that Mr. Janicki made in his Statement of Position in response to the Tenure Charges, and in his Statement of Evidence with exhibits, and that the entire Statement of Position is inadmissible hearsay, since the representations are coming from a piece of paper and not from a witness testifying at the hearing with the opportunity to judge credibility, and whose perception, memory and truthfulness as to the document cannot be tested and who has not offered testimony about the documents he provided as attachments to his Statement of Evidence; more importantly, has provided it no opportunity to cross examine him about said documents and the denials asserted therein. Further, the District argues, absent any testimony from Janicki, the claims in his Statement of Position amount to nothing more than bald assertions wholly lacking in probative value, denials the District asserts that should not be considered by the Undersigned.

### **Janicki's Comments**

The Undersigned notes that in the Statement of Facts and the Brief filed by counsel for Janicki, much reliance was placed upon, *inter alia* (1) disputing events and testimony relating to matters covered by the Zudick Award and (2) Janicki's statements in his February 21, 2020 sworn Statement of Position and sworn Statement of Evidence with related Exhibits.

In addition, the Undersigned further notes, in the Brief filed by counsel for Janicki, he noted that the Court Order arose from a proceeding in which the WTEA and he had prepared and filed a motion to dismiss the District's Verified Complaint and Order to Show Cause and after oral argument by the parties, after which a motion for reconsideration of that Order was filed by counsel, that was denied. As recited by counsel for Janicki, the Court Order precluded Janicki from challenging the factual findings, credibility determinations, and determination of just cause of the Zudick Award.

### **Zudick Award**

In Arbitrator Zudick's Award, he found that the District had just cause to withhold Janicki's 2019 increment because Janicki:

- was disciplined in Ms. Meehan's March 2016 letter of reprimand for conduct that included animus towards LGBTQ<sup>8</sup> students;
- skipped the April 2, 2019 faculty meeting that included a presentation from the GSA student club on LGBTQ topics;
- walked out of a make-up meeting on April 4, 2019, for the portion of the meeting delivered by an administrator that dealt with a LGBTQ presentation;
- showed lack of respect for LGBTQ rights in the April 2019 events that was directly related to Ms. Meehan's March 2016 letter of reprimand and in sync with progressive discipline;
- ignored Mr. Bollendorf's request to submit a written acknowledgement of his obligation as a public school teacher to attend all training sessions, no matter what the content, and respect LGBTQ students and staff; and
- was untruthful with Mr. Strout and Mr. Saverase regarding his instructions to his students during the lockdown drill on June 6, 2019

Arbitrator Zudick also found Mr. Bollendorf and Mr. Strout to be credible witnesses under their direct and cross examinations.

### **Discussion and Determination**

The Undersigned finds valid the District's arguments that, as a consequence of the Court's Order to Janicki, he was required to not challenge the factual underpinnings of his prior discipline and the findings made when that discipline was put before arbitrator Zudick, as well as

---

<sup>8</sup> Lesbian, Gay, Bi-Sexual, Transgender, Queer/Questioning

not make use of the related cross examination herein, because both were prohibited under the Court Order which clearly prohibited him from “repudiating, rejecting, disclaiming, renouncing, contesting and/or challenging the factual and credible findings in the Zudick Award.” In that regard, the Undersigned notes that the Court Order arose from a proceeding in which Janicki participated and argued and, following the issuance of the Order, in which he filed a motion for reconsideration of the Order, that was denied.

In those regards, the Undersigned further notes that in Janicki’s Brief, he notes all of the above-described information without offering a position or argument as to the impact of the Order upon this proceeding. Therefore, in the absence of any argument by Janicki against the application of the Order in the manner sought by the District, the Undersigned grants the District’s request to apply the Court Order to the record evidence herein. As a result, the Undersigned shall not consider any materials presented in Janicki’s Statement of Facts and his Brief as to matters determined in the Zudick Award.

In addition, as to other issues raised in Janicki’s Statement of Facts and his Brief, in view of his decision not to testify herein, the Undersigned shall consider the materials presented in his Statement of Facts and his Brief that rely upon his Statement of Evidence or his Statement of Position from the perspectives of the absence of testimony by him and the facts that there is nothing in the record evidence herein to support the assertions, denials or other pronouncements in his Statement of Position in response to the Tenure Charges or in his Statement of Evidence with exhibits and that his submissions therein have not been tested by his testimony as to such or by the District having an opportunity to cross examine him regarding his testimony or his submissions.



## **THE TENURE CHARGES**

In the District's brief, it summarized its eight Tenure Charges<sup>9</sup> as follows:

**CHARGE 1 - DISTRIBUTION OF DOCUMENT #3<sup>10</sup> IN THE  
WORKPLACE ON OCTOBER 15, 2019**

**CHARGE 2 - EXHIBITING A CONTINUOUS PATTERN OF  
INTOLERANCE AND/OR ANTAGONISM TOWARD  
INDIVIDUALS BASED ON THEIR SEXUAL ORIENTATION AS  
WELL AS GENDER IDENTITY OR EXPRESSION**

**CHARGE 3 - INTENTIONAL MISREPRESENTATIONS TO  
ADMINISTRATION DURING INVESTIGATIVE INTERVIEWS**

**CHARGE 4 - DEFIANCE AND NON-COOPERATION IN  
LEGITIMATE ADMINISTRATIVE INVESTIGATIONS**

**CHARGE 5 - ILLEGAL TAPING OF PRIVATE CONVERSATION  
AMONG ADMINISTRATION AND COUNSEL**

**CHARGE 6 - RETALIATION AND INTIMIDATION OF WITNESSES**

**CHARGE 7 - POSTING RELIGIOUS REFERENCES IN LESSON  
PLANS**

**CHARGE 8 - COMMENTS TO STUDENTS**

### **TENURE CHARGES 1 AND 2**

#### District's Evidence and Arguments

The District describes its Charge 1 as alleging that on October 15, 2019, Janicki surreptitiously and without authority placed Document #3 in the 11-12 Main Office of the High School in which he taught, next to the frequently visited and highly accessible teacher sign in sheet, creating the false impression that it was an official District handout.

Charge 2 incorporates the events set forth in Charge 1, the District reports, as part of an alleged continuous pattern of intolerance and/or antagonism toward the rights of LGBTQ individuals by Janicki, combined with not being able to separate his personal religious beliefs from his duties as a public school teacher. The District notes further that Charge 2 also references the

---

<sup>9</sup> The District, of course, described each Charge more fully, along with the District's Preliminary Statement and Statement of Facts in support of Tenure Charges, when it provided the Tenure Charges to Janicki and forwarded them to the Commissioner.

<sup>10</sup> Document #3 is a document regarding which Janicki denied involvement throughout these proceedings. As to the document itself, the parties stipulated to its conflict with the District's policies and the inappropriateness of both its content and its presence and its title within the District's premises, as well as to the exclusion from this proceeding of its title because of its provocative nature. Accordingly, the document was designated as Document #3 throughout this proceeding and will be solely described as such by the Undersigned herein.

previous disciplinary actions taken against Janicki - the March 2016 Meehan letter of reprimand and the increment withholding based in part on not attending the April 2019 GSA faculty meetings dealing with LGBTQ issues, as well as his failure to reaffirm in writing his commitment to attend mandatory training on LGBTQ issues, as described in the Zudick Award, upon which the District relies as support for its assertions.

In that regard, the District notes the Zudick Award's description of Janicki being disciplined in Ms. Meehan's March 2016 letter of reprimand for conduct that included animus towards LGBTQ students; skipping the April 2, 2019 faculty meeting that included a presentation from the GSA student club on LGBTQ topics; walking out of a make-up meeting on April 4, 2019, for the portion of the meeting delivered by an administrator that dealt with the LGBTQ presentation; and ignoring Mr. Bollendorf's request to submit a written acknowledgement of his obligation as a public school teacher to attend all training sessions, no matter what the content, and respect LGBTQ students and staff, all of which Arbitrator Zudick found to be a direct line in progressive discipline and that Janicki did not "get the message" regarding his professional duty to respect the LGBTQ rights of students and staff.

The District asserts that in October 2019, just months after Janicki's increment withholding was put in place, he answered Arbitrator Zudick's question - whether Janicki had gotten the message - when his actions centered on Document #3, and other material it asserts he introduced into the workplace, climaxed his pattern and caused the last step of progressive discipline in the Tenure Charges.

#### Tenure Charge 1

Regarding Charge 1, the District asserts that it has proven it by a preponderance of the evidence through the testimony of High School Executive Principal Jonathan Strout, Business Administrator/District Affirmative Action Officer Janine Wechter, and Superintendent Joseph Bollendorf, as well as the surveillance videos of the High School 11-12 Main Office incident on October 15-16, 2019, which show that Document #3 was placed on the counter by Janicki at 2:37 pm on October 15 and that on the morning of October 16, starting at 6:13 am, when staff started to come in, Document #3 was uncovered. The District asserts that the videos depict a premeditated, deliberate plan by Janicki to furtively leave copies of the Document #3

article in the 11-12 Main Office for staff to see and hopefully take and mistakenly think it was an official District communication.

In that regard, the District asserts, first, that Janicki's explanation to Mr. Strout that he, Janicki, saw Document #3 in the faculty room and it was left there by the psychology department, after first claiming he never saw the document before, was false on its face - there is no psychology department nor any psychology teachers at the High School.

Second, the District asserts, when Janicki first entered the 11-12 Main Office, he initially looked around to see that no one else was there, whereas he had no reason to put the stack/folders of papers in his hands down on the counter to check his mailbox, since he could easily see he had no mail from where he was at the counter, a distance of several feet, and manipulated his fingers and eyes as he carefully picked up the stack and left the copies of Document #3 on the counter from the only papers in his hands that are loose and not in a manila folder.

The District cites Mr. Strout's testimony as to his conclusion, after viewing the video, that Janicki's actions were intentional:

I believe they were left intentionally for a number of reasons. You know, I'm not sure why he - when you come in, you can see, he looks at the mailboxes, he never actually took anything out of his mailbox, so why he put stuff down to go over to the mailbox is peculiar.

And when he comes back and he kind of looks down to see that he's pulling everything up that he had placed down and he turns and he walks out with everything but the stack of documents that was underneath the folders that he had.

The District further asserts that the timing of the appearance of Document #3, as well as its location, further supports the finding of calculated design: as Mr. Strout noted in his testimony, minutes before Janicki left Document #3 in the 11-12 main office, the High School finished a professional development session on the District's Student Transgender policy that Document #3 undermines. Mr. Strout further explained that putting copies of Document #3 next to the teacher sign-in sheet also was intended to spread Janicki's misinformation to as many staff members as possible:

It's placed in the most highly visible area, an area that pretty much every staff member walks by that morning. And one could reasonably and most appropriately assume that documents that are left there are really approved by administration; they're documents that, you know, we want our staff to take and they're placed there because of their high level of importance. Teachers, when they enter, they sign in in a book. It was left directly next to the book in plain sight of anyone who signs in each day and signs out each day, it was left in that exact spot. A far more visible place, quite frankly, than documents that were left in the faculty lounge where people may or may not enter. This particular location was the primary spot that everybody has to cross paths with at the start of the day.

The District next notes that the video depicts several staff members unknowingly picking up Document #3 in the normal course of their professional duties, as if it were something left by administration, and Mr. Strout's testimony in which he notes that several staff members at the High School were part of the LGBTQ community and were disturbed, upset and crying upon being exposed to Document #3, which was corroborated by the testimony of Teacher Kristen Meares regarding her experience finding Document #3 that morning, which she said disturbed and upset her, leading her to research the American College of Pediatricians listed thereon as the source, as well as the testimony of Teacher Brittany Mason as to her being very upset in finding the document in the Main Office, all within the context of her personal experiences as a teacher of Humanitarian Studies and Social Justice and having a sister who is part of the LGBTQ community and of knowing students who do not identify with their gender assigned at birth.

The District also notes Mr. Strout's testimony that it did not matter if no student saw Document #3 - the damage to the school environment was paramount and did not make any difference in determining Tenure Charges:

Even if they weren't in the LGBTQ, just the level of just, you know, tearing down the climate and culture of the school, the intent to do that was the issue. And it didn't matter if a student saw it. It doesn't matter if anybody saw it, really, because it had the potential to upset and offend people, create a hostile work environment, and staff members did see it, and they were upset.

Mr. Strout further testified that he believed that the repeated unprofessional behavior from Janicki was beyond remedial measures:

The concern was with the nonstop intent to be insubordinate and act in a way that was completely unprofessional and unacceptable. I just - I had enough. I just couldn't continue to tolerate this anymore. Well, it's yet another example, quite frankly, of insubordination for Mr. Janicki to come and leave a document minutes after I had just delivered required professional development and a review of a Board-approved policy. And to leave it in the manner in which he left it was a purposeful attempt to completely undermine the work that we're doing and the requirements of my position as a leader in the building. I mean content aside, he specifically left something minutes after professional development that was exactly contrary to the professional development that was delivered and left it in a place where it was highly visible and could be perceived by whoever picked it up to have been supported and approved and left there by administration. It was absurd.

The District next notes that Mr. Bollendorf directed Administrator/District Affirmative Action Officer Janine Wechter ("AA Officer") to investigate the incident because the sensitive nature of the documents deserved the attention of the AA Officer. Ms. Wechter issued a December 20, 2019 Investigation and Recommendation ("Wechter Report") wherein she outlined the second interview of Janicki held on November 13, 2019 in which he responded substantively to the allegations of leaving Document #3 in the 11-12 Main Office and her initially asking him if it was still his position that he did not leave Document #3, as he had previously told Mr. Strout and Janicki's Yes response, at which point Gerald Taraschi, the WTEA President, interjected his own question of whether it was true that Mr. Janicki also previously told Mr. Strout that Mr. Janicki had never seen Document #3 before, to which Mr. Janicki also said Yes. Following these two confirmations, Ms. Wechter showed Janicki the video; she testified he replied:

And then Mr. Janicki said that he could - he said he didn't leave them, but then he said I guess I could have picked them up by mistake in the faculty room and then mistakenly left them on the counter. I don't know.

Ms. Wechter, who watched the video several times, testified her view was that Janicki's explanation was a lie:

I just felt that if you watch the video - like I said, I watched it a number of times. I think that his actions are deliberate. I think that they were thought out. You know, and the document was left during a time where the school had announced LGBTQ Coming Out Day. There was recently a faculty meeting about a new transgender policy that, you know, we had to put into place. In the past, my investigation showed that he wasn't truthful when he was asked questions. He, you know, was uncooperative.

Because at - well, as he enters the main office, he's kind of looking around and even looks up at the camera. And he doesn't actually sign out of the sign-in book. He puts down his - the documents next - or his folders he was carrying next to the sign-out book, but leans over to - takes a couple of steps over to check his mailbox. There's nothing in his mailbox. And then when he comes back to get his folders, he kind of looks to the side and picks up everything but the papers that were left.

The District notes that in the Wechter Report, Ms. Wechter recited her conclusions:

I find Mr. Janicki's initial denial to Mr. Strout of leaving Document 3 in the 11/12 office, and his subsequent explanation to me that he may have inadvertently picked up the material and then inadvertently left it behind, to be totally incredible. I also find that Mr. Janicki's initial refusal to answer my questions during the November 4, 2019 interview Mr. Janicki is in violation of District Policy 3281, Inappropriate Staff Conduct. My reasoning is as follows:

It must be noted that several days prior to [Document #3] being introduced into the 11/12 main office, and Document 1 and Document 2 were found in the faculty room, the High School publicly acknowledged "LGBTQ Coming Out Day." Subsequent to this announcement, Mr. Janicki is seen on the video from the security camera in the main office entering the office with a stack of folders under his arm. He first looks around the office. He places the folders next to the staff sign in sheet on the counter and then moves off camera to the left, presumably to check his mailbox. The first question I have is why Mr. Janicki had to put the stack of papers down on the counter to check his mailbox?

Putting that aside, Mr. Janicki returns to the counter after a few seconds to pick up the stack of papers. As he does this he leans over and looks at the side of his pile, and then inserts his hand toward the bottom of the stack of folders and documents so that he ends up leaving behind the document that the staff members uncovered the next day. Based on the above, Mr. Janicki's actions were deliberate and premeditated, and may have been done in reaction to the High School's celebration of LGBTQ Coming Out Day. No matter what the motive, Mr. Janicki put the stack of papers on the counter with the specific intent to leave behind the material from [Document #3]. His initial defensive posture with Mr. Strout, his denial, and then his story that this was all a mistake, are not worthy of belief.

The District argues that the Wechter Report and Ms. Wechter's testimony establish that Janicki violated numerous District policies: 1) Policy 5756, Transgender Students; 2) Policy 1140, Affirmative Action Program; 3) Policy 1530, Equal Employment Opportunities; 4) Policy 3281, Inappropriate Staff Conduct; 5) Policy 3211, Code of Ethics; and 6) New Jersey Department of Education, Transgender Student Guidance for School Districts.

In the Wechter Report, Ms. Wechter recommended to Mr. Bollendorf that he consider disciplinary action up to and including Tenure Charges based upon Janicki's insubordination, untruthfulness and creation of a hostile work environment and violation of the affirmative action policy and other District policies, citing repeated violations of its policies and New Jersey statutes protecting gay and transgender students, noting that the March 2016 Meehan letter of reprimand and the increment withholding in 2019 were partially based on not attending the LGBTQ faculty meeting presentation, as well as the offensiveness of the message from Document #3:

Well, I thought, first and foremost, that the purpose of the investigation was, you know, that incident because it was reported by staff members who were upset. So, I did determine that he did leave the document on the counter and where he left it was - it was left next to a staff sign-in book so it was in a place where staff would see it. And, also, as you could tell from the video, in that area on the counter, that's where administration tends to leave things out that they want the staff to see or pick up, you know, especially if it's, you know, a half-day schedule or an assembly schedule something that they would need for that day. So, it was left out as if, you know, it could be perceived as District documents that were left out.

And type of document that was left out, in - in my opinion, could have left the District open for somebody filing a hostile work environment claim or - and then again staff members were rightfully upset and - and that's what basically what led to the investigation.

The District notes that Mr. Bollendorf echoed these concerns:

Because anybody who found this, not knowing where it came from, finding it on the counter of our 11-12 Main Office could have incorrectly deduced that it came from the District, and certainly had the very strong potential for creating a hostile work environment, particularly by those that are protected - a protected class in this area, and/or those that are extremely sensitive to those in that protected class.

Mr. Bollendorf accepted the Wechter Report and testified that as a previously long-term Principal of the High School who knew the 11-12 Office well, he had concluded that Janicki had an intentional design to leave the papers in that office:

The mailbox location to the right where you walk into that room has a large counter right below it. Some papers are kept on that counter, things like professional day forms, you know, personal day forms. There is a lot of room on that counter. The notion that somebody who was simply coming in to do a visual inspection of their mailbox having to take a pile of papers

and lay them on the counter across from the mailbox next to the sign-in book to me defies logic. If you're doing a visual inspection, there is no reason to put the papers down at all. You walk over, you look in your mailbox. If something is there that you need to reach in and get, there is a counter directly there right under your mailbox. You set the papers down, you reach your hand in, you take your mail, you pick up your papers and you go. I think it was very calculated that those papers were left on that counter directly next to the sign-in book where they would be left. And I think it's also apparent when he picks the papers back up, that he visually inspects what he's picking up and visually sees what was left behind. There is no doubt in my mind that was done intentionally.

Mr. Bollendorf met with Janicki on January 16, 2020 and informed him of the findings in the Wechter Report and gave him the opportunity to explain his actions, but reports that Janicki sat in silence and did not speak.

#### Tenure Charge 2

As to Tenure Charge 2, the District asserts that Janicki was motivated to continue his pattern of intolerance and antagonism toward LGBTQ issues when he left Document #3. In that regard, the District notes that Arbitrator Zudick described Janicki's discipline in Ms. Meehan's March 2016 letter of reprimand for conduct that included animus towards LGBTQ students; skipping the April 2, 2019 faculty meeting that included a presentation from the GSA student club on LGBTQ topics; walking out of a make-up meeting on April 4, 2019, for the portion of the meeting delivered by an administrator that dealt with the LGBTQ presentation; and ignoring Mr. Bollendorf's request to submit a written acknowledgement of his obligation as a public school teacher to attend all training sessions, no matter what the content, and respect LGBTQ students and staff, all of which Arbitrator Zudick found to be a direct line in progressive discipline and to show that Janicki did not "get the message" regarding his professional duty to respect the LGBTQ rights of students and staff.

The District also notes that Janicki's October 2019 Document #3 actions followed only months after his increment withholding and, in its view, answered Arbitrator Zudick's question - whether Janicki had gotten the message - when his actions regarding Document #3 served as a climax of his earlier pattern of conduct and caused the last step of progressive discipline in the Tenure Charges.



## Janicki's Evidence and Arguments

### Tenure Charge 1

Janicki asserts that the District failed to establish through the testimony of its witnesses and proofs that he engaged in conduct unbecoming a teacher on October 15, 2019 in that neither the District's witness testimony nor the video evidence presented supported the District's allegation that Janicki "distributed" the document or that he purposely left the document in the 11-12 Main Office at the High School to create the false impression that it was an official District handout.

In those regards, Janicki argues that it is uncontested that no District witnesses testified that they thought it was an "official District handout" and there was no testimony to support that the alleged leaving of the article in the Main Office caused any significant disruption to school operations. To the contrary, Mr. Strout testified that the security video depicted only a few staff members taking a copy of the article at issue within the one hour and thirty nine minutes the documents were in the Main Office and both he and Mr. Bollendorf testified that there was no evidence of any students seeing the document, nor was the document distributed to staff, other than the few individuals who picked it up. Further, Janicki notes, Ms. Mears testified that the stack of papers looked like a pile of copies someone had made and inadvertently left behind and Ms. Mason that there is not a past practice of documents or notices from the principal being left next to the sign-in sheet, that it is "not a place where there would be important information." Ms. Mason testified "[T]ypically, there's no documents next to the sign-in sheet," and when asked if the counter is a normal place where official documents or notices from the principal or School District are left, she responded, "Not typically. usually we get either an email...it's distributed through some type of portal like that. So, it's typically not a place where there would be important information."

Janicki further notes that Mr. Taraschi testified, with regard to Document 3, that "to my knowledge at least, [the District] never conclusively proved that it was left there by Mr. Janicki," based upon Mr. Taraschi's review of the video. Janicki also notes that Ms. Wechter testified that if it was a mistake that Document 3 was inadvertently left, there would be no violation of District policies. Mr. Bollendorf testified with regard to individuals placing personal material on the main office desk in a temporary fashion, "[I]t would be fair to say that people have set things down on the counter, sure."

Accordingly, Janicki asserts that, as he stated in his sworn Statement of Position at ¶31, the documents were left behind unknowingly and inadvertently, in conjunction with his checking a personal mailbox, placing a stack of documents and material on a tabletop and then retrieving that same stack of documents and material, inadvertently and unknowingly leaving several pages behind. The District has failed to prove that he left the document in the Main Office, or that the article was left for the purpose of distribution to staff and/or students in violation of District policy and referenced authority.

Janicki also asserts that the District's failure to present evidence that he "distributed" the document and/or that he purposely left the document to create the false impression that it was a District-issued handout also means it has not established that he violated policies 1140 Affirmative Action Program; 1530 Equal Employment Opportunity; 3211 Code of Ethics; 3233 Political Activities; 5756 Transgender Students; and 2260 Affirmative Action Programs for School and Classroom Practices or violated of the New Jersey Department of Education Guidance on Transgender Students; the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.; the New Jersey Administrative Code, N.J.A.C. 6A:7-1 et seq.; and/or Title IX of the Education Amendments of 1972 as alleged.

#### Tenure Charge 2

As to Charge 2, in which the District alleges that Janicki repeatedly exhibited a continuous and ongoing pattern of intolerance and/or antagonism toward individuals based on their sexual orientation, gender identity or expression, he asserts that it has failed to set forth any evidence of his purported intolerance or antagonism of individuals in the LGBTQ community in his role as a public school teacher and that while the District has made the sweeping allegation against him that he is "incapable of complying with his duties as a public educator to be impartial, supportive and respectful to all students and staff members regardless of their sexual orientation or gender identity," it has not produced one instance of his exhibiting an outward animus toward a student or other staff member due to their sexual orientation or evidence in support of this alleged "pattern" for the time when Mr. Strout was employed elsewhere, whereas there is an undisputed history of animosity between Mr. Strout and Janicki. In addition, the District has not established that Janicki is incapable of complying with his duties as a public school teacher to be impartial, supportive and respectful to all students and staff members.

## **Discussion and Determinations - Tenure Charges 1 and 2**

The Undersigned finds that the District has supported its Tenure Charges 1 and 2 with the overwhelming preponderance of the record evidence provided by the parties.

### **Tenure Charge 1**

The District's first Tenure Charge is focused upon its assertion that Janicki was responsible for placing Document #3 on the counter in the 11-12 Main Office during the afternoon hours on October 15, 2019 such that staff noted it on the next morning upon their arrival at work and entry into the 11-12 Main Office area. As noted earlier, the inappropriate and provocative nature of Document #3 in the District workplace was stipulated by the parties, based upon which the Undersigned determined at Hearing that it should receive the neutral designation in the record as "Document #3." Accordingly, the only disputed issue in this proceeding is whether Janicki was responsible for the document being placed where it was found.

The District's investigation of Document #3 was initiated because of the document's discovery by staff on the morning of October 16, 2019 and started with a review of the video recording of the preceding evening events in the same area. That review showed Janicki in the vicinity, which led to his being interviewed, initially by Mr. Strout and then by Ms. Wechter. As a result, the Undersigned further notes, a second issue arose beyond the first - Tenure Charge 1's question of whether Janicki was responsible for the document - the second issue being Tenure Charge 3's concerns about his conduct during the interview process.

The interview process started with a review of the video recording showing Janicki's appearance in the 11-12 Main Office on the afternoon of October 15, 2019 for several minutes, during which he placed some papers on the counter at 2:37 pm. During Janicki's interviews with the District's witnesses, they report that Janicki changed his reports of his actions at around 2:37 pm on October 15 a number of times, from at first, with Mr. Strout, ignorance of the papers - "he never saw the document before" - to speculation about the papers - it was left in the faculty room by the psychology department. Then, with Ms. Wachter, who initially asked Janicki whether it was still his position that he did not leave Document #3 - as he had previously told Mr. Strout - and received Janicki's Yes response.<sup>11</sup> Following these two confirmations, Ms.

---

<sup>11</sup> At which point Mr. Taraschi interjected his own question: was it true that Janicki also previously told Mr. Strout that Janicki had never seen Document #3 before - to which Janicki also said Yes.

Wechter showed Janicki the video and testified he replied “he could - he said he didn't leave them, but then he said I guess I could have picked them up by mistake in the faculty room and then mistakenly left them on the counter. I don't know.”

In Janicki’s arguments he notes that leaving the article in the Main Office did not cause any significant disruption to school operations and there was no evidence of any students seeing the document, nor was the document distributed to staff, other than the few individuals who picked it up. Further, Janicki notes, the stack of papers looked like a pile of copies someone had made and inadvertently left behind and there is not a past practice of documents or notices from the principal being left next to the sign-in sheet, that it is “not a place where there would be important information and usually employees get either an email or a distribution through some type of portal like that. Janicki also notes that Mr. Bollendorf testified with regard to individuals placing personal material on the main office desk in a temporary fashion, “[I]t would be fair to say that people have set things down on the counter, sure.”

Accordingly, Janicki asserts that as he stated in his sworn Statement of Position at ¶31, the documents were left behind unknowingly and inadvertently, in conjunction with his checking a personal mailbox, placing a stack of documents and material on a tabletop and then retrieving that same stack of documents and material, inadvertently and unknowingly leaving several pages behind.

The Undersigned notes the extensive and detailed analyses of the video - and Janicki’s responses - that the District’s witnesses, which also included Mr. Bollendorf, provided in their testimony, analyses that the Undersigned, also after his own many extensive reviews and careful studies of the video recordings, fully adopts. The witnesses and the Undersigned analyses leave no doubt that Janicki left Document #3 on the counter in the 11-12 Main Office and did so intentionally and deliberately, notwithstanding Janicki’s protestations that the District’s evidence is insufficient to so establish.

In addition, the Undersigned notes that he agrees with the District that whether Document #3 was ever seen by a student or otherwise received wide distribution or caused any significant disruption to school operations are not the material issues herein in that a failure to accomplish student viewing or wide distribution or significant disruption does not excuse or mitigate an effort to accomplish those goals. Similarly, lack of success in having employees pick up papers by

putting them in an unusual location is not the test of the propriety of making an effort to get the employees to pick up those papers. Accordingly, the Undersigned concludes that Janicki's assertion that his sworn Statement of Position at ¶31 - that the documents were left behind unknowingly and inadvertently - carries negligible weight and is not persuasive, compared to the evidence provided by the District's witnesses to the contrary.

Therefore, in the absence as well of any testimony by Janicki that offered any alternative explanations of his actions and/or his intent during the afternoon on October 15 in the 11-12 Main Office, the Undersigned concludes that the evidence provided by the District that Janicki intentionally and deliberately left Document #3 on the counter is sufficient to establish support for its Tenure Charge 1.

#### Tenure Charge 2

In Tenure Charge 2, the District asserts that Janicki acted in continuance of his pattern of intolerance and antagonism toward LGBTQ issues when he left Document #3 and in furtherance of his prior conduct that, as found in the Zudick Award, included animus towards LGBTQ students; skipping the April 2, 2019 faculty meeting that included a presentation from the GSA student club on LGBTQ topics; walking out of a make-up meeting on April 4, 2019, for the portion of the meeting delivered by an administrator that dealt with the LGBTQ presentation; and ignoring Mr. Bollendorf's request to submit a written acknowledgement of his obligation as a public school teacher to attend all training sessions, no matter what the content, and respect LGBTQ students and staff, all of which showed that Janicki did not, as Arbitrator Zudick said, "get the message" regarding his professional duty to respect the LGBTQ rights of students and staff. In the District's view, Janicki's actions centered on Document #3 climaxed his earlier pattern of conduct.

Janicki responds that the District has not produced one instance of his exhibiting an outward animus toward a student or other staff member due to their sexual orientation or evidence in support of its alleged pattern and has not established that he is incapable of complying with his duties as a public school teacher to be impartial, supportive and respectful to all students and staff members.

However, notwithstanding Janicki's assertions that the District has not produced one instance of his exhibiting an outward animus toward a student or other staff member due to their

sexual orientation, the Undersigned finds that Janicki ignores the Zudick Award findings recited above and, of course, precede the Undersigned's findings herein as to Janicki's role in Document #3. Accordingly, the Undersigned instead concurs with the District's assertions that Janicki's role in Document #3 showed a continuing pattern by Janicki of intolerance and antagonism toward LGBTQ issues and constituted another example of that conduct. Part of the reasons for the Undersigned's conclusion is how futile, self-destructive and poorly executed Janicki's actions were regarding Document #3, as well as his conduct during his interviews over it, all of which contribute to the Undersigned's conclusion that Janicki was motivated to continue his pattern of intolerance and antagonism toward LGBTQ issues with Document #3 by his outrage and his out-of-control zeal to respond to the recent High School announcement of a LGBTQ Coming Out Day and a faculty meeting about a new transgender policy that Ms. Wachter noted in her Report. The Undersigned finds Janicki's actions were futile in that, as soon as Document #3 was seen, it was removed, not circulated, a totally foreseeable outcome, and self-destructive and poorly executed because he ignored the fact that his actions in the Main Office would be recorded, leading investigators quickly to him seeking an explanation for them. Janicki's conduct during his interviews were similarly futile, also reflecting his poor planning regarding his Document #3 exploit. Therefore, in the view of the Undersigned, Janicki's response of leaving Document #3 manifested his deep and ongoing hostility to the recognition that the announcement of a LGBTQ Coming Out Day and the new transgender policy were receiving from the District, based upon his self-destructive and poorly executed actions arising nearly mindlessly out of that hostility. Accordingly, the Undersigned also concludes that the evidence provided by the District that Janicki intentionally and deliberately left Document #3 on the counter, combined with his earlier pattern of intolerance and antagonism toward LGBTQ issues found in the Zudick Award, is sufficient to establish support for its Tenure Charge 2 - that he repeatedly exhibited a continuous and ongoing pattern of intolerance and/or antagonism toward individuals based on their sexual orientation, gender identity or expression.<sup>12</sup>

---

<sup>12</sup> The District also asserted that Janicki was involved in additional Documents #1 and #2 that further supported its Tenure Charge 2. However, in view of the Undersigned's findings as to Document #3, he finds it unnecessary to determine the significance herein of the additional Documents #1 and #2.

## TENURE CHARGE 3

### District's Evidence and Arguments

The District describes its Charge 3 as alleging that Janicki engaged in unbecoming conduct by repeatedly making intentional misrepresentations to administration when conducting investigations in order to hide and/or mitigate his misconduct and first cites the references in the Zudick Award to his being untruthful with Mr. Strout and Mr. Saverase regarding his instructions to his students during the lockdown drill on June 6, 2019, as well as the testimony of Mr. Strout, Mr. Saverese and Ms. Wechter during the investigation of Document #3.

In support of the District's assertion, it first notes that Mr. Strout conducted his second interview with Janicki during the investigation of Document #3 on October 22, 2019 after, during Mr. Strout's first interview with Janicki on October 16, Mr. Strout testified that Janicki stared at Mr. Strout and refused to answer questions. On October 22, Janicki responded, but, the District asserts, his answers were lies. Mr. Strout's testimony in this regard is that:

So as I always do in interviewing someone, whether it's a staff member or a student, I start it open ended. He was not forthcoming, he was not honest in his responses in my opinion. So I continued to craft my questions in such a way to give him a change to come clean. And, you know, even in his answers in that moment when he finally met and agreed to answer the questions, there was dishonesty even in all of that.

It was: No, I never saw this document. And then it's: Oh, yeah, I did see it. I think it's something from the psychology department. So it was just another example of Mr. Janicki being dishonest.

Q Did you ask him specifically whether he left document number three in 11-12 Main Office counter?

A. Yes.

Q. What did he say about that?

A. First he said he had never seen it. Then he said that it was something that he had seen, but he said no, he did not leave it in the 11-12 Main Office.

Q And then you referred to some type of interaction about the word "purposely." Could you tell us more in detail about that? How did that communication arise and who said what?

A. Yeah I actually backed the word “purposefully” out. I said, you know, did you purposefully leave these documents? And then, you know, I had seen the video, I knew he left them. So I took the word “purposefully” out and specifically stated to him and said: Let me clarify by removing the word purposefully, did you leave this document in the 11- 12 Main Office? Whether purposefully or not, did you leave it there? And his response was no.

The District asserts that Janicki’s dishonesty continued during his interview with Ms. Wechter on November 13, 2019, outlined in Charge 1, and regarding which she noted that his untruthfulness was in violation of Policy 3211, Code of Ethics that mandates District educators “believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nature of democratic principles.” The District notes that Ms. Wechter also highlighted in her testimony and in her Report the changing stories by Janicki, that went from not leaving Document #3, then, to maybe seeing it in the faculty room by the Psychology Department that does not exist, then back to not leaving the document, then confirming Mr. Taraschi’s interjection that he previously told Mr. Strout he never saw Document #3, and then, after seeing the video, claiming he picked up the copies by mistake and left them by mistake.

Mr. Bollendorf agreed:

Well, [Janicki] continued with the story that he had no idea where the papers came from. And then all of a sudden the notion that oh, well, maybe I picked them up accidentally in the faculty work room and then left them behind accidentally emerges is inconsistent and not credible. You know, now we’re changing our story. That’s, you know, that’s a tell sign there that we’re not being honest about the events.

What changed is initially indicating that he had no knowledge of the document, didn’t recognize the document. And then when the question was rephrased and removed the word “purposeful,” he indicated that he had seen the document in the faculty room and, in fact, it was left there by the psychology department. So he went from not being familiar with the document, not having seen it, to now having seen it, having knowledge of it and, in fact, the knowledge was acute that he knew what department it came from.

In short, the District asserts, Janicki has lied to every administrator who has interviewed him as part of an investigation for misconduct.



## Janicki's Evidence and Arguments

Janicki asserts that the District has failed to produce sufficient evidence in support of its allegation that he repeatedly made intentional misrepresentations to administration when conducting investigations in order to hide and/or mitigate his misconduct in its allegation that he "repeatedly lied" to administration regarding his leaving the referenced document in the 11-12 Main Office at the High School.

Moreover, Janicki notes, the District has already imposed discipline through withholding of his increment based on prior lying allegations. Therefore, Janicki asserts, the District is seeking duplicative and punitive punishment through the filing of Tenure Charges, based only on the new assertion that Janicki allegedly lied about leaving a document in the 11-12 Main Office. Janicki asserts that the only allegation which was not considered in conjunction with the increment withholding action is that Janicki "lied" during the District's investigation into the documents found in the Main Office and this remaining allegation does not give rise to a basis for termination from his tenured employment. See In re TenureHearing of Barbara Emri, OAL Dkt. No. EDU 457-00, Agency Dkt. No. 18-6/00, 2002 WL 31042788, initial decision (Aug. 30, 2002), 2002 WL 32590922, Comm'r. decision (October 21 2002 discipline final decision (Dec. 5, 2003);)(racially inappropriate comments and multiple acts of inappropriate behavior involving students, colleagues and parents, insubordination, failure to follow progressive discipline).<sup>13</sup>

Janicki next notes that he has shown compliance with his 2016 discipline by completing the required training and that, with the limited exception of the 11-12 Main Office investigation, the allegations set forth in Tenure Charge 3 have all been addressed in the context of the increment withholding proceeding in a decision which was not issued until after the Tenure Charge process was initiated. Therefore, Janicki asserts, Tenure Charge 3 should be dismissed - the District has failed to produce evidence that Janicki has made intentional misrepresentations to administration. Furthermore, termination would be disproportional to the District's allegation that Janicki made intentional misrepresentations in conjunction with the District's investigation.

---

<sup>13</sup> Janicki's additional arguments regarding progressive discipline and its impact upon the District's determination to dismiss him are discussed herein under Penalty.

### **Discussion and Determinations - Tenure Charge 3**

The Undersigned finds that the District has supported its Tenure Charge 3 with the overwhelming preponderance of the record evidence provided by the parties.

The Undersigned first notes that the record herein is rife with examples of Janicki's intentional misrepresentations to administration, in addition to those found in the Zudick Award. For example, the Undersigned notes that in the discussion above of Tenure Charge 1, the evidence presented by the District's witnesses established that, the Undersigned now finds, Janicki was not forthcoming or truthful in his responses to the District's witnesses during the Document #3 interview process. In that regard, the Undersigned also notes as to that process, Mr. Bollendorf's summary of what Mr. Strout and Ms. Wachter had encountered while interviewing Janicki: Janicki continued with the story that he had no idea where the papers came from, then all of a sudden, well, maybe he picked them up accidentally in the faculty work room and then left them behind accidentally, changing from initially indicating he had no knowledge of the document and didn't recognize the document. Mr. Bollendorf continues: when the question was rephrased to remove "purposeful," Janicki indicated that he had seen the document in the faculty room and, in fact, it was left there by the psychology department - so he went from not being familiar with the document, not having seen it, to now having seen it, having knowledge of it and, in fact, the knowledge was acute that he knew what department it came from. Ms. Wachter's encounter was that Janicki repeated that he never saw Document #3, and then, after seeing the video, claimed he picked up the copies by mistake and left them by mistake.

Once more, the Undersigned is compelled by the record evidence to find that Janicki's assertions - that the District has failed to produce sufficient evidence in support of its allegation that he repeatedly made intentional misrepresentations to administration when conducting investigations in order to hide and/or mitigate his misconduct in its allegation that he "repeatedly lied" to administration regarding his leaving the referenced document in the 11-12 Main Office at the High School - are not supported. Rather, the Undersigned instead again concurs with the District's assertions - that Janicki repeatedly made intentional misrepresentations to its administrators when they were conducting investigations of his conduct - as evidenced in the Zudick Award, and again during the District's investigation of Document #3, with Mr. Strout and Ms. Wechter, as recited above by the Undersigned.

Accordingly, the Undersigned also once more concludes that Janicki's assertion that his sworn Statement of Position at ¶31 - that he left the documents behind unknowingly and inadvertently - carries negligible weight and is not persuasive, compared to the evidence provided by the District's witnesses to the contrary in their recitations of his shifting stories during their investigations.

Further, again, in the absence as well of any testimony by Janicki that offered any alternative explanations as to the reasons for his shifting stories during the District's investigations of his actions and intent during the afternoon on October 15 in the 11-12 Main Office, the Undersigned concludes that the evidence provided by the District's witnesses supports the conclusions they made that Janicki repeatedly made intentional misrepresentations to them when they were conducting their investigations. Accordingly, the Undersigned concludes that the evidence provided by the District is sufficient to establish support for its Tenure Charge 3.

#### **TENURE CHARGE 4**

##### District's Evidence and Arguments

The District describes its Charge 4 as alleging that Janicki engaged in conduct unbecoming by displaying defiance in not responding to legitimate questions by administration during investigative interviews surrounding his leaving copies of Document #3 in the 11-12 Main Office, in particular in the Wachter Report's summary:

Mr. Janicki has been defensive and non-cooperative through this process. Mr. Strout and I spent a significant amount of time trying to prepare for meetings with Mr. Janicki only to have him either call out sick or refuse to answer the questions. Both Mr. Strout and I explained the purpose of our investigations and that he did not have the right to refuse to answer. He was warned that such action would be considered insubordination.

Mr. Strout added:

That meeting was - that was, you know, that was unlike any other meeting I had ever had with him because there seemed to be this refusal to answer questions. When I say that he stared at me for a period of about a minute multiple times when I asked him a question, I literally mean a minute, I mean 60 seconds. It was incredibly bizarre and disturbing ...

Yeah, they asked for a recess, if we could step out. Mr. Savarese and I could step out so they could speak privately and I gave them that opportunity. When I came back, I even remember rephrasing the

question, like did you purposely leave them, leave any documents? And he-you know, again this staring, as if looking through me, which was incredibly disturbing.

I have never been involved in an interview like that where there was complete and utter refusal to answer questions. And furthermore, like if someone doesn't understand a question, they'll say can you repeat that or they'll say I'm not comfortable answering that until I talk to my representative. This was very different. This was staring at - just staring at me.

Mr. Bollendorf reported similar behavior during his meeting with Janicki on January 16, 2020, which Ms. Wechter described as disrespectful and unprofessional.

#### Janicki's Evidence and Arguments

Janicki denied the allegation by the District alleged that he engaged in conduct unbecoming a teaching staff member in that he repeatedly exhibited defiance and did not cooperate with legitimate administrative investigations by refusing to answer questions posed to him and staring blankly at administration when asked to offer explanations for his conduct. Respondent Janicki's Statement of Position, ¶43.

Janicki notes that it is uncontested that he never refused to attend a meeting with administration. In one instance, with the acknowledgment and approval of administration, Janicki's union representative attended on his behalf and in following the advices of his union representative, he at times did not provide substantive responses given pending grievances and pending arbitrations and not wanting to prejudice his position in conjunction with them.

Janicki also denied the "staring blankly" characterization, explaining that there were instances where he would look ahead or to the side, and not offer a substantive response, given the advices that he received concerning not wanting to prejudice his ongoing contest of disciplinary action being taken against him, which was the basis of his grievance and a pending arbitration. Respondent Statement of Position ¶44.

In several instances, Janicki reports he deferred answering based on advices of legal counsel and reported that on advice of his personal legal counsel he would rather not answer the question at that time. Respondent Statement of Position, ¶44. Invocation of the Fifth Amendment privilege against self-incrimination is not per se conduct unbecoming a teacher. See Laba v.

Newark Board of Education, 23 N.J. 364 (1957). See also Lowenstein v. Newark Bd. of Education, 35 N.J. 94, 99 (1961). Accordingly, Janicki argues that Charge Four should be dismissed as the District has failed to produce evidence that he exhibited defiance and/or did not cooperate by refusing to answer questions.

#### **Discussion and Determinations - Tenure Charge 4**

The Undersigned finds that the Janicki conduct cited by the District during its witnesses' testimony does not rise to the level of defiance and non-cooperation to an extent that the conduct would support Tenure Charge 4. The Undersigned agrees that the District's investigative interviews were legitimately conducted and included high levels of frustration with Janicki. Nonetheless, the instances of conduct by Janicki cited by the District were so intertwined with his right to representation and his assertions thereof, as well as his reliance upon counsel's advice, and with what the Undersigned finds may have been normal reactions to his receiving negative news that, while uncomfortable and unpleasant for all involved, and while certainly at times impeding his ability to cooperate with the investigatory process, that Janicki's conduct during those interviews did not rise to a level that it should be considered defiance. Accordingly, the Undersigned concludes that the evidence provided by the District is not sufficient to establish support for its Tenure Charge 4.

#### **TENURE CHARGE 5**

##### District's Evidence and Arguments

The District describes its Charge 5 as alleging that Janicki engaged in conduct unbecoming on November 13, 2019 when he intentionally tape recorded a private conversation between Ms. Wechter and Assistant Superintendent of Curriculum and Instruction Jack McGee, as well as their conversation with counsel.<sup>14</sup> The District contends that the Charge is supported by the testimony of Supervisor Casey Corigliano in which he reported that Janicki had reported to Mr. Corigliano that he had taped meetings with administration in the past, particularly meetings with Mr. Strout. In addition, Janicki reported to Mr. Taraschi that Janicki had left a recording device in the room with Ms. Wechter and Mr. McGee while talking to counsel, with Janicki and Mr. Taraschi waiting outside. In addition, on November 14, 2019 Janicki communicated

---

<sup>14</sup> Janicki concedes the conversation was recorded and contends such was inadvertent and not willful.

to Mr. Corigliano that Janicki had secretly taped the private conversations among Ms. Wechter, Mr. McGee and the District's counsel while Janicki was out of the interview room on November 13, 2019. In that regard, Mr. Corigliano described Janicki as first approaching him as a friend, long-time colleague and confidant with the conversation starting with Janicki stating "I don't know if I can trust you," indicating, the District asserts, that Janicki was about to reveal inculpatory information to a trusted friend that he did not want anyone else to know about. Mr. Corigliano testified that Janicki went on to state "I got it all right here" as he patted his pocket to indicate a cell phone/recording device to indicate he had hard evidence of the District targeting him, smiling the whole time. The District concedes that Janicki did not utter the word "intentional" during this admission, nor did he indicate the recording was inadvertent, but argues that Mr. Corigliano believed Janicki was expressing that the recording was purposeful.

I was left with the idea, based upon the conversation that we had, based upon the action of Mr. Janicki, that he had secretly recorded the conversation between Ms. Wechter and Mr. McGee.

Q. That was your impression? So is that your answer now, sir, that your impression and your takeaway was that he did it intentionally, but he never said that?

A. The way in which all - you put all of the evidence together, that's what my impression was, yes.

After some admitted confusion, the District notes, as to whether Mr. Corigliano heard "inadvertent" or "intentional," when questioned, he cleared up the ambiguity by testifying that he had "every reason to believe that Mr. Janicki left the - knowingly left his phone in the room when he and Mr. Taraschi were asked to leave. That's my impression." T 1111, lines 24-25 and 1112, lines 1-2, and

Based upon how his - and I believe I testified to this on day one, on the demeanor which he said to me "I got it all right here," he had a smile on his face about it, was patting his pants pocket. And then also the other - you know, the history that he has told me in the past that he has recorded meetings. I had every reason to believe that he knew full well what he was doing. T. 1112 lines 6-13.

As to Janicki's claim that the tape recording of the Wechter/McGee/Counsel discussion was inadvertent, the District argues it is belied by the undisputed record that he is experienced in surreptitiously tape recording investigative meetings with administration. The District

further notes that even if recording the private conversation among Ms. Wechter, Mr. McGee and counsel by Janicki was unknowing at first, his failure to correct an alleged mistake, admit to the recording, and hand over the tape and copies, continue the path of non-disclosure and cover-up, which establishes that he is guilty of unbecoming conduct on those bases.

### Janicki's Evidence and Arguments

Janicki asserts that the District has failed to meet its burden of proof that he engaged in conduct unbecoming a teaching staff member by allegedly tape recording a private conversation between Administration in which he was not a party during an investigative interview on November 13, 2019 and that he did not willfully record any private conversations and had no intention to record others when asked to leave the room where the investigation was being conducted, but inadvertently left his phone behind. Respondent Janicki's Statement of Position, ¶46. As to Mr. Corigliano's testimony, it was only his "impression" that Janicki had secretly tape recorded the conversation and that Janicki never used the word "intentionally." "It was my understanding, yes, it was my understanding that he left the phone there inadvertently." T. 1109:1-11.

### **Discussion and Determinations - Tenure Charge 5**

The Undersigned finds that the District has provided sufficient evidence that Janicki engaged in conduct unbecoming on November 13, 2019 when he intentionally tape recorded a private meeting by leaving his recording device behind, and operating, when he left the meeting for the known purpose of the remaining participants in the meeting consulting with counsel before resuming the meeting. In that regard, the Undersigned finds that Mr. Corigliano's explanations during his testimony of the reasons he so concluded sufficiently support his determinations, in the absence, once more, of an alternative explanation by Janicki as to the meanings that Mr. Corigliano placed upon the exchanges that Mr. Corigliano described with Janicki about the recording. Mr. Corigliano's testimony made clear that when Janicki said he "got it all right here," smiled and patted his pants pocket, given Janicki's history - he had told Mr. Corigliano in the past that he had recorded meetings - Mr. Corigliano had every reason to believe that Janicki knew full well what he was doing.

While Janicki attempts to parse Mr. Corigliano's use of the word "impression" in Janicki's assertions that Mr. Corigliano's testimony is unreliable, the Undersigned finds that

Janicki's failure to provide explanations of his actions, upon which Mr. Corigliano relied, leaves Mr. Corigliano's explanations persuasive. Moreover, the transcript excerpt relied upon by Janicki as to whether Mr. Corigliano testified that Janicki acted intentionally was superseded by Mr. Corigliano's later testimony clarifying that he did find Janicki's actions intentional. Accordingly, the Undersigned concludes that the evidence provided by the District is sufficient to support its Tenure Charge 5 that Janicki intentionally tape recorded the November 13, 2019 administrators' meeting with counsel, an action that clearly constituted conduct unbecoming.

## **TENURE CHARGES 6, 7 AND 8**

### District's Evidence and Arguments

The District describes its Tenure Charges 6, 7 and 8 as intrinsically intertwined and arising from events that unfurled on January 21, 2020, after Janicki's meeting with Mr. Bollendorf on January 16, when the latter advised Janicki of the findings of the Wechter Report and that tenure charges will be pursued by the District, followed the next day by Janicki's receipt of the formal notice from Mr. Bollendorf.

The District first notes that at Janicki's January 16, 2019 meeting with Mr. Bollendorf, Janicki did not provide any explanation for his behavior or rebuttal to the charges and simply stared back in silence; further, it notes that the information in the Wechter Report, as to the earlier admission by Janicki to Mr. Corigliano of Janicki's tape recording of the private conversation on November 13, 2019 with administration and counsel, was provided by Mr. Corigliano.

### Tenure Charge 6

In connection with Tenure Charge 6 re: retaliation and intimidation of witnesses, the District notes that on Tuesday, January 21, 2020, the next day back to school after Janicki's January 16, 2019 meeting with Mr. Bollendorf, Janicki engaged in intimidating conduct toward Mr. Corigliano, having been informed that Mr. Corigliano had told administration of the admission Janicki had made to Mr. Corigliano of the secret tape recording and that a referral was made to the Washington Township Police Department, as well as Janicki's engaging in



intimidating conduct during his interaction with Washington Township Police Officer Thomas DiTullio, the High School's School Resource Officer.

As to the District's assertion that Janicki intimidated Mr. Corigliano, it notes that Mr. Janicki went to Mr. Corigliano's office unannounced, stared at him for a few seconds from the doorway, backed up, then came forward again, looked at Mr. Corigliano again, and then sarcastically said, "Thanks" and walked away, an encounter Mr. Corigliano described as:

The manner in which he came into my office, again unannounced, and then the way in which he was looking at me and also looked like he had more words to say, but only said thanks and walked away very dejected looking, you know. There was a - it was - it left me with a very uneasy feeling.

Q. Could you tell us why you felt intimidated by the actions of Mr. Janicki on January 21, 2020?

A. Because of the history that had been happening, knowing that there were some concerns about his professionalism, there had been ongoing, you know, meetings with administration and then for the simple fact that I knew at some point the memo that I wrote in November would come to his information as part of that whole proceeding. You know, having him appear in my office unannounced and the way in which he carried himself made me feel the way I felt that day. T 1028.

Q. Why did you feel intimidated?

A. Given the demeanor, given the reports that he had been depressed, given that he has had a history of, you know, discipline issues that were ongoing, and, you know, whether it's relevant or not, unfortunately pre-Covid we live in a world that school violence was on the forefront of our minds and mental health was on the forefront of our minds. And it was that basis and the basis of which he came into my office and acted in the manner in which he did that led me to that feeling of being intimidated. T 1114.

The District further notes that although Mr. Corigliano admitted during cross examination that he believed that Janicki would not attempt to intimidate him because of their friendship and long standing working relationship, Mr. Corigliano remained steadfast that Janicki's actions in coming to his office unannounced, staring him down and sarcastically saying, "Thanks" was an act of intimidation.

A. When you put all of that together, in that particular case I did feel that was an act of intimidation.

A. In the moment I felt intimidated, yes.

A. That was in the moment how I felt.

T. 1055.

As to the District's assertion that Janicki intimidated Officer DiTullio, it notes testimony that Janicki approached his office, stared for 20-30 seconds and asked - "Do I have you to thank for this?" in reference to the Wechter Report that a referral to local law enforcement was in place for a possible violation of the wiretapping laws. The District concedes that Officer DiTullio was not physically threatened, but notes that he felt the need to stand up and address Janicki, who appeared angry.

#### Tenure Charge 7

In connection with Tenure Charge 7 re: the posting of religious references in lesson plans, the District alleges, via the testimony of Mr. Strout and Mr. Corigliano, that Janicki engaged in unbecoming conduct by posting religious references in quotes from Dr. Martin Luther King in his lesson plans on January 20, 2020 that had no relevance to instruction in the classroom, actions Mr. Strout found bizarre and out of character.<sup>15</sup>

#### Tenure Charge 8

In connection with Tenure Charge 8 re: comments to students, the District alleges that Janicki, in his third period music theory class, made a comment to students that his supervisor "snitched" on him, as supported by the testimony of Mr. Strout, Mr. Corigliano and Mr.

---

<sup>15</sup> The District argues that what Mr. Strout described as Janicki's bizarre and out of character posting of religious references in quotes from Dr. Martin Luther King in his lesson plans on January 20, 2020 - that had no relevance to instruction in the classroom - is relevant herein in that the posting corroborates some testimony of Mr. Bollendorf as to Janicki's religious beliefs and his role as a public school educator; the District also concedes that since Janicki did not testify, it can only speculate and make observations about these issues. The Undersigned also notes that in Janicki's reference in his response to Tenure Charge 7, he cites Mr. Bollendorf's testimony that there were not any quotes Mr. Bollendorf was concerned with and that he was not overly concerned about these quotes.

Accordingly, under the totality of the circumstances described to this point with regard to Tenure Charge 7, the Undersigned finds that the District's admittedly speculative observations as to Janicki's posting of religious references in quotes from Dr. Martin Luther King in his lesson plans on January 20, 2020 do not have a material role to play in this proceeding. Therefore, the Undersigned declines to consider the matters involved in Tenure Charge 7 further.

Bollendorf, after Janicki found out via the Wechter Report that his admission to Mr. Corigliano of the tape recording was reported up the chain of command to the administration, and, while he was teaching, held his head down in his hands and told his students that he was depressed and that he may not be teaching past February, his supervisor snitched on him, conduct that the District asserts was “highly inappropriate,” whether framed as “betrayed” or “snitched.”

### Janicki’s Evidence and Arguments

#### Tenure Charge 6

Janicki argues that the evidence offered by the District re: retaliation and intimidation of witnesses is insufficient to support the allegation that he “engaged in conduct unbecoming a teaching staff member by engaging in retaliation and intimidation of potential witnesses on January 21, 2020 by confronting the Washington Township High School SRO (School Resource Officer) and Mr. Corigliano, after [he] became aware of a referral to law enforcement....” in that the testimony of Officer DiTullio and Mr. Corigliano does not support the allegation that Janicki “confronted” either individual. Statement of Position of Gregory Janicki ¶51.

Janicki notes that Mr. DiTullio testified that he did not feel threatened and was not concerned for his safety when Janicki stopped by his office and that he invited Janicki into his office to talk and he did “not at all” feel intimidated during their “perfectly cordial conversation,” consistent with Janicki’s representations that he has known Officer DiTullio for years and they have had prior discussions on all types of topics. Given the representations in the District’s Affirmative Action report of “investigation by law enforcement of possible criminal activity,” it is not inconceivable that Janicki would seek out the advice of a known colleague who is a law enforcement officer.

Likewise, Janicki notes Mr. Corigliano’s testimony on cross examination that he believed Janicki’s statement that he “would never attempt to intimidate or retaliate against him for any reason.” T. 1051:25-1052:3, 1053:2-3. Janicki further notes that Mr. Corigliano testified to his office open door policy and noted that it did not come as a surprise that Janicki came to his office on that particular day. On these bases, Janicki argues that Mr. Corigliano’s testimony that he was somehow “intimidated” by his longtime colleague is inconsistent with his agreement that Janicki did not raise his voice and seemed dejected and defeated during their exchange. Accordingly,

Janicki argues that the first hand testimony provided by the actual individuals involved in these exchanges with Janicki does not support the District's allegation that Janicki engaged in "retaliation and intimidation of potential witnesses."

#### Tenure Charge 8

Janicki argues re: comments to students that the District has alleged that he engaged in conduct unbecoming by relaying to his students that his supervisor, Mr. Corigliano "snitched" on him and that Janicki told his students that Mr. Corigliano "snitched" on him, further speculating "by telling administration of Mr. Janicki's admission to Corigliano that Mr. Janicki secretly tape recorded the private Wechter/McGee/Solicitor conversation." Again, Janicki asserts, the District is seeking to sustain tenure charges on assumptions without supporting evidence and offered no first hand testimony of this alleged incident, relying solely on the testimony of Mr. Corigliano and Mr. Bollendorf. Janicki also asserts that while both witnesses testified to student(s) report of the word "snitched," limited context was provided. Therefore, Janicki argues that the District has failed to present sufficient evidence in support of this de minimus allegation and accordingly, Charge Eight should be dismissed.

### **Discussion and Determinations - Tenure Charge 6, 7 and 8**

#### Tenure Charge 6

As to the District's intimidation and retaliation assertions in its Tenure Charge 6, the Undersigned finds the District's arguments overreach the record evidence.

In the District's own arguments, it concedes Officer DiTullio was not intimidated and that Janicki provided no reason for Officer DiTullio to be intimidated.

Mr. Corigliano testified on cross examination, as Janicki argues, that he believed Janicki would never attempt to intimidate or retaliate against him for any reason and that it did not surprise him that Janicki came to his office on that particular day and did not raise his voice and seemed dejected and defeated during their exchange. In that regard, the Undersigned compares Mr. Corigliano's testimony on direct examination in response to indisputably leading questions by District counsel,<sup>16</sup> Mr. Corigliano responded with extensive explanations that lasted 175

---

<sup>16</sup> Q. "Could you tell us why you felt intimidated by the actions of Mr. Janicki on January 21, 2020?" and Q. "Why did you feel intimidated?"

words, until finally himself saying the word “intimidated,” in view of all the preceding considerations he had just discussed.<sup>17</sup>

The Undersigned next notes that being or not being intimidated is a personal response, whereas the basis for whether one might be found to have been intimidated by events is somewhat subject to reasonable analysis. Based upon all of the above considerations, the Undersigned finds that the factual context surrounding the conversation between Janicki and Mr. Corigliano, as described by Mr. Corigliano in his testimony and Janicki in his arguments, was more conducive to a conclusion that Janicki’s somewhat muted actions did not provide Mr. Corigliano with reasonable bases to be intimidated, given Mr. Corigliano’s testimony on cross examination as to his belief that Janicki would never attempt to intimidate or retaliate against Mr. Corigliano for any reason. Accordingly, the Undersigned concludes that the evidence provided by the District is not sufficient to establish support for its Tenure Charge 6.

#### Tenure Charge 7

In Footnote 15, the Undersigned reported his bases for declining to consider the matters involved in Tenure Charge 7.

#### Tenure Charge 8

The Undersigned agrees with Janicki’s description that his allegedly inappropriate snitched and or betrayed comments to his students on January 21, 2020 were de minimus, especially within the parameters of comparison involved in the numerous other matters under consideration herein. In addition, as Janicki argues, his comments to students were reported based upon hearsay by Mr. Strout and Mr. Corigliano without context. Accordingly, the Undersigned concludes that the evidence provided by the District in support of its Tenure Charge 8 does not provide material bases for finding merit to a Tenure Charge.

### **Penalty for Meritorious Tenure Charges**

#### The District

The District urges dismissal for Janicki and argues that the record is replete with examples of him failing to comply with applicable laws, regulations, and school policies, and

---

<sup>17</sup> The Undersigned acknowledges that on cross examination, Mr. Corigliano repeatedly stood by his testimony that Janicki’s actions were acts of intimidation.

lying about it afterwards. Whether based upon some of the individual Tenure Charges that would independently warrant termination, or as a group, the District argues that they demonstrate conduct unbecoming under the applicable legal standards and just cause for Janicki's dismissal, more particularly because he continues to engage in conduct in the workplace that is antagonistic and discriminatory toward students and coworkers in the LGBTQ community, causing turmoil with staff members, and putting the District at risk for violating state and federal anti-discrimination laws and directives from the US and New Jersey Departments of Education.

The District cites the dismissal standard in N.J.S.A. 18A:6-10 as inefficiency, incapacity, unbecoming conduct, or other just cause, with unbecoming conduct being any conduct which adversely affects the morale or efficiency of the [government unit]... [or] which has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services Karins v. Atlantic City, 152 N.J. 532,554 (1998), i.e., a teaching staff member's fitness to discharge the duties and functions of one's office or position Laba v. Newark Bd. Of Educ., 23 N.J. 364, 384 (1957), predicated not upon the violation of any particular rule or regulation, but based merely upon the violation of 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 Education v. Ciripompa, 228 N.J. 4, 19 (2017) quoting In re Emmons, 63 N.J. Super. 136, 140 (App. Div. 1960); unbecoming conduct is generally recognized as behavior adversely affecting morale or weakening respect for the teaching profession. Karins, supra. The District further notes that outrageously inappropriate behavior, combined with lack of remorse or contrition and a likelihood of repeating the behavior are facts that may be taken into account in assessing a penalty. I/MIO Lesley Etheridge and Passaic County Vocational School District, Agency Dkt. No. 120-6/15 (Denenberg, 2016).

From the record herein, the District then first cites the Zudick Award as confirming its prior disciplines of Janicki, and points to a quote from the cross examination of Mr. Bollendorf as to why the District believed Janicki's dismissal was warranted.

I have a responsibility to ensure the integrity of what we do in a public education setting and, you know, obviously through these circumstances I've grown very concerned about, you know, where he's at with regard to his ability to do that. He's not demonstrated an ability to separate his personal feelings towards his responsibilities as an educator. That doesn't change my opinion of his qualities as a guitarist and his ability to teach guitar to kids. It certainly doesn't change my opinion of him as a human being. I have no personal animus towards Mr. Janicki. I know he's a good father and he's a good family man and I don't have any issue with that.

This is a question of whether or not he can divorce himself of those convictions that he has to be able to do the job that he's paid to do in a public education setting.

Q. And in that regard, you reached the conclusion that he was unable to divorce himself, is that correct?

A. I wouldn't say unable. In fact, he's demonstrated an unwillingness through his actions.

Q. An unwillingness in his actions related to leaving document three in the main office?

A. Yes.

Q. And his unwillingness related to not attending the April 2 faculty meeting and the makeup April 4 faculty meeting?

A. Yes.

Q. And his unwillingness related to the incident identified in the homeroom by Ms. Meehan in 2016?

A. I don't know that that was an unwillingness, that was an action that he committed on the spur of the moment. I don't think that fits into unwillingness. I think the one major aspect that you haven't asked me about, if I can, is -

Q. The unwillingness component of it, we detailed that for you the unwillingness component of it, what you relied upon in making that determination that he was just simply unwilling to separate himself from his own belief was that he left this document in the main office and that he didn't attend the faculty meetings on April 2<sup>nd</sup> and April 4<sup>th</sup>. Is there anything else?

A. Yes. His unwillingness to agree in writing to me that he understood his obligations as a public educator and his need to attend any and all trainings. That would have prevented the increment withholding. That would have stopped the gradual discipline in this particular case in its tracks at that particular point in time. He had an opportunity at that moment to take control of the situation and indicate his understanding of his responsibilities and do so.

And I think that if that had occurred, had he come to that understanding and been willing to admit to that and do that, we would probably not be here today. And more importantly, you know, this latest incident that led to the filing of the tenure charges was not as a result of something he was being asked to do by the District. There was no training that he was refusing to go to. He, in the absence of any of that, decided to carry, you know, what I can only describe as his mission to address his concerns as related to the goings on of public education and the recognition of an LGBTQ environment and an LGBTQ curriculum and LGBTQ students and staff members that worked in that building. He was not -you know, he was not reacting to anything he was asked to do, he took that upon himself to do that.

Q. Okay. So we got three things then.

A. Yeah.

Q. Okay. So the unwillingness. Your conclusion that tenure charges, as you said, is that you're at the point of no return, is that it was clear to you that Mr. Janicki was unwilling to separate his personal beliefs from his ongoing duties and responsibilities as a public educator?

A. Correct.

Q. An unwillingness related to him purposely leaving documents, document number three specifically, not attending the faculty meetings on - or the portions of the faculty meetings on April 2 and April 4 relating to diversity training and also his unwillingness to give you a written document representing that he would continue to go to training, diversity training, in lieu of taking an increment?

A. Correct.

Q. Accurately summarized?

A. For the most part. where you're, you know, doing incremental discipline, this all begins with the initial write-up and the comment that was made in the homeroom. That becomes step one and is directly related to the LGBTQ



and the District's initiatives to recognize and have those kids and staff feel comfortable in our school setting.

That comment by him as it relates to his religious feelings regarding that population was not appropriate and he was written up. And a write-up is a write-up. And, you know, any intended discipline is always with the intention of helping someone understand and hoping that they'll do better moving forward, not that you want to start laying the groundwork for something.

At that moment in time it was an isolated incident that had not happened before and the hope was that there was something valuable to learn from it. The letter is in your file and nothing more comes of it if somebody does, in fact, learn something positive and does nothing more.

But when something else happens, you go to the next level. Clearly something wasn't understood as a result of the first write-up and now we move on to something else. And then you apply incremental discipline as it relates to that case. And that's what led to the increment withholding, which was still within his control to do away with and he elected not to. And then eventually the incident involving the leaving behind of the transgender - anti-transgender material in the office. And it was to me a clear demonstration on his part that he was not going to abide by the District's initiatives and what it is that we were trying to do. And it wasn't enough that he could just live in his own classroom and not worry about it and not feel like he had to do anything about it, but now he was going to take his feelings, his thoughts to others in the building by leaving those documents behind - it shifted the whole dynamic. T. 1659-1664.

The District further argues that, with Document #3, Janicki's discriminatory behavior toward a protected class was unfettered and getting worse, as well as intentional and accompanied by his continued false claims of inadvertence, the kind of unprofessional, divisive, disrespectful and discriminatory conduct directed toward gay and transgender students that Ms. Meehan first cited in her March 2016 letter of reprimand and repeated during the increment withholding proceedings. In the District's view, there was no sign of remorse, no apology or defense, but simply incorrigibility that could not be rehabilitated by workshops, professional development courses, corrective action plans or interventions and as Arbitrator Zudick noted, Janicki did not learn any lessons from Ms. Meehan's letter of reprimand, the sensitivity workshop he had to attend, Mr. Strout's letters that threatened tenure charges if his misconduct continued, the efforts of conciliation and mitigation offered by Mr. Bollendorf, the withholding of his increment, and the language of the Zudick Award itself.

The District argues that there is no disciplinary action other than dismissal available to a school district after a letter of reprimand and the withholding of increment. Here, the District asserts, Janicki has revealed an inability to adhere to fundamental standards of professional conduct required within a public educational institution and has no intention of complying with any future mandatory training on LGBTQ issues and will likewise be non-compliant with new legislation (N.J.S.A. 18A:35-4.35 et. seq.; P.L.2019, c.6) that specifically requires a board of education to provide instruction on the political, economic, and social contributions of persons with disabilities and LGBTQ individuals in an appropriate place in the curriculum of middle school and high school students as part of its implementation of the New Jersey Student Learning Standards. Janicki never submitted any statement of assurance to Mr. Bollendorf in response to his offer as outlined back on May 15, 2019. Therefore, the District argues, the Undersigned can infer from Janicki's lack of response to Mr. Bollendorf's invitation for written assurance, Janicki's continued silence during the arbitration hearing on the increment withholding, and Janicki's muteness in these proceedings, that the assurance will never be given.

The District also points to examples in Tenure Charge 3 of Janicki's repeated dishonesty that erodes the requisite bond of professional trust in the employer-employee relationship, such that his return to his teaching position poses an unacceptable risk of harm to the District based upon his continuous intentional disregard of the basic duty of honesty and good faith dealing with his employer, which strikes at the heart of the employment relationship. In addition, the District considers Janicki's tape recording of the private conversation between administrators that was protected by privacy concerns, wiretap laws and the attorney client privilege, to be inexcusable, whether intentional or not, as was his disdain toward Mr. Corigliano because he did his supervisory duty of reporting the admission of illegal taping.

Janicki

Janicki denies that any of the Tenure Charges herein has merit and urges that all be dismissed because the District has failed to meet its burden of proving just cause for any discipline and, even if the underlying allegations were proven, the penalty of removal from his tenured position is disproportionate to the alleged conduct. Nonetheless, above, in the preceding sections of this Opinion, the Undersigned has found merit to what are clearly the four most serious and

substantive of the eight Tenure Charges. Under that circumstance, the Undersigned turns to arguments made by Janicki in the course of arguing the merits of the Tenure Charges even if they were meritorious.

Janicki notes that in matters under N.J.S.A. 18A:6-10, the fact-finder in a tenure hearing involving allegations of misconduct should consider the nature and gravity of the offenses under all the circumstances involved, any evidence as to provocation, extenuation or aggravation, and any harm or injurious effect which the teacher's conduct may have had on the maintenance of discipline and the proper administration of the school system when determining the appropriate remedy. In re Fulcomer, 93 N.J. Super. 404, 422 (App. Div. 1967). In addition, the impact of the penalty on [the respondent's] teaching career; the respondent's teaching record and teaching ability; and whether the respondent had been disciplined in any manner by the board prior to the date of the incident[s] involved in [the] charges are other factors to be considered. Id.

Pursuant to N.J.S.A. 18A:6-17.2(d), the board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met based upon a preponderance of the credible evidence. Pugliese v. State-Operated School District of the City of Newark, Essex County, 2016 N.J.AGENLEXIS 19, 9 citing In re Polk License Revocation, 90 N.J. 550 (1982). See also Atkinson v. Parsekian, 37 N.J. 143 (1962). The evidence must be such as to lead a reasonably cautious mind to the given conclusion. Bornstein v. Metro. Bottling Co., 26 N.J. 263, 275(1958). The preponderance may also be described as the greater weight of credible evidence in a case, not necessarily dependent on the number of witnesses, but having the greater convincing power. State v. Lewis, 67 N.J. 47 (1975). Tenure was designed to protect employees from dismissal for unfounded, flimsy or political reasons. Wright v. Bd. of Educ. of E. Orange, 99 N.J. 112, 118 (1985) (quoting Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 71 (1962) cert. denied 371 U.S. 956, 83 S.Ct. 508 (1963)).

In that context, Janicki noted that he has shown compliance with his 2016 discipline by completing the required training and that, with the limited exception of the 11-12 Main Office investigation, the intentional misrepresentations allegations set forth in Tenure Charge 3 have all been addressed in the context of the increment withholding proceeding in a decision which was not issued until after the Tenure Charge process was initiated. Therefore, Janicki asserts, Tenure Charge 3 should be dismissed as the District has failed to produce evidence in support thereof;

further, termination would be disproportional to the District's allegation that Janicki made intentional misrepresentations in conjunction with its investigation. Therefore, Janicki argues, the District is seeking duplicative and punitive discipline through the filing of Tenure Charges based on new assertions herein that do not give rise to a basis for termination from his tenured employment. See In re Tenure Hearing of Barbara Emri, OAL Dkt. No. EDU 457-00, Agency Dkt. No. 18-6/00, 2002 WL 31042788, initial decision (Aug. 30, 2002), 2002 WL 32590922, Comm'r. decision (October 21 2002 discipline final decision (Dec. 5, 2003);)(racially inappropriate comments and multiple acts of inappropriate behavior involving students, colleagues and parents, insubordination, failure to follow progressive discipline).

Janicki further argues that progressive discipline is a foundational principle of public sector discipline in New Jersey. West New York v. Bock, 38 N.J. 500, 522 (1962). The District, through the filing of these Tenure Charges, has failed to afford Janicki the opportunity to correct the alleged problematic behavior before increasing the sanction for failing to do so. In that regard, Janicki notes that the increment withholding decision was issued on April 1, 2020, after Janicki had been served with the Tenure Charges herein. Therefore, Janicki argues, the discipline of discharge is too harsh a penalty relative to the alleged offense. See In the Matter of the Tenure Hearing of Joseph Archible, Lenape Regional High School District, Burlington County, Dkt. No. 25-21, decided 1/29/2021 ("Archible") (holding "The fact that Respondent had his increment withheld once does not require that any discipline that may be issued to the teacher in the future - no matter how many years may pass - must be termination... Just Cause requires the corrective action of progressive discipline in all but the most egregious circumstances. As a consequence, just cause requires that management exercise judgment-under-the-specific-circumstances to determine whether discipline could reasonably be relied upon to correct an employee's conduct or performance." Here, as in Archible, Janicki asserts, he has a long record of good performance and has expressed a strong interest in continuing his role as a guitar teacher.

### **Discussion and Determinations - Penalty for Meritorious Tenure Charges**

#### **Parties' Arguments**

The parties have presented accurate descriptions of the standards under N.J.S.A. 18A:6-17.2(d) and numerous relevant cases for the Undersigned's determinations herein. However, the Undersigned finds that he cannot accept Janicki's assertions that under those standards, the

District has failed to meet its burden of proving just cause for any discipline and, even if the underlying allegations were proven, the penalty of removal from his tenured position is disproportionate to the alleged conduct.

As the Undersigned has already noted just above, he has found in the preceding sections of this Opinion merit to the four most serious and substantive of the District's eight Tenure Charges. As a result, we turn then to Janicki's alternative argument - that even if the underlying allegations were proven, the penalty of removal from his tenured position is disproportionate to the alleged conduct. In that regard, the Undersigned also finds that the District's arguments to the contrary are far more persuasive and that it has established that the penalty of dismissal is appropriate.

In those regards, the Undersigned rejects as unpersuasive Janicki's argument, that his removal is disproportionate to his conduct, in that the District's proofs have established that, contrary to Janicki's assertions, he has not shown compliance with his earlier found Zudick Award disciplines. Rather, the District's evidence has established that Janicki has, as it argues, failed to comply with applicable laws, regulations, and school policies; compounding his misconduct, he then lied about it afterwards, to extents that he has demonstrated conduct unbecoming under the applicable legal standards and just cause for his dismissal. Moreover, as the District also argues and the Undersigned has found, Janicki continued to engage in conduct that is antagonistic and discriminatory toward students and coworkers in the LGBTQ community, causing turmoil with staff members, and putting the District at risk for violating state and federal anti-discrimination laws and directives

The Undersigned also rejects Janicki's arguments that the District failed to afford him the opportunity to correct the alleged problematic behavior before increasing the sanction for failing to do so in that the Zudick Award's increment withholding decision was issued on April 1, 2020, after Janicki had been served with the Tenure Charges herein. Therefore, Janicki argues, the discipline of discharge is too harsh a penalty relative to the alleged offenses in the earlier issued Tenure Charges. In that regard, Janicki argues that Archible's holding should be applied:

The fact that Respondent had his increment withheld once does not require that any discipline that may be issued to the teacher in the future - no matter how many years may pass - must be termination... Just Cause requires the corrective action of progressive discipline in all but the most egregious

circumstances. As a consequence, just cause requires that management exercise judgment-under-the-specific-circumstances to determine whether discipline could reasonably be relied upon to correct an employee's conduct or performance."

Therefore, Janicki asserts that, as in Archible, he has a long record of good performance and has expressed a strong interest in continuing his role as a guitar teacher.

However, the Undersigned finds, Archible, by its own terms, involves applying discipline based upon a years ago increment withholding without the District exercising "judgment-under-the-specific-circumstances to determine whether discipline could reasonably be relied upon to correct an employee's conduct or performance," while clearly also providing termination for just cause in the most egregious circumstances. Herein, the Undersigned notes, the District followed progressive discipline, and yet, merely months, not years, later, found itself with Janicki nonetheless relentlessly dedicated to continuing his misconduct: being hostile to ideas with which he disagreed; lying about such; and surreptitiously taping an administrators' meeting with counsel, about which he boasted to a co-worker - egregious circumstances each. The Undersigned also finds that whether Janicki did so before or after receiving the Zudick Award issued is immaterial. Until receiving the Award, Janicki was on notice from the District as to its policies and its disciplining of him for violating them. If Janicki chose to continue violating those policies prior to possibly being vindicated by Arbitrator Zudick in his Award, Janicki did so strictly at his peril and cannot complain about his lack of knowledge that Arbitrator Zudick would rule against vindicating Janicki.

Accordingly, the Undersigned finds that Janicki's arguments against a dismissal penalty are of no merit herein.

#### Impact of Tenure Charges

The Undersigned next notes that while he has rejected four of the District's eight Tenure Charges, each of the rejected Charges is of modest or no material significance, compared to the four substantive and most serious Tenure Charges to which he has found merit. The Undersigned's determinations above as to the four Tenure Charges he found meritorious describe them and their outcomes fully and do not require repetition here. Accordingly, the Undersigned turns next to reporting his agreement with the District's description, in its discussion of the appropriate penalty, that with Janicki's involvement with

Document #3, his Zudick Award-found discriminatory behavior toward a protected class got worse, instead of better, as well as clearly intentional, and that it was also accompanied by his making false claims of inadvertence, which indicated no sign of remorse or apology by him, but simply incorrigibility as to the seriously concerning conduct involved. The Undersigned also agrees with the District, that Janicki's conduct - motivated by his out-of-control zeal and outrage, in responding to the recent High School announcement of a LGBTQ Coming Out Day and a faculty meeting about a new transgender policy that Ms. Wachter noted in her Report by attempting to distribute Document #3 - demonstrates that he could not be rehabilitated by workshops, professional development courses, corrective action plans or interventions. Or, as the District aptly describes: as Arbitrator Zudick noted, Janicki did not learn any lessons from Ms. Meehan's letter of reprimand, the sensitivity workshop he had to attend, Mr. Strout's letters that threatened tenure charges if his misconduct continued, the efforts of conciliation and mitigation offered by Mr. Bollendorf, or the withholding of his increment.

The Undersigned also finds Mr. Bollendorf's concluding comments regarding his analysis of Janicki's final serious misconduct telling:

And [Document #3] was to me a clear demonstration on [Janicki's] part that he was not going to abide by the District's initiatives and what it is that we were trying to do. And it wasn't enough that he could just live in his own classroom and not worry about it and not feel like he had to do anything about it, but now he was going to take his feelings, his thoughts to others in the building by leaving those documents behind - it shifted the whole dynamic.

### **CONCLUSION**

As a result of all the considerations discussed herein, the Undersigned finds the District's determination compellingly correct: Janicki's incorrigibility required it to move beyond its rehabilitation efforts to severance of its employment relationship with Janicki.

**AWARD**

The District had just cause to issue its Tenure Charges 1, 2, 3 and 5.

The District's Tenure Charges 4, 6 and 8 were not supported by sufficient evidence and Tenure Charge 7 did not have a material role herein.

The District's Tenure Charges 1, 2, 3 and 5 were of sufficient seriousness that the District had just cause to dismiss Gregory Janicki.

DATE: August 31, 2021

\_\_\_\_\_  
GARY T. KENDELLEN

STATE OF NEW JERSEY:

SS:

COUNTY OF UNION:

I hereby affirm pursuant to CPLR Sec. 7507 that I am the individual described in and who executed this instrument, which consists of my Decision.

DATE: August 31, 2021

\_\_\_\_\_  
GARY T. KENDELLEN



**AWARD**

The District had just cause to issue its Tenure Charges 1, 2, 3 and 5.

The District's Tenure Charges 4, 6 and 8 were not supported by sufficient evidence and Tenure Charge 7 did not have a material role herein.

The District's Tenure Charges 1, 2, 3 and 5 were of sufficient seriousness that the District had just cause to dismiss Gregory Janicki.

DATE: August 31, 2021

  
GARY T. KENDELLEN

STATE OF NEW JERSEY:

SS:

COUNTY OF UNION:

I hereby affirm pursuant to CPLR Sec. 7507 that I am the individual described in and who executed this instrument, which consists of my Decision.

DATE: August 31, 2021

  
GARY T. KENDELLEN