

**Pursuant to Referral by the Commissioner of Education
State of New Jersey
Before Timothy J. Brown, Esquire**

In the matter of:

**The Tenure Hearing of Joseph
Archible**

and

**Lenape Regional High School District
Board of Education, Burlington County**

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: **Docket No. 281-1019**
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Decision and Award

Appearances:

On behalf of Joseph Archible:

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**On behalf of Lenape Regional High School District
Board of Education, Burlington County:**

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I. Introduction

This matter arises from tenure charges of unbecoming conduct, incapacity and other just cause sufficient to warrant dismissal against Joseph Archible, (Respondent) certified by the Lenape Regional High School District Board of Education, (the District) and an October 10, 2019 referral of the tenure charges initially to Arbitrator Tia Schneider Denenberg and thereafter to

the undersigned by the New Jersey Department of Education, Office of Controversies and Disputes pursuant to N.J.S.A. 18A:6-16.

Days of hearing in the matter were conducted by Arbitrator Denenberg on February 3, 4, 5, 6, 7 and March 11, 12 and 13, 2020 and by the undersigned on October 29 and 30, 2020 in Shamong, New Jersey. All parties were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Respondent was present for the entire hearing and testified on his own behalf. A transcript of the hearing was taken. At the close of the hearing on October 30, 2020, the parties elected to submit written closing argument, upon the receipt of which by the arbitrator on December 14, 2020 the matter was deemed submitted.

This Decision and Award is made following my careful consideration of the entire record in the matter, including the undersigned's observations of the demeanor of witnesses presented during the final two days of hearing.

II. Issues

The issues presented in this matter may be accurately stated as follows:

Has the District met its burden of establishing the truth of its tenure charges against Respondent, and if so, what is the appropriate discipline, if any?

III. The Tenure Charges

The tenure charges in this matter were filed by Dr. Carol L. Birnbohm, Ed.D., Superintendent of the District on September 27, 2019. The Statement of Tenure Charges filed by the Board first presents some 66 numbered paragraphs of alleged "Relevant

Facts” and thereafter three Charges. The Charges (less their respective 66 paragraphs of included statements/allegations of fact and references to evidence exhibits submitted) provide:

CHARGE ONE
UNBECOMING CONDUCT

67. The Board incorporates by reference paragraphs 1-66, as fully set forth herein.

68. As set forth above, despite receiving progressive discipline and remediation measures, Archible continued to engage in questionable and unprofessional relationships with female students, specifically K.F., K.L., J. S. and R.T.

69. By continuing an abhorrent pattern of engaging in inappropriate relationships with minor female students, both inside and outside of school hours, Archible’s (sic) continues to show a blatant disregard for authority and the emotional well-being of his students.

70. In fact, concerns that Archible “grooms” select female students due to “creepy” and “weird” conduct toward female students is reprehensible and must be stopped before it escalates.

71. As set forth above, Archible’s gross lack of judgment in facilitating and leading a discussion regarding the use of the n-word in classic literature wholly disregards his obligation to facilitate an emotionally protective and culturally sensitive learning environment.

72. The overwhelming evidence demonstrates that during a class discussion, Archible advocated that teachers should be permitted to say the n-word during instruction; his opinion is in direct contradiction to the trainings he received, including most recently on August 30, 2018.

73. The overwhelming evidence demonstrates that Archible continued to direct this classroom discussion, despite the visible discomfort being exhibited by his students, including causing the only African American student in the class to begin crying when confronted about her views by Archible.

74. As the investigation into this incident continued, and public outrage mounted, yet another incident surfaced in which a photograph of Archible using the “N-word” in his classroom while apparently playing a game of “hangman,” as well as a separate video of his stating the “N-word” during class instruction.

75. To that end, the April 9, 2019 classroom discussion showed a pattern and practice of Archible ignoring professional directives

regarding cultural sensitivity, instead relying on racially insensitive language on at least three known occasions during classroom instruction.

76. As such, Archible's employment with the Board should be terminated for unbecoming conduct, incapacity, and other just cause.

77. For all of the above reasons, the Charge of Unbecoming Conduct must be upheld and Archible's employment with the District must be terminated.

CHARGE TWO **INCAPACITY**

78. The Board incorporates by reference paragraphs 1-77, as fully set forth herein.

79. As set forth above, Archible's repeated and flagrant breach of professional boundaries of the teacher/student relationship with female students, use of racially insensitive language on at least three known occasions, and complete disregard for this Administration's expectations of its educators, has no place in this community.

80. Archible's conduct the presence of students (sic) makes it impossible for him to effectively return to the District as a teacher. To allow Archible to return would cause acrimony with students, staff, and community.

81. As such, Archible will not be able to perform the duties of his job if he were to be returned to the District and, therefore, is incapable of continuing his employment with the District.

82. For all of the above reasons, the Charge of Incapacity must be upheld and Archible's employment with the District must be terminated.

CHARGE THREE **OTHER JUST CAUSE**

83. The Board incorporates by reference paragraphs 1-82, as fully set forth herein.

84. Over the course of his employment, Archible violated the fundamental boundary between student and teacher, oftentimes relying upon minor female students for private emotional advantage, despite progressive discipline and remediation measures.

85. By leading a classroom discussion regarding the use of a racial slur, despite repeated objection from students to Archible's insensitivity, Archible can no longer be employed by the District because allowing him to do so would violate the public trust to

ensure the District students' care and well-being and that they are in a safe environment where they are not subjected to the use of a racial slur by their teachers.

86. As seen in the District's investigation in the April 9, 2019 incident, Archible's use of racial slur during classroom (sic) is not an isolated incident, despite receiving training to the contrary.

87. For all of the above reasons, the Charge of Other Just Cause must be upheld and Archible's employment with the District must be terminated.

IV. Summary of Facts

A. Introduction

The District provides high school education to approximately 7,000 students in four high schools. The District employs approximately 1,000, of which approximately 650 are certified staff. Dr. Carol L. Birnbohm, Ed.D. is the District's Superintendent. Respondent was hired by the District in September 2005 and became tenured in September 2008. At all times relevant, Respondent has taught English at Lenape High School. During the 2018-2019 school year Respondent taught, among others, two classes of AP English.

B. The Association of Black Women Lawyers Contest

Supervisor of English and History Larry Strittmatter testified that he handed out a pamphlet to all of his English teachers announcing the Association of Black Women Lawyers of New Jersey Law Day 2019 Competition. "This year's Law Day Theme," the flyer announced:

..is, "Free Speech, Free Press, Free Society." New Jersey Lawmakers want schools to stop teaching "Huckleberry Finn" : Two African American members of the State Assembly have introduced a non-binding resolution calling on school districts in New Jersey to remove

“Adventures of Huckleberry Finn” – widely acclaimed as one of America’s greatest literary works – from their curricula. There has been a decades-long debate over teaching the book, written by Mark Twain in the 1880s. Though filled with what many academics see as anti-racist and anti-slavery themes, “Huckleberry Finn” presents an unvarnished depiction of the antebellum South and includes use of the n-word more than 200 times. Take a position advocating either for the removing of “Huckleberry Finn” or against the removal of “Huckleberry Finn” from New Jersey schools, citing provisions of the New Jersey and/or United States Constitutions or laws.

The evidence establishes that the pamphlet was distributed to English teachers by Strittmatter in early April 2019.¹ After receiving the Law Day pamphlet Respondent assigned his students to write an essay on whether *Huckleberry Finn* and *Too Kill a Mocking Bird* should remain in the curriculum. As part of his AP-test preparation for his two AP English classes, Respondent sought to have students take a position and support the position. On April 9, the class was to have a first paragraph thesis statement prepared.

Strittmatter testified that the flyer was not meant to provide a topic of discussion for class and that, in any event, the discussion Respondent eventually had with his students in one of his AP classes on April 9 went beyond whether the books should remain in the curriculum and extended to the subject of the use of the N-word itself. The discussion on April 9, according to Strittmatter, was not in the curriculum and was not appropriate.

¹ All dates hereinafter are 2019 unless otherwise indicated.

C. Events of April 9-11, 2019

1. April 9, 2019

In the evening of April 9, Lenape High School principal Tony Cattani, received an email from the mother of a S.L.,² a student in one of Respondent's AP English classes.

The email stated:

My daughter had a disturbing incident in her AP English class today. The teacher, Mr. Archible (copied), had the students discuss the use of a derogatory African American term in the classroom. My Daughter S.L. was the only African American student in the class today and this discussion left her feeling hurt and humiliated. As an honor student at Lenape who has had a positive experience in this school and in this class, it was shocking to hear of this unacceptable event. My husband and I will be at school first thing in the morning to discuss this issue and how it will be resolved.

2. April 10, 2019

Principal Cattani and supervisor Strittmatter met with the parents of S.L. in the morning of April 10. S.L.'s mother reported that, according to her daughter, Respondent's AP class of the day before was largely focused upon the use of the "N-word" in literature and included an extended discussion during which Respondent expressed what the student believed was his opinion that he should be able to say the entire word in the context of teaching. The discussion was culturally insensitive, the parents reported. The parents told the principal that as the only African-American student in the class that day S.L., felt she had been singled out and she was upset and humiliated.

² Students herein are referred to by initials.

Cattani and Strittmatter testified that Respondent responded to the parent email seeking to meet with the parents also on the morning of April 10, but that the parents of S.L. declined the offer.

Following the parent meeting, Cattani contacted Assistant Superintendent Matthew Webb and informed him of the concerns expressed by S.L.'s parents. Cattani was directed to interview some of the students involved and get a grasp of what had occurred during the April 9 class. Cattani testified that the N-word topic was, to his knowledge, not part of the AP English curriculum. He also testified that his concern was not that Respondent was a racist, but that Respondent had tried to push his personal agenda onto his students and that he was effectively asking students for permission to use the N-word in the classroom; conduct prohibited by policy, and permission for which the students did not have the authority to give.

Following the early morning parent meeting, Cattani and Strittmatter began "calling down" students from the AP English class to discuss what had occurred in the class the day before. The two first met with S.L. and thereafter the two administrators split up the task of meeting with the three additional students S.L. had identified as, she believed, being aware of how upset S.L. was; A.R., M.H. and G.M. Strittmatter received written statements from each of the four students; statements dated either April 10 or 11. He did not attempt to interview or seek statements from students in the AP class not identified by S.L.

S.L. testified at the hearing. According to S.L., prior to April 9, Respondent had assigned the AP class to read two articles discussing whether or not *To Kill A Mockingbird* and *Huck Finn* should remain in the curriculum of schools nationwide. The

students were to have their introductory paragraph with their thesis statements ready by the April 9 class. On April 9, the class began with a discussion on the topic of the articles. A poll of students was taken and everyone in the class took the position that the books should stay in the curriculum. According to S.L. Respondent then asked the students to expand upon their views, and asked if the use of the n-word in the books played a role in the students' decisions. "A lot" of students, according to S.L., stated that the use of the n-word in the text was fine as that was the language of the times the books were written, "and took the position that the word itself did not need to be stated verbally in order to get the point across." According to S.L.'s statement of April 10, "others stated that as long as the word is only stated verbally in context with the book then it should not be an issue." S.L.'s written statement then continues:

...Mr. Archible seemed to agree with the side that the word can be stated for literary purposes only. A--- R--- and G---_ expressed their views that the word should not be stated at all, but Mr. Archible kept advocating for the word to be used. His rationale was that the use of the word would demonstrate the ugliness and history with the word, He also said that if we don't verbalize the word when reading these texts would make people too sensitive and the history with the word would be lost. He also stated that he had friends that were African American and he discussed the issue with them and they said people have become too sensitive to talk about these issues. After mentioning this, I brought up the point that if the term is consented in the classroom, some may bring the term outside of the classroom. However, he still advocated for the use of the word. This discussion began to take a turn that was unneeded and the tone of the classroom changed. More people began to be more quiet and only A-- and C—were talking. M.H. mentioned that this conversation should not continue, but it did continue. As the conversation continued, I began to feel kind of overwhelmed considering I was the only African American person in the classroom at that time. I then raised my hand and said that family members like my mom have had the word said to them in a hateful manner and I began to cry while saying this. I ended by saying that the word should not be said in any

context. After seeing my reaction, Mr. Archible began to ask me more about my views on the subject. I once again explained that the history that comes with the word would not be lost if it is not said verbally. Clearly uncomfortable, Mr. Archible changed the topic to the book on sexual harassment that me and my classmates would be reading next year. However, some people appeared to not be satisfied with how the conversation ended and continued to state their views. I believe that Mr. Archible did not intend for the conversation to go in that direction, but it did. There was really no closure to the subject and his personal views should not have been so clear, especially since he is not African American. I left the class feeling overwhelmed and sort of singled out.

Statements were also taken from AP English students A.R., M.H. and G.H., the first two of whom also gave testimony at the hearing. A.R. wrote that Respondent often brings up controversial topics to discuss in class, but that the conversation on April 9 “was different.” A.R. wrote that when Respondent asked if teachers should be allowed to say the n-word in class, all agreed that teachers should not and that thereafter Respondent would not let it drop and spent the entire period arguing that teachers should be able to use the word. According to A.R., Respondent wrote an “N” on the board and asked how far he should be allowed to go and that despite the fact that some students protested, he continued and wrote, “NI R” on the board and said everyone knows what we are talking about but no one can say it. At one point a student asked why Respondent was so obsessed with saying the word. A.R. further wrote that:

After almost an hour of the topic S.L. who is black raised her hand and told the class of her mothers experience with the word and began crying. The class was silent and filled with tension and rather than just admitting he was wrong, Archible asked S.L. how her mother felt about using the word. The entire class period Archible refused to let the topic go and he seemed to be arguing for more than just to be devils advocate.... This should never have even been a topic of discussion because it had nothing to do with the AP Language and Composition curriculum. But when brought

this up to him, there was not a clear answer as to why we were discussing this...

According to A.R., she was present when Respondent gave the class his apology. At that time, Respondent said how he hadn't eaten, he had few friends and family and how teaching was important to him. Respondent went on to say that he had tried to control the class but that it got out of hand. A.R. testified that she was not satisfied with Respondent's apology; that the apology was less about how sorry Respondent was and more about how important teaching was to him.

M.H. wrote in her statement that "...more than 50% of the students raised their hands when ...Archible asked if it should be taken out or not be said in class." M.H. explained that Respondent had gone back and forth with students;

Saying if it is part of the curriculum then we should be able to say it which started to make more students speak up. One student had told a personal story of how the word was hurtful to her mom and even began crying in class. Mr. Archible was understanding of her feelings but still was not sure why he shouldn't teach the history of the word in its entirety if it is included in the curriculum.

According to M.H., both the students in the class and Respondent were strong in their opinions, the discussion went until the class ended and the discussion; "never really got a full closure." At the hearing M.H. testified that in addition to the letter written on the board, Respondent also drew some of the lines of a swastika on the board. She also testified that she saw the connection between the thesis the class was asked to write and the Law Day flyer and recalled that at some point the competition was discussed in class. As for Respondent's addressing the events of the n-word class on April 11, M.H. testified that she felt it could have been more of an apology.

G.H. wrote her statement on April 11 and expressed that the feelings in the classroom became “rather hostile,” that many students said they felt uncomfortable with the situation and that after she left the class she learned that one student had cried.

Later in the day of April 10, Cattani and Strittmatter met with Respondent. Respondent was apologetic, expressed that he did not intend the discussion to go as it had, took responsibility for his actions, and stated that he would do what he needed to do to resolve the situation with his students. According to Strittmatter, Respondent said he was not aware that S.L. had been upset or crying and that he was not aware that S.L. was African American. (Cattani testimony was less certain in this regard, as he testified “I don’t recall him knowing that she was crying, but I believe he indicated that he didn’t know that she was African-American at the time.”) During the meeting a plan was made for Respondent to apologize to his class and give students the opportunity to voice their opinions about what had happened in the class. According to Strittmatter, Respondent was to first acknowledge what he and the administration had become aware of, allow students to process and have closure and apologize for the direction the conversation went and the level of student discomfort resulting from the conversation.

3. April 11, 2019 (am)

Supervisor Strittmatter was present for the first ten minutes of Respondent’s involved AP English class on April 11. According to Strittmatter, the master objective written on the board for the lesson of the day was a W.H. Auden poem analysis. Respondent began the class by acknowledging that the direction of the previous class had not gone in the direction he had intended, spoke to the students about his love for teaching and that he was so upset that he was unable to eat.

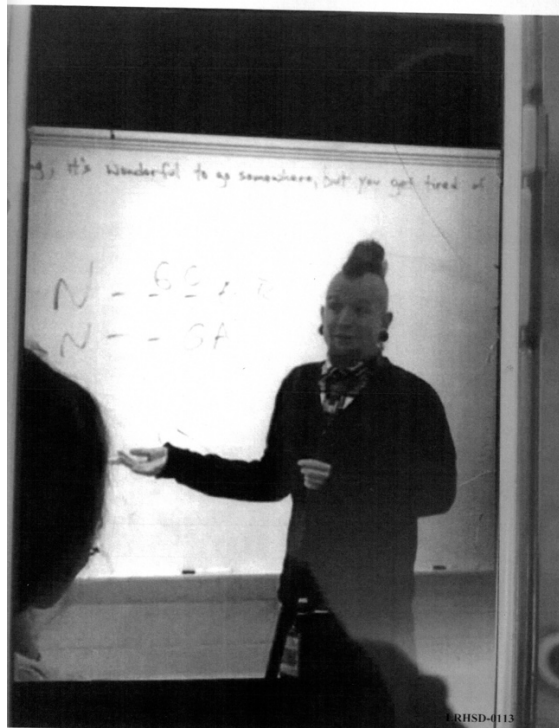
According to Strittmatter, Respondent came into his office toward the end of school that day and expressed his disappointment at Strittmatter attending his AP class; saying that the supervisor did not trust him. Strittmatter testified that in response; “I informed Mr. Archible that he should consider the fact that I was there to protect him, to ensure that what we had spoken to him about...and based on the conversations we had with the student and parents, that I was there to ensure that the students had a chance to process and have closure, and that ultimately at the end, that I was there to protect him.” According to Strittmatter, Respondent acknowledged that he had not thought about that. Strittmatter did not tell Respondent that his apology had not been adequate or that Respondent had not done as he had been instructed. When asked on the witness stand why he had not done so, Strittmatter testified; “It was a short conversation.”

Cattani testified that he is not the ultimate decision maker on subjects of termination of tenured staff, but that at this point he was not considering termination of Respondent as an option. Cattani later received another email from the mother of S.L. expressing her concern that Respondent had not provided students an opportunity to speak or get closure with the subject.

4. April 11, 2019 (pm)

In the evening of April 11 Cattani attended a banquet celebrating accomplished academic students in the area. At the meeting a woman approached Cattani and said there was something causing a lot of concern in the Lenape community that Cattani should see.

The women the showed Cattani a video on her phone and the following picture:



The picture is of Respondent in front of a white board. Written on the top of two lines on the board is; “N _ G G E R”, and on the bottom line; “N _ _ G A”. In the video shared with Cattani one can hear Respondent saying: “It’s basically saying look, there are black people, and then there are niggers.”

According to Cattani, there was significant community response to the video and picture; he received numerous calls and communications from upset parents and the matter was a topic of conversation in the community for a year and a half. According to Birnbohm, people in the community were outraged and upset at the video. The District identified one individual who lived in the District, contacted the District, complained about the picture and video, described Respondent as playing hangman on the picture, and offered her consulting services on the matter.

5. Suspension of Respondent

Cattani thereafter reported the picture/video matter to District superintendent Birnbohm, who in turn discussed the matter with the Board of Education President. The decision was then made to suspend Respondent pending investigations. By letter dated April 11, 2019, Respondent was notified of his suspension until the outcome of “investigation(s) into possible conduct unbecoming a teacher...”

D. *On The Road* and R.T.

Cattani testified that on April 10, a female student of Respondent, **R.T.**, left a message with the principal’s secretary that she wanted to speak with Cattani about her English class. The student attended Respondent’s other AP English class. Cattani assumed the student wished to speak with him about the N-word matter of the day before, so he passed the message on to Supervisor Strittmatter and asked that the supervisor speak with the student. As it turned out, R.T had not reached out to speak about the N-word matter, but instead, expressed her discomfort with Respondent. She explained that she felt her grades from Respondent were higher than she deserved, that it was well known that Respondent gives out better grades to student who share Respondent’s personal opinions, that Respondent had invited her to a poetry field trip that she had not expressed interest in going on, and that Respondent had given her a copy of a book (*On The Road*, by Jack Kerouac) that she had not requested. The copy of the book given to her by Respondent had handwritten notes and highlights, including highlighted text describing a young teenage girl with long dark hair (which R.T. has) having a relationship at a motel with an older man, and handwritten notes such as “do you ever

feel like that?” and other underlined text stating; “Oh man, she was only 15 and wearing jeans, just waiting for someone to pick her up... she was so sweet then, so *young*. Hmm, ahh!” At that time, in response to a request from Strittmatter, R.T. provided the following written statement:

From the first day of school, Mr. Archible seemed somewhat creepy and weird to me. Throughout the year he gave me high grades on essays that were not deserving, It is well known that he tends to give poorer grades to essays that disagree with his own opinion, but an essay that I wrote that discouraged free healthcare. Which is very against his beliefs, received a high grade. Mr. Archible also invited me to the Dodge Poetry Trip without my volunteering. Last Friday, he found me during lunch and learn, out of the blue, to give me a book. Flipping through it, I realized he underlined some passages that seemed weird, such as a couple lines that mentioned a teenage with long, dark hair (which matches my description) going to a motel with the main character to have a relationship. Later in the book, a line that said something like, “she was 18, lost and confused” he wrote “do you ever feel like that?” in the margins I showed the book to my parents that night, and they both disliked it. That night he also sent an email to my mom saying I was an intelligent student, a talented writer, and that he was glad to have me in class. I know this has no solid evidence, but I feel very uncomfortable in his class.

R.T. testified that Respondent’s AP English class that year did not discuss poems at all. (In contrast to Strittmatter’s testimony that on April 11 a poem was the subject of that day in Respondent’s AP classes.) Following his meeting with R.T., Strittmatter contacted R.T.’s mother, who came to school with the loaned book. The mother, like R.T., was uncomfortable with Respondent giving R.T. the book and the highlighted passages and handwritten comments in the book; comments that both R.T. and her mother believed were directed at R.T. The mother also expressed her view that an email she received from Respondent about R.T. was “stilted” and inappropriate. R.T. testified

that she did go on the poetry trip because there was a large group of students going and she felt comfortable doing so.

On the day he loaned his copy of *On The Road* to R.T., Respondent emailed the student's mother the following:

I just wanted to send you a quick email to let you know how highly I have come to regard [R.T.] after meeting her and having her in my class this year. She is certainly one of my most intelligent students, and without question, one of my most talented writers. It is obvious that she has grown up in an environment in which literature is important. Today, I gave her a copy of On the Road, which is on a short list of books I consider to be genius (along with Catch-22, 1984, and The Picture of Dorian Gray). I felt she will appreciate it. Kerouac helped to open my eyes to how unpredictable and philosophical literature can be sometimes. I hope he does the same for her.

Too often, we teachers email parents only when their children are misbehaving or falling behind in their coursework. I am trying to make a conscious effort this year to do the opposite. So.. thanks for raising a great kid. I know that, as cliché as it might sound, she is going to go on to do great things in life someday. But she is also doing them now, too.

I hope you have a great weekend.

Strittmatter testified that *On The Road* has been part of the curriculum at the high school in the past, but was not in 2019.

E. Meeting of July 25, 2019

Respondent's next meeting with anyone from the District occurred on July 25, a meeting attended by District representatives, Respondent and Respondent's Union representative. According to the District and as explained to Respondent at the time of the July 25 meeting, the District's investigation into the R.T. - *On the Road* matter had been put on hold pending a criminal investigation into the matter by the Burlington

County Prosecutor. (Respondent had not previously been informed there was a matter involving R.T.). By letter dated June 28 the Prosecutor notified the District that he had found the matter did not warrant criminal charges and cleared the District “to commence an investigation and pursue any administrative actions that you deem appropriate.”³ At the meeting, Respondent’s Union representative took the position that no questions would be answered by Respondent until Respondent had the opportunity to review the evidence gathered during the District’s investigation and a copy of the Prosecutor’s letter. The District provided the Prosecutor’s letter but refused to provide the Union the other information the Union requested. After some back and forth, the District’s Director of Personnel, Page MacGregor provided a copy of the picture of Respondent standing in front of a white board and a copy of the video during which Respondent made the statement “it’s basically saying look, there are black people, and then there are niggers.” During the July 25 meeting, Respondent admitted that he spoke the entire n-word on the video and according to MacGregor, explained he was probably giving a lesson on subliminal racism, and how it is possible to not be racist against all black people, and that sometimes it is the black people who are racist.

F. The Decision to File Tenure Charges

Cattani testified that he was concerned about the R.T. matter because of Respondent’s “established pattern” of inappropriate conduct with female students. Respondent had a pattern of poor judgment, including particularly the N-word incident and now with R.T., another example of Respondent’s poor judgment with a female student. Whether Respondent’s “personal agendas,” or “his potential pursuit of 15, 16,

³ The letter was offered to show the criminal investigation was closed and not offered for the truth of its contents.

17-year-old girls in a grooming pattern,” Cattani testified, he could not, in good conscious put Respondent back in the classroom.

The District presented two witnesses who took part in the District’s consideration of whether to file Tenure charges; Director of Personnel MacGregor and Superintendent Birnbohm. According to MacGregor, tenure charges were filed because; (1) Respondent had lots of opportunities to correct his inappropriate behavior with young female students; (2) Respondent had lots of counseling in the appropriate steering of controversial topics, and (3) yet Respondent continued to do what he wanted to do. MacGregor testified that Respondent could not come back to teach in the District as “[t]he trust is gone.” She went on to testify:

The most important thing for a teacher is to have the trust of the students, and as an Administration, the safety and security of our students is our number one goal. There’s no learning that can happen without the students feeling safe and secure. So, Mr. Archible has had discipline, reprimands, counseling, mentoring, numerous reminders of him to maintain appropriate interaction with students. In addition to that, this April 9th incident caused emotional harm to students. He was given instruction on how to form an appropriate apology to the class, and he failed to do so which caused community outrage and provided us with additional evidence to show that he may have been doing this for years unbeknownst to us. At the same time the community is outraged, we’re finding out from R.T., you know, simultaneously, that here now is the fifth allegation of a young woman who feels that he’s creepy and he’s behaving inappropriately, and, you know, she fits the profile, the long brown hair, you know, giving her this book with the creepy underlined passages, and that’s not even counting Mr. Archible’s fiancée, who was a 2013 graduate of Lenape High School and a former student of his. You put all that together and so we can’t put minority students in his class, because they might feel like they won’t be fairly treated by him. We can’t put, you know, young Republicans, because they are going to feel they are not fairly treated by him. We can’t put young women in his class with a good conscious, because Mr. Archible is no dummy, you know, he’s not – he’s not failing to

take direction. He's calculated, he's predatory. At that point, we basically eliminated every student in the high school. There's nobody that we can put in his classroom with a good conscious and feel that those students are safe and secure.

Superintendent Birnbaum testified that tenure charges were filed because;

I couldn't put him in the classroom again. His credibility is gone. There's just distrust. We've given the employee opportunity, after opportunity, after opportunity to correct his behavior, to follow District rules and regulations. And he not only doesn't want to follow them, he brags about how he doesn't follow District rules and regulations. In his e-mail to L.B. he said he couldn't wait to get tenure, and he would do something outlandish – I don't even know what it is. But he couldn't wait to get tenure because he could almost do whatever he wants...He has shown us again and again and again that he's not going to change his behavior. And putting him back in the classroom is just reaffirming this inappropriate behavior in his classroom. It's about student safety.⁴

G. Testimony of other Students Attending the April 9 Class

1. I.A.

I.A. was a student in Respondent's AP English class on April 9. She was not interviewed by the District. She testified that the goal of the AP class was to prepare for the AP test in May. As she understood it, the essay topics on the test could be anything, but were usually controversial subjects. Throughout the year, Respondent would give the class controversial subjects and have the class discuss them as a way to learn how to form a thesis, have a discussion with classmates and how to craft an argument. Respondent told the class that if anyone was offended by subjects raised in the class, they could come and talk with him.

⁴ The L.B. email referenced by the superintendent was a subject of a 2008 discipline of Respondent. (Discussed below.)

She recalled that for the April 9 class Respondent had posted an assignment to write a thesis statement and be prepared to discuss the topic of whether the novel Huck Finn should be taken out of the national curriculum. In class, Respondent introduced the topic and let students engage in discussion. I.A. testified that most of her class mates were in agreement that the book should stay in the curriculum. Respondent then discussed how school districts had removed the book from their curriculum because of its frequent use of the n-word and asked if it was ever okay to use the word. After the class unanimously agreed that the word should never be said, Respondent played devil's advocate and pointed out the contrast between students saying the book should stay in the curriculum and their saying the word should never be spoken, even in an educational setting. I.A. testified that Respondent was trying to represent the other side of the issue as part of teaching how to craft an argument for the AP exam. The discussion, I.A. explained was mostly a one-sided conversation that Respondent tried to turn into more of a discussion, and at no point did Respondent imply that he was presenting his own perspective on the use of the word.

According to I.A. at one point a student got upset, said she was uncomfortable and explained that her mom who was African American had been called the n-word before and that the student didn't think it was right for anyone to say the word in any context. The student started to tear up and Respondent, according to I.A.'s written statement, "softened," acknowledged the mother's struggle and asked how she felt about it. The student did not want to discuss the subject further and Respondent moved the conversation to the general subject of the AP exam and how controversial subjects will be included in the exam. In her view, I.A. testified, the discussion on April 9 was not out of

line and was basically a repeat of a discussion she had in class with another teacher the year earlier when the class read the novel. On April 9, the discussion was in the context of preparing for the AP exam, an exam that, at the time, was three weeks away.

2. J.S.

J.S. was not interviewed by the District. He testified that the prompt for the discussion on April 9 was the question presented in the Law Day competition and that Respondent took the role of devil's advocate. When another student spoke of how the word had been used toward her mother and choked up while talking about it, Respondent allowed the student to finish, talked to her a little bit "like are you okay," treated her like an adult and kept the discussion moving. J.S. was also present on April 11 and that Respondent; "issued an apology to all students, the discussion had gone in a way that he didn't want, and it had gone on too long." In his view, J.S. testified, Respondent treated the student like adults and was sincere in his apology.

J.S. also testified that at the next class after April 11, Respondent was not present and Principal Cattani and Mr. Strittmatter came into the classroom. J.S. went on to testify:

We were mostly all there. There were a few people absent. It felt sort of more like an interrogation, but they knew the answer that they wanted and that they were trying to get, like the fact that we all felt uncomfortable and that they tried – they were trying to paint Mr. Archible as sort of like this person with ulterior motives, and honestly, to me at least, it felt more uncomfortable than the actual discussion in class on that first – April 9.

The two men did not ask or for statements from any students, J.S. testified.⁵

⁵ Respondent called as witnesses a number of former students, parents of students and teachers who testified to Respondent's rhetorical teaching method, care for students and positive impact

H. Prior Discipline of Respondent

In October 2008, principal Cattani received a report from a father of a student of Respondent expressing suspicion that his daughter, **L.B.**, was involved in a relationship with a Lenape teacher, a teacher who turned out to be Respondent. After referring the matter to the office of the county prosecutor and local police and being cleared to investigate the matter, the District's investigation eventually revealed that Respondent had maintained an ongoing email conversation with the student using Respondent's private email account (a violation of District policy) and that a number of statements made in the emails were inappropriate and violated District policy. By letter dated November 12, 2008, from then-Superintendent Emily Capella Respondent was notified of the results of the District's investigation and provided:

As you are aware, following our receipt of report(s) indicating you may have developed/maintained inappropriate relationship(s) with students; my office completed a thorough investigation related to the circumstances surrounding the report(s). Through the investigations, evidence was discovered to support the claims of inappropriate activity with students, which includes, using inappropriate language, undermining authority to a student and conduct unbecoming, such as personal use of alcohol and consuming alcohol with a female under the age of 21.

upon students. One witness, former Lenape English teacher Linda Hammond testified that she taught a class on the Holocaust and invited Superintendent Birnbaum to observe her class. Hammond testified that during the class Birnbaum attended, Hammond said out loud every racial, ethnic, sexist slur there was and explained their origins and that after the class Birnbaum said the class was good and Hammond could continue to do what she was doing. Birnbaum was called on rebuttal and denied that she heard Hammond say the n-word out loud or that she ever gave Hammond permission to say the word in class.

Respondent also called retired Lenape English teacher Joseph Tortorelli, who testified that he taught *To Kill a Mocking Bird* and *Huck Finn* in his English classes at Lenape. He testified that a major theme of *Huck Finn* is against racism and that in the hands of a capable teacher, the use of the n-word in the book is "an extraordinary teachable moment." He further testified that he wrote the entire n-word on the board, but that when he did so there was no policy against doing so.

In addition, as you are aware, the Board requires staff to sign the “Staff Acceptable Use Policy for Computer and Network Use.” You should not use your personal email account to communicate with students or parents. The evidence indicates that you utilized your personal email account to communicate with at least one student.

It is important for teachers to always be cognizant of how words and actions may be perceived, especially by students, and to respect the boundaries of the student-teacher relationship. As a result of your inappropriate behavior, the following steps will be taken to help you avoid making these mistakes in the future:

- (1) You are mandated to complete a minimum of six district-paid counseling sessions by the end of February 2009 with Dr. William Matta, Counseling associates of Medford at 133 Jackson Road – Suite F, Medford, NJ . . . Dr. Matta has worked with other staff and student successfully, and you should contact him immediately to schedule your sessions. The counseling will certainly remain confidential, but I will require proof of your attendance at six sessions over a three month period, beginning no later than December 2, 2008;
- (2) You are to meet bi-weekly, for the remainder of the 2008-2009 school year with your Supervisor to receive monitoring on maintaining a professional demeanor and appropriate, respectful interactions with students;
- (3) I will be recommending to the Board of Education that your increment be withheld. You will be notified at which time the Board of Education acts on the recommendation, and
- (4) Effective immediately, you are no longer to be involved with any extracurricular activities or clubs. You are also to have no further contact with L-- B--. If these steps fail to correct your inappropriate behavior and similar incidents are reported, further disciplinary action, up to and including termination will be considered.

In your future interactions with students, parents, and staff either in person or via the internet, please exercise good judgement and follow district policy. Once again, should you have any questions or concerns, please contact me directly.

Respondent completed the required six counseling sessions. In May 2015 Respondent's increment was restored after a recommendation to do so was filed with the Board of Education by Superintendent Birnbohm upon the recommendation of principal Cattani. Cattani testified that he made the recommendation after Respondent had completed seven years of teaching with no substantiated similar incidents by Respondent.

I. Prior (Unfounded) Allegations Against Respondent

At the hearing in the matter, the District offered evidence of a number of alleged incidents of conduct by Respondent with female students, none of which resulted in discipline, including the following:

1. On December 19, 2008, another Lenape teacher reported overhearing a female student, A.H., discussing that Respondent was having sexual relations with a student (**K.F.**) so that the student could salvage her grade. Respondent was suspended pending investigation of the matter by letter dated December 22, 2008. By letter from Superintendent Capella dated January 7, 2009, Respondent was notified:

I have concluded my investigation regarding the report of an inappropriate teacher-student relationship. District administration spoke to several students, and met with you to provide you the opportunity to hear and respond to the allegations. Through the investigation, no evidence was found to support any claim of wrong-doing on your part.

This letter is not one of reprimand, nor will it be placed in your personnel file. Please allow this letter to serve as a reminder to you of the boundaries of student-teacher relationships. It is important for

teachers to always be cognizant of how words and actions may be perceived by students, and to maintain an atmosphere of respect in your classroom.

In your future interactions with students, parents, and staff, please exercise good judgment and follow district policy. Once again, should you have any questions or concerns, please contact me directly.

2. In or about December 2009 Cattani received a report from two janitorial staff members that they had observed Respondent in his classroom after school hours with a female student (**K.L.**) in a casual setting. Cattani testified that someone had indicated at one point that Respondent had a guitar and he was playing guitar for the student in the classroom. On cross examination Cattani testified that there was no written record of a guitar being involved and that the two staff members did not report seeing a guitar or hearing anything; that they reported they just had suspicions. Cattani testified that he responded to the report by discussing appropriate practices with Respondent and that per instructions of Superintendent Birnbaum had Strittmatter surveil Respondent's classroom for a week thereafter. He also testified that neither the student nor Respondent knew of the surveillance and that the surveillance disclosed no inappropriate conduct. No discipline was issued as a result of the report and investigation.
3. On September 12, 2012 student K.R. reported that Respondent had provided student J.S. with alcohol at a concert venue where

Respondent's band was playing. The investigation disclosed that **J.S.** was a former Lenape student/graduate who worked at the venue and was working a different event than Respondent's concert; that the former student may have said hello to Respondent; that J.S. would not have been allowed into the concert portion of the venue due to her being under age 21; and that Respondent was there with his girlfriend and another Lenape teacher who is also in Respondent's band. The District did not interview the other teacher. The matter was concluded with an October 2, 2012 letter to Respondent identical with the January 9, 2009 letter quoted above, except that the October 2, 2012 letter is signed by Carol Birnbohm. Thus, the District informed Respondent that "no evidence was found to support any claim of wrongdoing," that "[t]his is not a reprimand" and the reminder relating to teacher-student boundaries.

J. Lenape High School Policy

As part of the August 30-September 2018, pre-school-year meeting of Lenape English and History staff, Strittmatter reviewed a number of policies, including the School's "Cultural Sensitivity/Controversial Content/Common Sense." That policy provides:

- At no time in class should the N-word (or any similar word describing any group of people), be used in its entirety – **not in discussion, not in question, and not in reading**. So for example, if your kids are reading Mockingbird or a current article aloud, that word is there; **you can't say it**. It's about

“cultural insensitivity”. If you have any questions or misunderstand these parameters, see me directly.

- If you are using a model text or article that has any **CONTROVERSIAL** content, please see me and we will navigate through the content appropriately. There is a general expectation that we as teachers promote transparency with our students and parents on subject matter that may be graphic and/or divisive. See me if you have any concerns.
- There is to be **NO** videos/films shown in its entirety in a classroom that is not on a BOE approved curriculum. **NO exceptions!** I encourage videos/films/Youtube to be used as supplemental learning resources and “chunked” appropriately to support learning plans/mastery objectives. Preview all Internet content prior to using in your lessons.

K. Lenape Regional Board of Education Policy

Lenape Regional Board of Education Policy 2240– Controversial Issues, adopted

19 September 1989, provides:

The Board of Education believes that the consideration of controversial issues has a legitimate place in the instructional program of the schools. Properly introduced and conducted, the consideration of such issues can help pupils learn to identify important issues, explore fully and fairly all sides of an issue, weigh carefully the values and factors involved, and develop techniques for formulating and evaluating positions.

For purposes of this policy a controversial issue is a topic not expressly enumerated in the course guide as appropriate for the course of study.

The Board will permit the introduction and proper educational use of controversial issues provided that their use in the instructional program is related to the instructional goals of the course of study and level of maturity of the pupils. The discussion of controversial issues must not tend to indoctrinate pupils or persuade them to a particular point of view. Instead, teachers must encourage fair presentation and open-mindedness and the free exchange of ideas in a spirit of scholarly inquiry, drawing upon information and insights from the widest feasible range of resources.

The discussion of controversial issues in the classroom will be conducted in an unprejudiced and dispassionate manner and can not be allowed to disrupt the educational process. In the discussion of any issue, a teacher may express a personal opinion, provided the expression is characterized as personal opinion and does not attempt to persuade pupils to the teacher's point of view.

The Superintendent shall assist teaching staff members in developing an alertness to the occurrence of controversial issues in the context of the curriculum and developing techniques for the management of controversial issues that do not stifle a spirit of free inquiry.

L. Curriculum

The Adventures of Huckleberry Finn and *To kill a Mockingbird* are both in the District's curriculum. *On the Road* has also been in the District's curriculum.

M. Respondent's Testimony

1. 2008 Discipline

Respondent is certified to teach English grades 7 through 12. He testified in regard to his 2008 discipline that during the period he was emailing L.B. he was 27 or 28 years old, depending upon the month, and that at the time of the administration's investigation he admitted to the emails and acknowledged that it was inappropriate for him to exchange the emails with LB. Since that time, he testified, he has not done so with any other student. As for L.B., he explained, the student had told him that her father had cancer, that she had a fractured relationship with her father and that she was going through some serious issue with her boyfriend and he was trying to be a support system for the student. Respondent further testified that he never texted LB, that he did not give LB his phone number and did not have hers, and that during the investigation he offered

to open his phone and let the administration look through it. He complied with the requirements of his disciplinary notice and had no further contact with LB and attended his six counseling sessions. He took responsibility for his actions, Respondent testified.

2. AH-KF-SF Matter

As for the 2008 matter involving an accusation by AH of KF having sex with Respondent in order to save her sister SF from poor grades, Respondent testified that he did not know KF; that AH was in his sophomore English class and received poor grades and that her sister SF had been in his British Literature class the year before and received B grades throughout the year. He testified that he did not have SF in his class her senior year and that he had no contact whatsoever with her outside of class. After the District notified him that its investigation into the KF matter had concluded and that he was not being disciplined, he was never thereafter accused by the Board or any member of the administration of wrongdoing in regard to KF. Additionally, notwithstanding the dismissal letter's representation that the letter would not be placed in his personnel file, he first learned that the District retained the letter when he read the tenure charges involved here.

3. KL Matter

As for the 2009 claim that he was meeting with student KL after school hours, Respondent testified that he does not know KL and that the first time he learned there was such a claim was when he read of it in the tenure charges.

4. JS Matter

In regard to the allegation involving JS at the Mansion, Respondent testified that JS had been in either his poetry or creative writing class in either her junior or senior

year. On the evening in question his band was scheduled to play at a venue called “The Mansion.” Another teacher from Lenape was also in the band. He was accompanied that evening by his girlfriend at the time and at some point, he heard a “hay, what-up Mr. Archible” from behind him, he and his girlfriend turned, and Respondent saw JS and said; “Oh hi JS.” JS then sort of gave a wave and went back to her work for the catering event she was working. He did not see JS any other time that evening. He had not arranged to meet JS at the concert and did not know she would be there. Respondent testified that he again received an investigation-end letter relating to the matter.

5. The April 9 Class

The April 9 incident involved his Advanced Placement (AP) Language and Composition class. The discussion topic planned for April 9 was whether or not the novels *To Kill a Mocking Bird* and *The Adventures of Huckleberry Finn* should be kept or removed from the high school curriculum nationwide. The topic came to him from an essay contest announced in a flyer he received from Supervisor Strittmatter. Respondent testified that it was common practice in the department to use materials handed out by Strittmatter in class; that in regard to the Law Day flyer, he “took it as implicit that it was entirely acceptable to use in class because it had happened in the past,” and that Strittmatter; “gave me an essay contest about texts that have the N-word in it. So, I feel that’s only natural for me to assume that’s what we – that’s part of what we would be talking about.” Respondent admitted that no administrator told him specifically to discuss use of the n-word in class or that he discussed the controversial and sensitive subject with either Cattani or Strittmatter prior to his April 9 class.

Respondent considered the subject of the flyer controversial and testified that he had discussed controversial subjects with students over the sixteen years he taught. He often discussed controversial subjects with his 2018-2019 AP Language and Composition classes, subjects including, as examples, LGBTQ-plus rights, gender identity, racial issues, the death penalty, pro-life vs pro-choice, stem cell research and whether Columbus Day should remain a national holiday. Making students uncomfortable about controversial subjects can be an element of the learning process, Respondent testified. He confirmed that he is aware of the Board's policy on controversial subjects. According to Respondent, for the April 9 AP English class he had previously given students a copy of the Law Day flyer and assigned them to compose a rough outline of how they were going to execute their essay and write a well-constructed introductory paragraph and thesis that stated their position. The purpose of the assignment was to have students write an argumentative essay as practice for their upcoming AP exam.

Respondent testified that in previous years the AP exam included an argumentative essay on social-conscious topics. In such an essay, students have to show that they can anticipate the opposition's side or sides, anticipate what the other side will say and refute the other argument; showing that you have considered the alternative to the side you are taking. The question raised by the Law Day contest offered such an opportunity. In preparation for the April 9 discussion, Respondent assigned articles to be read by students expressing views on both sides of the issue. One article by David Bradley argues that the books should remain; that the books uses the n-word which is offensive, and that the book has literary merit because of that. Respondent included *To Kill a Mockingbird* in the assignment to give students a choice.

In response to testimony of Superintendent Birnbohm that it is not a teacher's job to make students uncomfortable, Respondent testified that his job is not to deliberately make students uncomfortable. But, Respondent continued:

...when you are assigned text like *To Kill a Mockingbird* and *Huckleberry Finn* and as I referenced in that class that students would take AP Literature the next year, they would be encountering bestiality and sexual violence towards children, those are required texts, I don't know how to teach those things without discomfort materializing somehow.

On April 9 Respondent polled the class and learned that it was unanimous; everyone said the books should remain in the curriculum. Unanimity was unusual when issues were raised for discussion in the class. The discussion turned to when, if ever, the word should be used, with some students saying it shouldn't be used ever and others saying it shouldn't be used in conversation. So, Respondent explained, some of the same students who took the position that the books should remain in the curriculum also took the position that the word should never be used. The students discussed the use of the n-word ending in "-er" and ending in "-a." When Respondent asked who had heard the n-word spoke in the school's hallways that day, everyone raised their hand.

Respondent testified that he has given his personal opinion in class in the past, and that students are always permitted to express their personal opinions. Student class participation grades are not based upon the opinion the students express. Respondent testified that he often has to play devil's advocate to move the discussion along and that sometimes students do not know if he is expressing his true positions or playing devil's advocate. In regard to the April 9 assignment, if students were going to receive a passing grade on the essay, they had to address the use of the N-word in the books. Had the question been in the AP exam, and had they not addressed the subject in their essay, they

would fail. Because of the unanimity of the position taken by the class on April 9, - something he was surprised by - he played devil's advocate to get the students to address the N-word issue. He admitted that he did not specifically say he was being devil's advocate on April 9, but that he did repeatedly say that the questions he was asking had nothing to do with his own beliefs whatsoever.

Respondent testified that he did write "N _ _ _ _ r" on the board, that he did not write the full n-word and had no intention of writing the entire word. He was addressing the observation in one of the assigned articles that for some people just seeing the word in writing is offensive. So, the object of his doing so was to get students to think at what point their offense starts and to analyze why. Respondent testified that he has used the same exercise a hundred times over his years of teaching. Respondent also drew an "X" on the board with one diagonal mark and asked if he drew the whole thing what would it make students think of. Students answered the Holocaust or Nazism, and one student said that it is an ancient symbol of peace. Words are symbols that don't have any inherent meaning; they have whatever meaning we ascribe to them, Respondent testified he explained to his class.

Respondent recalled that at one point on April 9 at least one or two students asked; "why are we still talking about this?" Students do not decide when a discussion in class is complete, Respondent testified, and the reason the conversation continued was that Respondent did not feel the students were prepared to address the inclusion of the ugly words in literature and their societal implications.

Respondent testified that at one point S.L. began to cry. "I was standing closest to the white board," Respondent testified, and:

When I noticed that she was crying. She said again: My mother has been called that word. I don't think anyone should say it. I noticed that she was crying. So, I went physically closer to her in proximity, and I just, I stopped, and I said: I'm very sorry that your mother experienced that. The I said -- I tried to use it as a teachable moment. I said: Well, given her experience, how do you think she would feel about what we are talking about? And she didn't want to answer. So rather than -- I told her, you know, I'm sorry that she went through that. I am trying to remember chronologically. Yeah. I'm sorry she went through that. How do you think she would feel about it? But then when I realized she wasn't interested, you know, in using her mother's experience in the context of our conversation. I didn't want to make that or her any more of a spectacle. I didn't want her to be a source of attention to the rest of the class. So at this point, there was not much time left in the class at all. Maybe five-ish minutes at this point. And so I said: Okay. Just so you know -- I tried to put things -- I tried to show them a bigger picture, a broader perspective. I said: This class, these works, this is not the only time you are going to encounter controversial literature, not even at your time at Lenape. I said: Next year, those of you that take AP Literature are going to read Hamlet which has the theme of suicide and regicide and others. You're going to read Beloved, which has sexual violence and bestiality and things like that. I said: if you are going to take that course and sign up for it, then just be prepared. These are the works that you will encounter in it.

According to Respondent, he spoke with S.L. for maybe thirty seconds after the class asking along the lines of "are you okay?" And saying it wasn't his intention to get the class to say the N-word. He does not recall S.L. saying anything in response; "She just kind of shrugged," he testified.

Respondent denied that he told Cattani that he did not know S.L. was African American. He also testified that he told S.L. in class; "Listen, me as a white person, I...could never understand what it's like to go through that experience like that."

6. April 10

Respondent, he met with Cattani and Strittmatter in the afternoon of April 10. Cattani told Respondent they wanted him to apologize to his AP class for upsetting everyone and to tell them it had not been his intention. When Cattani suggested he wanted to be present for the apology, Respondent said he did not think it was a good idea to have an administrator present as students would believe Respondent's apology was disingenuous, that he was doing so only because he had gotten in trouble. Respondent testified that Cattani agreed and said there would be no administrator present for the apology. As it turned out, Respondent testified, Strittmatter was present when Respondent made his apology. According to Respondent he met all of Cattani's instructions. He said he was sorry several times and gave his students several opportunities to express their opinions about the matter – although no students accepted the offer. He testified that he did tell the students how much teaching meant to him and that he was so upset about the matter that it had affected his ability to eat properly. After he made his apology, Strittmatter left the classroom and as the supervisor was exiting through the door he looked Respondent in the eyes and gave an affirmative nod of the head.

7. R.T and *On The Road*

As for the R.T. matter, Respondent testified that R.T. was in his other AP English class, was probably his best writer and his most avid reader. He denied that he has ever given poorer grades to students who do not agree with his opinions; repeating that students often are mistaken as to his beliefs on a number of issues. He graded based upon whether the student met the criteria established for their success on the AP exam. He

gave R.T. good grades on her essays because she deserved them. Respondent has chaperoned students attending the Dodge Poetry Festival and the Seneca Poetry Festival since 2014. The two festivals are held in alternate years. The Seneca is held at the Seneca High School – another of the high schools in the District. For a period both Respondent and another teacher taught poetry classes at Lenape. Respondent no longer teaches the class, but if the other poetry teacher has left-over permission slips/tickets for the school's field trip to a poetry festival, he will give them to Respondent to give to students who he knows will appreciate poetry or literature. Typically, 15 to 20 Lenape students go on the annual field trip. In 2019 Respondent was given two or three slips and handed them out to students he believed would enjoy the trip; one of whom was R.T.

Respondent testified that he has read the novel *On The Road* at least 15 times; including twenty years ago when he read it in his college Secondary Education Department seminar on understanding and teaching literature, and most recently when he taught the book at Lenape five or six years ago. In his college seminar class, he was part of a group assigned to identify and discuss themes of madness and beauty in the novel and relate them back to the Beat Generation. He testified that the copy of *On The Road* he loaned to R.T. had been the copy he used in his college Seminar as well as the last time he taught the book. He testified that he has not written in, or highlighted portions of, the book since the last time he taught it.

Respondent testified that he and R.T. had had a number of brief conversations asking if the other had read different novels. One day Respondent asked R.T. if she had read *On The Road*, to which R.T. responded; no, but my mom said I should because I would like it. Respondent testified that as he was leaving for work the next morning he

grabbed one of his five copies of the book and gave it to R.T. later that day. He testified that he has lent books to several students, both male and female. He testified that the highlighting and handwritten notes in the copy of the novel given to R.T. were made in his college seminar or when he taught the book in his sophomore honors class at Lenape. He testified that he emailed R.T. mother to let her know he lent the student the book and to let her know that her child was doing well in his class. He testified that between phone calls and emails, he has made over a hundred such communications with parents of students, and that the second paragraph of his email to R.T.'s mother is sort of a template he uses for his emails.

Respondent characterized his selecting a book with his notes and highlights to give to R.T. as “an oversight” and that he later realized – after giving it some thought – that, as the book had been in the curriculum, there would be a copy of the book in the school library.

Respondent testified that he was never questioned by the District about allegations concerning R.T. and that he did not learn of the allegations until he read them in the tenure charges. He did not know he was the subject of a Burlington County Prosecutor investigation until he was told at the beginning of his July meeting with administrators and his Union representative that the Prosecutor had cleared the District to investigate.

8. The Picture and Video

Grievant testified that he does not know when the picture of him teaching in front of a white board with “N __ G E R” and “N_ _ GA” was taken, but he is sure it was in relation to his teaching, (something he has done many times, perhaps a hundred, in his

career) and; “ illustrating the different contextual meanings and uses, how it is said by whom and its consequences, et cetera.” He has never previously had a student complain about the lesson and to his knowledge no parent has ever complained. He absolutely was not playing “hangman.” There has never been a formal or informal District or Lenape high school policy prohibiting his writing such on the board, Respondent testified. Similarly, he does not know when the short video recording of him teaching was made, but he believes he was teaching about use of the word in *To Kill a Mocking Bird* or *Huck Finn*. He doesn’t believe the video was made in recent years because of his hair style and his use of the n-word; “it has been so long since he and his colleagues have used the word in its entirety in the classroom.”

V. Arguments of the Parties

The parties submitted lengthy and detailed post hearing briefs presenting factual and legal arguments on the Tenure Charges; briefs that have been fully and carefully considered by the undersigned and will only be summarized herein.

A. Position of the School District

The District asserts that the evidence supports its tenure charges. In considering tenure charges, the Arbitrator is required to determine whether the conduct, as alleged, occurred; whether the proven conduct amounts to unbecoming conduct, and what remedy is appropriate considering the conduct proven. The District has established the truth of its tenure charges against Respondent.

The District has proven many acts of unbecoming conduct by Respondent. Unbecoming conduct is broadly defined, and may include conduct that destroys public

respect for government, behavior that is not in accord with propriety, modesty, good taste or good manners or behavior that violates the implicit standard of good behavior. Here, the District has shown that Respondent engaged in multiple acts of unbecoming conduct, including: Leading an inappropriate class discussion about use of the N-word; on numerous occasions writing a variation of “N---ER” and “N—GA” on the board; failing to follow directives regarding the handling of controversial topics in the classroom; stating to students that; “its saying there are black people and there are niggers”; and engaging in inappropriate interaction with R.T., a female student.

Respondent has been counseled numerous times about appropriate conduct toward female students, but the testimony offered by the District has shown that Respondent is calculated and predatory. The evidence establishes that Respondent wrote N—ER and drew part of a swastika on the white board. Common sense dictates that such is inappropriate. Administration witnesses established that such is not permitted and that notwithstanding Respondent’s testimony that he has done so for many, many years, school administration did not know such. Moreover, there was no reason for Respondent to be discussing the use of the N-word; it was not part of the AP English curriculum, the subject of continuing Huckleberry Finn was not part of his classes’ curriculum and was not suggested by Strittmatter. Even if the subject of continuation of the book(s) in the curriculum was a permissible subject of the class, such does not amount to permission to additionally discuss the spoken use of the N-word. Respondent, having engaged in the unbecoming initiation of the discussion, also violated policy by attempting to force his opinion upon the students in the class that the word should be spoken out loud.

Respondent's excessive advocacy for his personal views caused one student to be driven to tears and another to Ask; "why are we still talking about this?"

In directing his class on April 9, Respondent failed to follow District policy on controversial subjects, he did not forewarn his students as he was required to do, nor inquire whether the subject would cause discomfort. It is not enough that Respondent believes the subject he teaches requires the presentation of controversial issues, he is nevertheless required to comply with District policy and here he did not.

Respondent's conduct in writing on the whiteboard, as memorialized in the photograph and video, outraged the community and caused parents to communicate that they did not want their children to be in Respondent's classroom. Moreover, in regard to the video, Principal Cattani credibly testified that since he was hired by the District in 2007 there has been no time when saying the n-word in its entirety in a classroom has been permitted. There is simply no circumstance where such is permitted. Both Cattani and Superintendent Birnbohm credibly testified that they were not aware that district teacher-witnesses called by Respondent, Hammond and Tortorelli, ever used the entire N-word in their classrooms. Uttering a single racial, sexual or ethnic epithet in the presence of students has been sufficient in the past to support tenure charges. (Citations omitted).

Respondent has previously received serious discipline in the form of a written warning and withholding of increment for his inappropriate conduct with a female student – a female student with long dark hair. His former fiancé was a former female Lenape student with long dark hair. He has been accused of inappropriate conduct with other female students or former students with long dark hair on at least three occasions

and on each such occasion was counseled about inappropriate contact with female students. Yet, in April Respondent again engaged in inappropriate conduct with R.T. a female student with long dark hair in one of his AP English classes.

Contrary to the testimony of Respondent, R.T. credibly testified that she did not have prior discussion with Respondent about novels, had not told Respondent that R.T.'s mother had recommended that she read "*On The Road*", did not like poetry and had not studied poetry in Respondent's class. R.T. credibly testified that Respondent gave her a slip to attend the Seneca Poetry Festival without her ever expressing interest in such and that "out of the blue" Respondent handed her a copy of *On the Road* with hand-written notes/annotations and highlights that made her very uncomfortable; highlights that included:

- Her hair was long and lustrous black; and her eyes were great big blue things with timidities inside. I wish I was on her bus. A pain stabbed my heart, as it did every time I saw a girl I loved that was going in the opposite direction in this too-big world.
- The prettiest, shyest one hid far back in the field to watch, and she had good reason because she was absolutely and finally the most beautiful girl Dean and I had ever saw in our lives. She was about 16 and had the most Plains complexion like wild roses...
- [O]h, man, she was only 15 and wearing jeans, just waiting for someone to pick her up. And then...she was so sweet, so young.
- She was 18, most lovely, and lost

And Respondent's handwritten annotations in the book included:

- The most BEAUTIFUL girl in the WORLD
- What do you want most out of life?

The book caused R.T. such discomfort that she attempted to report the matter to the principal, and eventually reported the matter to Strittmatter. And then, to cover up his

grooming effort, Respondent sent an unusual, stilted email to R.T.'s mother, testifying he did so; "to maintain as much transparency as possible to avoid any misconceptions about his intent in giving her the book."

Respondent's testimony and conduct begs the question:

Why would an adult male teacher who has had his increment withheld for an inappropriate relationship with a female student with long, dark hair; had several allegations of inappropriate relationships with female students with long, dark, hair; was engaged to a former student with long, dark, hair;⁶ give a book to a female student with long, dark hair after highlighting a passage about a girl with long, dark hair; send an email to the parents of the female student with long dark hair in order to avoid any misconception after the student was surprised by the adult teacher giving her the book?

The District is charged with provide a safe environment for its students. A school with Respondent present is not a safe environment for female students. In his inappropriate conduct toward R.T. Respondent unequivocally engaged in unbecoming conduct. There can be no question that such conduct by Respondent is not in accord with propriety, modesty, good taste or good manners. His behavior is unsuitable, indecorous or improper under any circumstances. When his conduct toward R.T. in considered within the context of Respondent's unbecoming conduct in teaching a class where he advocated for the use of the N-word, previously used the n-word in the classroom, caused a public outcry, and showed throughout the District's investigation and the tenure hearing that he is not credible, termination of Respondent is warranted based upon his unbecoming conduct.

⁶ The evidence establishes that Respondent's former fiancé was a former student, that as a result of his family's friendship with her family he knew her for years prior to her attending Lenape. He testified she had "dirty blond" hair. At the time she attended Lenape she had long dark hair.

Respondent should also be terminated due to his incapacity. Determining a teacher's fitness to teach is not only focused upon his or her ability to perform the function in the classroom, but also takes into account whether the teacher's presence poses a danger to students not related to academic proficiency. Respondent's conduct has created a circumstance where the District cannot use him in the classroom with students of color or female. To put him in the classroom would condone his preying upon young girls and advocating for and saying the N-word. Respondent's lack of credibility means the District cannot trust him.

Finally, the District has other just cause to terminate Respondent. Respondent's lack of credibility and the distrust he has created, have resulted in a good faith concern on the part of the District, as well as parents of student in the District, for the safety of students. Respondent has previously received significant discipline of an increment withholding. He has engaged in further inappropriate conduct toward a female student, has violated District and school policy; has caused discomfort to students in his classroom, and has placed his own opinion over the mandates of his employer. Respondent cannot be placed in a classroom with students of color, Respondent cannot be placed in a classroom with female students. Respondent cannot be trusted to comply with District and School policies. Respondent can no longer effectively perform his job duties. There is cause to terminate Respondent.

B. Position of Respondent

The District has the burden of proving the truth of its Tenure Charges against Respondent by a preponderance of the evidence. The District has failed to do so.

The District's investigation of the allegations relating to the class of April 9 was procedurally defective and failed to disclose the whole truth of what took place during the class period and what the purpose of the discussion was and how the lesson related to the goals of the AP English class. Contrary to the conclusion of the District, a conclusion made prior to it hearing any evidence from any student not selected by S.L., Respondent did not advocate his own view nor attempt to get the class to agree that he could say the N-word out loud. In this regard, S.L. admitted, and other students testified, that the AP class often required that students take a position, supporting the position, anticipate the other side's argument, and refute the other side's argument, and that is what took place on April 9. S.L. also admitted that Respondent often took the position of devil's advocate and did not always use the exact words "devil's advocate" when he did so.

Respondent may have been seen as taking a stronger position than usual on April 9, but it should be remembered that he was presented with a class that unanimously took the position that the N-word should only be used in literature and never otherwise. In such a circumstance, and to meet the objectives of the class in preparing students for the AP exam, the students had to anticipate a strong argument against their unanimous view and then refute that argument. The few students interviewed by the District who had been identified by S.L. may have interpreted Respondent's effort as being too strong. But, had the District engaged in a fair investigation and interviewed other students in the class, it would have learned that other students believed Respondent was playing devil's advocate and that the class was consistent with its rhetorical nature. Had those other students been interviewed, the District would also have learned that Respondent did acknowledge S.L.

was crying and said a few words of comfort, and then directed the focus of the class away from S.L.

Had the District considered S.L.'s view closely, it would not have come to the wrong conclusion that S.L. cried because of the position taken by Respondent. S.L. testified that Respondent acted professional during the class, and that she began to tear up when she raised her hand and; "started to say, like, my mom and...other family members have been [called] the 'N' word, out of hate. And...when I mentioned my mom, I started choking up because I was so overwhelmed by the feelings..."

The charges also allege Respondent's conduct violated school's English Department policy on Cultural Sensitivity/Controversial Content/Common Sense which states that "at no time in class should the N-word be used in its entirety - not in discussion, not in a question, and not in reading." Strittmatter testified that he distributed the policy and that his "mind has always been to avoid posing any beliefs about or controversial topics that make students uncomfortable." Superintendent Birnbohm also testified that teachers should not make student uncomfortable. But, in contrast to the claim that controversial subjects are prohibited, the District's Policy 2240 provides that "consideration of controversial issues has a legitimate place in the instructional program" and that the "Board will permit the introduction and proper educational use of controversial issues provided their use in the instructional program is related to the goals of the course of study and level of maturity of the pupils." In this regard, the evidence shows that other teachers have used the N-Word in their classes with the knowledge of administrators and that Respondent was writing a portion of the word on the board and

discussing the use of the N-Word with an educational purpose, and has done so for many years.

As for the video in which Respondent spoke the N-Word, the District was unable to establish when the video was taken and Respondent credibly testified that it must have been a significant time ago and that the statement was made with an educational purpose. He did not direct the word as a slur toward someone; he was teaching.

Contrary to the District's assertion, the record establishes that Respondent can change when counseled to do so. He has not written emails to students on his private email since he was instructed not to do so in 2008 and on his own accord he changed his teaching from the prior accepted standard of saying the entire "N" when such was acceptable within an educational context to referencing the word as the "N-Word" as teaching literature norms have evolved and changed.

As with its conduct involving Respondent's April 9 AP class, the District failed to provide Respondent due process in the R.T. matter. At no time prior to its decision to terminate Respondent did the District give Respondent the opportunity to explain his conduct. The District's Director of Personnel McGregor, notwithstanding her testimony that the July meeting was to give Respondent an opportunity to be heard, memorialized the District's July meeting with Respondent and his Union representative in a written memorandum, written within a week of that meeting. In her memorandum, McGregor wrote that even before stating that the District would not share its information about the matter with the Union, she told the Union that if Respondent did not resign, the District was "willing to proceed with tenure charges[,] as there is no way we would willingly put him back in the classroom..." The District just assumed that Respondent had given the

copy of *On The Road* to the student so he could communicate to the student through his handwritten annotations and his highlights in the book. In fact, had the District given Respondent the opportunity to explain, the District would have learned that the notes and highlights were at the most 20 years old and at the least and five or six years old. They plainly could not have been directed toward R.T., and R.T.'s assumption that they were, as was the District's, was plainly mistaken. Additionally, although there was a credibility dispute about whether or not R.T. told Respondent that her mother had read *On The Road* and recommended that R.T. read the book, when R.T. testified at the Tenure hearing, her mother was in the room with her. Yet the District did not call the mother to testify in support of her daughter's testimony that her mother had never read or recommended the novel.

Similarly, the District further jumped to the conclusion that because the student had described Respondent as "creepy and weird" that such related to conduct of Grievant directed specifically toward the student. Rather, as the student plainly wrote in her statement presented to the District in April that; "[f]rom the first day of school. Mr. Archible seemed somewhat creepy and weird to me," and that; "I know this had no solid [basis in] evidence, but I feel very uncomfortable in his class." It is also evident that R.T.'s recollection of events is not reliable. She testified that she never spoke to Respondent about novels whereas Respondent testified that his occasional conversations with the student were brief. R.T. testified that poems were never a subject in the AP class, yet Respondent testified about various specific poems discussed and that poems may be a subject of an essay in the AP exam, and supervisor Strittmatter testified that when he

went into Respondent's classroom on April 11, Respondent had written a white board prompt to his two AP classes about a poem.

Additionally, the testimony of Birnbohm, McGregor and Cattani that Respondent is a predator and "grooms" female students with long dark hair is wholly based on assumptions, not facts. The facts are, that Respondent has never engaged in such conduct and that notwithstanding the District and county prosecutor have investigated allegations of conduct by Respondent a number of times, no evidence has ever been established to support District's assumptions. The District witnesses wildly mischaracterized their prior findings related to Respondent.

The District has also failed to support its claim of community outrage at Respondent. The only evidence of community outrage the District offered was limited to two members of the community; the mother of S.L. and Daria Torres. The first incorrectly perceived Respondent's discussion of the N-Word on April 9 as a "racial incident," and the second contacted the District to offer her consulting services.

The District has failed to prove its allegations against Respondent.

VI. Discussion

A. Introduction

The foundational narratives about Respondent, and upon which the District largely bases its charges, are two: First, that the events of April 9 to 11, as well as Respondent's prior classroom conduct relating to the N-word, had no educational basis and reflected racial animus or insensitivity on Respondent's part and, second, that Respondent is a predator and has an established history of "grooming" female students,

with long black hair, so he might engage with them in inappropriate relationships.

Neither foundational narrative is established by the evidence.

B. Unbecoming Conduct

1. The Claim That Respondent “Grooms” and Engages in Abhorrent Conduct with Female Students

The District’s first Charge against Respondent begins by presenting bold-faced claims relating to Respondent’s past conduct toward female students. Thus, the first three substantive paragraphs of Charge One allege:

68. As set forth above, despite receiving progressive discipline and remediation measures, Archible continued to engage in questionable and unprofessional relationships with female students, specifically K.F., K.L., J. S. and R.T.

69. By continuing an abhorrent pattern of engaging in inappropriate relationships with minor female students, both inside and outside of school hours, Archible’s (sic) continues to show a blatant disregard for authority and the emotional well-being of his students.

70. In fact, concerns that Archible “grooms” select female students due to “creepy” and “weird” conduct toward female students is reprehensible and must be stopped before it escalates.

The evidence establishes that Respondent received a single discipline in his 14 years at Lenape; a written warning and withholding of increment in 2008. In 2008, the District did not find that Respondent engaged in a physical or otherwise in-person relationship with a student. The discipline focused upon Respondent’s email-based relationship with a female student, use of private email in communicating with the female student, and the content of those email communications. The District’s findings⁷ were limited to:

⁷ The reference to use of alcohol and consuming alcohol with a female under the age of 21, did not relate to a Lenape student, and was a reference to email discussion about Respondent meeting a female at a bar who had used a fake I.D. to gain entrance.

evidence ...of inappropriate activity with students, which includes, using inappropriate language, undermining authority to a student and conduct unbecoming, such as personal use of alcohol and consuming alcohol with a female under the age of 21...The evidence indicates that you utilized your personal email account to communicate with at least one student.

2. Paragraph 68; K.F, K.L. & J.S. and the Meaning of “No Evidence”

The evidence offered by the District was insufficient to support its allegations that Respondent “continued to engage in questionable and unprofessional relationships with female students, specifically K.F., K.L., J. S....”⁸ To the contrary, the record establishes that notwithstanding allegations against Respondent, the District (in some cases following consideration by the Office of the County Prosecutor) conducted its own investigations and concluded that; “no evidence was found to support any claim of wrongdoing” by Respondent. Contrary to the suggestions by the District and its witnesses that the prior allegations against Respondent were dismissed by the District because there was inconclusive evidence, insufficient evidence or too little evidence, the allegations were dismissed because there was “no evidence” of the inappropriate conduct alleged. “No” means: no; none; zero. Where there is “no evidence” of a prior conduct, there can be no finding of a continuation of such conduct. Leaving aside the allegations relating to R.T., the District failed to prove the allegations contained in numbered paragraph 68 in Charge One.

3. Paragraph 69

Similarly, for the same reasons as stated above, I find there was no “pattern of conduct” of Respondent engaging in inappropriate conduct with female students

⁸ I address the R.T. matter below.

established by the evidence. As a consequence, I further find the District has failed to prove the allegations contained in numbered paragraph 69 in Charge One that Respondent has continued “an abhorrent pattern of engaging in inappropriate relationships with minor female students, both inside and outside of school hours...”

4. “Creepy” and “Weird” Conduct, Paragraph 70

The District and its witnesses repeatedly raised student R.T.’s reference to Respondent as being “creepy” and “weird.” However, the District never asked R.T. what she meant by her description. Neither the definition of the word “creepy” or the definition of the word “weird” suggests, as the District asserts, that Respondent must therefore have been attempting to establish inappropriate relationships with female students. R.T. did not report that Respondent was creepy in his conduct toward anyone. Instead, she began her statement, written at the request of Strittmatter in April, that; “[f]rom the first day of school, Mr. Archible seemed somewhat creepy and weird to me.” Failing to inquire as to what R.T. meant by the term creepy in describing Respondent is particularly curious where, as here, the individual described by the seventeen-year-old is a man with a “Mohawk” haircut and plug earrings. Considering the arguably unusual presentation of Respondent, a fair assumption could be made that the student was reacting to that presentation. In any event, it is not known what R.T. meant by writing that Respondent “seemed” creepy to her as she was not asked during the investigation or during either of the two times she testified at the hearing.

Again, the District has failed to prove its allegations contained in numbered paragraph 70 in Charge One. District witnesses expressed their “concerns that Archible ‘grooms’ select female students due to “creepy” and “weird” conduct toward female

students.” But concerns and assumptions do not establish either that Respondent engaged in such conduct or that any conduct engaged in by Respondent; “is reprehensible and must be stopped before it escalates.”

5. The April 9 Class and History of Lessons Relating to the N-Word

I find there is no evidence of race-based animus on the part of Respondent. Nor do I find that the lesson of April 9 was some rouge activity by Respondent, unrelated to his AP English curriculum. Notwithstanding supervisor Strittmatter’s testimony that the Law Day flyer was handed out to Respondent’s AP classes on April 11, I find based upon the testimony of student witnesses, the testimony of Respondent and the course of the April 9 discussion itself, that the flyer was distributed by Strittmatter to English department teachers prior to April 9 and that the subject of the essay described in the flyer provided the concept of the April 9 lesson. Additionally, I credit Respondent’s testimony that the subject of the April 9 lesson was consistent with the AP-test preparation goals of his AP English classes, including; (a) the use of the underlying question of whether the two books at issue should remain in the curriculum and (b) his rhetorical exercise of addressing how students could unanimously agree that the books should remain in the curriculum and that the word should never be said out loud, but not have developed an rhetorical response to an anticipated counter position that the word should be spoken out loud for educational purposes.

Respondent’s process was consistent with portions of the Board’s policy 2240 stating that controversial subjects were permissible and, “can help pupils learn to identify important issues, explore fully and fairly all sides of an issue, weigh carefully the values and factors involved, and develop techniques for formulating and evaluating positions.”

Although I am persuaded by the testimony of students in attendance and by Respondent that Respondent did not express or advocate his personal opinion on the subject of use of the N-word in class, contrary to the District’s argument, Board policy 2240 allows teachers to express their personal opinions when so characterized.

I do, however, find that Respondent violated the portion of the Board policy providing that the discussion of controversial issues in the classroom, “can not be allowed to disrupt the educational process.” In this regard, I find that the evidence establishes that on April 9 Respondent allowed the N-word discussion to go on too long, unnecessarily upsetting students and that, as a consequence, the educational process was disrupted for a number of students for a period toward the scheduled end of the class on that day.

As for the claim that Respondent failed to forewarn his class of the sensitive and controversial nature of the planned April 9 class, the evidence establishes that at the start of the class on April 9 Respondent did not specifically caution students about the potentially sensitive nature of the discussion planned for that day. But the record establishes that the topic of discussion for April 9 had been previously described in his assignment to students and in a Law Day flyer distributed to the students as background for the assignment. In regard to any question of pre-class notice of sensitive or disturbing subject matter, I find it would be hard to miss the sensitive nature of the planned class discussion as the flyer presented the issue of whether – because of the author’s use of the N-Word and slave references the book - *Huckleberry Finn* should be removed from the national curriculum, and specifically provided: “[t]hough filled with what many academics see as anti-racist and anti-slavery themes, ‘Huckleberry Finn’ presents an unvarnished depiction of the antebellum south ***and include[s] use of the n-word more***

than 200 times.” (Emphasis added) Thus, the sensitive topic of use of the N-word was communicated prior to the class.

In addition, Respondent did orient his class at the beginning of the schoolyear warning them that controversial subjects would be discussed. I also find that Respondent did not review the details of his discussion with Strittmatter prior to the class. However, I find that the record does not establish that the school has strictly enforced the Strittmatter policy. The evidence establishes that Respondent’s AP English classes have often discussed controversial subjects over a period of many years and I find it wholly unreasonable to assume that Strittmatter has been such an absent supervisor over such an extended time as to not have knowledge of the nature of the class.

Additionally, evidence establishes that Respondent’s raising a controversial subject for discussion in class on April 9 without clearance and advice from the supervisor was not perceived as a violation of policy by school administration when the subject was first presented. In this regard, both principal Cattani and supervisor Strittmatter met with Respondent on April 10 and made no mention of the fact that Respondent had not reviewed the raising of a controversial subject in his class with his supervisor. (Strittmatter also did not raise the controversial subject issue on April 11 when he met with Respondent at the end of the school day.) Instead, the administrator’s focused upon the teacher pushing the subject and his personal opinion too hard, allegedly causing some students to be uncomfortable and one student to cry and the request of a student’s parents to meet with the principal. Respondent admitted that he had let the class discussion go too far and took responsibility for his conduct. The administrators then determined that the remedy to the situation was for Respondent to apologies to the class -

the remedy was not to discipline Respondent. As Cattani testified, he was not considering tenure charges. I find that Respondent fully complied with the remedy decided upon by the two administrators.

Based upon such considerations, with the exception of Respondent's allowing the class discussion to go too far and causing the educational process to be disrupted during the April 9 class, I find the District has failed to prove the truthfulness of the remaining allegation of paragraphs 71, 72, 73 & 75.

6. "Public Outrage" and the "Hangman"

Paragraph 74 of the District's Tenure Charge One alleges:

74. As the investigation into this incident continued, and public outrage mounted, yet another incident surfaced in which a photograph of Archible using the "N-word" in his classroom while apparently playing a game of "hangman," as well as a separate video of his stating the "N-word" during class instruction.

The evidence offered of "public outrage" included statements of S.L.'s mother - who I find had reason to express concern - and a statement by a single member of the District's community who characterized the picture of Respondent in front of a white-board as playing hangman and offered to sell her consulting services to the District. In their testimony, Supervisor Birnbohm, Director McGregor and Principal Cattani referred generally to public outrage or growing outrage in the community. Cattani testified that he received many telephone calls from parents who said they did not want their children in Respondent's class. But, such testimony, although relevant to explain the origin and reason for an investigation, was hearsay and the District offered no specifics; no identifying information of any such parents; no copies of social media posts, emails, texts or other communications, or contemporaneous notes of any such conversations or phone

calls to establish the nature and breadth of any community concern. I find there was insufficient evidence in the record to establish the community outrage alleged in the District's Tenure Charges.

Additionally, I find troubling the District's inclusion in its Tenure Charges of the assertion that Respondent was; "using the 'N-word' in his classroom while apparently playing a game of "hangman..." Contrary to the District's arguments at the hearing and afterward, the District's charges here do not assert that Respondent's writing a portion of the N-word on the board violated policy. It alleges narrowly that Respondent was apparently playing a game of hangman. Nooses and hangings are permeated with particularly vulgar and hateful race-based messages. A simple glance at the picture referenced by the Board in this paragraph, or a brief review of the referenced video, shows that no game of hangman was being played. There is no evidence whatsoever of Respondent playing hangman in the record. By giving voice to such an obviously false and potentially inflammatory allegation - to broadcast that it is true when such has no support whatsoever in fact - the District - while trying to enforce a line of racial sensitivity- may have itself crossed such a line.

In its puffery and exaggerations of its allegations, I find the District has effectively admitted that the facts that can be proven are likely insufficient to support the termination of Respondent. Such puffery and exaggeration includes District assertions that: 1) Respondent "continued to engage in questionable and unprofessional relationships with [three] female students;" 2) that Respondent continued "an abhorrent pattern of engaging in inappropriate relationships with minor female students;" 3) that Respondent "grooms" select female students by engaging in "reprehensible" and "creepy

and weird conduct toward female students”; and, now, 4) that Respondent used the “N-word in his classroom while apparently playing a game of ‘hangman’...” Considering it is the District’s burden to prove the allegations it chose to allege and describe in its Tenure Charges, I give weight to such an implied admission against interest.

I also do not find, under the circumstances established by the record, that the video in which Respondent says the N-word word out loud supports a finding of conduct unbecoming. Respondent openly taught his N-word-related lesson for many years; some one hundred times according to his testimony. The lesson evolved with the times and he admitted that there was a time years ago when he and his colleagues would say the full N-word in class in the manner recorded by the video when teaching about books wherein the word was used, such as *To Kill a Mocking Bird* and *Huckleberry Finn*. As the mere utterance of the word became culturally unacceptable, he adjusted and began referring to the word as the N-word. I find that the video supports Respondent’s testimony that he was likely talking about a passage in a novel when he referenced in the video; “it’s basically saying....”

I also find in this regard, that Respondent did not say the word in the context of directing a slur toward any individual person or any group of people. The video at issue is of Respondent teaching, and the word was uttered by Respondent in the context of teaching students about the use of the word in American literature. Contrary to the argument of the District, I do not find the cases relied upon by the District support the tenure charges here. This is not a case where the teacher could be heard mumbling the N-

word to describe his students,⁹ or in an outburst saying the words “nigger, nigger, nigger,” “fuck you” and “suck my dick” to his students.¹⁰

7. Paragraph 75

As discussed above, I am not persuaded by the evidence that Respondent engaged in a pattern or practice of “ignoring professional directives regarding cultural sensitivity” by having class discussions over his 14 years of teaching about use of the N-word in American literature and by saying the N-word or writing part of the N-word on the board during his classes. Respondent was hired in 2005. The written policy against saying or writing the entire N-word in class offered into the record is dated August 2018.

Strittmatter testified that he authored the policy in or about 2014. The record does not establish when the video was taken and the District did not present the individual who took the video as a witness. Considering all of the evidence on the matter, I find the District failed to establish that the video was recorded at any time when either the school or the District had a policy against utterance of the complete word by teachers in the performance of lessons related to novels using the word.

The District also failed to prove that Respondent’s writing part of the N-word on the board violated any policy. Respondent did not write the entire word as is prohibited by supervisor Strittmatter’s policy, and there was no District Policy offered addressing such a subject. It is well established in matters of discipline or discharge for cause that rules and policies must be clear and must reasonably put employees on notice of the conduct prohibited and the potential discipline that could result from violation of the

⁹ See *I/M/O/ Bruce Bassetti and Penns-Grove –Carney Point School District Board of Education*, DOE Docket No. 75-4/19 (Susan Wood Osborn, July 17, 2020).

¹⁰ See *I/M/O/ Vincent Serpico and School District of the Township of Piscataway*, DOE Docket No. 144-6/18 (John E. Sands November 4, 2018)

policy. The policy provides that “at no time should the N-word...be used *in its entirety*.” (Emphasis added). There is no evidence that Respondent ever wrote the entire N-word on the board. Again, I credit the Respondent’s explanation as to the educational purpose of his conduct.

8. Charge of Unbecoming Conduct Relating to R.T.

I find that Respondent did not make the handwritten notations or highlights in the copy of *On The Road* he loaned to R.T. with R.T. in mind. I am persuaded that the handwritten notations and highlights were made by Respondent when he was in a college seminar some twenty years ago and five or six years ago when he taught the book in a class at Lenape.

Regardless of whether or not Respondent and R.T. had conversations about *On The Road* or other novels, or a conversation about R.T.’s mother’s interest in the book, I find that the *On The Road*-related conduct of Respondent with R.T. was outside of the ordinary course of the AP English class in which R.T. was enrolled and Respondent taught. The invitation to the poetry festival and the lending of the book should be viewed from such a context and from the perspective of the student.

Although, (1) as discussed above, the record fails to establish that Respondent had a pattern of inappropriate conduct toward female students or engaged in efforts to “groom” female students, and (2) I do not find that Respondent engaged in any such conduct toward R.T.; I nevertheless find that Respondent should be held accountable for the discomfort and potentially inappropriate, albeit mistaken, message communicated to R.T. that resulted from his conduct. I am not at all persuaded that Respondent’s lending of the particular copy of *On The Road* to R.T. can fairly be characterized as “an

oversight,” as Respondent described it. Respondent knew that there were highlights and notations in his book. His choosing the copy of the book he gave R.T., whether intentionally or by an unthinking grabbing of one of his copies, had very real consequences to the student.

There is no evidence of animus on the part of R.T. toward Respondent. The content of the book she received from Respondent disturbed R.T. enough that she took deliberate and intentional steps to report the matter to her school’s principal. That R.T. was disturbed by some of the highlights and handwritten notations in the book is understandable; particularly where, as here, the book was given without prior explanation of, or warning about, the notations and highlights. When considered in combination; (1) that the book was not requested by R.T. and was handed to her by Respondent unexpectedly; (2) the book was not in the curriculum in the class R.T. was taking from Respondent; (3) the out-of-context, disturbing nature of some of the highlighted passages and handwritten notations in the book; and (4) R.T.’s unexpected invitation from Respondent to a poetry festival for which she had not expressed interest, I find that R.T.’s expressed discomfort, as well as her assumption that the highlights and notations were directed at her, were reasonable.

Respondent had been disciplined in 2008 for his interaction with a female student and had been further reminded by District superintendents on at least two occasions, to:

Please allow this letter to serve as a reminder to you of the boundaries of student-teacher relationships. It is important for teachers to always be cognizant of how words and actions may be perceived by students, and to maintain an atmosphere of respect in your classroom.

In your future interactions with students, parents, and staff, please exercise good judgment and follow district policy.

Although the two investigation-closed letters were not disciplinary warnings and did not specifically state that discipline would result should Respondent fail to heed the advice contained therein, they served the function of placing Respondent on notice of the conduct expected of him. This is particularly so of the guidance; “[i]t is always important for teachers to always be cognizant of how words and actions may be perceived by students...” and “to exercise good judgment.”

Based upon such considerations, I find that the District has shown that Respondent exercised bad judgment and failed to be cognizant of how his words and actions would reasonably be perceived by R.T. At least to such extent, the District has met its burden of proving that Respondent engaged in unbecoming conduct by giving R.T. the copy of *On The Road*.

C. Incapacity

As the District’s claim of incapacity is primarily based upon its unproven allegation that Respondent engaged in a pattern of inappropriate conduct with female students and allegations that Respondent has used racially insensitive language, allegations I have found not supported by the record, I am not persuaded that the District has proven its Charge of Incapacity.

D. The Appropriate Discipline Considering *Fulcomer* and Just Cause

As discussed above, I find that Respondent engaged in conduct alleged in Tenure Charge One relating to a violation of the Board’s Policy 2240 on Controversial Issues and a portion of the conduct alleged relating to R.T. In determining appropriateness of

discharge or alternatively the degree of discipline of Respondent warranted, I make the following conclusions based upon the *Fulcomer* and Just Cause standards.

1. *Fulcomer*

Applying the well-recognized test for determining the appropriateness of termination of a tenured teacher's employment for unbecoming conduct articulated in *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967), and cases citing *Fulcomer*, the undersigned is required to consider a number of factors, including: the potential impact on Respondent's teaching career; the longevity of Respondent's teaching career; Respondent's overall teaching record; Respondent's teaching ability; Respondent's attitude and whether the acts at issue were premeditated, cruel or done with an intent to punish; Respondent's disciplinary record; the nature and gravity of the offenses under all of the circumstances; evidence of provocation, extenuation or aggravation; any harm or injuries Respondent's conduct may have had on maintenance of discipline and the proper administration of the school system; the likelihood of such behavior recurring and whether the discipline is generally fair and proportional to discipline imposed for similar offenses by other public employees. It is also well established that where an incident of conduct unbecoming is found to have occurred, in most cases progressive discipline should be used.

I find that Respondent has a significantly long teaching career of at least fourteen years, and that he has a very good overall teaching record. Respondent has one prior discipline of which he fully complied and the record well establishes that Respondent has very good teaching ability. The potential impact of termination on Respondent's teaching career would be substantial.

As for the nature and gravity of the Respondent's offenses under all of the circumstances, I find that the violation of policy found relating to the April 9 class are relatively minor and were to a large degree addressed by Respondent's immediately taking responsibility for his conduct and compliance with the remedy to the situation directed by his principal and supervisor; to apologies to his class and give the students the opportunity for closure. In this regard, the conduct of individuals speaks loudly in the resolution of credibility issues, and in finding that Respondent apologized as directed, I rely primarily upon the conduct of Supervisor Strittmatter that reflected the supervisor's approval of the apology. In this regard; (1) Strittmatter was present when the terms of the apology were described to Respondent by principal Cattani, (2) Strittmatter was present when the apology was given, looked Respondent in the eye and gave him a nod when the supervisor left the class and, (3) importantly, notwithstanding that the supervisor explained to Respondent on the afternoon of April 11 that he attended the class that morning to ensure that the teacher did as he was directed, the supervisor did not suggest that the apology had been inadequate. If the supervisor believed at that time that the teacher had failed his directive, it would have been illogical for him to (a) give the assurance he gave Respondent, and (b) not tell the teacher he had failed to do as directed.

Respondent's conduct toward R.T. was more significant. Respondent's conduct was an exercise in poor judgment and lack of forethought. However, the evidence does not establish that Respondent intentionally premeditated the misunderstanding that was created by his giving R.T. the book. Nor do I find that the conduct of Respondent toward R.T. was cruel, done with an intent to punish the student or done for some other nefarious purpose.

I find there is no significant likelihood of harm or injury that Respondent's conduct may have on maintenance of discipline and the proper administration of the school system. In this regard, the fears expressed by District administrators about Respondent being in the classroom were largely based upon the claims that Respondent "grooms" female students and habitually fails to comply with policy, and as discussed above, those claims have not been established. Finally, I am persuaded that, considering the very significant discipline of Respondent ordered herein, it is unlikely that Respondent will repeat the unbecoming behavior found here.

Applying the *Fulcomer* considerations, I find that termination is not warranted in this matter.

2. Just Cause

The TEACHNJ Act incorporates the just cause standard wherein it provides that a school district shall not dismiss or reduce the compensation of a tenured teachers except for "inefficiency, incapacity, or conduct unbecoming ...*or other just cause,*" (emphasis added). An analysis of whether or not Respondent's discharge was for just cause under generally recognized standards requires consideration of all of the circumstances in determining whether the issuance of discipline was "fair." Some of the several factors often considered when applying the just cause standard include whether or not: (1) the rule or policy being enforced is reasonable; (2) there was prior notice to the employee of the rule and the consequences for its violation; (3) the disciplinary investigation was adequately and fairly conducted and the employee was afforded an appropriate level of due process under the circumstances; (4) the employer was justified in concluding that the employee engaged in the conduct as charged; (5) the rule has been consistently and

fairly enforced and (6) whether or not the discipline issued was appropriate given the relative gravity of the offense, the employee's disciplinary record and considerations of progressive discipline and due process.

For the reasons stated above, I have found that the District has failed to prove many of its allegations against Respondent. As a consequence of such findings, I also find that the District failed to show just cause for discipline relating to those allegations. As to the allegations I have found the District has established, I find that under the standard of just cause, the discipline of discharge was too harsh given the relative gravity of the offense, Respondent's disciplinary record and considerations of progressive discipline and due process.

a. Progressive Discipline

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. The disciplinary notice issued to Respondent in 2008 does not state that if further conduct warranting discipline occurs Respondent will be terminated. Instead, the notice provides that if Respondent engages in similar conduct “further disciplinary action, up to and including termination will be considered.” 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 reasonable be relied upon to correct an employee's conduct or performance.

I find insufficient evidence to support the District's claim that Respondent will not reform his conduct in the future. Respondent has a long record of good performance

and Respondent expressed strong interest in continuing his teaching position. Respondent has shown through his full compliance with his 2008 discipline that he can reform his conduct; compliance on Respondent's part that eventually resulted in his increment being restored by the Board.

b. Appropriate Discipline

As discussed above, termination of Respondent is not required by the *Fulcomer* considerations and termination is also contrary to the Just Cause requirement of progressive discipline. I additionally find that termination is disproportionately harsh relative to the conduct found.

Respondent took responsibility for his conduct relating to the April 9 class and immediately complied with the apology remedy directed by the principal. As for Respondent's R.T.-related conduct, considering all of the circumstances, I find termination to be disproportional to the offenses found herein. Contrary to the District's charges, Respondent did not engage in a pattern and practice of "grooming" or a premeditated scheme to initiate an inappropriate relationship with the R.T.; the conduct the District argued warranting termination. The misunderstanding caused by Respondent's lending the student a book with the teacher's handwritten notations and highlights and the ill effect it wrought upon the student were real; but not intentional. Respondent should have exercised more care and better judgment and his failure to do so under the circumstances presented here amounts to conduct warranting significant discipline, but does not, standing alone or in combination with the violations of policy found, amount to cause for termination of a tenured teacher.

VII. Conclusion

The Tenure Charges are sustained in part and dismissed in part.

VIII. Remedy

I will order that Respondent be promptly reinstated; that Respondent serve a suspension without pay of 60 calendar days beginning with the date of his initial suspension, April 11, 2019; that Respondent be made whole for lost pay, benefits and seniority, less such related to his 60-day suspension; and that Respondent be warned in writing that he must exercise good judgment when interacting with students, particularly when such interaction is outside of the classroom and/or curriculum of his classes, and to comply with Board policies relating to discussions of controversial topics.

IX. Award

IMO Tenure Charges of Joseph Archible Agency Docket Case No. 281-9019

The subject tenure charges against Respondent are sustained in part and dismissed in part.

The District is ordered to:

1. Promptly offer Respondent reinstatement to his former position;
2. Reduce Respondents termination to a written warning and suspension without pay for a period of 60 calendar days from the date of his original April 11, 2020; and
3. Make Respondent whole for lost wages, benefits and seniority for the period from the date of his suspension to the date he is reinstated or declines reinstatement, less pay and benefits related to his suspension.

Dated: January 29, 2021



Timothy J Brown, Esquire
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket Case No. 281-1019 relating to tenure charges against Joseph Archible on Friday, January 29, 2021.



Timothy J Brown