

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges

<p>WILLINGBORO BOARD OF EDUCATION, BURLINGTON COUNTY, NJ</p> <p>Petitioner,</p> <p>-and-</p> <p>RAYMOND G. MORISON, JR.,</p> <p>Respondent.</p>	<p>AGENCY DOCKET NO.: 251-12/20</p> <p>DECISION AND AWARD</p>
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BEFORE: RUTH MOSCOVITCH, Arbitrator

Appearances:

For the Petitioner:

Caitlin Pletcher
Steinhardt Cappelli Tipton & Taylor
430 Mountain Avenue, Suite 103
New Providence, NJ 07974

For the Respondent:

Dean R. Wittman
Zeller & Wieliczko
120 Haddontowne Court
Cherry Hill, NJ 08034

This matter comes before me on tenure charges brought under N.J.S.A. 18A:28-5 and N.J.S.A. 18A:6-10, et seq., by Petitioner Willingboro Board of Education, Burlington County (the "Board") against Respondent Raymond G. Morison, Jr. The tenure charges at issue here were certified to the Bureau of Controversies and Disputes by the Board on or about December 15, 2020. I was appointed the arbitrator to adjudicate this matter on December 28, 2020.

The parties filed counter motions for summary adjudication of this matter, which I denied on February 22, 2021 in a 17-page decision. I then conducted a hearing via video conferencing on March 11, 2021. Both sides were represented by counsel and were afforded the opportunity to call witnesses, present evidence, and cross-examine witnesses offered by the opposing party. All witnesses were sworn. A court reporter attended the hearing and produced a transcript of the proceedings.

The Board presented the testimony of four individuals: two Board employees -- Dr. Neely Hackett, Superintendent of Schools and, Kimberly Ash, Willingboro High School Principal – and two former students, CH and KP. The Board identified a total of 27 exhibits, including pleadings and Board policies. Eight exhibits (P. 19-27) were identified by the witnesses during the hearing and were entered into evidence.¹ Respondent testified in his own behalf and offered 28 exhibits: his resume at the time he was hired by the Board and 27 evaluations. The parties submitted post-hearing briefs simultaneously on April 15, 2021. No objection has been made to the fairness of this proceeding.

TENURE CHARGES

BACKGROUND INFORMATION COMMON TO ALL CHARGES.

Respondent was hired by the Board on or about September 28, 2004 as a physical education teacher. Respondent subsequently earned tenure in his position, in or about September 29, 2007. During his tenure. Respondent also served as a softball and soccer coach.

¹ Respondent's counsel objected to the admission of a ninth exhibit, P. 25. I allowed testimony but reserved my ruling to allow the parties to argue the matter in their post-hearing briefs. My ruling appears in the Discussion section below. The remaining exhibits had already been present with the Charges and Motion for Summary Judgment.

During his employment with the Board, Respondent was, at all times, subject to the terms and conditions of his employment contract. These contracts obligated Respondent to faithfully perform the duties of his position in accordance with any and all Board policies and any and all applicable laws, rules and regulations.

Relevant Board Policies

Willingboro Township Board of Education Policy No. 3150 *Discipline*, states, in pertinent part:

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

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

Willingboro Township Board of Education Policy No. 3211, *Code of Ethics*, states, in pertinent part:

The Board of Education endorses the code of ethics for professional educators published by the National Education Association.

Preamble

The educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nature of democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts the responsibility to adhere to the highest ethical standards.

The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of pupils, of parent(s) or legal guardian(s), and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct. The Code of Ethics of the Education Profession indicates the aspiration of all educators and provides standards

by which to judge conduct.

The remedies specified by the NEA and/or its affiliates for the violation of any provision of this Code shall be exclusive and no such provision shall be enforceable in any form other than one specifically designated by the NEA or its affiliates.

Principle I – Commitment to the Pupil

The educator strives to 'help each pupil realize his/her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals...

7. Shall not use professional relationships with pupils for private advantage.

Willingboro Township Board of Education Policy No. 3281, *Inappropriate Staff Conduct*, states, in pertinent part:

In support of this Board's strong commitment to the public's trust and confidence of school staff, the Board of Education holds all school staff to the highest level of professional responsibility in their conduct with all pupils.

Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district.

Inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Therefore, school staff members are advised to be concerned with such conduct which may include, but is not limited to, communications and/or publications using e-mails, textmessaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.

A school staff member is always expected to maintain a professional relationship with pupils and to protect the health, safety and welfare of school pupils. A staff member's conduct will be held to the professional standards established by the New Jersey State Board of Education and the New Jersey Commissioner of Education. Inappropriate conduct or conduct unbecoming a staff member may also include conduct not specifically listed in this Policy, but conduct determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education, an arbitration process, and/or appropriate courts to be inappropriate or

conduct unbecoming a school staff member.

Willingboro Township Board of Education Policy No. 3282,
Use of Social Networking Sites, states:

The Board of Education has a strong commitment to quality education and the well-being of all pupils, as well as the preservation of the school district's reputation. The Board believes staff members must establish and maintain public trust and confidence and be committed to protecting all pupils attending the school district. In support of the Board's strong commitment to the public's trust and confidence, the Board holds all staff members to the highest level of professional responsibility.

The Commissioner of Education has determined inappropriate conduct outside a staff member's professional responsibilities may determine them as unfit to discharge the duties and functions of their position. Staff members should be advised communications, publications, photographs, and other information appearing on social networking sites deemed inappropriate by the Board could be cause for dismissal of a non-tenured staff member or to certify tenure charges against a tenured staff member to the Commissioner of Education.

Staff members are advised to be concerned and aware such conduct deemed inappropriate may include, but is not limited to, communications and/or publications using e-mails, text-messaging, social networking sites, or any other form of electronic communication that is directed and/or available to pupils or for public display or publication.

While the Board respects the right of staff members to use social networking sites, staff members should recognize they are held to a higher standard than the general public with regard to standards of conduct and ethics. It is important that a staff member's use of these sites does not damage the reputation of the school district, employees, pupils, or their families. Staff members who utilize, post or publish images, photographs, or comments on social networking sites, blogs, or other forms of electronic communication outside their professional responsibilities shall ensure their use, postings, or publications are done with an appropriate level of professionalism and are appropriate conduct for a school staff member. Staff members should exercise care in setting appropriate boundaries between their personal and public online behavior, understanding that what is private in the digital world often has the possibility of becoming public even without their knowledge or consent.

The school district strongly encourages all staff members to carefully review the privacy settings on social networking sites they use and exercise

care and good judgment when posting content and information on such sites. Staff members should adhere to the following guidelines, which are consistent with the district's workplace standards on harassment, pupil relationships, conduct, professional communication, and confidentiality.

When using personal social networking sites, school staff members:

1. Should not make statements that would violate any of the district's policies, including its policies concerning discrimination or harassment;
2. Must uphold the district's value of respect for the individual and avoid making defamatory statements about the school district, employees, pupils, or their families;
3. May not disclose any confidential information about the school district or confidential information obtained during the course of his/her employment, about any individual(s) or organization, including pupils and/or their families;
4. Shall not use social networking sites to post any materials of a sexually graphic nature;
5. Shall not use social networking sites to post any materials which promote violence;
6. Shall not use social networking sites which would be detrimental to the mission and function of the district;
7. Are prohibited from using their school district title as well as adding references to the district in any correspondence including, but not limited to, e-mails, postings, blogs, and social networking sites unless the communication is of an official nature and is serving the mission of the district. This prohibition also includes signature lines and personal e-mail accounts;
8. Shall not post updates to their status on any social networking sites during normal working hours including posting of statements or comments on the social networking sites of others during school time unless it involves a school project. Employees must seek approval from the Superintendent of Schools for such use; and
9. Shall not post or publish any information the Commissioner of Education would deem to be inappropriate conduct by a school staff member.

The Policy of this district is to maintain a level of professionalism both during and after the school day. Any publication through any means of electronic communication which is potentially adverse to the operation, morale, or efficiency of the district, will be deemed a violation of this Policy. If the Board or Superintendent believes that a staff member's activity on any social networking site violates the district's policies, the Board or Superintendent may request that the employee cease such activity. Depending on the severity of the incident, the staff member may be subject to disciplinary action.

This Policy has been developed and adopted by this Board to provide guidance and direction to staff members on how to avoid actual and/or the appearance of inappropriate conduct toward pupils and/or the community while using social networking sites.

SPECIFICATION OF CHARGES

CHARGE I

CONDUCT UNBECOMING A TEACHING STAFF MEMBER AND/OR OTHER JUST CAUSE REGARDING RESPONDENT'S INAPPROPRIATE CONDUCT TOWARD FORMER STUDENTS

The foregoing background information, and the facts alleged therein, are incorporated by reference as if fully set forth herein. Raymond G. Morison, Jr. has engaged in unbecoming conduct including misconduct, insubordination, inappropriate conduct with former students, and other just cause by his acts and omissions relative to his former students. These acts and omissions, as specifically set forth below, constitute just cause for immediate dismissal due to conduct unbecoming.

Count 1

On April 30, 2016, Respondent inappropriately messaged a former student, KP on Facebook and stated, "I want to fuck u." KP immediately notified the Board, which notified the police and prosecutor's office. As a result of this inappropriate message, Respondent was subjected to a month-long unpaid suspension.

Count 2

On August 22, 2020, Respondent sent a "friend request" to former student CH, which she accepted. Thereafter, Respondent began a conversation with CH over Facebook messenger, which ended with Respondent stating, "I should've gotten u earlier." Respondent's language and tone caused CH to feel

uncomfortable, and as if she were being preyed upon. As a result, she contacted Principal Kimberly Ash.

CHARGE II
CONDUCT UNBECOMING A TEACHING STAFF MEMBER,
INSUBORDINATION AND/OR OTHER JUST CAUSE REGARDING
RESPONDENT'S VIOLATION OF THE BOARD'S INAPPROPRIATE
STAFF CONDUCT POLICY

The foregoing background information, and the facts alleged therein, are incorporated by reference as if fully set forth herein. Raymond G. Morison, Jr. has engaged in unbecoming conduct including misconduct, insubordination, and other just cause by violating Willingboro Township Board Policy No. 3281, *Inappropriate Staff Conduct*. His acts and omissions, as specifically set forth below, constitute just cause for immediate dismissal.

Willingboro Township Board of Education Policy No. 3281, *Inappropriate Staff Conduct*, states, in pertinent part:

Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district.

Inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Therefore, school staff members are advised to be concerned with such conduct which may include, but is not limited to, communications and/or publications using e-mails, textmessaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.

A staff member's conduct will be held to the professional standards established by the New Jersey State Board of Education and the New Jersey Commissioner of Education. Inappropriate conduct or conduct unbecoming a staff member may also include conduct not specifically listed in this Policy, but conduct determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education, an arbitration process, and/or appropriate courts to be inappropriate or conduct unbecoming a school staff member.

Count 1

On April 30, 2016, Respondent sent several messages to former student, KP, on Facebook. The string of messages ended with Respondent stating, "I want to fuck u. I saw u were sleeping." This language and behavior is in direct violation of Board Policy 3281.

Count 2

On August 22, 2020, Respondent sent several messages to former student CH on Facebook, including stating that he was laying on the beach at his parents' house, asking what CH's plans were, and stating, "I should've gotten u earlier." This language and behavior is in direct violation of Board Policy 3281.

CHARGE III CONDUCT UNBECOMING A TEACHING STAFF MEMBER, INSUBORDINATION AND/OR OTHER JUST CAUSE REGARDING RESPONDENT'S VIOLATION OF THE BOARD'S SOCIAL MEDIA POLICY

The foregoing background information, and the facts alleged therein, are incorporated by reference as if fully set forth herein. Raymond G. Morison, Jr. has engaged in unbecoming conduct including misconduct, insubordination, and other just cause by violating Willingboro Township Board Policy No. 3282, *Use of Social Networking Sites*. His acts and omissions, as specifically set forth below, constitute just cause for immediate dismissal.

Willingboro Township Board of Education Policy No. 3282, *Use of Social Networking Sites*, states, in pertinent part,

While the Board respects the right of staff members to use social networking sites, staff members should recognize they are held to a higher standard than the general public with regard to standards of conduct and ethics. It is important that a staff member's use of these sites does not damage the reputation of the school district, employees, pupils, or their families. Staff members who utilize, post or publish images, photographs, or comments on social networking sites, blogs, or other forms of electronic communication outside their professional responsibilities shall ensure their use, postings, or publications are done with an appropriate level of professionalism and are appropriate conduct for a school staff member. Staff members should exercise care in setting appropriate boundaries between their personal and public online behavior, understanding that what is private in the digital world often has the possibility of becoming public even without their knowledge or consent.

Count 1

On April 30, 2016, Respondent sent several messages to former student, KP, on Facebook. The string of messages ended with Respondent stating, "I want to fuck u. I saw u were sleeping." This language and behavior is in direct violation of Board Policy 3282.

Count 2

On August 22, 2020, Respondent sent several messages to former student CH on Facebook, including stating that he was laying on the beach at his parents' house, asking what CH's plans were, and stating, "I should've gotten u earlier." This language and behavior is in direct violation of Board Policy 3282.

CHARGE IV
CONDUCT UNBECOMING A TEACHING STAFF MEMBER,
INSUBORDINATION AND/OR OTHER JUST CAUSE REGARDING
RESPONDENT'S VIOLATION OF THE BOARD'S CODE OF ETHICS

The foregoing background information, and the facts alleged therein, are incorporated by reference as if fully set forth herein. Raymond G. Morison, Jr. has engaged in unbecoming conduct including misconduct, insubordination, and other just cause by violating Willingboro Township Board Policy No. 3211, *Code of Ethics*. His acts and omissions, as specifically set forth below, constitute just cause for immediate dismissal.

Principle 1(7) of the Code of Ethics states that teachers, "Shall not use professional relationships with pupils for private advantage." While KP and CH are former students, the relationship between them and Respondent is still subject to the Code of Ethics. Respondent used his position as their former educator to form a personal relationship, which he clearly hoped to make into a more intimate relationship.

CHARGE V
CONDUCT UNBECOMING A STAFF MEMBER AND/OR OTHER
JUST CAUSE REGARDING RESPONDENT'S INAPPROPRIATE
CONDUCT TOWARD FORMER STUDENTS

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

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

ISSUE PRESENTED

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

FACTUAL BACKGROUND

The Board. The Board operates public schools for the town of Willingboro in Burlington County, New Jersey. The schools serve students for grades kindergarten through high school. The Board also operates an alternative school for students who have to be removed from the general school population due to behavioral issues.

Respondent. Respondent is a native of New Jersey and received his education, including his health and exercise science and teacher certifications from Rowan University in 2000. That year, he also attended Trenton State, where he received certification as a drivers' education instructor. (Tr. 209)

Following his certifications, Respondent began teaching in New Jersey public schools. In 2004 he was hired and began teaching physical education and drivers' education at Willingboro High. (Tr. 210) In 2017 he was transferred to Willingboro's Alternative High School, where he has taught middle and high school students. (Tr. 210, 212) During his years at Willingboro, he has coached high school softball, baseball, and varsity wrestling; he testified that he has never coached soccer. (Tr. 215)

Respondent testified about his personal life. He is married and has three children. In 1998 or 1999 his wife developed a debilitating brain tumor; she is now partially paralyzed and lives in a care facility. (Tr. 217) Respondent separated from his wife in 2010, keeping his children with him and raising them with the help of his

parents, who live with him. (Tr. 217, 218) In 2015 he became engaged to a woman; however, she had a heart attack in his home and died in front of his boys, his father and himself. (Tr. 220) Respondent testified that he had a difficult time and started drinking. (Tr. 220-1) In 2016, he renewed a friendship with a woman he had known, TM. Like him, she had a lot of issues, but they trusted one another and started talking to each other. They also began a sexual relationship. (Tr. 222-3)

April 2016 incident. Respondent had an online exchange with a female former student, KP, beginning on the night of April 30, 2016 and ending the next day. The exchange is included in the Charges and is undisputed:

On April 30, 2016, at midnight, Respondent contacted a former student, KP, on Facebook. The midnight exchange was as follows:

- Mr. Morison: *Hey*
- Mr. Morison: *What u doing*
- KP: I was sleeping. Lol

Over twelve hours later, at 1:04 P.M., Respondent sent the following, also via Facebook:

- Mr. Morison: *I want to fuck u*
- Mr. Morison: *I saw u were sleeping*

KP's testimony regarding the April 2016 incident. KP was a student at Willingboro High from 2010-2014, when she graduated. (Tr. 191) She had Respondent for drivers' education and gym in her sophomore year. (Tr. 192) He was also her coach for girls' softball, which she played in her freshman, sophomore, and senior years. (Tr. 192-3)

Since her graduation, KP has not seen Respondent in person, but she did have online communications with him in 2016. (Tr. 194) Respondent sent her a

Friend request on Facebook, which she accepted. (Id.) KP does not recall exactly when in 2016 he made the Friend request, or when she accepted it, but she recalls that Respondent initiated his first online conversation with her a few days before April 30. (TR. 201) She recalls that around midnight on April 30, 2016, they had a conversation, back and forth, beginning around midnight:

It began he asked me like what school I was at and like how everything was going. And then we started talking, like just catching up, he told me about the current girl's softball team and how they were doing. And then we also spoke about his children for a brief moment to see how they were doing as well.

(Tr. 197)

KP testified that she went to sleep after that. The next morning, she saw a message from Respondent sent at 12:12 a.m. the night before: "Hey, what u doing." (P. 19, Tr. 197) She thought, "he must be a night owl if consistently he contacts me around midnights." (Id.) She responded, "I was sleeping, LOL." The next message that came in from Respondent was "I want to F-U-C-K u" and "I saw u were sleeping." (Id.)

KP testified:

I was definitely taken aback because it was unprovoked and un, like, wanted because, like I don't understand how it went from us talking about like how school was going and the girl's softball team to escalating to what was said.

(Tr. 197-8) KP did not respond to these messages and has not heard from Respondent or had any communication with him since that time. (Tr. 199, 205) After talking the matter over with a friend, she met with Principal Ash to report

the messages. She was very uncomfortable doing so, but decided it was important to report the interchange:

because it's better to speak up and then rather than to stay silent and the case that he could possibly be sending these messages to like other women or like even the other girls currently students, that was like my main fear.

again, like I said, in the case like this is unwanted conversation, like regardless if it's if I was a student or not, it's just not acceptable, especially when it's so unwanted. Like unprovoked in any manner, like this is still a form of sexual harassment that no one should have to be obliged by or like accept if they did not want to.

(Tr. 200) At the Principal's request, she filled out an incident report on May 20, 2016. (P. 20)

Principal Ash confirmed that when KP came to see her and report the April 2016 incident, she was "very uncomfortable showing it to me because of the strong language in it;" and was concerned that her father not find out. (Tr. 159)

Respondent's testimony regarding the April 2016 incident.

Respondent testified that this exchange took place during the period following the death of his fiancée, when he was drinking heavily. He was online with TM at the same time as KP and testified that he had intended the sexual text for TM, rather than KP. (Tr. 252) He only noticed his mistake a day or two afterward. (Id.) He was embarrassed when he noticed, but he did not reach out to KP to apologize:

I kind of was like, you know, mad at myself and embarrassed and I thought should I just send another message back to her to try to clarify it and then I didn't, I just figured it would go away. And then three weeks or a month later, I guess is when it came to me what had happened, but at that point there was no way, I'm not going to reach out, like because of what was

going on, I can't reach out to apologize at that point, like, and I never had the opportunity even to meet with her to explain what had gone -- gone on, like that wasn't intended for her. Because we -- we -- like I had never -- like she said, we had talked for the couple days and we talked about regular like everyday living stuff and then like you could tell that message wasn't meant for that person, it's out of the blue completely to the wrong person.

(Tr. 254-5)

Resolution of the April 2016 incident. About a month later, the Board placed Respondent on administrative leave with pay. (Tr. 229) He was out of work for about a year, during which time, at the urging of his family, he got help for his drinking problems. (Tr. 226) He does not know if his explanation was told to the Board, but he told his attorney and Union rep what had happened. (Tr. 262) He consented to the settlement agreement of a 30-day suspension that is referenced in the Charges. He thought that “dealt with” the situation. (P. 22, Tr. 251) Respondent testified that “no one ever clarified what exactly I was being suspended for.” (Id.)

August 22, 2020 incident. Respondent had an online exchange with another female former student, CH, on August 22, 2020. The exchange is referenced in the Charges and is undisputed:

Sunday, 5:20 p.m.

Respondent: How u been

CH: Hey mr. [Respondent]! I've been good! How are you?

Respondent: I'm good. Down the shore laying here! Lol

My parents have a house down here so I spend my summers down here

Sunday, 6:00 pm.

Respondent; U have any plans

CH: Just relaxing I go back to grad school tomorrow.

Respondent: Where's that at

CH: Jefferson University

Respondent: I should've gotten u earlier

Relaxing is always good!!!

I've been relaxing on the beach all summer! Lol

(P. 24)

CH's testimony regarding August 22, 2020 incident. CH attended Willingboro High from 2009-2013. She had Respondent for gym and possibly drivers' ed during her junior and senior years. She believes she also had him as a substitute soccer coach: she was a player and also a team manager in her senior year. She has not seen Respondent since she graduated in 2013.

Her next contact with Respondent was on Facebook. She received a Friend request from Respondent, who she could see was also Facebook friends with other former students she knew. She accepted the friend request.

A day later, in the afternoon, Respondent sent her the message shown above. She thought it felt a little casual:

I mean, it's not the first time that I've spoke to or caught up with a faculty member outside of school that either I like ran into or maybe came across on Facebook or a platform. And usually they'll ask like, you know, what are you doing now, are you working, you know, are you in school, things like that, but it just seemed kind of informal, I guess.

(Tr. 110) CH went on to explain that when Respondent asked her about her plans, she felt the conversation took an inappropriate turn (P. 26):

The conversation just got a little bit more casual. I felt like, you know, initially, because I knew Mr. [Respondent] in high school, I guess I saw him more as an authoritative figure and at first he was, you know, messaging me, I thought it was just to catch up and ask like, you know, again what I've been up to, like, you know, was I in school, so forth. And it just got a little personal I felt at that point, because it was about like what I was doing, what my plans were and he was obviously in a relaxed setting.

(Tr. 111-12) She described her reaction to the casualness of the conversation:

Just speaking of peers my age and, you know, just knowing how casually we speak to each other and, you know, what different messages mean, it just made me feel as if I wasn't seen as a past student or, you know, someone that looked at him as an authority figure.

At first I, you know, I tried to give him the benefit of the doubt, so I tried not to just go off and think that it was anything unusual, so I answered it. I thought when he asked if I had any plans, it was just like our first conversation casual, so I responded back and said I'm just relaxing, I go back to grad school tomorrow.

(Tr. 112) She became uncomfortable with Respondent's next message, "I should've gotten to you earlier:"

Meaning I should've gotten you at an earlier -- oh, that message made me a little uncomfortable, honestly, I think that was the turning point for me, it felt like I should've gotten to you at an early date -- an earlier date so we could hang out, so it didn't seem as much as, you know, about just like catching up or just asking like where I was at in life, it just felt like more of a leeway into like a physical appearance.

(Tr. 113) At the time, she was not sure what Respondent meant. (Tr. 136) She acknowledged that Respondent did not ever tell her that he wanted to "hang out" with her,

But I felt like he insinuated that when he asked if I had any plans and he should have gotten to me earlier.

(Tr. 135)

After this exchange, CH stopped messaging Respondent; she “unfriended” him:

I think it was just my way of saying that it was inappropriate, I realized that it wasn't the type of relationship that I felt it would be or expected it to be from the friend request.

(Tr. 138) He did not message her again or otherwise attempt to contact her. (Id.)

Two days later, on August 24, 2020, CH was on twitter and saw a tweet from one of her peers that she went to high school with. (Tr. 115) The tweet said, “My old gym teacher slid in my DMs at 1:53 a.m.” (P. 25) She replied, “He slid in mine too. Like an f'ing weirdo.” (Tr. 122, P. 25) Another former student followed with “Mr. V [blank] slid in mine” and ended with three emojis. (Tr. , p. 25) After someone posted a message with lots of emojis, another individual, a male who CH recognized as a former student, posted: “Yoo u da second female I seen say something about Morrison dm'n them lastnight. [emoji] smh he bugged out.” Another person replied, “Lol who,” and the male student responded, “Mr. Morrison from the high.” (Id.) CH blocked the names of the individuals making the tweets by drawing over them, and then took a screen shot of the conversation. She no longer can go back to the original posting. Although at the time she knew the names of three people who participated in this conversation on twitter with her, she did not identify them, stating: “I wish not to honestly disclose those names because I do not have their permission to bring their names into court.” (Tr. 126)

After seeing the tweets, CH reached out to some friends to ask their advice about whether she should report her interaction with Respondent. After

considering their advice and reevaluating the events, she decided that she did need to come forward:

I think that after I saw that other women were saying that they were contacted as well, it made me a little bit more uncomfortable in the sense that I felt like it was happening to multiple people that I graduated with and I felt like it was my responsibility to bring it forward and speak on it if I'm -- if I knew who to go to. And I had, you know, collected additional evidence of people talking about the event. So after that instance I decided, after I took some days, to gain the courage to report it to Miss Ash.

(Tr. 128) CH sent an email to Principal Kimberly Ash on August 29, 2020:

I'm reaching out to you about a concern that I have about a currently employed staff member of the district. [Respondent] was a Gym teacher and girls soccer coach in my years at the highschool. I have not seen or spoken to Mr. [Respondent] since I graduated in 2013. Last Saturday, I noticed a friend request from him late at night, which I accepted. I accepted the request assuming he was just being friendly and catching up with students he previously knew. I did notice we had some mutual friends. A few hours later I received a message from him asking "How u been". I thought at the moment that it felt a little casual, but I responded "hey Mr. [Respondent]! I've been good! How are you?". The conversation took an inappropriate turn when he stated that he was laying on the beach at his parents house and asked what my plans were. It continued with phrases like "U have any plans" and "I should've gotten u earlier" I stopped responding. Unsure what this meant, I learned from my peers posts on social media that he had sent them a friend request and messaged them as well (at least two other alumni). In light of the recent discoveries of Mr. HH and Mr.HH I have felt that the things being said on social media should be taken seriously and active staff should be held accountable in order to make Willingboro Schools safe places for students. Though the women who have stated that they've been contacted, as well as myself are in our adult years now, I find it predatory for a teacher to reach out to past students that they do not have a professional, or informal relationship with after they graduate and suggest "hanging out". I'm not sure if this has been brought to your attention before, but it is my hope that young black women in Willingboro can feel safe and not prayed [sic] upon by teachers, coaches, and mentors who help shape our futures.

Thank you.

(P. 26, Tr. 127) In this hearing, CH was asked to explain why she used the word “predatory” to refer to Respondent’s messages:

It just made me feel as though -- the fact that I was messaged made me feel as though, after all those years, you know, it's been eight years since I graduated, maybe going on nine now, and it just made me feel as though a memory of me being my younger self versus now for me not to have seen or spoken to a faculty member within the last eight or nine years would just make me feel like why would you feel the need to reach out to me in that way, in such an informal way?

CH ended her testimony explaining how she felt about the messages she received from Respondent:

I think that growing up in -- or getting a good amount of my education in Willingboro school system and, you know, seeing a lot of different faculty members come and go, we gain close relationships with some of the faculty members that are there for extended periods of time and, you know, they work in various departments, whether it's coaching and teaching, you know, they may substitute for a class, so we get to know these faces and it's very familiar. And to be from such a small town, these are faces that stick with you, names for the rest of your life, so I just think the importance of it, you know, as a young woman coming out of the Willingboro school system is that we should feel safe within our schools and we should feel like our educators truly care about the well-being of us as the alumni and also as students that are currently here. It means a lot to me because, you know, it makes me feel uncomfortable to know that there may be faculty members within the school that may not have seen us as children at the time and do not see us as, you know, alumni and someone who looks up to them now. So to me it was important to bring it forward to the younger women who are currently in the school now and will be graduating, and not only with [Respondent], but with other faculty members or educators, may go through the same thing as me in life and be confused on what kind of decision to make and what steps to take.

(Tr. 130-1)

Principal Ash confirmed that CH reached out to her via email on August 29, 2020 (P. 26, Tr. 147) and shared with her the August 29 Facebook messages

she had received from Respondent. (P. 24, Tr. 147-8) Principal Ash reported the matter to Superintendent Hackett. (Tr. 152)

Respondent's testimony regarding the August 2020 incident.

Respondent testified that he has been active on social media through Facebook, Instagram, and Snapchat. (Tr. 272) Over the years, he has been in touch with maybe 20 to 30 former students, including some of student athletes he coached and other students he runs into at the CVS or when he is driving for Uber or Lyft. (Tr. 269-70) He is probably friends with more male than female students. (Tr. 270) When he is on social media and sees the names pop up of former students who are friends with some of his other former students, he'll "friend request them:" "It's like I haven't talked to that person in years, let me see what they're doing." (Tr. 276)

Respondent acknowledged that he sent a Friend request to CH in 2020. When asked why he sent a Friend request to CH, he explained that although he never coached her, he had her as a student, and:

I talk -- I talk to like I said, numerous former students on social media. I reached out to see how she was doing. And that's basically -- that's basically it, see where she was at, what she was doing.

(Tr. 236, 235) He went on to explain:

in the beginning we were just talking about what's going -- like what's going on and how she's been. It was basically just a general question back and forth of where we're both at that point. 'Cause I hadn't talked to her in years like, like some of the other students, like former students. Like I said, sometimes they'll reach out on social media. Most of the time I end up picking a lot of former students up through Uber and Lyft and it's like they recognize me usually, you know. Well, in this I was just reaching out to see what she was doing, what she had been up to. That's what, usually

I'll send a friend request or if they send a friend request and then usually ask how you been or how are you, what are you doing.

(Tr. 236-7) When he said, "I should've gotten u earlier," he meant he should have gotten her earlier because she was going back to school. (Tr. at 238)

As to whether Respondent ever contacted other students and/or spoke inappropriately to them, he provided an answer in his certification that "I know I had not done so." (P. 11, par. 6) However, in his testimony, Respondent agreed that answer was not accurate. (Tr. 272)

Respondent's interview with Dr. Hackett. On October 9, 2020, Dr. Hackett conducted an online interview with Respondent as part of her investigation of his online communication with CH that was reported to her by Principal Ash. Respondent's then current principal, Ms. Alicia Biddle, also participated in the interview. Dr. Hackett testified that during this interview, Respondent told her he wanted

the young lady to come down and spend time with him. I don't know whether he said beach house or shore, I can't remember. I thought he said beach house, but he wanted the young lady to come down and spend time with him.

(Tr. 27)

Respondent corroborated Dr. Hackett's memory regarding this exchange:

I said if it got to I possibly would have invited her down to meet at the beach down at the shore. I never -- but in a lot of the testimony like that was saying the shore house, which the shore house was never involved because my family, my mom would never even allow it, because due to what's going with, you know, my wife, my fiancée, like my mom's very strict about bringing anyone around the kids. They've gone through too much loss and too much. So that was definitely not said as far as the shore house. And I never had -- I never actually -- I never actually put out the invite....

(Tr. 245) Respondent said much the same thing in his certification dated

February 16, 2021:

5. I did say that I may have asked her to come to the shore, but since summer was over and she was leaving for graduate school, I did not extend any invitation.

(P. 11)

Dr. Hackett also discussed Respondent's social media accounts:

I believe he mentioned something along the lines of he should just -- he should just delete his social media accounts, something like I should just delete my accounts. And I think I might have said something along the lines of perhaps that could have been a course of action after the first incident because you turned around and repeated it again.

(Tr. 29)

Respondent's agreed that he told Dr. Hackett he would delete his accounts.

However, he testified that in fact he has not deleted all of his social media

accounts – he still has a Snapchat account with the user name of “Coach

Morison.” (Tr. 272-4) He also explained why he was getting off social media:

I said, between all the election stuff and the movement, there was so much arguing going on, I was like I was going to delete -- I was tired of seeing the posts on Facebook anyway, everybody arguing. And then at that point, like after what had been brought up and now that I was in another meeting, I'm like this isn't worth it because people are making their own opinions and they're reading the message in one way when you're sending it a different way. And I was like is, it's not worth it anymore, I'm like not even going to be here.

(Tr. 241) He went on to elaborate:

at this point you really can't talk to anyone is what this is coming down to because anything you say can be twisted at this point.

Like you literally, you kind of really can't say anything, obviously, like, without being, you know, without messages being misconstrued. So like it's better off at this point like, you know, to get off the social media, that's why I got off it. Because it's not -- it's not worth it.

(Tr. 280, 281)

POSITIONS OF THE PARTIES

The Board argues that it has met its burden to prove the tenure charges by a preponderance of the credible evidence. In particular, (1) the Board has proven that Respondent used his professional position as a teacher and the trust he established with his students to his advantage to contact former students inappropriately on social media on multiple occasions; this was established not only through the uncontested messages, but also through CH's testimony and the production of messages on Twitter demonstrating that at least two other female alumni referenced "gym teacher," confirming that Respondent had reached out to them; (2) the weight of the evidence establishes that Respondent does not understand or appreciate the magnitude of the issue presented by his messaging with former students; in his interview with Superintendent Hackett, as well as his testimony in this proceeding, Respondent has demonstrated that he does not understand or care about how the students or Board administrators reacted to his behavior; he has not learned from his prior discipline in 2016; (3) Respondent's inability to discern between inappropriate and appropriate communications confirms that he is unfit to be a staff member for the Board; (4) Respondent's own testimony shows that he intended to invite CH to have a personal rendezvous with him, despite the fact that his only connection to her was his role as her former teacher nine years earlier; CH

reasonably perceived that intent and was uncomfortable; such a misuse of his position as a teacher to reach out to former students for his personal advantage is contrary to Board policies and is conduct unbecoming a staff member; (5) Respondent has shown no remorse at all for his behavior; he has demonstrated that he thought it was perfectly acceptable to allow KP to think he had intended to send her a vulgar message in 2016, making no effort to clarify or rectify the situation; likewise he shows no sign that he understand his 2020 communication with CH could or would be perceived as unwanted, indeed, predatory; thus the Board cannot be assured that he will not engage in inappropriate social media interactions with students or former students in the future; (6) additionally, Respondent has not entirely discontinued his use of social media, dialing back his use only because he found people using the media were misconstruing posts; he continues to be active on at least one site as “Coach Morison,” a title and status he enjoyed only as a Board employee; he has not learned why his use of social media to reach out to former students, particularly female former students, to invite them to meet up with him, is inappropriate; (7) Respondent has continued to seek access to former students through his work driving for Uber and Lyft; he cannot be trusted to refrain from using his position as a former teacher to interact with students, even if he does stay off social media; (8) similar to the employee in *I/M/O David Clune*, where a teacher was discharged because of inappropriate Facebook and text messages to two female former students, Respondent used his position as a former teacher to seek out former students, violating their trust and the public’s trust in the teachers and other Board employees responsible for the care and custody of school children; the Board

has proven it has a reasonable basis for concern for the safety of its students if Respondent is allowed to enter a classroom again; (9) by his own admission, Respondent sought to interact with many former students in addition to CH and KP; the interactions that form the basis of these charges are aggravated by the fact that he served a suspension in 2016 for similar conduct, yet apparently learned nothing from that experience; the Board cannot be assured that Respondent understands the line between appropriate and inappropriate interactions with current or former students.

For all of these reasons, loss of tenure and discharge is the appropriate penalty in this case.

Respondent, on the other hand, argues that the Board has not met its burden to prove the tenure charges, in that (1) none of the evidence -- neither the exhibits nor the testimony -- establishes that Respondent made any inappropriate advances toward CH; it would be unreasonable to interpret that as his purpose based upon the content of the communications; Respondent's intent upon contacting CH was not to extend any invitation to spend time with her or otherwise, but simply to inquire as to what was going on in her life; this is no different than the interactions he has had with 20 to 30 other former students without incident; (2) further, it is unreasonable to punish Respondent based upon his perceived thoughts rather than his actual words; similarly it is unreasonable to speculate about where a conversation may have gone if it were to continue, when it did not; (3) the Board has failed to prove that Respondent reached out to other former students with similar messages or for a similar purpose; the screen shot of tweets must be excluded as hearsay,

particularly since CH refused to identify the individuals posting those tweets, even though she knew who they were; that has unfairly prejudiced Respondent, depriving him of the opportunity to challenge the authenticity of the tweets or cross-examine the alleged tweeters; (4) for the same reason, the portion of CH's email to Principal Ash saying that she had learned from her peers that Respondent had sent others a friend request and messages, must be stricken, since there is no competent, credible, admissible evidence supporting this; this is a fiction created by the Board; (5) because, as Respondent and Dr. Hackett both testified, Respondent did delete his social media accounts, the likelihood that a similar incident will occur in the future if Respondent is reinstated is minimized; (6) the actual words in Respondent's message to CH fall well short of the messages in *I/M/O David Clune*, relied upon by the Board: (i) Respondent was not exchanging messages with young students, but with an adult in her mid-twenties; (ii) the language itself was neither salacious nor racy; (iii) the text did not concern the appearance of the student, invite smoking marijuana, tell her he was attracted to her, or urge her to keep the communications secret; and (iv) CH never asked Respondent to stop contacting her; in short, given the stark differences between the two cases, *Clune* cannot serve as precedent in this case; (7) Respondent's conduct was not outrageous; hence termination is too harsh a penalty, particularly in light of Respondent's lengthy history as an effective teacher.

In sum, the Board has failed to prove that Respondent was guilty of any misconduct. But, if his communications can be considered as misconduct, termination is simply too harsh a penalty.

DISCUSSION

Both parties were ably represented by counsel in this proceeding and had full opportunity to present evidence and make arguments in support of their respective positions. In the preparation of this Opinion and Award, I have given careful consideration to the testimonial and documentary evidence, the legal authorities cited, and the positions and arguments set forth by the parties. For the reasons set forth below, I find the Board has proven Count 2 of Charges I II, III, and IV and Charge V. Respondent did engage in conduct unbecoming a tenured teacher. I further find that while Respondent's conduct was improper, removal from his position and loss of tenure is not the appropriate penalty.

Before addressing the Charges, I turn to certain preliminary issues.

Exhibit P. 25, Screenshot of Twitter posts from August 24, 2020, is admissible for limited purposes only.

During the hearing, the Board introduced a screen shot of tweets from August 24, 2020. (P. 25) The screen shot had been taken by CH, who blocked out the names of the people sending the tweets in order to protect the identity of the individuals involved. Respondent objected to the exhibit on two grounds.

First, Respondent cites N.J.S.A. 18A:6-17.1(b) which requires the Board to furnish all documents to the charged employee at the time the case is referred to arbitration; the Board is precluded from presenting additional evidence at the hearing, except for purposes of impeachment of witnesses. It is undisputed that the Board did not provide this piece of evidence upon referral of the case to arbitration. The Board only obtained the document later and did provide it

attached to the Superintendent's Certification dated February 17, 2021, submitted in opposition to the Respondent's Motion for Summary Judgment.

The Board argues that the document should be admitted because it does not add new charges, but simply corroborates the statements of CH that are the basis of these charges. As early as August 29, 2020, about a week after Respondent exchanged messages with CH on Facebook, she sent an email to Principal Ash reporting that exchange. In that email, which was furnished to Respondent in support of the charges, she referred to learning "from my peers on social media" about Respondent messaging at least two other alumni. (P. 26) Thus the existence of social media posts was not withheld from Respondent.

The Board cites the case of *Petrella v. Hackensack* BOE, 2021 WL 84056 for the proposition that exhibits submitted after the original charges may be admitted if (a) they do not materially expand on the original charges, and (b) the Respondent has a "full and fair opportunity to dispute all charges." In that case, the arbitrator permitted an additional 17 exhibits to be entered into evidence. Here we have the single exhibit.

I agree with the Board that Exhibit P. 25 did not expand the scope of the original charges. Further, Respondent was given ample notice of the additional document a full month before the hearing, and therefore had a full and fair opportunity to review the document and prepare his defense against the charges.

Second, Respondent argues that the document is classic hearsay and should be excluded. Because CH refused to identify the people sending the tweets and did not produce the original of the document, he had no opportunity

to cross examine the speakers or confront his accusers. He is obviously correct that he was deprived of the opportunity to cross-examine the authors of the tweets, and thus could not refute the allegation that he had messaged at least two other alumni around the same time he messaged CH.

There are a couple of points to be made about this exhibit. First, the messages themselves do not clearly assert that Respondent “dm’n” or messaged three students. According to CH, a female alum first said “my old gym teacher skid in my DMS at 1:53 a.m.” CH then responded, “he slid in mine too.” Then a third alum, a male, said “Yoo u da second female I seen say something about Morrison dm’n them last night.” Another former student wrote about a different teacher, “Mr. V,” sending her a message. The evidence thus is unclear: did the alums on twitter know about Respondent sending messages to two students the same night or three? CH was questioned about this message, but the matter remains murky to me, particularly since CH refused to identify the senders of the messages, although she knew who they were. (Tr. 123-4)

Second, P. 25 does contain uncorroborated hearsay. It cannot be used to prove the truth of the matter asserted. Thus it may not be used, and has no weight, on the issue of whether Respondent did, in fact, send messages to multiple students around the same time that he sent his message to CH. Nor do I have any evidence of the content of these messages, if they were sent. So, I exclude P. 25 from consideration on the questions of whether Respondent was reaching out to multiple female alums and, if so, for the purpose of pursuing personal interactions.

On the other hand, the exhibit does corroborate CH's statement that she had reason to believe Respondent was messaging other female alums. In his testimony, Respondent readily admitted sending social messages to many alums, male and female – some 20 to 30. Interestingly, Respondent never denied seeking personal interactions with other alums, and he did admit having the purpose of asking CH to meet up with him, only dropping that idea when she told him she was going back to graduate school the next day.

Finally, Respondent claimed in his Certification (P. 11) that he knew he had not contacted other former students, "In fact, Petitioner has not provided any additional evidence or witnesses of any such communications." Exhibit P. 25 impeaches that certified statement.

In short, even though the exhibit cannot be used to prove that Respondent was preying upon multiple female alums, the exhibit is nevertheless admissible and probative to corroborate CH's statements and testimony. Further, it is admissible as corroboration of Respondent's testimony about multiple social media exchanges with other alums and impeaches his statement that he had not contacted others.

Disputed Issues of Material Fact Identified in Motions for Summary Judgement.

In my decision denying the parties' respective motions for summary judgment, I noted "there are at least three issues of material fact in dispute here: (1) whether Respondent admitted to Dr. Hackett that he intended to invite CH to his parents' beach house, and, relatedly, whether it was reasonable for CH to

interpret his messaging as an overture for that purpose; (2) whether Respondent reached out to other former students with similar messages and/or for a similar purpose; (3) whether Respondent told Dr. Hackett that he intended to delete all of his social media accounts.” Having now heard all of the evidence and arguments, I address these three issues in turn.

1. Respondent intended to invite CH to meet up with him at the shore, and it was reasonable for CH to interpret his messaging as an overture for that purpose.

As discussed above, Respondent admits that he did intend to invite CH to meet up with him “at the shore” although not to his parents’ beach house. At the time I wrote my decision denying the motions for summary judgment, I had assumed the issue concerned a potential invitation to his parents’ house, but Respondent clarified that he would not have done that, since his mother was very strict and would not have allowed him to bring people around his children.

I find there is no significance between an intent to invite CH to his parents’ home or inviting her to meet him at shore. If anything, an invitation to meet alone with him somewhere on the shore, is more inappropriate than inviting her to come to his family home where other members of his family, including his parents and children, would be present. It was reasonable for CH to interpret his messages as an overture for a rendezvous or meet-up, one-on-one. Since he had no prior personal relationship with this former student, having had no contact with her for almost 9 years, this was an overture that was highly inappropriate and violated the Board’s policies requiring all school staff to “maintain a professional relationship with pupils and to protect the health, safety and welfare

of school pupils.” (Policy #3281) It also violated the Board’s Code of Ethics, requiring that educators “Shall not use professional relationships with pupils for private advantage.” The fact that CH terminated the conversation so that Respondent never actually made an invitation and she did not accept one, does not render the communication harmless.

I am not called upon to decide whether Respondent’s other Friend requests to former students were inappropriate. Respondent testified that he has some 20-30 friendships on Facebook with former students, many of which he initiated when he saw their names pop up as mutual friends of others with whom he maintained online friendships. The Board’s policy does not absolutely prohibit online friendships between employees and pupils – whether current or former. However, initiating a friendship and using it as an overture for a personal meet-up with a former student crosses the line from friendly, professional, and supportive interest in the post-graduation lives and well-being of students, to potentially predatory behavior. Respondent’s only basis for contacting CH was that he was her former teacher; using that relationship to pursue a personal relationship was entirely improper.

2. Respondent did reach out to other former students. The Board, however, has failed to prove that he sent similar messages with a similar purpose as with CH.

As discussed above, Respondent testified that he reached out to other former students and exchanged messages with them on Facebook and other social media platforms. His testimony corroborates the testimony of CH and

Exhibit P. 25 as to interactions with former students. That allegation is thus proven.

However, the Board has failed to meet its burden to prove that the content of Respondent's communications with other students was inappropriate. There simply is no credible evidence on this point: CH does not know the content of the other messages, and she refused to furnish the names of witnesses who might know. We do know that he sent messages late at night, but there is no evidence that he was either hoping or intending to invite other students to make personal contact with him.

3. Respondent told Dr. Hackett that he intended to delete all of his social media accounts.

At the time the parties filed their motions for summary judgment, this was an open issue: the Board's charges contained an allegation that Respondent told Dr. Hackett he intended to deactivate all of his social media accounts. Respondent at that point had neither admitted nor denied this allegation. During the hearing, however, as cited above, he agreed that he told Dr. Hackett he had deleted his social media accounts. He further testified that he had not in fact deleted all of his accounts – he still has a Snapchat account. (Tr. 273)

Further, Respondent gave as to his reasons for discontinuing social media his disgust with the elections, and people misconstruing his opinions. (Tr. 280-1) He did not delete them to avoid making inappropriate communications.

General Conclusions. I find that the Board has proven by substantial credible evidence that Respondent initiated contact with a 24-year-old former

female student that was unprovoked and unwanted. His messages, though not lewd or vulgar in themselves, were intended to set up a personal interaction with a student he had no contact with for almost 9 years. This student reasonably concluded that he was seeking some kind of personal interaction.

I agree with the Board that Respondent simply has no understanding of why his conduct was unwanted, unprofessional and inappropriate. The casual tone of his online messaging shows a lack of appreciation for his obligation to maintain a dignified, respectful and professional presence in the community, whether on line or in person, toward past as well as current students, and toward the public at large.

Even accepting his explanation that his vulgar sexual message to KP in 2016 was sent in error, he has not learned from his experience. His testimony and conduct clearly show that he sees nothing wrong with reaching out to former students with whom he has had no contact since high school to begin friendships on social media or elsewhere. He shows no understanding or empathy with how such overtures could be perceived and that they could be disturbing to these students. It is troubling that Respondent was insensitive -- even oblivious -- to how his conduct as a white man of middle years would be perceived by the young black women he approached, whom he knew only because he was their teacher. CH expressed this concern to Principal Ash: “it is my hope that young black women in Willingboro can feel safe and not prayed [sic] upon by teachers, coaches, and mentors who help shape our futures.”

While I find Respondent's social media interactions with CH were unprofessional and unbecoming conduct, I cannot agree with the Board that all of Respondent's interactions with former students in the community have been improper. For example, in its post-hearing brief, the Board argues that Respondent's testimony about encountering former students in the community as an Uber/Lyft driver and having friendly exchanges with them "makes it clear that he will seek access to the students of Willingboro Township by other means." (Brief, p. 16) That goes too far and is unfair. The Board has suspended Respondent from his employment as a teacher, and he has taken up driving for car services as a means of earning a living. There is no evidence that he engages in this activity in order to "seek access" to students. It is both natural and appropriate that he should be courteous and friendly whenever he does encounter students in the community. There is no evidence that he is initiating these interactions for personal purposes, as he did with CH.

This case arises out of the misuse of social media. The District's policy on social media largely focuses on warning staff to beware of posting communications that can be made available "for public display or publication," with the "possibility of becoming public even without their knowledge or consent." (P. 18, Board policy on Use of Social Networking Sites) But the facts of this case equally involve the question of ethical behavior by Board staff toward people in the community – current and former students and the public at large. I do not know the nature of training that the Board gives staff on these policies. I suggest that Board needs to educate staff on the appropriate range of interactions

staff may have with members of the public and former students. More thorough training should help staff understand that they must be professional, respectful and cautious in all their interactions, including on social media.

I regard the current charges as very serious, particularly in light of Respondent's failure to appreciate the consequences of his actions or understand how his actions could be perceived and be hurtful to others, even after receiving discipline in 2016. Nevertheless, I conclude that discharge is too severe a penalty based on the facts before me. The 2020 messages were not lewd or vulgar, but merely insensitive and overly casual. They were addressed to an adult. And, to her credit, CH reacted with maturity: she discontinued the correspondence. Even if Respondent intended to set up a tryst of some sort, which would have been highly inappropriate, the fact is that CH quickly cut off the interchange, so it never came to that; she was not unduly harmed by Respondent's conduct. CH only thought to report the incident when she had reason to believe Respondent was sending messages to numerous young women in what seemed to her a predatory manner. Whether in fact Respondent sent such messages and what their content was remains unproven.

I will not deprive a teacher of his livelihood forever, because he sought casual friendships with a former student, when he did not use lewd or vulgar language and did not pursue the relationship when the student dropped it. Yet, a severe penalty must be imposed so that he learns to act within the ethical and professional boundaries of his role as a teacher and mentor to foster and protect the health, safety and welfare of school pupils, not only while he is their teacher,

but after they graduate. If he still cannot appreciate the unethical and inappropriate nature of his approaches to former students and continues this behavior in the future, further consequences, including additional tenure charges, may be warranted.

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

CHARGE I: CONDUCT UNBECOMING A TEACHING STAFF MEMBER AND/OR OTHER JUST CAUSE REGARDING RESPONDENT'S INAPPROPRIATE CONDUCT TOWARD FORMER STUDENTS

I find that Respondent engaged in unbecoming conduct when, as alleged in Count 1, he texted KP on April 30, 2016, but he has already served a month-long unpaid suspension for that conduct; it cannot be the basis of discipline again.

I find that Respondent engaged in unbecoming conduct when, as alleged in Count 2, he engaged in an inappropriate online conversation with CH on August 22, 2020.

CHARGE II: CONDUCT UNBECOMING A TEACHING STAFF MEMBER, INSUBORDINATION AND/OR OTHER JUST CAUSE REGARDING RESPONDENT'S VIOLATION OF THE BOARD'S INAPPROPRIATE STAFF CONDUCT POLICY

I find that Respondent engaged in unbecoming conduct and violated the Board's Inappropriate Staff Conduct Policy, when, as alleged in Count 1, he texted KP on April 30, 2016, but he has already served a month-long unpaid suspension for that conduct; it cannot be the basis of discipline again.

I find that Respondent engaged in unbecoming conduct and violated the Board's Inappropriate Staff Conduct Policy when, as alleged in Count 2, he engaged in an inappropriate online conversation with CH on August 22, 2020.

CHARGE III: CONDUCT UNBECOMING A TEACHING STAFF MEMBER, INSUBORDINATION AND/OR OTHER JUST CAUSE REGARDING RESPONDENT'S VIOLATION OF THE BOARD'S SOCIAL MEDIA POLICY

I find that Respondent engaged in unbecoming conduct and violated the Board's Social Media Policy, when, as alleged in Count 1, he texted KP on April 30, 2016, but he has already served a month-long unpaid suspension for that conduct; it cannot be the basis of discipline again.

I find that Respondent engaged in unbecoming conduct and violated the Board's Social Media Policy when, as alleged in Count 2, he engaged in an inappropriate online conversation with CH on August 22, 2020.

CHARGE IV: CONDUCT UNBECOMING A TEACHING STAFF MEMBER, INSUBORDINATION AND/OR OTHER JUST CAUSE REGARDING RESPONDENT'S VIOLATION OF THE BOARD'S CODE OF ETHICS

I find that Respondent engaged in unbecoming conduct and violated the Board's Code of Ethics, when, as alleged in Count 1, he texted KP on April 30, 2016, but he has already served a month-long unpaid suspension for that conduct; it cannot be the basis of discipline again.

I find that Respondent engaged in unbecoming conduct and violated the Board's Code of Ethics when, as alleged in Count 2, he engaged in an inappropriate online conversation with CH on August 22, 2020.

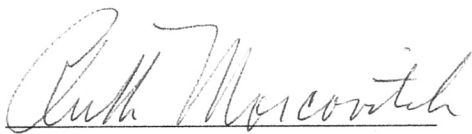
CHARGE V: CONDUCT UNBECOMING A STAFF MEMBER AND/OR OTHER JUST CAUSE REGARDING RESPONDENT'S INAPPROPRIATE CONDUCT TOWARD FORMER STUDENTS

I find that the Respondent engaged in a pattern of unbecoming conduct or other just cause, warranting disciplinary consequences. I find that the conduct was serious but does not warrant his immediate dismissal.

AWARD

The Board has established Count 2 of Charges I, II, III, and IV and Charge V. The proven allegations are serious and constitute grounds for discipline. Respondent is ordered suspended without pay for the entire 2020-2021 school year. He may return to his position as a tenured teacher beginning in the fall of 2021, subject to the following conditions:

1. Prior to his return to his teaching position, Respondent shall report to the Board all existing social media relationships with current or former students.
2. Respondent is prohibited from initiating any new online relationships with current or former students of the Board – whether as Facebook Friend or otherwise on any social media platform -- for two full academic years, from 2021-2022 through the end of 2022-2023. If current or former students initiate new relationships with Respondent, he shall report the same to the Board.
3. During the two-year period the Board may request that Respondent provide access to his social media accounts for the purpose of monitoring Respondent's compliance with the prohibition outlined above.
4. During the two-year period, Respondent is prohibited from using any terms, such as "Coach," on any social media platforms that identify him as an employee of the Board.
5. In the event that Respondent violates any of the terms set forth herein, he may be subject to further tenure charges which may result in termination.



Ruth Moscovitch, Arbitrator

Date: April ²⁹30, 2021

