



## I. BACKGROUND CONSIDERATIONS

Respondent Yesenia Camilo is employed as an instructor by the West New York, New Jersey, Board of Education. Ms. Camilo is certified as a Teacher of English as a Second Language; Teacher of the Deaf and Hard of Hearing; Teacher of the Handicapped; and Elementary School Teacher. Over her roughly nineteen (19) years in West New York, tenure was acquired pursuant to N.J.S.A. 18A:28-5(a). During the 2019-2020 School Year, Ms. Camilo taught Special Education. On August 11, 2020, the Board brought tenure charges against the instructor in Agency Docket No. 189-9/20.

That matter was assigned to Arbitrator Joyce Klein, pursuant to the provisions of the TEACHNJ Act, N.J.S.A. 18A:6-16 et seq. After conducting numerous evidentiary hearings, Arbitrator Klein issued her Award on June 3, 2021. See Board Exhibit 4. This sustained Counts 3 & 4 of Charge II (Conduct Unbecoming, Neglect and Incapacity) and Count 1 of Charge III (Insubordination and Conduct Unbecoming for Failure to Follow Directives). The remaining charges were dismissed. In addition to withholding Ms. Camilo's increment for the 2021-2022 School Year, Arbitrator Klein ordered that her reinstatement be conditioned on the successful completion of a Fitness For Duty Examination.

When Respondent failed to comply with this arbitral directive, the WNY Board of Education adopted REVISED TENURE CHARGES against Ms. Camilo at its Meeting of November 29, 2021. These suspended her without pay for the

statutory one hundred twenty-day (120) period, pursuant to N.J.S.A. 18A:6-14. See CERTIFICATE OF DETERMINATION. On January 3, 2022, Respondent's then-Counsel James R. Zazzali, Jr. sent a letter of representation to Jennifer Killough-Herrera, Director of Controversies and Disputes for the New Jersey State Department of Education. This additionally memorialized counsel's intention to file a Motion to Dismiss the instant revised tenure charges before an arbitrator, based upon his understanding that the DOE would not entertain the application.

Ms. Killough-Herrera subsequently notified me on January 7, 2022 that I had been appointed to serve as the Arbitrator, per N.J.S.A. 18A:6-16, with instructions to review all charges that were not dismissed as a result of the motion. On March 11, 2022, Colin M. Lynch, Esq., of the Zazzali Law Firm filed a NOTICE OF MOTION TO DISMISS IN LIEU OF FILING AN ANSWER, with supporting brief and case citation. On March 25, 2022, Lester E. Taylor, III, Esq., and David J. Kass, Esq., of the Florio Law Firm filed a BRIEF IN OPPOSITION TO RESPONDENT'S MOTION TO DISMISS IN LIEU OF AN ANSWER. This was submitted on behalf of the Board of Education and accompanied by case citation.

On April 29, 2022, I issued an INTERIM AWARD ON MOTION TO DISMISS, which dismissed Charges II through V of the Revised Charges with prejudice. The surviving charge provides as follows:

**CHARGE I**

**CONDUCT UNBECOMING A TEACHING STAFF MEMBER  
REGARDING RESPONDENT'S ABANDONMENT OF POSITION**

The foregoing background information, and the facts alleged therein, are incorporated by reference as if fully set forth herein. Ms. Camilo has engaged in unbecoming conduct by abandoning her teaching position. On June 3, 2021, Arbitrator Joyce M. Klein ("the Arbitrator"), issued an Opinion and Award as a result of the initial tenure charges. The Opinion and Award, in addition to the facts found therein, is incorporated by reference as if fully set forth herein.

The Arbitrator concluded Ms. Camilo shall be reinstated to her teaching position "pending successful completion of a Fitness For Duty examination." Although the Arbitrator did not specify a timeline for said completion, it has been – as of this date – more than four (4) months since the Opinion and Award was issued, and nearly two (2) months since the 2021-2022 School Year began. Ms. Camilo has not presented proof of a successfully completed Fitness For Duty examination, nor has she submitted other medical documentation justifying her continued absence. Ms. Camilo has failed to comply with the terms of the Opinion and Award and has not returned to her position. These acts and omissions, constituting an abandonment of her position, amount to just cause for immediate dismissal.

A hearing on the merits of this charge was held on May 12, 2022 at the Annex, located at 5401 Polk Street, West New York, New Jersey. At that time, the parties were provided with a full opportunity to enter relevant and admissible documentary evidence; to participate in oral argument; and to undertake the direct and cross-examination of witnesses, who testified under oath. No sequestration order was invoked, and a verbatim transcription of the proceeding was provided by RIZMANRAPPAPORT CERTIFIED COURT REPORTERS. Post-hearing briefs were thereafter submitted in lieu of closing argument, with the record closed on June 3, 2022. At my request, on May 18, 2022 Ms. Killough-Herrera graciously extended the second forty-five (45) day statutory period during which my AWARD would be due to July 6, 2022.

## II. FRAMING OF THE ISSUE<sup>1</sup>

Whether Ms. Camilo failed to comply with the terms of the Klein Opinion and Award and whether a failure to submit for a Fitness For Duty examination as of the date of the filing of the tenure charges constitutes an abandonment of position and/or other just cause for removal.

## III. POSITIONS OF THE PARTIES

### Petitioner West New York Board of Education

Yesenia Camilo was hired by the Board approximately nineteen (19) years ago. T82:21. She holds a certificate as a Teacher of English, Teacher of English as a Second Language, Teacher of the Deaf or Hard of Hearing, Teacher of the Handicapped, and Elementary School Teacher. T84:1-6. She subsequently earned tenure in the position. During the entirety of her employment, Respondent was subject to the terms and conditions of the collective bargaining agreement between the Board and the West New York Education Association, which was admitted into evidence as Board Exhibit 1.

There is little doubt that for most of Respondent's tenure as a teacher, there were no issues with her behavior and/or conduct. Yet that changed starting in the 2019-2020 School Year, in which she began behaving erratically. Upon becoming aware of her concerning conduct at the school in or around October 2019, the

---

<sup>1/</sup> The second part of the framing was proposed by the Petitioner. I indicated to the parties that the Respondent's proffer was really subsumed therein, and that in framing the issue I would focus just on what the Board stated in Charge 1. The initial language was lifted from the second paragraph of the same. T7:16-25, T8:1-10.

Board placed Ms. Camilo on administrative leave and required her to attend a Fitness For Duty examination. T13:13-15. Ms. Camilo's last day of work was October 16, 2019. T17:21. However, over the next several months, the Board attempted to schedule a Fitness For Duty examination for Ms. Camilo. Given Ms. Camilo's repeated failure to attend a Fitness For Duty examination in that period, the Board certified tenure charges alleging the erratic behavior constituted conduct unbecoming and warranted her termination.

The matter proceeded to binding arbitration, which resulted in Arbitrator Klein's June 3, 2021 Opinion and Award. Unfortunately, while the June 3, 2021 Opinion and Award purported to resolve these issues, the lack of clarity therein precipitated the events resulting in the Revised Tenure Charges. Specifically, although Arbitrator Klein determined that Ms. Camilo should have an increment withheld and "be reinstated pending successful completion of a Fitness For Duty Examination," Arbitrator Klein did not specify a time frame in which same must be completed. See Board Exhibit 4, at 42. Nevertheless, testimony from the May 12, 2022 arbitration hearing demonstrates that both parties interpreted the award to mean Ms. Camilo was required to submit for a Fitness For Duty examination prior to the start of the 2021-2022 School Year. See T40:18; see also T128:22-129:1; T141:23-142:3. Ms. Camilo twice acknowledged her interpretation of the June 3, 2021 Opinion and Award was that she had to complete the Fitness For Duty examination "ASAP."

This admission at arbitration stands in stark contrast to her counsel's

representations throughout the months following the June 3, 2021 Opinion and Award. Despite the Board's attempt to immediately schedule a Fitness For Duty examination for Ms. Camilo, her counsel, on June 25, 2021, rejected the Board's chosen physician and advised Ms. Camilo would submit to same with Dr. Nicole J. Rafanello, offering dates of "either July 1<sup>st</sup> and July 6, 2021, or July 8<sup>th</sup> and July 13, 2021. See Board Exhibit 6. This examination, quite clearly, was never completed. The Board never received any correspondence reflecting that Ms. Camilo submitted to these appointments with Dr. Rafanello. T45:2-13.

Despite Ms. Camilo's offering of dates for early to mid-July, she testified during the hearing, "July 27<sup>th</sup> was my first appointment" with Dr. Rafanello. T85:18. Ms. Camilo apparently attended an initial session with Dr. Rafanello on July 27, 2021 and testified that Dr. Rafanello wanted her to complete the evaluation on a later date, August 3, 2021. T87:13. During the May 12<sup>th</sup> hearing Mr. Camilo stated — and the Board learned for the first time — she did not submit to an examination on August 3, 2021 because she "woke up with ... 3 feet of water in [her] apartment," and arrived forty-five minutes later to her appointment. So, Dr. Rafanello's office rescheduled her appointment for two weeks later on August 14, 2021. T84:3-4; T89:11-12.

Regarding her August 14, 2021 appointment, Ms. Camilo further testified that that morning, she "woke up with a foot of raw [sewage] in her apartment." T89:17. Nevertheless, Ms. Camilo went to the exam, still wearing the clothing she "put [on] to deal with the situation," but did not complete the exam because, in her words, "I

[didn't] think I was ready for this evaluation because mentally I was so disgusted. T91:21-22; T92:3-5. As a result of the incomplete exam, Dr. Rafanello rescheduled Ms. Camilo for August 24, 2021. T93:8. Yet Ms. Camilo testified that misfortune plagued her calendar once again. On the date of the thrice-rescheduled exam, Ms. Camilo testified her daughter was in a car accident. T93:17. Despite this, Ms. Camilo was able to arrange for her father picking up her daughter so that she could attend the exam.

Although Ms. Camilo testified she "finished" the exam, she further testified that Dr. Rafanello told her she "was not in any state of mind" to complete the exam. T94:19. Ms. Camilo did not indicate in her testimony any effort to schedule a further visit to finally complete the exam between August 24, 2022 and November 29, 2021, the date the instant charges were filed. It bears emphasizing that Ms. Camilo did not introduce any documentary evidence supporting the reasons she provided for failing to complete the exam on various dates in July and August 2021. Nor did her attorney ever mention any of these purported "reasons" for the substantial delay in the numerous communications between counsel between June and October 2021.

Instead, Ms. Camilo, nearly two (2) months later — and presumably with the assistance of her legal counsel — took it upon herself to enroll in an Employee Assistance Program at Rutgers University ("the EAP") because, in her words, she needed "psychological help." T99:18; 100:12. This enrollment commenced absent authorization from her employer, the Board. Interestingly, Ms. Camilo, in her



nineteen (19) plus years of experience “didn’t even know this program existed,” until it was “brought up to [her] attention.” T100:18-24. She did not testify who advised her to enter the EAP. There is simply no evidence Ms. Camilo made any attempt to complete a Fitness For Duty exam in the more than six (6) weeks between August 24, 2021 and October 11, 2021.

It was at this juncture the Board determined the Revised Tenure Charges should be filed, which is reflected through email correspondence between Board counsel and Ms. Camilo’s counsel. See Board Exhibit 7. After receiving the initial June 25, 2021 email from Ms. Camilo’s attorney, James R. Zazzali, Jr., Esq. (“Mr. Zazzali”), explaining that Ms. Camilo would be submitting to a Fitness For Duty exam with Dr. Rafanello, the Board’s counsel continued following up urging completion of the same, and seeking a status update. Ibid. This is reflected in emails from Board counsel dated July 15, 2021 and July 23, 2021.

Having not heard from Mr. Zazzali in several weeks, Board counsel emailed Mr. Zazzali on September 29, 2021, requesting a status update, given the Board’s desire to have this matter finally resolved. Id. at 6. Mr. Zazzali then advised he would have an update no later than Tuesday, October 5, 2021. Mr. Zazzali did not mention the possibility of an EAP. On October 6, 2021, Mr. Zazzali advised Board counsel via email that while he now believed he was getting a status update on Friday, October 8, 2021, he stated “Ms. Camilo is unlikely to be in the classroom this Fall, perhaps obviously.” Id. at 5.

To be clear, it was not obvious to the Board that Ms. Camilo would not be back in the classroom that Fall. Mr. Zazzali still did not mention the possibility of an EAP. Board counsel responded via email that same date, and explained Ms. Camilo “cannot dictate when she goes into the classroom,” and “if she is not cleared on or before [October 15, 2021], my client will likely direct me to pursue additional steps to terminate her employment. We have been extremely patient.” Id. at 4.

Mr. Zazzali acknowledged receipt — without mentioning the EAP — and then, five (5) days later on October 11, 2021, advised Board counsel that Ms. Camilo enrolled in the EAP on October 8, 2021. Id. at 2. The email further stated: “[a]t the successful completion of that program, Ms. Camilo will presumably submit for a completion of her Fitness For Duty examination, for pending return to employment, as required by the Board of Education.” Id. It bears repeating this requirement was not set forth by the Board, but rather Arbitrator Klein’s June 3, 2021 Opinion and Award. Moreover, Mr. Zazzali specified no timeline in which either the EAP or the Fitness For Duty exam would be completed.

None of the communications between the Board and Mr. Zazzali between June 2021 and October 2021 mentioned an EAP, until October 11, 2021. Moreover, as was testified to at length by Mr. Wohlrab, Ms. Camilo never sought authorization for a leave of absence to enroll in the EAP. Accordingly, justifiably frustrated with Ms. Camilo’s obstruction of this process and failure to communicate her progress, the Board filed the Revised Tenure Charges in Count 1 that Ms.

Camilo abandoned her position.

A tenured public-school employee cannot be dismissed from employment "except for inefficiency, incapacity, unbecoming conduct, or other just cause." N.J.S.A. 18A:6-10. The Board bringing tenure charges must prove that the factual allegations are true, and that the penalty is just, by a "preponderance of the credible evidence." In the Matter of the Tenure Hearing of Mark C. Bringhurst, School District of the City of Vineland, Cumberland County, Agency Docket. No. 236-8/12; see also In the Matter of the Tenure Hearing of Jill Buglovsky, School District of the Township of Randolph, Morris County, Agency Docket. No. 484-12. The court in In re Polk 90 NJ 550, 560 (1982), outlined that the evidence "need not have the attribute of certainty, but it must be well founded in reason and logic." Lesniewski v. W.B. Furze Corp., 308 N.J. Super., 270, 279 (App. Div. 1998) (quoting Lister v. J.B. Eurell Co., 234 N.J. Super. 64, 72 (App. Div. 1989)).

Regarding abandonment of position, "excessive or chronic absenteeism of a tenured teacher, even if related to legitimate medical or health problems, has been held to constitute "incapacity," "unbecoming conduct," and/or "just cause" within the meaning of 18A:6-10. State-Operated School District of Jersey City, Hudson County v. Vincent Pellecchio, 92 N.J.A.R. 2d. (EDU) at \*7 (1992).

The rationale behind abandonment warranting termination is justified." [T]here is no question that repeated and excessive absenteeism of regular teachers poses a threat to the integrity of the educational process." Trenton

Board of Education v. Williamson, OAL Docket No. EDU 7335-85 at \*4 (April 14, 1986) aff'd by Comm'r (May 28, 1986). In other words, it is not merely the teacher's prolonged absence that supports termination, but the effect it has on the school's efficient operations as well. Importantly, "the point at which absenteeism is judged to be chronic falls within the prerogative and discretionary authority of the Board." Pellechio, supra at \*6 (internal citation omitted).

To determine whether abandonment of position has occurred, three (3) factors must be considered: (1) the particular circumstances of the absences and not merely the number of absences; (2) the impact that the absences had on the continuity of instruction during the period of time the absences occurred; and (3) whether some warning had been given to the employee that his or her supervisors were dissatisfied with the pattern of absences. See In the Matter of the Tenure Hearing of Lena White, State-Operated School District of Jersey City, Hudson County, 92 N.J.A.R. 2d (EDU) 157 (1991); see also Kelsey v. Board of Education of the City of Trenton, Mercer County, Commissioner Decision No. 127-89 (May 11, 1989).

Perhaps most critical to this analysis is the fact that the employee's intent to return to his or her position is largely not dispositive. In I/M/O Tenure Hearing of Giuseppe Amodei, supra, the respondent teacher had a knee issue which was preventing him from performing his duties. Id. at \*2. Yet, the Commissioner of Education, in issuing the decision, found that "respondent's decision to undergo a knee replacement was driven, at least in part, by his desire to restore his ability to

physically handle his teaching position. It would thus be counterintuitive to conclude that his actions signified an intent to abandon that position." Id. at \*3.

However, and essential to this analysis, the Commissioner emphasized: "[t]he determination that respondent did not abandon his position, however, does not dispose of the ultimate issue in this case. Frequent or prolonged absences can, regardless of the reason warrant dismissal from a position." In the Matter of the Tenure Hearing of Giuseppe Amodei, New Jersey State Juvenile Justice Commission, No. 575-9/10, 2011 WL 7030981, at \*3 (EFPS October 13, 2011) (citing State-Operated School District of Jersey City v. Vincent Pellechia, supra).

The argument here is simple. Ms. Camilo had ample time to complete the required Fitness For Duty examination, and her failure to do so constitutes abandonment of position, thus warranting her termination. Alternatively, Ms. Camilo's evidenced inability to remain in the classroom also warrants termination. To address the three (3) factors prescribed by relevant law, the argument is summarized as follows: Ms. Camilo's protracted absence from work was in large part due to her own failure to receive clearance to return, notwithstanding the administrative leave. Furthermore, given Ms. Camilo's role as a special education teacher of which there are limited personnel, her absence detrimentally affected the students most in need. Lastly, the evidence produced substantiates the Board's myriad attempts to return her to the classroom and expressed the Board's significant dissatisfaction with her absence from work. The Board submits the evidence produced at the May 12, 2022 hearing substantially supports the

conclusion Ms. Camilo abandoned her position, based upon a preponderance of the evidence, as required by relevant case law.

During the May 12<sup>th</sup> hearing, Ms. Camilo acknowledged that she had several appointments scheduled — after rejecting the Board's chosen physician — and still failed to comply with the June 3, 2021 Opinion and Award. As previously discussed, Ms. Camilo testified she endured several "obstacles" preventing her examination, including: waking up to water in her apartment, waking up to raw sewage in her apartment, and learning that her daughter was in a serious motor vehicle accident. Even assuming, *arguendo*, the Arbitrator determines Ms. Camilo had justifiable excuses for missing those summer appointments, no such justification was proffered for the month of September 2021, i.e. the first month of the 2021-2022 School Year. There is nothing to suggest she even attempted to submit for examination in September 2021. Ms. Camilo testified she knew in August 2021 that the Board was considering refiling tenure charges. T144:7-9. Moreover, she testified she had this knowledge before she was even aware of the EAP program's existence. T144:10-13.

It further bears emphasizing the issue underscoring the entire matter: Ms. Camilo's actual fitness for duty. Ms. Camilo testified that, on multiple occasions, she could not complete her Fitness For Duty examination because she was not in the right "mental" or "emotional" state of mind. See T118:21-23 ("I needed help for, [sic] to handle my emotional status at that point of time."). This goes to the heart of the matter. Ms. Camilo intentionally delayed her Fitness For Duty examination

because she did not believe she would successfully complete the exam.

Ms. Camilo has argued previously that she submitted for a Fitness For Duty examination in February 2022 and was successful in same. But as the Board noted at the time, reliance on that examination is misplaced due to its inconclusive nature. In fact, it is the Board's position that the February 2022 examination — occurring more than 3 months after the Revised Tenure Charges were filed — should have no bearing on this matter. Indeed, the Arbitrator has previously determined that the results of said examination do not preclude a judgment on the merits for the abandonment charge, as the Revised Tenure Charges were filed before the exam was conducted. This aligns with the Board's case: the question presented is whether Ms. Camilo had abandoned her position at the time the Revised Tenure Charges were filed.

Mr. Wohlrab testified to the particular issues caused by Ms. Camilo's protracted absence. Specifically, he testified that at the time Ms. Camilo was first placed on leave in October 2019, she was "in the middle school supporting special education." T58:22-23. He further testified that currently the Board is suffering a "shortage of teachers," which makes it "very difficult for [the Board] to find special education teachers." T59:8-11.

In fact, Mr. Wohlrab testified that the Board has in its employ only fifteen (15) special education teachers with the same certification that Ms. Camilo holds, such that "when we don't know what staff is in place or when they're going to be in place,

there's a lot of shuffling. And it's a huge deterrent to the education process and affects the students greatly." T60:15-16; 61:8-12. This is particularly the case for special education teachers who teach self-contained students, meaning "it's a different education from the special education teacher." T60:21-22. In other words, when a special education teacher is absent, "[i]t prohibits the growth of students, "because the special education students are "the most-needy" pupils. T59:11-13. As Mr. Wohlrab testified: "[e]specially in time of COVID with the internet and trying to learn over remote, not to have a full-time teacher and the scheduling, it is a lot of dominoes that fall when you don't have your staff in place by September." T59:13-18.

Lastly, it is virtually undisputed that the Board repeatedly expressed its dissatisfaction to Ms. Camilo about her nearly three (3) year absence. The email chain in Board Exhibit 7 demonstrates several attempts to receive the status of Ms. Camilo's still-outstanding Fitness For Duty examination. See Id. As Ms. Camilo testified, she had received a Rice notice in August 2021, and was aware the Board was considering additional tenure charges due to her continued noncompliance. T144:7-9.

Simply put, there is substantial evidence in the record showing the Board was persistent in warning Ms. Camilo, through counsel, that her continued absence would not be tolerated. Her absence, indefinitely prolonged upon her own volition, created significant instructional issues within the district and the Board repeatedly sought to have her return. Ms. Camilo's unilateral delay of this process



effected several warnings from the Board that she needed to successfully complete her Fitness For Duty examination. Accordingly, it is respectfully requested that this third factor of the analysis is satisfied as well.

In conclusion, the Board is responsible for providing an environment in which students are provided a thorough and efficient education through engaged and active instructors. It is impossible to achieve that objective when a teacher does not satisfy her obligations and is absent for nine hundred and sixty-one (961) days. In this matter, Ms. Camilo has effectively abandoned her position by failing to timely complete a Fitness For Duty examination as of the filing of the Revised Tenure Charges. Her absence was unduly protracted upon her own volition; her absence created significant issues for a district trying to meet the needs of special education students; and she was warned through counsel on several occasions her continued absence would not be tolerated.

Lastly, and significantly, her continued absence was in direct contravention of Arbitrator Klein's June 3, 2021 Opinion and Award, as admitted by Ms. Camilo on several occasions through cross-examination. Thus, based upon the preponderance of the evidence, Ms. Camilo has abandoned her position and her termination is justified pursuant to relevant New Jersey law.

Respondent Yesenia Camilo

TEACHNJ Act tenure charge proceedings are required to be determined pursuant to the American Arbitration Association Labor Arbitration Rules. N.J.S.A.

18A:6-22 (c), and not the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. That being the case, and depending on the nature of the charges, the arbitrator is vested with discretion to determine the quantum of proof required to support the discipline or discharge of an employee.

Whatever standard of proof is applied, it is well settled that when evidence is in equipoise, and there is no other persuasive evidence, the question in issue must go against the party who has the burden of persuasion. In re Tenure Hearing of Clare Miller, Union County Educational Services Commission, O.A.L. Docket No. 5812-01, Agency Docket No. 240-7/01 (decided April 8, 2002); see also In re Tenure Hearing of Elbert Smith, Hudson County Area Vocational-Technical Schools, 96 N.J.A.R. 2d (EDU) 903, 910; Pacifico v. Pacifico, 2009 WL 436465 (N.J. Super. App. Div. 2009); Concord Insurance Co. v. Miles, 118 N.J. Super. 551 (App. Div. 1972); Ford Motor Co. v. Coleman, 402 F. Supp. 475, 493 (D.C. 1975); United States v. Dudley, 62 F.3d 1275, 1276-77 (10<sup>th</sup> Cir. 1995).

The Board failed to carry its burden of proof with respect to the Tenure Charge and it should therefore be dismissed. The charge is based on Ms. Camilo's alleged abandonment of her position by allegedly failing to submit to and complete a Fitness For Duty examination as required by Arbitrator Klein's June 3, 2021 Opinion and Award. The evidence shows, however, that Ms. Camilo made reasonable and good faith efforts to complete a Fitness For Duty examination and ultimately successfully completed such an examination with the Board's in-house doctor. The evidence also shows that throughout Ms. Camilo's efforts to submit to

and complete a Fitness For Duty examination, unexpected and uncontrollable events took place in her personal life that delayed the completion of the examination.

Arbitrator Klein's Opinion and Award does not specify precisely when Ms. Camilo was required to complete a Fitness For Duty examination. Nonetheless, at all material times, Ms. Camilo attempted to promptly complete a Fitness For Duty examination. She searched for a doctor to conduct the examination following receipt of Arbitrator Klein's Award. Ms. Camilo initially had difficulty retaining a doctor due to the impacts of Covid-19 on doctors' schedules and availability. Ultimately, Ms. Camilo made an appointment with Dr. Rafanello in July 2021, however Dr. Rafanello required Ms. Camilo to attend multiple appointments to complete the examination.

Ms. Camilo completed the first portion of the examination on July 27, 2021. Thereafter, another appointment was scheduled for August 3, 2021. That was when Ms. Camilo began encountering unexpected events in her personal life that interfered with her ability to complete the examination with Dr. Rafanello. On the day of Ms. Camilo's second appointment, her home flooded. Despite that circumstance, Ms. Camilo appeared for the appointment, albeit late and emotionally upset because her intention was to complete the examination, comply with Arbitrator Klein's award and return to work. However, when she arrived for the appointment, Ms. Camilo was directed to reschedule it by Dr. Rafanello's office. Ms. Camilo rescheduled it for August 14, 2021.

On August 14<sup>th</sup>, Ms. Camilo's home flooded once again, this time with sewage due to a backup in the sewage line. Despite the sewage flood in Ms. Camilo's home, she appeared in Dr. Rafanello's office for her appointment on August 14, 2021, because she appreciated the need to complete the examination in order to return to work. However, she was visibly upset when she arrived and did not feel mentally prepared to complete that portion of the examination that day. As such, Ms. Camilo requested that the appointment be rescheduled and it was for August 24, 2021.

On August 24, 2021, however, Ms. Camilo's daughter was involved in a car accident. Ms. Camilo attended to her daughter following the accident and then appeared for her appointment with Dr. Rafanello. When she arrived for the appointment, she was upset and emotionally distraught. The series of events began to have a cumulative effect on Ms. Camilo. When Dr. Rafanello met with her, she stated that she could not "read" Ms. Camilo and advised that the examination could not go forward that day.

After this series of events, and being unable to complete the examination on August 24, 2021, Ms. Camilo contacted her Union president for guidance because she was concerned that she would be unable to return to work for the commencement of the school year. At that time, Ms. Camilo was faced with significant stress in her personal life. The flooding in Ms. Camilo's home resulted in the loss of her water heater, her furnace, and her refrigerator. Ms. Camilo did not have an income and was unable to pay for her child's college tuition. And most

recently, her daughter was injured in a car accident.

After consulting with her Union president, Ms. Camilo determined to seek psychological treatment from an Employee Assistance Plan ("EAP"), Ms. Camilo's EAP provides employees with skills and therapy for emotional issues. In order to enter an EAP, an individual such as Ms. Camilo must be screened and accepted. Ms. Camilo was accepted into the EAP in early October 2021. Her enrollment in the EAP shows that it was her intention all along to return to work. Entrance into the EAP was a responsible and reasonable step to take in light of the stressors Ms. Camilo was confronted with at the time, which were interfering with her ability to successfully complete a Fitness For Duty Examination. Her intention was to obtain the help she required, and then submit to and complete a Fitness For Duty examination.

Monica Valencia was Ms. Camilo's social worker from the EAP. Ms. Valencia certified that Ms. Camilo enrolled in the EAP and was receiving treatment three (3) days a week for three (3) hours a day. See Respondent Exhibit 1. Immediately following Ms. Camilo's receipt of the letter from Ms. Valencia, it was sent to the Board through its attorney by Ms. Camilo's then-attorney. T103:3-104:12. See also Board Exhibit 7. Moreover, by email dated October 11, 2021, Camilo's then-attorney advised the Board's attorney that Ms. Camilo had enrolled in an EAP and begun to receive counseling and treatment. Id. at p. 2. The Board was therefore aware, as of October 11, 2021, that Ms. Camilo had entered an EAP for treatment and counseling.

In or around the end of November 2021, Ms. Camilo progressed sufficiently for her sessions to be reduced to once a week for one (1) hour. After showing more progression, Ms. Camilo was discharged from the EAP on December 15, 2021. When she was discharged, she promptly sought to submit to and complete a Fitness For Duty examination. After Ms. Camilo consulted with her then-attorney who spoke with the Board's attorney, the Board proposed a doctor to perform Ms. Camilo's Fitness For Duty examination.

After agreeing to see Dr. Vincent Z. Ruiz, an examination was scheduled to take place on February 1, 2022. Dr. Ruiz is the Board's in-house psychiatrist. Ms. Camilo appeared for the February 1, 2022 appointment and completed the Fitness For Duty examination with Dr. Ruiz on that date. Dr. Ruiz issued a report following Ms. Camilo's Fitness For Duty examination. See Respondent's Exhibit 2. In his report, Dr. Ruiz clears Ms. Camilo to return to duty.

Abandonment of position takes place where a teaching staff member is absent from their position for an extended period of time with no explanation for the absence. See In re Tenure Hearing of Linda Lane, Newark School District, 1987 S.L.D. 1073; In re Tenure Hearing of Noemia Gomes, Elizabeth Board of Education, Agency Docket No. 69-3/18 (DeTreuX, March 4, 2019). The evidence shows that Ms. Camilo intended to return to work from the day she received Arbitrator Klein's Award. And she made a good faith attempt to comply with Arbitrator Klein's Award throughout the relevant time period. Indeed, it can be inferred that the fact that Arbitrator Klein did not set a date certain for the

examination to be completed in her Award is a recognition of the nature and realities of scheduling and completing a Fitness For Duty examination in a Covid-19 setting and an acknowledgement that at times, employees can be confronted with unforeseeable and uncontrollable circumstances that could interfere with the completion of a Fitness For Duty examination. As such, because the Board failed to carry its burden with respect to the abandonment of position charge, this Charge should be dismissed.

The Board's policy, generally, is that when it directs an employee to submit to a Fitness For Duty examination, it places the employee on administrative leave pending the results of the examination and a clearance to return to work. And an employee on administrative leave need not request a leave of absence or have such a request approved by the Board. The Board has the prerogative to place the employee on administrative leave. Additionally, when the Board certified tenure charges against an employee, the employee is placed on administrative leave without pay by the Board pending the results of the tenure charges.

Ms. Camilo was ordered reinstated by Arbitrator Klein pending the successful completion of a Fitness For Duty examination. By definition, Ms. Camilo was ordered out from work by an arbitrator until she completed an examination. And, in any event, when an employee is directed to submit to such an examination, the Board places the employee on an involuntary administrative leave. Under these circumstances, Ms. Camilo was not required to, nor was it necessary to, request a leave of absence while she was making efforts to complete the examination. The

Board's witness, Scott Wohlrab, conceded that he knew that Ms. Camilo was out from work by order of an arbitrator pending the results of the Fitness For Duty examination. Moreover, the collective negotiations agreement ("CNA") between Ms. Camilo's Union and the Board has no provision governing Fitness For Duty examinations and administrative leave pending the results of the examination are unaddressed by the CNA.

The Board was well-aware of the fact that Ms. Camilo had enrolled in an EAP before it determined to file tenure charges against her. That action against Ms. Camilo was and is barred by N.J.S.A. 34:13A-42, which provides in pertinent part: "[n]o public employer shall take any action against an employee of the employer, including termination, because the employee . . . has obtained counseling, referrals or other services from an employee assistance program or has obtained treatment or other services from any program to which the employee assistance program refers the employee . . ."

Here, by October 13, 2021, Ms. Camilo began treatment with the Rutgers University Employee Assistance program ("EAP"). Contrary to its assertion that Ms. Camilo has failed to present medical documentation justifying her absence, the Board was informed of Ms. Camilo's enrollment in the EAP on October 11<sup>th</sup> and 13, 2021. She was not referred to the EAP by the Board; and did not fail to make a good faith attempt to comply with the recommendations made by the EAP. Rather, Ms. Camilo successfully completed the EAP. Further, the Charge is not based on any alleged workplace misconduct by Ms. Camilo or poor work



performance as contemplated by the statute.

Instead, the Charge is based solely on Ms. Camilo's alleged failure to complete a Fitness For Duty examination which was ordered by an arbitrator and not by the Board. And the Board's determination to file tenure charges against Ms. Camilo was made shortly after she entered the EAP and provided the Board with notice that she had entered the EAP. It can thus be inferred that the Board took umbrage to Ms. Camilo's entrance into the EAP and that it served as the impetus for the Board's decision to move forward with tenure charges. And that is the precise circumstance and adverse action that N.J.S.A. 34:13A-42 seeks to prevent and make unlawful. Based on the above, under the plain language of N.J.S.A. 34:13A-42, the Board is prohibited from taking any action against Ms. Camilo, including the prosecution of tenure charges seeking Camilo's termination. Accordingly, the tenure charge should be dismissed for this reason as well.

Due to all of the above, it is respectfully submitted that the Charge should be dismissed in its entirety and with prejudice. The Board did not carry its burden of proof as the charge is not supported by the evidence presented. Consequently, the Board should be ordered to reinstate Ms. Camilo to her tenured teaching position together with an award of back salary (to wit: the salary withheld while on suspension without pay pursuant to N.J.S.A. 18A:6-14) and re-crediting of all other benefits and emoluments of employment that should have accrued to her during that period.

If it is determined that the charge is true, it then becomes necessary to address the question of the appropriate penalty to impose upon Ms. Camilo. N.J.S.A. 18A:28-5 speaks of dismissal or reduction in compensation. The standard for administrative proceedings holds that factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges; the teacher's prior record; the effect of such conduct on the maintenance of discipline among the students and staff; and the likelihood of such behavior recurring. In re Fulcomer, 93 N.J. Super. 404 (App. Div. 1967).

However, in arbitrations which are litigated pursuant to the American Arbitration Association Labor Arbitration Rules, it is eminently clear that much broader discretion is vested in the arbitrator to review the reasonableness of the penalty which has been imposed, or is being sought by the employer, in relation to the employee's wrongful conduct. Consequently, the Arbitrator is required to bring his informed judgment to bear in order to reach a fair solution of a problem, especially when it comes to formulating remedies.

Due to the facts of this matter, the conduct for which Ms. Camilo has been charged demonstrated at most a delay in completing the required Fitness For Duty Examination, which she respectfully submits was unforeseeable and out of her control. However, importantly, Ms. Camilo's actions evidenced a clear intent to return to work. In light of her efforts to comply with the terms of Arbitrator Klein's Opinion and Award; her effort to successfully complete an EAP; and her eventual successful completion of a Fitness For Duty examination on February 1, 2022,

dismissal and/or any further loss of salary would be too harsh a penalty under these circumstances.

If it is determined that the charges are true, standing alone, this incident does not merit the imposition of any further penalty upon Ms. Camilo beyond that which has already been imposed — to wit: her loss of pay from the effective date of Arbitrator Klein's Opinion and Award on June 3, 2021 through her unpaid suspension pursuant to N.J.S.A. 18A:6-14.

In conclusion, based on all of the above, it is respectfully submitted that the Tenure Charge be dismissed in its entirety, together with a Order requiring the Board to return Ms. Camilo to her tenured teaching position forthwith, together with back pay and all emoluments and benefits of employment.

#### **IV. STATEMENT OF THE CASE**

It is axiomatic that the tenure laws of our State were originally enacted and designed to establish a "competent and efficient school system," and to protect teaching and other staff from dismissal for "unfounded, flimsy or political reasons." See generally Viemeister v. Prospect Park Board of Education, 5 N.J. Super., 215, 218 (App. Div. 1949); Spiewak v. Rutherford Board of Education, 90 N.J. 63 (1982). The statutory status of a tenured individual should accordingly not be lightly removed. See In re Tenure Hearing of Claudia Ashe-Gilkes, City of East Orange School District, 2009 WL 246266 (January 12, 2009) adopted by the Commissioner of Education (May 2, 2009).

N.J.S.A. 18A:6-10 provides that a tenured teacher may not be dismissed or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct, or other just cause..." Because the Petitioner is the moving party in this disciplinary matter, the Board encumbers the prefatory burden of making a *prima facie* showing that it has satisfied or established the sufficiency of the unbecoming conduct or abandonment of position tenure charge by a preponderance of the credible evidence. See In the Matter of the Arbitration of the Tenure Charge between the School District of the City of Burlington, Burlington County and Penny Keough, Agency Docket No. 119-4/16 (Pecklers, 2016 at pp. 67-68); see also In the Matter of the Tenure Hearing of Mark C. Bringhurst, School District of the City of Vineland, Cumberland County, Agency Docket No. 236-8/12; In the Matter of the Tenure Hearing of Jill Buglovsky, School District of the Township of Randolph, Morris County, Agency Docket No. 484-12; Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Darcy, 114 N.J. Super. 454, 458 (App. Div. 1971).

In that event, the burden of production will shift to Respondent to plead and prove her affirmative or exculpatory defenses. And if a determination is made that the tenure charge has been established, Petitioner shoulders the additional burden of demonstrating that dismissal for the charged conduct is warranted and proportional. I am then tasked with the consideration of the totality of the circumstances; the nature of the act(s); and the impact on Ms. Camilo's career. See In re Fulcomer, 93 N.J. Super. 404, 421 (App. Div. 1967). Following a comprehensive analysis of the record evidence, with careful consideration of the

respective positions and the indexing of the transcript, I find that the instant tenure charge is **SUSTAINED IN PART**, as while Ms. Camilo violated the Fitness For Duty examination directive of the Klein Opinion and Award, she did not abandon her position at the time of the filing of the subject Revised Tenure Charge.

The majority of the material facts in this case are undisputed and fully developed in the position statements of counsel. At the outset of this discussion, arbitral notice is taken that there is no question that repeated and excessive absenteeism poses a threat to the integrity of the education process. See Trenton Bd. Of Ed. V. Williamson, OAL Docket No. EDU 7335-85 at \*4 (April 14, 1986) aff'd by Comm'r (May 28, 1986). This is particularly true when as here, the pupil population to be serviced is special needs, coupled with the unique educational challenges for remote learning in the COVID-19 era. The Petitioner has raised many potent and in fact compelling arguments, buttressed by the credible testimony of Assistant Superintendent Wohlrab. These related to the deleterious effect Ms. Camilo's lengthy absence has had upon her students. Included among them was the fact that a shortage of special education teachers was exacerbated by the difficulty in scheduling Respondent's uncertain return.

The Board has invited me to revisit and include many of the days Ms. Camilo was absent from school during the pendency of the initial tenure charges fully adjudicated before Arbitrator Klein. Respondent lodged a muscular standing objection to any consideration of the same, both at the May 12<sup>th</sup> hearing and in brief. That ship has sailed, however. On that count, the argument is made and

reiterated by Petitioner that "this case involves a teacher who has not worked in nine hundred and sixty-one (961) days." This contention is of course designed to conform the facts of the instant case into the well-established rubric of abandonment of position case law.

However, a review of the Board's citation makes clear that it is not on point and factually inapposite. See e.g. State-Operated School District of Jersey City, Hudson County v. Vincent Pellecchio, 92 N.J.A.R. 2d. (EDU) at \*7 (1992); In the Matter of the Tenure Hearing of Lena White, State-Operated School District of Jersey City, Hudson County, 92 N.J.A.R. 2d. (EDU) 157 (1991); In the Matter of the Tenure Hearing of Giuseppe Amodei, New Jersey Juvenile Justice Comm'n, No. 575-9/10, 2011 WL 7030981. Nor has Petitioner demonstrated that the three (3) part abandonment test articulated by White is applicable in the instant case, or has been met. Instead as Respondent has underlined, abandonment of position takes place where a teaching staff member is absent from her position for an extended period of time with no explanation for the absence. See generally In re Tenure Hearing of Linda Lane, Newark School District, 1987 S.L.D. 1073; In re Tenure Hearing of Noemie Gomes, Elizabeth Board of Education, Agency Docket No. 69-3/18 (DeTreuX, March 4, 2019).

My scrutiny of the operative events commences with the issuance of the Klein Opinion and Award on June 3, 2021. See Board Exhibit 4. At page 42 of the Award, Arbitrator Klein sustained Charge II, Counts 3 and 4, as well as Charge III, Count 1. The remaining tenure charges were denied. Paragraph 2 went on to

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

Respondent has made much of the fact that Arbitrator Klein neglected to provide a time period during which the Fitness For Duty exam would be completed by Ms. Camilo. But a fair reading of this language convinces me that the intention was to have Respondent reinstated to her position for September 2021 after she successfully passed the FFD. This was early June and the Board, which was short on special education teachers, certainly contemplated that scenario. The testimony by Ms. Camilo at the May 12<sup>th</sup> hearing also supports the Petitioner's position, which was that Respondent understood the directive to mean "ASAP." See T40:18; T128:22-129:1; T141:23-142:3.

By correspondence dated June 25, 2021, Respondent's then-counsel James R. Zazzali, Esq. responded to a letter from Board counsel regarding a Fitness For Duty examination being scheduled with Dr. Kezmarsky. This objected to the use of the physician based upon a potential, if not inherent conflict of interest. Mr. Zazzali further advised that Ms. Camilo would submit to a Fitness For Duty examination by Dr. Nicole J. Rafanello, pending Board approval and at Respondent's expense, on either July 1<sup>st</sup> and 6, 2021 or July 8<sup>th</sup> and 13, 2021. See Board Exhibit 6.

The record reflects that Ms. Camilo did not complete her Fitness For Duty

exam with Dr. Rafanello, and no documentation related to the same appears. Ms. Camilo testified that her first appointment was July 27, 2021 which she attended. T85:18. The doctor then wanted her to complete the evaluation on a later date, August 3, 2021. T87:13. According to Respondent, however, she arrived at that appointment forty-five (45) minutes late after she woke up with three (3) feet of water in her apartment. This caused Dr. Rafanello's office to reschedule her for August 14, 2021. T84:3-4; T89:11-12. However, on that date Ms. Camilo recalled, she woke up with a foot of raw sewage in her apartment. T89:17. While she went to the exam, Ms. Camilo did not complete it because "I didn't think I was ready for this evaluation because mentally, I was so disgusted." T91:21-22; T92:3-5. The exam was thereafter rescheduled one final time on August 24, 2021. But on that date, Ms. Camilo's daughter had a serious car accident. T93:17. She was nevertheless able to make the appointment, but Dr. Rafanello reportedly told her that she was not in "any state of mind" to complete the exam. T94:19.

By any measure, these circumstances constitute adversity on an epic scale, bordering on incredible. The fact remains that Ms. Camilo's testimony was unrebutted and notwithstanding the fact that no documentary evidence was introduced by Respondent, I am willing to give her the benefit of the doubt and do not find that she deliberately failed to complete the FFD with Dr. Rafanello. That said, I fully credit the Petitioner's position that during the six (6) week period between August 24, 2021 and October 11, 2021, Ms. Camilo made no attempt to complete a Fitness For Duty exam as directed by Arbitrator Klein. This was so,



even though she was aware that the same should be completed ASAP and that her students would be reporting to school in September. The email string at Board Exhibit 7 illustrates that Mr. Zazzali was likewise not kept in the loop by Respondent, as well as the Board's understandable increasing impatience to establish the status of Ms. Camilo's Fitness For Duty examination.

In its zeal to bolster its abandonment *bona fides*, Petitioner insists that none of the communications between the Board and Mr. Zazzali between June 2021 and October 2021 mentioned an EAP until October 11, 2021. Further, as testified to at length by Mr. Wohlrab, Ms. Camilo never sought authorization for a leave of absence to enroll in the EAP. Nevertheless, as brought out on cross and trumpeted by Respondent, this overlooked the fact that Ms. Camilo was placed on an unpaid administrative leave when the initial tenure charges were filed, which was extended by operation of law after the Klein Award. The assistant superintendent conceded the same during his testimony.

Under these circumstances, there was no requirement for Ms. Camilo to request a leave of absence. It is also of no moment that Mr. Zazzali failed to mention an EAP-referral or that Ms. Camilo was not even aware of the possibility of the same until she spoke with her Association president. Moreover, by October 13, 2021, the Board had actual notice of this participation. See ZAZZALI TO TAYLOR Email, at Board Exhibit 7, supra at p. 2; see also OCTOBER 12, 2021 LETTER FROM MSW, LSW VALENCIA OF THE COUNSELING CENTER, at Respondent Exhibit 1.

This was well before the Revised Tenure Charges were preferred in late November of 2021. And while I decline to ascribe sinister motives to the Board, my interpretation of N.J.S.A. 34:13A:42 PROHIBITION UPON ADVERSE EMPLOYMENT ACTION AGAINST EMPLOYEES UTILIZING [EAP] PROGRAM is consonant with Respondent's, in that "[n]o public employer shall take any action against an employee of the employer, including termination, because the employee or a dependent of the employee has obtained counseling, referrals or other services from an employee assistance program or has received treatment or other services from any program to which the employee assistance program refers the employee or dependent, unless the employee was referred by the employer to the employee assistance program due to issues related to job performance and fails to make a good faith effort to comply..." The record establishes that EAP was completed in early December 2021. Ms. Camilo's absences during the relevant period are accordingly protected.<sup>2</sup>

The remaining question that must be addressed, is the correct penalty to be assessed in this case. This will only come into play, of course, in the event that Ms. Camilo is found fit for duty and cleared to return to work. When the totality of

---

<sup>2/</sup> After the assignment of this case to me as the Arbitrator and with my assistance, a Fitness For Duty exam was scheduled for Ms. Camilo on February 1, 2022 with the Board's psychiatrist, Dr. Vincent Z. Ruiz. Ms. Camilo appeared as scheduled, and was examined. This resulted in the PSYCHIATRIC EVALUATION at Respondent Exhibit 2. The ASSESSMENT reached by Dr. Ruiz was that "Ms. Camilo showed no evidence of depression or psychosis. She was not a danger to herself or others at the time of this evaluation." Ibid. The Petitioner subsequently refused to accept the Ruiz FFD, which it deemed inconclusive. There is a sharp difference of opinion between the parties on the application of this, with Respondent urging that Ms. Camilo was cleared to return to duty. For its part, Petitioner insists that it should be afforded no weight, as it also took place more than three (3) months after the revised charges were filed. In my view and on balance, I would exceed my authority were I to embrace Respondent's request, as Dr. Ruiz did not testify at the May 12<sup>th</sup> hearing. That said and as I mentioned at that time, while I do not view it as dispositive it certainly evidences a continuing desire on the part of Ms. Camilo to finally complete the Fitness For Duty examination ordered by Arbitrator Klein, and fatally undercuts Petitioner's position that she abandoned her position.

the foregoing circumstances is considered, in conjunction with the guidance provided by In re Fulcomer, I believe that a written reprimand that is conditionally removed at the completion of the 2022-2023 School Year is appropriate.

I share Respondent's view that any additional financial penalty would be harsh under the circumstances. Ms. Camilo had her 2021-2022 School Year increment held by Arbitrator Klein, and was placed on an unpaid suspension herein for the initial 120-day period per N.J.S.A. 18A:6-14. I am mindful of the fact that her six (6) week period of inaction preceded her October 11, 2022 entry into the EAP. As she was screened and accepted into the program by Rutgers, I must therefore assume that she was under emotional distress during this time.

Respondent will accordingly be afforded a final opportunity to pass an FFD and be returned to work. Should she fail to appear for this examination, it will be at her own peril. Jurisdiction will be retained for a period of thirty (30) days simply to assist counsel with any remedial issues that may surface and ensure that Ms. Camilo may return to the West New York School District and her special needs students if medically cleared in September. IT IS SO ORDERED.

## **V. CONCLUSION**

Petitioner has established by a preponderance of the credible evidence that Ms. Camilo failed to comply with the terms of the Klein Opinion and Award, but has not demonstrated that the failure to submit to the same as of the date of the filing of the tenure charges constituted an abandonment of her position and/or other just cause for her removal.

**AWARD**

1. The subject Revised Tenure Charge is sustained in part. Respondent shall receive a written reprimand, which shall be expunged from Ms. Camilo's personnel file after the 2022-2023 School Year, provided that she does not receive any further discipline during this period.

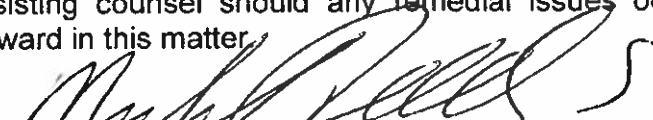
2. Within five (5) business days of the receipt of this AWARD, the Board shall schedule a psychiatric Fitness For Duty examination for Ms. Camilo pursuant to N.J.S.A. 18A:16-3, which shall be held within fourteen (14) business days. The doctor administering the Fitness For Duty exam shall definitely state in the report that Ms. Camilo "is" or "is not" fit to return to her teaching duties. This timeline may be amended by mutual agreement of counsel in the event of scheduling difficulties. The failure of Ms. Camilo to attend the Fitness For Duty shall result in an adverse inference being drawn that she is unfit for duty. An absence may be excused only for an emergent and documented circumstance.

3. In the event that Ms. Camilo is declared fit for duty, she shall be immediately reinstated to her tenured teaching position with the West New York School District with full seniority and benefits and receive any lost wages and benefits beyond the 120<sup>th</sup> day, pursuant to N.J.S.A. 18A:6-14, minus any period of delay caused by Respondent as previously discussed with counsel.

4. In the event that Ms. Camilo is deemed unfit for duty, the Board shall follow the provisions of Policy 3161, as contemplated by Arbitrator Klein, in Agency Docket No. 189-9/20.

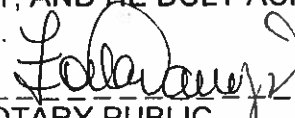
5. Jurisdiction shall be retained for a period of thirty (30) calendar days for the limited purpose of assisting counsel should any remedial issues occur. This constitutes the entire Award in this matter.

Dated: July 5, 2022

  
-----  
MICHAEL J. PECKLERS, ESQUIRE,  
ARBITRATOR

STATE OF NEW JERSEY  
COUNTY OF HUDSON

ON THIS 5<sup>TH</sup> DAY OF JULY 2022, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQUIRE**, TO BE KNOWN TO ME TO BE THE INDIVIDUAL DESCRIBED HEREIN, AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

  
-----  
NOTARY PUBLIC

