

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION

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In the Matter of Tenure Hearing
Of Joseph Putrino and the Montclair
School District, Essex County.

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Agency Docket No. 189-10/21

OPINON AND AWARD

Issued: October 18, 2022

ARBITRATOR

Joseph Licata, Esq.

APPEARANCES

FOR THE PETITIONER

Isabel Machado, Esq.
Machado Law Group

FOR THE RESPONDENT

Robert M. Schwartz, Esq.
Schwartz Law Group, LLC

PROCEDURAL HISTORY

On September 20, 2021, Superintendent Dr. Jonathon C. Ponds submitted to the School Business Administrator/Board Secretary Nicholas Cipriano, a Notice of Tenure Charges against Dr. Joseph Putrino (“Respondent”), Principal of Renaissance Middle School, on behalf of the Montclair Public School District (“Petitioner”). On September 20, 2021, Cipriano served Putrino the Statement of Tenure Charges and Statement of Evidence Under Oath, with supporting documents and an affidavit supporting the Charges. On October 7, 2021, Petitioner’s attorney, Isabelle Machado, Esq. filed with the New Jersey Department of Education a Certification of Determination together with an October 6, 2021 Board Resolution adopting the Tenure Charges against Putrino. Also filed was a Statement of Tenure Charges and Statement of Evidence Under Oath with supporting documents and an affidavit supporting the Statement of Tenure Charges¹ and Statement of Evidence Under Oath dated September 20, 2021; and, lastly a Certification of Service upon Putrino and his attorney, Robert M. Schwartz, Esq.

Based on two specifications, Petitioner charged Respondent with Conduct Unbecoming and Other Just Cause within the meaning of N.J.S.A. 18A:6-10. The first specification alleges that Respondent showed a racially offensive video on September 2, 2020 during a convocation presentation to staff which was available by livestream. The second specification alleges that Respondent created a schedule for teachers which was significantly short of the 1250 minutes of weekly pupil contact time allowed under the provisions of the 2018-2021 Collective Bargaining Agreement between Petitioner and the Montclair Teachers’ Education Association. Petitioner seeks Respondent’s dismissal from employment.²

¹ Hereinafter referred to as “the Charges”.

² Respondent is on a paid suspension pending the results of this proceeding.

On October 27, 2021, Respondent filed an Answer with the New Jersey Department of Education. On November 3, 2021, the New Jersey Department of Education, Office of Controversies and Disputes, designated the undersigned to hear and decide this matter pursuant to N.J.S.A. 18A:6-16. Subsequently, pursuant to N.J.S.A. 18A:6-17.1(b)(3), Respondent filed a Witness and Evidence Disclosure.

On February 2, 2022, the parties stipulated to a “Protective Order” concerning copies of correspondence sent in by a parent of a Montclair Board of Education student; any document concerning student information, student name, or student records; and any document containing employee confidential, personal, medical, social and/or private information. The parties further stipulated that the confidential document/information shall only be used in the pending matter and shall not be used in any other matter in the absence of further Order.

On February 8, 11 and 15, 2022, the parties’ representatives exchanged email communications concerning certain discovery issues which arose between them. As a result of the exchange, Petitioner agreed to withdraw Paragraphs 7-10 of the Charges pertaining to allegations surrounding a 2019 N.J. Superior Court Complaint.

On February 17, 2022, Respondent filed a letter seeking dismissal of the Charges with respect to a portion of Paragraph 13, which alleges:

“During Dr. Putrino’s presentation, numerous staff members, District parents, as well as members of the public, objected to and were offended by the video. As a result, the video was stopped by District administration.”
(See, Ex. G through K, and O through P.)³

Respondent contends that such dismissal was warranted due to alleged insufficiencies regarding the Sworn Statement of Evidence, Exhibits O and P; namely, that Exhibits O and P were

³ Petitioner’s exhibits are referenced by letters. Respondent’s exhibits are referenced by an “R” followed by the number of the exhibit.

anonymously sent emails which do not meet the general standards set forth by the undersigned in Tenure Matter of Noelle Gordon, Agency Docket No. 24-1/18 or the more specifically applicable ruling of Arbitrator Arnold Zudick in Tenure Charges of Brett Fetty Agency Docket No. 173-7/19 (rejecting reliance on anonymous statements).

In addition, based on the same arbitral precedent, Respondent sought to dismiss Paragraphs 20-23 pertaining to a “Renaissance Middle School 2020-2021 Teachers’ Schedules Audit”. The basis for Respondent’s motion regarding Paragraphs 20-23 is that Exhibit S does not contain pertinent information necessary to support a Tenure Charge and/or to enable cross-examination. For example, Respondent alleges that Exhibit S does not contain the identification of teachers, class assignments, or even the school year at issue.

However, one day prior to the first day of hearing, in an attempt to cure a portion of the defects noted in Respondent’s February 17, 2022 letter, Petitioner replaced its originally filed Exhibits O and P (which redacted the names and email addresses of the senders) with the originally received emails that did identify the complaining individuals. Respondent objected to the belated attempt by Petitioner to cure the alleged defects. In addressing the objection and resolving the evidentiary dispute, the undersigned directed Petitioner to restore the originally filed Exhibits O and P containing the redacted email addresses and names of the senders. However, Dr. Ponds was permitted to testify that the emails he originally received contained names and email addresses and, thus, were not sent anonymously.

On February 18, 2022, the undersigned presided over the first day of hearing in this matter.⁴ The parties completed opening statements and the direct and cross-examination of Dr. Ponds.

⁴ All hearing days were conducted pursuant to Zoom videoconferencing and were transcribed by a certified court reporter. In total, the hearing encompassed 1,952 transcribed pages.

On February 23, 2022, Petitioner filed an opposition to the motion limited to Respondent's objection over Exhibit S of the Sworn Statement of Evidence and seeking dismissal of Paragraphs 20-23 of the Charges. On February 27, 2022, the undersigned requested a copy of Petitioner's answer to Respondent Interrogatory #21. On the same day, Respondent filed a reply letter brief and provided the undersigned with a full set of Petitioner's Answers to Respondent's Interrogatories.

On March 1, 2022, the undersigned issued a decision on the Respondent's Motion to Dismiss the scheduling infractions Charge. Respondent's motion was denied for the reasons set forth in the undersigned's decision. The motion decision was filed with the Office of Controversies and Disputes on the same day.

On March 2, 2022, Respondent filed a motion to exclude two witnesses for the reason that neither was on Petitioner's original witness list. Petitioner opposed the motion.

On March 3, 2022, a second day of hearing was held. The March 2, 2022 motion to exclude two witnesses filed by Respondent was resolved on the record. The parties also completed the testimony of Dr. Ponds.

On March 4, 2022, a third day of hearing, Petitioner adduced the testimony of Diane Anglin (a non-District employee) and Rodney Jackson, a teacher at Renaissance Middle School.

On March 10, 2022, a fourth day of hearing, Petitioner presented the testimony of Major Jennings, Principal of Buzz Aldrin Middle School and Acting Principal at Renaissance.

On March 11, 2022, a fifth day of hearing, Petitioner presented the testimony of Damen Cooper, Human Resources Personnel Director. Following the completion of Cooper's testimony, Petitioner rested its case in chief subject to rebuttal.

On March 23, 2022, a sixth day of hearing, Respondent adduced the testimony of Ketty White, a second grade teacher at Nishuane School.

On April 19, 2022, a seventh day of hearing, Respondent presented the testimony of Erika Pierce, Principal Glenfield Middle School; Shashana Smiley, an Administrative Assistant/Secretary assigned to Montclair High School (previously Renaissance Middle School); Susan Weintraub, a non-District employee who held the position of PTA President for Northeast Middle School and Glenfield Middle School; Javon Pleasant, a non-District employee and former graduate of the Montclair Regional School District; Ibn Shakoor, a non-District employee; and, Beth Calamia Scheckel, a non-District employee and former PTA President of Renaissance Middle School.

On April 27, 2022, an eighth day of hearing, Respondent testified on direct examination.

On April 28, 2022, a ninth day of hearing, Respondent's direct examination and cross-examination were completed.

On May 10, 2022, a tenth day of hearing, cross-examination, redirect examination and recross-examination of Respondent were completed. In addition, Respondent offered the testimony of Naomi Kirkman, a retired school principal at Branford School. The parties completed Kirkman's testimony.

Finally, on June 14, 2022, an eleventh day of hearing, Respondent adduced the testimony of Dr. Matt Jennings, who was offered to testify in response to the scheduling Charge. Petitioner called two rebuttal witnesses, Chris Graber, Director of Technology, Montclair Public Schools and Dr. Ponds, whereupon the evidentiary portion of the records was completed.

Pursuant to the briefing schedule established, the parties' respective representatives filed initial briefs on August 3, 2022, and reply briefs on August 17, 2022.

EXHIBIT DISPUTE

Subsequent to the filing of briefs, a dispute arose when Petitioner contended that certain exhibits identified by Respondent were not admitted in evidence.

Specifically, Petitioner, in a letter to the undersigned dated August 18, 2022, stated:

Dear Arbitrator Licata:

As you are aware our office is counsel to the Petitioner, Montclair Board of Education (“District”). Kindly accept this correspondence in response to Respondent’s final proposed exhibit list. Various exhibits listed in Respondent’s Exhibit List were not admitted into the evidence during the hearing.

More specifically, the District objects to the following exhibits:

- Ex. R16 Montclair Public Schools Website articles – Bates stamped 144-148; 169- 172.

During the hearing, Arbitrator Licata you ruled that pages Bates stamped 144-148; 169-172 were not admitted into evidence. See, T. 1212:23-1214:25; 1216:6-1218:14.

- Ex. R199/7/20 Letter of Support, including Beth Scheckel, Bates stamped 204, 205- 207, 209, 2026.

Respondent’s proposed language is unclear. Only certain pages of Ex. R19 were admitted with the caveat discussed during the hearing. As such, the use of the word “including” is inaccurate and same should be revised to “limited to”. Additionally, page Bates stamped “2026” is inaccurate.

- Ex. R22 Josh Pray Statement.

Ex. R22 was never admitted into evidence. Ex. R22 was introduced during the hearing but was not moved into evidence. See T. 220:17-25.

- “Ex. R26 MEA agreement (Ex. PQ)”.

During the hearing, Arbitrator Licata you ruled that “Ex. R26 is not in Exhibit PQ is.” See T. 1437:19-20.

- “Ex. R31 Reopening Plan Bates stamped 441”.

Based on our review of the transcript, R31 Bates stamped 441 was shown

during the hearing. See T. 1425:15-25. However, we have no record of same being admitted into evidence.

- “Ex. R32 CV of Dr. Matthew Jennings/Report”.

Based on our review of the transcript, Ex. R32, CV of Dr. Jennings was marked for identification, but we have no record of the CV or report being admitted into evidence.

Respondent replied on August 26, 2022.

Dear Arbitrator Licata

This is in response to Ms. Machado’s letter of August 19, 2022.

After receiving Ms. Machado’s letter, I went back and reviewed the transcripts. Ms. Machado is correct with most of her points. In this regard, I wish to apologize for any confusion my error may have caused.

More specifically, in reviewing the transcript as to Exhibit R-16, this was admitted except for the pages Bates stamped 144-148 and 169-172.

As to R-19, pertaining to the Scheckel letter, Bates stamped 204, it was admitted “subject to the previous colloquy.” T.1123:22-23. The colloquy can be found on the preceding pages. Referring to the letter, Arbitrator Licata stated:

“...I don’t know to the extent that this letter goes to his character, and she’s listed as a witness, as a character witness.” T.1121:23-25; 1122:1

“it does talk about his character and what she’s been testifying to so far about restorative justice program, and its turnaround at the school. So I’m going to allow it.” T.1122:11-15

Also, as to the documents in R-19, Bates stamped 204, 205, 206, 207, 209, 226, they were admitted at T.179:23 T.181:19 and T.189:24-25; T.190:1-3

As to R-26, this was also listed as Exhibit Q.

R-31 is the District’s remote learning plan. The portion of the document Bates stamped 441 represents the virtual schedule at Renaissance for the 20-21 school term which is also found in R-30 of the Renaissance Staff Bulletin, Bates stamped 428 and admitted into evince at T.1425: 5-12. Dr. Ponds testified that R- 31, Bates stamped 441 was a “snapshot” of the Renaissance schedule and he acknowledged that this was put out in the District - wide reopening plan for 20-21. T.375:11-20

While R-31 does not appear to have been entered into evidence, this was through inadvertence. Given Dr. Ponds' testimony that R-31, Bates stamped 441 was a snap shot of the Renaissance virtual schedule for the 20-21 school term, and given that the schedule is the same as in R-30, 428, which was admitted into evidence, it is respectfully requested that this be allowed into evidence.

With respect to R-32, representing the CV for Dr. Jennings, this was marked for ID at T.1768. At T.1805: 11-23, Arbitrator Licata found Dr. Jennings to be qualified as an expert. This being the case, I would respectfully ask that the CV be allowed into evidence inasmuch as Dr. Jennings testified as to his expertise and the Arbitrator qualified him as an expert.

With regard to R-22, the Josh Pray statement, it was marked for identification. See T.220: 19-20. Dr. Ponds said he was not sure if he looked at the statement, but there was a "chance that he read it." T.220: 23-25. We intended to introduce it into evidence just to show that Mr. Pray's message was to illustrate the frustration of many parents during the lock-down in having to work and take care of their children at the same time and the new-found appreciation for what teachers do every day. It represented a message that was understood by several witnesses, including Ketty White, Erika Pierce, Shashana Smiley, Ibn Shakoor, and Javon Pleasant. They all testified that they saw the video as relatable. More specifically, Ms. White, Ms. Pierce and Ms. Smiley also testified that it spoke them as parents when, during the period of the lock down, they had to work remotely and at the same time teach and occupy their children. We intended to introduce it into evidence. Apparently, this did not occur. Accordingly, I am respectfully requesting now that you consider allowing this document to come in as evidence just to show that the intended message of the video corresponded to how the Respondent's witnesses characterized their view of the video.

Petitioner replied on August 31, 2022.

Good Morning, Arbitrator Licata:

The District objects to Respondent's request to submit new exhibits into evidence months after both sides have rested and submitted their post hearing briefs. The Board has not been permitted or sought to unilaterally add new exhibits into evidence.

The request is further even more concerning since same includes a request to include R-22 as an exhibit, without any testimony that it is even a statement by Josh Pray or an opportunity to cross examine the alleged author of the statement. Josh Pray did not testify in this matter and in fact no one testified that R-22 was even a statement made by Josh Pray.

Thank you.

(8/31/2022 at 9:13 a.m.)

After fully considering the post-hearing evidentiary dispute, I enter the following rulings:

Ex. R16 Montclair Public Schools Website articles – Bates stamped 144-148; 169-172 (Will Not Be Admitted).

This matter was resolved during the hearing as follows:

Bates 144-148

ARBITRATOR LICATA: We have Dr. Putrino's testimony describing the event. He was in the picture. I mean, if it's not written by Dr. Putrino, I think you have enough with his testimony, identification of the events, that we could move on and sustain Isabel's objection to that extent.

MR. SCHWARTZ: So 144 to 148, the document itself is not coming in, the pictures are not coming in?

ARBITRATOR LICATA: We have the witness' testimony about what the event was and who the people are (Tr. 8, p. 1214, lines 1-13).

Bates 169-172

ARBITRATOR LICATA: All right. Look, I mean, in terms of these exhibits, the same ruling I had before is that Bob has the testimony, Dr. Putrino has described the event. Nobody is disputing he received those awards or that's not him in the picture. It wasn't photo-shopped. So I'll sustain the objection and take Dr. Putrino's testimony and identifications of people in the photo and that he received the award. I don't know what more the article would add anyhow to that. But I'll sustain the objection (Tr. 8, p. 1217, line 17 through p. 1218, line 4).

Ex. R19 9/7/20 Letter of Support, including Beth Scheckel, Bates stamped 204, 205-207, 209, 2026 (admitted with clarification)

Petitioner claims Respondent's proposed language is unclear. Certain pages of Exhibit R19 were admitted with the caveat discussed during the hearing. As such, the use of the word "including" will be deleted. I agree. Additionally, I concur that Bates stamp "2026" is inaccurate. However, Bates Stamp 2026 is conformed to Bates Stamp 226 based on the Transcript.

Exhibit R22 Josh Pray Statement (will not be admitted)

Petitioner submits that Exhibit R22 was introduced during the hearing but was not moved into evidence. Respondent replies that it intended to introduce it into evidence just to show that Mr. Pray's message was to illustrate parent's frustrations of parents during the lockdown. Respondent respectfully requests the admission of Exhibit R22. Unlike other statements (emails) which were admitted based on Dr. Ponds' testimony that he either did receive or likely received the email (if properly addressed to his email account), the Pray statement was not similarly validated or otherwise authenticated. Additionally, because the video also reveals the message underlying Pray's performance, and because Pray is obviously critiquing his own children's remote learning study habits, Respondent's asserted need to have the Pray statement in evidence expressing the obvious is not compelling. Thus, without authentication, I concur with Petitioner. Exhibit R22 will not be admitted.

Exhibit R26 MEA agreement (Ex. Q).

(Exhibit R26 is stricken and replaced with Exhibit Q).

Exhibit R31 Reopening Plan Bates stamped 441
(Admitted)

Petitioner is correct. Exhibit R31 was discussed during Dr. Putrino's testimony, but not moved into evidence. In accepting this document, however, I observe both parties developed the record to such an extent that the document should be admitted to give context and any needed clarification to the testimony. The extent of discussion by both attorneys and Putrino is set forth below:

By Mr. Schwartz

Q. The next document I would like to show you, Dr. Putrino, is R-31. It's Putrino 31. It starts on Bates Stamp 431. I'm sorry, 430. And it is dated

August 2020, and it's titled remote learning plan. Can you tell us what this is, please?

A. This is the document that the District sent out to parents and posted on the website as the Montclair's remote learning plan.

Q. I'll show you what is Bates Stamped 441 of R-31. Have you seen this before, Dr. Putrino?

A. Yes.

Q. Can you tell us what this particular page is? And again, I'm on Bates Stamp Page 441.

A. This is my District approved remote learning schedule set to be put in place for the 2020-2021 school year (Tr. 9, p. 1425, line 14 through p. 1426, line 12).

By Ms. Machado

MS. MACHADO: Can you put up Exhibit 31?

ARBITRATOR LICATA: Is this R-31?

MS. MACHADO: Yes. Putrino 31. Go to the Renaissance schedule, which is 441, if anybody is looking at the Bates Stamp.

Q. You would agree with me that this schedule does not show how many minutes each teacher is actually teaching students; correct?

A. On this schedule, no.

Q. And looking at this schedule, there would be no way for somebody looking at this to be able to say how many minutes each teacher is teaching; accurate?

A. Correct.

Q. And you would also agree with me, looking at the schedule, you can't tell, nobody would be able to tell how many students are in any particular teacher's classroom or class; correct?

A. You're correct. That's not the function (Tr. 9, p. 1458, line 23 through p. 1459, line 20).

By Mr. Schwartz

Q. Dr. Putrino, I show you R-31. And R-31 is the Montclair Public School Remote Learning Plan, and it says August of 2020. Do you know -- and it's Putrino 430. Do you know who put this out?

A. The District (Tr. 10, p. 1665, lines 18-23).

Q. And the Montclair reopening plan that's been marked as R-31, that came out when?

A. Also the 21st. Later that afternoon. (Id., p. 1667, lines 4-6).

The in depth discussion of the exhibit by both sides supports admission of the document.

Lastly, I observe, a portion of this virtual schedule is also found in Exhibit R30 which is in evidence.

Based on the foregoing, I will admit Exhibit R31.

Exhibit R32 CV of Dr. Matthew Jennings/Report (admitted in evidence)

Petitioner is correct. Exhibit R32, the Curriculum Vitae of Dr. Jennings was marked for identification, but not moved for admission. However, the document will be accepted since (1) it was the subject of both direct examination and extensive *voire dire*; (2) it gives background or context to the testimony of Jennings concerning his education and experience; and (3) the testimony of Jennings – apart from the CV – was more heavily relied upon in the undersigned's ruling to qualify Dr. Jennings as an expert witness regarding the planning and creation of school schedules:

So I'm going to admit the witness, qualify him as an expert, recognizing that there are varying degrees of expertise. And as we go along in the proceeding, cross-examination can certainly bring out further flaws, if any, with respect to the findings and conclusions that Dr. Jennings has made.

So I'm satisfied initially based on his experience of reviewing schedules, creating some master schedules, that the topic of scheduling would be something he would be able to assist me with. So I'm going to allow the testimony, and of course, as we go through it, there could be cross-examination of what his testimony actually is (Tr. 11, p. 1805, line 15 through p. 1806, line 4).

In light of the foregoing, the final lists of exhibits admitted in evidence are as follows:

PETITIONER'S EXHIBIT LIST

- Ex. A June 19, 2012 letter from Dr. Patterson confirming Respondent's employment.
- Ex. F September 2, 2020 convocation video.
- Ex. G September 2, 2020 email from Alecia Wells, District teacher, to Dr. Ponds.
- Ex. H September 2, 2020 email from Margaret R. Sáraco, District teacher, to Dr. Ponds.
- Ex. I September 2, 2020 email from Rodney Jackson, District teacher, to Dr. Ponds.
- Ex. J September 2, 2020 email from Mike Chiles, retired District staff, to Dr. Ponds.
- Ex. K September 2, 2020 email from Natale Burrell, District teacher, to Dr. Ponds.
- Ex. L Video of the September 2, 2020 Board meeting and Ms. Anglin's statement.
- Ex. M September 2, 2020 TAPINTO Montclair article, *Montclair NAACP Demands Immediate Action After 'Racist' and 'Offensive' Video Shown to District Staff.*
- Ex. N September 2, 2020 letter to Respondent from Mr. Cooper regarding administrative leave.
- Ex. O October 29, 2020 email from Parent, Shani Stephens (S.S.), to Dr. Ponds.
- Ex. P November 9, 2020 email from Parent, Deborah Guzman Meyer (D.M.), to Dr. Ponds.
- Ex. Q 2018-2021 Collective Bargaining Agreement between the Montclair Board of Education and the Montclair Education Association.
- Ex. R District Principal Job Description.
- Ex. S 2020-2021 Renaissance Middle School Teachers' Schedules' Audit Documents.
- Ex. T May 10, 2021 MHS Daily Announcements.

- Ex. U May 11, 2021 Montclair Local article, *Montclair Schools ‘Deeply Regret’ Honoring Ultra-Nationalist Rabbi Meir Kahane.*
- Ex. V September 7, 2020 Email chain between Major Jennings and Dr. Ponds, Kalisha Morgan, and Damen Cooper.
- Ex. W July 9, 2020 Email Chain between Dr. Putrino and Dr. Ponds.
- Ex. X Dr. Putrino’s Public Instagram Page.
- Ex. Y Full video of September 2, 2020 convocation.
- Ex. Z July 15, 2020 E-Mail Chain between Dr. Putrino and Dr. Ponds.
- Ex. AA July 16, 2020 E-Mail from Dr. Kelisha Morgan to Dr. Putrino, etc.
- Ex. BB Excel Sheet from Dr. Matt Jennings with additional column added by Isabel Machado, Esq.

RESPONDENT’S EXHIBIT LIST

- Ex. R10 6/19/20 Letter, Our Lady of the Valley Divine Mercy Café.
- Ex. R11 Glenfield Happenings.
- Ex. R13 7/15/20 letter from MPA.
- Ex. R14 8/12/20 letter from MPA.
- ~~Ex. R16 — Montclair Public Schools Website articles — Bates stamped 144-148; 169-172.~~
- Ex. R17 Renaissance Middle School.
- Ex. R18 Evaluations – Mini Observations.
- Ex. R19 9/7/20 Letter of Support, **including** Beth Scheckel, Bates stamped 204, 205-207, 209, 2026.
- ~~Ex. R22 — Josh Pray Statement.~~
- Ex. R23 Meir Kahane, Bates stamped 287-288.
- Ex. R24 Scheduling docs.
- Ex. R25 Art work.

~~Ex. R26~~ — ~~MEA agreement~~ (Ex. PQ).

Ex. R27 Montclair Principals Association CBA.

Ex. R28 Commendation letter from for Superintendent Parker.

Ex. R29 Text messages from Chris Graber -Bates stamped 420.

Ex. R30 Renaissance Staff Bulletins.

Ex. R31 Reopening Plan Bates stamped 441.

Ex. R32 CV of Dr. Matthew Jennings/Report.

Ex. R33 2/5/21 Kirkman letter.

Finally, the undersigned's Opinion and Award is issued in accordance with N.J.S.A. 18A:6-17.1 and the American Arbitration Association Labor Arbitration Rules.

THE ISSUES

“Did Petitioner have just cause to seek the dismissal of Dr. Joseph Putrino, a tenured employee of the Montclair School District based on charges of conduct unbecoming and other just cause? If not, what shall be the remedy?”

SUMMARY OF THE POSITIONS OF THE PARTIES

Petitioner's Initial Brief

On September 2, 2020, in the midst of the COVID-19 pandemic and the aftermath of the devastation gripping the country after the murder of several African American citizens including that of Mr. George Floyd, Respondent choose to present a racially offensive and hurtful video to all staff members in the District, as well as members of the community.

During a virtual convocation, in his capacity as the president of the Montclair Principals Association (“MPA”), Respondent displayed a video which depicted a series of horrifying racial stereotypes about the African American and Black community, including that of the angry Black man. One of the most dangerous stereotypes about the Black community. The video further reinforced negative racial stereotypes which portray African American and Black parents as

uneducated, unintelligent, unable to care for their own children and reliant on the government to do so. The video also reinforced negative racial stereotypes which portray African American and Black students as cheaters and connected to drugs.

Understandably, staff members and members of the community, including the Montclair chapter of the NAACP, were offended by the perpetuation of the horrifying racial stereotypes. Even Respondent's own organization, the MPA, removed him from his president's position and publicly denounced his action.

Although the Respondent's full video was not shown during the convocation, as the Superintendent of Schools was able to stop the video, the remainder of the video remains equally troubling. It mocks the District's COVID-19 safety protocols, and demeans the head custodian, who is African American, by having him mop after each step taken by the Respondent. The video continues to a scene of a thermometer being swung at staff and books being thrown at stuffed animals sitting at desks, who apparently represent students.

After being placed on administrative leave, it was also discovered that Respondent had overstaffed his building by giving teachers partial schedules. Under the contract with the Montclair Education Association, teachers are to work 1,250 minutes. Renaissance Middle School teachers were scheduled to work significantly less, costing the District hundreds of thousands of dollars.

In September 2020, Montclair Public Schools needed reassurance. During a time when District staff members were anxious and fearful of COVID-19, the staff did not need the public mocking of the safety protocols. In September of 2020, the District needed leadership from its principals, not to have the staff be demeaned. In September 2020, the District needed, and continues to need, a building leader who is capable of understanding the dangers of racial stereotyping and is able to comprehend when his actions will perpetuate such harmful stereotypes.

Respondent, unfortunately, has proven that he is incapable of being that leader. Respondent has unfortunately shown that he is incapable of being a responsible administrator who can unite the school and not further damage, divide, and hurt the community.

Respondent's behavior further undoubtedly negatively impacted the morale and efficiency of the Montclair Public Schools. No reasonable person could argue that Respondent's behavior meets the implicit standard of good behavior or the degree of self-restraint and controlled behavior expected of public-school employees. When an educator perpetuates racial stereotyping which is negatively perceived, even if a single incident, nothing short of dismissal is warranted. In re Chaki, No. A-2430-11T3, 2013 N.J. Super. Unpub. LEXIS 2032 (App. Div. Aug. 13, 2013). Furthermore, where an educator perpetuates a stereotype, even if in jest, same constitutes unbecoming conduct warranting dismissal. See In the Matter of the Tenure Hearing of Mark Blasko, Cherry Hill School District, Camden County, 1980 S.L.D. 987 (Initial Decision), 1980 S.L.D. 1002 (Commissioner Decision). As noted by the Commissioner, when racial stereotyping is involved, that kind of behavior cannot be condoned and requires nothing short of dismissal. Id. at 1003.

Accordingly, Respondent's behavior clearly constitutes unbecoming conduct requiring his termination from the school district.

Respondent's Reply Brief

The Respondent asserts that with respect to the issue of the video and the convocation, the Board is attempting to go beyond what is in the Charges. As they relate to the convocation video issue, the Charges are limited to the allegation that the video was inappropriate because it portrayed a "Black man yelling angrily about his children's virtual learning experience." Since the filing of the Charges, the Board has gone beyond what is in the pleadings. It has characterized the video as racist, depicting an "angry Black man" stereotype, and it has sought to have

considered as part of this proceeding portions of the video not shown at the convocation, nor referred to in the Charges. Respondent asserts that this proceeding should be limited to what was pled in the Charges.

As to the “angry Black man” theory of its case, the Board has sought to substantiate its position through personal subjective opinion testimony and through journals and articles referenced in its brief, which have not been vetted for accuracy or bias, and which were not introduced or referred to in the hearing of this matter. That the Board’s position as to the video is predicated on personal subjective opinion, is borne out by the testimony, even from Dr. Ponds, who acknowledged that not everyone shared his interpretation of the video.

As for the Respondent’s witnesses, they all disagreed with the Board’s characterization. These witnesses included Ketty White, a long-time teacher, Erika Pierce, an administrator, and Shashana Smiley, a secretary. They all testified that they found the video to be relatable because it showed the challenges of having to conduct work-related activities, while at the same time having to homeschool their children, which was the video’s intended message. None of them said that they were offended by the video. Ibn Shakoor and Javon Pleasant, former students of Dr. Putrino’s when he taught in Jersey City, presented testimony as to Putrino’s character. But, when asked on cross-examination what they thought of the video, they said it was relatable and funny and not offensive.

Given this disparate reaction, Respondent asserts that the Charges as they relate to the video cannot rest alone on the personal subjective opinions of Dr. Ponds or the opinions of the Board’s witnesses. Respondent contends that with different reactions to the video, as was evidenced by the testimony, to make the leap that showing the video was racist or racially offensive, there needs to be a showing of intent. However, the testimony demonstrated that Ponds and Mr. Cooper, who

was charged with investigating this matter, ignored or disregarded the issue of intent, so much so that they were not interested in what Mr. Pray intended in making the video, and completely discounted Dr. Putrino's apology in which he sought to explain that in showing the video he never intended to offend anyone.

As to the video's impact on the District, the only people Dr. Ponds said he spoke to regarding the video were Mr. Cooper and Board members. When Cooper conducted his so-called investigation of the video, he never spoke to staff. Respondent asserts that without hearing from staff there is no credible evidence to substantiate that the convocation video had a negative impact on the District, particularly given the testimony of the staff members who testified for Respondent, all of whom stated that they did not see the video as offensive in any way.

Further, there is nothing in the record to suggest that prior to the convocation, the video, which had been on-line for months, was seen either as racist or as racially offensive. Accordingly, before the convocation, there was no notice, implicit or otherwise, that the video was seen for anything other than what it was intended to be; a statement of appreciation of teachers for what they do, presented in what was thought to be a humorous way.

Even though Dr. Ponds testified that following the convocation he had asked Mr. Cooper to conduct an investigation of the video issue, effectively there was no investigation. In addition to not speaking to staff about the video, Cooper testified that he only reviewed Dr. Putrino's personnel file one time on September 2, 2020, that he only skimmed his evaluations and that he never spoke to Putrino.

Also, in bringing these Charges, in addition to not making any inquiry as to intent, the Board ignores that Dr. Putrino, who only learned that he was to participate in the convocation a couple of weeks before, called the superintendent to ask if he wanted to review what was to be

presented. The superintendent chose not to do that. He didn't see a need to review everyone's presentation even though he was new to the District. Further, no consideration was given to Putrino's more than 20 years of unblemished service.

As to the cases cited by the Board, they all pertain to overt discriminatory acts or statements that are not analogous to the situation being presented in this matter which, as stated, is based exclusively on the interpretation of the video by the Board's witnesses. There was nothing in the video itself that spoke to race. It's only connection to race was that Mr. Pray happens to be African American.

With respect to the scheduling issue, here too the evidence does not match up to the allegations. The Charges were predicated on Exhibit S which, because it did not contain a single teacher name, could not be vetted for accuracy. The Charges alleged that no teacher taught the required 1250 minutes per week, but the MEA contract only provides that teacher pupil contact time shall not *exceed* 1250 minutes. The Charges speak to an "audit of the 20-21 schedule," but Mr. Cooper's review was of the schedule of the 2019-2020 school term. The Charges state Cooper's audit was conducted in February and March 2021, but he testified he performed the audit in September and October 2020.

Further, the audit was woefully lacking in rigor. Mr. Cooper testified that his audit was limited to the Genesis documents that he was provided by Mr. Jenkins. He never went into Genesis to verify the accuracy of what Jenkins had given him. He never looked at the master schedule. He never contacted Dr. Putrino to get an explanation of what he had done with the schedule. He did not include duty periods in his analysis, though this was required by the MEA contract for determining pupil-teacher contact time. His audit as reflected in Exhibit S which was presented to the Board for its consideration contained significant arithmetical errors which were never

corrected and never reported to the Board. Lastly, Cooper either ignored or was not aware of the assessment of the schedule by the former superintendent, Dr. Kendra Johnson, who, in November 2018 and June 2019 called it “masterful,” “strategic” and “focused.” (R-18)

The burden of the Board is to prove these Charges, in which it seeks to terminate Respondent’s employment by a preponderance of credible evidence. For the reasons set forth in his submissions, Respondent asserts that the Board has not met this burden. Accordingly, he respectfully submits that the Charges need to be dismissed.

Respondent’s Initial Brief

The Charges stem from an incident that occurred on September 2, 2020 in which the Respondent showed a video at a District convocation that contained a skit by a comedian, Josh Pray. The skit which was intended to be comedic spoke to the frustrations of Pray and many others at having to home school their children because of the lock down caused by the pandemic. As a result, in the skit Pray expressed for himself and for many others, a new-found appreciation for teachers and all they do.

However, the Pray video was not well received by the superintendent, Dr. Ponds and perhaps by some others too. About two minutes into the video when it was shown at the convocation Ponds had it shut down. He didn’t view it as the positive message that it was intended to convey; that the pandemic and the resulting quarantines helped to make parents realize the difficult job it is to teach our kids and sometimes to have to control our kids. But, clearly this was its intent as evidenced by the statement issued by Mr. Pray as well as the testimony of Dr. Putrino and others in this matter. Instead, Ponds saw the video as portraying an African American man channeling what he described, and what counsel for the District described in her opening

statement, as an “angry Black man” stereotype, though it is not clear that there is such a stereotype, and even if there is, it’s not clear what it is or what it means.

To this, shortly after learning of the controversy in Montclair, Mr. Pray issued a statement in which he repeated his appreciation for teachers and what they do, expressed surprise and outrage that some would think that he was denigrating his own children, and was at a loss as to how his video thanking and appreciating teachers with “heartfelt fervor” was “racist” or “offensive.” Pray said in his statement that “In a time where it feels like all we have are heated and rash decisions, the Montclair Public School System has made yet another heated and rash decision based on the color of my skin. I am completely bewildered as to why my race was brought into this conversation.” (See Ex. R22) Again, the only connection the video had to race was that Pray happens to be African American.

Dr. Ponds readily acknowledged that his determination that the video was racist was because of his “interpretation” of how Mr. Pray portrayed himself, which again, he said was as an “angry Black man” (Tr. 1, p. 170, lines 1-11 through p. 171, lines 1-3) It was this “interpretation” that led the superintendent to say at the virtual convocation that there is no place for racism in Montclair, a comment which, if nothing else, helped to shape the opinion of some others who were in attendance. It was this interpretation that led Ponds to place Dr. Putrino on administrative leave a couple of hours after the video was shown with no opportunity given for Putrino to explain his intent for showing the video. That is because Ponds was not interested in hearing what Putrino had to say. His interest was solely to remove Putrino from the premises regardless of his intent in showing the video and regardless of his history as an educator and as a person.

Though Dr. Ponds’ decision to place Dr. Putrino on administrative leave was all but immediate, it took him and the Board over a year to file the Charges, presumably because they

were searching for other reasons to help substantiate Putrino's dismissal. When they were filed, the Charges alleged three discreet events which Ponds and the Board alleged constituted "unbecoming conduct" and "other just cause" warranting Putrino's dismissal from Montclair with which he has been employed since 2000 (Tr. 8, p. 1143, lines 21-25; and Ex. A attached to the Charges).

After the Charges were filed, but before the hearings commenced, the Board decided to withdraw one of the allegations in the Charges having to do with a claim by certain African American teachers who asserted in a 2019 New Jersey Superior Court complaint that they had been treated unfairly with respect to an appointment to a Geometry class. The outcome of this complaint is not known.

With respect to the September 2, 2020 convocation and the Pray video, the Charges allege that Dr. Putrino exhibited "unprofessional conduct unbecoming of a certificated staff member" warranting his termination. (Paragraph 19 of the Charges). However, though he said that he found the video to be racist and a portrayal of an angry Black man (Tr. 1, p. 170, lines 1-11 through p. 171, lines 1-3) Dr. Ponds also acknowledged that notwithstanding his "interpretation" there were other views that supported the use of the video (Tr. 1, p. 170, lines 1-11 through p. 173, lines 5-9). In this regard, there were a number of witnesses who testified that they not only didn't see the video as racist, but that it channeled in a humorous way their own frustrations during the pandemic at having to work remotely from their homes, while at the same time having to deal with their children who were also stuck at home in a remote environment.

That there were such disparate views of the video, and that Dr. Ponds acknowledged that he was acting on his "interpretation" of the video, by itself should result in a dismissal of the Charges as they relate to the video. As removal from employment is the most drastic employment

action a board can take, a conduct unbecoming case such as this one should not be based on one's interpretation of words or actions. Rather, a conduct unbecoming case should be limited to conduct that is so egregious, so clear on its face, that it requires immediate dismissal; that the conduct being complained of is so beyond the pale that it cannot be corrected with warnings or progressive discipline. In re Young 202 N.J. 50, 66 (2010) "In making the determination that one is guilty of unbecoming conduct the employee must be shown to lack fitness to discharge the duties and functions of one's office or position." Id. In the Matter of Michael Smurro, Agency Docket #100-6/21 at page 17. (Attached as Ex. I) That wasn't show here – at all. At worst, there was testimony that people were offended by the video, but this does not demonstrate a lack of fitness to hold office or conduct unbecoming; certainly not without mal intent.

There was no mal intent here. But that didn't appear to matter to the superintendent who signed off on the Charges and Statement of Evidence without having had a conversation with Dr. Putrino to determine his intent in showing the video. He was not interested in having such a discussion. Had such a conversation taken place the superintendent would have learned that Dr. Putrino's showing of the video was an attempt through humor to demonstrate the craziness of the times and the value of what teachers do every day. Had he or the Board reached out to Mr. Pray, they would have heard first-hand what Pray's intent was in creating the video – an intent which had nothing to do with race. Had he truly conducted an investigation, the superintendent would have known that showing the video was not intended to offend anyone and in fact, as the witness testimony supports, was not deemed offensive by the people who saw the full version of the video before the convocation. Had the superintendent conducted an investigation he would have learned that Putrino was a 20-plus-year veteran of Montclair, that he was a trusted and respected principal, who for many years served as the President of the Montclair Principals Association (MPA), that

he had never had any disciplinary action brought against him, and that throughout his career he received only effective or better than effective evaluations. Had he conducted an investigation the superintendent would have learned that Putrino's entire career has been a model of inclusivity and commitment to the values of diversity.

But, instead, Dr. Ponds chose to react without investigating because he was not interested in hearing from Respondent, or, for that matter, from anyone who was not offended by the video. And, by making Dr. Putrino the villain in the story line that he wanted to convey, Ponds was deflecting his own negligence in not sitting down with the presenters of the convocation, including Putrino, beforehand to review and plan what was to be presented and what was to transpire at the convocation.

The other allegation in the Charges has to do with the teacher schedules at the Renaissance School. This portion of the Charges is equally lacking in substance. The allegation is that after a "detailed review" of the teachers' schedules at the Renaissance School where Dr. Putrino had been the principal since 2018, it was determined that teacher-pupil contact time was much less than what was set forth in the MEA contract – which had a limit of 1250 minutes per week (Ex. Q). A presentation to this effect was made to the Board by Mr. Cooper, the Human Resources Director. At the direction and with the approval of the superintendent, as part of this presentation Cooper submitted to the Board what is now Exhibit S, a document that was attached to the Charges. This exhibit is said to show that the teacher-pupil contact time was dramatically under the contractual limit of 1250 minutes per week which, according to the allegation, cost Montclair a sum approximating "\$767,447.00" (Paragraph 21 of the Charges)

The testimony that was given by Mr. Cooper as well as the Respondent's expert, Dr. Matthew Jennings, amply demonstrates that Exhibit S is problematic in many respects. While it

lists 29 teachers who are alleged to have had too little pupil contact time, it does not list a single name of a teacher. Therefore, it was virtually impossible to cross-check for accuracy the information it contains. In addition, it contains significant arithmetical errors which even Cooper acknowledged, but at no time did he seek to correct them or advise the Board that the information he provided in his presentation was incorrect. And according to Jennings, the expert retained by the Respondent on the scheduling issue, Exhibit S is woefully incomplete because it does not include advisory periods or duty periods, all of which should have been included as teacher-pupil contact time.

The failings of Exhibit S are all the more stunning because of the stakes involved; which is nothing less than the professional career of Dr. Putrino. None of this appears to have been of any concern to Dr. Ponds, who, when first told of the alleged scheduling issue by Major Jennings, the person who had been named as the Putrino's replacement at the Renaissance school a few days before, responded almost gleefully to Jennings' email, stating "outstanding work." (See Ex. V). He appears to have accepted as fact what Jennings had reported without so much as inquiring how his conclusion came about. His reaction only further demonstrates that his agenda was limited to dismissing Putrino.

Moreover, that the Charges characterized the investigation of the schedules as "detailed" when it was at best cursory and incomplete, also was of no concern. As with the video issue, while there was supposed to have been an investigation, nothing of the sort actually took place. The so-called investigation conducted by Mr. Cooper was limited to receiving and reviewing documents that he was given by the interim principal of Renaissance, Mr. Jennings. No further review took place. No conversation with the Respondent occurred. No conversation with the teachers occurred. No inquiries were made. And all but ignored was that a prior superintendent, Dr. Kendra Johnson,

had labeled the very same schedule that was now a part of Charges for dismissal, as “masterful.” (Ex. R18, Bates stamped 198) As with the video, the intent here was to find fault, regardless of the evidence.

Lastly, as Dr. Ponds’ subjective view of the video cannot and should not be the barometer on which to view the Charges in reference to the video, and because the District’s findings as to the scheduling issue is so woefully lacking in analysis and so inaccurate and incomplete, the Charges must be dismissed.

Petitioner’s Reply Brief

Respondent’s post hearing brief further demonstrates his lack of fitness to hold the position of a principal within the Montclair School District. After days of testimony regarding the pain and hurt caused by the racial stereotypes which Respondent disseminated, Respondent’s brief alleges that “it is not clear” that there is an "angry Black man" stereotype. The angry Black man stereotype has been acknowledged and examined in numerous news articles, studies, and court decisions. A simple google search of the angry Black man stereotype returns 5,070,000 hits. Moreover, during the hearing various witnesses testified extensively regarding the angry Black man stereotype and its impact on Black men. Yet, Respondent still doesn’t recognize that the stereotype exists. Racial stereotypes, such as the angry Black man stereotype, are real, hurtful, and dangerous. Respondent cannot serve as a school principal when he is unable to even admit that racial stereotypes are real. How can Respondent serve as a principal and not continue to perpetuate racial stereotypes if he refuses to even recognize that there is a stereotype?

Respondent’s brief further alleges that “[w]hether showing the ... video at the convocation was a mistake, can be debated.” Again, after hearing about the pain and hurt caused to the African American staff and community, Respondent’s brief will not even recognize that his actions of

perpetuating the racial stereotypes was a mistake. Respondent cannot serve as a school principal and disseminate racial stereotypes. Respondent cannot serve as a principal and be willfully blind to the pain and hurt caused by his actions.

Respondent's brief also alleges that staff members, parents, and community members being offended by the video, does not demonstrate a lack of fitness to hold office or conduct unbecoming, without what he labels as "mal intent". Same is not the standard. When an educator introduces racial stereotyping, which is negatively perceived, dismissal is warranted regardless of the educator's intent. See In re Chaki, No. A-2430-11T3, 2013 N.J. Super. Unpub. LEXIS 2032 (App. Div. Aug. 13, 2013)(noting that even if intent of the educator was to enhance her lessons, same does not "cure the shock and upset felt ..."); In the Matter of the Tenure Hearing of Mark Blasko, Cherry Hill School District, Camden County, 1980 S.L.D. 987 (Initial Decision), 1980 S.L.D. 1002 (Commissioner Decision)(noting that where an educator perpetuates a stereotype, even if in jest, "[t]he Commissioner cannot condone the use of ethnic materials, jokes, or actions that ridicule any racial group directly or by implication"); In the Matter of the Tenure Hearing of George Zofchak, Board of Education of the City of Trenton, Mercer County, 2002 N.J. AGEN LEXIS 564 (disregarding allegations that educator had no intention of making a racial statement); In the Matter of the Tenure Hearing of Ward Campbell v. Board of Education of the Princeton Regional School District, Mercer County, 1993 N.J. AGEN LEXIS 2064 (affirming dismissal of educator perpetuating stereotypes regardless of "his intent").

Respondent has shown that he does not have judgment to be a principal of a diverse school. His actions have adversely affected the morale or efficiency of the District. His actions, including his racially offensive video, further undoubtedly have a tendency to destroy public respect for public employees and confidence in the operation of public services. Respondent's perpetuation

of racial stereotypes cannot stand unrefuted and cannot be condoned. The Montclair School District needs a principal who will consider whether his actions will cause pain by perpetuating a racial stereotype. The Montclair School District needs a principal who after hearing all of the testimony in this matter, will not continue to allege that whether perpetrating the racial stereotype was a mistake is up for debate.

THE BACKGROUND OF WITNESSES

Dr. Johnathan Ponds

Superintendent of Montclair Public Schools for a year and a half (Tr. 1, p. 39, lines 14-23). Started July 1, 2020 (Tr. 1, p. 39, line 23).

Doctorate in Educational Leadership from Johnson and Whales (Tr. 1, p. 40, lines 2-4).

Certificate Advanced Graduate Studies in Leadership from Johnson and Whales (Tr. 1, p. 40, lines 4-7).

Certificate Advanced Education Leadership in education from Cambridge College (Tr. 1, p. 40, lines 7-9).

Master's Degree in Education for Special Needs from Cambridge College (Tr. 1, p. 40, lines 9-10).

BA in Political Science from Queens University in Charlotte, N.C. (Tr. 1, p. 40, lines 11-13).

Superintendent's Certificate (Tr. 1, p. 40, line 17).

Principal's Certificate (Tr. 1, p. 40, line 18).

Rowan University – Adjunct Professor teaching online classes in school improvement and instructional leadership (Tr. 1, p. 40, lines 21-21).

Rowan University – Adjunct Professor previously taught diversity and leadership in their doctoral program (Tr. 1, p. 40, lines 24-25).

Rowan University – Adjunct Professor in leadership for their master's program (Tr. 1, p. 41, lines 1-2).

Thomas Edison University - content expert as a consultant on supervising equitable organizations. Dr. Ponds explained that supervising equitable content understanding that diversity between your

students, parents, and teachers exists and bringing cultural responsive understanding (Tr. 1, p. 41, lines 7-25).

Member of the New Jersey Association of Superintendents of New Jersey (Tr. 1, p. 42, lines 6-7).

Board Member – Center of Leadership and Equality in Education (ELITE) (Tr. 1, p. 42, lines 6-12). ELITE trains leaders on how to be equitable and responsive to your children and your community and your colleagues (Tr. 1, p. 42, lines 18-24).

Given speeches on “equality and leadership” and “cultural responsive leadership” (Tr. 1, p. 43, lines 5-7).

Doctoral Studies Dissertation on cultural responsiveness, which Dr. Ponds summarized as teaching to a person based on their background, understanding their background and reflecting on your own personal biases and try to protect individuals from your biases when you teach them (Tr. 1, p. 43, line 13 through p. 42, line 3).

Given two speeches for the New Jersey Superintendents Association on leadership (Tr. 1, p. 44, lines 13-16).

Authored a paper published in Express and ACD Express on cultural responsiveness (Tr. 1, p. 44, lines 17-25).

Trained educators and leaders (one person in Moonachie) to take over the position of superintendent in a diverse environment (Tr. 1, p. 45, lines 1-4).

On cross-examination, Dr. Ponds testified that he began in the position of superintendent in Montclair around July 1, 2020 (Tr. 1, p. 148, lines 14-20). Prior to that, he was the superintendent in Moonachie, a one-building district with approximately 300 students (Tr. 1, p. 148, line 21 through p. 149, line 2). He held that position for five years (2015 through 2020) (Tr. 1, p. 152, lines 15-25).

Dr. Ponds was also a CA director in Boston, Massachusetts of a school within a school (Tr. 1, p. 149, lines 6-9). He was the director of a program where students were sent to a different school than their local school because of behavioral issues (Tr. 1, p. 149, lines 12-18). After holding that position for about a year, he became a dean or vice principal of Neighborhood Charter School in Dorchester, Massachusetts (Tr. 1, p. 149, line 19 through p. 150, line 1).

Dr. Ponds was also the principal in Malden Public Schools for four years (approximately 2008 through 2012) (Tr. 1, p. 150, lines 5-10). He then moved from Massachusetts to New Jersey and became the principal in North Brunswick from 2012-2015 (Tr. 1, p. 152-14).

Rodney Jackson

Mr. Jackson has a degree in history, a major in history, a minor in political science, and a minor in women’s studies (Tr. 3, p. 461, lines 4-6). Jackson has been teaching in Montclair for 21 years

(Tr. 3, p. 461, lines 6-7). He currently teaches at Renaissance Middle School (Tr. 3, p. 461, line 9). He taught in East Orange for two years prior to coming to Renaissance, where he has been for the last 20 years (Tr. 3, p. 461, lines 12-14).

At Renaissance, Mr. Jackson is a team leader for the 8th grade, he is a social studies teacher, and the co-founder of TURN (Teachers Undoing Racism Now) (Tr. 3, p. 461, lines 18-21). Jackson testified that TURN challenges teachers to examine their own racial biases and understand how those affect their teaching, and therefore affect student outcomes (Tr. 3, p. 463, line 14 through p. 464, line 2). He explained that TURN is a group of four or five teachers who, since 2017, have come together on their own time to educate teachers and administrators (Tr. 3, p. 464, lines 6-20). They also started the “Teachers Institute for Black Lives” which is a “teacher training teacher initiative to help teachers understand more about African American history” (Tr. 3, p. 465, lines 8-12).

Mr. Jackson testified that he worked with Dr. Putrino at Renaissance for two years (Tr. 3, p. 466, lines 6-9). During that time, they were both teachers when they worked together (Tr. 3, p. 466, lines 13-14).

Diane Anglin

Ms. Anglin graduated from Virginia State University with a B.S. in psychology (Tr. 3, p. 406, lines 12-14). She currently works for Parents, Incorporated in Newark, New Jersey (Tr. 3, p. 406, lines 16-17). She is also involved with a non-profit organization in Montclair called the Montclair Neighborhood Development Corporation which educates young children in career development (Tr. 3, p. 406, line 18 through p. 407, line 1) as well as another non-profit, Good Success Academies, on a per diem basis (Tr. 3, p. 407, lines 2-6). In addition, Anglin is also the chair of the education committee for the NAACP and also holds the Youth Council position for the Montclair NAACP (Tr. 3, p. 407, lines 12-19). She has been the chair of the education committee since 2020 (Tr. 3, p. 408, line 21). Anglin testified that the goal of the education committee is to make sure there is equity for all students, with the main focus on students of color (Tr. 3, p. 409, lines 5-8).

Ms. Anglin also testified that she was the president of the PTA for Hillside School (Tr. 3, p. 409, lines 21-22); that Dr. Putrino was the principal of both Glenfield (Tr. 3, p. 410, lines 9-10) and Renaissance Middle School when Anglin substitute taught at those locations (Tr. 3, p. 410, lines 10-12).

On cross-examination, Ms. Anglin testified that she had pleasant interactions with Dr. Putrino, and basically only exchanged hellos and brief pleasantries (Tr. 3, p. 446, line 22 through p. 447, line 11).

Major Jennings

Mr. Jennings is employed by the Montclair Board of Education as the Principal of Buzz Aldrin Middle School (Tr. 4, p. 520, line 25 through p. 521, line 3). He attended American Internal College in Springfield, Massachusetts and received a BS in business administration, with a

concentration in personnel management (Tr. 4, p. 521, lines 10-14). He also has a master's degree in transportation management that he earned while working for Burlington Industries (Tr. 4, p. 521, lines 15-17). In addition, Jennings also attended Montclair State University, where he received a Master of Arts, focused on administration, education leadership (Tr. 4, p. 521, lines 17-20). He has a teacher's certification, a supervisory certification, and a principal's certification (Tr. 4, p. 521, lines 23-25).

Mr. Jennings is a member of the Montclair Principals Association and has worked with Project Oasis, which is a summer program to help struggling youth where they attend classes and a basketball league (Tr. 4, p. 522, lines 4-14). Jennings has been employed by the Montclair Board of Education for approximately 30 years; he was a technology teacher (Mt. Hebron/Buzz Aldrin), a "house leader" (Buzz Aldrin), the head basketball coach (Montclair High School), and prior to that the JV basketball coach, girls varsity volleyball coach, assistant principal (Mt. Hebron/Buzz Aldrin), acting principal (Renaissance), and principal (Buzz Aldrin) (Tr. 4, p. 522, line 18 through p. 523, line 11).

Mr. Jennings testified that he has known Dr. Putrino for at least 20 years (Tr. 4, p. 526, line 21).

Damen Cooper

Damen Cooper is employed by the Montclair Board of Education as a personnel director for the past two years (Tr. 5, p. 674; lines 3-11). He has a bachelor's degree in psychology from Central State University in Ohio, a master's degree in special education, and a master's degree in administration supervision from New Jersey City University (Tr. 5, p. 674, line 24 through p. 675, line 4). In addition, he holds a certification as a special education teacher, a psychology teacher, a supervisor, a principal, and a school administrator (Tr. 5, p. 675, lines 7-11).

Mr. Cooper taught in the South Maplewood School District as a special education teacher (Tr. 5, p. 676, lines 14-16). This is where he began his career in teaching, the South Orange-Maplewood School District in 1997-98 (Tr. 5, p. 735, line 24 through p. 736, line 3). He was then employed by New Jersey State Department of Education as a special education monitor for the State (Tr. 5, p. 676, lines 12-14). This was his second position in education for approximately two and one-half to three years (Tr. 5, p. 736, lines 10-14).

Mr. Cooper was previously both education supervisor and assistant principal for approximately eight to ten years for the City of Jersey City (Tr. 5, p. 675, line 22 through p. 676, line 8). He worked in the City of Jersey City after Maplewood and the NJ Department of Education; he held the position of assistant principal there for about five years (Tr. 5, p. 736, line 8 through p. 737, line 5). Cooper was also previously employed by Montclair as the high school assistant principal for six years (Tr. 5, p. 674; lines 12-20). In addition, he was also the principal of two different middle schools, in Summit (two and one-half to three) and Hackensack (two years) (Tr. 5, p. 676, lines 21 through p. 677, line 7). As the principal in Summit, Cooper created the master schedule. In Hackensack, he created about 90% of the master schedule (Tr. 5, p. 677, lines 11-13). He then returned to Montclair in his current role as the director of personnel. Cooper works with the entire District on all matters pertaining to personnel, leaves of absences, hiring, onboarding, and everything involving personnel since July 1, 2020 (Tr. 5, p. 677, lines 14-22).

When Mr. Cooper was hired to the position, the interim director of personnel, Dr. Purnell, was hired back as his mentor for the position because Cooper never served in a Human Resources position before (Tr. 5, p. 741, line 9 through p. 743, line 19). Cooper admitted that since he has been there, he has not hired anyone to a new position with no experience (as in his case) and then also simultaneously hired a mentor to assist them (Tr. 5, p. 744, lines 2-19).

Chris Graber

Mr. Graber is currently employed by Montclair Public Schools as the director of technology since 2018 (Tr. 11, p. 1889, lines 8-14). He is familiar with Dr. Putrino as the principal at Renaissance; he has had interactions with Putrino with regard to technology, day to day operations, and instructional technology (Tr. 11, p. 1889, line 24 through p. 1890, line 5).

Mr. Graber has his BA in history, an MA in educational technology, his ED, his EDS in education leadership, a principal certification and a supervisor certification (Tr. p. 1904, lines 3-10).

Ketty White

Ms. White has been employed by the Montclair Public School System for 17 years as a second grade teacher at Nishuane School (Tr. 6, p. 826, lines 6-15). She has been a second grade teacher for approximately 23 years (Tr. 6, p. 826, lines 16-18). She was previously employed in Newark (4 years) and Irvington (12 years) (Tr. 6, p. 827, lines 1-3). White has a BA in elementary education (pre-K through 8th grade) from Kean University, and she graduated in 1989 (Tr. 6, p. 829, lines 6-14).

Ms. White does not know Dr. Putrino personally, only as an employee of the District (Tr. 6, p. 829, lines 15-19).

Erika Pierce

Ms. Pierce has been employed by Montclair Public Schools for 17 years (Tr. 7, p. 894, line 22 through p. 895, line 1). She graduated from Hampton University in 1994, and Montclair State in 1998 (Tr. 7, p. 895, lines 5-6). She also received a second master's degree from NJPSA in 2012 or 2013 (Tr. 7, p. 895, lines 7-8).

Pierce started working in Montclair in 2005 as a high school English teacher (Tr. 7, p. 895, lines 12-13). She was promoted to Assistant Principal of Glenfield Middle School in 2015, where she worked under Dr. Putrino for four years (Tr. 7, p. 895, lines 14-16 & lines 19-21). In 2019, she was promoted to principal of Glenfield Middle School (Tr. 7, p. 895, lines 17-18).

Shashana Smiley

Ms. Smiley has been employed by the Montclair Public Schools for four years as a secretary (Tr. 7, p. 928, lines 10-17). She currently works in the Montclair High School (one year), but previously worked at Renaissance Middle School (three years) (Tr. 7, p. 928, line 19 through p.

929, line 1). Smiley testified that she was the main office secretary at Renaissance, not Dr. Putrino's secretary (Tr. 7, p. 929, lines 2-11).

Ms. Smiley graduated from Montclair High school in 2010 and received her associate's degree from Essex County College (Tr. 7, p. 930, lines 1-6). Smiley worked for her family's business, but after having two children and being a stay-at-home mom, she was in need of a job; she became a substitute teacher and then received a full-time position as a secretary (Tr. 7, p. 930, lines 12-23).

On cross-examination, Ms. Smiley testified that she is a 10-month secretary and starts September 1 and ends June 30 – but that she is permitted to start two weeks before September 1 and end two weeks after June 30 (Tr. 7, p. 940, lines 4-13).

Susan Weintraub

Ms. Weintraub testified that she has lived in Montclair for her entire life and went through all of her schooling at Montclair Public Schools and her four children have as well (Tr. 7, p. 991, lines 12-24). Weintraub served in the PTA throughout her children's tenure in public schools as the PTA president at Northeast School and then also at Glenfield School (Tr. 7, p. 992, lines 10-14). When she was the president of the PTA at Glenfield, Dr. Putrino was the principal (Tr. 7, p. 992, lines 15-17). Putrino had a vision of inclusivity which extended to parental involvement. He was active in trying to include under-represented people in the PTA so that it would be more representative of the student body (Tr. 7, p. 995 line 23 through p. 996, line 4). She testified that she worked with Putrino on this vision and that the end result was that the PTA became more inclusive (Tr. 7, p. 996, lines 5-10).

Javon Pleasant

Mr. Pleasant testified that Dr. Putrino was his home room science teacher in 8th grade, in the year 2000 (Tr. 7, p. 1007, lines 1-8). Pleasant is a revenue growth manager at Bimbo Bakeries, a subsidiary of Entenmanns, Thomas's English Muffins, Sara Lee, as well as other brand names (Tr. 7, p. 1013, lines 7-12). He works in a finance hybrid world where he focuses on pricing, margins, and revenue growth (Tr. 7, p. 1013, lines 12-15). He graduated Montclair State University in 2011 (Tr. 7, p. 1056, lines 23-24).

Ibn Shakoor

Mr. Shakoor testified that he currently works for the Jersey City Public School System as an attendance counselor (Tr. 7, p. 1069, lines 18-24). Shakoor went through the Jersey City Public School System and then graduated from Saint Peter's College with a degree in teaching (Tr. 7, p. 1070, lines 2-10). He has worked for the Jersey City School System for approximately six or seven years (Tr. 7, p. 1070, lines 11-14).

Mr. Shakoor testified on cross-examination that as an attendance counselor, he works with children who are truant, who have to go to court, and their parents who have to go to court to potentially pay fines if the child is under the age of 16 (Tr. 7, p. 1089, lines 2-7).

Beth Calamia Scheckel

Ms. Scheckel currently works for Ridgewood Public Schools as a middle school Latin teacher (Tr. 7, p. 1105, lines 10-14). She has worked there since September 2021 (Tr. 7, p. 1105, lines 15-17). Prior to working for Ridgewood, Scheckel worked for NJAT as the Associate director of global initiatives, and prior to that in the same position at Montclair State University (Tr. 7, p. 1105, lines 18-22). She worked briefly for Montclair Public Schools about eight years ago as a home instructor for a child who was out on medical leave (Tr. 7, p. 1105, line 23 through p. 1106, line 3).

Ms. Scheckel testified she does not know Dr. Putrino in any other capacity besides being the PTA president and as her son's soccer coach (Tr. 7, p. 1126, line 21 through p. 1127, line 3). She likewise only knows Putrino's wife because she was the assistant soccer coach (Tr. 7, p. 1127, lines 6-15). Their sons play on the same team but are not friends (Tr. 7, p. 1127, lines 16-21). Scheckel has never seen Putrino or his wife socially outside of games or a PTA meeting (Tr. 7, p. 1127, lines 22-25).

Dr. Joseph Putrino

Dr. Putrino began his educational career as an 8th grade science teacher in the Jersey City Public School System in 1999. One year later, in 2000 he began his employment in Montclair as a 6th grade teacher (Tr. 8, p. 1143, lines 21-25). Putrino remained a teacher until 2006 when he was promoted to be an assistant principal at the Hillside Elementary School (Tr. 8, pp. 1-8). In 2010, he was promoted to the title of principal, and he was assigned to the Northeast Elementary School (Tr. 8, p. 1144, lines 6-8). In 2013, Putrino was reassigned as the principal of the Glenfield Middle School where he remained until 2018. Then, in 2018, he was assigned to the Renaissance Middle School (Tr. 8, p. 1144, lines 9-13).

Dr. Putrino testified that while he served as teacher in Montclair, he received six nominations for the Weston Award for Excellence in Teaching and won the award in 2003 (Tr. 8, p. 1144, lines 17-20). In 2002, he received a fellowship from the Development Disabilities Council and in 2011 he was recognized as a Star of Essex County by the County Executive (Tr. 8, p. 1144, lines 21-25 through p. 1145, lines 1-2).

Dr. Putrino testified that in 2013, Dr. Penny McCormick (then superintendent) indicated to him that he was being assigned to Glenfield because of climate issues that had surfaced and as a result she thought the school needed an experienced principal (Tr. 8, p. 1146, lines 9-19). In 2018, Putrino was again reassigned, this time to the Renaissance Middle School.

Naomi Kirkman

Ms. Kirkman has a bachelor's degree from New York University and two master's degrees from Hunter College City University, New York (Tr. 10, p. 1716, lines 13-15). She was a teacher in Harlem, New York for four to five years before moving to New Jersey (Tr. 10, p. 1716, lines 18-22). Kirkman began teaching in New Jersey at Bradford School in 1999 as an elementary school

teacher (Tr. 10, p. 1716, line 20 through p. 1717, line 1). She remained a teacher for eight years before becoming the magnet coordinator for two years working at Montclair State University, after which she went back to the classroom (Tr. 10, p. 1717, lines 3-8). Kirkman became the principal of Bradford School in December 2008, with a start date of January 2009 (Tr. 10, p. 1717, lines 9-23). She retired January 31, 2021 (Tr. 10, p. 1717, line 24 through p. 1718, line 1).

Ms. Kirkman testified that she was a member of the MPA and attended MPA meetings, including virtual meetings in the summer 2020 (Tr. 10, p. 1718, lines 2-11).

Dr. Matt Jennings

Dr. Jennings testified that he was a teacher's aide at the Center School in Highland Park (Tr. 11, p. 1768, lines 13-14). He then was promoted to special education teacher in a self-contained class at the middle school (Tr. 11, p. 1768, lines 14-19).

Dr. Jennings then went to South Brunswick where he was a special education teacher for five years (Tr. 11, p. 1768, lines 20-22). He became the supervisor of instruction in New Egypt/Plumsted for one year and was then promoted to the director of special education student services (Tr. 11, p. 1768, line 22 through p. 1769, line 1).

Dr. Jennings then held the position of assistant superintendent in Berkley Heights for two years (Tr. 11, p. 1769, lines 2-3). After which, he held the position of superintendent for 12 years in Alexandria Township. He worked in Bloomingdale, and then concluded his career in Cranford as the director of human resources (Tr. 11, p. 1769, lines 5-8).

Dr. Jennings acted as interim principal when he was the assistant superintendent of schools for approximately six months when he was at Thomas P. Hughes School in Berkley Heights in 2005 (Tr. 11, p. 1784, line 22 through p. 1785, line 14). He left this position to become a superintendent (Tr. 11, p. 1785, lines 20-22).

Dr. Jennings has a doctorate in Educational Administration and Supervision from Rutgers and a Master's degree in education administration and supervision from Rutgers (Tr. 11, p. 1785, line 23 through p. 1786, line 2). He also has a Master's degree in curriculum instruction from Gratz College, and a Bachelor's Degree from Rutgers as well (Tr. 11, p. 1786, lines 2-4).

FINDINGS AND DISCUSSION

Part I

The September 2, 2020 Convocation Video

Dr. Putrino's Plan to Show the Josh Pray Video at Convocation

September 2, 2020 was the date scheduled for an annual convocation presentation. It would be the first for new superintendent, Dr. Johnathan Ponds. Due to COVID-19, the presentation was to be facilitated via Zoom and livestreaming to the public. A Local TV news outlet would also be privy to the convocation. Dr. Ponds planned on speaking first, followed by Dr. Putrino as MPA President, followed by the MEA President, and others. The entirety of the convocation was to last for about 40 minutes.

In preparing for the convocation, Dr. Putrino intended to present something meaningful about teacher appreciation and the tough year ahead with Covid protocols in the event hybrid or in-person learning returned. Putrino was known for his humorous presentations and his injection of humor into newsletters, staff bulletins, etc. This year, by happenstance, Putrino had previously received a video produced by comedian Josh Pray. He received it from his sister-in-law in March 2020 (Tr. 8, p. 1289, line 17 through p. 1290, line 2). In turn, Dr. Putrino's sister-in-law received it from Ketty White, a Black second grade educator. A group of teachers (most Black) were all talking about how funny it was (Tr. 8, p. 1290, lines 5-9). Specifically, those staff members included Ms. White, Principal Erika Pierce and Secretary Shashana Smiley.

In addition, Putrino knew that Pray's video went viral in the spring of 2020. In fact, the Pray video was used in commercials for YouTube and Google (Tr. 8, p. 1291, lines 2-8). It was also aired on "The Today Show". Presumably, if the video was widely perceived to be racist, one would assume that it would not have been shown on The Today Show or in commercials for YouTube and Google.

Dr. Putrino testified that everyone that watched the Pray video with him, or knew of it, characterized it as being very funny (Tr. 8, p. 1290, lines 3-5). Also, everyone he spoke to about the video had the same reaction; finally, someone brave enough to say that they appreciate teachers

and apologize for not appreciating them before (Tr. 8, p. 1290, lines 15-22). Putrino had not heard a negative thing about the video (Tr. 8, p. 1290, line 23 through p. 1291, line 1).

Finally, Dr. Putrino directly offered Dr. Ponds an opportunity to vet the video to see if it was in sync with the overall production of the convocation ceremony. Putrino testified that it was the tradition or practice that Dr. Parmer (former Superintendent) would hold a convocation team vetting meeting (Tr. 8, p. 1282, lines 1-16). Putrino was asked on cross-examination as to why the MPA did not vet the convocation video (Tr. 9, p. 1533, lines 6-13). Putrino responded:

The videos or presentations that I conducted at the convocation were always vetted by the District and the District team. There was never a concern that the material was not vetted or included in some kind of review. This was the first school year that did not happen (Tr. 9, p. 1533, lines 14-19).

Dr. Putrino called Nina DeRosa, an administrative assistant in “central office” to find out if he could submit his video to the superintendent for vetting (Tr. 8, p. 1306, lines 11-19). Nina called him back shortly after and told him that Dr. Ponds was not going to have a meeting and just to submit it to Director of Technology, Chris Graber (Tr. 8, p. 1306, lines 17-20):

Q: Did Dr. Ponds reach out to you at all to discuss the convocation before the convocation occurred?

A: No.

Q: So after you spoke to Ms. DeRosa, there was no communication from Dr. Ponds?

A: Correct (Tr. 8, p. 1318, lines 4-10).

Ms. DeRosa informed Dr. Putrino that Dr. Ponds said he did not need to see the video (Tr. 10, p. 1669, lines 18-25 through p. 1670, lines 1-13). Dr. Putrino said he was “shocked” that the superintendent did not want to meet to go over the material prior to the convocation (Tr. 8, p. 1320, lines 22-25). Pursuant to Dr. Ponds’ instruction via Ms. DeRosa, Putrino sent the video the following day to Mr. Graber. Putrino testified that Graber stated that he and another tech person

in the office “had watched the video and loved it” (Tr. 8, p. 1308, lines 1-3). This also was expressed in a text exchange Graber had with Putrino in which he wrote “Awesome job. Loved it.” (See Ex. R29, Bates stamped 420).

Nearly two years after he wrote the text, Mr. Graber, who is currently not tenured in his position as a director, was called as a “rebuttal” witness. He would be the only White witness called to testify that he was offended by the video. Graber testified that when he sent the text, he was merely referring to the “clarity” of the video that Dr. Putrino had sent him, “not the content.” As Director of Technology, Graber exclaimed, “I don’t care about the content” (Tr. 11, p. 1902, lines 21-25 through p. 1903, lines 1-2). In simplest terms, I found Graber’s testimony to be disingenuous and compromised by collateral events involving his continued employment and compensation.

Unambiguously, Graber commented in a text to Putrino – “Awesome job. Loved it.” Unless Graber was intentionally lying to Putrino which, as a consequence, would present similar credibility concerns in this proceeding, I find, the phrase used by Graber plainly implies that Graber watched the video and “loved it”. Further problematic for Graber, in my opinion, is that only three or four weeks before his testimony, he and Dr. Ponds met and discussed his salary and his tenure (Tr. 11, p. 1900, lines 8-16). By the time of his arbitration testimony, I further note, it would have been foolhardy for Graber to admit that he meant what he said in his text message, i.e., that he viewed the video and loved it.

In justification for not vetting the video and advising Dr. Putrino to talk to Mr. Graber, Dr.

Ponds testified:

If you're a leader in the District and you've been a leader in the District for a while, and you have a video to show, it's an assumption, it's a belief of mine, ... that you know the appropriateness to show it, of the type of video. I did not vet Ms. Jannah's speech. I did not vet the Union president's speech. And I don't make a practice to

do so. I believe they should understand the professionalism they're going into. And in my career, anyone, even our last convocation guest who was the president of Bloomfield College, gave a speech or showed something, I did not vet it because I have an understanding that they know the level of respect and the level of professionalism to have to be in a place like this. So no, I didn't view it. And I don't believe that the superintendent should look at a Union leader or a leader in the District and have to vet everything they do or say. ... I need a level of trust. I need to have a level of trust with administrators. I don't vet what's shown in classrooms as a superintendent. I don't vet what a principal shows in their staff meeting as a superintendent. And my expectation is that there they have the judgment not to show anything inappropriate. And that they understand the level of respect they have with those positions (Tr. 1, pages 76-78).

However, during the convocation, Dr. Ponds – with no mention of Dr. Putrino’s offer to vet the Pray video – stated, among other things, “*I’m sorry we didn’t vet that before it came up . . .*” (Ex. F, at 0:42:10).

The Displaying of the Josh Pray Video From Start to Finish

In order to put matters in context, especially because a video has to be watched to be understood, I note that a characterization of Josh Pray’s mannerisms bear significant similarity to Kevin Hart, i.e., animated, loud and, at times, intentionally speaking in an uneducated manner. Unlike Kevin Hart, however, Pray’s popularity has been gained primarily on social media. Kevin Hart’s fame and fortune has been widely achieved through stand-up and movies. While I am confident that most people have heard of Kevin Hart, I am equally confident that Josh Pray does not enjoy anywhere near the same level of name recognition. Thus, while it appears that a good number of teachers, administrators and staff knew of Josh Pray and had, in fact, previously seen the video presented by Dr. Putrino, it may be fairly stated that a good number of the same group witnessed the video for the first time when presented by a White school principal at convocation.

Against this backdrop, the undersigned’s transcription of the Pray video is as follows:

Welcome and Introductions by **Morgan and Janna**

Exhibit F: Convocation Video 9-2-20

Hello I'm Dr. Putrino. Principal of Renaissance Middle School and President of the Montclair Principals Association. The MPA.

[Time 0:18]

Most people believe that the MPA stands for Montclair Principals Association. Well, it used to. Now because we're going full remote instruction, with the possibility of going back hybrid, we've renamed ourselves Montclair Planning Ahead.

[Time 0:32]

I would first like to acknowledge When we first went remote back in the spring it was very clear that there was some opposition from people who feel like teachers didn't do enough work. However, now, social media has given a platform for many families to express how they really feel about teachers now that they have their children at home.

[Time 0:50]

Comedian Josh Pray:

See, I ain't gonna be like most parents. Most parents ain't gonna be big enough to apologize to every educator and every after-school program person, that took care of our kids.

[Time 1:00]

Now, while everybody out there stressing and worrying about other stuff, and saying the kids are off weeks and stuff at the time... I'm gonna be the first to admit it.

[Time 1:07]

It's been two days and I want to go on record apologizing. I have been around my kids for 48 straight hours.

[Time 1:14]

I'm posed to educate these kids? To every teacher that when you ask me for extra pencils, or some papers, or I ain't responding to your emails, or you trying to tell me that my child was talking back... and I was like no he ain't - you just don't know how to teach my child, you need to calm down.

[breathing heavily]

[Time 1:28]

I'm gonna tell y'all... I apologize.

[Time 1:32]

I don't even know how y'all feed my kids. My children maybe ask me for something to eat like every 18 minutes. Every time you ask me, Mr. Pray, if you don't mind could you send some snacks for the class? And I be like, I don't know I ain't got the money, you use your salary. I apologize to you.

[Time 1:46]

My kids eat too damn much. I thought I ate?! I got a 9- to 13-year-old you put them together that's 22. They eat like a 22-year-old child in the first grade.

[Time 1:54] **Video Stopped Here According To The Memory Of Most Witnesses**

And then my 9-year-old, he want me to help with math questions, I don't understand what division is, man. All I know is if I take taxes and the government takes some of my money, that's all I know.

[Time 2:05]

I don't know no math, my 13-year-old asked me about history. I don't know, man. The only history I know is me and his Mama that's it.

[Time 2:14]

I apologize. I thought... I'm out of control.

[Time 2:19]

I thought teachers ain't do a good enough job at school. I thought my child should get straight A's like my childhood.

[Time 2:26]

And I want to have a meeting with teachers when school resumes, if ever resumes, I want to have a meeting with every teacher and ask how my child got A's and they class, because the education I see at home that boy ain't deserve no A's. He cheat! I watch when he goes back to school, I want y'all to watch him and watch him well. I know he'd cheating. You can't tell me he ain't cheating.

[Time 2:47]

And all they wanna do is get up, sit down, get up, sit down, get up, sit down. They go to the bathroom four or five times. What the hell they doing in the bathroom? Drinking the soap? Smoking the soap?

[Time 2:56]

Are they going down the drain? Water come up, water go down, water come up, water go down.

[Time 3:02]

To every educator out there, when I said I could home school my child, I can't home school my child. I don't got the patience to homeschool my child. If us as parents, we as parents have the audacity to drop 18 and 19 and 20 kids on ya'll at once! And ask y'all to raise our kids, look after our kids, sanitize our kids, educate our kids, feed our kids, protect our kids.

[Time 3:27]

One out of five ain't bad. One out of five is happening in my house. I ain't gonna tell you which one happening, but one out of five ain't bad. To every educator . . . **Video actually stops here - Dr. Ponds Asks To Pull The Video.**

Dr. Putrino and Dr. Ponds Convocation Video Commentary

After the video was pulled and Dr. Putrino recognized some people were offended, he apologized stating that he intended the video as humor, just as he had presented a humorous convocation piece the prior year. Shortly thereafter, Dr. Ponds, seemingly in violation of the MPA contract against public reprimands, made the following statement to hundreds, if not thousands, of convocation participants and those watching it via livestream, including a local news outlet:

I want everybody to know from the bottom of my heart that I apologize for that video shown. **We are a district of inclusion. We care about all people. That will not happen in my administration anymore.** That will begin today. I love people. I love all people. **No one has the right to disparage anyone.** But, first I want to say I'm sorry we didn't vet that before it came up. **Next, I want to say it'll never happen again in my administration.** Together we will, and we can, make Montclair a special place.⁵

The Placement of Dr. Putrino on Administrative Leave (Three Hours Later)

Damen Cooper, a then relatively inexperienced human resources director, testified that Dr. Ponds called him about the convocation video (Tr. 5, p. 745, lines 16-19). Cooper called Dr. Putrino and told him that the superintendent thought his video was offensive and wanted him to report to central office immediately (Tr. 8, p. 1328, lines 6-15). Putrino replied that he had to first return to Renaissance School because he had a scheduled staff meeting. He represented that after the staff meeting he would report to central office. During the staff meeting, Putrino conducted a “restorative justice circle” and apologized to his staff to the extent he had offended anyone, and assured them that that was never his intent. Later, Putrino testified approximately **two out of his thirty** staff members stated they were offended.

⁵ Article 13, “Dismissal, Discharge and Discipline Procedures”, section 13.2 states: “**Reprimand.** The parties agree that as a matter of practice any reprimand of a Principal with respect to his performance shall be made in confidence and not in public.”

Present in the central office meeting were Dr. Putrino, Ms. Kuwabara, MPA, Dr. Ponds, Mr. Cooper, and Mr. Emidio D'Andrea (Tr. 8, p. 1353, lines 17-24). Putrino testified that no one was speaking (Tr. 8, p. 1354, lines 18-21). Putrino initiated the conversation, stating that he was sorry that he did not get to know Ponds and he apologized if the video offended him (Tr. 8, p. 1354, line 22 through p. 1355, line 2). Ponds did not respond to Putrino. He just looked at him (Tr. 8, p. 1355, lines 3-4).

Mr. Cooper testified that Putrino "tried to apologize" and when asked why he phrased it that way, Cooper said that he did not believe Putrino was sincere (Tr. 5, p. 698, lines 1-4). When he was asked why Putrino's apology was not sincere, Cooper illogically replied, "Because it wouldn't have happened if it was sincere" (Tr. 5, p. 698, lines 5-8). Cooper slid a piece of paper across the table at Putrino which stated that he was being placed on administrative leave (Tr. 8, p. 1355, lines 4-9).

Dr. Putrino viewed the letter as vague and asked why he was being placed on administrative leave (Tr. 8, p. 1355, lines 10-14). Dr. Ponds responded that he would be citing the anti-racism policy, and that was all he said (Tr. 8, p. 1355, lines 14-15). The anti-racism policy, if one exists, was not presented at the hearing. Putrino then asked Mr. Cooper who he needed to communicate with. Ponds interjected and said Putrino should communicate through the School Board's attorney or human resources (Tr. 8, p. 1355, lines 16-21). The meeting ended. Cooper, in his car, then followed Putrino back to Renaissance Middle School. Putrino retrieved the items requested by Cooper and gave them to him. This was the last time Putrino would be on school premises.

Mr. Cooper also spoke with Major Jennings immediately after Dr. Putrino was sent home on leave. Cooper asked Jennings if he could fill the position of acting principal at Renaissance Middle School (Tr. 5, p. 696, lines 1-3). Jennings agreed.

Dr. Ponds' Communication with the Montclair NAACP

Dr. Ponds next initiated a call to the Montclair NAACP to apologize. Ponds testified that now deceased NAACP President, Mr. Pelham asked for dates with respect to suspensions, student data, and academic progress (Tr. 1, p. 114, lines 18-23). Although it is not clear as to how Mr. Pelham would be entitled to such information, Pelham apparently harbored a concern that Dr. Putrino's presentation of the two to three minute Josh Pray video may be the "tip of the iceberg" on racial equality vis-à-vis students in the Montclair Public School District. Of course, if that were the case, this proceeding would have undoubtedly included charges to that effect. Ultimately, no charges were brought against Dr. Putrino alleging that he treated Black students disparately from non-Black students.

By 3:20 p.m. that same day, an article appeared in "Tap into Montclair", entitled: "Montclair NAACP Demands Immediate Action After 'Racist' and 'Offensive' Video Shown to District Staff." The article asserts that "Staff were taken aback by the video that 'depicted a Black man shouting angrily about his kids' virtual learning experience.'" The article contains an inflammatory and, based on this record, unsupported quote from Pelham: "Principal Putrino has a history of complaints of racial insensitivity during his tenure as a leader in the Montclair School District."⁶ Pelham also called for immediate action against Putrino.

The September 2, 2020 Open Public Meeting of the Montclair BOE

Later that evening, Dr. Ponds made the following statements **in open session** at a Board of Education public meeting (facilitated via Zoom):

Dr. Ponds, Superintendent: Now I'd like to read a statement about a serious matter that happened today. On behalf of the Montclair Public Schools Administration and the Montclair Board of Education, I want to apologize to students, staff, parents, guardians in our community at today's

⁶ No evidence was presented during the hearing to support this assertion. As will be discussed, this record shows that Dr. Putrino engaged in numerous activities both inside and outside of work in support of the Black community.

Welcome Back convocation, *the staff showed a completely inappropriate and unacceptable video was broadcast which is inconsistent with our schools' strong values and ideas regarding diversity. The Montclair Public Schools, and I as your Superintendent, are committed to providing our staff and students with a school environment free of racism, prejudice and bias. The matter is being handled internally by central administration.*⁷ I apologize and thank you. Lastly, I want to say goodnight and Mr. Major Jennings, the Acting Principal at the Renaissance Middle School, thank you Mr. Jennings and thank you families. Thank you Ms. Jannah.

[The remaining key speakers on the Putrino incident lent their support of Dr. Ponds]:

Ms. Jannah/Board of Education: Thank you Dr. Ponds. I also want to state unequivocally that speaking for the Montclair Board of Education, we support Dr. Ponds in this decision and in his leadership in this matter. Mr. Graber or Mr. Deandra, do we have a spokesperson from the MPA?

Mr. Graber or Mr. Deandra: Do you want to go right to public comment? Then go back and do Committee Reports?

Ms. Jannah/BOE: No, I think that person is available and we'd like to speak now, we could do that now, we could do public *****

Mr. Graber or Mr. Deandra: If you'd like we could bring on the Union representative.

Ms. Jannah/BOE: Yes.

Mr. Graber or Mr. Deandra: Okay. David you could bring on Dr. Anglin to speak?

David: Sure thing. Dr. Anglin, Dr. Anglin can you hear me?

Dr. Anglin/Principal and Acting President MPA: Yes, I can hear you.

David: Thank you.

Dr. Anglin/Principal and Acting President MPA:

Good evening Dr. Ponds, Board of Education, administrators, teachers, staff, students and community members. I'm Dr. Samantha Anglin, Principal of Hillside School and the Acting President of the Montclair Principals Association. The MPA membership did not vet, nor did we condone, the message that was delivered under the umbrella of the MPA today. I speak on behalf of my colleagues this evening to reaffirm our ongoing, unending commitment to the core values of diversity, equity and social justice in our schools and community. Now, more than ever, we believe it is our duty and obligation to work together to ensure that all children, families, staff and community members are recognized and treated with equality and respect. We join you in this important work. We will challenge words, we will push back, we challenge actions to the contrary

⁷ Although Dr. Ponds did not identify Dr. Putrino, due to the events earlier in the day, it should have been abundantly clear to everyone that he was referring to Dr. Putrino.

and we stand before you to voice this commitment. We are fully committed to Dr. Ponds and the BOE's message. Thank you for your time and have a wonderful evening.⁸

David: Thank you Dr. Anglin.

Lastly, according to Dr. Putrino, and again inconsistent with the MPA contract, Dr. Ponds sent a memo to staff stating (1) that Ponds found the video offensive; (2) that there is no room for racism in Montclair; and (3) that the matter is being handled immediately (Tr. 8, p. 1360, lines 16-22).

The Lack of An Investigation

Due to the same day public commentary made by Dr. Ponds in two separate public forums, the immediate involvement of the Montclair Chapter of the NAACP, and the related Newspaper Article, Dr. Putrino's career as an educator and long term administrator with an unblemished work record effectively came to an end in less than a day. In short, by way of its actions and inactions, Petitioner had, in effect, signaled to the school district and the community at large that Putrino was guilty of committing a racist act and, hence, by implication, he was a racist.

Dr. Ponds and/or Mr. Cooper did not interview or meet with any of the people who subsequently submitted statements in support of Dr. Putrino. No contact was made with comedian, Josh Pray (Tr. 1, p. 220, lines 6-25 to 221, lines 1-2). Ponds was not sure if he read Pray's statement objecting to Petitioner's characterization of the video which involved Pray's two children (Tr. 1, p. 220 lines 22-25). Ponds testified on cross-examination that his investigation consisted of reviewing the video "a couple more times" (Tr. 1, p. 221, lines 4-5). Ponds never looked at

⁸ Notably, the generalized commentary of the interim MPA President did not include an independent statement as to why the video was offensive and, if anything, it more heavily shows a sign of support for Dr. Ponds who, in turn, had already set the table on how the video and its presenter should be regarded. Also, Petitioner stated in post-hearing submissions that the MPA removed Dr. Putrino as President. This is somewhat misleading because Putrino was first placed on administrative leave and could not serve as MPA President.

Putrino's record. To the extent he received any information on this score, it was from Mr. Cooper (Tr. 1, p. 213, lines 8-15).

Mr. Cooper later testified that Dr. Ponds directed him to "review the personnel file" after seeing a portion of the convocation video, which was the only semblance of an "investigation" that was conducted prior to the removal action (Tr. 5, p. 750, lines 5-14). When asked if he was instructed to investigate how the video came about, Cooper responded "No" (Tr. 5, p. 750, lines 15-17). Mr. Cooper further testified that the determination to bring action against Dr. Putrino was made after he dissected the video with Dr. Ponds - a week after Putrino was placed on leave (Tr. 5, p. 755, line 16 through p. 756, line 13). However, charges were not brought for approximately another 13 months.

Mr. Cooper did not reach out to any staff member, student, parent or member of the public to ascertain their take on the video (Tr. 5, p. 750, line 25 through p. 751, line 8). When asked if he reviewed Dr. Putrino's performance evaluations, Mr. Cooper testified that he "skimmed" them (Tr. 5, p. 753, lines 20-21). Cooper could not answer how long he spent reviewing Putrino's personnel file (Tr. 5, p. 755, lines 10-12).

Finally, Petitioner's investigation, or lack thereof, did not include a review of Dr. Putrino's background on fostering inclusion and positive race relations, or any inquiry into why some Black staff members found the video humorous and not offensive.

The Filing of Tenure Charges

On October 7, 2021, Petitioner's attorney, Isabelle Machado, Esq. filed with the New Jersey Department of Education a Certification of Determination together with an October 6, 2021 Board Resolution adopting the Tenure Charges against Putrino. The first charge relates to the September 2, 2020 convocation video of Josh Pray presented by Dr. Putrino:

- On September 2, 2020, during a District-wide convocation viewable by both District staff and members of the public via Zoom, Dr. Putrino display(ed) a highly inappropriate video (Ex. F).
- The video, among other things, portrayed a Black man yelling angrily about his children’s virtual learning experience. Ibid
- During Dr. Putrino’s presentation, numerous staff members, District parents, as well as members of the public, objected to and were offended by the video. As a result, the video was stopped by District administration (Ex. G through K, and O through P).
- When Respondent showed the highly inappropriate video on September 2, 2020, he was President of the Montclair Principals Association (“MPA”).
- As a result of Respondent showing the highly inappropriate video on September 2, 2020, he was removed from his position as the President of the MPA. As a result, Principal Samantha Anglin replaced Respondent as Acting MPA President.

The Scope of this Proceeding

The scope of this proceeding insofar as it relates to the charge of unbecoming conduct and other just cause regarding the September 2, 2020 convocation video must be limited to that portion of the video actually shown by Dr. Putrino, prior to it being switched off at Dr. Ponds’ direction (which occurred in response to unquantifiable objections in the chat). Even with approximately 13 months to formulate and file charges, the portion of the video unseen or not displayed by Dr. Putrino was not specified as a basis for the tenure charges. N.J.S.A. 18A:6-17.1 (3) (b) makes very clear that Petitioner’s obligation when filing tenure charges is to specify the conduct complained about and to provide full disclosure of its evidence. “The employing board of education shall be precluded from presenting any additional evidence at the hearing..” The pertinent regulation which relates to this statute is N.J.A.C.6A:3-5.1 (b)(1). N.J.A.C. 6A:3-5.1(b) (1) specifically states:

Charges shall be stated **with specificity as to the action or behavior underlying the charges** and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person(s) instituting such charges. Complete

copies of all documents referenced in the statement of evidence shall be attached as part of the statement.

In addition, in the analogous context of civil service cases, where the ALJ/Commissioner dichotomy is the same as it was in the education context prior to 2012, an employee cannot be legally tried or found guilty on charges of which s/he has not been given plain notice by the Appointing Authority. Indeed, the de novo hearing following an administrative appeal is limited to the charges and specifications contained in of the Final Notice of Disciplinary Action. West New York v. Bock, 38 N.J. 500, 522 (1962), Dept. of Law and Public Safety, Division of Motor Vehicles v. Miller, 115 N.J. Super. 122 (1971); Borough of HohoKus v. Menduno, 91 N.J. Super. 482, 487-488, 221 A.2d 228 (App.Div.1966)(noting that a public employer can only find an employee guilty of offenses specifically mentioned in the charges); Hammond v. Monmouth County Sheriff's Dep't, 317 N.J. Super. 199, 206 (App. Div. 1999)(noting that an Appointing Authority's broadening of local-level charges on subsequent appeal would "surcharge the right to appeal with a cost which violates any decent sense of due process or fair play"); Grasso v. Borough of Glassboro, 205 N.J. Super. 18 (October 16, 1985) (the original charges may not be amended at a trial de novo so as to include new charges); Accord, Fabian vs. Town of North Bergen, (CSV 3198-97, Initial Decision (August 24, 1998), adopted, Merit System Board, (December 2, 1998).

Finally, arbitrators follow similar tenets of due process when addressing just cause in a disciplinary dispute. See, Elkouri & Elkouri, *How Arbitration Works*, 5th Edition, page 918; *Koven & Smith*, *Just Cause -- The Seven Tests*, 2d Edition, page 397.

In this matter, consistent with the foregoing, the scope of the proceeding must be limited to the following specifications contained in the tenure charges:

- On September 2, 2020, during a District-wide convocation viewable by both District staff and members of the public via Zoom, Dr. Putrino display(ed) a highly inappropriate video (Ex. F).

- The video, among other things, portrayed a Black man yelling angrily about his children’s virtual learning experience. Ibid
- During Dr. Putrino’s presentation, numerous staff members, District parents, as well as members of the public, objected to and were offended by the video. As a result, the video was stopped by District administration (Ex. G through K, and O through P).
- When Respondent showed the highly inappropriate video on September 2, 2020, he was President of the Montclair Principals Association (“MPA”).
- As a result of Respondent showing the highly inappropriate video on September 2, 2020, he was removed from his position as the President of the MPA. As a result, Principal Samantha Anglin replaced Respondent as Acting MPA President.
- Although Respondent’s presentation was purportedly made on behalf of the MPA, the MPA’s Acting President, Principal Anglin denounced the video. During the September 2, 2020 Board meeting, Ms. Anglin stated that “[t]he MPA membership did not vet, nor do we condone, the message that was conveyed under the umbrella of the MPA.” She further publicly stated that “We are fully committed to Dr. Ponds and the Board of Education's message.” (Ex. L).
- The Montclair Branch of the NAACP, President Al Pelham, issued a statement calling for immediate action (Ex. M).
- As a result of Dr. Putrino showing the highly inappropriate video on September 2, 2020, Respondent was placed on paid administrative leave (Ex. N).
- Respondent’s actions constituted unprofessional conduct unbecoming of a certificated staff member.

Despite the express wording of the tenure charges, Petitioner asks the undersigned to rely on the remainder of the video not shown (involving a comedic skit produced, and starred in by, Dr. Putrino and other staff members. The video exaggerates what it will be like working under COVID-19 protocols. Petitioner asserts that this portion of the video not displayed also demonstrates that Putrino lacks the judgment necessary to continue as a certificated school

principal for two reasons: (1) it makes fun of Covid protocols during the pre-vaccination stage of the pandemic and (2) it, in part, shows evidence of racial bias.

In rejecting Petitioner's entreaty, I find that Petitioner had a statutory obligation to have proffered a tenure charge supported by a stated specification regarding Respondent's composition of the video. Instead, the entirety of the tenure charge pertaining to the September 2, 2020 convocation faults Dr. Putrino for "showing" or "displaying" the video to the convocation audience. That portion of the video pertaining to the Covid skit was not shown on September 2, 2020 and it never made its way into the tenure charges. In the end, no acceptable explanation was provided by Petitioner as to why it did not charge Dr. Putrino with planning to show the entire video - if it was at all concerned about the COVID-19 protocols skit. Indeed, Petitioner had its sites set only on the Pray video. That it now claims that the Covid video reflects racial bias, I find, is not persuasive.

For all these reasons, I reject Petitioner's belated attempt to discipline Dr. Putrino for the Covid portion of the video.

Additionally, I observe, Petitioner attempted to inject other anecdotal evidence into the proceeding which was not presented in the tenure charges or Statement of Evidence. As to the alleged "sins of the past", Petitioner refers to an improper tax deduction; sending out a periodic newsletter - which Dr. Putrino had no obligation to send out in the first place - with numerous typos; use of personal email 10-15 years ago to communicate with Shashana Smiley when she was a 6th grade student; providing Smiley with an internship after she graduated high school (9-10 years prior) without Board approval, but with the knowledge of central office; and allegedly reporting to work under the influence of alcohol (an allegation not sufficiently proven). With respect to the alleged sins of the present, Petitioner asserts that Dr. Putrino, who is a practicing artist, maintained

an online art gallery during his period of leave which included paintings of nudes. For the same reason I will not consider the Covid portion of the video, I will not consider new allegations based on evidence discovered during the midst of this proceeding.

Based on the foregoing, I find and conclude that this proceeding must be limited to the charges and supporting Statement of Evidence related to Dr. Putrino's displaying or presentation of the Josh Pray video.

Conduct Unbecoming and Other Just Cause

In the State of New Jersey, a tenured teacher shall not be dismissed from his position or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct, or other just cause." N.J.S.A. 18A:6-10. It is acknowledged that as public role models, teachers, principals, and other administrators are "held to a higher standard of behavior than other employees and individuals in society." Matter of the Tenure Hearing of Darlene Donahue, OAL Dkt. Nos. 4379-03 and 6586-03 (Mar. 10, 2006), adopted, Agency Dkt. Nos. 177-6/03 and 285/03 (Commissioner of Educ. Apr. 24 2006), aff'd Docket No. 25-06 (State Bd. of Educ. Oct. 4, 2006); In the Matter of the Certificates of Hattie Black, OAL Dkt. No. EDE 5140-02 (March 12, 2003). Educators are "entrusted with the care and custody of children," they "must exercise a degree of self-restraint and controlled behavior unlike like most other types of employment." Matter of the Tenure Hearing of Darlene Donahue, OAL Dkt. Nos. 4379-03 and 6586-03 (Mar. 10, 2006), adopted, Agency Dkt. Nos. 177-6/03 and 285/03 (Commissioner of Educ. Apr. 24 2006), aff'd Docket No. 25-06 (State Bd. of Educ. Oct. 4, 2006) citing In re Tenure Hearing of Lucarelli, 97 N.J.A.R.2d (EDU) 537, 541.

The term unbecoming conduct is elastic and broadly defined to include any conduct "which has a tendency to destroy public respect for [government] employees and competence in the

operation of [public] services.” Behavior rising to the level of unbecoming conduct “need not be predicated upon the violation of any particular rule or regulation but may be based merely upon the violation of the implicit standard of good behavior which develops upon one who stands in the public eye as an upholder of that which is morally and legally correct.” Hartman v. Police Dep’t of Ridgewood, 258 N.J. Super. 22, 40 (App. 992) (citing Asbury Park v. Dep’t of Civil Serv., 17 N.J. 419, 429 (1955)). Unfitness to hold a position in a school system may be demonstrated by a series of incidents or a single incident, if sufficiently flagrant. Redcay v. State Bd. of Educ., 130 N.J.L. 369, 371 (Sup. Ct. 1943), aff’d, 131 N.J.L. 326 (E. & A. 1944); In the Matter of the Tenure Hearing of Madhumita Chaki, Franklin Township School District, Somerset County, OAL Dkt. No. EDU 1529-11.

The TEACH NJ legislation, enacted in 2012, led to the replacement of the Office of Administrative Law and the Commissioner of Education with labor arbitrators required to be members of the National Academy of Arbitrators. It must be presumed that the legislature was aware of how arbitrators address and analyze just cause disciplinary cases, especially in the context of removal or dismissal. Consistent with the legislative enactment, it may be expected that the traditional arbitral factors relied on to evaluate the propriety of the removal or dismissal of a public employee will be brought to the table in addition to the precedent developed over the years by the Commissioner of Education prior to 2012. In fact, the only evidence of the legislature issuing substantive directives to the arbitration panel occurred in 2019, whereby arbitrator training was required on conduct unbecoming an employee, including, but not limited to, issues related to allegations of sexual assault and child abuse. N.J.S.A. 18A:6-17.1(a):

- (1) A review of tenure charge cases concerning conduct unbecoming by a school employee, including cases decided both before and after the enactment of P.L.2012, c. 26 (C.18A:6-117 et al.); and

(2) A review of the factors to be considered by arbitrators in deciding tenure charge cases concerning conduct unbecoming by a school employee including, but not limited to, the nature of the alleged offense and the impact, or potential impact, of the employee's conduct on the health and safety of students within the context of the school environment.⁹

In considering both arbitral and education law precedent, I note first that Petitioner must prove, by a preponderance of the credible evidence, that Dr. Putrino is guilty of some or all of the disciplinary allegations contained in the charges. See, West New York v. Bock, 38 N.J. 500 (1962); Cumberland Farms, Inc. v. Moffett, 218 N.J. Super. 331, 341 (App. Div. 1987); Atkinson v. Parsekian, 37 N.J. 143 (1962); *Elkouri and Elkouri*, How Arbitration Works, 5th Edition, pages 930, et. seq. Here, I find, Petitioner has sufficiently proven that Dr. Putrino unwittingly displayed what turned out to be an inappropriate video for the purpose of the event, that the video offended at least some members of the Black community who watched it, and he ran the risk of offending others based on a confluence of factors (i.e., Putrino is White, the audience was mixed, and Josh Pray, who was unlikely unknown to those who were offended, at times, is speaking in an exacerbated and uneducated manner).

Having said this, however, this is by no means an obvious case where there exists only one reasonable interpretation of the Pray video. To illustrate, the uneducated speech Pray exhibits is highlighted in *boldfaced italics* below, whereas observations about perpetuating stereotypes based on the content of what Pray is saying are set forth under the undersigned's "**Comments**", below:

Comedian Josh Pray:

See, I *ain't gonna be* like most parents. Most parents *ain't gonna* be big enough to apologize to every educator and every after-school program person, that took care of our kids.
[Time 1:00]

⁹ The undersigned filed a certification with the Commissioner on September 17, 2020 acknowledging the completion of such training. Subsequently, supplemental training was required for cultural diversity and bias. The undersigned completed such training on October 4, 2022.

Now, while everybody out there stressing and worrying about other stuff, and saying the kids are off weeks and stuff at the time... I'm gonna be the first to admit it.
[Time 1:07]

It's been two days and I want to go on record apologizing. I have been around my kids for 48 straight hours.
[Time 1:14]

(Comment – This could be any parent having to change his or her life to monitor children while they learn remotely for the first time. It is not a dilemma unique the Black community).

I'm posed to educate these kids? To every teacher that when you ask me for extra pencils, or some papers, or *I ain't* responding to your emails, or you trying to tell me that my child was talking back... and I was like *no he ain't* - you just don't know how to teach my child, you need to calm down.
[breathing heavily]
[Time 1:28]

(Comment – Pray's portrayal of himself as a protective parent refusing to acknowledge the potential misbehavior of his children is commonplace in society, regardless of race).

I'm gonna tell *y'all*... I apologize.
[Time 1:32]

I don't even know *how y'all* feed my kids. My children maybe ask me for something to eat like every 18 minutes. Every time you ask me, Mr. Pray, if you don't mind could you send some snacks for the class? And I be like, I don't know *I ain't got the money*, you use your salary. I apologize to you.
[Time 1:46]

My kids eat too damn much. I thought I ate?! I got a 9- to 13-year-old you put them together that's 22. They eat like a 22-year-old child in the first grade.
[Time 1:54]

(Comment: Pray did not say that he can't feed his kids. In fact, he is with his children during an extended period of remote learning. Of course, he's feeding them. That Pray does not want to spend the money or does not have the money to send in snacks for the entire class does not mean he can't feed his own kids. He is simply stating his disbelief as to how much his kids eat now that he is home observing them during the school day).

And then my 9-year-old, he want me to help with math questions, *I don't understand what division is, man*. All I know is I pay taxes and the government takes some of my money, that's all I know.
[Time 2:05]

(**Comment:** As Ketty White testified, parents of all races could experience the same challenge helping their kids with math as Pray. Ms. White tutors Caucasian students in math).

I don't know no math, my 13-year-old asked me about history. I don't know, man. *The only history I know is me and his Mama that's it.*

[Time 2:14]

(**Comment:** Parents of all races could experience the same challenge as Pray trying to help their kids learn history, a course which they may have taken decades ago).

I apologize. I thought... *I'm out of control.*

[Time 2:19]

I thought teachers *ain't do a good enough* job at school. I thought my child should get straight A's like my childhood.

[Time 2:26]

And I want to have a meeting with teachers when school resumes, if ever resumes, I want to have a meeting with every teacher and ask how my child got A's and they class, because the education I see at home *that boy ain't deserve no A's*. He cheat! I watch when he goes back to school, *I want y'all* to watch him and watch him well. *I know he'd cheating*. You can't tell me *he ain't cheating*.

[Time 2:47]

(**Comment:** Pray is making this commentary because he is observing how his children are tackling or not tackling their assignments at home, eating every 18 minutes, going to the bathroom frequently, etc., and he is contrasting his observations of his children's homeschool habits with the A's his children received when instruction was in-person. This is not the same as saying that Black students who get As must be cheating).

And all they wanna do is get up, sit down, get up, sit down, get up, sit down. They go to the bathroom four or five times. What the hell they doing in the bathroom? Drinking the soap? Smoking the soap?

[Time 2:56]

Are they going down the drain? Water come up, water go down, water come up, water go down.

[Time 3:02]

(**Comment:** Pray's observation that his kids procrastinate by constantly getting up, wanting to eat every 18 minutes, and frequently using the bathroom has nothing to do with the fact that his kids are Black. And, I find, Pray did not say his kids are doing drugs in the bathroom. He made nonsensical spontaneous remarks about his kids drinking or smoking soap because they are in the bathroom every five minutes).

To every educator out there, when I said I could home school my child, I can't home school my child. *I don't got* the patience to homeschool my child. If us as parents, we as parents have the audacity to drop 18 and 19 and 20 kids on *ya'll* at once! And ask *y'all* to raise our kids, look after our kids, sanitize our kids, educate our kids, feed our kids, protect our kids.

[Time 3:27]

(Comment: Pray is not saying that he can't feed his kids or protect his kids. He admits that he cannot take over the education of his kids from teachers and he admits that he grows impatient monitoring the rest of their behaviors, whereas before they were in school. A parent of any race could be Pray in this situation).

One out of five ain't bad. One out of five is happening in my house. I ain't gonna tell you which one happening, but one out of five ain't bad. To every educator . . . **Video actually stops here - Dr. Ponds Asks To Pull The Video.**

Here, I observe, to the extent that there was a risk of offending members of the Black community, in my opinion, it had more to do with Mr. Pray's intentionally uneducated, exaggerated and exacerbated presentation designed to evoke humor much in the same way that Kevin Hart projects himself. Where Dr. Putrino became tripped up, in my opinion, involves the following factors: (1) Pray is Black and presumably is not knowingly perpetuating racial stereotypes as he speaks about his own children; (2) other Black educators found the video humorous; i.e., teacher appreciation; and (3) the Pray video was displayed in YouTube and Google commercials and even on the Today show. As to the mixed views of the Pray video among Black educators, it is noted that there is evidence of uncertainty expressed even by Petitioner's witnesses. Consider the following:

Petitioner's Witnesses

Dr. Ponds

Dr. Ponds believed that a portion of the video shown perpetuates a stereotype, known as the "Myth of the angry Black man" (Tr. 1, p. 79, lines 2-4). Dr. Ponds added, "[t]here are Black parents and students that attend the Renaissance School and that it is important to not perpetuate the stereotype of an angry Black man" (Tr. 1, p. 83, lines 2-18). Having said this, however, it is

noteworthy that Ponds, despite his vast education and experience in subjects of racial diversity, inclusion and sensitivity, did not stop the video on his own initiative. He did so in response to chats from other participants – none of which were preserved.

Additionally, Dr. Ponds testified that he viewed the Pray video up to ten times, but not more than 10 (Tr. 2, p. 266, lines 3-4). He also testified that he had “other people look at it to kind of gauge my judgment of it” (Tr. 2, p. 265, lines 20-21). He had his “wife see it and talk to me about it personally” (Tr. 2, p. 266, lines 6-7). Plainly, if the Pray video so obviously perpetuated racial stereotypes, then one would think Dr. Ponds need not have taken the trouble to view it so many times and enlist the eyes and ears of others in order to gauge his judgment after the fact. This is especially so given Dr. Ponds’ professional background.

Rodney Jackson

When Mr. Jackson was asked what he recalled about the convocation, he testified that he was excited because it was Dr. Ponds’ first convocation (Tr. 3, p. 467, lines 8-10). Jackson recalled that Dr. Putrino showed a video of an African American comedian who was dealing with the stress of home schooling his children during COVID-19 (Tr. 3, p. 467, lines 18-22). Jackson testified that he had not seen the entire video until being shown it at the hearing that day (Tr. 3, p. 475, lines 11-12). The video was played again, and then stopped at the point where Mr. Pray states he has two children whose ages add up to 22 (Tr. 3, p. 478, line 10).

Mr. Jackson was questioned about his reaction to the video when it first aired. Jackson testified that when he first saw the video he had no reaction (Tr. 3, p. 478, lines 21-22). This testimony is interesting as well because Jackson is the head of the District’s “TURN” program and held out by Dr. Ponds as someone who was, in effect, a point person on race-related issues.

Jackson instead looked to other people on the Zoom and what they were writing in the chat to see other people's reactions (Tr. 3, p. 478, lines 23-25).

Mr. Jackson testified that in retrospect, he viewed the video shown as "inappropriate" (Tr. 3, p. 480, line 6). He testified that it was inappropriate because it did not paint parents in a positive light and reinforced negative stereotypes that they cannot take care of their children and are uneducated, emotional, and loud (Tr. 3, p. 480, lines 8-18; p. 481, lines 20-25; p. 482, lines 1-2).

Mr. Jackson was shown Exhibit I, his email to Dr. Ponds (Tr. 3, p. 489, lines 4-5). He said that in his email he referenced the video being racist, what he meant was that the convocation video was reinforcing negative stereotypes about Black parents (Tr. 3, p. 489, lines 20-22). Jackson added that there is a "long history" of the following stereotypes in this country; that Black people are loud, out of control, can't control their children, and are stuck in poverty (Tr. 3, p. 489, line 25 through p. 490, line 4).

However, on cross-examination, Jackson was asked about his email statement that he didn't think "many of us understood what the video was reinforcing" (Tr. 3, p. 489, lines 9-21). Jackson attempted to explain his email by stating "people did not see the hurt and the pain that others were feeling while it was being played (Tr. 3, p. 499, lines 1-5). Some thought it was humorous and others were offended" (Tr. 3, p. 499, lines 6-17).

Finally, Mr. Jackson admitted that the comedian was trying to be funny, and that the intent of the video was to appreciate teachers more but stated, *without offering a single specific reference*, that there were a thousand other videos Dr. Putrino could have shown (Tr. 3, p. 504, lines 9-15). Jackson testified that he understood what Putrino was trying to do but that the video he showed was derogatory and highlighted everything negative about Black people and Black parents (Tr. 3, p. 504, lines 17-22).

Diane Anglin

Ms. Anglin knew that the video had been posted on social media and she believed she also saw the video on YouTube (Tr. 3, p. 417, lines 5-8). Nonetheless, Anglin personally thought the video was offensive (Tr. 3, p. 435, lines 19-21). Now deceased, Mr. Pelham, NAACP President, felt the video was offensive due to the climate at the time (George Floyd and Breonna Taylor) (Tr. 3, p. 437, lines 9-18). Also, Mr. Pray's comments about division and math stood out to her (Tr. 3, p. 428, line 24 through p. 429, line 3). Anglin also said the video depicted "microaggressions" (which she did not define) and stereotypes (Tr. 3, p. 430, lines 5-13). Specifically, that the video added to the stereotype of the broken family (Tr. 3, p. 431, lines 22-24). There is insufficient evidence presented by the video which would lead one to conclude that the Pray family was "broken", that there was not a Ms. Pray or that his children weren't loved.

Ms. Anglin also opined that Pray portrayed himself as the "Angry Black man" (Tr. 3, p. 432, lines 13-16). Anglin testified that the stereotype of an angry Black man means that when Black men are passionate about something they are perceived as angry (Tr. 3, p. 432, line 23 through p. 433, line 1). Anglin was questioned about Pray saying the children were allegedly cheating. She said that was offensive because her son is questioned about whether he plays basketball, that he has a scholarship to Georgetown, and that he wants to lie and say he doesn't play basketball - but that he does actually play basketball (Tr. 3, p. 433, line 19 through p. 434, line 1).

Ms. Anglin also believed that the video was offensive because it meant that if a Black child is doing well in school, it is assumed that they are cheating (Tr. 3, p. 434, line 25 through p. 435, line 6). Anglin was questioned about drinking the soap/smoking the soap, and she said that this

comment continues to add to the ignorance but then also said that it didn't make sense to her (Tr. 3, p. 435, lines 7-21).

Finally, Ms. Anglin was offended by the portion of the video where Mr. Pray states that he does not know how the school is feeding his kids – elaborating, there are Black and brown children who get free lunch (Tr. 3, p. 456, line 23 through p. 457, line 5). She testified that it adds to the pain that they cannot feed their children (Tr. 3, p. 457, lines 22-25). Anglin asserted it was ignorant to the fact that some children's only meal comes from the school (Tr. 3, p. 457, line 25 through p. 458, line 2).

Major Jennings

Mr. Jennings only witnessed part of the video on the day of the convocation and the entire video the day prior to his testimony (Tr. 4, p. 660, lines 2-8). Jennings was shown the video again and asked to recall the stop point (Tr. 4, p. 542, lines 10-15). Jennings testified that the convocation video was stopped at the end of Mr. Pray's rant when the words, "Case Closed! You are appreciated!" appear on the screen (Tr. 4, p. 546, line 12). Jennings then testified that when he saw the words, he didn't remember seeing the words, but "it was like right before then" that the video was stopped (Tr. 4, p. 546, lines 18-22). When asked again where the video was shut down, or how long it took Dr. Ponds to stop the video, Jennings later said "it was instantly" (Tr. 4, p. 552, line 7).

Mr. Jennings testified that the video was offensive to him because it "was stereotypical of Black men" (Tr. 4, p. 549, lines 9-10). And that they are portrayed as being out of control (Tr. 4, p. 549, line 12 to 550, lines 15-17). He went on to state that Pray portrayed "his little Black kids as cheaters" and that he doesn't know anything about history and wants his kids out of the house (Tr. 4, p. 550, lines 18-20). He also testified that the portion about feeding his children made him

feel like little Black kids eat a lot (Tr. 4, p. 550, line 25 through p. 551, line 1). Contrary to a finding that “the chat was blowing up”, Jennings testified that he did not notice the chat (Tr. 4, p. 552, line 14).

Mr. Jennings also testified that people were upset and that he received an email for a restorative justice type activity the following day (Tr. 4, p. 552, line 23 through p. 553, line 4). There was a link to join a meeting with several staff members which gave an opportunity to share how they felt about the video (Tr. 4, p. 554, lines 7-13). During the restorative justice Zoom meeting, Dr. Putrino and Dr. Ponds were not present (Tr. 4, p. 556, lines 10-16). Jennings testified that some people expressed their dismay for the presentation, and others were not as upset (Tr. 4, p. 556, lines 19-21).

Damen Cooper

Mr. Cooper was involved with the convocation just to the extent that he was an attendee (Tr. 5, p. 680, line 9). Without showing the actual video presented by Dr. Putrino first, Petitioner showed Cooper the entire convocation video. Even Cooper testified that the entire video was not shown on that day; the first time he saw the entire video was a couple of days to a week after the convocation (Tr. 5, p. 687, lines 1-7). Cooper recalled that the video was stopped after discussions about the children eating.

Like Mr. Jennings, Mr. Cooper was not paying attention to the chat feature in the Zoom (Tr. 5, p. 689, lines 24-25). While watching the video, Cooper testified that he was angry, appalled, upset and embarrassed (Tr. 5, p. 690, lines 3-5). He added that he was embarrassed as a professional and representative of the school district; and that he was appalled as a Black man, as a father, the stereotype that was there. He said, “It frustrated me. It made me angry” (Tr. 5, p. 690, lines 8-13). Cooper asserted that the video reinforced a stereotype that African American men

are confused; that that is their dialect; that is way we have to work with our kids; and that they are not educated (Tr. 5, p. 690, lines 16-20).

Cooper testified that stating that African American men do not know how to do math is embarrassing (Tr. 5, p. 691, line 6). The statement about children cheating he said made him feel angry and hurt because his children do not cheat (Tr. 5, p. 691, lines 14-15).

Mr. Cooper further noted that the drinking the soap/smoking the soap comment was ridiculous and showed a stereotype that African American men don't know anything (Tr. 5, p. 691, lines 21-24).

Lastly, Mr. Cooper also testified that the grammar and enunciation the comedian used was offensive to him (Tr. 5, p. 691, lines 3-5).

Petitioner's Documentary Evidence

Exhibit G: Email from Ms. Wells

Email to Dr. Ponds claimed that she understood the message of the video and totally agreed with the message, but that it reinforced negative stereotypes of the President and others like him who want to portray African Americans in a certain way.

Exhibit H: Email from Ms. Saraco

Email to Dr. Ponds from a math teacher to thank him for stopping an incredibly offensive video and request that it be removed from any public presentation of the convocation.

Exhibit I: Email from Mr. Rodney Jackson

Mr. Jackson sent an email expressing that he was pleased that the video was stopped. *But then goes on to state that he wished there was an opportunity to discuss why it was racist and noted that many of us don't understand what the video was reinforcing.*

Exhibit K: Email from Ms. Burrell

Ms. Burrell's email to Dr. Ponds notes that she feels the video was putting Blacks on display for entertainment. She felt the video was unprofessional and disrespectful and lacked regard for the diversity of students in Montclair.

Exhibit O: Redacted Email

This redacted email is to Dr. Ponds noting that a statement of support for Dr. Putrino will not be provided. Claims are being made that his or her child was discriminated against "under his [Dr. Putrino's] watch." Parent is claiming that a teacher told two Caucasian children not to play with his or her child because they were Black. He or she claims that when Putrino was the vice principal

he or she and another parent went to him with their concerns about this allegation. Parent claims that Putrino did not believe his or her children's claims. This email notes that the teacher was disciplined but they were not told how the teacher was disciplined. The parent also claims that assignments made President Obama look like a minstrel character which made her children cry. Parent claimed that they went to Putrino and complained, and that Putrino did not do anything and the teacher claimed that the images were political cartoons.

Exhibit P: Redacted Email

Parent is a person of color with students in the District as well as an educator (not noted whether an educated in District). Letter to Dr. Ponds notes that this parent is in agreement with the decision to investigate Dr. Putrino. Letter also notes that Putrino hired a teacher last year this parent believed to be "wholly incompetent" and noted that Montclair is a "highly coveted" District to work in. Parent raised questions about how this person was hired in the first place.

Exhibit J: Email from Mike Chiles

Email to Dr. Ponds noting that the video shown "was fine except your staff will internalize his message as they were being chastised for not responding to children like him." He noted that he could not be more disgusted with the convocation.

Exhibit M: Article re: NAACP

Article entitled "Montclair NAACP Demands Immediate Action after "Racist" and "Offensive" Video Shown to District Staff" dated September 2, 2020. *This article notes that the President of the NAACP, Al Pelham, issued a statement claiming that Dr. Putrino had a history of racial insensitivity during his tenure with Montclair.* This article also references a law suit against Putrino and the school district claiming that only white teachers were given the opportunity to get additional pay for teaching additional classes. The article also noted that Putrino apologized for the video immediately and noted that if people were offended that was not his intent.

Respondent's Witnesses

Erika Pierce

Principal of Glenfield Middle School and the District's anti-bullying and harassment coordinator, Erika Pierce testified that during her time in Montclair she either participated or watched the convocations, including the September 2020 convocation (Tr. 7, p. 903, lines 6-12). Pierce's reaction to the video was that she "thought it was funny" (Tr. 7, p. 903, line 20): "I just thought it was funny because it really spoke to how I felt as a parent who was stuck in the house with their children, trying to work a full-time job and be a teacher at the same time" (Tr. 7, p. 903,

line 22 through p. 904, line 1). She did not find the Pray video racially offensive (Tr. 7, p. 904, lines 2-7).

Ketty White

Ms. White, a Black second grade educator, testified that she attended the September 2020 convocation (Tr. 6, p. 830, lines 13-15). White had seen the Pray video many times before the convocation on YouTube and testified that “everyone was sharing it” and that she “shared it with a lot of people. It was hilarious” (Tr. 6, p. 831, lines 8-19). “So teachers were just sharing funny things that we would find on YouTube. And he was one of the videos that was shared, that I think I shared it, as a matter of fact. Because when I saw it, I shared it” (Tr. 6, p. 831, line 22 through p. 832, line 1). Specifically, she shared it with most of her colleagues, the second grade team, on their group thread (Tr. 6, p. 832, line 406). The second grade team she shared it with was made up of seven or eight teachers, friends, paras, everyone that was in the education field (Tr. 6, p. 832, lines 6-13).

Ms. White added: “It was funny. It was something, it was a comic relief” (Tr. 6, p. 832, lines 12-13). White never received any negative feedback on the video (Tr. 6, p. 832, lines 14-15). She referred to the video as “creative and unique and funny” (Tr. 6, p. 832, lines 22-24). She did not find the video offensive or racially offensive (Tr. 6, p. 833, lines 1-5).

When the video was stopped, Ms. White did not know what happened, she thought it was a technical issue (Tr. 6, p. 833, lines 6-14). White testified that when she found out what happened, “we just thought it was ridiculous” and that we were “shocked” and “utterly shocked” because everyone in her circle had seen the video before and thought it was funny (Tr. 6, p. 833, lines 21-25). White’s group didn’t find any issue with the video (Tr. 6, p. 833, line 25 through p. 834, line 2).

Ms. White also testified that no one reached out to her regarding her reaction to the video, and that none of her colleagues told her that they were contacted either to be questioned as part of an investigation (Tr. 6, p. 834, lines 13-20).

Ms. White viewed the comments after Dr. Ponds apologized and was surprised by the comments (Tr. 6, p. 834, line 21 through p. 835, line 4). On cross-examination, White acknowledged that when she viewed the chat, she saw comments about “a stereotypical angry Black man” (Tr. 6, p. 852, lines 1-2).

On cross-examination, the Pray video was played and Ms. White, noticeably, laughed through most of it. Ms. White also reviewed the video prior to her testimony and said “it was still funny. I still laughed” (Tr. 6, p. 836, lines 11-16). She had previously viewed the video on YouTube (Tr. 6, p. 836, lines 20-22). White was asked if she recalled specific portions of the video about the father not knowing history, the children being cheaters, and drinking/smoking soap, all of which she recalled (Tr. 6, p. 853, lines 12-25).

Q: Let me ask you this way. Is it your position that you don’t, that you don’t understand why somebody would find that offensive, that video?

A: Yes, that’s my position (Tr. 6, p. 854, lines 6-10).

Ms. White added that she has never heard of the Angry Black Man stereotype, that it is usually of an “Angry Black Woman” (Tr. 6, p. 854, lines 22-24). White also testified that if it was a woman in the video it would not have changed her opinion because “I didn’t find him to be angry. To me, he wasn’t angry” (Tr. 6, p. 855, lines 9-10). White viewed the video as a parent appreciating teachers and finding homeschooling challenging and difficult; and that “he just happened to be Black” (Tr. 6, p. 856, lines 3-9). The cross-examination colloquy continued:

Q: And would you agree with me that that was an inappropriate video to show the entire staff of Montclair Schools?

A: No, I would not agree with you.

Q: So it's your opinion that that was an appropriate video to show all staff members; that's your position?

A: I shared it. I shared it with my friends. I shared it with my colleagues, and one of my friends is a principal. I shared it with a lot of people. So I didn't find it offensive (Tr. 6, p. 856, lines 10-20).

Q: Is it your testimony today that he [comedian Josh Pray] is not angry in that video; is that accurate?

A: In my opinion, he's frustrated. He's had enough. He's not angry. He's like, okay, I can't do this anymore. This is too hard. Like that's how it comes off to me.

Q: And in your opinion, that does not portray an angry Black man; is that accurate?

A: Yeah. That's accurate.

Q: And the comment, the whole video where he's talking about his, his parenting, right, is it your opinion that that video does not portray African American fathers as bad parents?

A: No, not at all.

Q: And is it your opinion, when he's talking about not knowing any math, not knowing any history, is it your opinion that does not portray African Americans as uneducated; is that your testimony?

A: Yes. Because I tutor a lot of Caucasian kids, and I have parents actually tell me that they were having problems with the new math and to help them to help their child with it. So, no. No, absolutely not. A lot of parents have problems helping their kids with the new math and the new technology and the new that. It's not just because he's a man of color (Tr. 6, p. 866, line 16 through p. 867, line 11).

Shashana Smiley

Ms. Smiley watched the convocation video on September 2, 2020 (Tr. 7, p. 932, lines 6-8). Smiley testified that she saw the Pray video, but also that she had seen it before September 2 because it went viral on Instagram or Facebook (Tr. 7, p. 932, lines 9-18).

Q: Can you tell us what your reaction was to the video?

A: I thought it was hilarious and I thought it was relatable as a parent who was working from home, while navigating homeschooling my son, and still trying to get the daily day-to-day activities done.

Q: Did you find it racially offensive, the video?

A: Oh, no. No, I didn't (Tr. 7, p. 933, lines 8-20).

Ibn Shakoor

Mr. Shakoor did not testify to the video at all on direct examination, the video portion was shown to Shakoor on cross-examination up until the line "to every educator out there, I want to apologize and let ya'll know..." (Tr. 7, p. 1079, line 18 through p. 1083, line 3).

Mr. Shakoor testified that he had seen the video before on YouTube or Instagram (Tr. 7, p. 1083, lines 5-10). Shakoor's first thought on the video was that it was relatable and funny (Tr. 7, p. 1083, lines 11-17). He did not find the video offensive, and did not see any kind of stereotype in the video (Tr. 7, p. 1083, line 22 through p. 1084, line 1).

Mr. Shakoor testified that he was not shown the video in preparation for the hearing but that he has seen the video many times (Tr. 7, p. 1084, lines 2-24). He has outside knowledge of the video and the comedian (Tr. 7, p. 1084, line 25 through p. 1085, line 2).

Mr. Shakoor testified that he was made aware that the video was shown to the entire staff of Montclair Public Schools and that he believes the video was appropriate (Tr. 7, p. 1085, lines 3-25).

Dr. Putrino

Dr. Putrino testified that he would not have shown the video if he knew people would be offended by it.

Because I'm now aware that some people were offended. Again, you know, my whole purpose is to help people, not hurt people. Why would I choose that moment to knowingly hurt people? It just doesn't make sense. My goal was to make people laugh. The message in the video was appreciate teachers and remember to laugh when times are hard.

If I would have known that that video was offensive to anyone, in any way, had a clue about that, I wouldn't have, I wouldn't have shown it. Up until that point, everybody I showed it to thought that video was funny and either passed it on or passed it to me (Tr. 9, p. 1576, lines 12-25).

He was asked if he thought the portion about drinking the soap and smoking the soap was appropriate; Putrino responded

I don't think the comedian meant it to be inappropriate. I think the comedian was just kind of listing a bunch of things and saying whatever things came to his mind. I don't think he was trying to imply anything. And I understand that some people read into that and were offended by it, which to me is enough that I wouldn't have shown the video (Tr. 9, p. 1578, line 24 through p. 1579, line 7).

Respondent's Documentary Evidence

Putrino 204:

Email from the President of the Renaissance PTA, Beth Calamia Scheckel notes that Renaissance Middle School was a previously unpopular school until Dr. Putrino took over. Specifically, she noted that Putrino knows every child by name and welcomes them into school each morning. She also notes that Putrino is being used as a scapegoat for collective societal outrage against racism.

Putrino 205-207:

Email from Holly Shaw, mother of three children in the school system, as a letter of support for Dr. Putrino. Shaw notes that a quick decision was made without an investigation, and that labeling someone a racist without a proper investigation is very accusatory. She also noted that she had seen Mr. Pray's video before on the Today Show and was clearly vetted by producers of the morning news show. She encouraged the school to reinstate Putrino.

Putrino 209:

Email in support of Dr. Putrino from Lisa Wigdor, noting that her children previously were in schools where Dr. Putrino was principal. Wigdor noted that Putrino is energized, thoughtful, bright, organized, and competent. She asked him to reconsider his decision to remove Putrino.

Putrino 214:

Email from Shashana Smiley, an employee who was not offended by the video. Smiley noted that, through Mr. Pray's video, she noted that it expressed the difficulties facing parents trying to home school their children. She further noted that she has worked with Dr. Putrino for two years and that he has never shown any racial bias towards her or anyone that she knows. She attested that

Putrino is compassionate to students and staff of all races. She further noted that she did not find the video racist, while she understood that some may be offended, the video was not shown in a racist way. Smiley noted that she has known Putrino for 17 years and that he is a person of integrity.

Putrino 215:

Letter from Peter & Mary Anne Vaughn, noting that they have known Dr. Putrino for over 10 years and that he is professional, dedicated, respectful and effective school administrator. They further stated that the idea that he is at all biased, racist or disrespectful to anyone is “simply preposterous.” The letter goes on to state that Putrino’s number one priority has always been the success of the schools. It also noted that Josh Pray is a very well respected, popular comedian who has done a series of honest and funny sketches on the challenges of homeschooling. They further asked to reconsider their actions taken against Putrino.

Putrino 216:

Email from Sue Weintraub, PTA President of Northeast and Glenfield Schools, provided a statement of support for Dr. Putrino, noting that he was professional, thoughtful appropriate, and decent.

Putrino 222:

Dr. Putrino was one of the best, if not the best, principals they have seen in Montclair Public Schools. They state that the fact that there was not an investigation or any ability to remediate is extremely concerning.

Putrino 226:

Email from Diane Garland, noting that her children formerly had Dr. Putrino as a principal. She worked with Putrino as a board member of the PTA for Northeast and Glenfield schools, when he was the principal there. She noted that Putrino cares and is involved in the community. She stated that she viewed the video and saw that the intent of it was to be humorous, as the video is of a funny, stressed-out father. She also noted that the father in the video could be any nationality or race, and that the message is to appreciate teachers.

Putrino 231-232:

Email from Louis D’Amico, retiree after 40 plus years of teaching music in Montclair, in support of Dr. Putrino, noting that Putrino was his immediate superior as the assistant principal of Hillside Middle School. He noted that when Putrino was in this role he was a disciplinarian and would give a gentle consequence. Putrino would put emphasis on why the bad choice was made and seek a reason. He also noted that Putrino loved the students and they loved him. He would ascertain the child’s circumstances outside of school and follow up with the child to see how they were doing. He also was fully engaged with the student body and would play ball with them during recess.

Given the undersigned’s analysis of the video which reveals commendable messaging but through Pray’s comedic style which involves speaking exaggeration, exacerbation, speaking

loudly and, at times, in an uneducated manner, I cannot dismiss the charge since (for the above reasons) there was a risk of offending at least a portion of the convocation audience. Having said this, however, I find that two of the core allegations against Dr. Putrino cannot be sustained: (1) Pray’s video perpetuating “The Myth of the Angry Black man” and (2) “During Dr. Putrino’s presentation, numerous staff members, District parents, as well as members of the public objected to and were offended by the video. As a result, the video was stopped by District administration”. (Ex. G through K, and O through P)”.

The first accusation is pulled directly from the September 2, 2020 “Tap Into Montclair” Newspaper Article (Ex. M), i.e., that the video portrayed a Black man “yelling angrily about his children’s virtual learning experience”, a/k/a, the Myth of the Angry Black Man. Although the myth may not be known by everyone, a useful article on the subject – noted by Petitioner in its brief – is set forth below.

Emmanuel Acho on The Myth of The 'Angry Black Man' - Pan Macmillan¹⁰

Former NFL player and current Fox Sports analyst Emmanuel Acho explores the myth of the angry Black man, and the ways in which this damaging stereotype has been amplified and weaponized.

To understand the Angry Black Man stereotype and why it’s so harmful, we have to take a trip in the wayback machine to 1915. By this time, Black people had been legally free from enslavement for fifty years thanks to the Civil War and the passing of the Thirteenth Amendment. Two other amendments to our Constitution, the Fourteenth and Fifteenth, made Black people US citizens and gave Black men the right to vote, respectively. Things appear to be looking up for Black folks, right?

Ah, no. In fact, by 1915, Black Americans had been stripped of many of the gains they made during Reconstruction – the short-lived period of racial progress made right after the Civil War. During Reconstruction, several Black men were elected to local, state and national office. Afraid of losing their grip on power, white people used laws, violence and downright dirty lies to regain control over Black people.

¹⁰ <https://www.panmacmillan.com/blogs/general/emmanuel-acho-myth-of-the-angry-black-man>

One of the most enduring lies white people ever told about Black people is that Black men are predators out to harm white people. This myth is the granddaddy of the Angry Black Man myth. And D. W. Griffith made a fortune from this lie by using one of the newest inventions of his day – film – to launch one of the world’s most dangerous and long-lasting slander campaigns.

Enter Griffith’s film, the world’s first blockbuster hit, *The Birth of a Nation*. Imagine being a kid in 1915 and going to a movie theater to watch the most anticipated film of the summer. You take your seat and begin shoving handfuls of popcorn into your mouth as the lights go down and the film begins to roll. The movie is a reimagining of the Civil War and the period after it, Reconstruction. As the film rolls along, you notice that the main Black male characters are actually played by white men wearing blackface. Even more shocking, those characters also happen to be the movie’s primary villains. They are overly aggressive menaces and downright threatening, especially toward white women. At one point in the movie, a ‘Black’ man – played by a white dude in blackface – proposes marriage to a white woman. She’s so distraught over the idea that she runs and jumps off a cliff. Triumphant music swells (it was the first movie ever to have a full orchestral score), and the audience breaks into applause. That’s right. People all around you are clapping because the white woman in the movie would rather die than marry a Black man. What do you think their reaction and this film teaches you to believe about Black men? *The Birth of a Nation* was a huge success. Then-president Woodrow Wilson screened it at the White House and is said to have commented, ‘it is like writing history with lightning. And my only regret is that it is all so terribly true.’ In fact, the daring nature of the film rocked the country. Not only did it strengthen racist ideas about Black men across the fruited plain, it did so using cutting-edge film techniques like closeups and epic battles, ensuring it would also be a film people talked about for decades to come. Filmmakers and moviegoers in other parts of the world watched the film, picking up new film skills as well as infectious racist ideas.

The Birth of a Nation also inspired the rebirth of the Ku Klux Klan – a murderous white supremacist terror group. In the film, members of the KKK are depicted as heroes, riding in like the cavalry to protect Southern whites, white women in particular, from the clutches of menacing Black men. Many white people believed this myth. The murderous practice of lynching often had at its heart the goal of protecting the chastity of white women, or so white men claimed. Remember Emmett Till. The fourteen-year-old teenager was brutally murdered by two white men in 1955 after he was accused of whistling at a white woman. Decades later, the white woman who accused him, Carolyn Bryant Donham, admitted that Till never touched, threatened or harassed her. She had lied. And for that lie, Till, sadly, like so many Black men before him, paid with his life. This myth was used as a convenient excuse to harm any Black man or Black neighborhood white people deemed ‘too uppity’ (i.e., successful) for their comfort.

As with many myths, the Angry Black Man does have a kernel of truth to it. Not

the systematic assault on white women – the anger. In the time of slavery, Black men, women, and children were regularly abused by white people. Now, imagine you were a Black man, a father, and a husband, and you had to watch your loved ones be brutally treated by a white master or overseer. Day in and day out. White men and women even had the authority to sell your children or your wife away from you. And there was nothing you could do about it. Try to imagine the kind of hurt and anger you'd feel if this happened to you or to your children. And this would go on for generations. Added to this agony is the reality that at any moment, your life, and the lives of your loved ones, can be taken by white mobs for almost any trumped-up reason. Especially if you are accused of touching, disrespecting, harassing or harming a white woman.

Let's bring it back to the present. These destructive stereotypes and perceptions about Black people are still alive and well in America and still threaten the lives of Black people even today. Those intent on doing Black people harm weaponize these stereotypes by in turn 'weaponizing whiteness.' We've already seen an example of this, with the murder of fourteen-year old Emmett Till. More recently, you may have heard of Karen, or rather, Amy Cooper, who, on May 25, 2020, called the cops on a bird-watcher in Central Park because he wanted her to leash her illegally unleashed dog.

Bring it back up to the present, and this is what makes a George Floyd possible, a Trayvon Martin – anytime someone has been seen as a threat because they've first been seen as Black . . .

Based on the video as the best evidence, in my opinion, Petitioner has failed to sufficiently show that that the Pray video portrayed a Black man **yelling angrily** about his children's virtual learning experience or, stated differently, that Pray was perpetuating the "Myth of the Angry Black Man". It is acknowledged that Dr. Putrino testified that he was aware of the Angry Black Man stereotype. Obviously, Putrino did not believe it applied to the Pray video. Nor do I. Indeed, I infer that Pray, a Black man, did not make the video involving his own Black children with the intent to perpetuate racial stereotypes. Rather, Pray, with comedic emphasis, projects himself similar to comedian Kevin Hart, i.e., exacerbated, winded at times and, in Pray's case, at his wits end over his daily observations of his own two children during remote learning. It is this experience which provides the foundation for his newly found gratitude toward teachers – which is the message clearly intended by Dr. Putrino. In fact, the end of the Pray portion of Dr. Putrino's

presentation leads into an on screen message, “Case Closed! You are appreciated!” (referring to the tremendous services teachers provide to students and their families).

That Mr. Pray speaks loudly does not mean that he is perpetuating anger or the “Myth of the Angry Black Man”. Pray, for example, is not behaving in a manner which would cause anyone to feel intimidated, i.e., that he may become violent. It does not evoke the emotion propagated in Birth of a Nation, i.e., that harsh action must be taken against Blacks in order to protect Whites, White women in particular. That Pray states at one point that “I’m out of control” does not mean that he is even out of control due to anger. Putting aside the comedic context where any reasonable person would conclude that Pray is literally not “out of control”, people certainly can be out of control due to a variety of emotions, e.g., anger, fear, joy, sadness, tiredness, or being exacerbated over a situation. At the very least, Petitioner has not sufficiently demonstrated that the Pray video unambiguously depicts an angry Black man any more so than it depicts an exacerbated man now responsible, for the first time, with monitoring his children’s education every day during remote learning. Thus, based on the video alone, I find, Petitioner has failed to sufficiently demonstrate one of its core accusations against Dr. Putrino, i.e., that Putrino perpetuated the “Myth of the Angry Black Man”.

As to the second specification, Dr. Ponds testified that when he viewed the comments in the chat, he had to stop the video because it was difficult for him to watch and also the chat was “really blowing up.” When asked about what the comments stated, Ponds said that they were “pretty bad” but that he can’t remember them (Tr. 1, p. 59, lines 20-22). Ponds further testified that the director of technology could not retrieve them (Tr. 1, p. 59, line 23 through p. 61, line 4). Thus, I find, the best evidence of gauging how many of the 1100+ convocation viewers expressed being offended prior to the video being shut down no longer exists.

In addition, Ms. Anglin testified that she was receiving text messages and emails during the video expressing outrage. However, either Anglin did not preserve the text messages and emails, she did not produce them, or she exaggerated. Again, the best evidence in support of Petitioner's allegation would have been the actual text messages and emails which, for reasons unknown, were not produced by Petitioner in its Statement of Evidence or otherwise.

Lastly, I observe, nothing precluded Petitioner from soliciting staff, parents or other member of the public to testify (or provide a written statement) as to having expressed offense or outrage during the convocation. Rather, after 13 months to piece its case together, Petitioner adduced the testimony of witnesses who brought forward the Tenure Charges (Dr. Ponds and Mr. Cooper), neither of whom expressed concern in the chat prior to the video shutting down; Rodney Jackson, who acknowledges that he had no reaction to the video, but recalls observing the chats; and Mr. Graber, who also did not express offense or outrage during the presentation and prior to the video being shut down. Although Petitioner introduced a handful of emails received from certain staff and members of the public, those exhibits reflect after-the-fact expressions of discontent over the video.

Also notable, while Petitioner remained free to argue that the Pray video had the potential of offending numerous staff members, parents, and members of the public, unfortunately the tenure charges filed speak in conclusory language, i.e., that numerous persons not only were offended and outraged, but they expressed their outrage prior to the video being shut down. Consequently, in the end, Petitioner must be held to its burden of proof and cannot rely instead on a mere assertion.

Based on the foregoing, due to an insufficiency of competent evidence or evidence which only leads to one reasonable conclusion, I dismiss those portions of the tenure charge alleging that Dr. Putrino showed a video of a Black man "yelling angrily" about his sons' remote learning

experience and that numerous people expressed outrage in the chats prior to the video being shut down.

In addition to the dismissal of two core allegations contained in the tenure charge, there are other significant factors of mitigation in support of a reduced penalty. Generally speaking, in evaluating the propriety of the dismissal penalty, relevant factors “include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher’s prior record and present attitude, the effect of such conduct in the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring.” In the Matter of the Tenure Hearing of Erroll Goodwater, School District of the City of Camden, Agency Docket Nos. 185-7/11 and 187-7/11 (April 27, 2012). The Commissioner has previously stated that “unfitness to remain a teacher is best demonstrated by a series of incidents but might be shown by a single incident if sufficiently flagrant”. In the Matter of Norma Pollard, 96 N.J.A.R. 2d (EDU) 170 at 190.

Although the teacher in Pollard was found to have committed several offenses requiring dismissal from employment, the Commissioner found that even “the single allegation that respondent placed several pupils in a closet as punishment is sufficiently flagrant to warrant dismissal.” Pollard, supra, at 190. Goodwater stands for the proposition that length of service alone is not reason to deny a penalty of termination if the act underlying the tenure charge is “sufficiently flagrant” under Fulcomer, supra, and Pollard, supra. However, arbitrators may rely on the teacher’s prior record in determining the appropriate penalty if the past record is inherently relevant to the current offense. In the Matter of the Tenure Hearing of James Dunckley, Rockaway Township, 2018 N.J. Super. Unpub. Lexis 615 (App. Div. March 19, 2018); West New York v. Bock, 38 N.J. 500 (1962).

Initially, it must be observed that this matter stands on its own unique facts. Petitioner sees only racism in the video with little recognition as to the underlying messaging. Respondent does not see racism in the video at all, instead, believing that he showed a humorous video as a means to convey an important message to all teachers, regardless of race. The witnesses of each party espouse similarly mixed viewpoints of the video and there is implicit uncertainty even on the part of Dr. Ponds. Given these findings, I first note that this matter is clearly distinguishable from the precedent offered by Petitioner in support of the dismissal penalty.

For example, in Karins v. City of Atlantic City, 152 N.J. 532, 554 (1988), a firefighter was removed from employment for uttering a racial epithet at on-duty police officer during traffic stop. Specifically, Firefighter Karins was intoxicated. One white police officer pulled Karins over to the side of the road. A Black officer arrived on the scene as backup. Since the white officer knew that Karins was an Atlantic City firefighter, he was essentially treating him with kid gloves, i.e., lecturing him on the hazards of drinking and driving but not subjecting him to a sobriety test. When the white officer greeted the Black officer with “Hey Bro”, Karins interjected, “*Oh no, don’t start that nigger shit with me.*”

Karins bears absolutely no similarity to Dr. Putrino’s showing of the Pray video which was perceived as offensive by some and humorous by others, including several Black educators and staff members. In contrast, no one could possibly find that using the “N” word in this context was humorous.

In Chaki, the Commissioner concurred with the ALJ's findings that:

- ... Chaki made stereotypical and derogatory racial and ethnic statements to her first-period Honors Chemistry class at Franklin, including the following characterizations: African American students, and African Americans in general, as "lazy," or words to [*5] that effect; Hispanics as a labor force, or words to that effect; Caucasians as having average or inferior industry and means, or words to

that effect; and Asians as an intellectually and economically superior "brainpower," or words to that effect.

- At that time, Chaki also made reference to her personal economic status as being superior to others.
- Most if not all of the students were shocked and offended by Chaki's statements.
- The statements were entirely inappropriate in a classroom setting, and completely insensitive to the students.

(Initial Decision at 11-12.)

Here, unlike the teacher in Chaki who made generalized statements knowingly stereotyping all Blacks, Asians, Caucasians and Hispanics, Dr. Putrino did not make disparaging statements (alone or via Josh Pray) about anyone or even speak in generalities, expressed or implied, about all Black people. Nor is there evidence that Putrino directly offended students.¹¹

Furthermore, this matter is inapposite to In the Matter of the Tenure Hearing of Mark Blasko, Cherry Hill School District, Camden County, 1980 S.L.D. 987 (Initial Decision), 1980 S.L.D. 1002 (Commissioner Decision). In that matter, the ALJ/Commissioner found that Blasko had engaged in three separate incidents of conduct which garnered laughs from his seventh grade students, but which were, nonetheless, deemed offensive: (1) Blasko directed students to raise their hands if they were Jewish and then directed them to return "Christmas candy" given out to the remainder of the class; (2) he called one Jewish student over and measured his nose with a ruler, exclaiming that he "would like to measure a Jewish kid's nose". He then went on to measure his own nose, exclaiming "look at mine; he then measured other students noses as they filed out of the classroom; and (3) speaking another time with the same student whose nose he measured, the student informed Blasko that he had secured a summer job. Blasko replied that he thought "Jewish

¹¹ In many tenure and non-instructional disciplinary cases, redacted student statements are provided to show (1) that the students witnessed an event and (2) how witnessing the event impacted them. As to the subject of student witnesses, this record is barren.

kids didn't have to work" and if they needed five or ten dollars you simply ask your parents." The Commissioner in Blasko, in rejecting the educators defense that it was a joke, noted that "[t]he Commissioner cannot condone the use of ethnic materials, jokes, or actions that ridicule any racial group directly or by implication"

Here, the undersigned's comments above are incorporated by reference. Moreover, the educator in Blasko was plainly addressing the size of a Jewish student's nose based on a stereotype of all Jewish men. Conversely, nothing in Dr. Putrino's presentation objectively leads one to believe that Putrino was consciously or unambiguously portraying (via Josh Pray) all Black men in any sense. Also, Mr. Blasko was unambiguously and without debate humiliating Jewish students in his class in a way that no one could possibly step forward and find humorous, save for a handful of seventh grade students, who likely did not know what emotion to express in real time. Thus, I find, the instant matter is significantly distinguishable from Blasko.

In the Matter of the Tenure Hearing of George Zofchak, Board of Education of the City of Trenton, Mercer County, 2002 N.J. AGEN LEXIS 564 is also opposite. A teacher was found guilty of, among five other charges, a sixth charge relating to the following remarks:

I **FIND** that there is insufficient evidence to support a finding of guilt as to whether respondent is guilty of making defamatory statements to a student in September 2002 (P-30), when a student complained that Mr. Zofchak used childish and taunting language when disciplining the student. However, I **FIND** that on January 5, 1994, Mr. Zofchak said to the students in the Opportunity Room that they were "acting like monkeys and gorillas". I **FIND** that in February 1994, when students were discussing that a White Castle had been raided for the sale of illegal drugs, Mr. Zofchak stated that it should be called "Black Castle" instead of White Castle. I **FIND** that in April 1995, Mr. Zofchak, by his own admission and within the hearing of other school employees, referred to students as "fucking pigs" and "fucking animals" after some of them had thrown ketchup on Mr. Zofchak's shirt during lunchtime. Mr. Zofchak acknowledged that he was referring to the [*79] students. I **FIND** that these amount to the making of defamatory statements to or about students, and that respondent is **GUILTY** of this charge (Charge Two).

The dissimilarity between Zofchak and this matter is obvious. The statements of Zofchak are intentionally racist and expressly involve invidious characterizations of Blacks as a class.

Similarly, I find inapposite In the Matter of the Tenure Hearing of Ward Campbell v. Board of Education of the Princeton Regional School District, Mercer County, 95 N.J.A.R. 22 (Edu) 2011 (N.J. Adm), 1995 WL 507876 (made overtly racist comments to four students, sexist comments to another student and physically shoved another student, among other offenses).

In sum, the precedent provided by Petitioner – presumably the closest on point – involved use the “N” word; overt or intentional acts of discrimination involving generalized stereotyping of Blacks or Jews as a group; and misconduct which really has no reasonable counterpoint. In my opinion, such precedent stands in sharp contrast to Dr. Putrino’s actions under the totality of the circumstances presented.

Independent of the precedent deemed inapposite, however, Dr. Putrino must take responsibility for those unquantified convocation viewers, including staff, who were hurt or offended. Also, Dr. Ponds was perhaps most hurt by the entire experience. Ponds was a new superintendent launching the official start of his first school year on the day of the convocation. Like the memory of newlyweds on the receiving end of a horrible wedding day toast, Dr. Ponds’ memory of September 2, 2020 may fade, but it will likely never go away. Thus, even though Dr. Putrino did not realize that the Pray video could backfire on him, the hurt caused to at least some of the 1100+ and Dr. Ponds in particular cannot be minimized. Thus, even if liability is based solely “on the buck stops here” principle, the hurt caused must be factored in.

Having said this, I must reject Petitioner’s attempt to amplify the seriousness of Dr. Putrino’s offense by way of reliance on the murders of George Floyd, Ahmaud Arbery and Breonna Taylor. The assertion here is that somehow due to the tragic events which occurred from

February of 2020 through May 25, 2020, Dr. Putrino – even though he did not see the backlash coming - should have been more sensitive to the feelings of the Black community when he presented the Josh Pray video on September 2, 2020. Testimony from one of Petitioner’s witnesses said that “Montclair was on fire during the summer.” Although I would not have been upset if Petitioner omitted this line of argument in support of its tenure charges, the fact that it did leaves me no choice other than to address it. In doing so, the relevant timeframe of the protests over these tragedies must be placed in context.

On February 23, 2020, Ahmaud Arbery, an unarmed 25-year-old Black man was murdered by three civilians while jogging through a White neighborhood. On March 13, 2020, Breonna Taylor, a 26-year-old Black Woman was fatally shot in her apartment. On May 25, 2020, George Floyd was murdered by Derek Chauvin as aided by three other Minneapolis police officers. Montclair schools, a diverse school district in New Jersey, was very involved in the protests which occurred worldwide. In fact, people of good conscience, of all races, ethnicities, religions, etc., protested the injustices, especially after George Floyd. Dr. Putrino participated and even facilitated some of the activities in protest of George Floyd’s murder.

However, it is clear that the protests calmed following the arrest and charging of Derek Chauvin. A New York Times timeline of protests over George Floyd’s murder culminates on June 3, 2020 when charges were filed against Derek Chauvin and the other Minneapolis police officers.¹² The senseless killings of Arbery and Taylor were almost six months old by the middle of the summer of 2020 and had been somewhat overshadowed by the George Floyd murder. Thus, while the horrific acts of racism witnessed by the nation in 2020 will no doubt be etched in the

¹² The New York Times, “George Floyd Protests: A Timeline” by Derrick Bryson Taylor (November 5, 2021). <https://www.nytimes.com/article/george-floyd-protests-timeline.html>

minds of all concerned for many years to come, I find that the level of outrage burning prior to Chauvin's arrest had at least dropped off in terms of protests two to three months prior to Dr. Putrino's showing of the September 2, 2020 video.

Moreover, invoking the names of Floyd, Arbery and Taylor in the context of Dr. Putrino showing the Josh Pray video, if anything, diminishes the import of those tragedies. Dr. Putrino bears no resemblance to Derek Chauvin or the trio who killed Ahmaud Arbery. Similarly, I find, that an unknown portion of convocation viewers may have been offended by the words and mannerisms of a Black comedian cannot be possibility compared with the victims of murder at the hands of racists private citizens in Georgia, and at the hands of police officers in Minneapolis. Thus, for these reasons, I reject Petitioner's attempt to amplify the alleged severity of Dr. Putrino's offense by way of its unfortunate reference to the racially motivated or disparate treatment murders of Taylor, Arbery and Floyd.

In addition, since Petitioner elected to eschew any kind of meaningful investigation, it did not become privy to, let alone evaluate, several mitigating factors, such as, the reasonable opposite view of the video expressed by several Black employees of the District or Dr. Putrino's prior longstanding record of positive endeavors in the areas of race relations. Since the good faith opposite view of the video has already been addressed, I will next address Putrino's prior record in the area of race relations.

Arbitrators may rely on the teacher's prior record in determining the appropriate penalty if the past record is inherently relevant to the current offense. In the Matter of the Tenure Hearing of James Dunckley, Rockaway Township, 2018 *N.J. Super. Unpub. Lexis* 615 (App. Div. March 19, 2018); West New York v. Bock, 38 *N.J.* 500 (1962). Putrino's prior record is inherently relevant to the implicit allegations of racism underlying Petitioner's disciplinary

action against him. A review of his record in this area both inside and outside of his employment is more than commendable:

Dr. Putrino

Dr. Putrino, while Principal of Glenfield Middle School, hired Dr. Samantha Anglin, a Black woman, as his vice principal in 2013 (Tr. 8, p. 1146, line 7 through p. 1147, line 1147). Putrino had a role in having her hired as the assistant principal through his recommendation to Dr. Penny McCormick and Ms. Felice Harrison (Tr. 8, p. 1148, lines 4-9). Anglin subsequently became the principal of Hillside Elementary School (Tr. 8, p. 1149, lines 8-9). Mike Chiles called Putrino for a recommendation for the position. Putrino recommended Anglin (Tr. 8, p. 1149, lines 12-15) and that he gave Chiles a “history of her success and experience at Glenfield” (Tr. 8, p. 1150, lines 6-8). He further testified that it was clear that Anglin was “destined for leadership” (Tr. 8, p. 1150, line 9).

Erika Pierce, a Black woman, who testified that she found the Pray video to be humorous and not offensive, became Vice Principal after Dr. Anglin on Dr. Putrino’s recommendation (Tr. 8, p. 1148, lines 17-19). Putrino, as the principal, was in charge of the committee to solicit candidates, and then also ultimately the one charged with making the decision of who to recommend to the superintendent and the Board of Education (Tr. 8, p. 1148, line 21 through p. 1149, line 1). Putrino testified that he recommended Pierce for the position of assistant principal following Anglin (Tr. 8, p. 1149, lines 3-5). Currently, Pierce is the principal of Glenfield Middle School (Tr. 8, p. 1150, lines 14-15).

Pierce further testified that Putrino was “a very inclusive leader” and that he was “dedicated to making sure all children could succeed and thrive in a comfortable learning environment” (Tr. 7, p. 896, line 23 through p. 897, line 1).

Ms. Pierce testified that restorative justice was implemented in Glenfield under Dr. Putrino:

Q: Could you describe how that [restorative justice] played into the administration of Glenfield?

A: So Dr. Putrino was one of the first administrators to be restorative justice trained. And so once he came back from that training, even though I wasn't trained at the time, I knew that RJ was the driver in how we looked at all disciplinary issues and also our relationships with students (Tr. 7, p. 897, line 19 through p. 898, line 2).

Ms. Pierce went on to explain restorative justice:

A: So my understanding of restorative justice is that students are required to repair any type of harm that they caused based on their behaviours, and also to look more introspectively into their behaviours and why they did what they did. So if we had a student that, you know, had some type of disciplinary infraction and it was a conflict with another student, let's say, not only would they get a consequence for their actions, but they would also be required to go back to that student, or whoever, whatever staff member, whoever they got into a conflict with, and they had to make sure they were repairing the harm that they may have caused in the midst of the conflict (Tr. 7, p. 898, lines 7-22).

Ms. Pierce testified that she never saw any hint of bias by Dr. Putrino during her time working with him at Glenfield (Tr. 7, p. 901, lines 18-20):

So a lot of our discussions were always based around discipline when it came to inclusion. Because a lot of times you will see with staff members that bias, implicit, whatever, would usually come out in disciplinary practices or during times of the day that were unsupervised.

And so whenever there were disciplinary actions that were taken, like if a teacher brought a grievance to us, we would always discuss what would be the most fair consequence for the student by looking at all aspects. We would look at past behaviour.

We would look at maybe their motivations for why they did what they did. Is the student classified; do they have this pattern of behaviour. Does this teacher have an issue with the student.

It was a very well rounded and methodical approach to discipline as opposed to, oh, the student hurt somebody, we're just going to suspend him (Tr. 7, p. 902, lines 1-23).

Finally, Ms. Pierce testified that Dr. Putrino worked closely with the Montclair Neighbourhood Development Corporation as well as the NAACP, (Mr. Pelham was involved with both organizations) (Tr. 7, p. 906, line 18 through p. 907, line 7). She described the working relationship between Putrino and Pelham as “a positive working relationship and it was a partnership” (Tr. 7, p. 907, lines 12-13). All of this stands in sharp contrast with Pelham’s unsupported September 2, 2020 statement that Putrino had a long history of racial insensitivity.

Dr. Putrino had a part in physical education teacher Yvonne Shannon, a Black woman, receiving the Governor’s Educator of the Year Award for her work at Glenfield Middle School (Tr. 8, p. 1161, line 4 through p. 1162, line 4).

During Martin Luther King, Jr. Day (2020), Dr. Putrino went door-to-door and hosted a project called Light Up the Streets, donating hundreds of little white votive candles in paper bags; went door-to-door handing out supplies to draw or write messages on the bags (Tr. 9, p. 1440, line 21 through p. 1441, line 1). That night, everyone put their bags out on the curbs, and the streets in Orange, N.J. were lit up in honor of Dr. King and his message (Tr. 9, p. 1441, lines 2-5).

Dr. Putrino helped Shashana Smiley gain an internship with a special education teacher when Smiley was in college and he was the principal of Glenfield Middle School (Tr. 10, p. 1629, lines 7-12).

Dr. Putrino, as Principal of Glenfield Middle School, created a newsletter titled “Glenfield Happenings” in order to communicate with families about events at the school (Tr. 8, p. 1152, lines 5-18) (Ex. R11). In January 2014, Glenfield Happenings spotlighted Martin Luther King, Jr. and the “most important assembly” that they have all year (Tr. 8, p. 1153, line 19 through p. 1154, line 11). Dr. Putrino also highlighted Maya Angelou (Tr. 8, p. 1155, lines 1-2). Putrino testified that he “started a tradition where every year we would highlight a prominent person reflective of

Dr. King's message" (Tr. 8, p. 1155, lines 4-6). Putrino, who is an artist, further testified that in that particular year he had students paint a portrait of Maya Angelou (Tr. 8, p. 1155, lines 6-17). Putrino sketched out Angelou's portrait for the students to paint, and that he did that every year for whoever they were featuring (Tr. 8, p. 1160, line 24 through p. 1161, line 3). In 2017, for example, Putrino assigned students to do a live painting of a portrait of Barak Obama (Tr. 8, p. 1160, lines 16-23).

In January 2017, Dr. Putrino had Rabbi Israel Dresner, who was a freedom rider with Dr. King, come speak at the assembly (Tr. 8, p. 1157, lines 9-20). Putrino also testified about Glenfield Happenings discussing Dan Gill, a social studies teacher at Glenfield Middle School, come tell his story "Arthur's Chair" (Tr. 8, p. 1158, lines 7-21). Putrino testified that Dan's story, "Arthur's Chair," is about Dan growing up with a Black friend in a predominantly white neighborhood; Dan brought his Black friend (Arthur) to a party and the mother at the door said that Arthur could not come in because they didn't have a chair for him (Tr. 8, p. 1158, line 22 through p. 1159, line 6). Putrino testified that Dan did not attend the party and has since sought to use his missing chair as a symbol for always having a chair for every student in his classroom (Tr. 8, p. 1159, lines 7-10).

In addition, on an annual basis, Dr. Putrino hosts the Alpha Lambda Chapter of Alpha Phi Alpha fraternity competition for young male students to write an essay on the world today, as filtered through the eyes of Dr. King (Tr. 8, p. 1159, lines 18-23).

Dr. Putrino also had an assembly about the Innocence Project, where he had Gerald Richardson, a Black man, who was previously incarcerated for 30 years, come and speak to students about the challenges you can face in life, about life decisions, and resilience (Tr. 8, p. 1164, line 15 through p. 1165, line 2).

Dr. Putrino also discussed how he supported and grew African American Career Day in celebration of Black History Month (Tr. 8, p. 1166, lines 3-12). At African American Career Day, Putrino had upwards of 40 to 45 community members speak to the students about different career paths (Tr. 8, p. 1166, lines 13-15).

Dr. Putrino deemed it important to bring the story of Montclair to his students; to highlight Montclair's march to desegregate schools; to bring in speakers to speak about their experiences in the civil rights movement in Montclair; to bring in speakers about their experiences with "redlining" in Montclair (Tr. 8, p. 1169, lines 1-25; p. 1170, lines 1-25; p. 1171, lines 1-25; p. 1172, lines 1-25), etc.

Dr. Putrino testified that he was so inspired by African American Career Day at Glenfield Middle School, that when he became principal of Renaissance Middle School, he created the Black History Month celebration and "community building" (Tr. 8, p. 1168, lines 19-25). This particular event was held in October and was a community building activity, highlighting Montclair's diversity, its role in the Civil Rights Movement, and its unique strategy for desegregating schools (Tr. 8, p. 1169, lines 1-7).

Dr. Putrino used the advisory restorative justice period in the morning to have students discuss questions related to civil rights and diversity in Montclair for the duration of the month (Tr. 8, p. 1170, lines 2-9). Putrino invited 20 or so prominent people from the town, parents, grandparents, teachers, lawyers, actors, board president, NAACP representatives, etc. to come and speak to students regarding civil rights (Tr. 8, p. 1170, lines 10-22).

Dr. Putrino sent out a newsletter following the murder of George Floyd as an all-inclusive message to unify the school community and to make sure the community knew where the school stood on this issue (Tr. 8, p. 1176, line 16 through p. 1177, line 5).

Dr. Putrino implemented the same program at Renaissance that they had at Glenfield, the full school assembly for Martin Luther King, Jr. Day (Tr. 8, p. 1180, lines 13-20). Putrino would begin playing the “I have a Dream” speech over the intercom, and then students would do a silent march to the all-purpose room where they were met with the video of the speech, and then the assembly would start – with bands, guest speakers, and dancers (Tr. 8, p. 1181, lines 4-18).

Dr. Putrino also marched in the annual African American Heritage parade (Tr. 8, p. 1194, line 20 through p. 1195, line 2). Putrino created a weekly bulletin to send out to the staff at Renaissance Middle School (Tr. 8, p. 1219, lines 1-3). He wrote a poignant piece about the murder of George Floyd to punctuate the tragedy (Tr. 8, p. 1219, lines 12-20).

Finally, Dr. Putrino testified about the MPA caravan to highlight the community’s feelings about the murder of George Floyd and against police brutality (Tr. 8, p. 1221, lines 7-16). The caravan was organized by Putrino and Gayl Shepard (former MPA president and restorative justice leader in the District) (Tr. 8, p. 1222, lines 20-24). Putrino also had the students make signs regarding how they were feeling in the aftermath of George Floyd to hang on the fence outside of the school (Tr. 8, p. 1222, lines 1-13).

Rodney Jackson

Mr. Jackson testified that he worked with Dr. Putrino at Renaissance for two years (Tr. 3, p. 466, lines 6-9). Both teachers when they worked together (Tr. 3, p. 466, lines 13-14). As the leader of TURN, Jackson acknowledged that Putrino was very supportive of Black Lives Matter week of action that they did at their school (Tr. 3, p. 466, lines 20-22, 495, lines 8-10 and p. 503, lines 7-10). Jackson acknowledged that Putrino was a part of their meetings, and that he helped organize the TURN meetings (Tr. 3, p. 466, line 23 through p. 467, line 1). Under Dr. Putrino,

Jackson received teacher of the year (Tr. 3, p. age 493, line 23 through p. 494, line 1 to 495, lines 8-10). He said he “believed” staff voted on it (Tr. 3, p. 494, lines 3-4).

When Dr. Putrino was principal, Jackson did not experience any issue or incident in which Putrino was not inclusive (Tr. 3, p. 502, lines 10-18). Putrino consistently tried to support racial justice and promote diversity and respect for diversity (Tr. 3, p. 502, lines 19-25). When Jackson was asked if Putrino implemented restorative justice at Renaissance, Jackson responded that he did not know – stating: “Did Dr. Putrino go to the District and say we want Renaissance to be a restorative justice school, I don’t know if he did that” (Tr. 3, p. 507, lines 22-25). He acknowledged, however, “Renaissance is a restorative justice school and Putrino was the principal of it” (Tr. 3, p. 507, line 25 through p. 108, line 1). Lastly, Putrino and he together attended an MLK breakfast, a Saint Mark’s breakfast, and an African American Parade (Tr. 4, p. 666, line 16 through p. 667, line 1).

Javon Pleasant

Javon Pleasant was asked to describe the impact Dr. Putrino had on him. Pleasant testified:

He was excellent. I mean, I probably speak for the majority of the students who were in that eighth grade class, that graduating class. But, number one, he made science fun. He made the classroom feel safe. He made us feel like he was interested, genuinely and sincerely interested in our education and making sure that we’re not only good people, but we’re good students. He was my homeroom teacher, right, so we switched classes. But there was always this feeling when am I going to get back into Joe’s class, right. It was fun to be there. It was just a, just a really great experience. And the impact he had on me, you know, obviously transcended into our relationship that we had beyond graduating from his class (Tr. 7, p. 1007, line 12 through p. 1008, line 4).

Mr. Pleasant testified that, “It felt safe to have conversations with him and to open up to him during that time” (Tr. 7, p. 1008, lines 23-25). Pleasant described his contact with Dr. Putrino during high school as follows:

It was one of those things where he was just more or less checking in, how is the workload, you can do it. And that type of, you know, mentorship, you know. Because I was struggling, you know, coming from, I thought I was the top of the class in PS 41 and then went to a school that was way more rigorous and tough and way more demanding. So the times he would check in, it was more of how is school going, let me know if you need help with this, let me know if you need help with this, are you entering a science project this year? I've got some really cool ideas for you. It was always that type of relationship.

You know, he knew the things that were kind of tough going on at home. So conversations would include how is mom, how are things at home. You know, just call me if you need someone to talk to. That type of thing (Tr. 7, p. 1038, line 7 through p. 1039, line 1).

He testified that having someone reach out to you through those high school years made him feel safe (Tr. 7, p. 1039, lines 18-22).

Mr. Pleasant testified that, after high school, he continued to have a relationship with Dr. Putrino, including attending barbecues at his house, meeting up to talk and have coffee, spending time with the Putrino family, e.g., attending Christmas parties and other small random events (Tr. 7, p. 1010, lines 14-22). Pleasant described Putrino as “a mentor” (Tr. 7, p. 1010, lines 22-23).

In fact, Mr. Pleasant had resided at the Putrino household in early 2006 because he was going through “personal stuff at home” and dealing with financial troubles (Tr. 7, p. 1010, line 25 through p. 1011, line 9). Pleasant had dropped out of school because he needed to work full time. He reached out to Putrino (Tr. 7, p. 1011, lines 14-19):

And, you know, both him and his wife were just on the phone together on speaker. And I was just kind of explaining what was going on at home. Long story short, you know, at the end of the conversation, it wasn't my intentions, but Joe offered for me to come stay at his home for a short amount of time just to kind of get away from what I was going through and kind of get back on track, what I aspired to do from an academic standpoint (Tr. 7, p. 1011, line 22 through p. 1012, line 7).

Mr. Pleasant testified that he moved in with Dr. Putrino and readmitted himself back into Montclair State University (Tr. 7, p. 1012, lines 9-22). He stayed with the Putrinos for seven or

eight months that year in 2006 (Tr. 7, p. 1012, line 25 through p. 1013, line 1). After that, with Ms. Putrino expecting, Pleasant, on his own initiative, moved into an apartment (Tr. 7, p. 1013, lines 2-5).

On cross-examination, Mr. Pleasant testified that he had his own bedroom in the Putrino's house, and that Dr. Putrino's in-laws also lived in an apartment in the basement (Tr. 7, p. 1047, lines 10-23). He never paid rent or paid for food, but he tried to not take advantage of the situation despite them offering to buy groceries he preferred, etc. (Tr. 7, p. 1048, line 6 through p. 1049, line 6). He spent most nights at the Putrino's, but sometimes stayed at his mother's one night a week to be close to work/his girlfriend or for family gatherings (Tr. 7, p. 1049, line 8 through p. 1050, line 3).

Finally, Mr. Pleasant testified that the small amount of time he was able to stay with Dr. Putrino was "huge" because it allowed him to re-enroll in school. Otherwise, he may not have returned to school and graduated, and he may not have had the profession that he has now (Tr. 7, p. 1013, line 16 through p. 1014, line 11). Pleasant insisted that Putrino never exhibited any bias (Tr. 7, p. 1014, lines 12-14).

Shashana Smiley

Shashana Smiley knew Dr. Putrino prior to working at Renaissance. Putrino was her sixth grade science teacher when she was a student at Renaissance Middle School (Tr. 7, p. 929, lines 12-18). Smiley stayed in touch with Putrino after being his student (Tr. 7, p. 929, lines 19-21). She had a mentor-mentee relationship with him (Tr. 7, p. 929, lines 22-25).

On cross-examination, Ms. Smiley testified that after she was Dr. Putrino's student, she maintained contact with him via email (Tr. 7, p. 961, lines 4-21). She testified that she would visit Putrino during her lunch period when she was in 7th and 8th grade. Smiley explained that Putrino

saw that she was struggling with her home life and that she was able to honestly confide in him (Tr. 7, p. 963, lines 5-24). Smiley was asked about how often she stopped by his classroom. She testified that it was about three times per week in 7th grade and maybe one time per week in 8th grade (Tr. 7, p. 964, lines 1-20). In 8th grade Smiley would email Putrino if she was having a bad morning and that he would respond and offer words of wisdom (Tr. 7, p. 965, lines 3-7).

On cross-examination, Ms. Smiley was asked about how often she visited Dr. Putrino when she was in high school and why. Smiley responded:

But the reason for my visits to Dr. Putrino was still for me to be able to still have a trusted adult in my life that was in the education system, that I could still talk to, that would offer me advice, that I could depend on.

And I understand that you are asking these questions to test my credibility. But I will say this. I said it to Dr. Putrino more than once. If I didn't have a strong moral compass in my life, and that would be Dr. Putrino, there are so many times where I would be stepping off the wrong path, and he was there to guide me back on to say maybe that's not the best idea. Maybe you don't want to do that. Think about other options, think about your future. And so many educators now don't take the time to do that with their students (Tr. 7, p. 970, lines 6-23).

Ms. Smiley maintained contact with Dr. Putrino after she graduated from Essex County College (Tr. 7, p. 930, lines 7-9). Putrino is now the godfather of Smiley's first child, her son (Tr. 7, p. 931, lines 10-15). She testified that she asked Putrino to be her son's godfather because "he has a strong moral compass, and when I was a student at Renaissance, I was going through a lot of things. And he was the only staff member who took the time to notice what I was going through. I felt safe and protected. And ultimately, I wanted the same for my children" (Tr. 7, p. 931, lines 17-23).

On cross-examination, Ms. Smiley clarified that Dr. Putrino is actually the godfather of both her son and her daughter (Tr. 7, p. 974, lines 7-9).

She stated:

Q: So when was the next time after you graduate that you had contact with Dr. Putrino?

A: When I was pregnant with my son. So 2015.

Q: So how did that communication come about, did you reach out to him, did he reach out to you?

A: I reached out to him and I let him know that I was expecting with my then fiancé and now husband. And I told him, I had a very heart-to-heart conversation with him, a very in-depth conversation with him.

And I told him that I appreciated his guidance as a student. I appreciated his guidance in my life at that point. And what I wanted for my child was someone who would make them feel safe, create a safe space, a judgment-free zone, just as he had created for me. And I asked him if he would be willing to be my son's godfather. And he said yes.

I then asked him when I was pregnant with my daughter in 2017, if he would be my daughter's godfather. And he said yes.

And at that point, I was married and our families had communicated with each other (Tr. 7, p. 973, line 6 through p. 974, line 6).

Lastly, Ms. Smiley testified that Dr. Putrino never exhibited any bias (Tr. 7, p. 937, lines 4-10).

Ibn Shakoor

Ibn Shakoor testified that Dr. Putrino was his eighth grade science teacher in 1999-2000 (Tr. 7, p. 1071, lines 5-6). He credited Putrino as a teacher and a person:

We just connected with him. Well, speaking for myself, I connected with him. He was just like a genuine person. He used to stay after school, offer extra time. And we just kind of, like, were in sync.

So from there, after eighth grade, throughout my entire, not just my academic career, but even developing as a young man, we just always stayed in contact (Tr. 7, p. 1071, lines 6-15).

Mr. Shakoor testified that their contact was mutual (Tr. 7, p. 1071, lines 18-19). He stated that he was having aspirations to be an educator and being creative and that Dr. Putrino was both

of those things. Thus, Putrino was a valuable resource and a go-to person for Shakoor (Tr. 7, p. 1071, line 25 through p. 1072, line 5). Shakoor maintained contact with Putrino through going out to eat, social media, talking over the phone, and also a professional connection (Tr. 7, p. 1072, lines 14-18).

On cross-examination, Mr. Shakoor testified that he has had a relationship with Dr. Putrino for 20 years and that there were stretches of time where they would communicate and see each other more often, and then times when he didn't see him as much (Tr. 7, p. 1089, line 14 through p. 1090, line 1). That his contact would fluctuate since he was 13 or 14 years old (Tr. 7, p. 1090, lines 1-2). Between 2005 and 2020, Shakoor estimated that he saw Putrino maybe three to five times (Tr. 7, p. 1097, line 18 through p. 1098, line 1).

Mr. Shakoor testified that Dr. Putrino had brought him in as the keynote speaker for Women's Month or Black History Month to speak on culturally relevant content with positive messages (Tr. 7, p. 1072, lines 19-24 through p. 1073, lines 2-8).

Finally, Mr. Shakoor also testified that Dr. Putrino is his mentor for his doctorate (Tr. 7, p. 1073, lines 21-25).

Susan Weintraub

Susan Weintraub offered the following:

Q: How would you, based on your observations, how would you describe Dr. Putrino's approach towards inclusivity? And by inclusivity, I mean taking into account the diversity of the student population and the parent population in the schools in which he was assigned?

A: Well, I believe that Joe envisioned leadership in the PTA and at the school as needing to be representative of the population of the school. And when he had the opportunity to support in their promotions to assistant principalships, he absolutely, I feel, brought along women of color, because he honestly believes that you've got to have a seat at the table in order to even the playing field.

And I believe that Dr. Putrino actively supported Sam Anglin and Erika Pierce, because he felt it was important to promote women of color who were very capable.

And so I feel like Dr. Putrino's mindset about inclusivity is reflected in many ways, in inviting and promoting people to join the PTA of different backgrounds, in taking into account every student at his schools, and also promoted and supported minorities advancement in the school District (Tr. 7, p. 997, line 2 through p. 998, line 4).

Finally, on cross-examination, Ms. Weintraub acknowledged that her testimony was based on the time she was the president of Glenfield PTA (2011-2013) (Tr. 7, p. 998, line 25 through p. 999, line 6).

Beth Calamia Scheckel

Ms. Scheckel had been President of the PTA at Renaissance when Dr. Putrino last served as principal (Tr. 7, p. 1106, lines 9-13). She testified that Renaissance had children of different religions, races, socioeconomic status, and that they all felt like they were embraced as part of the Renaissance community (Tr. 7, p. 1115, lines 7-16). She said that Putrino "wanted to level the playing field for all students. Regardless of their heritage or their economic status or their level of intellect, he embraced all students" (Tr. 7, p. 1114, lines 15-24). As part of his effort to level the playing field, Ms. Scheckel testified that Putrino was able to secure a "Chromebook" for every student. . "And that is important in the bigger scheme of things, because there are some families in Montclair where the only tech they have at home might be like a mom's smart phone. And by having a Chromebook to take home, that allows students to have a more equitable foundation for technology" (Tr. 7, p. 1115, lines 24-24 through p., 1116, lines 1-9).

Ms. Scheckel also testified that what made Renaissance unique was that they implemented a restorative justice program and that was a big part of Renaissance's identity and what the PTA focused on also (Tr. 7, p. 1112, lines 6-16).

Restorative justice is a system that makes – that builds up the community. And then it's a way to build up the feeling of community, so then when there's some sort of transgression, there's already something to restore.

And it focuses on the obligation of the transgressor to make things right. And it also emphasizes the engagement of all of the people involved, teachers, staff, whatever community there is, including the students. It's a way to think of disciplining students in a different kind of way so that there is not an emphasis on, say, in school suspension, but rather a way to use discipline in the ancient way of what discipline means, which means to teach.

I can say that coming as a Latin teacher, discipline comes from the idea of being a student and being a teacher.

And in Montclair, you know, there are, like other Districts, there are times when it seems like the students who are being disciplined maybe were students of color or minority students. Restorative justice, to me, gives the population of the school a more level playing field and it emphasizes helping students rise up rather than pushing them down with a negative kind of discipline (Tr. 7, p. 1113, line 4 through p. 1114, line 7).

Although not directly related to the subject of race, one observation by former Superintendent Kendra Johnson stands out as to Dr. Putrino's acumen as a leader of Renaissance Middle School:

Date/Time 11/19/2018 7:45:00 AM

Oral Feedback Date 10/20/2019 10:00:00 AM

Focus Domain(s) of Focus: A. Diagnosis and Planning, B. Priority Management and Communication, C. Curriculum and Data, E. Discipline and Parent Involvement

Feedback

Dr. Putrino was masterful in organizing a redesign of Renaissance Middle School. He presented the proposed redesign at the November 19, 2018 Board Meeting (see the attached artifact). In particular, Dr. Putrino demonstrated the ability to create buy-in from a textured staff, a fractured parent group and a unique student community. He focused on rethinking the curriculum, presentation of physical school environment while also calming tensions with adult stakeholder groups. In one year, he was able to change a school

community around. This evaluator acknowledges and honors his talent and commitment in this regard.

In light of the foregoing, I find that a consideration of Dr. Putrino's prior work record and off duty endeavors are relevant factors of mitigation in relation to the penalty to be imposed in this matter.

Lastly, just cause entails the even enforcement of work rules, i.e., treating like offenses proportionately. This precept of just cause is also known as the prohibition against "disparate treatment." Where disparate treatment is demonstrable, arbitrators have the authority, if not the duty under just cause, to modify a disciplinary penalty. Disparate treatment is an affirmative defense. State of Ohio, 99 LA 1169, 1173 (Rivera, 1992); Shell Pipe Line Corp., 97 LA 957, 961 (Baroni, 1991). Thus, "[i]n order to prove disparate treatment, a union (or employee) must show (1) that he or she was treated differently than others and (2) that the circumstances surrounding his/her offense were substantially like those of individuals who received more moderate penalties. Genie Co., 97 LA 542, 549 (Dworkin, 1991). Where the union does prove that rules and regulations have not been consistently applied and enforced in a nondiscriminatory manner, arbitrators will refuse to sustain a discharge or will reduce a disciplinary penalty. Gemala Trailer Corp., 108 LA 565 (Nicholas, Jr., 1997); Schuller Int'l, 107 LA 1109 (Hockenberry, 1996); Mead Chilpaco Mill, 106 LA 1066 (Feldman, 1996); and, Geauga County, 106 LA 280 (DiLeone, 1996).

As stated by Arbitrator George Nicolau in Northwest Airlines, 89 LA 943, 953, different treatment is not necessarily disparate treatment; arbitrators have long held that circumstances must be considered and that a wide range of factors – length of service, prior work record, degree of culpability – can properly be taken into account; indeed, if those factors are not taken into account and "equal" treatment is imposed, that in itself might be disparate. See, e.g., Lockheed Martin Missiles & Space, 108 LA 482 (Gentile, 1997) (the instigator could be punished more harshly with

discharge, even though other employees received on warnings); Ramsey County, Minn., Sheriff's Dep't, 100 LA 208, 212 (Gallagher, 1992) (3-day suspension proper for deputy involved in automobile accident when penalty is assessed based on degree of fault); and Chanute Mfg. Co., 99 LA 20, 22 (Levy, 1992); S.B. Thomas, 92 LA 1055, 1057-58 (Chandler, 1989) (prohibition against disparate treatment only requires like treatment under like circumstances; these circumstances include nature of offense, degree of fault, and mitigating or aggravating circumstances); Fry's Food Stores of Ariz., 99 LA 1161, 1168 (Hogler, 1992)(discharge for sexual harassment upheld even though other employees charged with sexual harassment were only suspended or demoted); Southern Ind. Gas & Elec. Co., 90 LA 1311, 1314 (Dilts, 1988) (finding different penalties for same offense was justified because employees had different disciplinary records).

In the present matter, I am satisfied that Respondent has more than sufficiently demonstrated that he was treated in a disparate manner in relation to Assistant Vice Principal, Reginald Clark. While Dr. Putrino was out on paid leave, Clark, a Black assistant principal at Montclair High School, sent out a district-wide eblast celebrating the life of Meir Kahane for Jewish Heritage Month. Kahane is a documented racist and known terrorist. As may be expected, this action was met with outrage from rabbis and other members of the Jewish community. An ensuing newspaper article reported Clark's offense:

Newspaper article entitled "Montclair Schools Deeply Regret Honoring Ultra-Nationalist Rabbi Meir Kahane" dated May 11, 2021, in which Meir Kahane was described as a "racist, violent terrorist." Kahane, who was honored as a part of Jewish American Heritage Month, founded a far right terrorist group that has been acknowledged by the FBI as such since 2001 as is designated as a hate group by Southern Poverty Law Center. The correspondence sent honoring Kahane noted that his group's purpose was to combat antisemitism; however, his group orchestrated countless terrorist attacks in the U.S. and abroad, and has engaged in intense harassment of foreign diplomats, Muslims, Jewish scholars and community leaders, and officials. In response to public outcry for honoring Kahane, the school issued "letters of correction." *Congregation Shomrei Emunah Rabbi David*

Greenstein noted that the choice to honor Kahane was “atrocious.” Associate Rabbi and Director of Congregational Learning at Montclair synagogue Bnai Keshet Ariann Weitzman said she was “flabbergasted” when a congregant sent her the announcement email honoring Kahane because he’s a “terrorist,” Weitzman said. “To honor a racist, violent terrorist as a symbol of Jewish pride is confused to say the least.”

Dr. Ponds used tempered language when questioned about the incident. For example, he acknowledged that he did receive some calls *“about the situation at the high school”* (Tr. 1, p. 202, lines 9-12). Ponds testified that the rabbi he spoke with was upset and wanted to have a meeting about the situation (Tr. 1, p. 202, line 25 through p. 203, line 6). When asked if Ponds believed Clark’s offense to be stirring the pot of antisemitism, Ponds responded that *“anything that perpetuates a stereotype is bad”* (Tr. 1, p. 203, lines 22-25). However, in my opinion, Ponds’ answer was non-responsive to the question. Clark did not perpetuate a stereotype. He honored a known terrorist. Unlike the Pray video, there is no one who could reasonably express a reaction other than outrage to the Kahane publication.

Dr. Ponds also referred to Clark as “a young man”, rationalizing that Clark may have pulled up information on Kahane from “Wikipedia” and accepted what was reported without exercising due diligence (Tr. 2, p. 331, lines 12-16). Not only is Clark’s age irrelevant (he is an assistant principal) but how Clark missed even Wikipedia (or any other website) information about Kahane is perplexing. Indeed, this prominent paragraph about Kahane’s life, taken from a conspicuously displayed Wikipedia page, reads:

In 1968, Kahane was one of the co-founders of the JDL in the United States. In 1971, he co-founded Kach ("Thus"), a new political party in Israel. *That same year, he was convicted in New York for conspiracy to manufacture explosives and received a suspended sentence of five years.*^[5] *In Israel, he was convicted for plotting to blow up the Libyan embassy in Brussels in revenge for the massacre of 11 Israeli athletes at the 1972 Summer Olympics in Munich, receiving a suspended sentence and probation.* In 1984, he became a member of the Knesset, when Kach gained its only-ever seat in parliamentary elections. Kahane was boycotted across the aisles of the

Knesset, and would often speak in front of an empty chamber. *The Israel Broadcasting Authority similarly avoided coverage of his activities. The Central Elections Committee tried to ban Kahane from running in the 1984 elections, but this ban was overturned by the Supreme Court because there was no law to support it. In response, the Knesset approved an ad hoc law that allowed for the banning of parties that are "racist" or "undemocratic".* In 1988, despite polls showing Kach gaining popularity due in part to the ongoing First Intifada, Kach was banned from entering that year's elections. https://en.wikipedia.org/wiki/Meir_Kahane

Similarly, a simple search Google search of “Meir Kahane” leads to several conspicuous drop down headings – one of which is, “Meir Kahane Assassin.”

In conjunction with the Kahane incident, Dr. Ponds was questioned about a separate article reporting swastikas and graffiti in the school in 2019-20 (Tr. 1, p. 207, lines 7-12). Ponds admitted to being aware of one of the situations (Tr. 1, p. 207, lines 13-14). When questioned about whether naming Meir Kahane as the person to celebrate Jewish heritage month potentially exacerbated the problem, Dr. Ponds testified that he believed celebrating someone who does harm is wrong and could cause harm if you do not act proactively and address it quickly (Tr. 1, p. 207, lines 15-23).¹³

In addressing Assistant Principal Clark’s misconduct, Dr. Ponds issued a District-wide email apology for honoring Kahane. The apology noted that it might be very painful and that “we deeply regret this eblast.” Ponds noted that he was truly sorry for offending our families, staff, and community”. Unlike Dr. Putrino, however, Assistant Principal Clark was given a forum to apologize and take full responsibility for honoring Kahane. In effect, Clark was given the benefit of the doubt where Putrino was not. And while Clark’s apology was accepted by the administration, Putrino’s apology was deemed insincere (based on Mr. Cooper’s circular reasoning, which could have been equally applied to Clark i.e., if Clark was sincerely sorry for the incident it never would have happened in the first place).

¹³ However, the harm was already caused by the District-wide publication of Kahane as honoree of Jewish Heritage Month.

In addition, Dr. Ponds confirmed that Assistant Principal Clark was not tenured at the time this incident took place nor is he currently tenured. Nonetheless, his contract was renewed (Tr. 1, p. 208, lines 2-20). It is believed that, in contrast to Dr. Putrino's dismissal action, Clark received a mere two to three day suspension and had to apology to the Jewish Community, in general, and to handle personally any further calls.

Dr. Ponds attempted to distinguish Assistant Principal Clark from Dr. Putrino by stating that Putrino "thought about it" and Clark just didn't do enough research (Tr. 1, p. 208, line 25 through p. 209, line 6). However, as stated previously, even cursory research would reveal that Meir Kahane was a known terrorist. Moreover, Clark did not testify and, hence, Petitioner's attempt to explain Clark's mindset was ultimately unavailing. Also, since Petitioner did not interview Putrino or conduct any meaningful investigation, Ponds was not in a position to judge how much time Putrino spent on vetting the video versus what Clark actually knew about Kahane.

Indeed, Dr. Putrino obtained positive feedback from members of the Black community prior to showing the video on September 2, 2020. Ms. White (a Black second grade teacher) provided the video to Putrino's sister-in-law who, in turn, provided it to him. Putrino also knew that the Pray video had been aired on the Today show, that it went viral, and that it was also featured in commercials on YouTube and Google. Thus, if anything, Putrino exercised far more due diligence than Clark without any negative feedback. Conversely, there appears to be no convincing reason why Clark did not discover the true identity of Meir Kahane prior to publicly celebrating Kahane for Jewish Heritage month.

In addition, I did not find persuasive Mr. Cooper's attempt to explain the minor discipline which Clark received. Cooper testified that he was not instructed to investigate Clark with regard to the article about Kahane. He also testified that he did not have any conversations with Dr. Ponds

regarding Clark's apology (Tr. 5, p. 762, lines 1-18). Cooper was aware that people in the community were upset to have Kahane featured in an article, but that he was not asked to do anything about it (Tr. 5, p. 762, line 23 through p. 763, line 6). Rather, Cooper testified that the Kahane issue was addressed "at the building level"; and, in contrast, he was instructed by Ponds to be involved in the convocation video and Dr. Putrino (Tr. 5, p. 763, lines 7-25).

Plainly, however, Dr. Ponds and/or Mr. Cooper – if they were so inclined – could have addressed Assistant Principal Clark directly, especially given the magnitude of the offense and the involvement of rabbis speaking on behalf of the Jewish community who were obviously offended. Indeed, it is disingenuous, to say the least, that Dr. Ponds was somehow bound by the judgment of a building principal on a matter of presumably of the same import as Dr. Putrino's alleged offense. In fact, the undersigned asked Mr. Cooper to assume that Putrino was an assistant principal at the time he showed the Pray video. The question posed was whether central office would have reviewed or reconsidered a letter of reprimand issued by Putrino's hypothetical building principal in response to the Pray video? Cooper responded that it could have (Tr. 5, p. 816, lines 18-24).

Additionally, in contrast to Dr. Putrino, who is a twenty-year educator with an unblemished record, Assistant Principal Clark was not tenured. Notwithstanding that Clark offended the Jewish community, Clark's contract was renewed. In contrast, Putrino was placed on administrative leave three hours after the convocation, public statements of a conclusory and reputationally damaging nature were made, and Petitioner's dismissal was etched in stone.

In the end, I am satisfied that Petitioner's treatment of Dr. Putrino was noticeably disparate in relation to its treatment of Assistant Principal Clark. In my opinion, Clark's offense should have been regarded by Petitioner as equally as serious. As noted previously, unlike the Pray video, there is no other school of thought over the offensiveness of the Kahane bulletin published by

Clark. That Putrino is a twenty-year educator and Clark a non-tenured assistant principal should have resulted in more, not less, favorable treatment of Putrino. That Clark's apology was enough for Dr. Ponds and Mr. Cooper, but Putrino's was viewed as insincere, is likewise unjustifiable. Ultimately, unless we are to conclude that an educator has more leeway when offending members of the Jewish community as compared to offending a portion of the Black community, I see no basis under just cause to justify Petitioner's widely disparate treatment of Dr. Putrino.

Finally, as to Petitioner's concern about reintegrating Dr. Putrino into the school district in light of the fallout from the September 2, 2020 video, i.e., the impact of returning Putrino to the school district, a few comments are in order.

First, the very task of reintegration would not have been nearly as difficult had Petitioner appropriately handled this matter in a private, rather than in a public way, i.e., had Petitioner avoided making contemporaneous public statements condemning the showing of the video as racist and promising to take quick action – which any reasonable person would construe as action against its presenter, Dr. Putrino. In fact, if Petitioner conducted a full investigation of Dr. Putrino's prior commendable record in the area of diversity and inclusion, and taken into account the opposite viewpoint to the Video, it had an opportunity to impose a lesser penalty than dismissal which could have allowed everyone concerned to move on. Instead, by analogy, it pulled the plug almost immediately.

Second, out of 1100+ viewers of the convocation video and after 13 months to prepare its case, Petitioner ultimately produced only a few witnesses and a few more emails than that objecting to the Pray video as racially offensive. The supporting statement by the interim MPA President at the open public Board meeting served more as a statement of support for a new superintendent than it did as a critique of the Pray video or Putrino's actions. In contrast, it is clear from this

record that Dr. Putrino enjoyed the support of staff and parents both prior to and after September 2, 2020. In fact, Dr. Putrino did take immediate action to ameliorate any hurt caused to his staff. Thus, given the foregoing factors, and with the passage of time, the size of the challenge may not be as daunting as Petitioner apparently believes.

Third, Petitioner prides itself on resolving interpersonal and social disputes via “restorative justice.” Ms. Beth Calamia Scheckel testified that what made Renaissance unique was that they implemented a restorative justice program and that was a big part of Renaissance’s identity and what the PTA focused on also (Tr. 7, p. 1112, lines 6-16). She described “restorative justice” as follows:

Restorative justice is a system that makes – that builds up the community. And then it’s a way to build up the feeling of community, so then when there’s some sort of transgression, there’s already something to restore.

And it focuses on the obligation of the transgressor to make things right. And it also emphasizes the engagement of all of the people involved, teachers, staff, whatever community there is, including the students. It’s a way to think of disciplining students in a different kind of way so that there is not an emphasis on, say, in school suspension, but rather a way to use discipline in the ancient way of what discipline means, which means to teach.

I can say that coming as a Latin teacher, discipline comes from the idea of being a student and being a teacher.

And in Montclair, you know, there are, like other Districts, there are times when it seems like the students who are being disciplined maybe were students of color or minority students. Restorative justice, to me, gives the population of the school a more level playing field and it emphasizes helping students rise up rather than pushing them down with a negative kind of discipline (Tr. 7, p. 1113, line 4 through p. 1114, line 7).

In fact, Dr. Putrino conducted a restorative justice session immediately after the acrimony unfolded and before being placed on leave. Dr. Putrino testified that 2 out of his 30 staff members expressed to him that they were offended. He directly apologized to them. In Exhibit I, an email

from Rodney Jackson to Dr. Ponds, Jackson expresses that he was pleased that the video was stopped. However, Jackson's email goes on to state that he *wished there was an opportunity to discuss why it was racist and noted that many of us don't understand what the video was reinforcing*. **Jackson conducted a restorative justice meeting the next day. He received mixed feedback as to who was offended and who was not offended.** Like Assistant Principal Clark, Dr. Putrino should be afforded an equal opportunity to apologize to those who still may harbor resentment which, in turn, would lead to a more productive reintegration.

In light of the foregoing, while I sustain the convocation video tenure charge, in part (to the extent set forth hereinabove), I find that the penalty of dismissal is not consistent with just cause based on (1) the dismissal of two of the core allegations; (2) Dr. Putrino's prior long-term unblemished employment history, which includes numerous anecdotes of him fostering inclusion and diversity, both within and outside of his place of employment; and (3) the unjustifiable variation in Petitioner's treatment of Dr. Putrino versus Assistant Principal Clark. Accordingly, I will modify the disciplinary penalty to the disciplinary penalty implemented for Assistant Principal Clark. Petitioner shall immediately offer reinstatement to Dr. Putrino as Principal of Renaissance School. To the extent that Putrino was suspended without pay for more than the Clark suspension, Petitioner is directed to provide corresponding back pay and all applicable benefits of employment. To the extent that Putrino has suffered no loss in pay, then he must be returned to his position at the conclusion of the Clark suspension without pay.

Lastly, I will retain jurisdiction to the extent that the parties dispute the precise penalty which was issued to Assistant Principal Clark.

Part II

Dismissal of Tenure Charges Pars. 20-23 (The 2020-2021 Schedule)

The second part of the tenure charges pertain to the 2020-2021 school schedule allegedly created by Dr. Putrino:

20. In or about February and March 2021, Petitioner conducted an audit of the teachers’ schedules for the Renaissance Middle School. A detailed review of the teachers’ schedules at the Renaissance Middle School allegedly revealed that no teacher is teaching the contractual allotted 1250 minutes per week. Moreover, it is alleged that there are numerous teachers teaching less than 1000 minutes per week. As a result, the Renaissance Middle School was allegedly overstaffed to the approximate cost of \$767,447.00 to the District. This allegedly significant financial loss to the District did not result in more student contact time and/or smaller classes (Ex. S).

21. Pursuant to the 2018-2021 Collective Bargaining Agreement between the Montclair Board of Education and the Montclair Education Association, Article 8.1(i): “Pupil contact time is defined as the number of scheduled class minutes to which a teacher is assigned classroom instruction and/or supervisory duties. It specifically excludes homeroom and the ten (10) minutes before and twenty (20) minutes after school. The pupil contact time for classroom teachers assigned to the high school and the middle school shall not exceed 1250 minutes per week and 1500 minutes per week at the elementary school, average over the school year.” (Ex. Q).

22. As Principal of the Renaissance Middle School, it is alleged that Respondent was responsible for preparing the teachers’ schedules (Ex. R).

23. Thus, the alleged significant financial loss to the District, to the detriment of the students, by teachers allegedly being overstaffed, occurred during Respondent’s appointment as Principal to the Renaissance Middle School.

In support of the tenure charges, Petitioner relied on Exhibit S, which sets forth a summary created by Damen Cooper based upon a schedule(s) he received from one of several potential sources (Cooper’s testimony vacillated), i.e., Dr. Ponds, Major Jennings or “from the computer:”

Teacher Number	Minutes Taught	Missing Minutes	FTE %	Current Salary	Salary based on minutes worked per week	District Loss
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Teacher 1	1017	233	81.36%	\$84,185	\$68,492.92	\$15,692
Teacher 2	617	623	49.36%	\$108,825	\$ 53,716.02	\$55,109
Teacher 3	822	428	65.76%	\$78,093	\$ 51,353.96	\$26,739
Teacher 4	471	779	37.68%	\$67,605	\$ 25,473.56	\$42,131
Teacher 5	978	272	78.24%	\$103,368	\$ 80,875.12	\$22,493
Teacher 6	900	350	72.00%	\$99,968	\$ 71,976.96	\$27,991
Teacher 7	900	350	72.00%	\$99,968	\$ 71,976.96	\$27,991
Teacher 8	900	350	72.00%	\$99,968	\$ 71,976.96	\$27,991
Teacher 9	864	386	69.12%	\$68,585	\$ 47,405.95	\$21,179
Teacher 10	1020	230	81.60%	\$111,740	\$ 91,179.84	\$20,560
Teacher 11	1059	191	84.72%	\$111,250	\$ 94,251.00	\$16,999
Teacher 12	1020	230	81.60%	\$111,740	\$ 91,179.84	\$20,560
Teacher 13	570	680	45.60%	\$67,605	\$ 30,827.88	\$36,777
Teacher 14	960	290	76.80%	\$67,930	\$ 52,170.24	\$15,760
Teacher 15	900	350	72.00%	\$58,920	\$ 42,422.40	\$16,498
Teacher 16	648	602	51.84%	\$90,741	\$ 47,040.13	\$43,701
Teacher 17	1020	230	81.60%	\$64,670	\$ 52,770.72	\$11,899
Teacher 18	1020	230	81.60%	\$78,857	\$ 64,347.31	\$14,510
Teacher 19	1020	230	81.60%	\$106,023	\$ 86,514.77	\$19,508
Teacher 20	474	776	37.92%	\$99,113	\$ 37,583.65	\$61,529
Teacher 21	1020	230	81.60%	\$108,340	\$ 88,405.44	\$19,935
Teacher 22	1020	230	81.60%	\$69,585	\$ 56,781.36	\$12,804
Teacher 23	1020	230	81.60%	\$76,137	\$ 62,127.79	\$14,009
Teacher 24	996	254	79.68%	\$92,617	\$ 73,797.23	\$18,820
Teacher 25	1074	176	85.92%	\$60,870	\$ 52,299.50	\$8,570
Teacher 26	900	350	72.00%	\$80,131	\$ 57,694.32	\$22,437

Teacher 27	900	350	72.00%	\$96,017	\$ 69,132.24	\$26,885
Teacher 28	900	350	72.00%	\$65,310	\$ 47,023.20	\$18,287
Teacher 29	240	1010	19.20%	\$99,113	\$ 19,029.70	\$80,083
				\$2,527,274	\$1,759,827	\$767,447

It is acknowledged that for each teacher numerically set forth in the color-coded summary chart, Exhibit S houses an attached document which purportedly sets forth the number of classes (basic and elective) taught during the week. For example, the first document following the color-coded summary chart purportedly aligns with Teacher 1 who earns \$84,185.00 annually. The summary data alleges that Teacher 1 taught 1017 minutes per week in comparison to the 1250 minutes maximum. Subsequent pages follow in a similar manner for Teachers 2-29.

Pursuant to Dr. Putrino’s motion to dismiss, on March 1, 2022, the undersigned issued a decision allowing Petitioner’s Tenure Charges to go forward and preserving Putrino’s objections:

In conclusion, I find that Petitioner is entitled to attempt to make out its case against Respondent based on the evidence contained in Exhibit S. By the same token, Respondent is entitled to explore on cross-examination – without the necessity to testify himself – the purported deficiencies in Exhibit S, which both he and his expert have identified:

1. The data provided by the district in Exhibit S is incomplete. It is unclear what school year this data represents. Furthermore, none of the teachers’ schedules indicate the teacher’s name and only one indicates the subject area taught. This makes any analysis of district numbers very problematic.
2. Regarding the content of the district’s data, essential information is missing. More specifically, the district analysis does not include assignments of duty periods and other supervisory assignments such as advisory classes, hall duty, student arrival and student dismissal. From the district’s teacher contractual language, student supervision counts towards the number of assigned teacher minutes.
3. Data provided by the district is inaccurate. Schedules for Fridays are different than Monday through Thursday. Periods increase from 39 to 40 minutes on Fridays. Every schedule reviewed by the district did not account for

this difference. In addition, periods that are block periods on Monday through Thursday are 40 minutes and not 39 minutes.

4. When duty periods, advisory assignments and supervision assignments like hall duty and dismissal are included in the analysis, the number of teacher minutes is consistently much closer to the maximum number of 1250 minutes that may be assigned to a teacher in the Montclair School District.

Dr. Putrino testified at length about his formulation of the Renaissance Middle School (“Renaissance”) schedule preceding Covid. Putrino was assigned to Renaissance in 2018 with the task of revamping the teacher schedule and improving enrollment (Tr. 8, p. 1239, line 13 through p. 1240, line 5). Renaissance’s school day was longer than other schools, which required the schedule to be revamped. The school day went from approximately 8:00 a.m. to 4:00 p.m. (Tr. 8, p. 1242, lines 12-19). Putrino was asked to “collapse” the schedule by an hour so it would be more consistent with the school days at the two other middles schools, Glenfield and Buzz Aldrin (Tr. 8, p. 1243, lines 9-12).

The master schedule that Dr. Putrino had formulated was the “template of each grade’s experience in the school day.” The master schedule maps out the different courses during the day (Tr. 8, p. 1383, line 25 through p. 1384, line 13). Putrino testified that changing the schedule for a school is a “delicate process” because the “fear of change and all the little things that go along with it” (Tr. 8, p. 1363, lines 13-17). As a result, Putrino formed several committees to get input from all of the stakeholders: a student committee, a teacher committee, a parent committee, and a central office committee.

Dr. Putrino consulted each committee when formulating the schedule for Renaissance. Putrino estimated that he met with each of the committees approximately eight times during September, October, and into November 2018 (Tr. 8, p. 1363, line 20 through p. 1364, line 5). When he met with the individual committees, he let them “air out” their concerns regarding the

new schedule. He incorporated their suggestions to the extent that they fit within the parameters of the new schedule's requirements (Tr. 8, p. 1364, lines 18 through p. 1365, line 4).

Dr. Putrino described the bell schedule as the "map of each period in the school day" (Tr. 8, p. 1366, lines 17-20). For Monday through Thursday each period was 39 minutes, with a 2-minute break between each period (Tr. 8, p. 1367, lines 18-25). Both were to be included in pupil contact time because supervising hall duty is considered a supervisory duty (Tr. 8, p. 1368, lines 11-18). Periods 9 and 10 were for elective courses which were only 30 minutes. For Monday through Thursday, a 3-minute dismissal was allotted for exiting the building which counted towards supervisory time (Tr. 8, p. 1369, lines 1-9). Advisory periods, which were 20 minutes in length Monday through Thursday, also counted towards pupil contact time. Putrino's master schedule established advisory teams for each grade level (6th through 8th) and expressly noted that the homeroom teacher will lead the advisories (unless otherwise agreed upon by the team). In addition to taking attendance, the advisory period was devoted to Montclair's "restorative justice initiative" which was part of the curriculum (Tr. 8, p. 1371, lines 1-10). Putrino described restorative justice as a "practice that is supposed to increase... community by working on strengthening relationships between people so that you are less likely to make a bad choice about a person." It was a practice to help create a "community" which was useful to both students and staff. "The goal is to repair harm and reach consensus" (Tr. 8, p. 1343, lines 22-25; p. 1344, lines 1-13; p. 1345, lines 2-3).

On Fridays, the schedule was markedly different. The advisory periods were 45 minutes to "give room for more thorough discussions in the restorative justice setting... and to allow for assemblies and video presentations or larger lessons" (Tr. 8, p. 1372, lines 2-12). Students would participate in more "hands on stuff". The elective classes were extended to 120 minutes to allow

students to travel outside of school. “For example, a community service class takes place three consecutive periods in a row. Students board a bus and they travel to different locations in town where they donate their time for community service” (Tr. 8, p. 1370, lines 1-11). Finally, on Fridays, dismissal was four minutes instead of three minutes (Tr. 8, p. 1372, lines 13-18).

When Dr. Putrino put together the schedule for Renaissance that was to be implemented in the 2019-2020 school term, he included a full-day schedule, a half-day schedule, and a delayed opening schedule (Ex. R24; Tr. 8, p. 1376, lines 10-20). Every school was required to have these three schedules (Tr. 8, p. 1376, lines 15-16). Putrino followed the same practice while at Glenfield and Northeast elementary schools (Tr. 8, p. 1376, lines 21-25; p. 1377, lines 1-6). Once Putrino had a draft schedule, he sent it to central office. The central office is comprised of the business office and two of the “curriculum heads,” who were in charge of determining whether the new schedule contained the “right number of minutes” for the subject areas involved (Tr. 8, p. 1365, lines 5-13). He then gave the proposed schedule to the MEA for its review to make sure that it complied with the contract (Tr. 8, p. 1365, lines 14-19). Putrino noted that the MEA quickly came back with what they saw as a 5-minute discrepancy during the arrival time, which was then adjusted. After that, the schedule was given to then Superintendent Kendra Johnson for her review and approval (Tr. 8, p. 1366, lines 1-2).

Superintendent Johnson, in a Mini Observation dated June 17, 2019, stated as follows:

Administrator Joseph Putrino

Observer Kendra Johnson

Date/Time 6/17/2019 11:00:00 AM

Oral Feedback Date 6/17/2019 1:00:00 PM

Focus Domain(s) of Focus: A. Diagnosis and Planning

Feedback

Dr. Putrino has been a leader in rethinking the program at Renaissance Middle School. Specifically, he has been deliberate establishing a new bell schedule that meets the current needs of the student population. While doing this work, he worked with this evaluator and the former MEA Grievance representative to address contractual challenges. To this end, this evaluator finds Dr. Putrino's approach to be strategic and focused. He is commended for his leadership acumen (Ex. R18).

The Board also approved the schedule. Dr. Putrino added that the Board and superintendent were “incredibly satisfied” with both the presentation and the schedule that he had created (Tr. 8, p. 1393, line 23 through p. 1394, line 3).

As will be discussed, Petitioner, though charging Dr. Putrino with alleged scheduling deficiencies for the 2020-2021 school year actually evaluated the aforementioned 2019-2020 in-person, full school day schedule which was reviewed and approved with special mention by Dr. Kendra Johnson and the Board. The 2019-2020 in-person schedule remained unchanged and in Genesis.

Due to the onset of Covid, as all building administrators were directed, Dr. Putrino created three schedules for the 2020-2021 school year – an in-person schedule (already created), a remote schedule, and a hybrid schedule. The remote schedule was a “condensed” version of the 2019-2020 master schedule having 27 minute periods and Office Hours at the end of the school day (Ex. R30 and 31; Tr. 9, p. 1560, lines 17-22). In formulating the schedules, Dr. Putrino testified that he volunteered to be on two of the three committees, the hybrid and remote committees. Lamenting the lateness of the District’s decision to go remote, Putrino supplied his condensed schedule to central office and it was included in the Montclair Reopening Plan on August 21, 2020 (Ex. R31). However, because Dr. Putrino wanted his staff to see the schedule before it was released at 4:00 p.m. to the public, he sent out a staff announcement and attached the remote schedule (Ex. R30).

Dr. Putrino testified that importing teachers and students into the 2020-2021 schedule from Genesis was being handled by Student Advisement Counselor (“SAC”) Whitney Gibbs and “the secretarial staff” (which turned out to include “Leigh Ann”). Putrino explained:

Everyone sort of imports their parts. Joe Pellegrino, who was the central office Genesis Director, he was assisting us since this was a complete rebuild of the schedule. So the schedule was in Genesis. Teachers and courses were in Genesis. Student schedules were being populated at that time (Tr. 9, pp. 1461-1462).

However, Dr. Putrino explained, “We always have a few anomalies, red flags that pop up with electives that have too many kids or not enough kids. And in the first couple of days of school when staff is present, but students are not there, we usually make changes. Sometimes that includes reassigning a teacher to a class or adjusting the class size of a course” (Tr. 9, p. 1463).

As of September 2, 2020, his last day as Principal, Dr. Putrino was aware that the teachers’ schedules had been constructed as well as teachers’ assignments. He was told that those schedules were in Genesis and ready for the final step of matching students to those classes (Tr. 9, p. 1463, lines 16-24). Putrino acknowledged that looking at a schedule alone does not reveal how many students are in each of the classes. When asked whether he scheduled teachers with zero students, Putrino replied:

I don’t schedule teachers with zero students in classrooms. If they have zero students in their classroom, that anomaly is repaired when it’s discovered. Sometimes an elective is unpopular. That elective can be collapsed and that teacher is reassigned. Or if an elective is not populating enough, sometimes we transfer kids in before schedules are released to balance the numbers. That happens across all three middle schools and the high school (Tr. 10, p. 1664).

In connection with Petitioner placing Dr. Putrino on leave, Dr. Ponds assigned Major Jennings as interim principal at Renaissance. Jennings has been an educator employed by the Montclair School District for approximately 30 years. Jennings was an assistant principal at Buzz

Aldrin Middle School. Subsequent to the 2020-2021 school year, Jennings was assigned as principal of Buzz Aldrin.¹⁴

Mr. Jennings estimated that there are 260 students and 30 staff members at Renaissance. During the summer of 2020, as Jennings confirmed, building administrators were instructed to develop three schedules, an in-person schedule, a remote schedule and a hybrid schedule (Tr. 4, p. 579, lines 21-25). As it turns out, neither the in-person nor hybrid schedule was used. Rather, students and teachers operated on a remote basis from home. It was not until April 2020 that a hybrid schedule, not relevant necessarily to this dispute, was implemented (Tr. 4, p. 581, lines 5-10).

Mr. Jennings acknowledged that the first step was to establish a master schedule, regardless of format, before students and teachers can be imported into the schedule (Tr. 4, p. 581, lines 21-25; p. 582, lines 1-5; p. 584, lines 16-25; and p. 585, lines 15-17). Jennings confirmed that Dr. Putrino had put in place a condensed schedule for remote learning which, in short, is a condensed version of the in-person master schedule. For example, if classes lasted 40 to 45 minutes under the in-person schedule, they were reduced to 27 minutes under the remote schedule (Tr. 4, p. 587, lines 2-9).

Mr. Jennings explained that once the master schedule is established, the building principal is responsible for assuring that teachers have an appropriate number of students in classes as well as a sufficient number of classes to teach in relation to the 1250-minute contractual limitation. Jennings discovered what he perceived to be deficiencies concerning the ratio of teachers to students and the number of classes taught by each teacher. Upon further inquiry, Jennings found out from Whitney Gibbs that the deficiencies detected by Jennings were due to the late arrival of

¹⁴ The record is not clear as to who followed Mr. Jennings as interim principal at Renaissance Middle School in Dr. Putrino's absence.

the 2020-2021 condensed schedule. Ms. Gibbs and (Leigh Ann) specifically informed Jennings, “There’s no way we can get this schedule out” (Tr. 4, p. 596, lines 16-24).

In light of the struggles of Ms. Gibbs and Leigh Ann in Dr. Putrino’s absence, Counsel for Dr. Putrino asked Mr. Jennings whether he thought of calling Putrino to ask him for clarification or assistance about the implementation of the Renaissance remote schedule. In response, Jennings stated, “No, I was instructed I should not have any conversations with Dr. Putrino” (Tr. 4, p. 60, lines 18-25 to 622).

Mr. Jennings next asked Joseph Pellegrino (who is responsible for the Genesis software program) to run a report, such as, a list of teachers who have less than ten students, less than five students, or who appeared on the schedule but had no students assigned to a class (Id., p. 589, lines 15-22). On direct examination, Jennings was asked whether he had verified the information from Genesis provided to him by Pellegrino. Falling short of an affirmative response, Jennings testified, “I mean, I looked in Genesis, and I’m like why don’t teachers have full schedules” (Tr. 4, p. 593, lines 14-18). In consulting with Pellegrino, the two tried to “clean it up, get rid of classes that showed zero students in those classes”. As Dr. Putrino testified, such an anomaly had to be caused by a computer glitch in Genesis because he would never schedule a teacher to teach zero students. Nonetheless, after the zero student classes were eliminated, Jennings noticed that some teachers were teaching two or three classes out of a 10-period day, while others were teaching five or six (Tr. 4, p. 591, lines 1-23).

In sum, Mr. Jennings had discovered two distinct deficiencies from the data he obtained from Mr. Pellegrino: (1) some classes had far less students than others and (2) some teachers taught more classes than others. However, it became clear that Jennings did receive from school clerk Debra Alderman “paper” copies of the projected remote and regular schedule that had been

created by Dr. Putrino (Ex. R30 and R24; Tr. 4, p. 635, lines 10-20). When asked more specifically what the concern was with the schedule, Jennings replied, “Well, you would think that you would be able to combine to make the class a little larger, and to just be more efficient with your schedule” (Tr. 4, p. 598, lines 16-25 through p. 599, lines 1-6). “You would – why would I want to have a teacher teaching three to five students, when potentially I could have 15 students in that class” (Tr. 4, p. 600, lines 1-11).¹⁵

However, Mr. Jennings was asked what happened to teachers who had classes that had zero students, i.e., specifically if he attempted to reassign them to other teaching duties. Jennings admitted, “There weren’t really a lot of other teaching duties” (Tr. 4, p. 601, lines 23-25 to 602, lines 1-2). Jennings added that more operational challenges arose in April of 2021 when the schedule changed over to hybrid – and this was due to an inability to cover for absent teachers and a lack of substitutes because “no one wanted to come in the building” (Id., p. 602, lines 12-18). And while Jennings complained that teachers not having a full schedule were putting in timesheets to cover for absences, either they were entitled to do so or not under the MEA contract.¹⁶

In the end, teachers were not reassigned due to a lack of other teaching duties (absent the glitch where a teacher was assigned to a class with no students), each teacher had classes to teach, and each student had a full course load under the remote learning schedule. As to the concern that some teachers were teaching more classes than others, Mr. Jennings acknowledged that the MEA did not raise any complaint or file a grievance (this record reveals no such action by the MEA).

¹⁵ Interestingly, Jennings testified to his inability to fix the schedule based on the same concerns that Ms. Gibbs and Leigh Ann had relayed to him about implementing it correctly in the first place, i.e., “And you know, it’s – a schedule is a very time consuming process. So we had to go with the schedule.”

¹⁶ Article 8, “Employees’ Workload and Related Matters” of the MEA contract, Section 8.1 (a)(i)(b) states: “A full teaching load is considered the equivalent of 5 full classes per day at the high school and middle school level, and the equivalent of 6 full classes at the elementary level. An extra class taught at the middle school or high school in all subject areas will receive 1/5 of the person’s FTE salary as additional compensation. . . .

In fact, Jennings was only able to identify one teacher who asked why some teachers were teaching six classes while science and social studies teachers were only teaching five (Note: this teacher did not make reference to a teacher having less than five classes and the MEA contract establishes five classes as a full class load).

On cross-examination, Mr. Jennings admitted that his focus was limited to the information contained in Genesis (as previously discussed). Jennings was then asked questions as to whether any other forms of pupil contact time were contained in Genesis (other than direct class instruction). In short, Jennings testified that lunch duty, advisory performed under the umbrella of homeroom, and hall duty would not show up in Genesis. Conversely, scheduled advisory periods (i.e., office hours as designated on Ex. R30) and in-class support duties would show up in Genesis.

On September 7, 2020 (which was one day prior to the start of the school year) Jennings decided to send the following email:

Sent: Monday, September 7, 2020 5:08:35 PM
To: Jonathan Ponds; Kalisha Morgan; Damen Cooper
Subject: Schedule

Dear Dr. Ponds, Mr. Cooper, Dr. Morgan

I hope you are doing well. Over the past few days, I have been working towards getting Renaissance up and running for the first day of school. Nisha and I have been working on finishing the schedule, along with Whitney and Leigh Ann (from Renaissance). While working on the schedule, we came across some issues that I want you to be aware of. Nisha and I also met with Joe Pellegrino Saturday, who was kind enough to help us get a better understanding of the schedule and discuss possible solutions. Please see the bulleted list below regarding Renaissance's schedule.

- There are 85 sections that have less than 10 students in each class.
- Of those 85 sections, there are 69 sections that have 5 students or less.
- Of the 69 sections with 5 or less students, there are 56 sections with two or less

students, and of the 56 sections, there are 24 sections with zero students in them.

- I've instructed the scheduling team to delete as many sections of zero as possible, and to allocate those teachers to other classes. Additionally, I've instructed them to try to balance the schedule as much as possible given the short amount of time.
- There are several staff members who appear to have "holes" in their schedules. (Ex. V). Some students are scheduled for the same teacher and class twice (two different sections), rather than being part of one class that meets on multiple days.
- We are short a Geometry teacher (as you know), but the Geometry section was offered and scheduled for the students.
- We are short a MAP teacher (as you know).
- **We have multiple staff members at Renaissance who are not teaching a full load of classes.**

It is apparent that there are some serious concerns with Renaissance's master schedule. I would like to discuss this further with you, and I believe Joe Pellegrino can also help with this conversation. After discussing with Joe and Nisha this morning, we concluded that we really can't change the master schedule at this point in time. Our schedules go live on Tuesday.

However, this building's master schedule needs to be scrutinized and possible changed entirely so that we are properly allocating our staff, funding, and resources for our students. [emphasis supplied].

Thank you, Major

In a peculiar response to such disconcerting news from Mr. Jennings, Dr. Ponds responded via email at 5:32:53 on the same day:

Major,

Outstanding work!! Let's all get together with your team and support you. Please send Nina times your team is available. I will reschedule whatever I have to be there. I cannot thank you enough!! Have a good night.

Jonathan (Ex. V).

Dr. Ponds then assigned Mr. Cooper to investigate the building schedule discrepancies further. Cooper made it abundantly clear that the scope of his “investigation” pertained only to the underscored portion of Jennings’ email, above. Cooper admitted that he did not investigate or follow-up further on any other aspect of the alleged deficiencies with the Renaissance schedule. In fact, the tenure charges which were filed were based on shortfalls in relation to the 1250 minute maximum of pupil contact time, as illustrated by Exhibit S. However, given the attachments to the color-coded summary chart, it is clear that Mr. Cooper was evaluating an in-person (39 and 30-minute block) schedule used during the 2019-2020 school year up until the time of the Covid shut down in March 2020. Conversely, Cooper did not base his analysis on the condensed 27-minute remote schedule created by Dr. Putrino (2020-2021). Since Mr. Jennings had possession of the “paper schedules”, it is presumed that either Jennings or Dr. Ponds provided the in-person schedule to Cooper, or Cooper obtained it independently. Cooper admitted that he was not concerned about investigating inequities regarding the number of students per class.

Mr. Cooper began the audit in September 2020, which took approximately a month and a half to complete (Tr. 5, p. 771, line 18 through p. 772, line 1).¹⁷ Cooper then presented his findings to the Board, which included Exhibit S, as follows:

Teacher Number	Minutes Taught	Missing Minutes	FTE %	Current Salary	Salary based on minutes worked per week	District Loss
Teacher 1	1017	233	81.36%	\$84,185	\$68,492.92	\$15,692
Teacher 2	617	623	49.36%	\$108,825	\$ 53,716.02	\$55,109
Teacher 3	822	428	65.76%	\$78,093	\$ 51,353.96	\$26,739
Teacher 4	471	779	37.68%	\$67,605	\$ 25,473.56	\$42,131

¹⁷ The tenure charges allege that in or about February and March 2021 the District conducted an audit of the teachers’ schedules at the Renaissance School.

Teacher 5	978	272	78.24%	\$103,368	\$ 80,875.12	\$22,493
Teacher 6	900	350	72.00%	\$99,968	\$ 71,976.96	\$27,991
Teacher 7	900	350	72.00%	\$99,968	\$ 71,976.96	\$27,991
Teacher 8	900	350	72.00%	\$99,968	\$ 71,976.96	\$27,991
Teacher 9	864	386	69.12%	\$68,585	\$ 47,405.95	\$21,179
Teacher 10	1020	230	81.60%	\$111,740	\$ 91,179.84	\$20,560
Teacher 11	1059	191	84.72%	\$111,250	\$ 94,251.00	\$16,999
Teacher 12	1020	230	81.60%	\$111,740	\$ 91,179.84	\$20,560
Teacher 13	570	680	45.60%	\$67,605	\$ 30,827.88	\$36,777
Teacher 14	960	290	76.80%	\$67,930	\$ 52,170.24	\$15,760
Teacher 15	900	350	72.00%	\$58,920	\$ 42,422.40	\$16,498
Teacher 16	648	602	51.84%	\$90,741	\$ 47,040.13	\$43,701
Teacher 17	1020	230	81.60%	\$64,670	\$ 52,770.72	\$11,899
Teacher 18	1020	230	81.60%	\$78,857	\$ 64,347.31	\$14,510
Teacher 19	1020	230	81.60%	\$106,023	\$ 86,514.77	\$19,508
Teacher 20	474	776	37.92%	\$99,113	\$ 37,583.65	\$61,529
Teacher 21	1020	230	81.60%	\$108,340	\$ 88,405.44	\$19,935
Teacher 22	1020	230	81.60%	\$69,585	\$ 56,781.36	\$12,804
Teacher 23	1020	230	81.60%	\$76,137	\$ 62,127.79	\$14,009
Teacher 24	996	254	79.68%	\$92,617	\$ 73,797.23	\$18,820
Teacher 25	1074	176	85.92%	\$60,870	\$ 52,299.50	\$8,570
Teacher 26	900	350	72.00%	\$80,131	\$ 57,694.32	\$22,437
Teacher 27	900	350	72.00%	\$96,017	\$ 69,132.24	\$26,885
Teacher 28	900	350	72.00%	\$65,310	\$ 47,023.20	\$18,287
Teacher 29	240	1010	19.20%	\$99,113	\$ 19,029.70	\$80,083
				\$2,527,274	\$1,759,827	\$767,447

Mr. Cooper acknowledged that the end product of his audit (above) did not reflect the actual schedules that were in place for 2020-2021 (Tr. 5, p. 782, lines 8-15). Cooper's explanation for conducting an "audit" for the 2020-2021 school term using the 2019-2020 schedule was that it was based on the information that he obtained from the computer (Tr. 5, p. 778, lines 13-18). However, Cooper backtracked from that explanation when he subsequently testified that his audit was based on what Mr. Jennings gave him, which appears to be the "paper" 2019-2020 in-person schedule Jennings received from Ms. Alderman.

Mr. Cooper conceded that teachers were not required to teach 1250 minutes, as set forth in the tenure charge. Rather, the MEA contract only states that pupil contact time for teachers shall not exceed 1250 minutes (Ex. Q; Tr. 5, p. 805, lines 21-25). Cooper also testified that there were physical education (PE) teachers at Renaissance who did not have a full teaching load (Tr. 5, p. 791, lines 8-11). However, there were 240 students at Renaissance and only two PE teachers (Tr. 5, p. 791, lines 12-25). With PE required for every student, and assuming there was an even distribution of students among the PE teachers, there would have been 12 sessions of PE which would each have 20 students. Therefore, each PE teacher would have six periods. Cooper could not explain his conclusion that PE teachers at Renaissance did not have a full teaching load. His answers ranged from "I am not familiar with many schools that run PE that only has 20 kids in a section" to "I did not count the number of kids in the section" to "I don't know" how many students in the PE classes (Tr. 5, p. 792, line 1 through p. 793, line 25). In the end, Cooper conceded that the information on which he concluded that PE teachers did not have sufficient teaching periods was predicated solely on what Jennings had provided to him (Tr. 5, p. 796, line 24 through p. 797, line 6).

In addition, Mr. Cooper admitted that his chart contained mathematical errors. In his reference to teacher #4, as contained in Exhibit S, Cooper acknowledged that it showed 12 different periods, each of which were 39 minutes in length. When told that this amounted to 468 minutes, Cooper was at a loss to explain how he came to 351 minutes as contained in Exhibit S. He responded, "I am not sure" (Tr. 5, p. 784, lines 5-18). He also acknowledged that he listed one of the Friday classes as 39 minutes when it should have been 78 minutes (Tr. 5, p. 784, line 20 through p. 785, line 18). Cooper also testified that teacher #20 in Exhibit S was another example of a teacher not having sufficient pupil contact time (Tr. 5, p. 797, lines 8-15). Without knowing who the teacher was, here too, Cooper's "audit" contained simple arithmetical errors. Cooper agreed that the document contained eight classes that were 39 minutes each, which meant that the total number of minutes amounted to 312. Yet, the document, Exhibit S, stated that there were only 156 minutes (Tr.5, p. 798, lines 1-12). When asked whether his number of 156 minutes was accurate, Cooper readily acknowledged that it wasn't, testifying that "it's off" (Tr. 5, p. 798, line 12).

Additionally, Mr. Cooper acknowledged that all the duty periods and advisory periods counted towards pupil contact time. Yet, Cooper did not count advisory periods in his calculation (Tr. 5, p. 787, lines 1-25). He also did not count duty assignments (hall duty, lunch duty, or dismissal time) all of which the MEA contract says must be included in determining the amount of pupil contact time (Ex. Q; Tr. 5, p. 789, lines 1-25). Cooper admitted that not only did he not include the duty periods in Exhibit S, but that he also did not know how long lunch period, hall duty, or dismissal duty lasted (Tr. 5, p. 800, lines 1-25). Further, he was not aware that class periods on Friday were longer than the class periods on Monday through Thursday (Tr. 5, p. 790, lines 1-12; p. 798, lines 13-25; p. 799, line 1 through p. 803, line 5).

Mr. Cooper admitted that the alleged financial loss he said was attributable to the teacher #20 for not having had sufficient pupil contact time – a sum he said in Exhibit S amounted to \$61,529 - was also not accurate (Tr. 5, p. 802, lines 16-20). Finally, Cooper testified that he never sought to correct the information that he had presented to the Board (Tr. 5, p. 803, lines 2-4).

Dr. Putrino noted that the advisory portion of homeroom and lunch duty were missing in Mr. Cooper's analysis (Tr. 9, p. 1416, lines 2-9). Sections of electives that are taken by students in periods 9 and 10 were also missing (Tr. 9, p. 1416, lines 10-15). Hall duty and dismissal duties prior to the end of the day were not included. When those items are factored in, Teacher #1 (identified as Ms. Dubois, a French teacher) should have been credited with 1,241 pupil contact minutes per week. Instead, Cooper recorded 1,017 minutes. In other words, Cooper performed an incomplete analysis of Dubois' schedule (Tr. 9, p. 1416, lines 23-25 and p. 1417, lines 1-3). Notably, the schedule that Putrino put in place for Dubois was the same as the 2019-2020 school year (for which Putrino received glowing feedback from Superintendent Kendra Johnson) (Tr. 9, p. 1417, lines 4-10).

Dr. Putrino explained that advisory periods, which were twenty minutes in length Monday through Thursday, also counted towards pupil contact time. Putrino's schedule establishes advisory teams for each grade level (6th through 8th) and it expressly noted that the homeroom teacher will lead the advisories (unless otherwise agreed upon by the team) (Ex. R24, Bates Stamp Putrino 0296). During advisory periods, in addition to taking attendance, the period was devoted to Montclair's "restorative justice initiative". It was a part of the curriculum (Tr. 8, p. 1371, lines 1-10). On Fridays, the schedule was markedly different. The advisory periods were 45 minutes to "give room for more thorough discussions in the restorative justice setting... and to allow for assemblies and video presentations or larger lessons" (Tr. 8, p. 1372, lines 2-12).

Dr. Putrino closed his scheduling testimony on cross-examination, as follows:

Q. You took us through this sample schedule for this particular teacher. Is it your testimony that if you add up all of the minutes, counting Monday through Friday being a 39-minute period, counting a 20-minute period for the advisory, and then including the passing time, the three minutes for dismissal, and then the Friday, all of those advisory periods which were a little bit longer, I think only went through five, that if you did this for each of these schedules, that you would come pretty close to 1,250 minutes; that's your testimony for all of these schedules?

A. I testified that they were close to or at 1200, but didn't --- or more, and didn't exceed 1250 ... (Tr. 9, p. 1464, lines 7-25 through p. 1465, lines 1-22).

Lastly, Dr. Matt Jennings testified on behalf of Dr. Putrino regarding the scheduling dispute. A difference of opinion arose as to Jennings qualifying as an expert witness. N.J.R.E. 702 states, "An expert may testify by opinion or otherwise if scientific/technical/specialized knowledge will assist the trier of fact to understand testimony or determine fact in issue, and expert is qualified by knowledge, skill, experience, training and/or education." In this matter, following *voir dire*, I concluded that Jennings qualified as an expert in formulating and reviewing over 40 school schedules for over 18 years in several school district leadership roles:

So I'm going to admit the witness, qualify him as an expert, recognizing that there are varying degrees of expertise. And as we go along in the proceeding, cross-examination can certainly bring out further flaws, if any, with respect to the findings and conclusions that Dr. Jennings has made.

So I'm satisfied initially based on his experience of reviewing schedules, creating some master schedules, that the topic of scheduling would be something he would be able to assist me with. So I'm going to allow the testimony, and of course, as we go through it, there could be cross-examination of what his testimony actually is (Tr. 11, p. 1805, line 15 through p. 1806, line 4).

Turning to the specific dispute between the parties, in anticipation of testifying and the hearing and for the purpose of preparing his expert report, Dr. Jennings testified that he reviewed three main documents: the teachers' contract, Exhibit S, and Dr. Putrino's scheduling documents (Ex. R24; Tr. 11, p. 1806, lines 17-21). Jennings testified that "[Dr. Putrino's scheduling

documents [were] more detailed perhaps, even more thorough than most of the ones that I've seen with regards to the assignment for things like dismissal. I mean, it's very specific" (Ex. R24; Tr. 11, p. 1808, lines 20-24). In contrast, Exhibit S was deficient for several reasons, most notably, that the school year of the schedule was not specified (Tr. 11, p. 1820, lines 12-14); the teacher names were intentionally omitted (Tr. 11, p. 1820, lines 15-22); and many of the district's numerical calculations were wholly incorrect (Tr. 11, p. 1820, line 23 through p. 1821, line 19). He stated, "To be honest ... I was shocked at some of the mathematical errors" (Tr. 11, p. 1820, line 23 through p. 1821, line 1). He further testified that all the numbered teachers listed in Exhibit S had "some degree of error... It was shocking to me to see – that teacher #13, teacher #4,... and #20... were significantly off" (Tr. 11, p. 1821, lines 2-18)(and that was without adding non-instructional pupil contact time).

Dr. Jennings observed, with respect teacher #4 in Exhibit S, referring to the 12 blue color-coded classes from Monday through Thursday and the double period on Fridays (Tr. 11, p. 1823, lines 1-20), Mr. Cooper had a total of 351 minutes, compared to Dr. Jennings' total of 546 minutes (Tr. 11, p. 1824, lines 13-22). He said that the simple arithmetical difference in the minutes was unexplainable – "I mean the numbers are there. It seems to me it would have to be an error, just a careless error in addition" (Tr. 11, p. 1824, line 25 through p. 1825, line 3). As for the missing 779 minutes – alleged for teacher #4 – Jennings emphatically stated that it was not accurate (Tr. 11, p. 1827, lines 1-6). His testimony with respect to teacher #20 was similar. For the blue color-coded classes, Mr. Cooper said there were 156 minutes of pupil contact time, where the actual number was 312 (Tr. 11, p. 1829, lines 1-10). Further, as with teacher #4, the calculations in Exhibit S did not include advisory periods or duty periods, all of which were missing (Tr. 11, p. 1830, lines 1-13).

Dr. Jennings opined that just reviewing what Mr. Cooper did in compiling his data would be obvious “that you’re missing some things. Because not included here are things like the advisory, the hall duty, the lunch duty, any of those things. They’re all missing. So, you would have to get additional information” (Tr. 11, p. 1825, lines 9-18). Jennings also said with the numbers in Exhibit S being so incorrect, he would have expected a more thorough follow-up which would have included speaking to the principal who created the schedule.

Well, here’s what I would expect. I would expect if I saw a number like this, that looked, you know, so out of line, I would expect there would have been a more thorough follow-up. And yes, I would have expected that you would look carefully at all of the information (Tr. 11, p. 1826, lines 7-12).

Dr. Jennings continued, “You’re talking about making a very serious claim about an individual. And to... not get the most accurate picture, in my professional opinion, is not acceptable” (Tr. 11, p. 1825, line 23 through p. 1826, line 17). Knowing the significance of this decision... what’s at stake... I would do the very best I could to make certain that the information provided to the Board was accurate... And if there was inaccuracy... I would certainly bring that to the Board’s attention that an error was made” (Tr. 11, p. 1846, lines 1-17).

Petitioner attempted to characterize Dr. Jennings’ ultimate findings as something less persuasive than they ultimately were: “Respondent’s expert testified to some mathematical errors, but even his audit showed that the staff members were scheduled for significantly less than the 1250 pupil contact time.”

	Respondent’s expert’s Total	Missing minutes according to Respondent’s expert
1	1028	-222
2	629	-621
3	840	-410
4	668	-582
5	980	-270
6	920	-330
7	920	-330

8	920	-330
9	880	-370
10	1040	-210
11	1080	-170
12	1040	-210
13	808	-442
14	966	-284
15	900	-350
16	648	-602
17	1040	-210
18	1040	-210
19	1040	-210
20	632	-618
21	1040	-210
22	1040	-210
23	1040	-210
24	1028	-222
25	1108	-142
26	920	-330
27	920	-330
28	920	-330
29	240	-1010

(Ex. BB; Tr. 11, p. 1875, line 3 through p. 1876, line 13).

However, it became evident that Petitioner’s numbers reflected above fail to include duty periods or advisory assignments (Tr. 11, p. 1877, lines 15-23). Dr. Jennings testified that when duty periods are included, like suspension, hall duty, etc., the minutes of pupil contact time are much closer to the maximum 1250 minutes (Tr. 11, p. 1873, lines 6-14).

Petitioner asserted that, under the MEA Agreement, homeroom should not be included in the pupil contact time. Although Dr. Jennings acknowledged that the contract specifies that homeroom doesn’t count towards the 1250 minutes and that the schedule did not expressly state “advisory” as a co-subject with homeroom, he clarified that “five minutes of this is for homeroom, and then 15 minutes is for the advisory [supervisory time], with the exception of them being a 40

minute on Friday” (Tr. 11, p. 1832, lines 13-23). While it may be an estimate, that time needs to count toward the pupil contact time and added at a minimum 95 minutes per week (Tr. 11, p. 1832, lines 23-24). His testimony was notably informed by Dr. Putrino’s testimony, which was not convincingly refuted.

Dr. Jennings noted that the MEA contract does not provide for a minimum number of minutes and that no teacher will get to exactly 1250 minutes of pupil contact time (Tr. 11, p. 1814, line 20 through p. 1815, line 1). He further explained that if you have more than 39 minutes left available, you would try to assign that teacher to another class, because you would have enough time for another full class period (Tr. 11, p. 1815, lines 4-7). He testified that 1221 minutes would be the range that he would look for when reviewing the scheduling documents (Tr. 11, p. 1815, lines 13-17). In conjunction with Exhibit BB, as prepared by Petitioner, Jennings agreed with the following adjustments which accounted for all forms of student contact time discussed previously.

Teacher							Ad.	Duty	Duty	Hall	Dism.	Total	1250
Dubois	12	468	3	120	8	240	125	5	196	72	16	1237	13
Anagnostis	20	780	3	120	4	120	100	1	40	72	16	1248	2
Lorusso	20	780	3	120	4	120	100	1	40	72	16	1248	2
Spagnulo	16	624	8	120	8	240	125	1	40	72	16	1237	13
Garzon	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Arnette	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Cullen	16	640	4	160	4	120	125	4	156	72	16	1289	-39
Thomas	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Gazillo	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Jordan	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Dunn	16	640	4	160	6	180	125	2	78	72	16	1271	-21
Smith	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Stulbaum	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Jackson	16	640	4	160	4	120	125	4	156	72	16	1289	-39
Woodward	16	640	3	120	8	240	125	1	40	72	16	1253	-3
Bousel	8	312	5	205	8	240	80	4	156	72	16	1081	169
Colon	20	878	3	120	2	78	85	0	0	72	16	1249	1
Brophy	20	878	3	120	2	78	85	0	0	72	16	1249	1

Prasarn	18	702	3	120	6	180	125	1	20	72	16	1235	15
Collier-Thomas	16	640	3	120	4	120	125	4	158	72	16	1251	-1
Hittel	16	640	4	160	4	120	125	4	156	72	16	1289	-39
Noori	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Ucci	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Harris	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Sender	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Doctry	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Stafford	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Dyer	16	640	4	160	8	240	125	0	0	72	16	1253	-3
Bailey	16	640	4	160	8	240	125	0	0	72	16	1253	-3
												1249	
			21 out of 29 people are over the 1250									1289	
			8 out 29 are under 1250										

Finally, Dr. Jennings clarified that advisory assignments were to be adjusted so that no one would ever go over the 1250 minutes:

Q: So you based your expert report on these schedules, but you agree with me that 21, approximately 21 out of 29 teachers are actually over 1250, eight teachers, with a couple of them being significantly under 1250?

A: I think what you're missing here is the backtracking that I had to do to find out why it was over. And I was told, and I don't know if Dr. Putrino ever spoke to this, but that the advisory assignments were adjusted so that nobody would go over (Tr. 11, p. 1880, lines 5-15).

In light of the foregoing, I first find, consistent with N.J.S.A. 18A:6-17.1 (3)(b) and N.J.A.C. 6A:3-5.1 (b)(1), that an analysis of Petitioner's scheduling allegations against Dr. Putrino must be limited to whether or not Putrino put forth a 2020-2021 schedule which allegedly revealed that no teacher is teaching the contractual allotted 1250 minutes per week; numerous teachers are teaching less than 1000 minutes per week; the Renaissance Middle School was allegedly overstaffed to the approximate cost of \$767,447.00 to the District; and the alleged significant financial loss to the District did not result in more student contact time and/or smaller classes.

However, in dismissing the tenure charge, as a threshold matter, I initially find that the tenure charge refers to a 2020-2021 schedule put together by Dr. Putrino. That schedule (Ex. R30) was a condensed remote schedule and not the master schedule (in-person) put together by Dr. Putrino in 2018-2019 and implemented during the 2019-2020 school year (Ex. R24; Tr. 9, p. 1460, lines 18-25 through p. 1461, lines 1-13). Mr. Cooper analyzed, charted and presented to the Board as Exhibit S Putrino’s 2019-2020 schedule which, in turn, led to the filing of a tenure charge over the 2020-2021 schedule.

One basis for Dr. Putrino’s motion to dismiss was that the tenure charge did not express which school year schedule was evaluated. Petitioner – referring to the subheading of the charge, its witness list and answers to interrogatories – replied during the motion to dismiss that it was the 2020-2021 schedule which was evaluated:

In addressing Respondent’s specific concerns, I first find that the Sworn Tenure Charges, Paragraphs 20-23 do allege that the 2020-2021 school year was the subject of the audit. The introductory heading itself states: “Renaissance Middle School 2020-2021 Teachers’ Schedules Audit.” To the extent that any clarification is needed, Petitioner’s “Witness List” filed with the Sworn Tenure Charges and Statement of Evidence plainly speaks of the 2020-2021 school year as the subject of the audit (See, anticipated or potential testimony of Damen Cooper, Director of Human Resources; Dr. Timothy Purnell, former Interim Director of Human Resources). Lastly, in Petitioner’s Answers to Respondent’s Demand for Interrogatories, #21, Respondent demands that Petitioner “Identify the school term and/or year in which the “overstaffing” as set forth in the Charges began”. Petitioner replies: “. . . Petitioner states that the audit was regarding the 2020-2021 Renaissance Middle School Teachers’ Schedules.” Thus, I disagree that Petitioner did not sufficiently identify the 2020-2021 school year as the year involved in the scheduling allegations against Respondent [March 1, 2022 Decision on Motion to Dismiss, page 16].

Based on this response, in part, I denied Dr. Putrino’s motion to dismiss the tenure charge pertaining to scheduling. Now, however, after being presented with a fully developed record, I am inclined to dismiss the tenure charge based on the disconnect between the charged schedule (2020-2021) and Cooper’s analysis of the in-person master schedule (2019-2020). Mr. Cooper’s

analysis and presentation to the Board as Exhibit S clearly involved the 2019-2020 in-person schedule (characterized by 39 minute and 30 minute periods). In other words, Petitioner charged Dr. Putrino with various deficiencies in the 2020-2021 schedule (Ex. R30) which was never analyzed by Mr. Cooper and which Exhibit S does not encompass. In turn, Dr. Putrino did not discover until the cross examination of Mr. Cooper that the 2020-2021 condensed remote schedule was not audited. Rather, it was the 2019-2020 in-person master schedule which was audited. In my opinion, the disconnect between what was charged and the evidence presented constitutes a clear violation of N.J.S.A. 18A:6-17.1 (3)(b) and N.J.A.C. 6A:3-5.1 (b)(1).

N.J.A.C. 6A:3-5.1(b) (1) specifically states:

Charges shall be stated **with specificity as to the action or behavior underlying the charges** and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, **accompanied by a supporting statement of evidence**, both of which shall be executed under oath by the person(s) instituting such charges. Complete copies of all documents referenced in the statement of evidence shall be attached as part of the statement.

Therefore, having the benefit of a full record, I dismiss the scheduling tenure charge.

In the alternative, as testified to by Dr. Putrino, Dr. Jennings, and even as admitted by Mr. Cooper, in part, Cooper's analysis (Ex. S) was significantly underinclusive. It failed to include several forms of student contact minutes which are recognized in the MEA contract and/or as developed over the years as a matter of custom or practice. The chart developed from Putrino's and Jennings' testimony (Exhibit BB, save minor adjustments for advisory time) is consistent with the MEA contract and past practice accounting for varying forms of pupil contact time other than direct classroom instruction, i.e., advisory as part of homeroom, hall duty, activity after the last class but before the literal dismissal of students from school, in class support, lunch duty, etc.

While I acknowledge that Petitioner attempted to challenge the reasonableness of the past practice, for example, asking whether every teacher is needed to come into the hallway between every class, whether every homeroom has advisory activities, or whether every teacher spends three minutes in pre-dismissal activities, that is an argument to change the practice, if Petitioner wishes to do so by way of placing the MEA and MPA on notice during contract negotiations. It is not a basis to seek to remove one of the three middle school building administrators who adhere to the same scheduling practices (Tr. 9, p. 1456, lines 22-25 to 1457, line1).

Lastly, Petitioner has failed to show that it incurred any monetary loss during the 2020-2021 school year as a result of the 2020-2021 schedule. Indeed, even Mr. Jennings admitted that there were not many teaching duties to reassign someone to during remote learning. And, as the hybrid schedule came on line in April of 2020, sick outs and the unavailability of substitute teachers created a supply shortage, and not a supply surplus. In the final analysis, even peeking behind the outright dismissal of the charge as a threshold matter (as discussed above), I find that Petitioner failed to sufficiently prove that it lost \$767,447.00 due to Dr. Putrino's 2020-2021 schedule (which was not even analyzed).

In light of the foregoing, I find and conclude that Petitioner has failed to sufficiently demonstrate the allegations set forth in the scheduling tenure charge it filed against Dr. Putrino:

20. In or about February and March 2021, Petitioner conducted an audit of the teachers' schedules for the Renaissance Middle School. A detailed review of the teachers' schedules at the Renaissance Middle School allegedly revealed that no teacher is teaching the contractual allotted 1250 minutes per week. Moreover, it is alleged that there are numerous teachers teaching less than 1000 minutes per week. As a result, the Renaissance Middle School was allegedly overstaffed to the approximate cost of \$767,447.00 to the District. This allegedly significant financial loss to the District did not result in more student contact time and/or smaller classes (Ex. S).

21. Pursuant to the 2018-2021 Collective Bargaining Agreement between the Montclair Board of Education and the Montclair Education

Association, Article 8.1(i): “Pupil contact time is defined as the number of scheduled class minutes to which a teacher is assigned classroom instruction and/or supervisory duties. It specifically excludes homeroom and the ten (10) minutes before and twenty (20) minutes after school. The pupil contact time for classroom teachers assigned to the high school and the middle school shall not exceed 1250 minutes per week and 1500 minutes per week at the elementary school, average over the school year.” (Ex. Q).

22. As Principal of the Renaissance Middle School, it is alleged that Respondent was responsible for preparing the teachers’ schedules (Ex. R).

23. Thus, the alleged significant financial loss to the District, to the detriment of the students, by teachers allegedly being overstaffed, occurred during Respondent’s appointment as Principal to the Renaissance Middle School.

CONCLUSION

For the reasons set forth more fully herein, I find and conclude that Petitioner, Montclair Board of Education has sufficiently demonstrated that Respondent, Dr. Putrino unwittingly showed an inappropriate video which offended a portion of the staff and some members of the public. However, I find that the penalty of dismissal is not consistent with just cause based on (1) the dismissal of two of the core allegations; (2) the mixed reactions to the video among Black educators; (3) Dr. Putrino’s prior long-term unblemished employment history, which includes numerous anecdotes of him fostering inclusion and diversity, both within and outside of his place of employment; and (4) the unjustifiable variation in Petitioner’s treatment of Dr. Putrino versus Assistant Principal Clark. Accordingly, I will modify the sought after dismissal penalty to the disciplinary penalty implemented for Assistant Principal Clark. Petitioner shall immediately offer reinstatement to Dr. Putrino as Principal of Renaissance Middle School. To the extent that Putrino was suspended without pay for more than the Clark suspension, Petitioner is directed to provide corresponding back pay and all applicable benefits of employment. To the extent that Putrino has suffered no loss in pay, then he must be returned to his position at the conclusion of the Clark suspension without pay. I will retain jurisdiction to the extent that the parties dispute the precise penalty which was issued to Assistant Principal Clark. Finally, I dismiss the tenure charge pertaining to the 2020-2021 schedule.

AWARD

For the reasons set forth more fully herein, I find and conclude that Petitioner, Montclair Board of Education has sufficiently demonstrated that Respondent, Dr. Putrino unwittingly showed an inappropriate video which offended a portion of the staff and some members of the public. However, I find that the penalty of dismissal is not consistent with just cause based on (1) the dismissal of two of the core allegations; (2) the mixed reactions to the video among Black educators; (3) Dr. Putrino's prior long-term unblemished employment history, which includes numerous anecdotes of him fostering inclusion and diversity, both within and outside of his place of employment; and (4) the unjustifiable variation in Petitioner's treatment of Dr. Putrino versus Assistant Principal Clark. Accordingly, I will modify the sought after dismissal penalty to the disciplinary penalty implemented for Assistant Principal Clark. Petitioner shall immediately offer reinstatement to Dr. Putrino as Principal of Renaissance Middle School. To the extent that Putrino was suspended without pay for more than the Clark suspension, Petitioner is directed to provide corresponding back pay and all applicable benefits of employment. To the extent that Putrino has suffered no loss in pay, then he must be returned to his position at the conclusion of the Clark suspension without pay. I will retain jurisdiction to the extent that the parties dispute the precise penalty which was issued to Assistant Principal Clark. Finally, I dismiss the tenure charge pertaining to the 2020-2021 schedule.

Respectfully submitted,


Joseph Licata

Dated: October 18, 2022

State of New Jersey)
):SS
County of Bergen)

On the 18th day of October, 2022, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.


Notary Public

