

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION

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In the Matter of Tenure Hearing
of Stephen Wolowitz and the
Fort Lee Board of Education,
Bergen County

Agency Docket No. 289-9/24

OPINION AND AWARD

Issued: March 11, 2025

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ARBITRATOR

Joseph Licata, Esq.

APPEARANCES

FOR THE PETITIONER

Lester E. Taylor, III, Esq.
Taylor Law Group, LLC

FOR THE RESPONDENT

Colin M. Lynch, Esq.
Zazzali, P.C.

INTRODUCTION

The U.S. Government Census notes that Fort Lee's population is/was 39,700 as of July 1, 2023 (<https://www.census.gov/quickfacts/fortleeboroughnewjersey>). The Fort Lee High School is located in Bergen County, New Jersey. It serves approximately 1,142 students in grades 9-12 via approximately 83 full-time teachers. The District is comprised of 45.7% Asian or Pacific Islander, 25.3% White, 20.8% Hispanic/Latino, 4.7% Black or African American, 3.1% Two or more races, 0.2% Native Hawaiian or Other Pacific Islander, and 0.1% American Indian or Alaska Native (<https://www.usnews.com/education/best-high-schools/new-jersey/districts/fort-lee-school-district/fort-lee-high-school-12547>). Although there is not an easily available data point, it is undisputed that there is a significant Jewish population in the community.

Since October 1, 2021, Dr. Robert Kravitz, who is Jewish, has been the Superintendent of Fort Lee School District. Based on Kravitz's assertions of how the lesson was biased against Israel, he is clearly intimately familiar with the conflict. B.F., who is Palestinian, presumably Muslim, was a second year nontenured teacher. B.F.'s certifications are in special education and social studies. She co-taught U.S. and World History with Stephen Wolowitz during the 2022-2023 and 2023-2024 school years. She was intimately familiar with the Israeli Palestinian conflict as well.

Diane Collazo-Baker is the Assistant Superintendent of Schools. She has been employed by the Fort Lee School District for approximately 19 years. During her tenure, she was a paraprofessional, a teacher, a staff developer, and an instructional supervisor before becoming an assistant superintendent. Kristen Richter is the Fort Lee Board of Education ("Board") President since January 2019. Lauren Glynn is the Principal of Fort Lee High School. She has been employed in the Fort Lee School District for 19 years. She was an assistant principal for four years prior to becoming Principal in 2015. Diana Ladd is employed by the Fort Lee School District as

a Special Education/Psychology High School Teacher. She has worked in the District for 10 years. She holds certifications in teaching psychology, history, disabled and elementary students (Tr. 2, p. 97). The religious affiliations of Mss. Collazo-Baker, Richter, Glynn and Ladd were not identified. However, as will be discussed, it is evident that they were not intimately familiar with the Israeli Palestinian conflict in contrast to Dr. Kravitz and B.F.

Since 2007, Mr. Wolowitz, who is catholic, has been a Teacher. He has been employed by the Fort Lee School District since the 2011-2012 school year. He holds a K-5 general content, 5-8 social studies specific standard, and K-12 social studies certificates. Wolowitz's subject matter expertise is in U.S. History. Wolowitz has regularly taught U.S. History 1, U.S. History Honors, U.S. History 2, and U.S. History 2 Honors. Conversely, he was first assigned World History in relation to the 2022-2023 school year and with only six days' notice. In 14 years, Wolowitz had an unblemished work record.

THE SWORN TENURE CHARGES

On August 5, 2024, the Board formally adopted Tenure Charges against Mr. Wolowitz, citing conduct unbecoming of a teacher, neglect of duty, and violation of District policies. The Charges arose following a lesson actually prepared and taught by B.F. The accompanying slide presentation allegedly contained biased and misleading information, allegedly contravening multiple Board policies and causing significant disruption within the school community. Following the Board's determination, Sworn Tenure Charges and a Statement of Evidence were formally submitted to the Commissioner of Education, accompanied by a certificate of determination, affirming that the Board had found sufficient grounds to proceed with tenure revocation.

The Charges filed with the Commissioner read as follows:

STATEMENT OF CHARGES

I, Dr. Robert Kravitz, of full age and capacity, having been duly sworn by the undersigned authority, depose and say as follows:

I am employed by the Fort Lee Board of Education (“Board”) as the Superintendent of the Fort Lee Public Schools. The Board maintains its administrative offices at 231 Main Street, 3rd Floor, Fort Lee, NJ. I am charged with the general oversight of the school district and all employees serving therein. During all times relevant herein, Stephen Wolowitz (“Mr. Wolowitz” or “Respondent”) has been employed by the Board as a Teacher. Mr. Wolowitz is currently tenured pursuant to N.J.S.A. 18A:28-5.

I am fully familiar with all the facts and circumstances regarding the charges against Mr. Wolowitz, based upon my personal knowledge and upon information and belief. I have personally reviewed the accompanying Sworn Statement of Evidence. I hereby charge Mr. Wolowitz with Charge I - Unbecoming Conduct; Charge II - Neglect of Duty; Charge III - Violation of New Jersey Statutes; Charge IV - Violation of Board policies; and Charge IV - Other Just Cause warranting dismissal or reduction in salary, pursuant to N.J.S.A. 18A:6-10 et seq., as more particularly set forth below.

BACKGROUND COMMON TO ALL CHARGES

1. Respondent was hired by the Board as a History Teacher and commenced employment on September 1, 2011. Respondent has subsequently acquired tenure. He was assigned to work at Fort Lee High School for the 2023-2024 school year. During the 2023-2024 school year, Respondent, a more experienced teacher, and nontenured teacher B.F. were co-teachers of a World History class at Fort Lee High School.
2. At all relevant times herein, Respondent was subject to the terms and conditions of the Collective Bargaining Agreements between his union and The Fort Lee Board of Education. Further, Respondent was obligated to perform the duties of his position in accordance with any and all Board policies and any and all applicable laws, rules, and regulations, as an employee of the Board.
3. From May 21, 2024 through May 23, 2024, B.F. and Mr. Wolowitz delivered a controversial lesson entitled 1948-2024, which presented a biased view of the Israeli Palestinian conflict. The lesson addressed a controversial subject and did not provide a balanced view of the conflict.
4. In fact, several students felt uncomfortable during the lesson. It was noted that one student left the classroom to use the bathroom and returned. Many parents were also troubled by the bias and manner of lesson presentation.

5. This action was in direct conflict of District policies, which recognize that (1) controversial issues must be presented in a fair and unbiased manner, and (2) that discussion of controversial matters should be free of the assumption that there is one correct answer. See District Policy 2240. Moreover, the content in the lesson plan should reflect the curriculum. While instructors are permitted to teach certain matters outside the course guide, they are required to follow a strict protocol if they elect to do so. Specifically, District Policy 3310 states:

The Board directs that the discussion of any specific issues not specifically covered by the course guide be conducted in an unprejudiced and dispassionate manner. The Board will not condone classroom discussion that is unrelated to the educational goals of this district or to the subject of the course of the study, disrupts the educational process, does not match the maturity level of the pupils, neglects to inform pupils of various responsible points of view on the subject under discussion, or fails to take into account the sensibilities of the community.

6. The lesson was accompanied by a PowerPoint slideshow which presented a one sided and biased viewpoint in favor of the Palestinian perspective of the Israeli Palestinian conflict.
7. For instance, the slideshow makes no mention of the extent of the Holocaust, and the struggle of Jews around the world to find a suitable place to live in the aftermath of World War II.
8. The slideshow ignores multiple instances of aggression committed against Israel in the aftermath of the Arab-Israeli war, specifically suicide bombings within Israel which were especially prevalent in the 1990s and 2000s (and which remain a threat to this day).
9. The slideshow also characterizes Hamas as a “resistance movement”, as opposed to a terrorist group, and frames the October 7, 2023, massacre of Jews inside Israel as a Palestinian effort to “break out of Gaza.”
10. The slideshow further states that after the October 7, 2023 massacre, “Israel then declares war [...]”, which ignores the facts that (1) Hamas and Israel have been in conflict for several decades and (2) the October 7, 2023 massacre itself was an act of war committed by Hamas.
11. The slideshow also mischaracterizes Israel’s retaliatory strikes and efforts to secure the country as a “genocide” directed against Palestinians and does not reference the fact that Hamas itself is responsible for the deaths of

civilians inside Gaza through their acts of using civilians as human shields of military targets.

12. The controversial and one-sided lesson has caused significant disruption in the school and community and has upset many individuals. This is evidenced through the hundreds of e-mails directed to the District (specifically, Superintendent Dr. Robert Kravitz), in addition to the public comments at several Board of Education meetings in the aftermath of the lesson.
13. Here, Respondent exhibited unbecoming conduct and neglected his duty by participating in and failing to review a controversial lesson plan before B.F. gave the lesson.
14. In addition, in contravention of Policy 3310, the lesson was delivered in a prejudiced and biased manner which favored the pro-Palestinian viewpoint in the Israeli Palestinian conflict.
15. B.F. resigned from her teaching position effective June 30, 2024.
16. Respondent has admitted that he did not review. Specifically, Respondent admitted that he did not review the lesson plan prior to copying and entering it in the Genesis system. Nor did Respondent report or take any action to prevent the lesson from being presented.
17. These actions have caused substantial disruption to the District and have made many students and parents feel uncomfortable.

SPECIFICATION OF CHARGES
CHARGE I: UNBECOMING CONDUCT

18. Respondent's actions demonstrate unbecoming conduct in that he failed to review the lesson plan and PowerPoint presentation that he and his co-teacher, B.F., presented to the class.
19. Moreover, Respondent violated multiple Board policies and regulations which govern controversial lesson plans and academic freedom in instances where the lesson plan delivered in the classroom deviated from the course curriculum.
20. Respondent's behavior has created conditions which have negatively affected the proper operation, reputation, and image of the Fort Lee schools.
21. His actions have caused disruptions to the administration of the Fort Lee Public Schools and have negatively affected the learning environment and quality of instruction in the District.

22. The allegations, jointly and severally, demonstrate his unfitness to continue to serve in a position of trust, warranting his immediate dismissal.

CHARGE II: NEGLECT OF DUTY

23. Through Respondent's acts and omissions, Respondent has demonstrated that he has neglected and/or refused to perform the duties to which he has been assigned.
24. Respondent admitted that he did not review the lesson plan even though he received it in advance and B.F. expressed concern and no action was taken by him.
25. The foregoing acts and omissions by the Respondent, as set forth in the above Counts, individually and cumulatively, constitute neglect of duty, warranting dismissal.

CHARGE III: VIOLATION OF NEW JERSEY STATUTES

26. Pursuant to N.J.S.A. 18A:29-4, Respondent's actions support the District's decision to withhold his salary.
27. In this matter, Respondent violated N.J.S.A. 18A:29-4 by neglecting and/or refusing to perform the duties to which he has been assigned.
28. The foregoing acts and omissions by the Respondent, as set forth in the above Counts, individually and cumulatively, constitute violation of New Jersey Statutes, warranting dismissal.

CHARGE IV: VIOLATION OF BOARD POLICIES AND REGULATIONS

29. Respondent's actions are in violation of Board policies and regulations. Specifically, Policy 2240, 3310, and Regulation 3270.
30. In this matter, Respondent violated Policies 2240 and 3310, and Regulation 3270 by presenting instructional material in a biased and prejudiced manner; presenting instructional material that disrupts the educational process and fails to take into account the sensibilities of the community; and by failing to follow established protocol regarding presentation of controversial lessons.
31. The foregoing acts and omissions by the Respondent, as set forth in the above Counts, individually and cumulatively, constitute violation of Board Policies and Regulations, warranting dismissal.

CHARGE V: OTHER JUST CAUSE

32. Under these circumstances, Respondent's actions demonstrate that he is unfit to serve as a teacher in the District.
33. Respondent has exhibited unbecoming conduct, neglected his duty, and has violated New Jersey Statutes and Board Policies and Regulations.
34. The foregoing acts and omissions by the Respondent, as set forth in the above Counts, individually and cumulatively, constitute other just cause warranting dismissal.

CONCLUSION

35. Each of the foregoing Charges and Counts individually and collectively warrant dismissal. Viewed in their totality, within the context of Respondent's behavior, it is evident that Respondent's actions amount to unbecoming conduct, neglect of duty, violations of New Jersey Statute, violations of Board policies, and/or other just cause warranting dismissal. Respondent's behavior has caused substantial disruption among students and parents and has negatively affected the proper operation of the Fort Lee Public Schools. The allegations, jointly and severally, demonstrate his unfitness to continue to serve in a position of trust, warranting his immediate dismissal.

THE ARBITRATION PROCEEDING

On September 26, 2024, the undersigned was appointed Arbitrator. Hearings were held on December 10 and 20, 2024 at the Fort Lee Board of Education Offices. Lester E. Taylor, III, Esq. of Taylor Law Group, LLC, represented the Board of Education. Colin M. Lynch, Esq. of Zazzali, P.C. represented Stephen Wolowitz. The testimony of Kristen Richter, Lauren Glynn and Diane Collazo-Baker took place on December 10, 2024. The testimony of Robert Kravitz, Diana Ladd and Stephen Wolowitz took place on December 20, 2024.¹

The following exhibits were introduced:

¹ Transcript citations with respect to Kristen Richter, Lauren Glynn and Diane Collazo-Baker should be understood to refer to the December 10, 2024 transcript. Transcript citations with respect to Robert Kravitz, Diana Ladd and Stephen Wolowitz should be understood to refer to the December 20, 2024 transcript.

<u>Exhibit No.</u>	<u>Date/Description of Document</u>
BOARD EXHIBITS	
Exhibit A	Sworn Tenure Charges against Stephen Wolowitz.
Exhibit B	Sworn Statement of Evidence against Stephen Wolowitz.
Exhibit C	Fort Lee Board of Education witness list.
Exhibit D	Stephen Wolowitz – Answer to Tenure Charges.
Exhibit 1	Lesson Plan World History – Palestine and Israel, 1948
Exhibit 2	Palestine/Israel 1948-2024 classroom slides.
Exhibit 3	Fort Lee Board of Education Meetings – June 3, 2024, June 24, 2024, and July 15, 2024.
Exhibit 4	Emails received by Fort Lee Board of Education – community complaints.
Exhibit 5	<u>N.J.A.C.</u> 6A:14-4.6. Program Criteria, Supplementary Instruction and Resource Program.
Exhibit 6	<u>N.J.S.A.</u> 18A:29-4. Withholding Salary for Failure to Perform Duties.
Exhibit 7	Fort Lee Board of Education Policy 2240 – Controversial Issues.
Exhibit 8	Fort Lee Board of Education Policy 3310 – Academic Freedom.
Exhibit 9	Fort Lee Board of Education Policy 3270 – Professional Responsibilities.
Exhibit 10	June 14, 2024 Investigative Report.
WOLOWITZ EXHIBITS	
R8	Parent emails/text messages.
R9	Lesson plan for lesson.
R10	Lesson plan review.
R11	Lesson plan approval.
R14	Revision history to Lesson Google Slides.
R15	5/23 Email from Wolowitz to Lombardo re: Atlas curriculum.
R16	Wolowitz evaluation history.
R20	Prior lessons.
R21	5/29/24 Letter placing Wolowitz on administrative leave.

The parties’ representatives each submitted a post-hearing brief and a reply brief. Both parties were expertly represented by skilled legal counsel. The instant Opinion and Award is timely filed based on the extended deadline approved by the Director of the Office of Controversies and Disputes.

THE POSITIONS OF THE PARTIES

The Position of the Board

During the week of May 21, 2024, Respondent, a tenured history teacher at Fort Lee High School, co-taught a lesson on the Israeli Palestinian conflict that sparked immediate and widespread controversy within the high school and the broader Fort Lee community. The lesson, which included biased and inflammatory content, was not approved by the administration, nor did it adhere to District-mandated curriculum guidelines.

Respondent's multi-day lesson presented a PowerPoint slideshow to the class, which was subsequently posted to Google Classroom and was accessible to parents. It characterized Hamas as a resistance movement rather than a terrorist organization and framed the Nakba as ethnic cleansing without providing any historical context or alternative perspectives. Ms. Glynn testified that while Respondent submitted a lesson plan for approval, it was a generalized outline and did not include the actual PowerPoint slides that were ultimately presented to students (Tr. 1, pp. 77-79). Students in the class immediately expressed discomfort with the lesson, with some feeling that it was politically charged and one-sided. Within days of the lesson being taught, parents lodged formal complaints, arguing that the content was deeply offensive, factually misleading, and inappropriate for a public-school setting. Several Jewish students and their families reported feeling targeted and ostracized as a result of the lesson's framing.

The fallout from the lesson extended well beyond the classroom, escalating into a District-wide controversy. Ms. Richter testified that multiple Board meetings turned contentious, with parents, students, and even uninvolved community members expressing outrage over the lesson's content (Tr. 1, pp. 34-35). She described disruptions at multiple meetings, where attendees shouted accusations of anti-Semitism, demanded disciplinary action against Respondent, and questioned

the Board's oversight in allowing such material to be presented. The controversy was not limited to interschool-related discussions, as it gained traction within the media further damaging the reputations of Fort Lee High School and the Board. Dr. Kravitz testified that the Board was forced to allocate substantial resources to address complaints, manage public relations, and conduct internal investigations to determine how the incident occurred (Tr. 1, pp. 29-28).

Ms. Collazo-Baker testified that Respondent admitted copying a lesson plan from his co-teacher, B.F., without thorough review of the materials. In fact, the evidence established that Respondent, despite allowing his name to be associated with the document, did not independently review the materials submitted for approval and allowed them to be presented (Tr. 1, pp. 181-189). Respondent's failure to vet the PowerPoint slides prior to the presentation to his class directly violated Policy 3310 (Lesson Planning), which mandates pre-approval for lesson content to ensure it aligns with Board educational standards. Additionally, the presentation's framing of the conflict violated Policy 2240 (Controversial Issues), which requires that any politically sensitive subject matter be taught in a neutral and balanced manner. The testimony from multiple administrators confirms that the lesson failed to meet this standard and, as a result, misled students while causing division within the Fort Lee community.

The lesson and its fallout created an ongoing disruption that extended well beyond the initial controversy. Dr. Kravitz testified that he had never witnessed a single lesson cause such widespread upheaval (Tr., 1, pp. 40-45). The community division, continued parental complaints, and the unrest at several Board meetings demonstrate that the impact of Respondent's actions has not dissipated. Instead, the Fort Lee School District remains fractured, with parents and students losing trust in the Board's ability to ensure an unbiased learning environment.

Respondent offered shifting explanations for his failure to review the lesson content before its presentation. While initially informing the investigator that he was not aware of the direction the presentation was going to go until he was in the classroom with the students viewing the presentation along with them, subsequent testimony revealed that he recognized the controversial nature of the lesson but failed to take any steps to mitigate potential issues (Tr. 1, pp. 202-203).

Respondent's actions caused substantial harm to students, undermined the credibility of the Board, and resulted in ongoing disruption to the educational environment. His failure to review materials, disregard for District policies, and inability to prevent community unrest make it clear that he failed to uphold his obligations as a tenured educator.

THE POSITION OF STEPHEN WOLOWITZ

This matter represents precisely the type of case for which the tenure laws and protections were created in the first instance. Members of the public are not unreasonably upset over the biased content of a controversial lesson conducted in class; a vocal portion of the school community, unaware of the full background and circumstances concerning the nuances of the development and presentation of that lesson, publicly demand the teachers' proverbial heads on a pike; and an elected school board, with no political incentive to show proportionality in its response to the incident or recognize any distinctions between the two educators present for the lesson, seeks to placate them. The *raison d'être* for the tenure process is to protect educators from unjustified termination based on the transient passions or politics of the moment, whether those passions are justified, or not.

Here, Mr. Wolowitz is a veteran teacher for the Fort Lee Board of Education ("Board" or "District"), having honorably served the District and its students for almost 14 years as a Social Studies Teacher and coach. During that time, his teaching performance uniformly has been rated

effective, and he has never been the subject of any disciplinary action or had either his integrity or performance as an educator questioned. Now he stands charged with alleged Conduct Unbecoming, Neglect of Duty and Other Sufficient Cause based upon a single lesson. The lesson at issue was with respect to the Israeli Palestinian conflict and was intended to be conducted over the course of four days in May 2024. Wolowitz does not herein defend that lesson or its contents, for it is evident that it was flawed in many respects and was plainly biased in its perspective and content.

What the District ignores about the lesson in question is that Mr. Wolowitz had little involvement with it. It is not significantly disputed that Wolowitz did not create the lesson plans; did not create or prepare the lesson materials which are the primary subject of public concern and controversy; and did not conduct or perform the lesson itself. All of that was done by Wolowitz's colleague, B.F. Moreover, as the flawed nature of lesson revealed itself to Wolowitz over the course of several days, he in fact took actions to ameliorate it, by at first suggesting that a certain portion of the lesson relating to questionable music lyrics not be shown, and ultimately by asking his collaborative teacher, B.F., to cancel it prior to its conclusion, which she did, following the third day of the lesson, when the bias imbedded in the lesson became fully apparent to him.

Thus, lying at the heart of this matter is that the District is attempting to terminate Mr. Wolowitz based upon the content and conduct of a lesson to which his primary role was that of a spectator. Despite this, the District claims that notwithstanding Wolowitz's limited role, he nonetheless remains fully responsible for it, as if he had created and presented it himself, such that it should cost him his livelihood. But the lesson was taught in what is known as a "collaborative class" where both teachers can and do share in teaching responsibilities. Indeed, Wolowitz's collaborative teacher, B.F., was fully qualified to teach the content subject matter for that class,

World History. Wolowitz and B.F. were operating under a mutually agreed upon division of labor, whereby he took responsibility for leading their collaborative course in U.S. History – which he had done previously and was more confident in instructing – and she took the lead in instructing content in World History – which he had limited experience and was unfamiliar with – but which B.F. expressed comfort.

There was nothing improper about that arrangement. It was open and known. It was the same as the arrangement Mr. Wolowitz had with B.F. the prior school year. It was also similar to the arrangements Wolowitz had with other colleagues with whom he has collaboratively taught, including Leo Ellison, Diana Ladd and April Coniglio. It is the same or similar to the arrangements other collaborative teachers have with each other. And there are no District articulated guidelines, rules, policies, or training provided by the District, suggesting or indicating that such arrangements are or would be improper.

It is fair to say that now, in hindsight, things could have potentially turned out differently. Mr. Wolowitz acknowledges regret about the lesson going forward as it did, and potential opportunities available for him to avoid or mitigate the fallout from the lesson. He did get a small preview of the larger lesson about a week prior, which was conducted by B.F. during an open period where both he and several colleagues were present. But only a fraction of the full multi-day lesson was viewed at the time, and that portion was the largely historical and less controversial portion of the larger lesson ultimately presented. Unfortunately, Wolowitz was ill at the time and was out sick the following day. He was also out of class for the first day of the lesson, which commenced on May 21, 2024. Thus, the following day, May 22, the second day of the lesson, was his first day observing it – and he was observing it, for the most part, just as the students were, clicking the slides as B.F. instructed the students.

Prior to the third day of the lesson on May 23, 2024, B.F. showed him lyrics to a video by the musician, Macklemore, and asked his opinion on showing it. Based on the content of the lyrics, he asked her not to show the video and she did not. However, during that third day of the lesson (his second day), as B.F. delved deeper into the materials, Wolowitz began to have reservations – he noted Hamas was not referred to as a terrorist organization, but an armed resistance organization; he noted the inclusion of references to the student pro-Palestinian protest movement; and that the lesson became more biased in its viewpoint, among other concerns. As a result, prior to the planned fourth day of the lesson, he ultimately asked B.F. to end the lesson and exclude the materials from exams, which she agreed to and did.

If Mr. Wolowitz had potentially missed opportunities to intervene earlier, he was not alone. Assistant Principal Diego Lombardo approved the lesson plans prepared by B.F. but submitted by both of them, which, while not providing the details of what would be taught, certainly indicated a lesson that had the potential to be controversial. No one warned either he or B.F. off of the lesson. Moreover, Principal Glynn met with two complaining parents on the morning of May 23, 2024, prior to most controversial third day of the lesson. She was aware B.F. was leading the lesson and had a slide deck which was the subject of the complaints but failed to meet with B.F. until after the lesson was conducted, and at no time prior asked to view the lesson materials, despite her authority, if not obligation, to do so. In fact, she allowed B.F. to proceed with the lesson and post the lesson materials to Google Classroom where it was viewed not only by students, but also parents, in the face of her personal knowledge of the prior parent complaints. Yet, while Wolowitz is being terminated for his purported responsibility for another teacher's lesson, the remainder of the District apparently exempts itself from such accountability.

Are members of the public upset? – certainly, a certain segment is and, candidly, understandably so. The events of October 7, 2023 are seared into their memories, as is the war which those events triggered. But what the public does not understand – and certainly the District did nothing to help the public understand – is that Mr. Wolowitz had little more to do with the lesson than being present while it was conducted, and that he, in fact, took steps to ameliorate and ultimately terminate the lesson when it became apparent it was flawed and biased, which was more, in the end, than District administration did.

This single lesson should not and cannot form the basis for tenure revocation. Even if Mr. Wolowitz bears some responsibility for what he potentially could have done to prevent the conduct of the lesson, or reduce or avoid its ultimate controversial fallout, that responsibility should, respectfully, be limited and proportionate. Certainly, his lack of involvement in the lesson creation or its presentation mitigates against the penalty of removal. So, too, do his years of unblemished and effective service to the District and its students, among other considerations. Accordingly, it is respectfully submitted that the Charges against Wolowitz should be dismissed in their entirety. But even if not dismissed, here, the doctrine of progressive discipline, respectfully, demands, at most, a proportionate corrective penalty and one far short of the ultimate and most severe penalty of removal.

RELEVANT BOARD POLICIES

DISTRICT POLICY

2240 – CONTROVERSIAL ISSUES

Section: Program

Date Created: August 2010

Date Edited: August 2010

Free discussion of controversial issues - political, economic, social – shall be encouraged in the classroom whenever appropriate for the level of the group.

Issues may be considered controversial which arouse strong reactions, based either on personal conviction or allegiance to a group. School treatment of controversial issues shall be designed to instruct pupils in fair and objective study techniques. The decision on whether a particular controversial issue shall become a matter for school study shall be based on the timeliness of the question, appropriateness to the written curriculum, the maturity and needs of the pupils and the purposes of the schools. Classroom discussions on controversial questions which arise unexpectedly shall be the responsibility of the teacher, who shall provide relevant information on both sides of the question. Such discussions shall be kept free from the assumption that there is one correct answer that should emerge from a discussion and be taught authoritatively to the pupils. Indoctrination is not the purpose; rather, the purpose is to have the pupils see as fully as possible all sides of the question.

The presentation and discussion of controversial issues in the classroom must be on an informative basis. Teachers must guard against giving their personal opinions on sectarian or political questions or any other controversial issues until the pupils have had the opportunity to:

1. Find, collect, and assemble factual material on the subject;
2. Interpret the data without prejudice;
3. Reconsider assumptions and claims; and
4. Reach their own conclusions.

By refraining from expressing personal views before and during the period of research and study, the teacher encourages the pupils to search after truth and to think for themselves. The development of an ability to meet issues without prejudice and to withhold judgments while facts are being collected, assembled, and weighed and relationships seen before drawing inferences or conclusions is among the most valuable outcomes of a free educational system.

Pupils shall be taught to recognize each other's right to form an opinion on controversial issues, and shall be assured of their own right to do so without jeopardizing their relationship with the teacher or the school.

The Building Principal shall have the authority to limit or suspend discussion of controversial issues pending a review of the issue/materials. Instructional materials not previously approved must be reviewed by the Principal before being introduced into the classroom.

In determining speakers to be invited for a class or school-wide program, the Building Principal must consider whether:

1. The speaker is controversial for any reason;
2. The topic is controversial, or sensitive, or known to arouse strong community feelings; and
3. The proposed speaker would gain an advantage by having a "captive" audience.

Adopted: 23 August 2010

DISTRICT POLICY

3310 – ACADEMIC FREEDOM

Section: Teaching Staff Members

Date Created: August 2010

Date Edited: August 2010

The curriculum adopted by the Board of Education is designed to address the education goals established for this school district and to meet the needs of pupils. The course guides prepared for each course of study describe the material to be covered in each course and, in general, the approach to be employed by the teaching staff member responsible for the course.

The Board recognizes that some deviation from the course guide is necessary to the free exchange of ideas within the classroom. Exposure to a wide range of ideas encourage the spirit of inquiry that is essential to the learning process; the thorough examination of those ideas aids pupils in developing power of reason and in acquiring habits of academic discipline.

The Board directs that the discussion of any issue not specifically covered by the course guide be conducted in an unprejudiced and dispassionate manner. The Board will not condone classroom discussion that is unrelated to the educational goals of this district or to the subject of the course of study, disrupts the educational process, does not match the maturity level of the pupils, neglects to inform pupils of various responsible points of view on the subject under discussion, or fails to take into account the sensibilities of the community.

Adopted: 23 August 2010

DISTRICT POLICY

3270 – PROFESSIONAL RESPONSIBILITIES

Section: Teaching Staff Members

Date Created: August 2010

Date Edited: August 2010

The Board of Education will establish and enforce rules for the assignment of specific duties to teaching staff members and for the conduct of teaching staff members during the work day.

The Board directs the Superintendent to require the preparation of lesson plans by each teacher that implement the goals and objectives of the educational program. Teachers shall also be responsible for providing adequate direction and guidance to substitutes. Lesson plans will be subject to periodic review by the Principal or designee.

The Superintendent shall apply uniformly throughout the district, except as may otherwise be provided in this policy, the following additional rules for teaching staff member conduct:

1. During the work day, teaching staff members may be assigned extra or alternative duties by the Principal and/or immediate supervisor in accordance with Board Policy No. 3134;
2. Teaching staff members are expected to attend every faculty meeting unless expressly excused by the Principal;

A teaching staff member who is excused from attending a faculty meeting must meet with the Principal and/or designee the following day to review the topics covered at the meeting;

Teaching staff members who are assigned as department heads or who are assigned to work on curriculum revision during the regular school day will be given an appropriate reduction in teaching assignments.

Adopted: 23 August 2010

FINDINGS AND DISCUSSION

SUMMARY

The Board improperly raised an argument under a special education regulation not housed in the Sworn Tenure Charges and, hence, in violation of Stephen Wolowitz's statutory due process rights. The argument will not be considered herein. The Board did not have just cause to remove Mr. Wolowitz from employment for conduct unbecoming, neglect of duty, or violation of Board policies. While co-teachers have a joint obligation for the quality of education provided, there are no established rules for how they divide their work and the record shows a variety of practices followed. Nor can Mr. Wolowitz be fairly held accountable under Board policies which, as acknowledged by several Board witnesses, do not unambiguously prohibit the co-teaching practices followed by Mr. Wolowitz and B.F. Nor can Mr. Wolowitz be held accountable under Board Policy 2240 where Mr. Wolowitz superior, Principal Glynn was only slightly familiar with the existence of the Policy, and did even know that she had the authority to stop B.F. from posting the controversial PowerPoint slides to Google Classroom. Nor can Mr. Wolowitz be held accountable for neglect of a duty, i.e., regarding a failure to completely vet B.F.'s slides where no such duty exists. Nor can Mr. Wolowitz be held accountable for the pattern of misconduct engaged in by B.F. which spanned the development of the controversial Slides, her actions in class which concerned some students, and her posting of the controversial slides to Google Classroom for students and parents to see, notwithstanding Principal Glynn's suggestion that she refrain from doing so due to parental complaints. In addition, a detailed investigative report which highlighted the alleged errors of Principal Glynn, contained an exculpatory passage from a student as to how Mr. Wolowitz countered B.F.'s attempt to equate Israel's retaliatory strikes against Hamas as Genocide, and

reflected that most students were more concerned or offended by B.F.'s individual actions as opposed to the lesson content was never presented to the Board for review before they certified Sworn Tenure Charges to the Commissioner of Education. Alternatively, even if lower rung discipline would be appropriate, it would be something close to how the administration disciplined Principal Glynn. By treating Wolowitz the same as B.F., and completely opposite to Glynn, the Board violated well-established tenets of just cause which cannot be countenanced. For these reasons, I will dismiss the Sworn Tenure Charges, order the Board to, within fourteen (14) days of the date hereof, reinstate Wolowitz to his position of employment, reimburse Wolowitz for all lost pay and benefits, and order the Board to expunge any and all documents pertaining to this matter from any and all files concerning Wolowitz or his employment by the District.² I will retain jurisdiction for sixty (60) days in the event there is a dispute over the implementation of the remedial relief awarded herein.

IN LIMINE RULING/DUE PROCESS

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. N.J.S.A. 18A:6-17.1(3)(b) makes 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):

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.

² I will grant the Board the option to continue Mr. Wolowitz on paid leave for the remainder of the 2024-2025 school year to avoid the potential disruption to educational services. The Board must provide notice to Counsel for Wolowitz within ten (10) days from today's date that it wishes to exercise the option to continue Wolowitz on paid leave for the remainder of 2024-2025 school year only. If the Board elects that option, Wolowitz must be reinstated to his position of employment commencing the 2025-2026 school year.

The Board's belated argument concerning Mr. Wolowitz's alleged violation of N.J.A.C. 6A:14-4.6(i) must be dismissed. The only witness proffered by the Board to accuse Wolowitz of conducting "an illegal classroom" was Superintendent Kravitz. N.J.A.C. 6A:14-4.6(i) provides:

In an in-class resource program, the student shall be provided modifications to the instructional strategies or testing procedures, or other specialized instruction, to access the general education curriculum in accordance with the student's IEP. ***The general education teacher shall have primary instructional responsibility for the student in an in-class resource program unless otherwise specified in the student's IEP.*** An in-class resource program shall be provided in the student's general education class at the same time as the rest of the class. A student receiving an in-class resource program or an in-class program of supplementary instruction shall be included in activities such as group discussion, special projects, field trips, and other regular class activities as deemed appropriate in the student's IEP.

However, a violation of this regulation is not the subject of the Sworn Tenure Charges. The Charges cite Policy 3310 and N.J.S.A. 18A:29-4 (salary increment withholding). It also cites Policy 2240 and Regulation 3270 under Count (3), for "Violation of Board Policies and Regulations". Nowhere within the Charge itself is there any reference to this special education regulation or accusation that Mr. Wolowitz conducted an illegal classroom. The Office of the Commissioner of Education has held that, "only those allegations contained in the tenure charges which were certified to the Commissioner [] may be considered." See I/M/O Giuseppe Amodei, New Jersey State Juvenile Justice Commission, 2011 N.J. AGEN LEXIS 689, *5, AGENCY DKT. NO. 575-9/10 (Comm'n Dec., October 11, 2011). Nowhere within the comprehensive investigation conducted by the District is there any reference or suggestion that Wolowitz's World History class failed to comport with N.J.A.C. 6A:14-4.6.

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 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. Indeed, this Arbitrator had an opportunity to address a similar matter in In the Matter of Tenure Hearing of Joseph Putrino and the Montclair School District, Agency Docket No. 189-10/21 [confirmed, Joseph Putrino v. Montclair Board of Education, N.J. Superior Court, Docket No. C-201-22, February 22, 023 (Hon. Jodi Lee Alper, J.S.C.)]. In Putrino, the Montclair Board of Education brought Tenure Charges against a middle school principal for (1) allegedly showing a racist video during convocation and (2) creating a deficient school year schedule. despite the express wording of the Sworn Tenure Charges, the Board asked the undersigned to rely on part 2 of the video not shown by Putrino, nor alleged as a basis for discipline. Part 2 of the video satirically exaggerates what it would be like working under COVID-19 protocols.

The Board also sought to introduce other alleged acts of misconduct not in the Tenure Charges, e.g., 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; reporting to work under the influence of alcohol (an allegation not sufficiently proven); and maintaining an online art gallery during his period of leave which included paintings of nudes. None of these additional acts were contained in the Sworn Tenure Charges and, hence, were dismissed.

Here, the Board's belated injection of an alleged violation of N.J.A.C. 6A:14-4.6(i) must be dismissed. The Board had as much time as it needed to get its ducks in a row before filing the Charges against Mr. Wolowitz. There is no justification, either at law, or in equity, to permit the Board to, in effect, include an added Charge for the first time at arbitration. Accordingly, I will not consider the Board's argument regarding N.J.A.C. 6A:14-4.6(i).³

DISMISSAL OF CHARGES RELATED TO BOARD POLICIES 3270 AND 2240

I note first that the Board must prove, by a preponderance of the credible evidence, that Mr. Wolowitz 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.

³ Even if I had considered the argument, the purpose of the regulation is to assure that a general education teacher instructs both IEP and other students as one class. This serves the purpose of the in-class support model whereby IEP and non-IEP students are treated alike with respect to the delivery of instruction. The special education teacher would be present to provide supports. However, during the week of May 20, 2024, particularly May 22-23, 2024, IEP and non-IEP students were treated equally by way of B.F.'s delivery of a subject which she was much more familiar with than Mr. Wolowitz. Meanwhile, if the roles were reversed, as the Board argues must be the case, then Wolowitz would be presenting a topic which he obviously lacked familiarity with and B.F. would be distracted from her IEP students working the PowerPoint slides from a computer. Additionally, even if the Board's application of the regulation to the facts of this case were accurate, a contrary practice has existed in the District which, if the Board seeks to change, must be addressed by way of notice to all teachers, as opposed to disciplining Wolowitz.

331, 341 (App. Div. 1987); Atkinson v. Parsekian, 37 N.J. 14 3 (1962); *Elkouri and Elkouri*, How Arbitration Works, 5th Edition, pages 930, et. seq. The foundation of the Sworn Tenure Charges is based on a fiction that Board policies unambiguously applied to Wolowitz so as to rule out any reliance on past practice or professional norms. However, once it became clear that the policies do not fairly apply to Wolowitz's actions or inactions, the Board's case against Wolowitz significantly weakened.

Policy 3270, as highlighted (bold/italics) below reads:

3270 – PROFESSIONAL RESPONSIBILITIES

Section: Teaching Staff Members

Date Created: August 2010

Date Edited: August 2010

The Board of Education will establish and enforce rules for the assignment of specific duties to teaching staff members and for the conduct of teaching staff members during the work day.

The Board directs the Superintendent to require the preparation of lesson plans by each teacher that implement the goals and objectives of the educational program. Teachers shall also be responsible for providing adequate direction and guidance to substitutes. ***Lesson plans will be subject to periodic review by the Principal or designee.***

Adopted: 23 August 2010

DISTRICT POLICY

3310 – ACADEMIC FREEDOM (IN PART)

Section: Teaching Staff Members

Date Created: August 2010

Date Edited: August 2010

The curriculum adopted by the Board of Education is designed to address the education goals established for this school district and to meet the needs of pupils. The course guides prepared for each course of study describe the material to be covered in each course and, in general, the approach to be employed by the teaching staff member responsible for the course.

The Board recognizes that some deviation from the course guide is necessary to the free exchange of ideas within the classroom. Exposure to a wide range of ideas encourage the spirit

of inquiry that is essential to the learning process; the thorough examination of those ideas aids pupils in developing power of reason and in acquiring habits of academic discipline.

* * *

Adopted: 23 August 2010

The Board's first argument here is that the lesson plans did not implement the goals and objectives of the School District. Based on the testimony of the Board's witnesses, I disagree. Ms. Richter testified that a lesson plan is an overview of what will be presented to the students in the classroom (Id., p. 30). Richter testified about District Policy 3270 (Ex. P8; Id., pp. 44-45). She observed that the curriculum is approved each year before the start of the school year. However, noted Richter, per District Policy 3310, "Academic Freedom", B.F. and Mr. Wolowitz could present the Israeli Palestinian conflict even if it fell outside the curriculum previously approved. By extension, the lesson would be proper to the extent it covered the events of October 7, 2023 and its aftermath (which occurred after the Board's adoption of the 2023-2024 school year curriculum).

Ms. Collazo-Baker's primary responsibilities include developing the curriculum, instruction and assessment, as well as professional development (Tr. 1, p. 182). She testified that the curriculum is a Board approved document. It sets forth the learning expectations a student would meet at a certain grade level or course within a defined period of time (Id., p. 183). Although Collazo-Baker recognized that the curriculum must align with New Jersey Student Learning Centers, she clearly opined that the District itself has discretion outside of the alignment to state standards at each grade level into the content being taught, e.g., mathematics, social studies (Id., p. 184).

Moreover, like Ms. Richter, Ms. Collazo-Baker testified that a teacher has the academic freedom under Policy 3310 to determine whether a sensitive or controversial topic has to be related

directly or indirectly to the curriculum (Id., p. 188). The caveat is that they have to teach both sides (Id.). A lesson plan has to include on its face every resource and tool or document that the teacher plans to use that day or that segment, *however, they do not have to attach the resources to the lesson plan they submit for approval* (Id., p. 185). Indeed, Collazo-Baker interviewed other social studies teachers about their coverage of the subject. Some, but not all, said it is not part of the curriculum; some said they did not have time for it; one said he/she was not expert enough; and others said, “they would not touch the subject of what was going on” (Tr. 1, pp. 206-207). Thus, the majority believed they had the discretion to cover the subject if they chose so much.

Principal Glynn testified that the District must meet state standards known as the content core standards for topics that need to be covered in the course of a year basically under a certain topic or a certain department (Id., p. 72). Standards are reflected on the course curriculum (Id.). The lesson plan has to meet the state standards of local board of education curriculum. Glynn likewise testified that it would not be improper for the October 7, 2023 Palestinian bombing in Israel to be discussed because it did not happen until after the 2023-2024 curriculum was approved. (Id., p. 74).

Contrary to every other Board witness, each having long-term experience in the District, Dr. Kravitz stated that the Israeli Palestinian conflict should not have been taught because it was not in the curriculum. He stated lessons have to be taught consistently with the curriculum, the curriculum has a pacing guide indicating what time you would speak about things (Tr. 2, pp. 67-68), and that the Department of Education requires the standard to fit within the curriculum pacing guide so you manage to hit all of the standards of the State of New Jersey (Id., p. 69).

However, Dr. Kravitz’s testimony was belied by the testimony of the above witnesses. He also failed to account for the fact that the same subject, prior to October 7, 2023 and its aftermath,

was approved by the Board in 2022-2023 and presented by B.F. He also failed to account for the fact that no evidence was presented to show that the District ran into a conflict with the pacing guide of the curriculum as a result of the lesson taught by B.F. Indeed, the lessons for the week of May 20-24, 2024 were the last substantive topic for study in that class. On or after May 24, 2024, the class began preparing for final exams.

Dr. Kravitz then testified to a number of alleged deficiencies in the lesson plan. He cited deficiencies “Standards 6.1.12.HSE.12.b use a variety of sources to explain how the Arab Israeli conflict influenced American foreign policy” (Id., p. 28). Counsel asked: “Q. Okay. Now, on its face, does that sound acceptable for presentation or teaching to a world history class?” Dr. Kravitz non-responsively replied, “On its face, the standard does not mention the curriculum that we have” (Id.). However, the lesson plan for May 22-23, 2024 was approved by Assistant Principal Lombardo and it was approved in the 2022-2023 school year. And to the extent the slide presentation did not align with the lesson plan, as will be discussed, that was the result of misconduct on the part of B.F.

The Board next argues that Mr. Wolowitz was tasked with creating and delivering the lesson plans for May 22-23, 2024 and/or that he had to vet B.F.’s supporting materials. Neither argument is persuasive. Ms. Collazo-Baker (and Ms. Williams) erroneously citing policies 2240 and 3310, found that Wolowitz:

Neglected to fulfill his professional responsibilities as a Fort Lee Board of Education appointed teacher in the planning and preparation of the lesson presented to his eight period World History Class from May 21, 2024 through May 23, 2024 Mr. Wolowitz is the general education teacher for this collaborative class. During his interview he admittedly did not prepare the lesson or review the resources that were going to be used . . . Therefore, he relied on his co-teacher to deliver instruction. In failing to properly plan and prepare for instruction, he neglected to fulfill his required duties as a teacher in the Fort Lee School District . . . (Ex. P10, pp. 20-21).

The only policy which could possibly apply to this contention by its express wording is Policy 3270 which requires the preparation of lesson plans “by each teacher”. However, while it is true that co-teachers are equally responsible for the lesson created and taught to a class, the Board lacked a basis in policy to discipline Mr. Wolowitz for allowing B.F. to create the lesson plan and accompanying materials and to deliver instruction to the class on May 21 (Wolowitz was not present), May 22, and May 23, 2024.

First, Principal Glynn and Ms. Collazo-Baker testified that teachers, whether solo or together with a second teacher in the classroom, have an obligation to create a lesson plan and to be responsible for the content of the lesson plan and accompanying materials (*Id.*, pp. 84-85; 220-221). However, Policy 3270 houses no such proclamation of joint and several liability. Indeed, when asked where those rules are codified or expressed in a document form, Collazo-Baker replied, “It’s outlined – I mean, I’m not sure, but it could be outlined in the job description, in code as far as responsibilities between the general education teacher and the special education teacher” (*Id.*, p. 221). To the extent that Collazo-Baker was referring to N.J.A.C. 6A:14-4.6(i), that argument was rejected because it was not encompassed by the Sworn Tenure Charges.

Additionally, in the co-teaching arrangement, the teachers must submit a unified plan. But, as this case demonstrates, Assistant Principal Lombardo approved the identical lesson plan separately submitted by B.F. and Mr. Wolowitz without questioning the allocation of labor in creating the plan. It could have been 100% Wolowitz, 100% B.F., 50-50, or any other allocation. The Board provided no evidence to show that co-teachers cannot agree upon an allocation of labor as they deem fit. The lack of rules concerning the division of labor between co-teachers extends to the creation or culling of materials or sources used for presenting the lesson as well as presenting the lesson itself.

Mr. Wolowitz's unrefuted testimony revealed "Teachers are required to submit a lesson plan for each week. As co-teachers we are -- try to give a unified lesson. So, whoever is preparing the lesson, so in this case in World History, B.F. created the lesson, alerted me that her lessons were up on Genesis for us to copy. So, I would copy her lesson plan into mine, and similar for our U.S. 1 class. I would create the lesson for the U.S. 1 class. I would alert Mr. Ellison or B.F. saying that my lesson plans are up on Genesis for you to look at and copy and submit for the class (Tr. 2, p. 123). Mr. Lombardo, Vice Principal would approve the lesson plan" (Id., p. 124). By copying the lesson plan of a co-teacher, the requirement to submit a unified lesson plan is met, especially in the absence of a contrary rule or policy.

Nor is there a requirement that each co-teacher review every step of his/her co-teacher. Indeed, Principal Glynn was not aware of any policy requiring a lead teacher to review all of the lesson materials that a co-teacher may develop for a lesson. Nor is there a policy prohibiting a content certified special education teacher from presenting a lesson to the class. Glynn qualified her testimony by noting that such a switch between a lead teacher and presumably special education content certified teacher may be appropriate "in a particular lesson, but not for the entire course" (Id., p. 124). However, the Sworn Tenure Charges did not allege that Mr. Wolowitz improperly allowed B.F. to teach World History for the entire year.⁴ Here, there is not a genuine dispute that B.F. taught the World History lesson at issue based on her comparatively grater expertise and familiarity with the Israeli Palestinian conflict.

Additionally, the naked assertion that as "lead teacher" Mr. Wolowitz could not allow B.F. to create and present a lesson on the Israeli Palestinian conflict is also belied by the record.

⁴ Even if the Charges did make such an allegation, the loose practices followed by co-teachers, including Mr. Wolowitz, and the lack of Board policy to the contrary would obligate the Board under just cause to first provide corrective notice before resorting to discipline.

Principal Glynn testified that in Genesis, Wolowitz would be assigned as the general education teacher but it does not state that he would be the lead teacher. In fact, further delineating the importance of the term, Glynn testified that, “The word lead being used, it always is connected to the general ed teacher.” When asked about the different practices followed by teachers in a collaborative classroom setting, Glynn answered:

- There’s different models that I think the different teams will follow.
- Generally the two teachers are given the opportunity to figure out what works best on the subject to any guidance on the contrary.

Glynn did not have any occasion or reason to intervene with respect to the collaborative team of B.F. and Wolowitz either in the 2023-2024 school year or in the preceding 2022-2023 school year (Id., pp. 123-124).

In leading fashion, Counsel asked Principal Glynn whether being the lead teacher made him or her primarily responsible for the creation of the plan and delivery of instruction. Glynn did not give an unambiguous response, notwithstanding the leading question:

Most collaborative teams work, they all work a little bit differently, but generally, yes, that would be the case with the special ed teacher’s input. Generally they would have the opportunity to collaborate together in creating the lesson (Id.).

Principal Glynn, most notably, did not testify that it would be improper for the lead teacher to rely on the content expertise of a special education teacher in preparing or delivering a lesson.

Additionally, Mr. Wolowitz’s understanding of the unwritten rules of the game was influenced by his experience with B.F. during the 2022-2023 school year. In June 2022, the administration informed Wolowitz that he would be teaching U.S. History 1 for the next school year and he prepared accordingly. However, just six days before the 2022-2023 school year, the District informed him that he would be teaching a World History class for the first time.

Consequently, based on B.F.'s familiarity with the subject, the two agreed that she would take a lead role in teaching World History and he would take more of a lead role in teaching a collaborative U.S. History 1 class (Id., p. 113). Wolowitz would review the lesson plans submitted by B.F. to the extent he was attempting to get an idea of what would be taught that coming week. He would not review resource materials that B.F. was using to support the lesson plan (Id., p. 116). In other words, they were both professionals and he trusted her.

In the early part of the 2022-2023 school year, Principal Glynn observed Mr. Wolowitz's World History class where B.F. was leading instruction for that day (Id., p. 118). As Glynn testified, she was evaluating B.F. because B.F. was a nontenured teacher. Mr. Wolowitz was B.F.'s co-teacher or "lead" teacher as the Board prefers. Wolowitz agreed that Glynn observed B.F. on one occasion sitting in for a portion of the class (Id.). Plainly, if a special education teacher were forbidden from taking a lead instruction role during a class, this would have been something immediately detected by Glynn, whether she was in the classroom for five minutes or thirty minutes. After observing B.F. lead the class, Glynn left the classroom as she would with any other observation and, based on this record, she did not raise an issue with B.F. in a post-observation conference or otherwise. Mr. Wolowitz had similar teaching arrangements with Mr. Ellison, Ms. Ladd and Ms. Coniglio. He was unaware of any prohibition on the co-teaching style he had been accustomed to.

Nor did the District provide any guidance or training on collaborative teaching models (Id., p. 117). Ms. Collazo-Baker could not recall any explicit training on collaborative teaching methods since she has been Assistant Superintendent (Id., pp. 222-223). She testified that collaborative teachers coordinate how they divide their work, but they don't seek permission from the administration. Administration is not aware that it is happening (Id., p. 223). She was not

aware whether there was any actual policy or training requiring co-teachers to seek permission to allocate the responsibilities regarding the presentation of instruction. No competent evidence of such training was introduced by the Board.

Ms. Ladd testified that she was never provided with training as to how collaborative teaching should interact with one another (Id., p. 101). During her ten years of employment, Ladd has been in a collaborative classroom each year with five or six different teachers over the span of her career. The purpose of collaborative teaching is to work together with the general education teacher when there are students with IEPs in addition to general education students (Id., pp. 97-98). Ladd is in the third-year teaching collaboratively with Jonathan Burton. She has taught collaboratively in the past with Mr. Wolowitz, specifically in the 2019-2020, 2020-2021 and 2021-2022 school years (Id.).

Having experience with five or six different teachers in the collaborative setting, Ms. Ladd stated that everybody runs things differently:

There were times that I had collaborative teachers that wanted to do all of the planning, none of the planning, some of the planning, some of the discipline, none of the discipline. It varied depending on which teacher I was working with and who felt comfortable with their different positions (Id., pp. 98-99).

With respect to Mr. Wolowitz, he was thoroughly experienced in U.S. History 1 and Ms. Ladd had not taught U.S. History 1 in many years so she deferred most of the questions she had to him. Meanwhile, she was responsible for more of the discipline of the class and accommodation for special education students (Id., p. 99). In her experience, typically the content area was covered by one teacher and other accommodations and things were covered by the special education teacher. However, there was no agreed upon formula. She also testified that a content certified special education teacher may deliver instruction, depending on what the teacher is comfortable with (Id.). Ladd testified that in delivering content as a special education teacher, she would also

assure that her special education students were being accommodated (Id., pp. 103-104). When asked whether such an arrangement was authorized, Ladd did not know if there was any written authorization or approval required. Rather, she testified that as long as she was providing accommodation for students as a special education teacher, she was doing her job (Id., p. 104). The same holds true in this matter.

Mr. Wolowitz's understanding of "lead role" was the individual responsible for creating lesson plans, creating the assignments, posting the assignments, introducing the assignments, leading the discussion in class about those assignments. Wolowitz agreed that he, as a certified teacher, is responsible for the information that is submitted to the assistant principal for review and the content of what's presented to the classroom either by himself or a co-teacher (Id., p. 173). Wolowitz explained that B.F. would multitask, i.e., she was moving around the room while discussing the subject matter. If Wolowitz were leading the class, for example, U.S. History, then B.F. would be off to the side during the presentation and when students would be working, the two would cycle through the classroom to make sure all of the students' needs were being met (Id., pp. 175-176). Finally, on May 22 and 23, 2024, Wolowitz and B.F. followed the same exact arrangement as they did in the 2022-2023 school year when the Israel-Palestine conflict was covered.

Dr. Kravitz stopped short of opining that the District provides training on the rules of collaborative teaching. Rather, he testified that the District provides online training regarding their roles and responsibilities (Tr. 2, p. 56). No corroborating evidence of the training to which Kravitz referred was introduced by the Board. Contrary to every other witness, Kravitz testified that Mr. Wolowitz should have created the slide deck. Kravitz's assertion that it was not appropriate for B.F. to lead the class was dismissed as part of the dismissal of the Board's reliance on the special

education regulation; and as stated, even if considered, must be rejected anyway due to a lack of uniform practices and understandings. Kravitz has been in the District since 2021. His testimony must give way to the overwhelmingly consistent testimony of all other witnesses who have been in the District far longer.

Based on a lack of explicit language in Board policy, the acknowledgement of a lack of guidance, and the absence of a uniform practice and understanding among co-teachers, I find that the Board did not demonstrate that Mr. Wolowitz committed misconduct, engaged in neglect of duty or violated Board policies by allowing B.F., who is content certified and much more expert in the subject of Israeli Palestinian relations, to prepare the lesson plan and materials and to take the lead in delivering the lesson while Wolowitz worked the slide presentation in sync with B.F.'s pace. While the Board is free to adopt a policy which bans the practices and understandings noted above, under just cause, it cannot do so by way of removing a tenured teacher.

Finally, even if co-teachers must be held equally accountable for the lesson they deliver to the class, this general rule cannot fairly apply in a situation where one teacher engages in misconduct with respect to the creation and delivery of instruction. Here, even Ms. Collazo-Baker reiterated that co-teachers are not responsible for everything the other teacher does during the class. For example, if one teacher hits a student, the other teacher's responsibility is to report the incident. He or she is not liable for the other teacher slapping the student (Id., p. 222). Mr. Wolowitz testified similarly on cross-examination. Counsel asked Wolowitz even though he did not create the lesson plan or slides, that he had a professional responsibility for the content of the lesson plans presented to the class, to which he replied, "I wouldn't necessarily agree with that. I mean, there is to a certain extent, I can't control what a co-teacher's is going to do or say" (Id., p. 179). Here, although co-teachers are each responsible for the quality of education they deliver, in this case,

Wolowitz cannot be fairly held accountable for the pattern of misconduct exhibited by B.F. (to be discussed).

DISMISSAL OF CHARGES – DISTRICT POLICY 2240

DISTRICT POLICY

2240 – CONTROVERSIAL ISSUES

Section: Program

Date Created: August 2010

Date Edited: August 2010

Free discussion of controversial issues - political, economic, social – shall be encouraged in the classroom whenever appropriate for the level of the group. ***(This paragraph would seem to permit discussion of the Hamas terrorist attack of October 7, 2023 and the Israeli response up to May 20, 2024).***

Issues may be considered controversial which arouse strong reactions, based either on personal conviction or allegiance to a group. ***(The Israeli Palestinian conflict qualifies as controversial).*** School treatment of controversial issues shall be designed to instruct pupils in fair and objective study techniques. ***(Ultimately, a PowerPoint could satisfy this requirement).*** The decision on whether a particular controversial issue shall become a matter for school study shall be based on the timeliness of the question, appropriateness to the written curriculum, the maturity and needs of the pupils and the purposes of the schools. ***(The lesson plan which included slideshow references for May 21-22, 2024 was approved by Assistant Principal Lombardo).***

Classroom discussions on controversial questions ***which arise unexpectedly*** shall be the responsibility of the teacher, who shall provide relevant information on both sides of the question. Such discussions shall be kept free from the assumption that there is one correct answer that should emerge from a discussion and be taught authoritatively to the pupils. Indoctrination is not the purpose; rather, the purpose is to have the pupils see as fully as possible all sides of the question. ***(This clause heavily relied upon by the Board does not apply to a preplanned lesson. By its own terms, it applies to discussions which arise unexpectedly. At the very least, it does not provide clear guidance in a situation where a discussion on a controversial question is to be expected).***

The presentation and discussion of controversial issues in the classroom must be on an informative basis. Teachers must guard against giving their personal opinions on sectarian or political questions or any other controversial issues until the pupils have had the opportunity to:

1. Find, collect, and assemble factual material on the subject;
2. Interpret the data without prejudice;
3. Reconsider assumptions and claims; and
4. Reach their own conclusions.

By refraining from expressing personal views before and during the period of research and study, the teacher encourages the pupils to search after truth and to think for themselves. The development of an ability to meet issues without prejudice and to withhold judgments while facts are being collected, assembled, and weighed and relationships seen before drawing inferences or conclusions is among the most valuable outcomes of a free educational system. ***(The Board did not identify any opinion that Mr. Wolowitz expressed to the class even though the only opinion he did deliver countered B.F.'s effort to characterize Israel as committing genocide).***

Pupils shall be taught to recognize each other's right to form an opinion on controversial issues, and shall be assured of their own right to do so without jeopardizing their relationship with the teacher or the school.

The Building Principal shall have the authority to limit or suspend discussion of controversial issues pending a review of the issue/materials. ***(Despite having knowledge of parent complaints, the existence of a slide presentation, and B.F.'s intent to post the slides to Google Classroom, Principal Glynn took no action to stop any of that over the course of an entire school day and, moreover, later testified that she was only slightly familiar with the policy itself).***

Instructional materials not previously approved must be reviewed by the Principal before being introduced into the classroom. ***(The slide presentation was listed in the May 21-22, 2024 lesson plan approved by Assistant Principal Lombardo and, as stated above, Principal Glynn was only slightly familiar with the policy).***⁵

Ms. Collazo-Baker testified that a teacher has the academic freedom to determine whether a sensitive or controversial topic has to be related directly or indirectly to the curriculum (Id., p. 188). The caveat is that they have to teach both sides (Id.). Collazo-Baker is unaware of any other restrictions on teaching sensitive topics (Id., p. 189). Perhaps most telling, Principal Glynn was unaware of any "policies that are adopted by the Board of Education and govern the introduction of sensitive topics" (Id., p. 74). Board Counsel next asked Glynn to review Policy 2240. She did and replied, "Some of it sounds slightly familiar, but..." upon which she was interrupted by

⁵ During the investigation, Assistant Principal Lombardo stated that the slide presentation was not mentioned for May 23, 2024. However, according to Principal Glynn and Mr. Wolowitz, lesson plans are submitted and approved for the entire week. Moreover, the slideshow created and presented by B.F. is referenced in the May 21-22, 2024 lesson plans as approved by Lombardo: "As we discuss this important and sensitive topic, there will be a slideshow that is used to follow along. We will have an open discussion and there will be guidelines explicitly noted throughout it" (Ex. R9). It appears that the PowerPoint presentation (29 slides) was planned for two days. Lombardo approved both lesson plans without questioning the slideshow which would be used to cover a "sensitive and important subject". Thus, Lombardo, like Glynn and Wolowitz had an opportunity to review the slides (or review in full in the case of Wolowitz) prior to 8th period on May 23, 2024.

Counsel to identify the policy number attached to the exhibit (Id., p. 75). Glynn’s obvious lack of familiarity with Policy 2240 would later surface in her meeting with B.F. during 9th period on May 23, 2024. It is observed that if the principal of the high school is unfamiliar with a policy which includes her as a valuable piece to its operation, how does the Board expect high school teachers to be intimately familiar with the same policy?

Under Policy 2240, which was slightly familiar to Principal Glynn, new materials on controversial issues are required to be vetted with the principal. During the investigative interview, Glynn was asked, “Do teachers ever come to her about controversial issues?” She replied, “Some in the past have.” In other words, some do not. The investigators did not even ask about the vetting provision. I must presume that Glynn would have mentioned that the materials were not vetted with her in violation of Policy 2240 if she were at all familiar with her authority under the policy. Based on her testimony and lack of action during 9th period viz-a-viz B.F.’s intent to post the Slides to Google Classroom, I find that she did not have sufficient awareness of the existence of Policy 2240.

The Board’s reliance on Policy 2240 took another hit with Ms. Richter’s testimony. She testified specifically that Policy 2240 does not require vetting, i.e., a teacher does not have to obtain permission from the superintendent, principal, or assistant principal before teaching a controversial issue. Rather, it is within the discretion of the teacher to address or not address a topic (Id., p. 46).⁶ Even Dr. Kravitz did not testify that vetting materials was mandatory. Rather, he said that controversial materials *should* be vetted.

⁶ As stated in Exhibit P10, some teachers wisely stated that they didn’t want to touch the subject of October 7, 2023 and the aftermath, others said they just did not have the Israeli Palestinian conflict in their lesson plans, and one did not feel competent enough to teach the subject (Ex. P10).

For these reasons, I do not find that the Board demonstrated that Mr. Wolowitz violated Board Policy 2240 based on (1) his and/or B.F.'s presentation of the Israeli-Palestini conflict post October 7, 2023 or (2) his and/or B.F.'s failure to gain preapproval regarding the slide presentation or otherwise vet the materials. Consequently, I must dismiss the Board's reliance on Policies 3270 and 2240 (and related conduct and neglect of duty charges).

DISMISSAL OF POLICY 3310/ CONDUCT UNBECOMING/NEGLECT OF DUTY CHARGES

This leaves the third prong of Policy 3310 (Academic Freedom) which ties into the Conduct Unbecoming and Neglect of Duty Charges and should be analyzed as one.

DISTRICT POLICY

3310 – ACADEMIC FREEDOM

Section: Teaching Staff Members

Date Created: August 2010

Date Edited: August 2010

The Board directs that the discussion of any issue not specifically covered by the course guide be conducted in an unprejudiced and dispassionate manner. The Board will not condone classroom discussion that is unrelated to the educational goals of this district or to the subject of the course of study, disrupts the educational process, does not match the maturity level of the pupils, neglects to inform pupils of various responsible points of view on the subject under discussion, or fails to take into account the sensibilities of the community.

Adopted: 23 August 2010

The above highlighted section ties into the Board's allegations of Conduct Unbecoming/Neglect of Duty against Mr. Wolowitz. That is, if Wolowitz is guilty of failing to meet the above standards or any one of them, he is likely guilty of conduct unbecoming and neglect of duty. 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.

While I acknowledge that the Charge of conduct unbecoming is “elastic” in application, even elasticity has its limits. Recognizing this, Ms. Collazo-Baker reiterated that co-teachers are not responsible for everything the other teacher does during the class. For example, if one teacher hits a student, the other teacher’s responsibility is to report the incident. He or she is not liable for the other teacher slapping the student (*Id.*, p. 222). Mr. Wolowitz testified similarly on cross-examination (*Id.*, p. 179). Here, although co-teachers are each responsible for the quality of education they deliver, in this case, Wolowitz cannot be fairly held accountable for the overt misconduct of B.F. which did not fully manifest itself until May 23, 2024.

By way of summary, B.F. significantly changed the tone of her lesson and presentation from the same topic in the 2022-2023 school year (compare Ex. R20 and Ex. P2). The only possible intervening factor leading to the differing presentations is the October 7, 2023 terrorist attack and massive Israeli retaliatory strikes. B.F. created a slide presentation from an unknown website(s). She altered the definition of “ Hamas” as a terrorist organization and replaced it with “resistance movement”. She saved the more offensive passages for the second half of what was

supposed to be a two-day lesson. She created slides suggesting that Israel is committing genocide and inflicting on the Palestinian people the same harm that Hitler did to the Jews in World War II. She told students on Tuesday, May 21, 2024 (when Mr. Wolowitz was not present) that she has a bias in favor of the Palestinian side of the conflict. In the beginning of class, she closed the door and collected cell phones in an unorthodox manner. She told students that if they were uncomfortable with her presentation, they could leave.

She unleashed the more detectably offensive part of the lesson on May 23, 2024 as Mr. Wolowitz was working the PowerPoint. But for Wolowitz's intervention during 6th period, she planned to show their World History class a music video by Macklemore entitled "Hind's Hall", the lyrics of which condemn Israel for the taking of civilian lives, including Hind, a six-year-old girl. During 9th period on May 23, 2024, she was called into a meeting by Principal Glynn. Present with them were B.F.'s Union representative, Assistant Principal Lombardo, and Disha Patel (a supervisor). Even after being informed about the complaints of two parents, she answered Glynn's suggestion to pause any further action on the lesson by stating that the lesson was not biased and that she was going to post the slides to Google Classroom which is accessible by both students and their parents. The posting of the slides on Google Classroom provided the source materials to the Jewish community which led to widespread outrage, media attention and false accusations against Wolowitz. Lastly, the ensuing investigation showed that more students were made uncomfortable by B.F. closing the door and the manner by which she collected cell phones than by the content of her presentation.

In dismissing the Charge of Conduct Unbecoming, none of the above was the fault of Mr. Wolowitz. As the Board's witnesses testified, Wolowitz had no clear duty to review B.F.'s slides, he did review a portion before becoming ill and when he returned to work neither B.F. nor

Wolowitz sought to renew their discussion. Given their prior experience together, and practices followed by Wolowitz and other teachers, Wolowitz had no reason to believe or foresee that if he did not review B.F.'s presentation prior to class his inaction could potentially result in a community-wide upheaval.

Mr. Wolowitz was not present on May 21, 2024. Given his limited background on the conflict, he reasonably opined that he did not find the May 22 lesson biased, and he witnessed the change in the presentation from unbiased to biased together with the students on May 23, 2024. Contrary to the Board's suggestion, there was no clear guidance to a co-teacher in this situation. Because B.F.'s presentation, though biased, was not the equivalent of child endangerment or other action requiring immediate action, Wolowitz's decision to speak with B.F. after class instead of confronting her in the presence of students was reasonable in real time. And given B.F.'s reaction to Principal Glynn during the immediately ensuing 9th period, it is more than obvious that Wolowitz's intervention in 8th period would not have deterred her from publishing her biased work product to students and their parents and, hence, to the Jewish community.

This notwithstanding, to his credit, as one student told the investigators, B.F. asked Mr. Wolowitz to define "genocide". Wolowitz replied: "I believe genocide is the eradication of a specific group of people." He then went on to say that "A conflict between two groups is a war. It is unfortunate that both people from the groups have died, but it is a war" (Ex. P10, p. 5). Nowhere in this proceeding is Wolowitz credited with offsetting B.F.'s attempt to link Israel's retaliatory strikes to a genocide. And, despite the above facts, the Board decided to Charge Wolowitz with Conduct Unbecoming and a violation of the last paragraph of Policy 3310 as if he could possibly be held fairly accountable for B.F.'s misconduct. In fact, B.F. called Wolowitz during the summer 2024 and apologized to him essentially for sabotaging his career. Given the

unfair damage to his reputational interests in the School District, and especially the Jewish community, Wolowitz deserves more than an apology. A more detailed review of the relevant chronology is instructive.

On Friday, May 10, 2024, B.F. approached Mr. Wolowitz. She informed him that she had created a PowerPoint slide presentation to accompany the lesson and that she had some concerns (Id., p. 127). B.F. did not previously ask Wolowitz to review a lesson before she taught it to a class. Wolowitz recalls that B.F. stated she had concerns about the way the presentation could be perceived, but he does not remember specific details about it (Id., p. 182). B.F. did not identify any concern with her presentation pertaining to covering the October 7, 2023 terrorist attack. In fact, she did not mention it.

The two met on Monday, May 13, 2024 during their 7th period “PDP”. A social worker and Mr. Ellison, also a social studies teacher, were in attendance (Id., p. 128). Although Ellison was interviewed by Ms. Collazo-Baker, inexplicably, his attendance at the preview was neither questioned nor volunteered. The same held true with respect to the social worker. This is a noted deficit in the investigation. If it turned out that both or one of them reviewed the slides in full, then their reaction to the slides could have supported Mr. Wolowitz’s key defense that he did not independently notice anything improper about the slides until May 23, 2024. This notwithstanding, Wolowitz recalls B.F. presenting maybe the ninth or tenth slide before he left due to illness. Wolowitz was out sick the next day, Tuesday, May 14, 2024. This is not disputed.

On May 14, 2024, B.F., implicitly content without Mr. Wolowitz’s full review, emailed the final lesson plan to Lisa Novella, a paraprofessional assigned to a blind student, with a copy to Mr. Wolowitz. Principal Glynn testified that Wolowitz would have received the slides as of May 14, 2024. This assumption was incorrect. On May 14, 2024, at 9:39 a.m., Novella reached out to

B.F. to inform her that the presentation, as adapted for the visually impaired student, was in the Palestine Israeli folder (Id., pp. 130-131; Ex. P9). However, the Google Drive folder was not shared with Wolowitz. Wolowitz acknowledges being copied on B.F.'s email to Novello. Even though the email did not contain a copy of the presentation, Wolowitz acknowledged it could have been a reminder to him about the slides that B.F. wished to review with him (Id., p. 186).

On the other hand, as stated previously, if B.F. still had a concern after she reviewed a portion of the slides with Mr. Wolowitz and potentially the remainder with Mr. Ellison and the social worker, she blunted that concern by emailing the final lesson to Ms. Novella on May 14, 2024, when Wolowitz was out sick. Also, Wolowitz had previewed the first ten slides without issue; he plainly trusted B.F. based on their 2022-2023 experience; and B.F., who is more competent than Wolowitz in teaching the Israeli Palestinian conflict, did not ask Wolowitz to review the slides that he missed after he came back to work. Thus, while it would have been reasonable for Wolowitz to reengage with B.F. on his own accord, it was also reasonable for him to move onto other responsibilities when he returned to work on May 15, 2024. At the very least, it was not objectively foreseeable that if Wolowitz did not review the remainder of the slides, B.F. would offend the Jewish community and sabotage both their careers. See, Palsgraf v Long Island Railroad Co [1928] 248 NY 339 (the hallmark case predicated a finding of negligence on foreseeability).

On May 15, 2024, Mr. Wolowitz and B.F. did not meet to continue to review the slides. On May 16, 2024, Wolowitz was proctoring an AP exam. On Friday, May 17, the two did not cross paths during their common noninstructional off periods (Id., 128-129). On Tuesday, May 21, 2024, Wolowitz was not present and B.F. commenced the slides. On Wednesday, May 22, 2024, Wolowitz's first day in class for the slides, he recalls the class presentation starting at slide

12 and ending at slide 16 (slides 13 and 17 if the cover is included in the count). The slide presentation ended with the paragraph which reads: “At your tables, let’s once again discuss the term on the board. [genocide]. How would you define it and can you think of examples? Be prepared to discuss it.” By way of undisputed testimony, Wolowitz recalled B.F.’s presentation to the students as discussing genocide in a broad sense but the lesson did not go any further at that point (Id., pp. 141-142; Ex. P2, slide 16).

Mr. Wolowitz explained his role in the class which is entirely consistent and supported by every student statement contained in the investigative report prepared by Mss. Collazo-Baker and Williams (Ex. P10): “For that period, I was seated at my desk, on the desktop, scrolling along when B.F. wanted me to move on to the next slide” (Id., p. 137). Wolowitz was observing the information being presented in real time along with the students. He thought it went well on that day. The students were quiet. They were paying attention and there were no complaints (Id., p. 138). Wolowitz maintains today that what he observed on May 22, 2024 was unbiased. “Yeah. I mean, even – I stand by that today, that at that time in meeting with Mrs. Glynn, that I viewed it as being a fair – a fair lesson based on what I thought I was seeing” (Id., p. 200). Asked how he would know that when he did not review the entire slideshow presentation, Wolowitz replied, “B.F. for the last two years never gave me a reason to doubt her abilities as a teacher, or not to trust that she wouldn’t prepare a fair lesson.” In other words, he trusted a professional colleague based on past experience.

However, two out of a 30 students were concerned enough to speak to their parents, or did so in the ordinary course about their school day. Superintendent Kravitz received a text message from a parent of a student on Wednesday evening, May 22, 2024.⁷ That parent, “Gabby”, indicated

⁷ It is not clear how “Gabby” had direct access to Superintendent Kravitz by way of his cell phone number.

a concern regarding the content of the lesson and “I informed the parent to follow the chain of command starting with the building principal” (Id., pp. 20, 73-74). On Wednesday, May 22, 2024, the same parent sent a late evening email to Principal Glynn stating that she needed to see her first thing in the morning (Id., p. 88). Glynn did not know what the subject was until the following day.

With respect to May 23, 2024, Principal Glynn described her interaction with Gabby and the email she received (Ex. R8, Bates #278). At the time of the email, two days of the lesson or slides 1-16 had already been taught, i.e., May 21 (Wolowitz was not present) and 22, (Wolowitz was present) (Id., p. 125). Gabby informed Glynn and Assistant Principal Lombardo that she felt that a lesson in her child’s history class was “very unbalanced and one-sided” and she wanted Glynn to look into it. Gabby also informed her that her son did not wish for her to come forward and complain to the administration. But she felt it was important and she asked for her son to be called down as well. As a sign of things to come, the student was far less concerned than the parent. Gabby’s son, most notably, did not state that he was offended. In stark contrast, he stated that he “was curious to see how the lesson was going to continue” (Id., pp. 94 and 127).

Principal Glynn did not know what part of the lesson B.F. had covered as of the morning of May 23, 2024 (Id., p. 129). She was not 100% sure that B.F. was teaching the entire class, yet the concerns presented by the parents were based on things that she had said (Id., p. 130). After Gabby left, a second parent was waiting to see Glynn and Assistant Principal Lombardo. That parent had the identical concerns as Gabby. Glynn admitted that one of the parents informed her of the PowerPoint presentation (Id.).

After the second parent left, Principal Glynn decided to talk to “one” of the teachers and find out what happened (Id., pp. 91-92). By happenstance, Mr. Wolowitz was “across the hall”, so Glynn and Assistant Principal Lombardo called him into her office and informed him that some

parents had concerns about the lesson.⁸ When he arrived, Glynn said this is not about you, it is about B.F. Based on that representation, Wolowitz believed he did not need a Union representative.

When Principal Glynn was asked a more open question, on direct examination, she testified that Wolowitz stated that he “took a look at it ahead of time and felt like it was a balanced lesson” (Id., p. 93). This response is consistent with Wolowitz’s testimony that he told Glynn that he previewed the lesson. However, in order to rehabilitate that testimony, Board Counsel immediately asked a narrower question, i.e., whether Wolowitz informed her that he reviewed part of the lesson or all of the lesson. Glynn responded that he knew what the lesson was and that he had seen the lesson and that he already spoke to B.F. about it because of the topic and that it was balanced lesson. In his opinion, it was a balanced lesson (Id., pp. 94-95). I credit Glynn’s first and spontaneous response to the more open-ended question and find Wolowitz stated, in effect, that he “took a look at it ahead of time and felt like it was a balanced lesson.”

In fact, Mr. Wolowitz did take a look at the lesson ahead of time, i.e., on May 13, 2024, whereby he reviewed approximately one-third of the slides before going home sick. The Board never refuted the fact that Wolowitz left sick on May 13 and was out sick, May 14, 2024, the next day. Wolowitz admits that he did not tell Principal Glynn that he previewed something less than the entire lesson. Wolowitz recalled stating, “I was given a preview of it.” Looking back on it now, he understands how Glynn could have presumed that he had reviewed the entire slide presentation ahead of time (Id., p. 199). Wolowitz stated then, and affirms today, that he thought

⁸ Not necessarily contradicting Glynn, Wolowitz testified that he received a text message from Lombardo to report to the main office.

the May 22, 2024 lesson was fair as of his meeting with Glynn and Lombardo in the morning of May 23, 2024 (Id., p. 200).

Here, I observe, if Mr. Wolowitz truly reviewed all the slides, then why would he not tell Principal Glynn to be concerned about the May 23, 2024 slides which had not yet been presented? The Board's skepticism, to be credited, implies that Wolowitz knew at the time he spoke with Glynn that the 8th period class was going to be presented with a biased lesson involving the Israeli Palestinian conflict and, nonetheless, he intentionally withheld that information from her. And why would he do that? To knowingly offend his 8th period class? The Board offers no reason Wolowitz would do this and it is doubtful that a logical reason exists. Since this record provides no basis why Wolowitz would want to intentionally harm his students, even though the Board's best-case scenario, not proven, is that Wolowitz lacked insight over the subject matter of the more offensive slides which, if true, would negate the Conduct Unbecoming charge as well.

Additionally, it is clear that Principal Glynn did not rely exclusively on Mr. Wolowitz's view of the lesson. Indeed, the investigators noted that Glynn also relied on the sentiments of one student who wanted to give the teacher an opportunity to finish the lesson and present both sides (Ex. P10). Presumably, that student was Gabby's son, who more accurately, stated that he was curious to see how the lesson was going to continue (Id., pp. 94 and 127). Thus, while the Board nonsensically accuses Wolowitz of essentially lying to Glynn, to Glynn's detriment, it also falsely argues that Glynn relied exclusively on Wolowitz's representation that the lesson was unbiased. Rather, she relied on both the views of Wolowitz and of Gabby's son that the lesson was not biased, at least not at that point.

Notwithstanding the foregoing, Principal Glynn was aware that B.F. had a PDP either 1st, 2nd, or 3rd period, i.e., in the morning. She acknowledged that would have been a good opportunity

to speak with B.F. (Id., pp. 132-133). However, just as Wolowitz trusted B.F., Glynn trusted Wolowitz (even though it turns out they had a misunderstanding) and I must go out on a limb and surmise that she received more than Gabby's complaint from parents during the school year. For those reasons, Glynn did not act with haste in speaking with B.F.

Subsequently, as Mr. Wolowitz believes, he did inform B.F. about his conversation with Ms. Glynn. Notably, the investigators did not ask Wolowitz in June 2024 whether he did speak to B.F. about his conversation with Glynn. This is especially significant because the report states: "Possible additional questions for Mr. Wolowitz: Did you tell B.F. that you met with Principal Glynn the morning of May 23, 2024?" (Ex. P10). The question was never asked while the subject would have been fresh in Wolowitz's mind. Thus, having not asked the question while aware of it during the investigation, the Board is not in an advantageous position to counter Wolowitz recollection (months later) that he did say something to B.F. about his earlier meeting with Glynn.

Next, during 6th period, B.F. approached Mr. Wolowitz and showed him lyrics entitled, "Hind's Hall" by Macklemore and informed him that she intended to play a video of the song in their 8th period class. The lyrics condemn Israel and the world for allowing Israel's retaliatory bombing to continue to take civilian lives in Palestine, one of them a six-year-old girl (Hind). Wolowitz informed B.F. that she should not play the video and, though upset, she complied – at least for the purpose of 8th period.

Nonetheless, with the lyrics out of the way and given where the lesson left off on May 22, 2024, Mr. Wolowitz did not see a reason to further intervene during the in-between 7th period when the two were not teaching World History together. Most importantly, while B.F.'s misconduct may have started with her preparation of the slides, it unfolded during World History class on May 23, 2024, even before the slides were presented: (1) she uncharacteristically wore traditional Muslim

or Palestinian garb; (2) contrary to the prior method of collecting cell phones, she went student to student and collected the phones; (3) she checked a student as he/she was returning from the bathroom; and (4) she told students that if anyone felt uncomfortable that they could leave. Admittedly, Wolowitz became concerned about the change in method of collecting cell phones, but since the two had collected cell phones in the past (by each student coming up to the front of class and handing in their cell phones), he did not read too much into it. He was also unaware that B.F. had told the class when he was not present (May 21, 2024) that she was biased toward the Palestinian side of the conflict.

With respect to the slide presentation of May 23, 2024, Superintendent Kravitz notes his version of what was wrong with it, as follows:

For instance, the slideshow makes no mention of the extent of the Holocaust, and the struggle of Jews around the world to find a suitable place to live in the aftermath of World War II.

The slideshow ignores multiple instances of aggression committed against Israel in the aftermath of the Arab Israeli war, specifically suicide bombings within Israel which were especially prevalent in the 1990s and 2000s (and which remain a threat to this day).

The slideshow also characterizes Hamas as a “resistance movement”, as opposed to a terrorist group, and frames the October 7, 2023, massacre of Jews inside Israel as a Palestinian effort to “break out of Gaza.”

The slideshow further states that after the October 7, 2023 massacre, “Israel then declares war [...]”, which ignores the facts that (1) Hamas and Israel have been in conflict for several decades and (2) the October 7, 2023 massacre itself was an act of war committed by Hamas.

The slideshow also mischaracterizes Israel’s retaliatory strikes and efforts to secure the country as a “genocide” directed against Palestinians and does not reference the fact that Hamas itself is responsible for the deaths of civilians inside Gaza through their acts of using civilians as human shields of military targets.

Plainly, Superintendent Kravitz (and, presumably, most of the Jewish community) are far more versed and vested in the conflict than Mr. Wolowitz. In fact, the lesson would have likely

been stopped or balanced out if Kravitz or any other unbiased teacher knowledgeable of the Israeli Palestinian conflict was co-teaching with B.F. instead of Wolowitz. However, Wolowitz did not have such intimate knowledge or understanding, his religious affiliation is catholic, he was not required to possess such knowledge to teach World History, and he understandably trusted B.F. based on their prior experience, even if he was growing concerned.

Additionally, it would be patently unfair to opine that the lesson had to match the Superintendent's suggestions as to how he would have made the lesson more balanced. Rather, the Charges are cognizable only as to what was included in the slide presentation and who is at fault. In addition, it is noted that the slide presentation does discuss both sides with respect to the "Nakba/War of Independence" (slides 10,11, and 12) and "Naska of 1967 or the Six Day War" (slide 15). Other sections include data, though factual, have a pro-Palestinian overlay, e.g., a ruling by an international court suggesting that the Israeli response includes acts of genocide.

Mr. Wolowitz did become more concerned as B.F. continued with the slide presentation from slide 17 onward (Id., p. 148). He noticed three concerns in particular: (1) that she was referring to Israel causing a genocide in the Gaza Strip; (2) finding Hamas as a "resistance movement" as opposed to a terrorist group (slide 20) (Id., pp. 148-149); and (3) images of college protest, "Divestment Now! The Student Movement" (slide 27) (Id.). In fact, one student informed Mss. Collazo-Baker and Williams that he subsequently researched the site containing the slide and discovered that B.F. altered the information by substituting the words "resistance movement" for "terrorist organization" (Ex. P10).

Another slide portrayed the term "genocide" on top of ashes and the phrase "Never Again", a Holocaust phrase which presumably is easily recognized as such by the Jewish community. B.F. asked the students to "revisit some of the key terms to describe what is happening today"

(genocide) and to “talk to your tables about the phrase Never Again” and “why it would be relevant to today’s discussion” (Id., slide 17). By instructing the class to apply the term genocide “to describe what is happening today”, B.F. left students with no choice but to equate the retaliatory strikes by Israel to an intent to eradicate Palestinians. Asking the same students to answer why the phrase “Never Again” would be relevant to today’s discussion similarly obligates them to contemplate equating the loss of 30,000 civilian lives during the current conflict with the loss of 6 million Jews as part of a Nazi plan to exterminate as many European Jews as possible. Both directives amount to misconduct on the part of B.F., especially knowing the makeup of the community and the class. This slide is the most offensive in my opinion.

To his credit, as one student told the investigators, B.F. asked Mr. Wolowitz to define “genocide”. Wolowitz replied: “I believe genocide is the eradication of a specific group of people.” He then went on to say that “A conflict between two groups is a war. It is unfortunate that both people from the groups have died, but it is a war” (Ex. P10, p. 5). As stated previously, nowhere in this proceeding is Wolowitz credited with offsetting B.F.’s attempt to link Israel’s retaliatory strikes to a genocide.

Other slides are far more subtle. The October 7, 2023 passage accurately states the numbers of deaths we have seen on the news. However, explanation is needed as to what B.F. meant by Hamas being able to “break out” of Gaza and enter Israel undetected. And Dr. Kravitz is correct that Hamas contributed to the civilian deaths by embedding itself into the population and structures such as hospitals. But expecting Mr. Wolowitz to recognize these nuances as he is turning the slides is an unrealistic expectation. Even more subtle, B.F. writes that Israel then “declares war” and “begins conducting airstrikes which led to thousands of civilian deaths.” Kravitz writes in the Charges that war had been declared on a *de facto* basis when Hamas attacked

Israel. Again, Kravitz is accurate, but his awareness after-the-fact of B.F.'s more subtle slides cannot be fairly deemed the benchmark by which Wolowitz should be judged.

Finally, the last slides pertain to the Divestment movement spearheaded by protesters at Columbia and other universities across the nation. The manner in which B.F. introduced the topic "Divestment Now!" appears to suggest that she favors the movement. This slide concerned Mr. Wolowitz as well but it was the last slide shown.

So, why didn't Mr. Wolowitz jump to his feet and stop the presentation? First, Principal Glynn aptly described Wolowitz's mannerisms – "Mr. Wolowitz is a little quieter than some of the other teachers but always positive" (Id., p. 80). As I observed, Wolowitz' demeanor during the hearing was that of an introverted mild-mannered individual – the type that would never harm anyone. Second, the Monday-morning quarterback suggestion that Wolowitz should have left class and reported B.F. to the administration also would have been an unprecedented move and no different from stopping B.F. in the middle of her presentation in front of the class. Third, B.F. – as lopsided as her presentation may have been – was not acting in a manner which would endanger the welfare of 16 or 17-year-old 11th grade students, many of whom voiced no complaints. She was not spouting anti-Semitic tropes, denying the Holocaust, or overtly stating that Jews are wrong and Palestinians are right. In other words, though the lesson was growing more biased on May 23, 2024, this was not a situation where students faced irreparable harm which would impose a duty on a teacher to take immediate action.

Fourth, in real time, as opposed to hindsight and slow-motion replay, Mr. Wolowitz felt conflicted between what he was witnessing and what he should do about it. As he couched it:

As I was watching it, nothing. I – I, this was something that I never come across in my entire teaching career. So, it was one of those things, I didn't – I didn't know how to react or what to do. So I reverted back to rules we had when I was coaching football that I still play to this day... If we ever disagreed with what a coach did or

said on the field, we never addressed it in front of the players. We always addressed it behind closed doors. I have the same policy with my wife, where if we disagree with what she or I says in front of the kids, we discuss it behind closed doors. So that was the approach I took. . . .

Fifth, even Principal Glynn and Ms. Collazo-Baker did not stop at any one slide before concluding the presentation was biased. As Glynn would testify, she and Assistant Principal Lombardo viewed the thirty-slide PowerPoint to be factual (first half) and pro-Palestinian (second half). When asked by the undersigned, Collazo-Baker testified that in determining that the slide presentation was biased, “her team went slide-by-slide to determine what, if anything, was offensive.” When asked what standard was used to determine whether a slide was improper or not, Collazo-Baker replied:

Just based on the number of slides that were dedicated to what would be considered, I guess, pro-Palestinian views versus the number of slides that were dedicated to the other perspective, as well as the slide in there with the definition of Hamas (Id., p. 232).

In sum, even with the benefit of hindsight and a slower pace than Wolowitz had, Glynn and Collazo-Baker had to review the entire slide presentation before tallying up the good and the bad and reaching a conclusion.

Additionally, like Mr. Wolowitz, neither Principal Glynn nor Ms. Collazo-Baker had specialized knowledge or a personal stake in the conflict. Counsel for Wolowitz asked Collazo-Baker to acknowledge that the biased nature of the slides did not manifest itself until the latter part of the lesson: “Would it be fair to say just viewing the slide deck that the most problematic materials toward the later part of the slide deck?” Counsel for the Board objected in a manner which actually would apply equally to Wolowitz. He stated: “There’s no foundation that Ms. Baker is certified in middle eastern politics and religious conflict it is beyond the scope” (Id., pp. 227-228). A similar objection applicable to Wolowitz was raised when Counsel for Wolowitz

asked Dr. Kravitz on cross-examination whether the slide presentation's definition of Zionism was anti-Semitic. The objection reads: "The witness isn't an expert, but I want him to answer" (Id., p. 82). Dr. Kravitz eventually answered that it is a debatable proposition (Id., pp. 83-84). This notwithstanding, on cross-examination, Counsel asked Wolowitz to affirm he did nothing about the precise passage that Kravitz said was debatable. Wolowitz understandably replied: "I did nothing about it, because my limited knowledge of this conflict and these terms, I didn't know what to do about it. I didn't know I had to do anything about it" (Id., p. 193).

Mr. Wolowitz wishes that he had the same benefit of hindsight that was afforded to those who brought the Charges against him. In retrospect, he wished that his antenna was up a lot sooner about the sensitivity of this; he gave B.F. too much of his trust in providing a fair lesson or fair assignment, he wished he had seen the slide deck relative to May 23, 2024 beforehand and he would have "either put an end to the whole thing, or asked her to rethink this, or asked her to take that portion out" (Id., p. 155).

Notwithstanding the foregoing, it is sufficiently clear that even if Wolowitz intervened during 8th period, he would only have cured the last part of the slides and his efforts would have fallen far short of stopping B.F.'s most serious act, i.e., posting the slides to Google Classroom, which she knew would be accessible by both students and their parents. As B.F. stated to Principal Glynn, who spoke with B.F. during 9th period, her lesson was not biased and she was going to post it like she did all others. And she did post the slides without any directive to the contrary by Glynn who, as mentioned earlier, was only slightly familiar with Policy 2240 (giving her the authority to stop a controversial presentation).

In addition to dissuading B.F. from playing the Macklemore video in class, and contrary to the inaction of Glynn, Mr. Wolowitz put a stop to the presentation before class on May 24, 2024.

He told B.F. to start preparing for final examinations and not to include the Israeli Palestinian conflict in the exam. The May 24, 2024 lesson – which Wolowitz nixed – had to do with “Settler Colonialism” which could be deemed offensive as well as applied to the actions of Israel during the longstanding conflict.⁹

In terms of the fallout from the May 23, 2024 lesson, it is clear that one student noted nothing significant about the class. Others were not offended. Some were offended by B.F.’s altering of the definition of “Hamass”, her teaching of genocide, her method of collecting cell phones, closing the door, and/or offering students an opportunity to leave, etc. Some were upset about what B.F. said apart from the slides. Perhaps most notable, one student remembers with specificity Mr. Wolowitz’s response to B.F.’s question about genocide which provided a counterbalance to B.F.’s presentation. All of these observations are highlighted below:

Student 1

- **What do you recall about the lesson?**
B.F. collected our phones. At the beginning of the lesson she stated that she was biased on the subject. B.F. told the class that If they were uncomfortable with the lesson, they could leave.
- **What was B.F. doing during the lesson?**
99% of the time, B.F. was teaching.
- **What was Mr. Wolowitz doing during the lesson?**
Mr. Wolowitz was just sitting. He was maybe grading papers or doing whatever he does. He does not think he was involved with the slideshow. He never teaches during the class time. He was sitting down like he does every day.

Mr. Wolowitz was asked a question by B.F., "Define genocide." He stated, "I believe genocide is the eradication of one specific group of people." He then went on to say that "A conflict between two groups is a war. It is unfortunate that both people from the groups have died, but it is a war."

⁹ In the 2022-2023 school year, B.F.’s slide presentation included “What is Settler Colonialism?” and then defined it as “a system of oppression based on genocide and colonialism, that aims to displace a population of a nation (often times indigenous people) and replace it with a new settler population” (Ex. R20).

- **How did the lesson make you feel?**
He was bothered by B.F. collecting the phones. B.F. has never taken away the phones before. What also bothered him was that she said that Hamas was a resistance group. It made him mad because it is simply untrue.
- **What teachers were in the class during the lesson?**
Both Mr. Wolowitz and B.F. were in the class that day.
- **Was there a homework assignment?**
After B.F. finished the assignment, she mentioned that there was homework assignment. She did not post an assignment.
- **Was the slide show finished?**
The slide show was finished in either 2 or 3 days.
- **Did you see a video?**
No videos were shown. If there was a video it may have been a college campus slide.

Student 2

- **What do you recall about the lesson?**
She believes It was taught over three days, but she was not there for the second day. She knew the lesson was about Palestine and Israel. *She does not recall the lesson too much.* There were three adults in the room.
- **What was B.F. doing during the lesson?**
She was sitting down and referring to the presentation. Before she started talking about the information she stated that if you are uncomfortable, you can leave. B.F. collected everyone's phones. She did not say she was collecting the phones. During the lesson, a few students asked questions. She had presented something about a girl (5-7 years old) who lost her parents, a bomb and the kid had to call 911. It was a reference to how people are dying during this time.
- **What was Mr. Wolowitz doing during the lesson?**
She believes he was there for the first day. He was controlling the slides on the 1st and 3rd day.
- **Did Mr. Wolowitz make any comments?**
No, Mr. Wolowitz was working on other work on the desktop computer. He was not paying attention during the lesson. He never added to the conversation. She could tell that he was doing other work.
- **During the class, are there any teachers who take the lead?**
Yes, B.F. always takes the lead. When she is not here, he takes the lead.

- **How did the lesson make you feel?**
She did not know there was anything wrong. She was kind of confused since she is not aware of the issue.
- **What teachers were in the class during the lesson?**
Was there a homework assignment? B.F., Mr. Wolowitz and Ms. Novella attended both days.
- **Was the slide show finished?**
The last day (3rd day) the slide presentation was complete.
- **Did you see a video?**
No video on any of these days, but she did refer to a video. She stated that B.F. was not going to show the video, but told them that if they wanted to watch it, they could click it.
- **Did the teachers take cell phones?**
She remembers that B.F. took phones the first day. She is not too sure about whether B.F. collects the phones a lot. She does collect them at least once a month. She takes phones when she notices that the students are not paying attention during class.
- **Did anyone get upset when she took the phones?**
No, they just handed it in.
- **Did anyone get upset or leave the class during the lesson?**
No. No one got upset or left the class.

Student 3

- **What do you recall about the lesson?**
B.F. took all student phones and closed the doors. She started by saying she wasn't going to be biased during the lesson. ■ felt that B.F. taught from a Palestine view. ■ felt it was evident from the powerpoint. B.F. spoke about genocide. ■ felt that the lesson was biased. B.F. did not talk about Israel. She said that the Israelis were attacking the Palestinians.
- **What was B.F. doing during the lesson?**
B.F. was teaching the entire presentation.
- **What was Mr. Wolowitz doing during the lesson?**
He was on his phone and doing his own thing. Thursday and Friday he was controlling the slides. He was there for all three days. She does not remember if Mr. Wolowitz said anything during any part of the lesson.
- **How did the lesson make you feel?**
She was ok with the lesson. She didn't want to say anything because she was neutral. ■ was a bit uncomfortable because it was a surprise. *The entire lesson made her feel uncomfortable, specifically the blanket, map and the word "genocide". She felt*

uncomfortable because she had no awareness of the lesson. The door being closed also made her feel uncomfortable. The taking of the phone made her feel uncomfortable.

- **During the class, are there any teachers who take the lead?**
B.F. always takes the lead unless she is tired, then Mr. Wolowitz takes the lead. Mr. Wolowitz normally sits at his desk.
- **Was there a homework assignment?**
Yes, there was a homework assignment.
- **Was the slide show finished?**
They started on Wednesday and finished on Friday. (Three days) She brought a blanket in the class and showed them how it was used. She showed them what it looked like, and how it was used to wear on your head. She said the blanket represented the Palestinian side.
- **How many adults were in the class?**
Two - B.F. and Mr. Wolowitz. The aide (Ms. Novello) comes in the class at the beginning of the class and leaves and then comes back to get her student. She did not stay for the lesson.
- **Did you see a video?**
No, there was no video. She cannot remember if B.F. spoke of a video.
- **Did the teachers take Cell Phones?**
B.F. normally does not take the phones. She took the phones and said she was taking the phones because she wanted to teach an important lesson. She did take the phones for all three days. She gave the phones back at the end of class. She told the class that they were learning a different topic. Phones are taken away during a test. After the test they can get them back. The phone being taken away made her feel uncomfortable. Student [REDACTED] in the class took his phone back when he went to the bathroom. [REDACTED] came back and B.F. mentioned the phone and he gave it back.
- **Tell us about your seating?**
Normally they can sit with their friends. She made them sit at their own tables and took the phones. She closed the door.

Additional Notes:

Classmate - [REDACTED] got really nervous and told her that the lesson made her uncomfortable.

Student 4

- **What do you recall about the lesson?**
[REDACTED] was not in class as he was on a field trip on Wednesday (5/22). He was present for the lesson on Tuesday and Thursday. During the class, B.F. stated that since we finished reviewing for the year, they would talk about the Israeli Palestinian war. The first day she

introduced key words, a glossary of different words. Thursday it was what was happening at the present time.

- **What was B.F. doing during the lesson?**

B.F. did say that the lesson would be an unbiased presentation to the best of her ability. She was the only person presenting.

- **What was Mr. Wolowitz doing during the lesson?**

Mr. Wolowitz did not help with the presentation. He only helps when she needs help. He notices that Mr. Wolowitz sits back and allows her to run the lesson. He usually sits at his desk. He sat at his desk during the lesson. Mr. Wolowitz did not speak, but clicked the slides.

- **How did the lesson make you feel?**

At first, he was excited to learn about it. He believes it was a biased presentation. He does not blame her, specifically he knows that she is close to the subject. It started from facts and then went to her opinion. For example, Hamas - After doing his own research he found that the words - "terrorist organization" was whited out/changed. He found the definition online. The words were changed to the "Resistance Movement."

- **What teachers were in the class during the lesson? Was there a homework assignment?**

B.F. and Mr. Wolowitz were present during the lesson.

- **Was the slide show finished?**

■ does not recall if they got through the slideshow. But they did talk about the protests in America. He does not recall the slide about the girl.

- **Did you see a video?**

■ does not recall seeing a video.

- **Did the teachers take cell phones?**

The teachers started collecting cell phones in early December. Not every class period, but mostly. He recalls that cell phones were taken a week prior, WWII was the topic. He does recall that there were students who were upset. This is his only class where phones are collected.

As can be seen from the foregoing, virtually all of the students who expressed concern did so regarding the actions and words of B.F. alone, i.e., collecting phones, closing the door, telling students they could leave, etc., presenting an altered definition of “Hamas”, which replaced “terrorist organization” with “resistance movement” allegedly stating Israel is attacking Palestinians. This individualized misconduct cannot be imputed to Mr. Wolowitz.

Moreover, while one student expressed concern over B.F.'s discussion of genocide, another observed Wolowitz neutralizing B.F.'s biased view by stating, "A conflict between two groups is a war. It is unfortunate that both people from the groups have died, but it is a war." Therefore, not only did the Board fail to demonstrate that Wolowitz engaged in misconduct or breached a known duty, but it failed to account for the fact that students were mostly offended by B.F.'s individual actions and commentary apart from the slides, and that Wolowitz injected neutralizing input on the discussion of genocide.

Finally, in contrast to the above reactions of students, the parents and other Jewish members of the community at large reacted in a manner which reflected their review of B.F.'s slides and, due to the prohibition on disclosure of personnel matters to the public, which reflected a uniform belief that Mr. Wolowitz engaged in the same misconduct as B.F. And at the June 3, 2024 Board of Education meeting, as Dr. Kravitz testified, several hundred members of predominantly the Jewish community showed up; one with a giant menorah on top of his car and had to be asked to leave because he was blocking traffic and otherwise causing a distraction. With a stacked crowd against him, one Palestinian man is observed attempting to address the Board in a civil manner and was met with a woman standing closely behind him rising from her seat and yelling, "You're a fucking terrorist" three times. Another man is proclaiming that Wolowitz and B.F. are "maggots". The police had to remove several pro-Israel protesters. Emails came into the Superintendent some level-headed and wanting answers and some over the top (Ex. P4). But, in the end, the community is entitled to its feelings especially after the October 7, 2023 terrorist attacks. However, feelings do not constitute proof that Wolowitz engaged in misconduct, breached a known duty to act or is at all anti-Semitic. And feelings certainly do not justify unduly removing from employment a 14-year educator with no record of prior discipline.

Nonetheless, it was against this backdrop that the investigation conducted by Mss. Collazo-Baker and Williams was developed into a report, which was published June 10, 2024 (Ex. P10). It was a report which fully showed Principal Glynn's shortcomings which, in my opinion, also led to B.F.'s presentation of the May 23, 2024 lesson to the 8th period class and solely led to the ensuing posting of the slides to Google Classroom; it contained information showing Mr. Wolowitz's statement to the class disowning B.F.'s injection of the term "genocide" into the discussion; and it showed the actual reaction of students to the class which solely related to B.F.'s conduct. That the investigative report was not presented to the Board prior to certifying Sworn Tenure Charges by itself deprived Wolowitz of due process and raises legitimate questions as to why the report was withheld.

In sum, the Board has failed to sufficiently demonstrate that Mr. Wolowitz engaged in conduct unbecoming/neglect of duty and/or breached Policy 3310 by failing to act during the 8th period World History class as the misconduct of B.F. alone unfolded. The Board failed to demonstrate that Wolowitz violated Policies 3270 and 2240. It failed to demonstrate that Wolowitz had anything to do with respect to the disclosure of the slides to parents and, hence, to the Jewish community.

Finally, even if I were to find that Wolowitz should be held responsible for not acting sooner than he did, which I do not, the removal penalty would be reduced to a letter of reprimand, at best, based on the Board's failure to fairly apportion between B.F. and Wolowitz and its failure to treat Wolowitz as it did Glynn.

In the context of group discipline, an employer's burden of proof extends to proving which of the two, if not both, are at fault. See, e.g., Elkouri and Elkouri, How Arbitration Works, 6th Ed., pp. 952-953. Guilt by association is not acceptable, nor is it proper to penalize both employees

where neither admits to wrongdoing or only one, but not the other, does. See, e.g., Arizona Aluminum Co., 82-1 ARB ¶8458 (Sass 1982). As this record inexorably bears out, B.F. is primarily, if not completely, responsible for this unfortunate chapter in the book of the Fort Lee School District. To apportion fault equally between she and Mr. Wolowitz, thereby unjustifiably damaging Wolowitz's reputational interests, constitutes a blatant just cause violation.

Lastly, the concept of disparate treatment leads to a similar conclusion. See, In the Matter of Tenure Hearing of Joseph Putrino, *supra*, (and disparate treatment cases cited therein, at pages 99-105) (penalty of removing a tenured principal for unwittingly showing a comedic skit taken by some to have racial implications was reduced to a written reprimand where the administration issued a mere written warning to a vice principal for distributing an eblast for Jewish Heritage Month which celebrated the life of Rabbi Meir Kahane, a documented racist and known terrorist).

In this matter, if there is a distinction between Mr. Wolowitz and Principal Glynn, it is only that Glynn arguably was more responsible for the eruption felt by the community. Glynn was aware that B.F. had a PDP either 1st, 2nd, or 3rd period, i.e., in the morning. Glynn acknowledged that would have been a good opportunity to speak with B.F. (Id., pp. 132-133). But she did not. Counsel then asked Glynn about her interview with B.F. and her Union representative. Glynn, Assistant Principal Lombardo, and Supervisor of Social Studies/Teacher Disha Patel were present in the meeting (Id., pp. 101-102). Interestingly, Glynn asked, did not tell, B.F. that maybe she should pause at this point on the material, "until we can, you know, deal with the sensitivities that have come from it so far" (Id., p. 102). According to the investigative statement of Disha Patel, B.F. stated in the meeting, "I always do a lesson and post the slides I am going to post the slides" (Ex. P10). Glynn did not stop her. Consequently, B.F. went ahead and posted her presentation to Google Classroom for all students and their parents to see and the rest is history (Id., pp. 107-108).

In sum, there is no justification for the Board to, on the one hand, remove Wolowitz, a 14-year employee with an unblemished record from employment, while giving Glynn a counseling letter or reprimand, whatever the case may be.

CONCLUSIONS

Based on the foregoing, I conclude that the Fort Lee Board of Education did not have just cause to remove Stephen Wolowitz from employment based on Board Policies or any of the grounds set forth by N.J.S.A. 18A:6-10. I will dismiss the Sworn Tenure Charges filed by the Board with the Commissioner of Education against Stephen Wolowitz. I will direct the Board to immediately offer reinstatement to Mr. Wolowitz, to reimburse him (within fourteen (14) days from the date hereof), for any and all lost compensation and benefits of employment, and to remove all references to the Tenure Charges from his files. If it elects, in lieu of immediate reinstatement, the Board may continue Wolowitz on paid leave for the remainder of the 2024-2025 school year so as to avoid disruption to the educational process. The Board must make such an election within ten (10) days of the date hereof by notifying Counsel for Mr. Wolowitz that it will continue Wolowitz on paid leave for the remainder of the 2024-2025 school year and reinstate him for the 2025-2026 school year. I will retain jurisdiction for sixty (60) days to address any dispute between the parties relative to the implementation of the remedial relief awarded herein.

AWARD

Based on the foregoing, I hereby dismiss the Sworn Tenure Charges filed by the Fort Lee Board of Education with the Commissioner of Education against Stephen Wolowitz. The Board is directed to immediately offer reinstatement to Mr. Wolowitz, to reimburse him (within fourteen (14) days from the date hereof) for any and all lost compensation and benefits of employment, and to remove all references to the Tenure Charges from his files. If it elects, in lieu of immediate reinstatement, the Board may continue Wolowitz on paid leave for the remainder of the 2024-2025 school year so as to avoid disruption to the educational process. The Board must make such an election within ten (10) days of the date hereof by notifying Counsel for Mr. Wolowitz that it will continue Wolowitz on paid leave for the remainder of the 2024-2025 school year and reinstate him for the 2025-2026 school year. I will retain jurisdiction for sixty (60) days to address any dispute between the parties relative to the implementation of the remedial relief awarded herein.

Respectfully submitted,



Joseph Licata

Dated: March 11, 2025

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

On the 11th day of March, 2025, 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.



Jacqueline M. Licata/Notary Public

