



NEW JERSEY ARBITRATOR DECISIONS IN TENURE CASES 2012 – 2019

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Arbitration Chart Link:

<http://njpsa.org/documents/pdf/NEWJERSEYARBITRATORDECISIONSINTENURECASES.pdf>

Case Name and Date (most recent first)

Charges Presented

Arbitrator Decision

Arbitrator

Case Name and Date (most recent first)	Charges Presented	Arbitrator Decision	Arbitrator
<u><i>Vincent Serpico v. Piscataway SD</i></u> 11/4/18	FACTS: SD filed Conduct Unbecoming Charges against tenured Special Education Math Teacher. SD Allegations: <ul style="list-style-type: none"> • Teacher was initially at the Middle School and then reassigned to the High School <ul style="list-style-type: none"> – Teacher regularly complained about this reassignment – Threatened to quit if he was not 	Rationale: <ul style="list-style-type: none"> • The relevant issue is not in dispute • Teacher’s comments / outbursts were inappropriate and served “no legitimate pedagogical purpose.” <ul style="list-style-type: none"> – Expression of personal frustration • Video confirms behavior was inappropriate and “destructive of pedagogical purpose” to his students 	John E. Sands

	<p>transferred back to the Middle School</p> <ul style="list-style-type: none"> • Issues <ul style="list-style-type: none"> – Throughout his career with the SD, teacher has been counseled, admonished and disciplined for disrespectful and demeaning statements to students – inappropriate “sarcasm” – Lack of Student progress on benchmark exams – Failure to actively participate in PD and Departmental meetings • Prior Discipline <ul style="list-style-type: none"> – Placed on SD’s “comprehensive mode” of evaluation of SY 2010-11 – Increment withholding for SY 2010-11 – 2011 – Letter with admonishment for calling students “idiots”, telling a student to “shut up” and other behaviors – Remained on “comprehensive mode” for SY 2011-12 • May 8, 2018 <ul style="list-style-type: none"> – Teacher (white) argued with student (black) in class, using phrases “Nigger” and “F-you” – Teacher became aggressive in the classroom when students threatened to report him – Teacher said nothing would happen to him and he was tired of working at the High School – Portions of the behavior were caught on video – Teacher claimed that source of his becoming upset was having to hear the students’ music which contained offensive language – The videos went viral throughout the 	<ul style="list-style-type: none"> • The rant included “negative statements about the Special Education population and the SD’s commitment to the program” • Teacher only seemed to appreciate the severity of his behavior when the Tenure Charges were filed • The record is devoid of any “convincing expression of remorse or purpose to improve” • The evidence supports the SD’s allegations regarding this incident • “I see no reason to expect that his fulminating resentment and frustration will abate, that therapy and anxiety medication will make him any happier teaching special education math at the high school, or that, if reinstated to employment, future such misconduct could not recur.” <p><u> Holding:</u> Granted. Termination of employment</p>	
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	<p style="text-align: center;">SD community</p> <ul style="list-style-type: none"> • SD's Arguments <ul style="list-style-type: none"> – Teacher's behavior caused a disruption to the students – The classroom was an inappropriate place to air personal grievances – Teacher's behavior has undermined his effectiveness as a teacher – Progressive Discipline has occurred, and he is unsalvageable as a teacher <p><u>Defenses:</u></p> <ul style="list-style-type: none"> • Teacher claimed that the offensive language was not directed toward anyone, but that he only repeated the words he heard students saying, in order to tell them not to use those words in the classroom • The students, in essence, taunted him and he became upset • Middle School is the more appropriate environment for him – if he would be transferred he would be better • There has been no discipline since 2011 prior to this incident 		
<p><u><i>In the Matter of Tenure Charges of Noel Gordon vs. City of Englewood</i></u></p> <p>8/13/18</p>	<ul style="list-style-type: none"> • SD filed Tenure Charges against Director of Guidance for Conduct Unbecoming <ul style="list-style-type: none"> – Alleges irregularities within the HS guidance department that led to a number of students graduating w/o having the State mandated number of classroom hours, classes, or number of course credits. • Gordon filed MTD to charges in lieu of an Answer <ul style="list-style-type: none"> – Tenure Charges refer to and rely on numerous evidentiary exhibits that are omitted from its filing – At most, the Charges are a case for 	<ul style="list-style-type: none"> • This matter was initially filed in a consolidated Statement of Evidence against 8 staff members. <ul style="list-style-type: none"> – Dismissed w/o prejudice – Charges and accompanying Statement of Evidence were temporarily sealed by the Commissioner. – If SD refiles charges, "it must comply with each of the statutory and regulatory requirements for certifying tenure charges." <ul style="list-style-type: none"> • <u>N.J.A.C. 6A:3-5.1(b)1</u>: Specificity requirement <ul style="list-style-type: none"> – "Complete copies of all documents referenced in 	<p>Joseph Licata, Esq.</p>

	<p>Inefficiency, not Conduct Unbecoming.</p> <ul style="list-style-type: none"> • SD failed to comply with the statutory prerequisites for filing Tenure Charges based on Inefficiency and instead filed the charges for incompetency and Conduct Unbecoming. This is an attempted end-run around the TEACH NJ prerequisites to filing Tenure Charges. • SD responses to MTD <ul style="list-style-type: none"> – All evidentiary documents have been submitted with original and resubmitted evidentiary CDs. No prejudice shown. – Viewed in the light most favorable to the non moving party, the claims submitted are sufficient to warrant a charge of Conduct Unbecoming, Incompetency and/or Other Just Cause. 	<p>the statement of evidence shall be attached as part of the statement.”</p> <ul style="list-style-type: none"> • BOE failed to provide all necessary / referenced documents • “<u>N.J.A.C. 6A:3-5.1(b)</u> places the onus on a BOE to line up all of its ducks before it commences the local processing of charges.” <ul style="list-style-type: none"> – “The sworn tenure charges must align with the sworn statement of evidence and the sworn statement of evidence must include all documents identified therein.” – “Conversely, the affected tenured staff member bears no burden to aide a BOE perfect the charges under the applicable statute and regulation.” • As this is a procedural error, the Dismissal will be w/o prejudice to a re-filing • No need to address the allegations that these Charges are Inefficiency Charges masked under Conduct Unbecoming Charges at this time. <p><u>Holding:</u> MTD granted w/o Prejudice. Return Gordon to employment with back payment.</p>	
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<p><u><i>In the Matter of Tenure Charges of Laurie Olsen-DelGuercio vs. Union SD</i></u></p>	<p><u>FACTS:</u></p> <ul style="list-style-type: none"> SD filed Tenure Charges against Secretary/Clerk who had extra-curricular duties of School Treasurer. 	<ul style="list-style-type: none"> “... while the evidence shows she is not blameless for what happened in the morning of June 29th, the blame must be equitably shared: <ul style="list-style-type: none"> Board Policy 3453 says ‘...The student activity funds for each school shall be kept in a separate account Supervised by the building principal. Separate and complete records shall be maintained for each student organization. All receipts from student fund-raising Projects, athletic events, and other events for which admission is charged will be deposited promptly. Bank deposits shall agree with the receipts in the case receipt book.’ (Emphasis supplied). ... consistent with the above cited Board Policy, the Union HS Principal had final responsibility for failing to make prompt bank deposits of the \$57,139.84 in the school safe during the 6/29/17 burglary.” The window where the burglars gained access to the building being left unlocked is a contributing factor that must be considered. There is no evidence that the Secretary was put on notice of the SD policies cited or the consequences for failing to follow them. Under <i>or Other Just Cause</i>, Secretary was negligent in her performance of her duties as School Treasurer when she left the money in the cabinet instead of the safe, and “did so without advising the Principal or seeking his permission in advance.” <ul style="list-style-type: none"> This “negligence is implicitly linked to her tenured Secretarial position by a preponderance of evidence.” <p><u><i>Inefficiency Charge</i></u></p> <ul style="list-style-type: none"> Unproven – the part-time Treasurer position is 	<p>Kinard Lang</p>
<p>5/10/18</p>	<p><u>SD Allegations</u></p> <ul style="list-style-type: none"> She handled collection and processing of school activity funds: receipt-to-reconciliation-to-deposit 6/29/17 – Former students burglarized the building <ul style="list-style-type: none"> Approximately \$28,899.41 in cash (student activity funds) stolen from Secretary’s locked file cabinet \$57,139.84 was in the school safe (not stolen) 7/6/17 – Secretary was relieved of School Treasurer duties <ul style="list-style-type: none"> SD felt she was negligent <ul style="list-style-type: none"> Kept the school funds in the form of cash in a cabinet drawer overnight Failed to properly deposit the funds in the bank account. Violated SD policies: <ul style="list-style-type: none"> 3450 - “In no case shall money be left overnight in schools except in the safe provided for safekeeping of valuable.” 3453 – “All receipts from student fund-raising projects, athletic events, and other events for which admission is charged will be deposited promptly...” 		

	<ul style="list-style-type: none"> – SD had the \$57,139.84 deposited in the bank and removed Secretary’s name from the bank account. • 8/30/17 – Secretary placed on Administrative Leave with pay pending the investigation of the theft. <p><u>Defenses</u></p> <ul style="list-style-type: none"> • Disavows all charges <ul style="list-style-type: none"> – Actions here at worst are errors in judgment, not the moral turpitude usually concerned in charges of this nature. • Allegations are against her as a School Treasurer, not in her tenured position of Secretary • Inefficiency charges are invalid <ul style="list-style-type: none"> – Need to have 2 consecutive findings of “ineffective” or “partially effective” summative evaluations – No evidence she was ever formally evaluated • Other factors are involved <ul style="list-style-type: none"> – A window left open and the act of burglary – Claims no knowledge of either alleged policy violated cited herein 	<p>not linked to her tenured Secretarial position.</p> <p><u>Holding</u> : Granted. 120 Suspension w/o pay. Request for Restitution denied.</p>	
<p><u><i>In the Matter of Tenure Charges of Nabil Youssef, Jersey City District BOE</i></u></p> <p>4/23/18</p>	<p>SD filed Inefficiency and Conduct Unbecoming Charges against tenured Mathematics Teacher.</p> <p>Teacher received satisfactory performance reviews from approximately 2001 through 2012. SD alleges Teacher's performance declined after 2012.</p> <p><u>Inefficiency</u> 2013-14: Ineffective 2014-15: Partially Effective</p>	<p><u>Classroom Performance Issues</u></p> <p>There is sufficient evidence and testimony that was presented by the SD which substantiates its claims against the teacher. Specific, legitimate deficiencies were articulated and noted during the observations. It is noted however, that mere recitation of the Danielson rubric is not helpful.</p> <p>The Arbitrator opined that the teacher failed to complete all SGO's as required. The teacher failed to attend a meeting to discuss his CAP where he</p>	<p>Howard C. Edelman, Esq.</p>

	<p>2015-16: Partially Effective</p> <p><u>SD allegations - Teacher failed to:</u></p> <ul style="list-style-type: none"> • Implement curricular goals & objectives • Design coherent instruction • Assess student learning • Create an environment of respect and rapport • Establish a culture of learning • Communicate clearly and accurately • Use questioning and discussion techniques with flexibility and responsiveness • Engage students in learning • Provide feedback to students • Attain student achievement that meets or exceeds performance benchmarks • Reflect on teaching • Contribute to the school and SD • Grow and develop professionally • Attend PD meetings • Attend required staff meetings • Attend Pre-observation Conferences • Attend Annual Summative Conferences • Attend CAP Conferences • Demonstrate promptness and attendance <p>SD contends it follows all required procedures and provides ample evidence of examples of the behaviors listed above</p> <p><u>Conduct Unbecoming</u> SD Allegations (summarized) -</p> <ul style="list-style-type: none"> • Same behaviors listed in Inefficiency charges • Insubordination • Failed to: <ul style="list-style-type: none"> ○ Comply with Administrative direction ○ Adhere to school policies and procedures 	<p>could have addressed his issues with access to Teachscape. "He cannot be excused for his lack of knowledge by deliberately shirking his obligation in this regard."</p> <p>"... it is likely that the introduction of the Danielson rubric and related protocol affected his performance, especially since ... he made virtually no effort to modify his pedagogy in accord with its dictates. Stated differently (the teacher) had the potential to perform adequately but stuck to his own pre-Danielson methodology which prevented him from doing so."</p> <p><u>Failure to Attend Meetings</u> "The record contains overwhelming evidence that (the teacher) knew of scheduled and required staff and professional development meetings. It contains similar evidence that he simply refused to attend all or virtually all of them."</p> <ul style="list-style-type: none"> • His name did not appear on attendance sheets • Other teachers complained that he didn't attend the meetings • CBA does not offer a valid excuse for missing the meetings • Evidence indicates that his physical condition did not prevent him from attending the meetings <ul style="list-style-type: none"> ○ SD provided video showing him walking up and down steps • Filing a lawsuit against the SD does not absolve the staff member from continuing to comply with the requirements of the SD <p>His union urged him to attend meetings to no avail.</p> <p>"No teacher sets his/her own rules. So long as the obligations do not endanger his safety, compliance</p>	
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	<ul style="list-style-type: none"> ○ Attend PD training sessions ○ Cooperate with BOE's evaluation process ○ Complete required SGO's ○ Comply with BOE Attendance policies ○ Comply with Dress Code Policy ○ Attend staff meetings (64 meetings over 3 years) ○ Complete CAP's <ul style="list-style-type: none"> ● Engaged in a pattern of behavior contrary to the position of a tenured educator ● Consistently left School prior to the contracted end of the school day, w/o notice to appropriate school personnel, in violation of SD policy, despite repeated warnings <p>SD asserts that appropriate Progressive Discipline occurred, and was ignored by teacher</p> <ul style="list-style-type: none"> ● Repeated warnings ● 2 Increment withholdings <p><u>Teacher Defenses</u></p> <p>Teacher alleges that the change in ratings is retaliation for his filing a lawsuit against the SD.</p> <ul style="list-style-type: none"> ● Claims he couldn't attend meetings that were in different buildings due to access issues (steps) ● SD failed to make reasonable accommodations for his disability that would have allowed him to attend meetings ● He had difficulty using Teachscape ● SD does not have evidence to substantiate its claims of deficiency ● Teacher disagrees with the assessments from the classroom observations - claims they were arbitrary and/or capricious ● He received "Effective" Ratings on 	<p>is required. Failure to comply constitutes insubordination. (The teacher's) was manifest during the period in question."</p> <p>"Though in some cases teachers were returned to service despite individual acts which could be categorized as more egregious than (the teacher's), none reveals a 3 year continuing course of conduct which so blatantly evinces a complete disregard for a teacher's professional obligations."</p> <p><u>Holding</u> Dismissal from Service</p>	
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	<ul style="list-style-type: none"> portions of the evaluations • SD did not properly follow all required procedures • His ratings were incorrectly calculated • Things he was asked to do were in violation of the CBA • He felt it would have been futile to attend post-observation meetings with people that he had named in his lawsuit against the SD 		
<p><u><i>In the Matter of Tenure Charges of Mary McKenzie vs. Hillsborough Township BOE</i></u></p> <p>4/10/18</p>	<p>SD filed Inefficiency Charges against tenured Special Education Teacher</p> <p>2015-16: Partially Effective 2016-17: Partially Effective</p> <p><u>SD Allegations:</u> <u>2014-15</u> composite score was 2.66 – barely meeting criteria for an Effective teacher.</p> <ul style="list-style-type: none"> • Teacher placed on a PIP addressing deficiencies: <ul style="list-style-type: none"> – Instructional Planning; Instructional Delivery; Learning Environment – Specific issues needing improvement within each category were addressed in documentation submitted • Teacher failed to timely submit lesson plans approximately 6 times. <ul style="list-style-type: none"> – Email reminders were sent • Consistent tardiness – 3x significantly late <ul style="list-style-type: none"> – Excuses included: Traffic and she overslept because her Cell Phone did not charge (no alarm) <p><u>2015-16</u></p> <ul style="list-style-type: none"> • SD completed all observations / conferences /reports required <ul style="list-style-type: none"> – Documentation submitted to substantiate SD’s claims 	<ul style="list-style-type: none"> • The waivers from NJDOE re: reduced number of observations in all instances (not just this teacher’s) was not submitted during Discovery, so the document could not be submitted as evidence. <ul style="list-style-type: none"> • Credible witness testimony established that the waiver was obtained. <ul style="list-style-type: none"> – Teacher took a leave of absence from mid-March to the end of the 2015-16 school year – a 3rd evaluation could not be performed under the PIP – When Teacher requested the Leave of Absence, SD could either start over the following year, or base the summative evaluation on the evidence available. – “The SD’s decision to have to have 2 evaluations instead of 3 did not materially affect the outcome of the evaluations.” • Tardy Lesson Plan submissions were documented <ul style="list-style-type: none"> – It was reasonable and necessary to expect lesson plans to be timely submitted • For 2015-17, there is no evidence that a second observer did an interview. <ul style="list-style-type: none"> – Teacher’s leave of absence made a 3rd 	<p>Peter Adomeit, Esq.</p>

	<ul style="list-style-type: none"> • SD made good faith attempts to help teacher improve <ul style="list-style-type: none"> – Advice re: better teaching techniques & strategies – Willingness to discuss ideas – Provided articles / resources for improvement strategies • Despite SD's efforts, Teacher did not improve <ul style="list-style-type: none"> – Received a Composite Score Report of 2.20 (among the lowest scores in the SD) – Lack of improvement in her ability to differentiate instruction and other areas there were the focus of her PIP from the 2015-16 year – Continued to submit lesson plans late <ul style="list-style-type: none"> • Discussions, emails and memorandums sent to Teacher to address this issue – Emails from SD with concerns about Teacher's timely reporting of and the content of the academic progress/assessment data. <ul style="list-style-type: none"> • "The artifacts and accompanying teacher narrative included here provide little to no information regarding variety of assessment, frequency of assessment, and use of data to inform overall instruction. Further, no artifacts displaying assessment in any other academic disciplines are present." <p>CAP was developed due Partially Effective rating for 2015-16 year</p> <ul style="list-style-type: none"> • Addressed previously noted areas for 	<ul style="list-style-type: none"> – observation impossible. <ul style="list-style-type: none"> – Even if she had scored a 2.6 in the 3rd (missing) evaluation, her overall score still would not have reached an "Effective" level • "... the failure to have a 3rd evaluation by a different evaluator under these facts would not have 'materially affected the outcome' of the Summative ra The Summative Performance Reports are supported by credible evidence. • The CAP is "quite specific" <ul style="list-style-type: none"> – "It lists the areas that needed improvement, the sources of information behind each issue, the goals, staff member responsibilities, supervisor responsibilities, and completion date." • "The old issues continued" <ul style="list-style-type: none"> – Late lesson plans – Failed to conform her work to the system within which she worked • "The finding of 2 successive years of Summative Evaluation scores at 'partially effective' or 'ineffective' defines 'ineffective' teaching and requires termination. The statute does not consider prior successes in days long past relevant." • The claim that she was evaluated based upon her use of the Stronge computer system and not her performance is invalid. <ul style="list-style-type: none"> – "The evaluation system relies on the teacher to provide the information. It is not the responsibility of the administrators to go seek it out. The method of providing the information is by computer. She was aware and was reminded by language in the bottom of the Observation reports that if you want the evaluator to have more information, 	
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	<p>improvement</p> <ul style="list-style-type: none"> • Contained multiple demonstrable goals intended to assist the Teacher and facilitate professional development. • Included: <ul style="list-style-type: none"> • Review of reading materials. • Bi-monthly meetings with Administration • Opportunity to visit the classroom of a math mentor 2-3 times per marking period to observe strategies that enhance meaningful student engagement and differentiation of instruction. • Allowed for the Teacher to arrange for the Administration's observation of a lesson where she would showcase differentiation of instruction. • Sought to have the Teacher systematically gather formative data on student learning and utilize such data to guide instruction, through the use of formative assessments (such as an "exit ticket") for each lesson and maintain a journal to demonstrate how she utilized the data. • Required Teacher to adhere to all SD policies <ul style="list-style-type: none"> • Specifically noting attendance and timely submission of lesson plans and assessment data <p><u>2016-17</u></p> <ul style="list-style-type: none"> • SD completed all observations / conferences /reports required <ul style="list-style-type: none"> – Documentation submitted to substantiate SD's claims • Despite SD's efforts, Teacher did not improve <ul style="list-style-type: none"> – Continued to submit lesson plans late – Left a classroom early without permission 	<p>provide it.”</p> <ul style="list-style-type: none"> – “The teacher, by the uploads, is given control of how... she will be perceived.” <ul style="list-style-type: none"> • “The argument that the Teacher's rating is based not on performance but on manner in which that performance was recorded is not persuasive. The evaluation system relies on the written word. A teacher does something. It is observed, either by the teacher or someone else. The observer produces a document, maybe on a computer, or on an email. The documents are reviewed by administrators. Something happens because of those records. There is an objective reality, but that reality must be captured and documented. The event is instantaneous and disappears. The record preserves it.” • Teacher's additional arguments are not persuasive or supported by the credible evidence. <p><u> Holding:</u> Granted. Teacher is Dismissed.</p>	
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	<ul style="list-style-type: none">- Absenteeism Issues<ul style="list-style-type: none">• As of 3/10/17, Teacher had been absent 12 days (10% of school year to date)• More than half of those absences occurred on Fridays• Two were on a Tuesday/Wednesday following a Monday holiday (President's Day)• Late notification of Sick Days, which led to the school being unable to secure a Substitute Teacher for those days- Failed to follow prescribed format for the classroom- Performed inadequately during observed classes<ul style="list-style-type: none">• Classroom performances did not adhere to the Lesson Plans- Declined additional supports<ul style="list-style-type: none">• Administrator "met with Teacher...", at which time he discussed his observations and progress towards her CAP (as well as any additional supports she would need to be successful). The Teacher advised that she did not need any additional supports."- "... other teachers brought their concerns regarding the Teacher's performance to (the principal's) attention."- SD documented all of the above through emails/memos/reports, citing specific dates of infractions, deficiencies, issues, and concerns.		
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	<ul style="list-style-type: none"> • “Composite Score Report for the 2016-17 year reflected a rating of 2.30 – tied for the second lowest rating in the entire district...” <p><u>Defenses:</u></p> <ul style="list-style-type: none"> • From the 1991-92 through 2012-13 school years, Teacher was evaluated as “successful” • SD’s evaluations were Arbitrary and Capricious <ul style="list-style-type: none"> – “The Board did not evaluate the Teacher’s performance, but, rather, her use of the Stronge computer system.” <ul style="list-style-type: none"> • The Principal “acknowledged that there was voluminous documentation generated by the Teacher in the form of, <i>inter alia</i>, lesson plans and a grade book, which was not uploaded into the Stronge system. He was aware of all of this documentation, as it was provided to him on a regular basis during the 2016-17 school year.” – Principal did not appropriately consider student assessments in the classes where Teacher was a Resource Teacher, with a role “to support the delivery of the lesson by the main classroom teacher to the subset of special-needs students to whom she was assigned.” – Teacher did receive “Effective” ratings during observations – Those performing observations did not review any IEP’s, student materials, grades, papers and did not speak with any students after the 		
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	<p>lesson, but still determined that the “students were struggling” and/or the classroom performance of the Teacher was deficient.</p> <ul style="list-style-type: none"> – There were no clear policies established explaining how utilizing sick days could be a sign of lack of professionalism • SD failed to meet all of the observation requirements <ul style="list-style-type: none"> – No proof of a waiver obtained for the 3rd evaluation – “The Stronge Model itself, which expressly requires ‘at least’ three observations, does not provide that this requirement may be ‘waived’ by a SD.” • Claims that the Administration did not comply with all of the meeting requirements of both the PIP and the CAP. 		
<p><u><i>In the Matter of Tenure Charges of Charles Webber vs. Elizabeth BOE</i></u></p> <p>3/6/18</p>	<p>SD filed Conduct Unbecoming Charges against tenured Custodian.</p> <p><u>SD Allegations</u></p> <ul style="list-style-type: none"> • Alleged Custodian violated BOE Policies including: <ul style="list-style-type: none"> – “Inducing or attempting to induce others to use illegal drugs, narcotics or alcohol is prohibited on school property and at all school functions.” – “Employee and student electronic communications of any kind shall be limited to school business as defined within this policy and should be conducted through the SD’s computers, SD email addressed and telephone systems. School 	<ul style="list-style-type: none"> • “A finding 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 devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.’” <i>citing</i> Ciripompa, 228 N.J. 4 (2017). • It was inappropriate for the Custodian to provide the lunches to the student <ul style="list-style-type: none"> – He should have followed proper school procedures for obtaining the hot lunches – Student still could have a cheese sandwich and apple – Providing the lunches in the boiler room <ul style="list-style-type: none"> • If he truly had “permission” to 	<p>Alan A. Symonette</p>

	<p>employees will not give out their private cell phone or home phone numbers or personal email addresses to students without prior approval of the principal.”</p> <ul style="list-style-type: none"> - Conduct and Dress, Duties, Pledge of Ethics, Sexual Harassment <ul style="list-style-type: none"> • Alleged Inappropriate Behavior Included interactions with a 15 year old student <ul style="list-style-type: none"> - Often bought her lunch (would eat together in the boiler room) <ul style="list-style-type: none"> • Told student he would get in trouble for buying the lunches if the Principal or lunch aide found out - Spoke to her about matters of a sexual nature - Discussed using controlled substances with her <ul style="list-style-type: none"> • Time in a rehabilitation facility for marijuana addiction • Offered to smoke marijuana with her after school and off school grounds - Gave her \$25 - He requested the student’s cell phone number (she complied) - Custodian then sent inappropriate texts to the student <ul style="list-style-type: none"> • Requested a hug from the student • Asked if the student was a virgin • Asked about intimate details about the student and her boyfriend’s 	<p>provide the lunches, there would be no need to go to the boiler room, because there would be nothing to hide</p> <ul style="list-style-type: none"> • A boiler room is inherently dangerous – students should not be in there <ul style="list-style-type: none"> • Based upon the testimony, the Custodian initiated the text messages <ul style="list-style-type: none"> - Text message communications on 10 different days <ul style="list-style-type: none"> • Shows lunch was provided more than just on 4 occasions • Content of the text messages shows “the relationship was increasingly inappropriate” • “... I find that he exercised exceptionally poor judgment that is highly inappropriate in the school environment. This cannot be dismissed with a lighter penalty. Respondent’s actions can appear to be naïve and immature but the nature of the relationship especially as documented shows that that behavior would destroy public respect for SD employees and confidence in the operation of the school. Based upon this evidence, I find that the SD had cause to terminate Respondent based on what is clearly a pattern of inappropriate behavior with a student.” <p>Retaliation Claim - Insufficient evidence presented to substantiate this claim.</p> <p>Holding: Affirmed. Employment terminated.</p>	
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	<ul style="list-style-type: none"> relationship <ul style="list-style-type: none"> • Sent details about meeting for lunches • Custodian's actions caused the student to feel extreme discomfort • Student reported Custodian because she feared him • He had told student stories, stating that he "has stomped on people's faces and likes fighting people." <p><u>Defenses:</u></p> <ul style="list-style-type: none"> • Student approached him to buy her lunch when refused services due to mother's failure to pay <ul style="list-style-type: none"> – Claimed Mom refused to complete the paperwork to get assistance from the school – He felt sorry for the student and had gotten permission to provide her a hot lunch (the first time) – He provided "at most" 4 lunches • Claimed going to the boiler room was necessary – cafeteria staff would not give student the lunch <ul style="list-style-type: none"> – He did not stay with the student in the boiler room – The boiler room door was always open and there were security cameras in the area • Denies any inappropriate contact / conversations with the student <ul style="list-style-type: none"> – Denied discussing sexual activity with the student – Denied ever suggesting any violence against the student – Admitted asking for a hug because he felt bad for the student 		
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	<ul style="list-style-type: none"> • Claims the student requested his cell phone number • “Maintains that his actions were as a result of an attempt to ‘help an underprivileged child who came to (him) for assistance.’” <ul style="list-style-type: none"> – He was “just trying to be a nice person” and “did not want to see a student go hungry”. • Claims the tenure charges are retaliation against him because of his politics. • He has an unblemished record and consistently received pay raises each year. 		
<p><u><i>In the Matter of Tenure Charges of Brenda Bruni, Bernards Township SD, BOE</i></u></p> <p>2/9/18</p>	<p>SD filed Conduct Unbecoming Charges against tenured Italian Teacher.</p> <p><u>Underlying Issue</u></p> <ul style="list-style-type: none"> • On 3/22/17, teacher was pulled over for speeding by the Police Dept. • She could not produce proof of vehicle registration or insurance • Teacher said she needed to get home to check on her mother-in-law and that she had something in the oven at the house. <ul style="list-style-type: none"> ○ She threatened to leave the scene ○ Police told her not to leave the scene ○ Police called for back up • Teacher left the scene and violated the speed limit while 2 police cruisers pursued with lights and sirens • 1 Police Officer maneuvered his vehicle to force her to stop <ul style="list-style-type: none"> ○ Teacher was still slow to respond to Officers' commands (guns were drawn) ○ Teacher was handcuffed and placed in squad car 	<p><u>Determining Conduct Unbecoming Behavior</u></p> <ul style="list-style-type: none"> • Undisputed: <ul style="list-style-type: none"> ○ The Teacher drove away from a traffic stop after being ordered not to do so. ○ Metal pipe found in her possession ○ Bad judgment by the Teacher • Credibility <ul style="list-style-type: none"> ○ Consistent story, testimony and police videos confirm teacher's true motive for actions <ul style="list-style-type: none"> ▪ Concern for her mother-in-law ▪ Still poor judgment ○ Teacher reported her arrest to the SD as required <p><u>Penalty Analysis</u></p> <ul style="list-style-type: none"> • Single incident • No history of Progressive Discipline • Outside of school • SD did not provide "specific information about impact on any particular students..." of Teacher's Actions • No evidence staff was trained on the SD's 	<p>Ruth Moscovitch</p>

	<ul style="list-style-type: none"> • Police Officer smelled marijuana emanating from the car <ul style="list-style-type: none"> ○ Search of car and purse - found a "one hitter pipe" that resembled a white cigarette • Police checked on the mother-in-law <ul style="list-style-type: none"> ○ She was fine • Teacher was arrested and charged with: <ul style="list-style-type: none"> ○ Eluding ○ Possession of marijuana under 50g ○ Possession of drug paraphernalia ○ Careless Driving ○ CDS in a MV ○ Failure to maintain lane ○ Failure to exhibit documents ○ Failure to signal turns ○ Maintenance of lamps • Details of the arrest were publicized <ul style="list-style-type: none"> ○ On-line/In the Press ○ School community, including students were aware of her conduct • Results of Criminal Charges <ul style="list-style-type: none"> ○ Drug charges dismissed ○ 1 year Pre-Trial Intervention - Eluding <ul style="list-style-type: none"> ▪ Charge dismissed if successful completion of 1 year of court ordered requirements <p><u>SD Allegations</u></p> <ul style="list-style-type: none"> • Teacher's following actions warrant dismissal: <ul style="list-style-type: none"> ○ Fleeing the scene and attempting to elude a Police Officer despite instructions to the contrary ○ Knowingly possessing drug paraphernalia ○ Inappropriate behavior does not create a positive impression of the SD ○ Inappropriate behavior violates BOE policy and has an adverse effect on 	<p>policies regarding "professional responsibility" and "standards of conduct".</p> <ul style="list-style-type: none"> • "The Superintendent testified that he felt no need to review the policies in relation to Respondent's conduct because: <ul style="list-style-type: none"> ○ 'I just felt that this was egregious and I couldn't think of a better example of conduct unbecoming, honestly.'" • Totality of the circumstances must be considered • Teacher's conduct warrants discipline, but not dismissal <p><u>Holding:</u> Two Month Suspension without pay.</p>	
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	<p>the students</p> <ul style="list-style-type: none"> ○ Her behavior is not appropriate for a teaching staff member entrusted with the care and custody of children • Teacher was more concerned that the "pipe" would be discovered rather than concern for her mother-in-law <ul style="list-style-type: none"> ○ She carried the pipe around for several weeks - means she brought it to school • Teacher's actions constitute Egregious Behavior <p><u>Teacher Response</u></p> <ul style="list-style-type: none"> • No prior disciplinary history with SD • No issues re: teaching ability <ul style="list-style-type: none"> ○ Consistent positive reviews • Wrong to disobey the Police Officers <ul style="list-style-type: none"> ○ All decisions made out of concern for her mother-in-law ○ Videos support her contentions re: concern for her mother-in-law • Extenuating Circumstances <ul style="list-style-type: none"> ○ Elderly mother-in-law with Parkinson's, Dementia and other medical issues ○ Cell Phone was at home ○ True concern • Drug / Vehicle Issues <ul style="list-style-type: none"> ○ Husband's truck used to transport workers ○ Found the pipe in the truck about a week earlier and had intended to dispose of it ○ Pipe could also be for tobacco use • Sent letter to SD acknowledging poor choices and asking for a second chance • SD failed to inform staff of policies regarding 		
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	discipline re: arrested employees		
<p><u><i>In the Matter of Tenure Arbitration Between SOSD of Newark, Maria Lopes-Anastasi</i></u></p> <p>1/10/18</p>	<p>SD filed Tenure Charges against teacher for Conduct Unbecoming, SD Policy Violations and Inefficiency. Teacher filed a Motion to Dismiss the Inefficiency Charges.</p> <p><u>SD Allegations</u> 2015-16 - Ineffective - Placed on CAP 2016-17 - Ineffective</p> <ul style="list-style-type: none"> • Arbitrator lacks the authority to grant MTD <ul style="list-style-type: none"> ○ Disagreement with the Commissioner's Decision to send to the Arbitrator should be handled at the Appellate level, not by MTD • <p><u>Teacher's Allegations</u></p> <ul style="list-style-type: none"> • The observations/evaluations failed to comply with standards and regulations <ul style="list-style-type: none"> ○ Observed 2x prior to issuance of CAP ○ Observed within 1 week of issuance of CAP • Contained Mistakes of Fact • CAP was inadequate <ul style="list-style-type: none"> ○ Failed to measure SGO's ○ No time frames/deadlines ○ No steps to help improve her teaching performance ○ Summative Evaluation was 6/15/16, but CAP was issued on 12/5/16 - more than a month after the 10/31 deadline • SD actions were harassment/retaliation 	<p><u>Holding:</u> MTD Inefficiency Charges granted. Absent some agreement between the parties regarding the remaining allegations, proceed to hearing on the remaining Charges.</p>	<p>Arnold H. Zudick</p>

<p><u><i>In the Matter of Arbitration of John McEntee, Jr., SOSD of Paterson</i></u></p> <p>12/26/17</p>	<p>SD filed Conduct Unbecoming Charges against tenured Respondent seeking an unpaid suspension. Teacher is also the President of the Paterson Education Association.</p> <p><u>SD Allegations</u></p> <ul style="list-style-type: none"> • Inappropriate interaction with a VP during a meeting <ul style="list-style-type: none"> ○ Respondent failed to properly identify the true purpose of the meeting to the VP prior to entering her office ○ VP claims Respondent was vocally and physically aggressive towards her ○ VP feared she would be hit by Respondent ○ VP asked Respondent to leave, Respondent allegedly replied that the VP could not have him kicked out of the building, he could speak to the VP any way that he wanted to and that the VP was going to be grieved. ○ VP said she would call security ○ Respondent (and NJEA Rep with him during the meeting) then left, and Respondent allegedly yelled "she's telling me I have to leave the building" in the hallway • Respondent was not "forcibly ejected" from the building. Video surveillance shows him interacting with a classroom teacher and lingering near the VP's office and in the hallway prior to the Respondent exiting the 	<p><u>PERC Issue</u> Beyond Arbitrator's authority to decide the merits of the PERC claim</p> <p><u>Analysis - the Meeting</u></p> <ul style="list-style-type: none"> • This was an unscheduled meeting • Respondent's initial comments to VP raise an issue protected by statute • VP allowed the meeting and knew who she was talking to • VP initially did not know the subject matter that the Respondent want to discuss at this meeting • When VP learned the reason for the meeting (grievance) she wanted to include the Principal, but could not reach him. • The VP was within her rights to not continue with an unscheduled "impromptu grievance meeting". • Based upon witness testimony, it is believed that Respondent was the first to raise the volume level of the conversation in close proximity to the VP • Respondent conceded he made a finger gesture (pointing) while speaking. • It is credible that the Respondent's movements were deemed aggressive by the VP and made her feel uncomfortable. • It was not unlawful for the VP to ask Respondent to leave her office. • It is clear that the Respondent did not initially honor the VP's request to leave 	<p>James Mastriani</p>

	<p>building on his own.</p> <ul style="list-style-type: none"> As a result of this incident, VP called City Police to make an incident report and asked the SD to provide a security escort for her to and from her car as she came and left the building Respondent submitted a written report to the Superintendent that was widely circulated to others stating that the VP had the teacher "forcibly ejected from the building by security." <p><u>Respondent Responses</u></p> <ul style="list-style-type: none"> Denied behavior was inappropriate The issues of the apparent improper utilization of a confidentiality clause and possible grievance issue were legitimate reasons to meet with the VP, and therefore constitute a "protected activity". The VP raised her voice and changed her demeanor first - his reactions were responsive to the VP's actions Denied he refused to leave the office prior to the VP calling security The video shows that he was not confrontational or argumentative in the hallway and that it was the NJEA Rep pacing in front of the VP's office, not the Respondent SD does not have the right to discipline him. <ul style="list-style-type: none"> He has no teaching duties PERC decision - "an employer may criticize a union rep's conduct during a meeting but may not discipline the rep as an employee when that conduct is unrelated to job performance." SD's actions were discriminatory and retaliatory (for filing an Unfair Practice 	<p><u>Analysis - The "Forceable Ejection" Issue</u></p> <ul style="list-style-type: none"> "the video clearly reflects that there was no basis for Respondent to accuse the District of forcible ejection within the literal meaning of the term which strongly implied to the District and the outside world that the District used some form of physical act that forced Respondent's removal." <p><u>Discipline Considerations</u></p> <ul style="list-style-type: none"> "Disciplinary action of a corrective nature is warranted for Respondent's conduct while in the VP's office." <ul style="list-style-type: none"> Statements were not reasonably connected to the grievance issue Contributed to the erosion of order in the VP's office Unpaid suspension is too severe a penalty in this case As Union President, Respondent has the right to utilize the grievance procedure - a protected activity Respondent failed to accept the VP's legitimate right to cancel the impromptu meeting when all the necessary participants were unable to be in attendance for the meeting. Respondent's conduct did not rise "to the level of threats designed to have the VP fear for her safety." Corrective and progressive discipline in the form of a written warning are justified. Although the Respondent has the right to vigorously act regarding complaints and grievances, his conduct cannot disrupt or challenge the "ongoing order of school business." 	
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	<p>Charge)</p> <ul style="list-style-type: none"> ○ Charges filed 3 months after the incident and 1 month after the Unfair Labor Practice Charge was filed ○ SD actions = unlawful threat to his employment, interfere with his rights to advocate for his membership, and has a chilling effect on reps to engage in protected activities. <p><u>Other Issues</u></p> <ul style="list-style-type: none"> ● Claims this matter should be heard by PERC <ul style="list-style-type: none"> ○ Unfair Labor Practice charge is held in abeyance until this tenure proceeding is completed 	<p>Holding: Written warning. Request for unpaid suspension dismissed. Jurisdiction retained to resolve any dispute arising out of this award.</p>	
<p><u><i>In the Matter of Arbitration of Donna Demarco, Wayne BOE</i></u></p> <p>11/20/17</p>	<p>SD filed Conduct Unbecoming Charges against tenured Pre-School Teacher for a class of approximately 16 students, half of whom were special education students or fell on the autism spectrum.</p> <p><u>SD Allegations - 2015-16 School Year</u> The Teacher allegedly:</p> <ul style="list-style-type: none"> ● Improperly confined at least one student to a bathroom as a means of punishment and/or behavioral control <ul style="list-style-type: none"> ○ She bragged in the Teacher's Room that she locks students in the bathroom to calm them down ○ Paraprofessional confirmed the practice of confining students ○ Violated the SD's Behavior Management System policy "Handle With Care", which prohibits confinement and requires reporting and review of such incidents 	<p>The evidence supports the following findings:</p> <ul style="list-style-type: none"> ○ Teacher improperly confined students in the bathroom during the 2015-16 school year in violation of the SD policy <ul style="list-style-type: none"> ○ Placed her students in potentially harmful situations ○ Students were unsupervised when confined in the bathroom ○ Teacher failed to report any of the incidents that necessitated her use of the confinement technique, in violation of the SD policy. ○ The teacher admitted to the use of improper language to describe her students <ul style="list-style-type: none"> ○ No evidence this was done in front of her students ○ No evidence of harm to her students by these comments ○ Credible that the "Stinky Pete" nickname was not in reference to a student wearing a dirty diaper ○ The events negatively impacted the SD <ul style="list-style-type: none"> ○ SD shares some culpability- parents claimed that the SD failed to notify 	<p>Deborah M. Gaines</p>

	<ul style="list-style-type: none"> • Referred to her students as "little a\$\$\$oles" and/or "little douchebags", and referred to one student with a dirty diaper as "Stinky Pete" to other faculty • SD's expert testified that Teacher's actions violated SD policy and placed the students at risk; • IAUA investigation found that Teacher's actions placed the students in harm. • Caused publicity that brought the District into disrepute <ul style="list-style-type: none"> ○ Numerous news stories ○ Outcry from parents in the SD <p><u>Teacher's Response</u></p> <ul style="list-style-type: none"> • Consistently receives above average ratings; • Safety is a primary concern; • She utilizes positive reinforcement techniques; • Acknowledged using the bathroom as a "de-escalation technique" for 2 students during the 2015-16 school year <ul style="list-style-type: none"> ○ The agitated students were sent to the bathroom to wash their hands ○ The bathroom doors were always left open ○ Teacher's expert testified that this de-escalation technique was an appropriate behavioral strategy • Admitted calling a student "Stinky Pete", but said that it was not a derogatory term. <ul style="list-style-type: none"> ○ All students had nicknames from the Toy Story Movies ○ Stinky Pete is a character in Toy Story • IAUI reports ultimate finding states that abuse was "not established". 	<ul style="list-style-type: none"> ○ Parents learned of the incidents when the State Investigator contacted them. <p><u>Analysis</u></p> <ul style="list-style-type: none"> • The improper confinement of Special Education students to a bathroom is serious misconduct <ul style="list-style-type: none"> ○ "The students were unsupervised, while emotionally distraught, in a tiny room with the potential to bump their head become more distraught." • Teacher had numerous alternatives to her course of action • "Even if the CST had not responded immediately, she could have moved the child to a chair in another part of the classroom away from other students or gone to the administration for help." • "Her lack of judgment is a clear instance of unprofessional conduct." • "While the Teacher's derogatory language in the teacher's room alone would, most likely, not subject her to termination, under these circumstances ... her conduct is demonstrative of a lack of empathy for her students which contributes to the determination she should not be returned to the classroom." • Although there is a lack of prior disciplinary history, "given the severity of her misconduct, the potential harm to her students and the inability of the SD to place its trust in her stewardship ... termination is the appropriate 	
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	<ul style="list-style-type: none"> Admitted using inappropriate language regarding students in the teacher's room as a means of "venting". The CST was slow to respond when the Teacher reported problematic behavior with a student 	<p>penalty."</p> <p>Holding: Granted. Teacher is Dismissed.</p>	
<p><u><i>In the Matter of Tenure Charges of Suzanne Kulik, Township of Gloucester</i></u></p> <p>11/13/17</p>	<p>Motion re: Standard of Review pertaining to the Tenure charges filed by SD against tenured Speech & Language Specialist/Therapist.</p> <p><u>Facts</u></p> <ul style="list-style-type: none"> 2 consecutive years: Rated "Less Than Effective" by SD <p><u>Speech Specialist/Therapist Arguments</u></p> <ul style="list-style-type: none"> Since staff member is a Speech and Language Specialist and/or Speech Therapist, the appropriate review standard is not limited to the criteria of NJSA 18A:6-17.2, et seq. (Section 25) Appropriate standard is "just cause". Staff member was NOT a "teacher, principal, assistant principal, assistant principal or vice-principal. Limitations of defenses to Inefficiency Charges under Section 25 also do not apply Plain language of the statute should be followed. NJAC 6A:10-1.2 defines teacher as "a teaching staff member who holds the appropriate standard, provisional or emergency instructional certificate issued by the State Board of Education and is assigned a class roster of students for at least one particular course." <ul style="list-style-type: none"> Staff Member was never assigned a class roster for any course 	<ul style="list-style-type: none"> "While possible for use regarding specialists, the evaluative measures spoken of at NJSA 18A:6-123 are far from orthodox methods of judging the performance of individual specialists, most of whom have ever changing and highly individualized student case-loads throughout the year with few students having overlapping objectives." <ul style="list-style-type: none"> "Specialist does not deal with typical class-size groups of students. They treat a collection of individual diagnoses under IEP's <ul style="list-style-type: none"> ... making their achievement nearly impossible to measure by objective instruments designed and normed to assess class-wide group growth which the Legislature obviously favored." Specialists are not mentioned in Section 25 "Section 23 "expressly and exclusively refers only to those staff enumerated at NJSA 18A:6-17.3 <ul style="list-style-type: none"> Teachers, principals, assistant principals and vice-principals" <p>Holding: Granted. Standard of review to be utilized is that of "just cause which must be</p>	<p>Ralph H. Colflesh, Jr., Esq.</p>

	<ul style="list-style-type: none"> • Speech and Language Specialists are not instructors in designated courses • TEACHNJ omitted the term therapists <p><u>SD Arguments</u></p> <ul style="list-style-type: none"> • Legislative History NJDOE guidance "strongly indicate" that the Act applies to all "teaching staff members." • NJSA 18A:6-119: "Members of the professional staff of any district... holding office, position or employment [that requires the staff member] to hold a valid and effective standard, provisional or emergency certificate appropriate to [his/her] office, position or employment, issues by the State Board of Examiners..." <ul style="list-style-type: none"> ○ Therapist holds such a certificate • Act does not "provide any alternative method of arbitration or scope of review for such arbitration for specialists or any professionals covered by it." • Act does not "suggest an alternative review regime for Speech and Language Specialists." • "Department's Guide to the TEACHNJ Act delineates the Act's application to various staff members, including "therapists"..." <ul style="list-style-type: none"> ○ Therapist fits in this category ○ "Teaching Staff" incorporates more than just teachers in the classroom 	<p>supported by sufficient and credible evidence, subject to any and all defenses available to Respondent, including evidence supporting mitigation at the penalty stage of the arbitration proceeding.</p>	
<p><u><i>In the Matter of Arbitration of Michael Coe, SD of Trenton</i></u></p> <p>11/10/17</p>	<p>SD filed Conduct Unbecoming Charges against 17 year tenured teacher for allegedly submitting weekly work records and payroll vouchers for extra duty work he did not actually perform but for which he was paid during the 2015-16 and 2016-17 school years.</p>	<p><u>Analysis</u></p> <ul style="list-style-type: none"> • Employed 17 years - no prior discipline • SD's Tenure Charges based upon conclusions drawn from Teacher's timesheet records • There is no evidence the Teacher failed to perform or appear for his assigned duties • The evidence does not show that: 	<p>Robert C. Gifford, Esq.</p>

	<p><u>Facts</u></p> <ul style="list-style-type: none"> • No negative performance evaluations or formal disciplinary action in his personnel file • Salaried for teaching position during regular school hours • Approved by the BOE for extra duty assignments (\$42/hour) <ul style="list-style-type: none"> ○ AM/PM Supervision ○ Home Instruction ○ Extended School Year • Attended meetings as part of the School Leadership Counsel, School Leadership Team and Advisory Council (\$36/hr) • Responsible to complete and submit Weekly Work Records/Payroll Vouchers • The State's Office of Legislative Services performed an audit of the SD in 2010 <ul style="list-style-type: none"> ○ Violations discovered • In November 2016, SD conducted an internal audit in anticipation of the Office of Legislative Services returning to perform a 10 year audit. <p><u>SD Allegations</u></p> <ul style="list-style-type: none"> • During the 2016 internal audit, the review revealed discrepancies in teacher's time sheets. <ul style="list-style-type: none"> ○ 39 discrepancies noted for Teacher ○ Overlapping Start/Finish times ○ Simultaneous assignments • Teacher paid for work and services that he did not actually complete • Teacher falsified time sheets, committed theft of time, services and public funds • No compensation for prep and/or travel time for Home Instruction <p><u>Respondent Defenses</u></p>	<ul style="list-style-type: none"> ○ Teacher was targeted or involved in the original 2010 audit ○ BOE shared the 2010 audit findings with employees ○ Implemented a written policy on recordkeeping, or ○ Provided specific training to employees subsequent to the 2010 Audit • The 2016 Internal Audit appeared to show inconsistencies with the Teacher's time sheets • Teacher admitted that some of the timesheets contained errors <ul style="list-style-type: none"> ○ Admitted to "rounding up" ○ Nothing done was willful - merely consistently doing the record keeping as he had done for 2 years <ul style="list-style-type: none"> ▪ SD never told him he was doing anything wrong • The teacher "calculated his time in a substantially similar manner for several years without written notification, review or determination from the Administration that his methodology was inconsistent with the manner expected by the Board." • "Given the presence of his practice, and the absence of a written policy or administrative directive to the contrary...", it is not persuasive that the Teacher's actions were "a deliberate, willful attempt to falsify his timesheets." <p> Holding: Dismissed. Reinstatement to teaching position and made whole in all respects.</p>	
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	<ul style="list-style-type: none"> • Denies SD's claims • Claims voucher forms expressly indicated to "round hour to the nearest quarter hour." <ul style="list-style-type: none"> ○ Based upon conversations with colleagues and administrators, teacher believed this meant he was to "round up" his time • Believed travel time was could be included in the calculations <ul style="list-style-type: none"> ○ No one ever informed him (verbally or in writing) that travel time was not included ○ He often did not include travel time • Was not aware of the audit until the Tenure Proceedings <ul style="list-style-type: none"> ○ No prior discipline / notice of discrepancy issues that are the basis of these Tenure Charges • Sometimes dismissals and meetings run longer than the scheduled time and/or other issues arise • Any true inaccuracies were merely mistakes / typos, and not done intentionally. <ul style="list-style-type: none"> ○ Teacher is willing to refund \$63 for errors discovered in his timesheets 		
<p><u><i>SD of Englewood v. Elbert, Armental, Bell, Gordon, Cartwright, Rose, Sanchez, & Scott</i></u></p> <p>11/8/17</p>	<p>FACTS:</p> <ul style="list-style-type: none"> • SD filed one set of tenure charges <ul style="list-style-type: none"> – Against 8 Teaching Staff members: <ul style="list-style-type: none"> • 2 Principals • Vice Principal • Director of Guidance • 3 Guidance Counselors • Social Worker functioning as a Guidance Counselor – Argued that all of these cases could / may be consolidated, so just filed jointly. 	<p>Holding: Granted. Tenure Charges Dismissed Without Prejudice</p>	<p><u><i>Commissioner Decision No. 330-17, Docket 216-9/17</i></u></p>

	<ul style="list-style-type: none"> • Staff Members filed Motions to Dismiss <ul style="list-style-type: none"> – Lack of specificity <ul style="list-style-type: none"> • Due Process Rights Violated – Not appropriate to file joint charges instead of individual charges 		
<p><i>In the Matter of the Arbitration of Robyn Holmes, SD of the City of Orange</i></p> <p>9/30/17</p>	<p>SD filed Conduct Unbecoming Charges against tenured Special Education Teacher employed as a PreSchool Disabled Teacher for the SD.</p> <p><u>SD Allegations</u></p> <ul style="list-style-type: none"> • Paraprofessional reported that the Teacher had placed a non-verbal autistic student under her the Teacher's desk. • At the end of that day, a meeting about the incident occurred between the Assistant Principal, the Teacher and 2 paraprofessionals • A second meeting occurred two days later - Teacher (with Union Rep) was informed that DCPD was informed about the incident and that the Teacher was being reassigned to a position without student contact • Matter was also referred to the Orange Police Department. • Teacher was not allowed on SD property or to contact SD personnel pending the results of the DCPD investigation • SD issued written reprimand to Teacher regarding the incident <p><u>Teacher Response</u></p> <ul style="list-style-type: none"> • Filed Motion to Dismiss <ul style="list-style-type: none"> ○ Teacher has already been disciplined for the issue with a Written Reprimand ○ No additional incidents are alleged. 	<p>The letters of reprimand do not indicate that Tenure Charges are being considered on the basis of the sole incident at issue.</p> <ul style="list-style-type: none"> • The language used within the letters contain the word "reprimand" four times, and stated that further disciplinary action MAY occur resulting in dismissal. • "The use of the word may in ... the letter clearly establishes that tenure charges were not being contemplated at that time." • The wording of the letters of discipline regarding this incident seem to indicate that the written reprimand would be the sole discipline for this incident, and that any future incidents may warrant dismissal. <p>The incident occurred on February 6, 2017, but the Tenure Charges were not filed until 5 months later on May 25, 2017. There were no additional infractions alleged after the February 2017 incident.</p> <p>"The practical imperative of the SD's action was to deprive the Teacher of her due process rights by attempting to use the written reprimand dated February 14, 2017, as the basis for tenure charges."</p> <p>Holding: Motion to Dismiss Granted. Tenure charges are dismissed with prejudice.</p>	<p>Gerard G. Restaino</p>

<p><i>In the Matter of Tenure Charges of Orleans Sarmiento, SD Twp of Saddle Brook</i></p> <p>8/31/17</p>	<p>BOE filed Conduct Unbecoming Charges against tenured teacher:</p> <p><u>SD Allegations:</u></p> <ul style="list-style-type: none"> • Teacher texted with a student, thereby violating Board Policy 3281 • Teacher destroyed her cell phone with the text messages to the student prior to the 1st hearing and 2 months after notice of litigation • Teacher inappropriately used her cell phone during class time • Teacher violated FERPA by accessing records of students not on her roster <ul style="list-style-type: none"> ○ Increment withheld for 2015-16 SY • Inappropriate discussions with a student <ul style="list-style-type: none"> ○ Foul language (admitted) ○ Advising the student how to avoid and contest administrative discipline ○ Denigrating the administration • As Teen Pep / Health Co-Advisor and Head Volleyball Coach <ul style="list-style-type: none"> ○ Complained to her students that the administration: <ul style="list-style-type: none"> ▪ Was punishing her for helping students ▪ Was out to get her ▪ Gave her the smallest classroom as punishment ○ Asked a student to recommend a therapist because she was suffering from anxiety and depression. ○ Cried in front of students 	<p>The SD had policies regarding Inappropriate Staff Conduct, Use of Social Networking Sites, and Electronic Communications Between Teaching Staff Members and Students. It was established that the teacher had received training on these policies and a copy of the Staff Handbook for the 2016-17 school year.</p> <p>Evidence established that the Teacher had texted with a student on multiple occasions during instructional time or when she should have been preparing for other classes.</p> <p><u>Spoliation</u></p> <ul style="list-style-type: none"> ○ Teacher hired a lawyer in March 2017. ○ Tenure charges were filed on April 24, 2017. ○ The Arbitrator issued a subpoena requiring the teacher to submit her cell phone used to text with the student, and the record of her phone records. ○ Teacher sold her phone on EBay in May 2017. ○ Teacher knew that her cell phone and text messages were "central pieces of evidence." ○ Teacher "had a responsibility to retain her cell phone until the proceedings were concluded." ○ A negative inference is drawn from the teacher's actions <p>"... Texting a student over a 7 day period ... during class time about subjects not related to school work but rather related to the student's discipline and actions by Administration was completely</p>	<p>Mattye M. Gandel</p>

	<ul style="list-style-type: none"> ○ Failed to report a HIB allegation ○ Told students that an AIDS Day Field Trip was denied, when it had not been submitted for approval. ○ Shared her personal sexual history to make students feel that they could talk to her <p><u>Teacher Response</u></p> <ul style="list-style-type: none"> ● Regretted most of her statements to the students ● Insisted she would not behave in this manner again. ● She was concerned for the mental health of one student, even though she never reported her concerns to the Administration ● The allegation that she "cried and that she shared personal experiences and expressed emotions should not serve as a basis for tenure charges as crying is human and a valuable lesson and as sharing emotions was required by the TeenPep program." ● Lack of credible evidence to substantiate SD's claims ● SD did not have a clear policy regarding communications with students. ● Teacher only used her cell phone during class time for school related purposes to access curriculum, post homework, take attendance or input grades ● No progressive discipline by SD 	<p>inappropriate."</p> <p><u>SD Issues</u></p> <ul style="list-style-type: none"> ○ SD did not complete a "fair and thorough" investigation <ul style="list-style-type: none"> ○ No interviews of co-teachers, assistant coach, etc. ○ Multiple years of evaluations were missing from the Teacher's Personnel File. ○ SD should consider an employee's personnel record as part of a thorough investigation and it is a "very important factor when determining the proper level of discipline." ○ SD did not provide Teacher with an opportunity to explain/refute its evidence ○ Evidence of potential bias against the Teacher of witnesses ○ SD did not submit all of the evidence that it had gathered to the BOE for consideration prior to the filing of the tenure charges. <p>Teacher had already been disciplined with an Increment Withholding for violating FERPA by accessing records of students not on her roster.</p> <p>Holding: Conduct Unbecoming Charges not proven. However, 120 day suspension, with time served, and salary loss shall be imposed.</p> <p>Given that teacher was paid the entire time that she was suspended, she shall reimburse the BOE for the 120 day suspension.</p> <p>Teacher reinstated to former positions with no loss of seniority or benefits.</p>	
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<p><i>In the Matter of Tenure Charges of Belinda Mendez-Azzollini, SD Twp of Irvington, Essex County</i></p> <p>5/27/17</p>	<p>BOE filed Conduct Unbecoming Charges against tenured Guidance Counselor (GC) alleging he falsified a student's grade.</p> <p><u>SD Allegations:</u></p> <ul style="list-style-type: none"> - During an audit of senior transcripts it was discovered that a student did not receive a passing grade in Geometry - Counselor failed to advise student that he needed to retake the course after failing it and student was denied opportunity to graduate on time - Counselor attempted to manually change the grade the student received from "F" to "D" - Counselor lied to central office about making grade change 	<p>The counselor's "conduct cannot be rehabilitated by workshops, professional development courses, or any interventions available to Irvington.</p> <p>Her conduct has broken the level of trust the District expects to rely upon for a guidance counselor to perform requisite duties."</p> <p> Holding: Granted. Teacher is dismissed.</p>	<p>Carol F. Laskin, Esq.</p>
<p><i>In the Matter of Tenure Charges of Brett D. Holeman, Freehold Boro Reg. SD BOE</i></p> <p>5/12/17</p> <p>Affirmed: Unpublished Opinion, Superior Court of NJ, Appellate Division – 2018 WL 6205081</p>	<p>BOE filed Conduct Unbecoming Charges against tenured School Psychologist.</p> <p><u>SD Allegations</u></p> <p>In the Spring of 2016, SD learned that the Dr.:</p> <ul style="list-style-type: none"> • "Engaged in inappropriate behavior with students and parents within a confidential environment; <ul style="list-style-type: none"> - Raised his voice so loudly that a Supervisor had to interrupt the session to "ensure the student's safety". - Interactions with a parent led to the parent initiating a Due Process Petition. - Failed to complete IEP's in a timely manner; - Dealing with a distraught student over breaking up with his girlfriend, Dr. allegedly told the student: <ul style="list-style-type: none"> ○ The girlfriend was a slut; ○ The student was soon leaving for college where he could f*** 40 girls; 	<p>The Hearing Record supports the allegations:</p> <ul style="list-style-type: none"> • Inappropriate behavior as a school counselor and a professional <ul style="list-style-type: none"> ○ He made disparaging remarks about his superiors and colleagues ○ Inappropriate interactions with students • Inappropriate and unethical conduct by soliciting former and current students for his private practice <ul style="list-style-type: none"> ○ Accepted fees from parents of a current student • Dr. used the SD's email system on occasion to set up / manage appointments for private counseling • Dr. used SD address in his correspondence with the NJ State Board of Examiners • Dr. was untimely in the completion of the IEP's • Dr. did share confidential student information with his spouse. 	<p>Stephen J. Rosen</p>

	<ul style="list-style-type: none"> ○ Recommended the book "F*** Feelings". • Made repeated derogatory and demeaning remarks about and to colleagues and supervisors; • Engaged in erratic and concerning behaviors that intruded into and unnecessarily disrupted the workplace of colleagues; • Jeopardized the State mandated testing environment to which he was assigned; <ul style="list-style-type: none"> – "Dr. was disruptive; – Cursed and talked loudly to the extent that it made his colleagues uncomfortable; – Expressed dissatisfaction with the "administration" – Showed considerable annoyance when the test was delayed because computers for the students were not in the test room"; – Dr.'s behavior had a potential negative impact while the students were taking the PARCC test. • Demonstrated an overall lack of respect for authority; <ul style="list-style-type: none"> – Insubordination - allegedly advised a student suspected of drug dealing "not to answer any questions concerning the matter" <ul style="list-style-type: none"> ○ Interfered with SD investigation – Failed to disclose prior employment with West Morris Regional HS District, and his abrupt termination from that position. <ul style="list-style-type: none"> ○ SD required a list of "prior teaching and administrative experience" ○ Denied SD opportunity to investigate • Disregarded the SD's organizational plan and 	<ul style="list-style-type: none"> • "While there is no evidence that the Dr. had an inappropriate relationship with any student the content of emails could have been more carefully thought out. One might conclude that the Dr. did not always exercise good judgment, especially in regard to comments concerning colleagues and administrators." • The testimony and written complaints about the Dr.'s behavior from colleagues and supervisors is credible. • It is notable that an Association representative provided potentially negative testimony about the Dr.'s behavior for a meeting that she participated in. <p>The Hearing Record does not support the charges:</p> <ul style="list-style-type: none"> • He spent a substantial amount of time conducting private business on school time <ul style="list-style-type: none"> ○ While the allegation may have merit, the SD did not establish a "substantial amount of time" ○ Dr. claimed he did this before/after school and on lunch breaks. • The deficiency issue regarding the Dr.'s employment application is "stale". <ul style="list-style-type: none"> ○ If necessary, this should have been investigated at the time of the application in June 2004 <p>It is noted that the blood test was negative and the examining Psychiatrist determined that the Dr. was fit to return to his position.</p> <p>"There is reason to conclude that it would be inadvisable to reinstate the Dr. The record indicates irrevocable differences between the administration,</p>	
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	<p>failed to observe or use proper chain of command when raising issues or concerns."</p> <ul style="list-style-type: none"> • Private Counseling Issues <ul style="list-style-type: none"> – School Email revealed the Dr. "had spent a substantial amount of time nurturing his private counseling practice" – Accepted pay for time counseling current and former students – BOE policy prohibits accepting payment from a current student for such services – Dr. used Freehold Boro HS as his official and registered business address – Dr. created a separate email address for his emails to private clients sent through the SD's system. – Dr. "solicited students for private counseling from internal and administration confidential lists that identified students withdrawing from the school" • Email Issues <ul style="list-style-type: none"> – Disclosed confidential student information – Emails to students were "overly familiar, even intimate" <ul style="list-style-type: none"> ○ Failed to maintain appropriate boundaries with past/present students <p><u>SD Discipline Response to Allegations</u></p> <ul style="list-style-type: none"> • Dr. advised to "get a full psychiatric and medical examination that included appropriate blood tests to ascertain the presence of any mood altering drugs or metabolic steroids." • Dr. placed on Administrative leave. <ul style="list-style-type: none"> ○ Dr. became very upset <ul style="list-style-type: none"> ▪ Staff was afraid there would be a physical confrontation 	<p>staff members and the Dr. In order to effectively serve the needs of students it is important the school Guidance Department function free of conflict."</p> <p><i> Holding:</i> Sustained. Staff Member is dismissed.</p>	
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	<ul style="list-style-type: none"> ▪ Told the Principal "You better sleep with one eye open." <p><u>School Psychologist Responsive Arguments</u></p> <ul style="list-style-type: none"> • He had received 13 years of positive evaluations with the SD. • Denied the validity of the allegations. • Steroid lab tests were negative • The psychiatrist concluded that the Dr. was medically fit to return to his position • Denied using SD time/facilities for his private practice <ul style="list-style-type: none"> – Admitted to temporarily using the SD address for his private business for a brief period of time while he was relocating his private practice – Always provided a private number for official business – Never provided the school address for purposes of private counseling – Former students had emailed Dr. using the only email address that they had - nothing was inappropriate • Acknowledged employment with West Morris Regional HS District, but denied abrupt termination from the position. • Investigating Administrator was inadequately trained to investigate / inadequate investigation 		
<p><i>In the Matter of Tenure Hearing of Christopher Masullo, South Hackensack BOE</i></p> <p>4/18/17</p>	<p>BOE filed charges of Conduct Unbecoming against 20 year tenured math / computer teacher, claiming that his actions of inappropriately disconnecting his classroom loudspeaker put his students and staff members at risk.</p> <p><u>SD Allegations</u></p>	<p>Citing <i>Fulcomer</i>, 93 N.J.Super. 404 (Super.Ct. App.Div. 1967), factors to consider when considering teacher dismissal for conduct unbecoming:</p> <ol style="list-style-type: none"> 1. The nature and gravity of the offenses under all the circumstances involved; 2. The teacher's attitude 	<p>Ira Cure, Esq.</p>

	<ul style="list-style-type: none"> • Teacher felt that the embedded ceiling loudspeaker was too loud and disruptive to his class and bothered his ears, which were sensitive to sound due to chronic ear infections. • Teacher complained to Administration and custodians about the loudspeaker, but was told there was nothing that could be done about the volume of the speakers. • Teacher became aware that a loudspeaker had been disconnected in an Administrator's office. • In 2015 teacher then unilaterally decided to disconnect the loudspeaker in his classroom. • 2x in Spring of 2015 and 1x in September 2016, another staff member that worked in the adjacent library that could see into the glass windows of the Teacher's room had to alert the Teacher that security drills were occurring, because the Teacher seemed to be unaware of the drills. • October 19, 2016 Incident <ul style="list-style-type: none"> ○ "Bomb Threat" announced over the loudspeaker 3x ○ Entire building, except for the Teacher's class evacuated the building ○ 15 minutes after the drill began, Teacher, his Teacher Assistant, and his 19 students were still in the Teacher's classroom, unaware that a drill was occurring. ○ Occupants of the classroom stated that they were unaware of the drill until an Administrator came into the classroom looking for them. • The Alleged Cover-Up <ul style="list-style-type: none"> ○ After the incident, the Teacher was observed bringing a ladder into is 	<ul style="list-style-type: none"> • Premeditation, cruel, intent to punish, etc. <p>3. Any evidence as to provocation, extenuation or aggravation.</p> <p><u>Fulcomer</u> factors to consider re: mitigating penalty:</p> <ol style="list-style-type: none"> 1. Teacher's ability, record and length of service; 2. Teacher's disciplinary record; and 3. The 'impact of the penalty on the [teacher's] career, including the difficulty which would confront him as a teacher dismissed for unbecoming conduct, in obtaining a teaching position in the State.' <p><u>Analysis:</u></p> <ul style="list-style-type: none"> • The teacher's "conduct in disconnecting the loudspeaker ... constituted a grave offense which may have endangered students and staff." <ul style="list-style-type: none"> ○ "If there had been an actual shooter or bomb scare ... the Teacher's students would have been in grave danger." • "The act was flagrant enough that a serious penalty is merited." • The testimony that on at least 2 prior occasions, the Teacher had to be alerted about security drills is credible. • Although the Teacher's behavior was reckless, he did not intentionally seek to endanger staff / students / himself. • The Teacher's "testimony demonstrated a tremendous amount of remorse, and ... if reinstated he will not engage in such reckless behavior again." • The Teacher's " testimony that the loudspeaker sounds disrupted his classroom and that the sounds disturbed students on the Autism spectrum" is credible. 	
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	<p>classroom, placing it under the loudspeaker, climbing up on the ladder, and removing a ceiling tile.</p> <ul style="list-style-type: none"> ○ The Administrator later came into the room and discovered the ladder still under the loudspeaker. ○ Administrator checked the loudspeaker, discovered that it was disconnected and contacted a vendor to have it repaired. ○ When questioned, the Teacher initially denied disconnecting the loudspeaker, but later admitted to the disconnection. ○ Teacher was immediately suspended. <p><u>Teacher's Position</u></p> <ul style="list-style-type: none"> • "He acted reasonably to rectify a difficult situation." • He was "trying to protect his students from the disruption caused by the loudspeaker." • No Progressive Discipline • Denied the "Cover Up" allegations • Termination and possible revocation of his license would be unfair. 	<ul style="list-style-type: none"> • His "sensitivity to the sounds does not excuse his actions and he could have been more forceful in pressing for an accommodation to this problem." <ul style="list-style-type: none"> ○ There is no finding regarding any accommodation pertaining to the volume of the loudspeaker if he returns to the same classroom. ○ See NJLAD - N.J.S.A. 10:5-12. • The Teacher's prior record is good, he is actively involved in the school and appears to be an excellent teacher. <p><i>Holding:</i> Sustained. Teacher shall remain suspended for the remainder of the 2016-17 school year, and reinstated to his position for the 2017-18 school year. No back pay for suspension period. Increment withholding for the 2016-17 school year.</p>	
<p><i>In the Matter of Va'lorie James, SOSD of the City of Newark</i></p> <p>4/17/17</p>	<p>SOSD filed charges against tenured social worker (TSW) for chronic absenteeism / tardiness and being absent without leave. SD claims TSW was insubordinate by failing to follow sign in/out procedures and not fulfilling her proctoring responsibilities for State required testing. TSW filed Motion to Dismiss.</p> <p><u>Procedural History</u></p> <ul style="list-style-type: none"> • Original charge filed January 2016 <ul style="list-style-type: none"> ○ Answer filed February 2016 ○ SD did not certify charges to the Commissioner and no further 	<p>In deciding this MTD, the merits of the allegations are not to be determined at this time. The question is whether the allegations contained in the April 2016 filing may proceed to a hearing <i>de novo</i>.</p> <p><u>Refiling Issue</u></p> <p>"The language of 18A:6-13 does not say a Board cannot re-file previous charges."</p> <ul style="list-style-type: none"> • "After the initial charges were filed on January 15, 2016, the District continued to examine TSW's records and re-filed the charges on April 11, 2016." 	<p>Arnold H. Zudick</p>

	<p>proceedings /action taken</p> <ul style="list-style-type: none"> • Refiled charges in April 2016, which were filed and ultimately assigned to an Arbitrator • 1st Arbitrator indicated that he wanted to consider the matter through motion rather than conducting a hearing <ul style="list-style-type: none"> ○ Sept. 2016 - TSW filed Motion for Summary Dismissal ○ Oct. 2016 - SD filed request for a different Arbitrator • Parties engaged in settlement negotiations <ul style="list-style-type: none"> ○ Jan 2017 - Settlement not reached & SD renewed request for new Arbitrator • Feb 2017 - Case reassigned to this Arbitrator <ul style="list-style-type: none"> ○ SD granted time to respond to TSW's MTD - Responded 3/20/17 <p><u>SD Allegations</u></p> <ul style="list-style-type: none"> • Excessive Tardiness <ul style="list-style-type: none"> ○ 2007-08: Tardy 44 Days ○ 2008-09: Tardy 71 Days ○ 2009-10: Tardy 70 Days ○ 2010-11: Tardy 106 Days ○ 2011-12: Tardy 101 Days ○ 2012-13: Tardy 13 Days ○ 2013-14: Tardy 56 Days ○ 2014-15: Tardy 38 Days ○ 2015-16: Tardy 20 Days (to 3/17) • Excessive Absenteeism <ul style="list-style-type: none"> ○ 2014-15: 18 Absences • Failure to fulfill proctoring duties • Warnings <ul style="list-style-type: none"> ○ 2008 and 2009 - Failure to comply with sign in-out procedures ○ November 24, 2014 - Unauthorized punches could lead to discipline ○ January 2015 - Tardiness 	<ul style="list-style-type: none"> • The original charges were dismissed without prejudice and the re-filing occurred within a reasonable time period. • TSW has not demonstrated that she was prejudiced by the re-filing. <p><u>Double Jeopardy / Res Judicata Issues</u></p> <ul style="list-style-type: none"> • "Although the MOA does state that future excessive tardiness will result in more harsh discipline, that document clearly and unequivocally also states that said Agreement: <ul style="list-style-type: none"> ○ ... constitutes full and final resolution of all issues regarding TSW's unsatisfactory attendance during the 2014-15 school year". • The argument that dismissal of a teacher for excessive absenteeism, even when absences included in the total were "justified" or "excused" is an argument on the merits, and not ripe for a decision at this time. • Double Jeopardy / Res Judicata does apply to the behavior addressed in the MOA for the 2014-15 school year. • Double Jeopardy / Res Judicata does apply to the May 2015 AWOL event. • The remaining allegations that were not previously covered by the MOA(noted above) may proceed to a decision on the merits, except those noted below. <p><u>Stale Claims</u></p> <ul style="list-style-type: none"> • The SD's "inaction until 2016 waived any right it may have had to proceed on the 2008-09 through 2013-14 charges/allegations..." • The SD should have taken action when the infractions occurred, some as many as 8 years prior to the filing of Tenure Charges. • Allowing these charges to proceed now "would 	
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	<ul style="list-style-type: none"> ○ March 2, 2015 - Agreement to fine TSW one day's pay (\$458.32) for excessive absenteeism/tardiness and warned ○ May 5, 2015 - Failed to fulfill proctor duties on April 30, 2015 ○ May 14, 2015 - Warned re: excessive absenteeism/tardiness and docked a day's pay for being absent without leave on that day. Warned discipline could include tenure charges being filed against her ● TSW failed to fulfill her proctor responsibilities for scheduled testing <p><u>TSW Defenses</u></p> <ul style="list-style-type: none"> ● SD is precluded from pursuing the April 2016 charges because they took no action regarding the January 2016 charges <ul style="list-style-type: none"> ○ The April 2016 charges repeated the January 2016 charges, with additional allegations ● Tenure charges seek a second punishment for instances for which discipline was already implemented <ul style="list-style-type: none"> ○ Double Jeopardy ○ <i>Res Judicata</i> ● The calculations are incorrect <ul style="list-style-type: none"> ○ Includes summer days - 286 of 351 alleged absences are incorrect ○ Includes FMLA leave ○ Claims true numbers from 2007-08 through 2015-16 SY is 126, which averages to 14 absences per year ● The older allegations from 2007-08 and 2008-09 are too far removed ● 204 of the alleged days tardy from 2007-08 through 2015-16 were within 5 minutes of the start 	<p>be fundamentally unfair and violate TSW's due process" rights.</p> <p><i>Holding:</i> Motion To Dismiss Sustained:</p> <p><u>Stale Claims</u></p> <ul style="list-style-type: none"> ○ All alleged conduct occurring during the 2008-09 through the 2013-14 school years. <p><u>Double Jeopardy / Res Judicata</u></p> <ul style="list-style-type: none"> ○ All alleged absenteeism and tardiness occurring during the 2014-15 school year. ○ The alleged AWOL conduct on 5/14/15 <p>Motion to Dismiss Denied:</p> <ul style="list-style-type: none"> ○ SD's allegation that the tenure charges could not be re-filed ○ The alleged 11/24/14 warning about unauthorized punches ○ Teacher's failure to perform proctor duties on April 30 and May 5, 2015 ○ The allegation that Teacher was tardy 20x during the 2015-16 school year <p>Jurisdiction Retained:</p> <ul style="list-style-type: none"> ○ Remedies discussed pertaining to sustained charges ○ Remaining matters for those denied ○ Conference Call will be scheduled to determine further processing of the case 	
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	<ul style="list-style-type: none"> • Acknowledged 31 days tardy during 2008-09 - caused by her need to care for her mother • SD failed to meet all of the terms outlined in the Attendance Improvement Plan (conferences, warnings, etc.) • Denied being AWOL on May 14, 2015 • Denied failing to fulfill her proctoring assignment or being insubordinate 		
<p><i>In the Matter of Ursula Whitehurst, SOSD of the City of Newark</i></p> <p>3/30/17</p>	<p>BOE filed Inefficiency and Other Just Cause Charges against tenured teacher.</p> <p>2013-14: Partially Effective 2014-15: Partially Effective 2015-16: Partially Effective</p> <p><u>SD Allegations (Inefficiency & OJC)</u> Teacher failed to:</p> <ul style="list-style-type: none"> • Implement curricular goals and objectives; • Design coherent instruction; • Assess student learning; • Create an environment of respect and rapport; • Manage student behavior; • Manage classroom procedures; • Establish a culture of learning; • Communicate clearly and accurately; • Use questioning techniques and discussion techniques with flexibility and responsiveness; • Engage students in learning; • Provide feedback to students; • Attain student achievement that meets or exceeds performance benchmarks; • Contribute to the SD; • Grow and develop professionally; and • Demonstrate promptness and attendance 	<p>There is no evidence of improper motive. "The teacher has been on notice for the last 4 years that her supervisors found her only partially effective as a teacher."</p> <p>"The SD had the obligation to offer her professional development, mentoring, guidance, and fair and timely observations and evaluations; she in turn, had the obligation to work with her appointed supervisors and mentors to try to improve her teaching."</p> <p><u>2013-14 - Denied</u> SD failed to substantially adhere to the required protocol for observing and evaluating a tenured teacher.</p> <ul style="list-style-type: none"> - Not assigned a class to teach during the entire academic year - CAP was defective <ul style="list-style-type: none"> o Not collaborative o Based on a class she never taught - Observations were improper <ul style="list-style-type: none"> o Timing <ul style="list-style-type: none"> ▪ 4 days apart in May o Choice of lesson to observe o Post Observation conference was a month after the observation - not w/i required 10 days. - Lack of mentoring/coaching 	<p>Ruth Moscovitch</p>

	<ul style="list-style-type: none"> • Many students, parents, and school personnel complained to Administration about Teacher's classroom ability/behavior. • "Teacher failed to demonstrate adequate growth ... even after receiving assistance through one-on-one coaching and participation in: Professional Learning Communities (PLC), school-wide professional development, and the schools' improvement panel (SIP)". <p>OJC - In addition to the above, Teacher has been reprimanded for infractions over the last 3 years.</p> <p><u>Teacher Response</u></p> <ul style="list-style-type: none"> • The CAP was not created collaboratively; • Lack of identified SGO's • Denies receiving coaching / opportunity to observe highly effective teachers; • She was "often tardy due to the special needs of a teenage child who lived with her"; • She should have been on an Individual Professional Development Plan (IPDP) instead of a CAP since the original Inefficiency Charges had been dismissed; • VP failed to "model a lesson" as requested by teacher; and • Observations / conferences were not conducted appropriately 	<p><u>2014-15 & 2015-16 - Granted</u> SD substantially followed protocols - "met the standards for observing, mentoring and evaluating a teacher in danger of losing tenure due to multiple partially effective ratings."</p> <p>Teacher "did not cooperate with her supervisors:</p> <ul style="list-style-type: none"> - Resisted and ultimately declined to sign a CAP during 2014-15 - Resisted meeting with her supervisors - Failed to submit data and artifacts both years to show that her students might be progressing to meet the growth objectives..." <p>Even though teacher only taught for half of the year, the evaluation and other protocols apply on a <i>pro-rated</i> basis. N.J.A.C. 6A:10-4.4(e)1</p> <p><u>Other Just Cause - Denied</u></p> <ul style="list-style-type: none"> - SD failed to plead with specificity - SD failed to identify what it considers "misconduct" <p>Holding: Inefficiency Charges for 2014-15 & 2015-16 Sustained. Inefficiency Charges for 2013-14 & Conduct Unbecoming Charges are Dismissed.</p> <p>* Note: "SD filed its tenure charges for the 2012-13 & 2013-14 SYs under Section 8; those charges are stayed pending the outcome of an appeal in the Appellate Division about the reassignment of the charges to the same Arbitrator who heard the original case." (FN1) See January 5, 2015 Decision</p>	
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<p><i>In the Matter of Tenure Charges of Lydia Wilson, SOSD of the City of Newark</i></p>	<p>BOE filed charges of Conduct Unbecoming against 12 year tenured 1st Grade Teacher for alleged failure to supervise / monitor her students, and allowing inappropriate sexual behavior by the students.</p>	<p>The SD's alleges CU due to the Teacher's:</p> <ul style="list-style-type: none"> ○ "Failure to observe her students engaging in certain sexual-related behavior..." ○ Failure to respond to such behavior." 	<p>Timothy J. Brown, Esq.</p>
<p>2/1/17</p>	<p><u>Facts</u></p> <ul style="list-style-type: none"> • Substitute teacher for Respondent claimed that the 6 & 7 year old students told her about playing the "Nasty Game" and "Kissing Game" in the classroom and at recess while Respondent was present: <ul style="list-style-type: none"> ○ Kissing and exposing their genitalia to each other and touching one another's genitalia (including mouth to genitalia contact). • Substitute teacher claimed she reported this information to administrators both orally and in writing (although the Substitute's written report was not produced for the Arbitration). • Administrators followed school procedure of involving the social worker. <ul style="list-style-type: none"> ○ Social worker speaks to the student to take information and then to decide a course of action. ○ The SD considers the Social Worker's interaction with students in situations such as these as neither an investigation or interview - it is "an asking about what happened." ○ Following Social Worker's student interviews and report, Administrators contacted the students' parents, completed an Incident Report and contacted the state Office of Institutional Abuse • When informed of the allegations, Teacher stated that she did not know anything about the reported conduct. 	<p>In this case, the SD failed to :</p> <ul style="list-style-type: none"> ○ "Offer the students as witnesses at the hearing; ○ Show that the students were unavailable to testify; ○ Offer any statements of the students that would be considered otherwise reliable evidence; ○ Offer any other form of competent or trustworthy evidence that the student conduct took place when the Teacher was present." 	
		<p>The purported evidence offered by the SD to show that the activities occurred in the classroom while the Teacher was present were:</p> <ol style="list-style-type: none"> 1. Substitute Teacher's Testimony <ul style="list-style-type: none"> ○ Contrived ○ Skewed to absolve her of liability 2. Social Worker's Testimony <ul style="list-style-type: none"> ○ Based on hearsay ○ No independent recollection of the interviews <ul style="list-style-type: none"> × could not recall details of who was present, when they were conducted, questions asked, etc. ○ Unreliable 3. Social Worker's Referral Forms documenting her September 25th interviews of the students. <ul style="list-style-type: none"> ○ Based on hearsay ○ Unreliable 	

	<ul style="list-style-type: none"> The IAIU investigation concluded that the evidence suggests that the students had engaged in a covert game dubbed "nasty team", but that there was no information to establish that the teacher was aware of the incidents. <p><u>SD Arguments</u></p> <ul style="list-style-type: none"> "The teacher was so disengaged from her class as to allow 6 & 7 year olds to repeatedly engage in appropriate sexual behavior... in her presence over a 12 day period." The teacher's actions either harmed or placed her students in harm's way. The students were properly questioned. <p><u>Teacher Arguments</u></p> <ul style="list-style-type: none"> Teacher's expert in issues regarding sexualized behavior and interviewing the children engaging in those activities found: <ul style="list-style-type: none"> Students' statements were unreliable First reports of conduct occurred during "circle time" - problematic - possible contamination Students should have been separated as soon as the subject was raised to preserve an independent interview of each student. Given the subject matter and the age of the students, the children would be focused on the conduct itself, not who was present when it occurred. The manner of questioning can be influential on how a child answers. <ul style="list-style-type: none"> In this case, it appears that the Substitute wanted to make sure that she was not held responsible. There is a question as to whether the 	<ul style="list-style-type: none"> 4. IAIU Investigation Report <ul style="list-style-type: none"> Based on #3 5. SD's internal investigation <ul style="list-style-type: none"> Understandable the SD would want to act promptly Based heavily on #3 "... One size does not fit all when it comes to interviews of children, and conversation that may be adequate for the school to determine if psychological or medical aid is recommended for a student or for purposes of making an initial determination that further investigation is warranted, is a far cry from the fairly and competently conducted interviews that would be necessary as part of a full and fair investigation for purposes of supporting the dismissal of a tenured teacher." "... the initial non-investigation, non-interrogation, non-interview "asking" of students what happened by the Social Worker may have served as important function at the time, however such an 'asking' is not, and does not become, an effective and adequate 'investigation' by default simply because the SD needs an investigation at a later time." <p>All of this evidence (witness testimony and reports) are based on inadmissible hearsay (the students' statements). Even if the evidence were admissible, the evidence is not credible.</p> <p>"... the record evidence is insufficient to establish by a preponderance of the evidence that any</p>	
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	<p>VP was present during the Social Worker's questioning of some of the children</p> <ul style="list-style-type: none"> ▪ "It is not good practice to have 2 adults present during an interview with a young child about sexual conduct as such creates an intimidating atmosphere." ○ The Social Worker spent no more than 5 minutes with each child <ul style="list-style-type: none"> • The SD's expert's opinion on classroom management were "largely based upon assumptions as to the accuracy of the contents of the Social Worker Referral Forms... <ul style="list-style-type: none"> ○ His testimony is of little or no value" regarding the issue of whether the Teacher was present during any of the sexual conduct by the students. • Teacher's expert opined: <ul style="list-style-type: none"> ○ in a case like this, an interviewer should not ask suggestive, leading questions and needs to spend enough time with a child to build a rapport. "... ○ At most, the Social Worker spent no more than 5 minutes with each child, (which is) not the time necessary to conduct an effective interview. (Typically it should be at least 15-30 minutes.)" ○ The Social Worker also waited until after all of her discussions were complete instead of completing her referral forms at the time of her interviews. ○ "Such a practice results in forgetting the order in which questions were asked for each child and the answers 	<p>incident took place in the classroom when the Teacher was present."</p> <p>The IAIU's report is not binding or conclusive. At best, this report indicates, or "suggests" that something occurred, but it is not established by a preponderance of the evidence that "children were harmed or placed in danger of harm."</p> <p>The SD's investigation was inadequate. "The investigator made no effort to interview other students about what may have been said or not said during the September 25 circle time, or other numerous adults who were in the classroom on a regular basis, or other adults who were supervising children during their lunch time or recess."</p> <p>"... the outcome of the SD's internal investigation was to a significant degree predetermined."</p> <p>Holding: Dismissed. Full reinstatement, make Teacher whole for any losses of pay/seniority/benefits, and expunge all records of suspension from SD files.</p>	
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	<p>each child offered."</p> <ul style="list-style-type: none"> • SD did not call any of the students involved or the IAIU Investigator to testify. • SD inappropriately marked the Teacher as AWOL for the days she attended the tenure hearing while she was on payroll, and told to use her personal days. 		
<p><i>In the Matter of Tenure Charges of Patrick Lynch, Greater Egg Harbor BOE</i></p> <p>1/10/17</p>	<p>BOE filed charges of Conduct Unbecoming against tenured Science Teacher (hired in 2002) for consuming intoxicating beverages, positive testing of legal intoxication on a blood-alcohol screening test (BAC .111%), and manifesting obvious signs and symptoms of intoxication due to alcohol in the work place and in the presence of students on May 26, 2016.</p> <p>The teacher conceded that he was legally intoxicated pursuant to a blood-alcohol screening test.</p> <p>The BOE granted the teacher's request to delay in filing the tenure charges until the teacher completed an in-patient addiction recovery program while on unpaid leave. When the program was completed, the teacher sought to be returned to work under a Last Chance Agreement. The BOE declined and charges were filed.</p> <p>The teacher admitted that he began drinking in 1998.</p> <p><u>2011 Incident / Treatment / SD Response</u></p> <ul style="list-style-type: none"> • Following an incident in 2011 based upon another staff member's report, the BOE required / the teacher volunteered to obtain treatment for alcohol addiction. • He completed a 45-day in-patient addiction 	<p>Given the teacher's BAC of .111%, which was considerably beyond the legal intoxication level of .02%, it is reasonable to find that the teacher either consumed alcohol at work or just before the workday began. He was intoxicated during school hours, at the workplace, and in the presence of students.</p> <p>"A Board is entitled to expect its teachers to model appropriate and responsible conduct to students, especially teenagers, including, at the appropriate age, moderate consumption of alcoholic beverages, abstention from alcohol and avoidance of intoxication during worktime and at the workplace. Teachers are required to have an unusually high degree of self-restraint and controlled behavior."</p> <p>"The teacher was made aware of steps to take to avoid relapses five years ago." Although some treatment was voluntary, the teacher partook in other treatment only when he was at risk for losing his job. He did not follow the recommendations of the SD's psychiatrist to maintain sobriety. At the time of the hearing, the teacher:</p> <ul style="list-style-type: none"> • Was only occasionally active in AA • Did not have a sponsor • Had not received counseling or pursued other steps to maintain his sobriety. <p>The teacher's "lack of adherence to the advice he received is an indication that were he returned to</p>	<p>Susan Wood Osborn</p>

	<p>recovery program, but relapsed one month later and was readmitted for an additional 60 days.</p> <ul style="list-style-type: none"> • He relapsed again in 2011, but recovered and was sober in 2012. • He took a leave of absence and did not work during the 2011-12 school year. • Prior to his return to work, the teacher was required to be evaluated by the SD's psychiatrist. • Although the teacher was found fit to return to work, the doctor expressed concern that the teacher was not fully committed to his sobriety. • The teacher was advised to participate in AA, obtain a sponsor, receive counseling, and obtain a complete physical/medical examination. <p><u>2012-2013</u></p> <ul style="list-style-type: none"> • In June 2012, the Superintendent informed the teacher in writing that he would be allowed to RTW during the 2012-13 school year, and that "... there would be no second chances in the future and the Board is prepared to file tenure charges against (you) should there be another incident." <p><u>September 2012-May 2016</u></p> <ul style="list-style-type: none"> • October 12, 2015 - After a night of drinking, the teacher was called to a meeting in the principal's office. • Another staff member had complained that he thought that the teacher was drunk. • During questioning, the teacher admitted drinking the night before, but denied being drunk. • The principal declined to order a BAC test. 	<p>work, he would likely be unable to avoid future relapses. It appears likely the Board will be forced to contend with similar conduct in the future. The Board should not be required to worry about (the teacher's) next occurrence of being intoxicated at work, with potentially more serious consequences to himself, the students and the entire education community."</p> <p><u>Discrimination / Accommodating Alcoholic (Disabled) Employee</u></p> <p>Alcoholism is a handicap under NJLAD. "Discrimination against an alcoholic employee is prohibited unless the employer reasonably believes that the person cannot perform the work in question because of the handicap."</p> <p>In this case, the teacher had already been given a "last chance" in 2011. He was provided with written warnings. The teacher "has only minimally complied with the conditions putting him back to work in 2012 and his efforts at rehabilitation were pursued primarily while he was under threat of losing his position. Under these circumstances, I decline to order a last chance agreement."</p> <p>Holding: Granted. Teacher is terminated immediately.</p>	
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	<ul style="list-style-type: none"> • The principal asked the teacher if there was anything the SD could do to help him with his problem. • The teacher declined, and said that he did not need help. • A note was put in the teacher's personnel file about this incident. <p><u>May 26, 2016 Incident</u></p> <ul style="list-style-type: none"> • Two employees reported that the teacher smelled like Alcohol and may be intoxicated. • He was removed from the classroom. • After consulting privately with his Union representatives and attorney, he agreed to submit to a blood alcohol test. • Since the BAC results (.111%) were above the legal minimum for intoxication (.02%), the teacher was placed on paid leave pending further BOE action. 		
<p><i>In the Matter of Tenure Charges of Michele Schwab, Woodbridge Township BOE</i></p> <p>1/5/17</p> <p>Affirmed: Unpublished Opinion - 2018WL2999032 NJ App Crt.</p> <p>6/5/18</p>	<p>SD filed Conduct Unbecoming Charges against tenured Elementary School Teacher, for allegations of (1) Theft/Shoplifting; (2) Failure to Report Arrest; (3) Violation of District Policies; and (4) Pattern of Unbecoming Conduct.</p> <p>It is undisputed that many of the Teacher's teaching performance ratings had been Highly Satisfactory / Highly Efficient. She had also received several commendations and had been part of the Governor's Educator of the Year program.</p> <p>On February 7, 2015, the Teacher was caught shoplifting a New York Jets hat, 2 New York Jets sweatshirts and pliers to clip off the sensors, by store security at a Sears store, resulting in her arrest. The charges were dismissed because a</p>	<p>The teacher concedes that her arrests for the 2 admitted shoplifting instances constitutes inappropriate conduct. Although this conduct is outside the Teacher's normal duties, the SD demonstrated that the behavior had an "adverse impact on students and affected the proper operation of the schools.</p> <p>During the Teacher's suspension for the first instance, the SD was required to utilize a substitute teacher in her 4th grade classroom. The "arrest and acknowledgement of her conduct, even without a criminal conviction, is sufficient basis to find a violation of her job description that requires a teacher to 'behave in accordance with the law and exhibit high standards of professional ethical behavior.' Any doubt as to this conclusion is resolved by the Teacher's second act" of shoplifting.</p>	<p>James W. Mastriani</p>

	<p>Sears Apprehension Agent, who was no longer employed by Sears, failed to appear and testify at trial.</p> <p>On March 3, 2015, The BOE first became aware of this incident after receiving a letter from the Teacher's attorney. The letter noted that it had failed to notify the SD of this incident earlier, and requested that the SD overlook the omission. After a meeting between the SD, the Teacher and her representative on March 4, 2015, the Teacher was suspended with pay until May of 2015.</p> <p>On March 5, 2016, the Teacher shoplifted a shell picture frame from a store in Beach Haven, NJ. The store owner posted the surveillance video of the Teacher committing the theft on FaceBook, and she was ultimately identified by one of her 4th grade students and arrested. The Teacher entered a Conditional Dismissal Program which included a guilty plea and a one year probationary period.</p> <p>The second arrest was widely known throughout the SD, and caused problems among the students and parents. The Teacher claimed that her mental history and issues with changing prescriptions was a causative factor in her behavior.</p>	<p>The second arrest "prompted events that caused the SD to cover her class for the remainder of the semester and to counsel all of the fourth grade students who became aware of the Teacher's arrest due mainly to the publicity surrounding the store's posting of the surveillance tape. The extent to which the video was observed cannot be determined, but the record clearly supports the conclusion that it was either seen or its contents described by faculty, parents and students who became aware that a SD teacher had committed an unlawful act of dishonesty."</p> <p>The SD correctly asserts that the notice of the first arrest was also untimely and inadequate. The Teacher's two acts of dishonesty within a 13 month period are sufficient to warrant dismissal in this case. The Teacher's mental health history does not serve as a mitigating factor in this case.</p> <p><i>Holding:</i> Granted. Teacher is terminated.</p>	
<p><i>In the Matter of Tenure Charges of Penny Keough, City of Burlington SD</i></p> <p>12/15/16</p>	<p>SD filed Conduct Unbecoming, Incapacity and Other Just Causes against tenured Administrative Assistant/Payroll Secretary (AA) for excessive absenteeism and "misrepresentations about surgery dates, failure to provide adequate documentation to support her leave request and her failure to advise the SD of her surgeries thereby preventing them</p>	<p><u>Unpaid Suspension</u></p> <ul style="list-style-type: none"> Based upon the facts in this case, "any delays in rescheduling the case are reasonably attributable to Respondent's Supreme Court filing and that the period from August 30, 2016 until November 1st should stay the running of the 120 period." 	<p>Michael J. Pecklers, Esq.</p>

from filling her position and prejudicing its operations."

Unpaid Suspension

- AA filed NJLAD claim in State Court while Tenure Charges filed.
- Tenure Arbitration proceedings were stayed due to pending State Court action Order.
- Tenure charges filed April 2016, but Arbitration Hearings not held until November 2016 due to Court Ordered Stay.
- By November 2016, the 120 day non-paid time limit was exhausted.
 - AA requested that pay be reinstated
 - SD argued the delay in proceedings was due to AA's actions (requesting the Stay), and the scheduling availability of the parties/Arbitrator once the Stay was lifted, the SD should not be penalized.

Conduct Unbecoming - SD Claims

- History of Absenteeism
 - SY 2012-2013 - 28 absences
 - 01/12 to 06/12 - 7 absences
 - SY 2013-2014 - 30 absences
 - SY 2014-2015 - 43.5 absences
 - SY 2015-2016 - 128.5 absences (through April 1, 2016)
 - Less than 5 yrs of employment - 267 total absences
- Leave of Absence / Veracity Issues
 - SD requested a doctor's note to substantiate clearance to RTW after an injury - AA accused SD staff of "being useless"
 - December 22, 2015 MD note allowed RTW on 1/4/16.
 - 8 days later, AA submitted MD note

Affirmative Defenses - Procedural Issue

- Respondent did not raise any Affirmative Defenses in the Arbitration forum, and therefore the line of questioning pertaining to the discrimination/FMLA SD policy issues and alleged retaliation issues that are the basis of the State Court Action, were excluded in this matter.
 - Neither the Answer or Statement of Evidence "contains any kind of a pleading or Affirmative Defense regarding those discrimination claims which are properly the subject of the Superior Court action..."

Arbitrator's Findings

- The SD's witnesses were more credible than the AA.
- Although there is documentation of 267 days of absence in less than 5 years of employment, AA "has not been counseled regarding not bringing in a doctor's note when out for more than a 3 day period, or for attendance deficiencies."
- "The only element that appears in AA's personnel file is a counseling by a prior supervisor due to her failure to transfer funds that were necessary to meet payroll."
- AA notified the SD that she would RTW on January 4, 2016.
- "Both during the period of time after 1/4/16, when AA was cleared to return from her WC leave and following the institution of Tenure Charges, the SD was unable to find any temporary help, because none of the potential candidates were willing to undergo the fingerprinting process and pay the application fee for potentially only a few months of employment.
 - This caused a disruption in the operation

	<p>that she needed additional surgery to be done on 1/4/16, keeping her out of work an additional 2-3 months.</p> <ul style="list-style-type: none"> ▪ Note did not contain a diagnosis, insight into the treatment or why AA could not work. ▪ Disability Application submitted on 1/7/16 also lacked any information <ul style="list-style-type: none"> ○ SD sent AA 3 letters seeking justification for request for additional medical leave, in order to clarify the "designation" of the leave <ul style="list-style-type: none"> ▪ SD offered to work with AA, but stated it needed requested information to engage in an interactive process to see if AA needed an accommodation due to disability ▪ SD advised that AA was not authorized to take uncompensated leave, and absent appropriate documentation, must RTW. ○ 3/14/15 MD letter <ul style="list-style-type: none"> ▪ AA is having hand surgery and cannot work until after surgery (no other information) ▪ 2/11/16 note states AA had surgeries on 12/16/16 and 12/18/16. ▪ This was SD's first notice of no surgery on 1/4/16 and that the December surgeries predated her 12/22/15 clearance to RTW. ○ SD believes AA lied about her medical issues 	<p>of the Business Office and required the Assistant School Business Administrator... to perform AA's job as well as her own, necessitating working through her lunch on a regular basis.</p> <p><u>Unproven Charges</u></p> <ul style="list-style-type: none"> • Incapacity and Other Just Cause by virtue of excessive attendance. <ul style="list-style-type: none"> ○ AA had been cleared to RTW on 1/4/16 and later for 5/4/16 without restrictions. ○ No Progressive Discipline for the excessive absenteeism charges. <p><u>Unbecoming Conduct</u></p> <ul style="list-style-type: none"> • "AA intentionally kept critical information regarding her medical condition a secret from the SD while at the same time requesting leave for medical disability..." • Based on AA's notification to the SD re: RTW on 1/4/16, "SD personnel then left for Christmas holidays secure in the fact that she had recovered from the comp leave and would be back to work January 4th". <ul style="list-style-type: none"> ○ This was "shattered" by the 12/30/16 notice that she needed additional leave, with the reasonable impression that the "need for surgery had recently developed." • "... there is ample evidence that AA used extremely poor judgment which falls just short of deception" in reporting throughout this process. • "The totality of the record evidence convinces me (the Arbitrator) that the credibility of AA is unreliable at best. The SD's witnesses evidenced no apparent bias towards AA, and their testimony was internally as well as externally consistent." • The SD was prejudiced by AA's absence - there 	
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	<ul style="list-style-type: none"> ▪ AA's statements to colleagues indicate plans to have surgeries in December 2015 ▪ AA's misrepresentations and delay in providing proper documentation created a big problem for SD in having this important position adequately staffed. <ul style="list-style-type: none"> • Additional Issue - Prior warning re: failure to transfer funds necessary to process payroll <p><u>AA's Arguments</u></p> <ul style="list-style-type: none"> • All necessary notifications were timely provided to the SD. • AA misunderstood the severity of her injury and recovery time - she did not lie to the SD. • AA is a "payroll clerk", not a teacher. Her work does not involve children. She should not be held to as high a professional standard as a teacher. • These tenure charges were filed prematurely - the charges were filed the end of April 2016, but AA was cleared to RTW for May 4, 2016. • The SD failed to properly engage with AA about her issues and time to RTW. • The SD has not established Progressive Discipline pertaining to the alleged years of excessive absenteeism. 	<p>was a disruption in the Business Office and a staff member was required to complete 2 jobs, requiring additional work.</p> <p>Holding: Conduct Unbecoming Charge Upheld. Incapacity and Other Just Cause Dismissed. Withhold 2016-17 salary increment. Returned to duty with full seniority and back-pay retroactive to May 4, 2016 (the date that she was medically cleared to RTW), offset by any appropriate mitigation.</p>	
<p><i>In the Matter of Tenure Charges of Gerri A. Chapman, SOSD of the City of Camden</i></p> <p>12/13/16</p>	<p>SOSD filed Inefficiency charges against 10 year elementary school teacher.</p> <p>2014-15: Partially Effective 2015-16: Partially Effective</p> <ul style="list-style-type: none"> • SD utilizes Danielson framework for its evaluation rubric and the Measures of 	<p>1. Calculations ... are "part and parcel of the overall process, which includes a whole host of carefully weighted factors specified in state law and District policy." Additionally, the applicable law "specifically delegates" the decision to defer to SD discretion. The SD did not abuse its discretion in this case.</p>	<p>Perry A. Zirkel</p>

	<p>Academic Performance (MAP) assessment for SGO's.</p> <p><u>Teacher Arguments:</u></p> <ol style="list-style-type: none"> 1. BOE should have found exceptional circumstances and granted her a 3rd year. <ul style="list-style-type: none"> ○ Received "Effective" ratings for her overall practice scores in both years. ○ Increase in her overall SGO scores. ○ She was only .03 below the requisite minimum for the Effective category. 2. Alleged Observational Violations <ul style="list-style-type: none"> ○ Inadequate Training of Observers ○ Observers failure to complete 2 observations annually ○ Failure to review Teacher's observation rebuttal 3. 2014-15 SGO Issues <ul style="list-style-type: none"> ○ Only a teacher may initiate changes to the SGO and no such changes are allowed after February 15th 	<p>2. The evidence is sufficient that the observers received regular training and exhibited competency in the Danielson instrumentation.</p> <p>"The regulator requirement of 2 annual co-observations is expressly for the purpose of accuracy and training in scoring." In 2014-15, only 1 co-observation occurred. "Although this shortfall for the co-observation requirement is of concern and merits requisite attention, in this case it does not provide the basis for revising or reversing the summative evaluation for the second year, particularly in light of the statutory limitation of the arbitrator's authority in terms of the quality of an employee's classroom performance."</p> <p>"Although it would have been best practice" for the SD to review and respond to the Teacher's rebuttal, it is not legally required.</p> <p>3. "The regulations expressly leave the final determination of the SGOs to the principal, and they establish a February 15th deadline for adjustments <u>made by the teacher</u>. Thus the regulations do not prohibit the administration from correcting an improper SGO at any time during the school year, with the inferable proviso of sufficient justification." The teacher had sufficient notice of this change.</p> <p> Holding: Sustained. Teacher is dismissed.</p>	
<p><i>In the Matter of Tenure Charges of Joel Dawkins, SOSD of the City of Newark</i></p> <p>10/21/16</p>	<p>SOSD filed Inefficiency Tenure Charges against 20 year teacher with Elementary and Math Teacher Certifications.</p> <p>2013-14: Partially Effective 2014-15: Partially Effective</p>	<p>The SD's actions throughout the Teacher's Evaluation Process were Arbitrary and Capricious for reasons including:</p> <ul style="list-style-type: none"> • Classroom assignment choices by the SD • Transferring from high school (where the Teacher was experienced) to middle school and assignments of lunch and playground 	<p>Stephen M. Bluth</p>

	<p><u>Case History</u></p> <ul style="list-style-type: none"> • 2013-14 SY - PreK-8 School <ul style="list-style-type: none"> ○ Received a CAP ○ January 2014, Teacher was injured and took a LOA ○ Upon RTW, teacher requested assignment change to Math Teacher at the High School • 2014-15 SY <ul style="list-style-type: none"> ○ Teacher took 3 month medical LOA (September- December) ○ Upon RTW, teacher reassigned to math position at Girls' Academy Middle School <ul style="list-style-type: none"> ▪ Additional CAP developed <p><u>SD Arguments</u></p> <p>Claims that it properly executed all required procedures, including collaboration in developing and the institution of CAP's, observations, conferences and support of the teacher.</p> <p><u>Teacher Arguments</u></p> <ul style="list-style-type: none"> • All of the 2013-14 evaluations were done at the High School, with no evaluations from the first (elementary) school. • The SD failed to provide adequate support from the SIPs at the schools where he had been assigned. • The SD failed to adhere to the required evaluation process. • The evaluations were improperly performed and scored. • Improper assignments <ul style="list-style-type: none"> ○ Assigned to a K-8 school after teaching HS for 21 years; ○ Spending weeks doing lunch duty and painting lines on the playground; ○ Assigned to an Assistant Gym 	<p>duty, and painting lines on the playground</p> <ul style="list-style-type: none"> • Teacher was only evaluated teaching Grade 9 students, and not Grade 12 students • The SD "either did not have a SIP or, while one may have existed on paper, it certainly did not function as required" <ul style="list-style-type: none"> ○ VP's "testimony demonstrates he had no knowledge of the Panel and certainly had no idea what it was supposed to achieve." • Timing of evaluations without reasonable time for improvement <ul style="list-style-type: none"> ○ Two observations on consecutive days ○ Two on the same day ○ A final observation the day before Annual Evaluation • Inconsistencies in rating <ul style="list-style-type: none"> ○ 4 Effective ratings, but given an overall Partially Effective rating on Competency Four • Improper development and use of CAP's <ul style="list-style-type: none"> ○ Assessment for Student Growth listed as occurring in four months, but the Annual Summative Evaluation occurred 1.5 months later ○ No process for assessing Student Growth <p>"... there were multiple observation/evaluation errors in both years at issue here ... both the timing and content of these factors were insufficient to establish anything except that certain administrators were asleep at the switch when it came to observation/evaluation and, especially, when it came to SGO's.</p> <p>Accordingly... the observations/evaluations and Annual Summative Evaluations were material</p>	
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	<p>Teacher position, which is outside his certification;</p> <ul style="list-style-type: none"> ○ When finally given a classroom assignment, it was one that was formed by selecting the most difficult, problematic students from existing classes, and none of the students had IEP's; ○ The CAP's were not appropriately revised when he received different positions. 	<p>because without valid SGO's and Annual Summative Evaluations there can be no statutory basis for charges..."</p> <p>Holding: Denied. Teacher is reinstated with full back pay.</p>	
<p><i>In the Matter of Tenure Hearing of Thomas Strassle, Sch. Dist. of the Twp of Old Bridge</i></p> <p>10/5/16</p>	<p>BOE filed charges of Conduct Unbecoming against 12 year tenured High School Industrial Arts teacher, with no evidence of prior discipline.</p> <p>The SD asserted that the teacher gave money to a female student, and then the teacher requested sexual favors in exchange for the money and engaged in appropriate sexual contact with the student, based upon the allegations of the female student. The student's sworn statement to the Police was admitted into evidence. However, the student did not testify at the Arbitration Hearing, and none of the SD's witnesses had first-hand knowledge of the allegations against the teacher.</p> <p>The Police Department and the Institutional Abuse Section of DCF separately investigated the allegations. No criminal or other charges were filed against the teacher.</p> <p>The SD also filed CU charges alleging that the teacher had inappropriate conversations about prostitution with female students from his photography class, in a darkroom/office connected to the classroom. At the Arbitration Hearing, the SD produced witnesses that the</p>	<p>The failure of the student to appear at the Hearing denied the teacher his Due Process right of cross examination or the opportunity to explore any improper motivation or bias by the student. Accordingly, the teacher's Motion to Dismiss these claims was granted.</p> <p>Based upon the evidence, the SD successfully proved one of the allegations of CU, but failed to prove the most serious of the factual allegations of the underlying charges. "As a tenured teacher, (he) should have known that joining a conversation with female students about the students' willingness to engage in prostitution or stripping was inappropriate without a specific rule expressly addressing such conduct." The established misconduct warrants discipline, "but is insufficient to demonstrate that the teacher is unfit to meet his responsibilities as a teacher.</p> <p>Holding: Conduct Unbecoming has been established and provides just cause for discipline. The penalty is reduced from termination to reinstatement with a forfeiture of the 120 days of pay already withheld following the certification of tenure charges. There shall be no back pay awarded in connection with this 120 days loss of</p>	<p>Melissa H. Biren, Esq.</p>

	alleged conversations about prostitution had actually occurred.	pay. All other tenure charges are dismissed with prejudice.	
<p><i>In the Matter of Tenure Charges of Howard Smith, Wayne Township BOE</i></p> <p>8/26/16</p>	<p>BOE filed Charges of Conduct Unbecoming and Other Just Cause against tenured Physical Education / Health teacher alleging that he engaged in a physical altercation with a high school student during the 2014-15 school year, and a series of incidents during the 2015-16 school year involving charges of HIB of several students.</p> <p><u>SD Allegations</u></p> <p><u>2/18/15 - Locker Room incident</u></p> <ul style="list-style-type: none"> • Video evidence of Teacher yelling and being aggressive with hands in the altercation with the HS student. • Teacher is significantly taller and heavier than the student. • Teacher failed to attempt to de-escalate the situation. • Just after the incident, video tape shows the Teacher walking through the locker room and bumping the student on the shoulder. <p><u>2015-16 "Other Incidents" in 8th grade middle school health class taught by Teacher</u></p> <ul style="list-style-type: none"> • HIB #1 <ul style="list-style-type: none"> ○ Teacher stated "I take shits bigger than you" to a student. ○ Teacher admitted making this comment ○ References the student's small stature • HIB #2 	<p><u>Locker Room Incident</u></p> <p>The video does not support the Teacher's self-defense claim. The Teacher "may have been initially startled, perhaps even provoked, by the confrontation but his response, as caught on video, was quite inappropriate for a teacher; his verbal and physical interaction with the student crossed the line into unacceptable conduct."</p> <p>"Neither party (Teacher and student involved) is relieved of all responsibility however, the Teacher must be held to a somewhat higher standard, responsible to reduce rather than escalate any conflict with students."</p> <p>The discipline agreement the SD and Teacher entered into imposed significant penalties on the teacher for the locker room incident.</p> <ul style="list-style-type: none"> • Shows "both parties perceived that incident to be severe misconduct" by the Teacher • "Clear notice" to the Teacher that "further Unbecoming Conduct would have severe consequences." <p><u>HIB Incidents</u></p> <ul style="list-style-type: none"> • HIB #1 is undisputed occurrence (teacher claims he was being "playful") - Letter of Reprimand • HIB #2 is believed to have occurred by Arbitrator <ul style="list-style-type: none"> ○ Credible witness testimony • HIB #3 not proven to have occurred by SD • HIB #4 is believed to have occurred by Arbitrator <ul style="list-style-type: none"> ○ Credible witness testimony 	<p>Joel M. Weisblatt</p>

	<ul style="list-style-type: none"> ○ Male student asked a question about vaginal discharge ○ Teacher responded that the male student should know what it is because he has it ○ Comment suggests student is female and/or has an STD ● HIB #3 <ul style="list-style-type: none"> ○ Students were watching a video about anorexia, which included a female removing her sweatshirt to reveal the effects of the disease ○ Teacher told student that "he would never get closer to seeing a naked woman in his lifetime." ● HIB #4 <ul style="list-style-type: none"> ○ Teacher suggested to a 14 year old student that she should be taking birth control pills ○ Comment insinuated to the student that she was sexually active with a large number of boys <p><u>Prior Corrective Measures</u></p> <ul style="list-style-type: none"> ○ Suspension without pay ○ Letter of Reprimand ○ Increment Withholding ○ Loss of all coaching assignments ○ Forfeited 30 accumulated sick days ○ Corrective Action Plan ○ Anger Management training <p><u>Teacher Response</u></p> <ul style="list-style-type: none"> ● Self-Defense to 2/18/15 Locker Room claim. ● He has already been disciplined for the locker room and HIB #1 incidents ● Denies the occurrence of HIB #2, #3 and #4 	<ul style="list-style-type: none"> ○ "Such a comment is inexcusable as it raises issues of sexual harassment and intimidation to a student in a very vulnerable setting." <p><u>Rationale</u></p> <ul style="list-style-type: none"> ● SD engaged in Progressive Discipline. ● Teacher was on notice that his behavior was unacceptable. ● "The Teacher's acts of misconduct during the 2015-16 school year are most troubling. They appear to establish a pattern of a loss of control over the need for the teacher to conduct himself within the bounds of reasonable expectations for the position." ● "Efforts at Progressive Discipline did not appear to be effective." <p> Holding: Sustained. Teacher is Dismissed.</p>	
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<p><i>In the Matter of Tenure Charges of James Dunckley, Rockaway Twp BOE</i></p>	<p>BOE filed Charges of Conduct Unbecoming against tenured teacher (employed by SD since 1976-77 SY), alleging inappropriate conduct towards Special Education students, including inappropriately repeatedly touching certain young females.</p>	<p>The SD policy prohibits sexual harassment, and warns that violation(s) of the policy are subject to discipline by the SD.</p>	<p>Dr. Andree Y. McKissick</p>
<p>6/13/16</p>	<p><u>Allegations</u></p>	<p>Teacher's arguments that the complaining girls were friends does not negate the veracity of the girls' complaints. The teacher did not testify at the hearing, and did not offer any evidence to contradict the testimony of the SD's witnesses and documents (handwritten statements, Affidavits, medical/counselor reports, etc.).</p>	
<p>Affirmed: 2018WL137021 NJ App Cr. t.</p>	<ul style="list-style-type: none"> • In approximately December 2009, parents of 2 female students allegedly complained to SD about the Teacher. <ul style="list-style-type: none"> ○ Teacher was admonished to stop the behavior • 2012 - Female teacher filed AA complaint for harassing, threatening and hostile behavior. <ul style="list-style-type: none"> ○ Teacher agreed to cease communicating with complaining teacher and to act in an appropriate manner. • No prior instances of increment withholdings, suspensions or other discipline. 	<p>In 2009, the SD had counseled the Teacher about appropriate interactions with students, and the complaining students were removed from his classroom. The SD has appropriately alleged a pattern of inappropriate conduct by the Teacher.</p>	
<p>3/19/18</p>	<p><u>Female Student #1 (Age 13) - December 2014- April 2015</u></p>	<p>The tenure case of <u>Davis v. SD of Asbury Park</u> (May 15, 2014) (custodian that inappropriately touched students) is applicable, as "both cases dealt with inappropriate touching of young girls who described such misconduct as acts which made them feel 'uncomfortable' and 'weird.' Both respondents had engaged in prior misconduct, involving the same acts of repeated inappropriate touching of female students."</p>	
	<ul style="list-style-type: none"> • Alleged complaints: <ul style="list-style-type: none"> ○ Teacher touched student inappropriately and repeatedly (shoulders, leg above her knee, knee, back and in the area of her chest) ○ Teacher made inappropriate comments, such as student was "mature" and his "buddy", and asking student if she was "OK" after he touched her ○ Student allegedly told the teacher to stop touching her, but he continued ○ Caused the student substantial 	<p>"... It is important to note that prior misconduct can be considered at the penalty stage, as here. Due to the egregious nature of these collective acts of 2009 and culminating in the misconduct of 2014-15, the penalty of dismissal is not excessive."</p>	

	<p>anxiety, discomfort and disruption.</p> <ul style="list-style-type: none"> ○ Student began dressing conservatively to avoid being touched ○ Student told guidance counselor, personal doctor, friends and family that she was depressed/anxious as a result of Teacher's behavior towards her <ul style="list-style-type: none"> ● Parents complained about Teacher's behavior ● SD claims Teacher was admonished to cease and desist from engaging in the offensive behavior. ● Teacher repeatedly stated "I don't touch kids!" ● SD alleges the conduct continued, resulting in further complaints of a similar nature involving additional female students. <p><u>Female Student (Age 13) #2 - 2014-2015 SY</u></p> <ul style="list-style-type: none"> ● Student claimed that Teacher touched her shoulders, sat too close to her when the class watched movies, and stared at her in class to the point where she would move her desk to be out of his line of sight <ul style="list-style-type: none"> ○ Caused student anxiety, discomfort and disruption 	<p>Holding: Granted. Teacher is terminated.</p>	
<p><i>In the Matter of Tenure Hearing of Kevin Karp, BOE of the Twp of Barenegat</i></p> <p>5/26/16</p>	<p>BOE filed Charges of Conduct Unbecoming against tenured teacher alleging:</p> <ul style="list-style-type: none"> – Brushed up against breast of 12 year old female student on multiple occasions – Made “cat calls” to same student walking down the hall – Touched another student’s exposed bra strap, touched her shoulders – Coached wrestling, stared inappropriately at 	<p>The SD failed to satisfy the legal requirements of providing a clear statement of facts including the time and dates when the alleged incidents occurred. The documents submitted were unsigned, and the charges were "certified" on "the basis of double hearsay". Many of the allegations were vague. The Superintendent did not directly participate in the investigation or speak with any of the witnesses.</p>	<p>Edmund Gerber</p>

	<p>female wrestler</p> <ul style="list-style-type: none"> – Made comment about two female students holding hands, saying “it was OK to try new things over Spring Break” – Another student claimed he would brush up against her when handing out papers <p>Teacher filed a Motion to Dismiss the Charges.</p> <p><u>Teacher’s Arguments</u></p> <ul style="list-style-type: none"> • Denied Allegations • No signed statements from the complaining students or School Administrators • Allegations are required to be filed in writing <u>with specificity</u> <ul style="list-style-type: none"> – The names of the persons involved were not provided, and it is impossible for the teacher to identify the people involved solely by the initials given by the SD – The Superintendent did not assert any <u>direct</u> knowledge of the facts relied on pertaining to the challenges – i.e. hearsay • The SD did not follow its own procedures <ul style="list-style-type: none"> – Required it to obtain written statements from the complaining students and witnesses – Superintendent was required to “hear the evidence herself”, and not merely rely on the statements of others 	<p>Based upon the evidence of record, the Charges filed by the SD fail to satisfy the legal requirements articulated in <u>N.J.S.A. 18A:6-9</u> and <u>N.J.A.C. 6A:3-1.6.</u>, requiring written statements and specificity of allegations.</p> <p>The BOE's failure to submit the actual names of the students was <u>not</u> improper, given privacy requirements. If the teacher could not identify the students from their initials, a confidential list of names could have been requested.</p> <p><i>Holding:</i> Dismissed without prejudice. Teacher is restored to his teaching position as if no charges had been filed.</p>	
<p><i>In the Matter of Tenure Charges of James Taylor, BOE, Englewood SD</i></p> <p>5/20/16</p> <p>Affirmed: Unpublished Superior</p>	<p>BOE filed Conduct Unbecoming Charges against tenured Physical Education/Health Teacher alleging Incompetence, Insubordination and Other Just Cause.</p> <p><u>SD Allegations</u></p> <ul style="list-style-type: none"> • Teacher has a history of prior instances of aggressive interactions with children, for which he has been disciplined. 	<p>"Clear rules are in place for how teachers in this school system should be guided when confronted with troublesome students."</p> <p>This teacher "had been the recipient of retraining and rehabilitative efforts due to his prior misplaced theories about handling difficult situations involving troubled or difficult students."</p>	<p>Jay D. Goldstein</p>

<p>Court, App. Div. – 2018 WL 3848610</p>	<ul style="list-style-type: none"> • Prior increment holding for 2011-12 year • Had been required to complete a Corrective Action Plan and attend professional development seminars on how to deal with "difficult students" • Prior discipline is not disputed • Security video of the current incident in class • Allegation of aggressive behavior towards a student <ul style="list-style-type: none"> ○ Teacher "escalated a dispute with a student from a verbal disagreement to a physical altercation. " ○ "Instead of seeking assistance from security, staff or school administration, Teacher initiated physical contact with the student by 'bumping' and pushing him with his torso and 'mushing' the student in the head with his hand." • "His pattern of aggression and unprofessional behavior makes him unfit to teach children and warrants his dismissal." <p><u>Teacher Response</u></p> <ul style="list-style-type: none"> • SD has burden to prove by a preponderance of evidence that the allegations are true and that termination is just • Teacher (although he did not testify) disputed who the initiator, aggressor and/or instigator was 	<p>Fair and progressive discipline and a full and fair investigation of the charges occurred in this case, including "careful consideration of any mitigating and/or aggravating circumstances.</p> <p>Teacher failed to raise any adequate defenses that refute the "rationale for discipline."</p> <p><i>Holding:</i> Granted. Dismissal granted.</p>	
<p><i>In the Matter of Tenure Charges of Ratiba Ahmed, SOSD of the City of Newark</i></p> <p>4/4/16</p>	<p>SOSD filed Charges of Inefficiency, Conduct Unbecoming, Neglect of Duty and Other Just Cause against tenured Math Teacher.</p> <p><u>Inefficiency</u> 2013-14 Evaluation: Ineffective 2014-15 Evaluation: Ineffective</p>	<p><u>Inefficiency</u> The truncated observation schedule "was not attributable to any mismanagement or bad faith on the part of the SD", but rather was due to the Teacher's "frequent and lengthy absences from the school". However, the Teacher had "a very limited time period in which to improve between the finalization of her CAP and her evaluations," and</p>	<p>Walt De Treux, Esq.</p>

	<p>Teacher was subject to a CAP for both school years, with a focus on timely submission of lesson plans, measurement of student growth and reading assignments for PD.</p> <p>SD claimed that the Teacher had been absent for more than 90 days in the 2014-15 school year (suspension/leave), thereby representing less than 40% of the total 191 days, which means that only 2 observations were required.</p> <p>Teacher seemingly did not contest the validity of the content of the evaluations or the lower number of required observations.</p> <p>Teacher contested the timing of the evaluations, as they did not give her time to improve. The first occurred within 11 days of the CAP being finalized (after being out on sick leave for a month), the second evaluation was 16 school days later, and the final two observations were two weeks apart from each other. Teacher had taken additional sick days during the described observation time period.</p> <p><u>Conduct Unbecoming/ Neglect of Duty / OJC</u> SD alleged pattern of excessive absenteeism and a failure to effectively manage and supervise her classroom.</p> <p>2011-12: 46 days absent (sick); 2012-13: WC 11/19-6/28; 2013-14: 11 days absent (sick); WC 3/2-6/30; 2014-15: Admin. Susp. 9/8-2/24; 29 days absent (sick)</p> <p><i>Other Infractions</i></p> <ul style="list-style-type: none"> • Failing to record grades; • Allowing students to leave classroom without 	<p>therefore did not have sufficient time to achieve improvement.</p> <p><u>Excessive Absenteeism / Classroom Management</u> During the 4 year period at issue, which is approximately 40 months, the Teacher was absent for approximately 19 months. The teacher was warned through memos, evaluations, and a monetary fine of one day's pay, that her pattern of absences was unacceptable. The teacher did not testify at the hearing, and did not offer any affirmative or exculpatory defenses for her extensive absences.</p> <p>The teacher also failed to offer any defense for the 8 occasions that she was cited during the 2014-15 school year for her classroom management and supervision issues.</p> <p>Holding: The SD failed to establish the Inefficiency Charges. The Neglect of Duty and Other Just Cause Charges are sustained. Teacher is Dismissed.</p>	
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	<p>permission and failing to notify security;</p> <ul style="list-style-type: none"> • Creating a safety hazard by locking her classroom door; • Failing to require students to remove hoodies in class and failing to teach while the class was in progress; • Leaving 25 students unattended in her classroom; • Failing to request an assignment from the main office when her students were on a class trip; and <p>Leaving her class unattended to observe other teachers conduct a lesson.</p>		
<p><i>In the Matter of Tenure Charges of Ardeena Long, SOSD of Paterson</i></p> <p>4/3/16</p>	<p>SOSD filed Inefficiency Charges against tenured 35 year teacher.</p> <p>2013-14: Partially Effective 2014-15: Partially Effective</p> <p>An earlier ruling by Arbitrator Robert C. Gifford on 3 consolidated cases, "did not find that, on a global basis, the District's implementation of the evaluation system was in violation of the TEACHNJ statute."</p> <p>SOSD claimed that it had satisfied all requirements regarding training the teacher on the evaluation rubric, providing adequate opportunity to be involved in the CAP process, providing support, and holding required conferences. Despite the SOSD's efforts, the teacher failed to show sufficient consistent improvement. SOSD asserted that the teacher's response to the allegations were "excuses, pleas of ignorance and self-serving answers."</p> <p>Teacher claimed that the SOSD's actions (1) failed to adhere to the evaluation process and (2)</p>	<p>The SOSD's witness, the Principal, was "particularly credible" and provided significant detail with respect to the process and its application to the teacher." The Principal's testimony provided "clear and convincing evidence" that the evaluations were an accurate reflection of the teacher's performance.</p> <p>At "the meetings between the teacher and the Principal, the teacher did not disagree with any mark or score, and did not indicate any lack of understanding of the evaluation process and the need to improve." Each item of the CAP was discussed with the teacher, "providing any opportunity for questions or suggestions".</p> <p>The SOSD provided documented proof of numerous training sessions, including a PowerPoint presentation, the rubric, and a handbook for the evaluation process. SOSD witnesses also convincingly testified that the observations and post conferences were timely, accurate and appropriate.</p> <p>The teacher was given an opportunity for input into the CAP, the evidence supports that there were co-observers in many of the formative observations</p>	<p>Joel M. Weisblatt</p>

	<p>were arbitrary and capricious. The teacher relied upon her own testimony that she did not collaborate in the development of the CAP. She also claimed that the SOSD did not perform all required walk-through evaluations, that some of the observations did not have "co-observers", and that some post conferences were not performed in a timely manner.</p>	<p>and the ratings were reached by consensus of the co-observers, and there were walkthroughs (albeit fewer documented than the handbooks delineate). There were no substantial deviations from the evaluation process. "There is no evidence that the scoring system is arbitrary and capricious."</p> <p>Holding: Tenure charges sustained. Teacher is dismissed from her position.</p>	
<p><i>In the Matter of Tenure Charges of Responda Sims, SOSD of Paterson</i></p> <p>3/27/16</p>	<p>SOSD filed Charges against tenured 16 year secretary.</p> <p>Secretary received exemplary evaluations until she had an argument with her supervisor at the end of the 2012 school year. After being transferred to a different school in January 2013, she received satisfactory evaluations in May of 2013. By the end of the 2013-14 school year, she was told that areas needed improvement and she received some unsatisfactory ratings. The secretary acknowledged receipt of the 2013-14 review, but indicated that she did not agree with the rating.</p> <p>A CAP was imposed for the 2014-15 school year. SD acknowledged that a CAP is an approach used for teachers, rather than staff, but felt that it could be a useful tool to help the secretary improve. Shortly after receiving the CAP for review, the secretary took approximately one month of medical leave.</p> <p>Upon her return, the secretary had a Union Representative join her for the meeting regarding her performance. The secretary signed the CAP, again indicating that she had received it, but did not agree with the assessment.</p>	<p>Many of the SD's allegations are not supported by evidence. Even where there appears to be instances where the secretary could improve, the process by which the SD addressed the alleged shortcomings was "flawed and does not comport with any applicable standard to support a finding that termination is warranted."</p> <p>"The School ... chose to proceed with a process that roughly paralleled the approach required for tenured teachers ... The CAP process, however, cannot be borrowed to use as a sword while disregarding the elements that function as a shield."</p> <p>The SD's actions "eliminated important elements of corrective opportunity and notice that are fundamental elements associated with discharge from any form of tenured employment."</p> <p>The SD utilized a CAP without a comparable history of poor evaluations, as is needed when placing a teacher on a CAP. "The June 2014 evaluation was insufficient to trigger the establishment of a CAP for which a lack of success would lead to termination."</p> <p>Additionally, the SD lacked an established evaluation instrument, and the CAP incorporated no structured review or process.</p>	<p>Jacquelin F. Drucker, Esq.</p>

	<p>The secretary requested permission to attend a training program on the Infinite Campus software, which had been introduced while she was on medical leave. The SD denied this request, stating that the time out of the office could not be allowed because there was overdue work that needed to be done. The secretary could seek assistance from the other secretary in the office instead. SD ultimately provided one hour of training by an IT Specialist.</p> <p>SD asserted that despite its efforts and the imposition of the CAP, the secretary did not timely complete tasks, her work was deficient, she did not maintain the confidential status of information, and that she made no progress by the end of the 2014-15 school year.</p>	<p>The SD claimed that the secretary exhibited a lack of willingness to learn. However, despite requests from the secretary for computer training, the SD only provided one hour of software training.</p> <p>For a teacher, being placed on a CAP portends a possible step toward termination of employment. "In this case, placement on a CAP did not put the secretary on notice that her job was in jeopardy, and nothing in the record suggests that she was ever advised that if she did not achieve the improvements sought in the CAP, charges would be issued."</p> <p>"The procedures and processes employed by the SD did not provide adequate notice, opportunity to improve, and support to do so."</p> <p>Holding: Dismissed. Secretary is to be restored to her position with full back pay and benefits.</p>	
<p><i>In the Matter of Tenure Charges of Edgard Chavez, SOSD of Newark</i></p> <p>3/17/16</p>	<p>SOSD brought Inefficiency Charges against tenured teacher in October of 2012.</p> <p><u>Procedural History</u></p> <ul style="list-style-type: none"> • The Inefficiency Charges were initially granted in 2013. • Teacher appealed the finding. • In May of 2015, the Appellate Court remanded the case to the DOE to determine the proper standard by which to evaluate a teacher prior to the effective date of TEACHNJ, when the SD alleges poor performance. • In June of 2015, the DOE determined that the "Preponderance of Evidence" standard, which was in effect prior to the enactment of TEACHNJ, was the appropriate standard to 	<p>The 90 Day Plan "was detailed and was tailored and aligned to address the Teacher's numerous deficiencies, presented professional growth goals and provided much more than weekly meetings about lesson plans..." The teacher had sufficient opportunity to provide input into the plan.</p> <p>The SOSD "complied with pre-TEACHNJ statutory and procedural requirements relating to the subject of Inefficiency Charges and ... the Charges have been proven by the SOSD by a preponderance of the evidence."</p> <p>Holding: Sustained. Teacher is dismissed from his teaching position.</p>	<p>Timothy J. Brown, Esq.</p>

	<p>utilize. The case was then assigned to the Arbitrator for a determination on the merits of the charges.</p> <p><u>SOSD Arguments</u> A 90 day Improvement Plan was implemented. The Teacher's poor performance included:</p> <ul style="list-style-type: none"> • Failure to design coherent instruction • Failure to establish a culture of learning • Failure to utilize question and discussion techniques with flexibility and responsiveness • Failure to engage students in learning • Failure to provide feedback to students • Failure to attain student achievement that meets or exceeds performance benchmarks • Failure to maintain adequate records • Failure to demonstrate promptness and attendance • Failure to demonstrate knowledge of content and pedagogy • Failure to demonstrate knowledge of students • Failure to assess student learning • Failure to manage student behavior • Failure to manage classroom procedures • Failure to communicate clearly and accurately • Failure to reflect on teaching • Failure to contribute to the School and District • Failure to grow and develop professionally • Failure to energize the physical space of the classroom • Failure to communicate with families • Failure to implement District Policies <p><u>Teacher Arguments</u></p> <ul style="list-style-type: none"> • The 90 Day Improvement Plan was inadequate • The SOSD did not properly support the teacher • The teacher's improvement was ignored 		
<p><i>In the Matter of Tenure Charges of Alexander Gonzalez, SOSD of Newark</i></p> <p>3/3/16</p>	<p>SOSD brought Inefficiency Charges against tenured Spanish teacher.</p> <p>2013-14 Evaluation: Ineffective 2014-15 Evaluation: Ineffective</p>	<p>The teacher had been "lackadaisical in his efforts to complete his CAP's" (using the Bloomboard). The Administrators consistently followed up on the completion of the CAP's, worked collaboratively with the teacher, provided ongoing feedback on his progress, and provided continued and varied</p>	<p>Timothy J. Brown, Esq.</p>

	<p><u>Facts</u></p> <ul style="list-style-type: none"> • After receiving an Ineffective rating in the Spring of 2013 (pilot year), teacher, who had taught in 3 District High Schools between 2005-2013, unsuccessfully attempted to find a job in another school or District. • Teacher received a CAP following the Ineffective Rating for year 2012-13 (pilot). • At the beginning of the 2013-14 school year, teacher was reassigned as an Additional Support Staff Member for the year in an Educator Without Placement Site (EWPS) at an Elementary School. Teacher was to replace a World Language Teacher taking leave. • Following the Ineffective rating for the 2013-14 school year, teacher was again subject to a CAP and retained EWPS status teaching World Language. For this assignment, teacher was required to travel from classroom to classroom throughout the school to teach different grade levels of students. <p><u>SOSD Arguments</u></p> <ul style="list-style-type: none"> • The SOSD complied with all evaluation standards, the CAP was collaborative between the Administration and the teacher, and provided clear and attainable goals and SGO's. • All required long and short observations and pre/post conferences were completed. • Throughout this process, Administrators continuously evaluated Teacher's progress by providing "CAP Reflection" feedback and attempted to address any issues identified. 	<p>support designed and tailored to help the teacher.</p> <p>The teacher was certified to teach the grades that he had been reassigned to. "The SD's Administrators did not set the teacher up to fail, but rather the Administrators made substantial, good faith efforts to address the teacher's performance issues and support the teacher."</p> <p>The teacher "was provided coaching, pre and post observation conferences, access to peer groups, lesson plan reviews, recommendations of appropriate books, web-based resources, opportunities to observe other accomplished teachers and assistance of other teachers in the classroom."</p> <p>The evidence is insufficient to support a claim of retaliation. "There is no evidence that any observation or evaluation of the teacher during the school years at issue was completed by any individual with knowledge of any aspect of the teacher's alleged December 2012 student-assault."</p> <p>Holding: Sustained. Teacher is dismissed from his teaching position.</p>	
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	<ul style="list-style-type: none"> When necessary, the SOSD had obtained extensions of time from the DOE to provide the CAP's, and had met those deadlines. <p><u>Teacher Arguments</u></p> <ul style="list-style-type: none"> The CAP's were deficient, did not comply with required standards and lacked appropriate SGO's. In December 2012, teacher had been hit with a water bottle thrown by a student. Teacher filed a report with the school and sought medical treatment and filed a report with the local police department against the SOSD's wishes. Teacher claimed that being given EWPS status, and these Inefficient ratings are Retaliation for filing the police report. 		
<p><i>In the Matter of Tenure Charges of Davis Hannah, SOSD of Newark</i></p> <p>2/6/16</p>	<p>SOSD brought Inefficiency Charges against tenured Art Teacher.</p> <p>2013-14 Evaluation: Partially Effective 2014-15 Evaluation: Ineffective</p> <p>Teacher filed Motion to Dismiss at the pre-hearing stage, alleging that the SOSD failed to adhere to the Section 25 mandated evaluation procedures and the SOSD's own evaluation guide requiring:</p> <ul style="list-style-type: none"> 3 annual observations, but not less than once during each semester and At least 1 announced observation preceded by a pre-conference <p>The SOSD did not dispute the teacher's aforementioned contentions, but asserted that it had "substantially adhered" to the evaluation procedure requirements.</p> <p>Teacher argued that there is no statutory or regulatory authority that permits a SD to</p>	<p>Nothing in the statutory provisions prohibits Arbitrators from ruling on motions prior to a hearing. Given that the SOSD conceded the allegations that are the basis of the Motion to Dismiss, the basis of this Motion is not a factual dispute, but rather an "argument of law".</p> <p>The statutory evaluation requirements are clearly established to ensure the teacher receives Due Process by specifying how s/he will be evaluated. Here, "the District clearly did not carry out the obligatory steps prescribed by law" and has not proffered any justification for its failure to comply with the statute.</p> <p><i>Holding:</i> Motion to Dismiss is granted.</p>	<p>Tia Schneider Denenberg</p>

	substitute such informal evaluation methods (such as walk-throughs) for the required formal classroom observations. Additionally, nothing in the statute permits a "harmless error" argument that the SD's failure to follow the evaluation process did not materially affect the outcome of the evaluation.		
<p><i>In the Matter of Tenure Charges of Eva Lewis, SOSD of the City of Camden</i></p> <p>1/12/16</p>	<p>SOSD brought Inefficiency Charges against tenured Teacher.</p> <p>2013-14 Evaluation: Partially Effective 2014-15 Evaluation: Partially Effective</p> <p><u>Teacher Arguments</u></p> <ul style="list-style-type: none"> • Teacher's wrist had been broken by a student, which caused the teacher to suffer from PTSD • Unfair to evaluate her when she had a broken wrist • Initially denied Danielson training, and then admitted she had received the training. • One of the evaluations lasted 9 minutes, ending when the evaluator received a phone call • Alleged her evaluators had not been appropriately trained on Danielson • No disciplinary issues in 2013-14 • Transferred from Special Ed to General Ed classes, which was not appropriately reflected in the CAP • Teacher was not informed about a CAP until 9/22/15, missing the 9/15/16 deadline <p><u>SOSD Arguments</u></p> <ul style="list-style-type: none"> • Teacher failed to submit lesson plans 	<p>Teacher's assertions that the SOSD (1) failed to adhere substantially to the evaluation process and that (2) the SOSD acted in an arbitrary and capricious manner are not substantiated.</p> <p>The teacher's assertion that one of the evaluations lasted 9 minutes is not credible. The teacher had submitted a rebuttal response after the evaluation, and the alleged "9 minute issue" was not included in the teacher's written response.</p> <p>It has not been established that one of the evaluators, who is no longer employed by the SOSD, was properly trained on Danielson. However, this potential lack of training did not have a material impact on the outcome of the evaluation in this matter.</p> <p>Given the teacher's absence from 9/9/15 through 9/15/15, this minor deviation from the regulation did not substantially interfere with the teacher's right to a CAP under TEACHNJ.</p> <p>Given the lack of medical evidence to substantiate the teacher's claim of PTSD, the severity of the alleged symptoms cannot be evaluated. The SOSD's responses to the teacher's medical condition were "educational based" and beyond the Arbitrator's authority to review.</p>	Edmund Gerber

	<ul style="list-style-type: none"> • Late / Missed Classes • Teacher observed making a personal phone call during class • Teacher's classroom was unstructured and chaotic • Many complaints about yelling at students and unprofessional communications with parents • Teacher did not submit any medical documentation about the alleged PTSD, and had been deemed fit for work, despite the broken wrist • SD properly completed all evaluations, pre/post conference, and CAP requirements • The CAP was collaboratively created • The issues addressed in the CAP were applicable to both her General Ed and Special Ed teaching assignments • Teacher had been trained on Danielson requirements • Teacher was provided with numerous mentors, coaches and opportunities for additional assistance • Teacher was absent from 9/9/15 until 9/15/15, so the CAP could not be completed by 9/15. 	<p>Holding: Tenure charges sustained. Teacher is dismissed from her teaching position.</p>	
<p><i>In the Matter of Tenure Charges of Wilson, SOSD of the City of Newark</i></p> <p>12/12/15</p>	<p>SOSD filed Inefficiency Charges against tenured teacher.</p> <p>2013-14 Evaluation: Partially Effective 2014-15 Evaluation: Ineffective</p> <p>The matter was assigned to an Arbitrator on 10/23/15. The SOSD supplied its witness list and additional documents on 11/6/15.</p>	<p>The Act's timelines and procedures for presenting evidence are rigid and are designed to provide sufficient but not unlimited time for parties to prepare their cases... The SD's 14 day delay in presenting evidence after the matter was referred to arbitration significantly curtailed the time the teacher had to prepare and present its evidence, which is due within 10 days of the first hearing (that must be and was scheduled 45 days after the Arbitrator's appointment).</p>	<p>Lewis R. Amis</p>

	Teacher filed Motion to Dismiss, arguing that the Act requires the SOSD to provide all evidence to the teacher upon referral of the case for arbitration, and that the SOSD's submission was therefore untimely.	Holding: Motion to Dismiss GRANTED.	
<i>In the Matter of Tenure Charges of Williams v. SOSD of the City of Camden</i> 12/2/15	SOSD filed Inefficiency Charges against teacher. Teacher resigned after Tenure Charges were certified to the Arbitrator.	Holding: Teacher's letter of resignation and the SD's acceptance of the resignation rendered tenure charges <u>moot</u> .	Carol F. Laskin, Esq.
<i>In the Matter of Tenure Charges of Cuntrera, Passaic County Voc. SD</i> 11/27/15	<p>School District filed Inefficiency Tenure Charge against tenured Math Teacher. Teacher alleged that the SD failed to provide accommodations to teacher's working conditions, and therefore the SD actions were (1) discriminatory and/or (2) arbitrary and capricious.</p> <p>2013-14 Overall Rating: Partially Effective - placed on a CAP for the 2014-15 school year.</p> <p>2014-15 Overall Rating: Ineffective</p> <p><u>The teacher alleged that:</u></p> <ul style="list-style-type: none"> • The SD did the #2 observation immediately following his return from an extended leave; • The SD performed the #3 & #4 evaluations on two consecutive days in May; • The SD failed to complete the #2 evaluation by February 15th; • The SD failed to properly adhere to pre and post observation conference requirements; • The SGO's to be utilized were not collaboratively developed; • Following the teacher's accommodation request in February 2015, the SD retaliated 	<p>It is the SD's responsibility to ensure that procedures are followed. It is undisputed that conference requirements were not satisfied - they either did not occur, did not have the proper attendees, or were not in person.</p> <p>When the teacher returned after the medical absence, he was assigned to a different class, and then was suspended. The SD was unreasonable when they evaluated the teacher his first day back after an extended leave. Additionally, performing two evaluations two days in a row did not give the teacher time to improve during the time period in between the evaluations - one of those observations should have been a mid-year evaluation.</p> <p>The SD did not attempt to help the teacher succeed and meet the goals of the CAP. The timing of the observations was arbitrary and capricious.</p> <p>The teacher kept the SD informed as to the necessity of his medical absences. The teacher had not had prior absenteeism issues, and did not receive progressive discipline in this case. The SD received a letter from the teacher's physician in April, but did not grant or deny the accommodation</p>	Mattye M. Gandel

	<p>against him by suspending him.</p> <ul style="list-style-type: none"> • SD did not prove excessive absenteeism, and failed to show progressive discipline if such a problem existed. <p><u>The SD argued that:</u></p> <ul style="list-style-type: none"> • The teacher was absent from January through March, so a February evaluation could not be completed; • The teacher falsified the SGO scores; • That the timing of the evaluations were reasonable • The teacher (and his physician) did not timely submit medical documentation, and therefore an accommodation could not occur until the documentation had been received; • Excessive absenteeism. 	<p>requests until June. At no time had the teacher been declared "unfit for duty", and therefore the suspension was unreasonable.</p> <p>Holding: Tenure charges DISMISSED. Teacher is reinstated with back pay and continue to receive the benefits of the CAP for the remaining 2015-16 school year.</p>	
<p><i>In the Matter of Tenure Charges of S. Thomas, SOSD City of Newark</i></p> <p>11/16/15</p>	<p>School District filed Inefficiency Tenure Charge against 23 year tenured Math Teacher. Teacher filed Motion to Dismiss, arguing that the SD failed to factor the appropriate SGO into her final evaluation and that the SD fabricated the evidentiary record to overcome its shortcomings.</p> <p>2013-14 Overall Rating: Partially Effective - placed on a CAP for the 2014-15 school year.</p> <p>2014-15 Overall Rating: Ineffective</p> <p>In September 2014, teacher administered a diagnostic math test to her students "in which 23 of her 26 students were unable to answer questions about circles, and in which 20 of 26 students were unable to make geometric constructions and express geometric properties with equations."</p> <p>Teacher and VP met to create a CAP. Both</p>	<p>It is clear that the SD and the teacher appropriately collaborated in creating the goals and requirement to re-administer the September 2014 diagnostic test in April 2015 contained within the CAP. The teacher did not offer any proof that she was coerced, forced or manipulated into signing her 2014-2015 CAP.</p> <p>The teacher admitted that she did not administer the test in April 2015 and that her students were "still learning circles" at that time. She did not request an extension of time in which to re-administer the September 2014 diagnostic test.</p> <p>As of May 14, 2015, teacher still had not met the goal of her students understanding and applying theorems about circles, yet she insists the SD rushed to administer the annual summative evaluation without the results of the diagnostic exam that she blatantly refused to administer in April 2015. Teacher's lack of administering the</p>	<p>Gerard G. Restaino</p>

	<p>parties signed a finalized CAP, which the teacher did not amend after it was finalized. CAP listed goals of: teacher's students being able to (1) understand and apply theorems about circles; and (2) make geometric constructions and express geometric properties with equations. Teacher was to re-administer the September 2014 diagnostic math test in April 2015 to judge her students' progress (i.e. - the SGO at issue).</p> <p>Teacher failed to re-administer the test in April 2015, and never requested an extension of time to administer the test. Instead, the teacher submitted a spreadsheet consisting of students' scores on exit slips and tests between December 2014 and January 2015. Teacher argues that SD should have given her a later opportunity beyond April 2015 to re-administer the test, and therefore cannot now bring Inefficiency Charges.</p>	<p>diagnostic test cannot be held against the SD.</p> <p>Holding: Motion to Dismiss denied.</p>	
<p><i>In the Matter of Tenure Charges of Clarke-Huff, Elizabeth BOA, Union County</i></p> <p>11/16/15</p>	<p>School District filed Tenure Charges against tenured Respondent for allegations of Conduct Unbecoming, Insubordination and Chronic Absenteeism. Respondent filed a Motion to Dismiss the claims.</p> <p><u>Conduct Unbecoming:</u> SD alleged that the Respondent lied to the SD about her child's residency, and therefore committed "theft by deception" in the form of her child inappropriately incurring tuition costs of \$17,283.00.</p> <p><u>Insubordination:</u> SD alleged a pattern of numerous infractions over an extended period of time.</p> <p><u>Chronic Absenteeism:</u> SD asserted instances of chronic absenteeism between November 2001 and School Year 2014-15. In June 2011, the SD</p>	<p>Although the Arbitrator has no jurisdiction over the question of the child's actual residency, the SD can legitimately pursue a claim of any tenured employee making false declarations, particularly false declarations related to the business of the BOE, as well as the claim for "stealing services" in the form of tuition.</p> <p>The allegations pertaining to Chronic Absenteeism between November 2001 and June 2011 have already been addressed, as they were part of the June 2011 increment withholding decision and subsequent settlement, and shall be dismissed. Whether or not the SD settled as a "business decision" is irrelevant - these particular issues have already been addressed.</p> <p>The Absenteeism allegations after June 2011</p>	<p>Ruth Moscovitch</p>

	withheld the 2011-2012 increment for this behavior from November 2001 through June 2011. Respondent filed a grievance. The parties ultimately reached a settlement of the grievance and the SD restored the Respondent's increment.	through 2015 have not previously been addressed, and may be pursued at this time. Holding: Motion to Dismiss granted in part and denied in part.	
<i>In the Matter of Tenure Charges of Howell, Orange Sch. Dist.</i> 11/8/15	School District filed Tenure Charges against Assistant Principal. After assignment of the Tenure Charges to the Arbitrator, Respondent resigned his position with the School District.	Holding: Tenure Charges are moot.	Melissa H. Biren, Esq.
<i>In the Matter of Tenure Hearing of Mastriana, Sch. Dist. of the Township of Hillsborough</i> 10/9/15	<p>School District filed Inefficiency Charges against tenured Special Education / Resource Center Teacher as a result of the teacher receiving "Partially Effective" ratings in 2 consecutive years.</p> <p>On 9/9/15, the NJDOE Director referred the case to the Arbitrator and sent notice to the parties' attorneys by Regular U.S. Mail. Counsel for the SD did not receive the notice until 9/11/15. Less than 2 hours after receiving the aforementioned notice on 9/11/15, the School District attorney provided the Teacher's attorney with a witness list and testimony summaries.</p> <p>Counsel for the teacher filed a Motion to Dismiss the Inefficiency Charges based upon the SD's failure to comply with the procedural requirements of submitting its witness list / testimony summaries no later than 9/9/15 - the date that the NJDOE Director had referred the case to an Arbitrator.</p>	<p>It is impractical to expect a SD to transmit the documentation to the teacher's counsel prior to actual receipt of notice of the referral to the Arbitrator by the SD attorneys. A party cannot assume responsibility for meeting a legally significant discovery timeline absent notice of the event that triggers the timeline. It is the receipt of notice of referral that governs.</p> <p>Holding: Motion Denied.</p>	Joseph Licata, Esq.

<p><i>In the Matter of Tenure Charges of Gilda Nicole Harris, SOSD of the City of Jersey City</i></p> <p>10/2/15</p> <p>Affirmed: 2018WL2122743 NJ App Crt.</p> <p>5/9/18</p>	<p>School District filed 8 claims of Conduct Unbecoming and 1 claim of Excessive Absenteeism Charges against tenured teacher in September 2014, and then filed further charges including 5 Conduct Unbecoming and 1 Neglect of Duty claims.</p> <p><u>School District - 1st Tenure Charges:</u> Conduct Unbecoming:</p> <ul style="list-style-type: none"> • Embarrassed struggling/failing students by making them stand in front of the class and separating students by academic performance; • Dividing her 4th grade class into 2 lines - one for "dark skin" students, and one for "light skin" students and then comparing the lines; • Yelling at students, claiming that they had betrayed her, and threatening to have a student transferred; • Disparaging other teachers in front of her students; • Violating the SD's Discrimination Policy; • Violating the SD's Equal & Bias-Free Access to School Policy; • Failing to maintain a professional relationship with students; • Being disrespectful to students; • Engaging in harassing and discriminatory behavior. <p>Excessive Absenteeism:</p> <ul style="list-style-type: none"> • 2007-08: 39 Absences; • 2008-09: 12 Absences; • 2009-10: 14 Absences; • 2010-11: 13 Absences; • 2011-12: 13 Absences; • 2012-13: 17 Absences; • 2013-14: 10 Absences; 	<p><u>1st Tenure Charges:</u> Conduct Unbecoming</p> <p>The SOSD's allegations regarding the classroom arrangement and putting the children into separate lines based upon complexion, are credible and supported by the evidence. Such arrangements negatively affects students' self esteem. Teacher's testimony demonstrates that she was "not cognizant of the negative impact such an arrangement might have on her students and did not seek to cause intentional harm." However, this behavior was inappropriate and demonstrated exceptionally poor judgment. The teacher should have used better methods to teach her students about race issues.</p> <p>Although there does not appear to be any intent to discriminate, the act of separating the students into two lines based upon race is a discriminatory act, which had a harmful effect.</p> <p>The claims of the teacher yelling at her students, disparaging other teachers, depriving students of access to school, and failing to maintain a professional relationship with her students are not supported by the evidence.</p> <p>Excessive Absenteeism</p> <p>The evidence supports this charge. Teacher does not contest that she was absent 118 times during the 7 year period (avg. 17 days per year). This is excessive.</p> <p><u>2nd Tenure Charges:</u> Conduct Unbecoming</p> <p>Schools must have written permission from the parent or eligible student to release</p>	<p>Howard C. Edelman, Esq.</p>
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	<ul style="list-style-type: none"> • Despite repeated warnings, memoranda and counseling, this behavior has not improved. <p><u>School District - 2nd Tenure Charges:</u> <i>Conduct Unbecoming:</i></p> <ul style="list-style-type: none"> • Teacher's response to first tenure charges improperly included un-redacted confidential pupil records and public information; <ul style="list-style-type: none"> ○ Submitted pupil records from 2005-2014 which included full names, grade levels and classes attended; ○ Teacher intentionally misappropriated and disclosed pupil records and pupil information, and did not have parental or SD consent in violation of FERPA; • Teacher's exhibits included pupil statements, wherein she asked students to write negative comments about other teachers; • Teacher required students to write negative statements about their study habits and home life, forcing students to reveal private information regarding their families; • Teacher's assignments constituted improper student surveys; • Teacher violated the "Pupil Rights Amendment", which requires written consent from parents/guardians prior to students being questioned about particular topics; <p><i>Neglect of Duty:</i></p> <ul style="list-style-type: none"> • Teacher failed to follow the SD curriculum and her lesson plans. <p><u>Teacher Defenses - 1st Tenure Charges:</u> She has been a teacher for this SD since 1999, and prior to these Tenure Charges, she has had an unblemished disciplinary record. <i>Conduct Unbecoming:</i></p>	<p>information from a student's records, except for legitimate educational interests. Although the teacher did not intentionally misappropriate and disclose confidential student records and information, her actions still are a technical violation.</p> <p>Technically, the teacher did violate the Pupils Rights Amendment. However, there is no evidence that her actions were "willful, placed the students at a risk of harm, or demonstrated she is unfit to be a teacher."</p> <p><i>Neglect of Duty</i> Although the teacher did not explicitly instruct her students to write letters complaining about other staff, through her actions, she did elicit and encourage their production, which is unprofessional. The writings regarding the students' home life did disclose private information and were not part of the curriculum, but there is no evidence of a risk of harm to the students from doing this activity. There is no evidence that the teacher neglected her duties.</p> <p><i>Determining Discipline</i> Although a significant penalty is warranted, termination is not appropriate. She is a long term employee with no prior discipline. The teacher exercised poor judgment, but did not act in a manner that was willful, vindictive or with malicious intent.</p> <p>There is no evidence that the Teacher was previously disciplined for excessive absenteeism.</p>	
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	<ul style="list-style-type: none"> • Categorically denies the SD's allegations; • Teacher divided students in lines of boys and girls, not by skin complexion; • SD treated her unfairly upon her return from an extended leave; • SD had been aware of the seating arrangements for the students in her classroom; • Common theme she often had to teach her urban school students - "simply because a person's complexion or skin color is brown does not make him or her black. The fact a person is fair-skinned complexion doesn't make him or her white." <p>Excessive Absenteeism:</p> <ul style="list-style-type: none"> • Use of her contractual days throughout her tenure does not constitute excessive absenteeism. <p><u>Teacher Defenses - 2nd Tenure Charges:</u></p> <p>Conduct Unbecoming:</p> <ul style="list-style-type: none"> • Admitted to submitting the documents, but believed she could because the proceedings are private, and she therefore did not violate FERPA; • She did not require the students to write the statements as claimed by the SD. <p>Neglect of Duty:</p> <ul style="list-style-type: none"> • She encouraged the students to write journals and/or letters regarding issues that upset them, and they did this during "down time" such as indoor recess. Accordingly, there was no loss of instructional time. 	<p>Penalty: "Time Served" suspension from 11/19/14 through 9/8/15, less awarded back pay pursuant to the previous 6/11/15 award. Final warning concerning attendance.</p>	
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<p><i>In the Matter of Tenure Hearing of Brady, SOSD of the City of Newark</i></p> <p>9/11/15</p>	<p>School District filed Inefficiency charge against tenured teacher for receiving Ineffective and Partially Ineffective ratings during her 2012-13 and 2013-14 school year evaluations. School District first filed Inefficiency charges under Section 25, which were Dismissed on 12/7/14, because the 2012-13 evaluations could not be considered under the law. School District now files Inefficiency charges under Section 8. Teacher filed Motion to Dismiss.</p> <p>Teacher argued that the current Section 8 charges are inappropriate because:</p> <ul style="list-style-type: none"> • <u>The Law of Case Doctrine</u>: Parties are prevented from relitigating issues that have already been decided. • <u>Res Judicata</u>: Parties are prohibited from litigating a second lawsuit on the same claim that has been or could have been raised in the first lawsuit. • <u>Entire Controversy Doctrine</u>: Courts must determine an entire controversy in a single judicial proceeding whenever possible. 	<p>In the 12/7/14 Decision, the Arbitrator determined that the Inefficiency Claim under Section 25 was not viable because the 2012-13 evaluations could not be considered. The 2014 Decision did not discuss the merits of whether a Section 8 Claim would be viable. Therefore, the arguments of "The Law of Case Doctrine" and "Res Judicata" do not apply in this matter.</p> <p>However, nothing precluded the SD from raising the Section 8 Claim when it brought the Section 25 Claim in 2014. The 2015 Section 8 Charges are based upon the same facts as the 2014 Section 25 claim. Accordingly, the 2015 Section 8 Claim should have been raised at the same time as the 2014 Section 25 Claim, and the "Entire Controversy Doctrine" applies in this case.</p> <p>Holding: Motion to Dismiss granted in its entirety.</p>	<p>Joyce M. Klein</p>
<p><i>In the Matter of Tenure Hearing of Zepralka, Greater Egg Harbor Regional High Sch. Dist. BOE</i></p> <p>9/4/15</p>	<p>School District filed Conduct Unbecoming Charges against a tenured 19 year computer operator/secretary for consuming alcohol during school hours in the work place, when students were present.</p> <p>Although the employee had an unblemished record prior to this incident and a history of satisfactory / average evaluations, the SD had a zero tolerance-policy and was concerned about the potential harm to "young and impressionable</p>	<p>Since this was the employee's first incident of misconduct, her prior performance reviews were at least satisfactory, and she had received medical clearance to return to work without restrictions, termination is too severe a penalty at this time. There was no showing that the employee's rehabilitated status would not hold under a "last chance agreement."</p> <p>As a condition of continued employment, the SD can monitor the employee's performance</p>	<p>Ernest Weiss</p>

	<p>children."</p> <p>Employee voluntarily completed an 80 day in-patient employee assistance program, and was cleared to return to work without restrictions and determined to be fit for duty.</p>	<p>closely and may require reasonable random testing to insure compliance.</p> <p>Penalty: Tenure Termination is not sustained. The parties shall enter into a "Last Chance Agreement". The Arbitrator retained jurisdiction for any issues arising out of this Decision.</p>	
<p><i>In the Matter of Tenure Charges of Toni Lenz, SOSD of the City of Newark</i></p> <p>8/24/15</p>	<p>In January 2015, SOSD's Inefficiency charges against tenured teacher in August 2014 pursuant to Section 25 were dismissed. In March 2015, SOSD filed amended Inefficiency charges against teacher pursuant to Section 8, which were based upon the same factual allegations filed in the first Inefficiency charges.</p> <p>The SOSD argued that the Section 25 Inefficiency charges were dismissed on statutory grounds and prior to the merits of the claims being addressed, so therefore those merits should now be addressed under the currently filed Section 8 Inefficiency charges.</p> <p>Teacher asserted that the amended charges should be dismissed based upon The Entire Controversy Doctrine, <i>res judicata</i>, and that Inefficiency charges can now only be brought under Section 25.</p>	<p>Nothing can be found within Section 8 that would grant a BOE the right to process Inefficiency charges. Section 25 is the basis for Inefficiency charges.</p> <p>The amended charges are the same petition previously filed, without any new charges, which is in violation of <i>res judicata</i> and collateral estoppel.</p> <p>Holding: Motion to Dismiss granted. Reinstate teacher with full back pay, benefits and seniority. Reimburse teacher for any documented medical expenses incurred while under suspension.</p>	<p>Gerard G. Restaino</p>
<p><i>In the Matter of Tenure Charges of Linda Kelly-Gamble, SOSD of the City of Newark</i></p> <p>8/24/15</p>	<p>SOSD originally filed Inefficiency charges under Section 25, which were dismissed. SOSD refiled Inefficiency charges against tenured teacher under Section 8, based upon the same Statement of Evidence.</p> <p>2012-13: Partially Effective 2013-14: Ineffective</p>	<p>The SD did not previously simultaneously file Inefficiency charges pursuant to Section 25 and Section 8 in the matter that was previously dismissed. However, the SD could have filed charges under Section 8 when the initial Inefficiency charges were filed under Section 25, and failed to do so. "... all inefficiency charges filed against New Jersey educators as a result of evaluations performed</p>	<p>Michael J. Pecklers, Esq.</p>

	<p>The teacher argued that the amended charges were filed untimely, that the Section 8 claim had previously simultaneously been filed with the Section 25 claim, the 3 month period to move to Vacate the previous award lapsed and that Section 25 is the exclusive manner in which to pursue Inefficiency charges.</p>	<p>during the 2013-14 school year and beyond must be brought under <u>N.J.S.A. 18A:6-17.3</u>, which operates as the exclusive means of doing so and not concurrently under <u>N.J.S.A. 18A:6-16.</u>"</p> <p>Holding: Dismissed with prejudice. Reinstate teacher with full back pay and seniority, minus interim earnings and other appropriate offsets, and made whole for the loss of any contractual or statutory benefits during the intervening period.</p>	
<p><i>In the Matter of Tenure Charges of Arnold Anderson, City of New Brunswick Sch. Dist.</i></p> <p>8/19/15</p>	<p>SD filed Inefficiency and Conduct Unbecoming Charges against tenured teacher. The Inefficiency charges were previously dismissed on 7/2/15 as improperly filed, and the remaining charge pertains to the teacher's chronic tardiness.</p> <ul style="list-style-type: none"> • 2013-14: Late 49 times after 8:40 am and 16 late punch in times of 5 or more minutes; • 2014-15: Late 40 times after 8:40 am and 6 late punch in times of 5 or more minutes. <p>The teacher asserted that despite his tardiness, he performs well in the classroom.</p>	<p>The SD meticulously tracked the teacher's cascades of tardiness, none of which were plausibly explained by the teacher.</p> <p>Students are entitled to receive the teacher's very best efforts for the entire period, and not merely for that remaining portion of the period following the teacher's chronically late arrivals.</p> <p>With a decade and a half of service, progressive discipline and due process sufficiently militate against summary discharge in this case.</p> <p>Penalty: The tenure charges were filed in May 2015. Teacher shall remain suspended without pay until the first day of scheduled classes after January 1, 2016.</p>	David L. Gregory
<p><i>In the Matter of Tenure Hearing of Thomas, SOSD of the City of Newark</i></p> <p>8/5/15</p>	<p>SOSD filed Inefficiency Charges. Respondent filed a Motion for Summary Judgment in April 2015. SOSD filed its Opposition to MSJ and a Motion to Stay the proceedings. Ultimately, in July 2015, the SOSD advised the Arbitrator that it withdraws the Inefficiency Tenure Charges in its entirety. This is a withdrawal and not a</p>	<p>Holding: Motion to Withdraw is Granted.</p>	Robert T. Simmelkjaer

	settlement.		
<p><i>In the Matter of Tenure Hearing of Mashore, SOSD of City of Camden</i></p> <p>8/4/15</p>	<p>SOSD filed Inefficiency Charges against Tenured Vice Principal. The VP was evaluated three times, and rated Ineffective, Partially Effective, and Partially Effective. He did not receive a Corrective Action Plan (CAP) or 4th evaluation as required by the SOSD's stated evaluation rubric.</p> <p>The SOSD argued that a CAP is not required since an Administrator in this situation can be dismissed under the State Intervention Statute after one year of Ineffective/Partially Effective evaluations, and that the recommendations contained within the evaluations equate to what would have been in a formal CAP.</p> <p>The VP argued that the SOSD failed to implement a CAP, conduct a 4th evaluation or provide additional professional development, as required by its own process and TEACHNJ standards.</p>	<p>Both TEACHNJ and the State Intervention Statute are applicable in this matter. By TEACHNJ's plain language, a district's failure to adhere to the evaluation process, including failing to provide a CAP, is a failure to adhere to the evaluation process and may be grounds to deny a charge of inefficiency. There is no distinction made for a state administered school district pertaining to these issues.</p> <p>In this case, the SD did not provide a CAP or a 4th evaluation to the VP.</p> <p>Holding: Dismissed. Reinstatement with all back pay and emoluments owed.</p>	Edmund Gerber
<p><i>In the Matter of Tenure Hearing of Brown, SOSD of City of Camden</i></p> <p>7/14/15</p>	<p>Respondent was a Math teacher in Camden SD from 1992 until September 2009, when she became VP at the High School. In February 2013, she was reassigned to the Middle School for the remainder of the school year. On May 1, 2013, Respondent was notified that she was not renewed as VP due to economic reasons. The State assumed operation of the SD on June 25, 2013. On July 25, 2013, she was notified of reassignment to the Dudley Family School, a K-8 school as Vice Principal.</p>	<p>The School District's actions against Petitioner were Arbitrary and Capricious because the SD did not strictly adhere to its own "Evaluation and Support System" prior to bringing tenure charges.</p> <ul style="list-style-type: none"> - Respondent never received a CAP - Once she received the CAP, the respondent should have had one additional evaluation beyond the 3 performed - Recommendations received in an evaluation do not constitute the functional 	Scott E. Buchheit

	<p>When the Respondent reported to the Dudley Family School in early August 2013, the Principal was on medical leave. She served as the Administrator responsible for Dudley when school began on September 2nd. The Principal resumed his position on September 19th. From October 9th through December 5th, the Respondent was on medical leave for weight reduction surgery.</p> <p>Respondent's 3 evaluations for the 2013-14 school year, and the Annual Performance Report rated her as "Partially Effective". The School District filed Inefficiency Tenure charges against Respondent on June 27th.</p> <p><u>School District Arguments:</u></p> <ul style="list-style-type: none"> • Petitioner was qualified for the assignment • Her claims of personality conflict are meritless • She did not follow recommendations, nor did she seek out additional assistance <p><u>Respondent Arguments:</u></p> <ul style="list-style-type: none"> • The SD failed to comply with the 12 month assessment cycle required by the State Intervention Statute. She began as VP at Dudley in August 2013 – Filing in June 2014 is therefore premature • The SD failed to implement a required CAP. • The SD failed to provide “additional support” and “at least one additional observation” as required under the law. • The SD failed to provide adequate training on each component of the evaluation rubrics, and “more thorough training for any teaching staff member who is being evaluated in the school district for the first time.” There had only been one, limited training on August 21, 	<p>equivalent of a CAP, as there is a clear distinction between Recommendations and a CAP</p> <ul style="list-style-type: none"> – These circumstances were at least “highly unusual”, and the lack of meaningful communication and collaboration during the school year was dysfunctional – It was an “undue burden” on the Respondent to find ways to work with the Principal in this situation – SD chose to ignore the context of the situation in which the Respondent was being evaluated, and focused on only the domains and sub-domains of the evaluation rubric. <p> Holding: Tenure charges Dismissed.</p>	
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	2013.		
<p><i>In the Matter of Tenure Hearing of...</i></p> <p><i>Lechelt v. Edison Middlesex County</i></p> <p><i>Weber v. Edison Middlesex County</i></p> <p><i>Van Pelt v. Edison Middlesex County</i></p> <p>6/30/15</p>	<p><u>FACTS:</u></p> <ul style="list-style-type: none"> - Four teachers attended PD at the School District's BOE office - During the PD, using SD issued Chromebooks on the SD's Internet Server, the four teachers engaged in a chat room discussion; - The transcript of the chat room recorded their conversation, which included: negatively discussing the presenters' appearance, discussing the appearance of others in attendance at the seminar, discussing the Superintendent's appearance (looks like a turtle) and sexual prowess, making fun of Special Education students (taking the short bus, etc.) oral sex, anal sex, and masturbation; - Another member of the audience sitting behind the four teachers took screen shots of the chat room conversation, and reported the actions to the Administration <p><u>Common Charges:</u></p> <p><i>Conduct Unbecoming</i></p> <ul style="list-style-type: none"> • Inappropriate Staff Conduct with other Staff Members • Inappropriate Comments • Disruption of Professional Development • Failure to Pay Attention to PD • Misuse of the Computer Network • Misuse of School Property 	<p><u>Decision Rationale Summary:</u></p> <ul style="list-style-type: none"> - All of the teachers had received the SD's policy re: utilizing school issued electronic devices and server – there was no Expectation of Privacy. - It does not matter that only the teacher that turned them in saw what they were doing – it was inappropriate behavior. - The four teachers conducted their “discussion” in a manner that could be viewed by others (conversation was visible on their screens, laughing about what they were doing drew attention to them, etc.) – so it was not unreasonable for someone to observe and report their behavior. <p><i>Penalty</i></p> <p>Lechelt: Outstanding Teacher of the Year 2012 - Suspended for 120 days without pay and one time loss of salary increment.</p> <p>Weber: Suspended for 90 days without pay</p> <p>Van Pelt: Created the chat room and had a series of Progressive Discipline for previous</p>	<p>Arthur A. Riegel, Esq.</p>

	<p>Insubordination</p> <ul style="list-style-type: none"> • Violation of School District Policies (Sex Harassment) • Violation of School District Affirmative Action Policies • Inappropriate Staff Conduct <p><u>Common Defenses:</u></p> <ul style="list-style-type: none"> • Expectation of Privacy in the chat room; • The teacher that turned them in should not have been paying attention to a private discussion; • No students saw the chat room; • No one else (besides the teacher that turned them in) was aware of the comments, so no harm was done to anyone discussed 	<p>violations of the Electronics Policy. Terminated</p> <p>Fourth Teacher: Resigned</p>	
<p><i>In the Matter of Tenure Hearing of Sandra Cheatham, SOSD City of Newark</i></p> <p>6/25/15</p>	<p>SOSD previously filed Inefficiency charges against teacher under Section 25, which were dismissed. SD filed Amended Inefficiency charges under Section 8, and asserted that the Section 25 charges had been dismissed based upon procedural issues, not the merits of the claim. Furthermore, the Legislature could not have intended to "hand poorly performing teachers a free pass for three years after the Act's effective date."</p> <p>Teacher argues "Law of the Case", "Entire Controversy Doctrine" and <i>res judicata</i>, as the first Inefficiency charges are replicated in the amended filing, and the SD did file to vacate the dismissal of the Section 25 charges. Additionally, prior to filing a WC claim, all of her evaluations had been good.</p>	<p>The District cannot proceed with Section 8 charges. The SD cannot have a "second bite of the apple" by refiling the same charges under a different Section. <i>Res Judicata</i> applies, as the allegations in both sets of charges are virtually identical. Furthermore, the SD did not attempt to vacate the first Decision.</p> <p>Holding: Inefficiency charges dismissed. Reinstate teacher with full back pay and benefits.</p>	<p>Stephen M. Bluth</p>

<p><i>In the Matter of Tenure Hearing of Jodi Thompson, SOSD City of Newark</i></p>	<p>SOSD filed Inefficiency charges against tenured teacher under Section 25, and then filed a second set of charges under Section 8, arising from the same facts and circumstances during the 2012-13 and 2013-14 school years.</p>	<p>Section 25 is inappropriate to use for evaluations occurring during the 2012-13 school year. The 2012-13 evaluation could be a basis for a misconduct claim under Section 8, as such misconduct charges (excessive absenteeism/chronic tardiness) "were not dependent upon application of an approved ... rubric".</p>	<p>Daniel F. Brent</p>
<p>6/19/15</p>	<p>Part of the teacher's ultimate Partially Effective rating was linked to her having been absent 14 times, tardy 82 times, and late 65 times during the 2012-13 year. A CAP was created, although the parties disputed the extent of the teacher's participation in creating the plan.</p> <p>Teacher argues the tenure charges are premature because they utilize the 2012-13 evaluations. The SOSD also acted arbitrarily and capriciously when it conducted an evaluation of the teacher during her first day in a new assignment upon her return from FMLA leave.</p> <p>SOSD asserted that the evaluations were properly performed and that the teacher declined to take advantage of the resources offered to her for improvement.</p>	<p>The teacher's rating of "Partially Effective" was reached properly when her attendance issues were considered and ultimately lowered her rating from "Effective". However, the SOSD failed to discipline her or bring charges immediately under Section 8 for her poor attendance.</p> <p>The SOSD's argument that the pilot year 2012-13 evaluation can be a basis for an Inefficiency claim fails.</p> <p>Teacher's claims of retribution by the SOSD for her use of the FMLA leave are unsubstantiated.</p> <p>The SOSD's filing of the Section 8 charges after the record had been closed on the Section 25 charges (which were based upon identical facts) is not permissible.</p> <p>The SOSD acted in an arbitrary and capricious manner when it evaluated the teacher on her first day of teaching a new class, which is a procedural flaw regarding the 2013-14 evaluation.</p>	<p><i>Holding:</i> Motion to Dismiss granted. Reinstatement with owed back pay and benefits.</p>

<p><i>In the Matter of Tenure Hearing of Leonard Yarborough, SOSD City of Newark</i></p> <p>6/8/15</p> <p>Affirmed: 455 NJSuper. 136 NJ App Crt.</p> <p>6/8/18</p>	<p>SOSD filed Inefficiency charges against tenured teacher. The first filing of Inefficiency charges against this teacher had been dismissed on 12/9/14, as the SOSD relied upon the 2012-13 summative evaluations to bring the first charges.</p> <p>The SOSD filed Amended Tenure Charges alleging inefficiency under Section 8 against the teacher. The amended charges contained the same factual allegations as the original tenure charges. Teacher filed a Motion to Dismiss the current Amended Tenure Charges.</p>	<p>The SOSD's tenure charges are not untimely, and <i>res judicata</i> does not apply in this case. However, the Entire Controversy Doctrine requires the SOSD to present its entire controversy in its initial pleadings. There was nothing preventing the SOSD from alternatively pleading a count of Inefficiency under Section 8 in the first Inefficiency charges filed against the teacher.</p> <p> Holding: Motion to Dismiss granted. Teacher shall be made whole for all lost wages and benefits.</p>	Edmund Gerber
<p><i>In the Matter of Tenure Hearing of Marie Ebert, SOSD City of Newark</i></p> <p>5/21/15</p>	<p>SD filed tenure charges which were originally dismissed without prejudice on 1/30/15 for failure to comply with statutory time limits. SD filed amended tenure charges of Inefficiency (Section 8 & 25) and Unbecoming Conduct.</p> <p>Teacher filed a Motion to Dismiss the amended charges asserting that they were untimely and such charges can only be filed under Section 25.</p>	<p>(1) The amended charges were timely filed.</p> <p>(2) The amended charges under Section 25 of TEACHNJ are to be dismissed, as they rely on evaluations from the 2012-13 school year.</p> <p>(3) The tenure dispute arose during the <i>transition</i> from Section 8 to Section 25. A charge involving the 2012-13 school year cannot be brought under Section 25, but there is nothing prohibiting the charges from being brought under Section 8. The Unbecoming Conduct charges are also proper under Section 8.</p> <p> Holding: Denied. Both charges shall proceed to a hearing.</p>	Tia Schneider Denenberg

<p><i>In the Matter of Tenure Hearing of Lat Sall, SOSD of City of Paterson</i></p> <p>5/13/15</p>	<p>SD filed Conduct Unbecoming charges against tenured French Teacher. Allegations included:</p> <ul style="list-style-type: none"> • Verbal altercation with a student • Leaving his classroom to follow the student • Deliberately spitting on the student in a stairwell • Aggressive behavior towards students • Aggressive behavior toward a principal • Using sick leave to attend a job interview • Embarrassing students and violating their privacy rights by posting test results • Insubordination and hostile conduct during a meeting regarding his transfer request • Inappropriate and hostile behavior towards a new supervisor <p>The SD ultimately withdrew all charges except those pertaining to the incident of leaving his classroom, engaging in a verbal altercation with a student and then spitting on her.</p> <p>The teacher denied the allegations. He asserted that the complaining student was a disrespectful, defiant, and uncooperative student, with many disciplinary issues in his classroom. He claimed that the student's allegations were retaliation for his trying to impose discipline.</p>	<p>Although video footage in this matter does not show spitting conclusively, the footage does circumstantially seem to indicate that the teacher spat at the student while in a stairwell. Spitting is a gesture of contempt. It is repulsive, demeaning, and calculating to damage a student's self-esteem.</p> <p>An unbiased student witness to the incident substantiated the complaining student's account of the incident.</p> <p>The teacher claimed that he had never been warned against leaving the classroom to follow a hostile student. Although a formal warning or disciplinary penalty had not been imposed, the teacher had previously been chastised for following an unruly student out of the classroom. Given the prior warnings resulting from the first incident, the teacher had ample reason to know that following the student into the stairwell would be regarded as a deliberate abdication of his responsibilities.</p> <p>Although the teacher appears to be a capable teacher with multi-lingual skills and good performance reports, by reacting intemperately to an aggressive student in defiance of clear caution, he gave the SD grounds for doubting his self-control.</p> <p><i>Holding:</i> Discharge.</p>	<p>Tia Schneider Denenberg</p>
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<p><i>In the Matter of Tenure Hearing of Elizabeth Corbacho-Musngi, SOSD Newark</i></p>	<p>SOSD filed Conduct Unbecoming charges against tenured pre-school teacher for excessive absenteeism.</p>	<p>The SOSD improperly included FMLA leave days in its calculation of absences during the 2010-11 and 2011-12 school years. Disciplinary action cannot be imposed in connection with FMLA approved absences.</p>	<p>Melissa H. Biren, Esq.</p>
<p>5/12/15</p>	<p>2010-11: 42 Absences 2011-12: 69 Absences 2012-13: 47 Absences 2013-14: 126 Absences</p>	<p>Approximately 170 absences over a 2 year period is an excessive number of absences. "That these absences were due to legitimate reasons does not require dismissal of tenure charges." Whether the underlying reasons for the absences has abated is another factor to consider.</p>	
	<p>SD argued that the excessive absenteeism failed to meet acceptable standards and adversely impacted the students. Teacher had been warned about this issue.</p>	<p>Prior to these tenure charges, the only discipline the teacher had received in connection with absenteeism was a fine equal to 3 days pay. "There is little evidence of counseling or progressive discipline." At this point, it does not appear likely that the pattern of absenteeism will continue.</p>	
	<p>In 2013-14, Teacher also had FMLA leave, but failed to contact the SD with regard to her unauthorized absences beyond the approved FMLA period. Teacher's failure to report for work at the end of the approved period and failure to keep the SD apprised of her status, resulted in her being considered AWOL, for which she was suspended.</p>	<p>The SD has not proven that the teacher was AWOL, and those charges shall be dismissed.</p>	
	<p>Teacher explained that her brother, uncle and husband had all died in 2009. The psychological impact of her husband's declining health and ultimate death had a severe effect upon her, and their 3 children, the oldest of which was 10 years old. Teacher also had restless leg syndrome (now under control after treatment), and fell down a flight of stairs and broke her jaw and cheekbone, ultimately requiring two surgeries.</p>	<p>Penalty: Suspension without pay from 5/12/15 through the end of this school year in addition to the salary withheld during the 120 day suspension period for these tenure charges, and upon her return, the withholding of a salary increment for the 2015-16 school year only. Reinstate teacher at the start of the 2015-16 school year.</p>	
	<p>Teacher claimed that she kept in touch with the school via text messages and calling Sub-Finder and the school secretary. She admitted to not submitting paperwork, but claimed that she did not think that she had to and said that she was not thinking clearly. She claims that the issues</p>		

	that had caused her absenteeism are now resolved.		
<p><i>In the Matter of Tenure Hearing of Namibia Burke, SOSD of Camden</i></p> <p>3/30/15</p>	<p>SOSD filed charges against tenured teacher for excessive absenteeism and tardiness.</p> <p>Teachers are allotted 10 lateness grace periods on a yearly basis.</p> <ul style="list-style-type: none"> • 2010-11: Absent 17 days (includes 1 personal day) and late 26 times; • 2011-12: Absent 17 days and late 41 times (most absences occurred on Mondays or Fridays); • 2012-13: Absent 30.5 sick days, 1 personal day, 5 bereavement days, 5.5 absences docked from pay as excess of allotted sick time, and late 58 times (many absences again occurred on Mondays or Fridays). • 2013-14: Absent 14 days (includes 2 personal days) and 3.5 days absences docked from pay as excess of allotted sick time, and late 34 times; • Totals: Absent 95.5 days and late 159 days. <p>The SOSD had the following documentation of the teacher's notice of this issue:</p> <ul style="list-style-type: none"> • May 2010 - the parties agreed to an Individual Attendance Improvement Plan; • March 2011 - Teacher Evaluation Observation Report noting that attendance and punctuality are unacceptable; • February 2013 - Letter of Reprimand for excessive absenteeism & tardiness and 	<p>Subtracting the bereavement and jury duty absences from the SOSD's totals, the teacher was absent 89.5 days for the 4 year period (22.34 days per year) and tardy 159 days (39.79 times per year). If the "lateness grace period" is taken into account, there is a total of 119 tardy days (29.75 times per year).</p> <p>The SD has an absolute right to mandate that teachers will be in the classroom on time to teach students. Unlike many other schools, this SD provides a lateness grace period.</p> <p>The teacher consistently reported to work late and was consistently absent. Her actions had a negative impact on her students. The teacher waited until after tenure charges were filed and she had been suspended to have surgery for her tonsillitis. Her choice to delay treatment for the tonsillitis led to her being absent from work, which is "on her".</p> <p>There is nothing in the record to mitigate against the teacher's absences and lateness.</p> <p><i> Holding: </i>Discharge.</p>	Gerard G. Restaino

	<p>requested teacher to submit an Improvement Plan;</p> <ul style="list-style-type: none"> • November 2013 - Letter of Reprimand for excessive absenteeism & tardiness; • February 2014 - Letter of Reprimand for excessive absenteeism & tardiness. <p>The SOSD argued that the teacher blamed her marital problems for her tardiness. Her behavior detrimentally affected the students as demonstrated by the lower NJASK scores of her students, and it is extremely doubtful that she would improve if given another opportunity. An increment withholding would not deter the teacher's conduct, as she has already shown that financial penalties have no impact upon her.</p> <p>The teacher did not deny the number of absences or tardiness, but claimed that she had legitimate reasons for her behavior, including tonsillitis.</p>		
<p><i>In the Matter of Tenure Hearing of Rinita Williams, SOSD of the City of Newark</i></p> <p>3/30/15</p>	<p>SOSD filed initial Inefficiency tenure charges against teacher in July 2014 under Section 25. Teacher challenged the charges as premature, and asserted that the SOSD failed to respect her FMLA / WC leave status and retaliation for filing disability / discrimination complaints. SOSD argued (and subsequently withdrew the argument) that if the Section 25 charges were to be dismissed, the allegations should revert to Section 8 charges. Evidence was submitted and witnesses testified during the pendency of the initially filed Inefficiency charges.</p> <p>SOSD then filed amended charges under Section 8, which were assigned to this Arbitrator. The Section 25 charges Arbitrator denied the SOSD's request for Abeyance, and issued a Decision</p>	<p>Inefficiency charges under Section 25 utilizing 2012-13 Test Year Evaluations are not valid. The SD's actions were arbitrary and capricious, and it did not satisfy all of the requirements regarding observations and conferences. One of the teacher's evaluations was done immediately upon her return from an extended leave, which is unfair and seemingly "calculated to catch a teacher before she has re-acclimated herself to the classroom and gotten her bearings."</p> <p>The teacher was given multiple involuntary reassignments, including 8th grade classes for which she was not certified to teach, and ultimately injured by a student. "The principal manifestly believed the teacher to be</p>	<p>Tia Schneider Denenberg</p>

	<p>denying the Inefficiency charges.</p> <p>2012-13: Partially Effective 2013-14: Ineffective</p>	<p>exaggerating her injuries ... and regarded her a malingerer, despite a lack of concrete evidence. Those groundless views contributed to an unfavorable impression of the teacher's abilities and efforts."</p> <p>The SD cannot now amend its Inefficiency charges to include a Section 8 claim.</p> <p>Holding: Inefficiency charges dismissed.</p>	
<p><i>In the Matter of Tenure Hearing of Darlene Barnes, SOSD of Paterson</i></p> <p>3/24/15</p>	<p>School District filed 19 Conduct Unbecoming charges against tenured teacher for alleged inappropriate interactions / physical contact with a fellow teacher and a 13 year old female student.</p> <p><u>Student Issues:</u> A student went to a room occupied by Barnes to retrieve her bookbag. Barnes asked for proof of ownership. The student chose to try to run out of the room, and Barnes blocked the doorway. The teacher and student then allegedly began punching and slapping each other. Witnesses observed Barnes push the student backwards and ultimately on top of a table, restraining the student's arms. Barnes claimed that the student, who has been previously suspended for fighting, threatened that her mother was going to come to school to beat up Barnes. Barnes also claimed self defense.</p> <p><u>Staff Issues:</u> Barnes barricaded another teacher in a restroom while haranguing her.</p>	<p>The teacher was not a credible witness. Her testimony that she "never touched" the student was inconsistent with her claims of self defense. The teacher had the opportunity to retreat from the situation, but instead chose a stance of aggression. "In such circumstances, discharge in the first instance is fully in accord with progressive discipline, due process and just cause."</p> <p>The District did not meet its burden of proving the allegations regarding the alleged assault of the co-worker. "... the governing legislation compels expeditious presentation and conclusion to these proceedings. The District simply did not have enough time available to develop fully these particular Charges."</p> <p>Penalty: Discharge. Based upon allegations regarding inappropriate physical contact with a student.</p>	<p>David L. Gregory</p>

<p><i>In the Matter of Tenure Hearing of Edward Newton, SOSD of the City of Newark</i></p> <p>3/23/15</p>	<p>SOSD filed Inefficiency charges against 5 year tenured math/science teacher.</p> <p>2012-13 / 2013-14: Partially Effective</p> <p>2012-13 Evaluation requirements: a minimum of 1 formal observation (recommended 3 times, whether formally or informally), and a post observation conference within 10 calendar days following the formal observation (which may be extended due to the absence of either party).</p> <p>2013-14 Evaluation requirements: 3 observations, and those on a CAP required at least one additional observation performed by someone other than the teacher that performed the other observations. Teachers with CAPs require at least 2 short and 2 long observations, followed by a post-observation conference within 10 calendar days, and at least 1 pre-observation conference. Midyear conference required for all teachers on a CAP and all teachers received an annual evaluation.</p> <p>SOSD argued that despite satisfying all of the evaluation requirements and its good faith efforts, the teacher failed to improve. If the charges cannot be granted under the current TEACHNJ law, then the SD has shown by a preponderance of the evidence under the long-established efficiency standard that the teacher is an ineffective educator.</p> <p>Teacher argued that SOSD did not fairly consider the poor behavior issues and caliber of the students in his classroom. Additionally, Inefficiency charges are premature, as 2012-13 evaluations cannot be considered.</p>	<p>"Where the Commissioner refers a matter to an arbitrator, as the Commissioner has done here, after concluding that he cannot determine that the evaluation process has not been followed ... the statute affirmatively directs the arbitrator to 'hear the case' pursuant to Section 23 of the Act."</p> <p>An arbitrator is "precluded by the Act from reviewing the determinations relating to the ... classroom performance made by the District's evaluators". None of the defenses identified in Section 23 of the Act for dismissing Inefficiency charges are present in this case.</p> <p>Penalty: Discharge. Tenure charges are sustained.</p>	<p>Timothy J. Brown, Esq.</p>
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<p><i>In the Matter of Tenure Hearing of Lawrence Henchey, Sch. Dist. of New Milford</i></p> <p>3/4/15</p>	<p>School District brought multiple Tenure Charges against tenured teacher. Counts 1 through 4 and part of Count 5 relating to Inefficiency were previously dismissed. (See 1/3/15 Decision Summary). School District's Motion to Reconsider was denied. (See 1/6/15 Decision Summary).</p> <p>Charges within Count 5 pertaining to the 2013-14 school year alleging Incapacity and Conduct Unbecoming included:</p> <ul style="list-style-type: none"> • Inappropriate classroom conduct; • Inappropriate attitude towards others; • Negative overall work performance; • Failure to timely submit "Class Expectations" letter; • Being 17 minutes late for a 30 minute mandatory PARCC training session because he went to Wendy's for lunch; • Displaying a redacted email from a parent in the classroom to seemingly dissuade others from emailing him with complaints; • Inappropriate comments to students; • Taking a Personal Day without arranging for a Substitute Teacher and supplying lesson plans; and • Failure to comply with the Principal's weekly directives of utilizing Study Island, timely submitting Mid-Term grades and bringing requested materials to the weekly meetings with the Principal. <p>The School District had issued a non-disciplinary Corrective Action Plan for the 2011-12 school year, and withheld the teacher's salary and adjustment increments for the school years 2012-13 and 2013-14.</p>	<p>If a preponderance of the evidence supports disciplinary allegations, an employer must show that the penalty imposed is just in light of factors such as:</p> <ol style="list-style-type: none"> 1. The gravity of the offense; 2. The employee's overall record and length of service; 3. The provision of proper notice of rules and penalties; 4. An employer's adherence to progressive discipline; 5. Whether there has been lax enforcement of rules; and 6. Whether the employer's actions or failure to act contributed to the disciplinary offense(s). (See <i>Elkouri and Elkouri</i>, How Arbitration Works, 5th Edition, pp.903, et. seq.) <p>Any allegations proving to be pure Inefficiency or brought about by the evaluative opinion of an administrator have been dismissed. What remains is the teacher's willful disregard of and failure to comply with the Principal's important directives to assess student feedback and growth (Study Island) and timely assess student performance (mid-term grades).</p> <p>The teacher further compounded matters by exhibiting other episodes of unprofessional conduct including the late arrival to the PARCC training, late arrival to work without notice, use of the parent's email in the classroom, and his failure to call in a substitute and leave lesson plans for a personal day absence. The teacher alone had control over his destiny with respect to the aforementioned behaviors.</p>	<p>Joseph Licata, Esq.</p>
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<p><i>In the Matter of Tenure Hearing of LaRhonda Ragland, SOSD of Newark</i></p> <p>2/2/15</p>	<p>School District filed Inefficiency charges against 9 year tenured dance teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for Inefficiency tenure charges.</p> <p>The School District's Motion for Default Judgment based on the Teacher's untimely filing of her Answer had previously been denied.</p> <p>In 2013, the Teacher's elementary school position was eliminated from the budget and she was transferred to the Arts High School in "employee without placement" (EWP) status. The teacher taught a limited number of dance classes, along with other assignments including attendance, housekeeping, monitoring tardy students and substitute teaching various subjects, and observing one or two weeks of dance classes taught by others.</p> <p>The School District memorialized conduct of the teacher having a bad attitude and making inappropriate comments to staff and students, which allegedly had a negative impact on</p>	<p>The School District failed to show that it met the standard for the 2013-14 school year. (1) The teacher's 2013-14 evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a CAP; (2) that the District's actions toward the teacher throughout the 2013-14 school year were arbitrary and capricious; and (3) that such failures by the District materially affected the outcome of the teacher's 2013-14 annual evaluation.</p> <p>There were no pre-observation conferences between the parties in which they engaged in a substantive exploration of the questions to be answered in such a conference as contemplated by the District's Framework. The District only conducted 3 of the 4 required observations for teachers with a CAP. There is no exception to the 4 observation requirement.</p> <p>The District's actions toward the teacher relating to her evaluation and attempts to correct her deficiencies were arbitrary and capricious. Rather than making a real effort to</p>	<p>Timothy J. Brown, Esq.</p>

	<p>students. When observed teaching dance classes, the District opined that the teacher demonstrated a lack of pedagogy in her certified area and only a basic knowledge of instructional best practices. The teacher misused and mispronounced dance terminology in a level IV class which resulted in confusion among the students. As part of a CAP, the teacher was to observe Level A classes for one week. The teacher missed 2 out of 5 mandatory meetings, and her poor writing abilities had a significant impact on her ability to teach. The teacher also skipped hall monitoring and late door assignment duties.</p> <p>The teacher carried a Vocational Certificate based on her professional experience as a Nets cheerleader - she did not have a college degree.</p> <p>The School District argued that even if the Inefficiency Claim failed, it had put forth enough evidence to establish that the teacher was an Ineffective educator.</p>	<p>mentor and assist the teacher in developing and improving her teaching ability and skills during the 2013-14 school year, the Administration predetermined that she was a lost cause, undertook to "warehousing" her and placed her in a form over function by going through the motions of observing her rather than exercising the time and energy contemplated by both TEACHNJ and the District's Framework in evaluating and helping the teacher develop.</p> <p>Holding: Tenure charges Dismissed. Reinstatement teacher to dance teaching position and make teacher whole for any and all losses of pay, seniority and other benefits.</p>	
<p><i>In the Matter of Tenure Hearing of Rinita Williams, SOSD of Newark</i></p> <p>1/31/15</p>	<p>Petitioner requested that this matter be held in abeyance.</p>	<p>Holding: Denied.</p>	<p>Tia Schneider Denenberg</p>
<p><i>In the Matter of Tenure Hearing of Marie Ebert, SOSD of Newark</i></p> <p>1/30/15</p>	<p>School District filed Inefficiency and Conduct Unbecoming charges against tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for inefficiency tenure charges and the District's alleged failure to properly and timely comply with Teacher's Discovery requests. Additionally, the list of 10</p>	<p>The Legislature made it clear that the teacher was to receive "all evidence", including the items listed in the statute, "upon referral" of a case to Arbitration. This requirement (1) ensures that the teacher gains access to the District's evidence early enough to mount an effective defense and (2) ensuring that the proceeding begins swiftly and operates within</p>	<p>Tia Schneider Denenberg</p>

	<p>potential witnesses provided by the School District did not include a summary of the witnesses' testimony, but merely identified the subjects to be covered by the testimony.</p> <p>The School District argued that it provided its witness list and had turned over 1,690 pages of documents (without an index).</p>	<p>the time constraints. Hindering the teacher's ability to defend herself denies her of Due Process.</p> <p>Penalty: None. Teacher's Motion to Dismiss is granted on the basis of the District's substantial and unexplained failure to meet the timeliness mandate of N.J.S.A. 18A:6-17.1b(3). Teacher is reinstated with full back pay and benefits. Dismissal is granted without prejudice to the District's right to file charges again.</p>	
<p><i>In the Matter of Tenure Hearing of Linda Kelly-Gamble, SOSD of Newark</i></p> <p>1/30/15</p>	<p>School District filed Inefficiency charges against 20 year tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for Inefficiency tenure charges.</p> <p>The School District argued that the teacher filed her Answer 8 days late, and that the District is entitled to a Default Judgment.</p>	<p>The teacher has a significant property interest in her position, and is entitled to have the charges determined on the merits notwithstanding the intransigence of her counsel. The Request for Default Judgment is denied.</p> <p>The School District did not have a SIP in place during the 2012-13 school year. The 2011-12 Pilot Program that the District participated in preceded the August 6, 2012 adoption of TEACHNJ. Citing the prior Arbitration Decisions of <u>Cheatham</u>, <u>Thomas</u>, and <u>Brady</u>, and following the regulations of TEACHNJ, the Inefficiency Tenure Charge should be dismissed.</p> <p>Penalty: None. The Tenure Charge is dismissed with prejudice. Teacher shall be immediately reinstated to her teaching position with full back pay and seniority and made whole for the loss of any contractual or statutory benefits during the interim period.</p>	<p>Michael J. Pecklers, Esq.</p>

<p><i>In the Matter of Tenure Charges Against Carson Steltz, Sch. Dist. of the City of Elizabeth</i></p> <p>1/20/15</p>	<p>School District filed tenure charges against Teacher for chronic absenteeism and incapacity. In 7 years, the teacher had been absent approximately 560.55 days, not including vacation days. His increment was withheld for the 2012-13 school year due to poor attendance. The teacher had received numerous memorandums regarding his attendance issues.</p> <p>The School District argued that the excessive absences had a negative impact upon the continuity of instruction, the overall running of the schools and the morale of other teachers that had to cover his classes when substitutes were unavailable. The cost of substitute teachers to cover during the teacher's absences over the course of the 7 years was approximately \$67,000.</p> <p>The teacher argued that his absenteeism had been due to his chronic medical issues, particularly, several surgeries on his left knee.</p> <p>The teacher failed to attend the Arbitration Hearing pertaining to these charges.</p>	<p>Excessive absenteeism is actionable even if the absences are "justified". There are 3 elements that must be satisfied to warrant termination in an absenteeism case:</p> <ol style="list-style-type: none"> 1. The particular circumstances of the absences and not merely the number of absences; 2. The impact that the absences had on the continuity of instruction during the period of time the absences occurred, not merely after the fact; and 3. That there be some warning given to the employee that his/her supervisors were dissatisfied with the pattern of absences. <p>The Arbitrator explained that a tenured employee may be dismissed when the underlying reasons for the absenteeism indicate there is a likelihood that the conduct will continue in the future. In this case, #1 element is satisfied given that the Teacher's attendance has not improved over the course of his 7 years of employment, despite repeated warnings and an increment withholding, it is reasonable for the Board to conclude that this conduct is likely to continue in the future. Additionally, #2 and #3 are clearly satisfied, for reasons outlined in the facts listed herein.</p> <p>Penalty: Tenure charges sustained. Dismissal.</p>	<p>Robert C. Gifford, Esq.</p>
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<p><i>In the Matter of Tenure Charges Against Ratiba Ahmed, SOSD of Newark</i></p> <p>1/20/15</p>	<p>School District filed Inefficiency charges against tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges.</p>	<p>Citing the prior Arbitration Decisions of <u>Cheatham, Thomas, Brady, Williams, Yarborough, and Brienza</u>, the Arbitrator held that the issues in this case are identical to those cited, and have already been thoroughly considered, litigated and disposed of.</p> <p>Penalty: None. Motion to Dismiss granted, and the teacher shall be made whole.</p>	<p>Ernest Weiss</p>
<p><i>In the Matter of Tenure Charges Against Toni Lenz, SOSD of Newark</i></p> <p>1/17/15</p>	<p>School District filed Inefficiency charges against tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges.</p>	<p>Citing the prior Arbitration Decision of <u>Brienza</u>, the Arbitrator held that the issues in this case are identical to those cited, and have already been thoroughly considered, litigated and disposed of.</p> <p>Penalty: None. Motion to Dismiss granted, and the teacher shall be made whole.</p>	<p>Gerard G. Restaino</p>
<p><i>In the Matter of Tenure Charges Against Jodi Thompson, SOSD of Newark</i></p> <p>1/16/15</p>	<p>School District filed Inefficiency charges against tenured teacher under Section 25. Teacher argued that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges. The record was closed on November 24, 2014. During the pendency of these proceedings, 6 arbitration awards involving tenure charges brought by the School District against various teachers were dismissed because the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges under Section 25.</p> <p>In order to address the issues raised by the aforementioned 6 arbitration decisions, prior to a Decision in this matter being rendered by the Arbitrator, but after the record had been closed, the School District filed identical tenure charges against the teacher under Section 8. The School District then filed a Motion requesting that this</p>	<p>With the wisdom of hindsight, the School District may prudently cite both Section 8 and Section 25 in the alternative when filing future tenure charges. Nevertheless, the Arbitrator is constrained by well-established principles of equity and the Labor Arbitration rules of the American Arbitration Association, not to permit a charging party to add a new cause of action that was not included as part of the original tenure charge.</p> <p>Pleading two separate causes of action, each invoking different standards of proof, requires adequate prior notice. Such notice was not provided in this case.</p> <p>Holding: Motion to Hold in Abeyance is denied.</p>	<p>Daniel F. Brent</p>

	matter be held in abeyance.		
<p><i>In the Matter of Tenure Charges Against Leslie Johnson, SOSD of Newark</i></p> <p>1/14/15</p>	<p>School District filed Inefficiency charges against tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges.</p>	<p>Citing the prior Arbitration Decisions of <u>Cheatham, Thomas, and Brady</u>, the Arbitrator held that the issues in this case are identical to those cited, and have already been thoroughly considered, litigated and disposed of.</p> <p>Penalty: None. Motion to Dismiss granted, and the teacher shall be made whole.</p>	<p>Carol F. Laskin, Esq.</p>
<p><i>In the Matter of Tenure Charges Against Antoinette Modrak, Edward J. Mack & Phyllis Mack, BOE Linden Public Schools</i></p> <p>1/8/15</p>	<p>Tenure charges were filed separately against the three respondents, and were assigned individually to the Arbitrator on October 6, 2014. A Motion to Consolidate the three cases was filed. The Arbitrator granted the Motion to Consolidate on December 12, 2014. The School District then provided the Respondents with the documents required under N.J.S.A. 18A:6-17.1 (b)(3), on December 18, 2014.</p> <p>The Respondents filed a Motion to Dismiss, arguing that the School District untimely submitted its documents in violation of the TEACHNJ requirements.</p>	<p>The identity of the arbitrator(s) to whom the tenure charges against the Respondents were to be referred to were not <u>definitively</u> determined until this Arbitrator issued the Decision on the Motion to Consolidate on December 12, 2014, which the parties received on December 15, 2014. Until this decision was issued, no final determination had been made, nor was it clear to the parties, which arbitrator(s) would hear each Respondent's case. A matter cannot be deemed to have been "referred" for arbitration until an arbitrator has been identified with specificity, has agreed to hear the case in the absence of any disqualifying conflicts or scheduling unavailability to meet the statutory time limits, and the parties have been notified of the arbitrator's appointment as the person to adjudicate the charges.</p> <p>Holding: Motion to Dismiss denied.</p>	<p>Daniel F. Brent</p>

<p><i>In the Matter of Tenure Charges Against Lawrence Henchey, Sch. Dist. of New Milford</i></p> <p>1/6/15</p>	<p>School District filed a Request for Reconsideration of the Arbitrator's 1/3/15 Decision (see case summary below) denying the use of the 2013-14 evaluation in tenure charge proceedings to demonstrate inefficiency, incapacity and conduct unbecoming. Teacher opposed the Request.</p>	<p>The future of tenure disputes involving inefficiency were intended to lie within Section 25 and not Section 8. The first year of the Section 25 clock began running in 2013-14, and all teachers were provided with an opportunity to prove their efficiency during the 2013-14 and 2014-15 school year based on a rubric approved by the Commissioner of Education. While this may have resulted in some teachers avoiding "justice" for their poor performance in years leading up to the 2013-14 school year, BOE's still had the ability to take action prior to the commencement of the 2013-14 school year for Inefficiency under Section 8. Section 8 did <u>not</u> preempt cases involving incapacity, conduct unbecoming and other just cause.</p> <p>The remaining dispute in this case is whether the School District had just cause to dismiss the teacher for continued incapacity and conduct unbecoming based on the 2013-14 allegations. The School District may introduce any and all evidence originating during the 2013-14 school year, no matter what the form, not to demonstrate inefficiency, but rather to serve as a predicate for the allegation that the teacher's incapacity and conduct unbecoming continued as demonstrated by the manner of his responses, or lack thereof, to such assistance and/or constructive criticisms.</p> <p>Holding: Request for Reconsideration denied.</p> <p>See 3/4/15 Decision Summary re: remaining Tenure Charges.</p>	<p>Joseph Licata, Esq.</p>
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<p><i>In the Matter of Tenure Charges Against Ursula Whitehurst, SOSD of Newark</i></p> <p>1/5/15</p>	<p>School District filed tenure charges of Inefficiency under Section 25 and Section 8, against 24 year teacher based on ratings of ineffective/partially ineffective for the teacher's 2012-13 and 2013-14 summative evaluations. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges under TEACHNJ provisions.</p>	<p>Citing the prior Arbitration Decisions of <u>Cheatham, Thomas, and Brady</u>, the Arbitrator held that the District was non-compliant with a Section 25 filing for Inefficiency. The same charges cannot proceed to Arbitration under Section 8. Absent statutory support in the TEACHNJ legislation for resort to Section 8 in the event Section 25 Inefficiency Charges are deemed insufficient.</p> <p>Holding: Motion to Dismiss granted. The teacher immediately reinstated with full back pay, benefits, seniority and any other benefits commensurate with her employment.</p>	<p>Prof. Robert T. Simmelkjaer, Esq.</p>
<p><i>In the Matter of Tenure Charges Against Leslie Ann Ramos, Sch. Dist. of the City of Elizabeth</i></p> <p>1/5/15</p>	<p>School District filed tenure charges in August of 2014 against Teacher for chronic absenteeism and incapacity. In 7 years, the teacher had been absent approximately 490.75 days, which did not include leave taken pursuant to military service, jury duty, on-the-job injury or vacation. Her increment was withheld for the 2012-13 school year. The teacher had received numerous memorandums regarding her attendance issues.</p> <p>The teacher argued that the issue of absenteeism was in the past. She had endured an extraordinarily run of bad health due to two extremely dangerous pregnancies and gall bladder surgery. The particular medical reasons that caused her absenteeism no longer exist. Furthermore, her teaching ability was never an issue.</p>	<p>Citing <u>Tenure Hearing of White</u>, 92 NJAR 2nd (EDU) 157, there are 3 elements that must be satisfied to warrant termination in an absenteeism case:</p> <ol style="list-style-type: none"> 1. The particular circumstances of the absences and not merely the number of absences; 2. The impact that the absences had on the continuity of instruction during the period of time the absences occurred, not merely after the fact; and 3. That there be some warning given to the employee that his/her supervisors were dissatisfied with the pattern of absences. <p>In this case, #2 and #3 are satisfied. However, given that the teacher received positive teaching reviews and the reason for his chronic absenteeism was due to her poor health, it is possible that the teacher's</p>	<p>Randi E. Lowitt</p>

		<p>attendance performance could improve given that her medical issues are now resolved. Accordingly, dismissal is not warranted in this case.</p> <p>Penalty: Teacher is to continue to be suspended for the remainder of the 2014-15 school year, her increment will be withheld for the 2014-15 school year, and she shall return to work for the 2015-16 school year. There shall be no back pay. The teacher is reminded that she is expected to be at work, ready to work, and that she is entitled to a very specific number of absences within the bounds of the CBA that covers her.</p>	
<p><i>In the Matter of Tenure Charges Against Gregory Short, Sch. Dist. of the City of Elizabeth</i></p> <p>1/4/15</p>	<p>School District filed tenure charges against Health and Physical Education Teacher for chronic absenteeism and incapacity. In 8 years, the teacher had been absent a total of 131 days. In 2009-10 and 2011-12 school years, salary increments were withheld (both actions were grieved and ultimately resolved). After 2013-14, the Principal recommended withholding the increment for the next school year. The Board decided to file tenure charges instead of an increment withholding.</p> <p>The teacher had received 13 memorandums regarding the attendance issue, several improvement plans and performance reports focused on his attendance problems, and there were 3 recommendations for salary increment withholdings.</p> <p>Fifteen days of absences were attributable to a work-related injury. Many of the absences during the 2013-14 school year occurred because the teacher's son suffered from chronic ear</p>	<p>Citing <u>Tenure Hearing of White</u>, 92 NJAR 2nd (EDU) 157, there are 3 elements that must be satisfied to warrant termination in an absenteeism case:</p> <ol style="list-style-type: none"> 1. The particular circumstances of the absences and not merely the number of absences; 2. The impact that the absences had on the continuity of instruction during the period of time the absences occurred, not merely after the fact; and 3. That there be some warning given to the employee that his/her supervisors were dissatisfied with the pattern of absences. <p>In this case, #2 and #3 are clearly satisfied. However, given that the teacher received positive teaching reviews and the reason for his chronic absenteeism for the 2013-14</p>	<p>Walt De Treux, Esq.</p>

	<p>infections, and the teacher required time off to care for his son. All of the teacher's absences were covered by paid leave time. The teacher had consistently received positive evaluations regarding his teaching abilities and interaction with students.</p>	<p>school year was to care for his ill child, it is possible that the teacher's attendance performance could improve given that his son's medical issues were now resolved. Accordingly, dismissal is not warranted in this case.</p> <p>Penalty: Salary increment withholding for the 2014-15 school year. Reinstatement to tenured position with no loss of seniority and made whole for back pay and all benefits lost for the time period during the suspension.</p>	
<p><i>In the Matter of Tenure Charges Against Lawrence Henchey, Sch. Dist. of New Milford</i></p> <p>1/3/15</p>	<p>School District filed 5 Tenure Charges against tenured Language Arts Teacher. Counts 1 through 4 effectively alleged Inefficiency Charges against the teacher for the school years 2011-12, 2012-13, and 2013-14. Count 5 alleged that the teacher consistently failed to implement effective and efficient teaching strategies, he demonstrated an unwillingness or inability to improve, and demonstrated a lack of professionalism throughout the aforementioned school years, including a lack of respect for the Administration and a complete disregard for the high standards placed upon him, which constitutes incapacity and conduct warranting dismissal. The School District had issued a non-disciplinary Corrective Action Plan for the 2011-12 school year, and withheld the teacher's salary and adjustment increments for the school years 2012-13 and 2013-14.</p> <p>After the assignment of the Arbitrator, the teacher filed a Motion to Dismiss all charges (which for procedural reasons, was instead considered a Motion for Summary Judgment). Teacher claimed that under TEACHNJ, it was inappropriate to file the Inefficiency Charges.</p>	<p>Under TEACHNJ, Inefficiency language was removed from Section 8 and specifically addressed in Section 25. Allowing a Section 8 proceeding for Inefficiency to encompass 2013-14 evaluations would defeat the purpose underlying Section 25. Section 8 is not available as a means to address evaluation deficiencies encompassing the 2013-14 school year. Any Section 8 proceeding for Inefficiency must be limited to school years 2012-13 and prior.</p> <p>The record contains no indicia that the School District previously sought to discipline the teacher for his performance during the 2011-12 year other than a non-disciplinary Corrective Action Plan. The School District had clearly addressed the teacher's 2012-13 shortcomings by way of an increment withholding.</p> <p>However, the School District's withholding of the salary increment <u>and</u> filing of tenure charges for the 2013-14 allegations was not an attempt to duplicate punishment. Rather, it was an attempt to fill a gap caused by the</p>	<p>Joseph Licata, Esq.</p>

	<p>Furthermore, Double Jeopardy applied, as he had received the prior discipline of the withholding of salary and adjustment increments for alleged problems occurring prior to the 2013-14 school year.</p>	<p>timing of the tenure charges to ensure that the teacher would not receive a raise during the interval between tenure charges being filed and the issuance of an arbitration decision.</p> <p>Holding: Motion to Dismiss granted as to Counts 1-4 for the 2013-14 evaluation allegations for failing to meet the TEACHNJ requirements. Counts 1-5 charges pertaining to the 2011-12 and 2012-13 evaluations are dismissed on the grounds of Duplicate Punishment. Charges within Count 5 pertaining to the 2013-14 school year alleging incapacity and conduct unbecoming shall remain and proceed to hearing.</p> <p>See 3/4/15 Decision Summary re: remaining Tenure Charges.</p>	
<p><i>In the Matter of Tenure Hearing of Sandra Brienza, SOSD of Newark</i></p> <p>12/30/14</p>	<p>School District filed Inefficiency charges against tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges.</p>	<p>Citing the prior Arbitration Decisions of <u>Cheatham</u>, <u>Thomas</u>, <u>Williams</u>, and <u>Brady</u>, the Arbitrator held that the issues in this case are identical to those cited, and have already been thoroughly considered, litigated and disposed of.</p> <p>Penalty: None. Motion to Dismiss granted, and the teacher shall be made whole.</p>	Ernest Weiss
<p><i>In the Matter of Tenure Hearing of Leonard Yarborough, SOSD of Newark</i></p> <p>12/29/14</p>	<p>School District filed Inefficiency charges against tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges.</p>	<p>Citing the prior Arbitration Decisions of <u>Cheatham</u>, <u>Thomas</u>, <u>Williams</u>, and <u>Brady</u>, the Arbitrator held that the issues in this case are identical to those cited, and have already been thoroughly considered, litigated and disposed of.</p> <p>Penalty: None. Motion to Dismiss granted, and the teacher shall be made whole.</p>	Edmund Gerber

<p><i>In the Matter of Tenure Hearings of Leon Mashmore, Edward Brown, Gay S. Brown, Brian Medley, SOSD of the City of Camden</i></p> <p>12/23/14</p>	<p>Four Administrator tenure cases were consolidated for purposes of judicial economy and efficiency, and to achieve uniformity regarding the resolution of what would have been identical Motions to Dismiss in the four separate cases.</p> <p>Citing the State Intervention Statute (<u>N.J.S.A. 18A:7A-45</u>), the School District argued that a tenured Principal or Vice Principal in a state-operated School District, may be dismissed for Inefficiency after a minimum of three evaluations, in an assessment cycle of not less than 12 months. During the 2013-14 school year, the principals and vice-principals that are the subjects of these charges in the School District, were evaluated three times and received ratings of "ineffective" or "partially effective". After the conclusion of the school year, the State District Superintendent brought tenure charges against the Administrators, seeking their removal for Inefficiency.</p> <p>The Administrators argued that the District's use of the TEACHNJ evaluation criteria requires that the evaluation of Principals and Vice-Principals in a state-operated School District must be governed by TEACHNJ and its requirement for a two-year assessment cycle and a corrective action plan.</p>	<p>The Arbitrator opined that one of the goals of the State Intervention Act was to allow the State District Superintendent to remove ineffective administrators and supervisors early in the process of rebuilding and revitalizing the failing district. He further opined that extending the assessment cycle for Principals and Vice-Principals from "no less than 12 months" to 2 years would be a significant departure from the goal of the Intervention Statute.</p> <p>Holding: Motions to Dismiss denied. The state-operated School District properly brought tenure charges against the Administrators for inefficiency pursuant to the provisions of the State Intervention Statute, as it relates to the number of evaluations and the length of the assessment cycle.</p>	<p>Walt De Treux, Esq.</p>

<p><i>In the Matter of Tenure Charges Against Lorraine Williams, SOSD of the City of Newark</i></p> <p>12/20/14</p>	<p>School District filed Inefficiency charges against tenured teacher. Teacher filed Motion to Dismiss, arguing that the School District could not utilize the 2012-13 school year evaluation as a basis for tenure charges.</p>	<p>Citing the prior Arbitration Decisions of <u>Cheatham, Thomas and Brady</u>, the Arbitrator held that the tenure charges were filed prematurely and could not be invoked against the teacher at this time.</p> <p>Penalty: None. Motion to Dismiss granted, and the teacher shall be made whole.</p>	<p>David L. Gregory</p>
<p><i>In the Matter of Tenure Charges filed by Township of Hamilton, Mercer County, Joseph Mahon</i></p> <p>12/20/14</p>	<p>School District filed Conduct Unbecoming and Other Just Cause charges against tenured teacher. The teacher and the School District entered into a Settlement Agreement, wherein the teacher Resigned and the parties executed a General Release outlining the terms and conditions of the Agreement.</p>	<p>The Arbitrator approved the Settlement Agreement.</p> <p>Penalty: None. Tenure charges are moot in this forum as per the Settlement Agreement.</p>	<p>Joseph Licata</p>
<p><i>In the Matter of Tenure Hearing of Karina Perez, Sch. Dist. of the City of Hackensack</i></p> <p>12/11/14</p>	<p>School District filed Unbecoming Conduct charges against tenured 11 year middle school Social Studies teacher, alleging that she engaged in inappropriate and assaultive contact with a 5th grade student.</p> <p>The student alleged that the teacher grabbed her wrist and left a mark which required her to visit the nurse and use an ice pack. Based upon the student's allegation, a hallway video and the Principal's investigation, a Letter of Reprimand was issued, and the Superintendent determined that the teacher should be suspended. The Letter of Reprimand noted that although inappropriate, the alleged physical contact did not appear to be hostile or malicious in nature.</p> <p>The teacher argued that she did not grab the student's wrist, that the video was inconclusive, and that the student was retaliating against the teacher because a few days prior to the alleged incident, the teacher had reported the student's</p>	<p>The School District did not consider the student's motive to lie about the teacher and failed to interview "non-involved" witnesses to the incident. The video did not affirmatively establish that the teacher actually grabbed the student's wrist. Based upon the foregoing, the School District failed to meet its burden of establishing the Unbecoming Conduct charges against the teacher.</p> <p>Penalty: None. Teacher is to be reinstated to her former position and made whole for any and all losses of pay, seniority and other benefits that she may have suffered during her suspension. The Letter of Reprimand issued in this matter and the teacher's suspension shall be removed and expunged from the School District's files.</p>	<p>Timothy J. Brown, Esq.</p>

	inappropriate conduct, which resulted in the student receiving a 2 day suspension.		
<p><i>In the Matter of Tenure Charges Against Elena Brady, SOSD for the City of Newark</i></p> <p>12/7/14</p>	<p>School District filed Inefficiency charges against tenured teacher based upon evaluations from the 2012-13 and 2013-14 school years. The teacher filed a Motion to Dismiss the charges, asserting that under TEACHNJ regulations, the 2012-13 evaluation cannot be used to support tenure charges for Inefficiency.</p> <p>The School District asserted that it had properly evaluated the Teacher utilizing the regulations in effect at the time of each annual evaluation. Furthermore, there was a Memorandum of Agreement (MOA) between the School District and the Newark Teacher's Union to implement its new teacher evaluation system for the 2012-2013 school year.</p> <p>Finally, the School District argued that if the Inefficiency charges would not be permitted to proceed as a Section 25 filing (Inefficiency under TeachNJ), then the same charges, based upon the same grounds, should be allowed to proceed as a Section 8 filing (removal of a teacher on "other grounds") as a default position.</p>	<p>The Arbitrator determined that TEACHNJ does not provide for consideration of the teacher's 2012-13 year summative evaluations for purposes of tenure revocation. The timeline established specifically requires full implementation of the new evaluation rubric "beginning with the 2013-14 school year." The regulatory scheme that became effective in March 2013, as well as guidance issued by the DOE supports the finding that the 2012-13 school year summative evaluations using the evaluation rubric may not be used for purposes of tenure revocation. The notice of charges against the teacher were for Inefficiency under Section 25, rather than under Section 8. The School District cannot seek to amend its charge to include Section 8 charges at this juncture.</p> <p>Holding: Motion to Dismiss granted. The teacher is to be reinstated to her position with the state-operated School District, with full back pay, benefits and seniority.</p>	Joyce M. Klein
<p><i>In the Matter of Tenure Hearing of Diane Monaco, Sch. Dist. of East Hanover, Morris County</i></p> <p>12/1/14</p>	<p>School District filed Unbecoming Conduct and Other Just Cause charges against tenured teacher that was in a one car accident, and then arrested for Driving While Intoxicated (DWI), Refusing to Submit to a Breathalyzer Test and Reckless Driving; and her failure to timely report said arrest to the School District. Teacher had</p>	<p>The facts and circumstances here demonstrate that the Teacher repeatedly engaged in unbecoming conduct on the date of her car accident, exercised poor judgment in her failure to report her arrest to the Superintendent, and did not comply with her legal obligations. Her behavior is not</p>	Robert C. Gifford, Esq.

	<p>no prior discipline and all evaluations between 2001-2012 were at least "satisfactory". She claimed that she did not report the arrest because it was a traffic motor vehicle violation, as opposed to a criminal offense.</p> <p>During the School District's investigation, it was discovered that the Teacher had a prior DWI arrest in 2009 that she had also failed to report to the School District. Additionally, during the arrest process and while being kept in a holding cell, the Teacher had been repeatedly uncooperative, disruptive and discourteous, and had attempted to use her position as a teacher and someone with an alleged association to the Mayor to influence the police department personnel.</p>	<p>diminished by the fact that it occurred outside of the school setting. Her actions are simply not consistent with the conduct reasonably required by a public school teacher, whether in or out of the classroom.</p> <p>The fact that the Teacher was convicted of traffic offenses rather than criminal charges does not preclude a finding of Unbecoming Conduct, nor does it require a modification of the penalty imposed herein.</p> <p>Penalty: Dismissal.</p>	
<p><i>In the Matter of Tenure Charges between Neil Thomas, SOSD of the City of Newark</i></p> <p>11/20/14</p>	<p>School District filed charge of Inefficiency against tenured teacher based upon two "partially effective" ratings during summative evaluations for the 2012-2103 and 2013-2014 school years. Teacher filed Pre-Hearing Motion to Dismiss, arguing that the 2012-2013 summative evaluation could not be utilized by the School District for purposes of Inefficiency tenure charges.</p> <p>The School District asserted that it had properly evaluated the Teacher utilizing the regulations in effect at the time of each annual evaluation. Furthermore, there was a Memorandum of Agreement (MOA) between the School District and the Newark Teacher's Union to implement its new teacher evaluation system for the 2012-2013 school year.</p> <p>Finally, the School District argued that if the Inefficiency charges would not be permitted to proceed as a Section 25 filing (Inefficiency under</p>	<p>It was not reasonable for the School District to conclude that it could evaluate the Teacher in 2012-2013 utilizing an incomplete set of NJDOE regulations, particularly regulations that did not delineate the number and type of formal observations a tenured teacher was entitled to under <i>N.J.A.C. 6A:10-4.4</i>.</p> <p>In acknowledging that it used "the regulations in effect at the time," the School District admits that the Teacher in 2012-2013 as compared to 2013-2014, was subjected to two asymmetric evaluation procedures, which the Arbitrator finds problematic and illegal under the statute.</p> <p>In regards to the MOA, the arbitrator held that the statute contains no language that would enable the School District to preempt the statutory commencement, effective 2013-2014, through the negotiation of a collective bargaining agreement encompassing an earlier start date.</p>	<p>Prof. Robert T. Simmelkjaer, Esq.</p>

	TeachNJ), then the same charges, based upon the same grounds, should be allowed to proceed as a Section 8 filing (removal of a teacher on "other grounds") as a default position.	The charges expressly state a charge of Inefficiency under Section 25 of TeachNJ. Since the School District's Inefficiency charge was not pleaded in the alternative under Section 8, but rather based on TeachNJ, the School District cannot amend its pleading at this juncture. Penalty: None. Charges are dismissed.	
<i>In the Matter of Tenure Charges between Jose Martinez, Sch. Dist. of the Township of Mahwah, Bergen County</i> 11/20/14	School District filed charges of Inefficiency, Unbecoming Conduct and other just cause for dismissal against tenured Spanish teacher. The Unbecoming Conduct charges were based on 6 written Notifications of Concern (NOC) regarding improper conduct from 2005 through 2013; numerous memos from the Administration regarding improper conduct; and withholding 3 annual increments in an attempt to correct the teacher's deficiencies. The Inefficiency charges were based upon 3 years of poor performance reviews; the teacher's failure to attempt to improve his teaching performance and comply with the multiple, jointly developed Professional Development Plans and Corrective Action Plan; and the teacher being combative and non-receptive to improvement suggestions from his superiors.	The teacher consistently failed to improve his performance and correct the many cited deficiencies, despite the School District issuing multiple NOC's and corrective memos, implementing multiple salary increment withholdings, and putting forth considerable effort and expenditure of time and resources to assist the teacher, despite the teacher's demonstrated resistance to the School District's efforts. Penalty: Dismissal.	Walt DeTreuX
<i>In the Matter of the Tenure Hearing of Charles Coleman</i> 11/9/14	School District filed tenure charges against the teacher. Prior to a hearing on the merits of the charges, Teacher filed a Motion to Dismiss, alleging that the School District failed to produce documents necessary to his defense, which therefore deprived the teacher of his fundamental right to Due Process and the opportunity to defend himself effectively against the charges.	The requested documents that the School District failed to produce may be exculpatory and/or enable the teacher to prepare his defense. Holding: Tenure charges dismissed without prejudice. Teacher shall be made whole for all lost compensation and benefits whatsoever. If the School District wishes to refile the	David J. Gregory

		charges, it must produce a specific list of documents that were not produced the first time the charges were filed.	
<p><i>In the Matter of Tenure Charges between Sch. Dist. of the Borough of Bound Brook, Glenn Ciripompa</i></p> <p>10/20/14</p>	<p>School District filed charges of Conduct Unbecoming against tenured High School Math Teacher for (1) Improper Usage of School District Technology / Electronic Devices and (2) Sexual Harassment.</p> <p>School District discovered that teacher had used the District issued laptop / IPad to send emails containing nude photographs of the male teacher and to receive emails of nude women, and the emails contained explicit discussions regarding sexual activities. Some of the explicit emails (without photos) were sent during the teacher's workday. The teacher did not deny these allegations, but rather argued that termination was too severe a penalty for a first time offense.</p> <p>School District also claimed that the teacher had sexually harassed multiple female employees in various manners, including: commenting about their clothing in front of students, asking them out on dates and sending them flowers.</p>	<p>The teacher's behavior demonstrated a "monumental lack of judgment and personal responsibility". However, the teacher had no prior disciplinary infractions on his record, and was by all indications a satisfactory teacher. He had no prior warnings about his misuse of the computer system. There was no scheme of progressive discipline applied in this case.</p> <p>The School District failed to meet its burden of establishing that the teacher created a hostile work environment for the female teachers that had complained about his behavior towards them.</p> <p>Penalty: Count 1 - Conduct Unbecoming regarding Technology / Electronic Device Usage - 120 Suspension without pay. Count 2 - Sexual Harassment - Charges Dismissed.</p> <p>UPDATE: 1/8/15 Superior Court Decision - Decision is vacated and remanded to a new Arbitrator. (1) This Arbitrator improperly excluded a "tweet" submitted a day after the Arbitrator's discovery deadline by the SD. (2) This Arbitrator improperly changed the SD's allegations of Conduct Unbecoming towards teacher's co-workers to a Sexual Harassment / Hostile Work Environment Claim, which improperly imposed a higher legal standard/burden on the School District.</p>	<p>Michael J. Pecklers, Esq.</p>

		APPELLATE COURT UPDATE: 10/29/15 Decision reinstated the Arbitration Decision.	
<p><i>In the Matter of Tenure Charge of Inefficiency between Sandra Cheatham, Sch. Dist. of the City of Newark</i></p> <p>10/16/14</p>	<p>School District filed charges of Inefficiency against tenured teacher based upon evaluations from the 2012-2013 and 2013-2014 school years. The School District claimed to utilize the TEACHNJ standards applicable to each respective school year.</p> <p>Teacher asserted that the Inefficiency Charge is invalid because the evaluation in 2012-2013 was part of the "pilot evaluation program" utilized by School Districts to test the program and define rubrics, and therefore could not be used to impact tenure decisions.</p> <p>School District further asserted that if this claim under Section 25 failed, the charges should be converted to Section 8.</p>	<p>The 2012-2013 school year was an "experimental year" to produce an evaluation system for the 2013-2014 school year. The DOE Guide to TEACHNJ stated that no evaluation during the 2012-2013 school year would impact tenure decisions. The DOE's first set of regulations implementing this new program were not effective until March 14, 2013, and therefore could not be applicable to the 2012-2013 school year.</p> <p>Since the School District chose to file this claim under Section 25, they cannot ask for "a do-over" and convert to a Section 8 filing if the Section 25 filing is unsuccessful.</p> <p>Penalty: None. Teacher is reinstated with full back pay and benefits.</p>	Stephen M. Bluth
<p><i>In the Matter of Arbitration between Sch. Dist. of the Black Horse Pike Reg. Sch. Dist., Camden County, David Clune</i></p> <p>8/18/14</p>	<p>School District filed Conduct Unbecoming charges against 10 year tenured Mathematics Teacher. The charges were based on (1) Improper and inappropriate social media contact with 2 recent female graduates; (2) Violating School District Policy regarding Computer Network / Computer use; and (3) Failing to report his arrest for Simple Assault and Criminal Mischief.</p> <p>The teacher sent multiple texts to 2 recent female graduates, ages 17 and 18. The messages</p>	<p>The teacher's social media contact of the recent graduates for solicitation and references to joining the teacher in the activity of smoking marijuana, an illegal substance, constitutes Conduct Unbecoming. It is irrelevant that the girls were graduates, as there is a "legitimate nexus" between the messages and the Respondent's position as a teacher. Additionally, the texts reference time periods when the girls were students.</p>	James W. Mastriani

	<p>included comments about the girls' appearance both before and after their graduation ("you look hot"), requests to meet, pictures and a suggestion that they should meet to get "baked". Upon learning that the police were investigating the aforementioned contact, the School District ran a search of the teacher's School Internet and School laptop usage. This search revealed that the teacher had inappropriately used the Internet hundreds of times during school hours to view websites pertaining to travel, gambling, Facebook and Twitter. Additionally, the laptop search revealed use for an Atlantic City Escort Service. During the time that the teacher was suspended for the aforementioned claims, he was involved in a domestic dispute with his wife, in which the police were called, charges were filed, and he was arrested. The teacher did not report this arrest to the School District, claiming that he was unaware that he was required to report the arrest. The School District offered the teacher access to a confidential counseling EAP, which he declined.</p>	<p>Failure to report his arrest and the Internet/Computer usage violations are insufficient individually to warrant dismissal for Conduct Unbecoming. However, when viewing the overall context of all charges, dismissal is an appropriate penalty. Since the teacher did not seek to access counseling or rehabilitative programs prior to this Decision, it is not proper to offer a conditional reinstatement penalty.</p> <p>Penalty: Tenure charges sustained. Dismissal.</p>	
<p><i>In the Matter of Arbitration between Lisa Radzik, Woodbridge Township BOE</i></p> <p>8/4/14</p>	<p>School District filed Conduct Unbecoming Charges against tenured 3rd grade teacher. A Special Investigator from the New Jersey Department of Education in the Office of Fiscal Accountability and Compliance (OFAC) determined that the teacher had helped her students cheat on the 2010 NJASK test. Additionally, the School District alleged that this teacher had coerced a "novice staff member" into both assisting with the test tampering, and then attempting to cover up their actions during the OFAC's investigation.</p>	<p>The arbitrator did not find the teacher's explanations as to the high Wrong to Right Answer (WRA) erasure rate of her students, the extraordinarily high rate of proficient scores, and the drop in the students' test scores in the following years, to be credible. The teacher was a poor role model for her students and had failed in her responsibilities as a teacher and public employee.</p> <p>Penalty: Tenure charges sustained. Dismissal.</p>	<p>Mattye M. Gandel</p>

<p><i>In the Matter of Arbitration against Michael Mignone, Bellville BOE</i></p> <p>7/30/14</p>	<p>Charges of Conduct Unbecoming and Other Just Cause, including Insubordination, and a Pattern of Conduct Unbecoming were filed against tenured teacher for:</p> <p>(1) Deviating from Prescribed Curriculum by discussing his opinions regarding the new school security system with students;</p> <p>(2) Inappropriately allowing a Union Representative to secretly listen to a telephone call with a student's mother;</p> <p>(3) Violating the BOE's instruction to refrain from entering school property during his suspension, and then causing a disruption when he entered the building.</p>	<p>The teacher had already been punished for the classroom discussion with a letter of reprimand, and there was no evidence that there were additional problems of this nature beyond the one incident. The BOE did not meet its burden of establishing that the teacher had been informed that he was barred from the school grounds, nor that the teacher had caused a disruption when he returned to the school grounds for union business after his suspension. The teacher did engage in conduct unbecoming when he permitted a union representative to surreptitiously listen to a telephone call with a parent. However, there is no link between any of the alleged charges, and therefore the BOE failed to prove a pattern of unbecoming behavior.</p> <p>Penalty: 30 Day Suspension without pay. Reinstatement to former position and teacher is to be made whole for the loss of compensation, if any, beyond the one month suspension penalty imposed herein.</p>	<p>Joel M. Weisblatt</p>
<p><i>In the Matter of Arbitration between Sch. Dist. of the Township of Irvington, Essex County, Andrei Foca-Rodi</i></p> <p>7/11/14</p>	<p>School District filed Conduct Unbecoming charges against Tenured Music Teacher. The teacher heard several of his students discussing derogatory comments made by another teacher about the Music Teacher. After asking a security guard to watch his class, the Music Teacher went to the classroom of the "other teacher" and asked to speak about the comments allegedly made. The Music Teacher did not yell, scream or threaten the "other teacher" during the encounter. The teachers' encounter lasted for 3 to 5 minutes, with security coming to the classroom.</p>	<p>While the teacher's behavior was inappropriate, it does not warrant dismissal. In his six years with the School District, the teacher has never been the subject of disciplinary action, nor accused of misconduct. The Teacher has taken responsibility for his poor judgment, and voluntarily sought counseling to address his issues.</p> <p>Penalty: Reinstatement with no back pay. Teacher shall remain in counseling for decision making and anger management until such time his counselor certifies he no longer needs to participate in counseling.</p>	<p>Stephen M. Bluth</p>

<p><i>In the Matter of Arbitration between Jerome C. Higgins, Sch. Dist. of the Township of Edison, Middlesex County</i></p> <p>7/10/14</p>	<p>Tenured Custodian was charged with neglect, misbehavior and/or other offenses, including but not limited to insubordination, intentional violation of the law and school policies; intentional and knowing and/or reckless or grossly negligent disregard for the safety, health and well-being of being of employees, students, the community and school property, resulting in, among other things, the total destruction of the James Monroe Elementary School, warranting dismissal pursuant to N.J.S.A. 18A:17-2 and 18A:6-10.1 <i>et seq.</i> The Custodian had accidentally burned the school down when he tossed a lit cigarette into a trash can.</p> <p>After the tenure charges were filed, the custodian submitted a unilateral, voluntary, irrevocable letter of resignation to the School District, with his retirement becoming effective on June 30, 2014.</p>	<p>The submission of the Custodian's irrevocable resignation renders the tenure charges moot.</p> <p>Penalty: None.</p>	<p>Robert T. Simmelkjaer</p>
<p><i>In the Matter of Arbitration between Gina Priano-Keyser, Sch. Dist. of The Chatams, Morris County</i></p> <p>7/4/14</p>	<p>School District filed Conduct Unbecoming charges against a tenured Theater Arts Teacher, after a parent complained about a particular class. All of the allegations were based on a lesson taught annually and several times a year to 8th grade students. The "Can of Squirms" classroom exercise consisted of the teacher asking students a series of questions regarding sexual behavior, sexual experiences, sexual orientation, use of drugs/alcohol, bullying, socio-economic status and familial relationships. The students would respond to the questions by moving to one side of a line to answer "yes", to</p>	<p>In this case, the "Can of Squirms" lesson had been taught for several years, the lesson plan with the allegedly inappropriate content had been submitted for review on multiple occasions over the years to multiple administrators without any objection, the lesson had been previously observed and given a positive evaluation, and there was no evidence that the lesson was taught for any reason other than to achieve the educational objective state. Additionally, there is no evidence that the teacher was administering a student survey. To charge the teacher with</p>	<p>Melissa H. Biren, Esq.</p>

	<p>the other side of the line to answer "no", or to stay on the line to answer "I don't know". The School District asserted that the teacher should be terminated because: (1) her behavior was sufficiently flagrant and egregious; (2) she had violated the Anti-Bullying Bill of Rights Act (N.J.S.A. 18A:37-13); et seq.; and (3) she violated the state requirement mandating written consent from parents when topics such as those noted above are to be discussed (N.J.S.A. 18A:36-34).</p> <p>The teacher also had a prior 90 day suspension for Conduct Unbecoming charges unrelated to the subject of this claim. Those charges would not be considered pertaining to the merits of this claim, but rather, only in relation to a penalty, if any, as a result of this case.</p>	<p>willful violation of the State statute regarding student surveys, without providing any training or notice that a lesson such as the "Can of Squirms" could constitute a student survey and require consent is inconsistent with due process and just cause principles.</p> <p>Penalty: None; charges were dismissed, and arbitrator ordered the board to restore the teacher to her tenured employment without loss of seniority for any purpose, and to make her whole for any lost salary and benefits while suspended in connection with these tenure charges, subject to reduction for any replacement earnings, including unemployment compensation that may have been paid during this period.</p>	
<p><i>In the Matter of Arbitration between Deardra Thompson, Dept. of Corrections, AC, Wagner Youth Correctional Facility</i></p> <p>6/30/14</p>	<p>The Department of Corrections, AC Wagner Youth Correctional Facility filed tenure charges against Art Teacher for Insubordination and Conduct Unbecoming when she refused to report to the Wagner Facility to teach scheduled classes. The teacher successfully ran an Art Program at the Garden State Youth Correctional Facility, for which she was awarded 2010 Teacher of the Year. She was asked to implement the same program at the neighboring Wagner Facility. The teacher claimed that the Wagner Facility would not provide the same accommodations as the Garden State Facility (issues pertaining to safety, supplies, and the teacher's cancer condition), and therefore she feared for her safety and was unable to successfully implement the program at Wagner. There was also an intense personality conflict between the teacher and the Assistant Supervisor at Wagner. The teacher claimed that</p>	<p>The Arbitrator determined that the Wagner Assistant Supervisor was not a credible witness. At the Hearing, the Assistant Supervisor consistently exhibited her disdain for the entire process. Although corrections officials did confirm the existence of the teacher's safety issues during this legal process, the teacher failed to effectively communicate her safety concerns to her supervisor prior to her initial refusal to go to Wagner, and was therefore insubordinate and neglected her duty at that time. However, the teacher's supervisor was notified of the teacher's safety concerns / reasons for refusing to report to Wagner on future occasions.</p> <p>Penalty: Ten working day suspension beginning September 23, 2013 for being</p>	<p>Carol F. Laskin, Esq.</p>

	every request at Wagner was denied and she failed to receive any support. The Wagner Assistant Supervisor claimed that the teacher was consistently disrespectful, insubordinate and failed to comply with requests.	insubordinate and engaging in a neglect of duty. Teacher is entitled to be made whole including reinstatement, back pay, reimbursement for COBRA payments and all other contractual and statutory entitlements. Removal Charges are denied.	
<i>In the Matter of Arbitration between Cumberland Reg. Sch. Dist. BOE, Dr. Audrey Cuff</i> 6/26/14	School District filed tenure charges against teacher for Inefficiency, Incompetence, Insubordination, Conduct Unbecoming and other just cause. It was alleged that the teacher continually failed to: (1) post and utilize measurable objectives on the blackboard; (2) appropriately structure lessons; (3) post a focus activity; (4) not repeat objectives and activities in lesson plans; (5) use closure activities to assess student progress; (6) use class time effectively; (7) cooperate and participate appropriately in mandatory conferences; (8) post grades in a timely manner; and (9) to improve despite repeated admonishments. The teacher claimed that she did not receive proper notice that tenure charges would be filed, and that she was being treated unfairly in response to filing Workers' Compensation and Civil Rights claims against the School District.	The arbitrator determined that given the long history of less than satisfactory evaluations, the denial of increment and two consecutive 90 day improvement plans imposed upon the teacher, she was well aware that her job was in jeopardy. At this point in her career, one would expect her to understand what is expected of her as a teacher and what must be done to effectively prepare to teach a class. Her performance as a teacher is unacceptable and the education of the students in her classroom has suffered. While none of the Board's charges when taken individually may be sufficient grounds for the denial of tenure, collectively they demonstrate a degree of inefficiency that warrants the denial of tenure. Penalty: Tenure charges sustained.	Edmund Gerber, Esq.
<i>In the Matter of Arbitration between Sch. Dist. of the City of Elizabeth, Union County, Lakhisha Wheeler</i> 6/23/14	School District filed charges against tenured secretary for (1) chronic absenteeism & tardiness; (2) misbehavior / neglect / insubordination; and (3) pattern of misbehavior. Between July of 2004 and December of 2013, secretary was absent for approximately 362.13 days, and tardy for approximately 20 days. Despite being given verbal and written warnings, poor evaluations, improvement plans and numerous increment withholdings, the secretary's behavior did not improve.	The arbitrator determined that double jeopardy did not apply here, as the increment withholdings and warning memos were forms of progressive discipline meant to correct the secretary's behavior, which unfortunately failed. The secretary is culpable of misconduct in that she was unavailable to work during a great number of days, and is therefore unfit to serve in her tenured position. Penalty: Termination.	Randi E. Lowitt

<p><i>In the Matter of Arbitration between Kelly Mascio, Sch. Dist. of Mullica Township, Atlantic County</i></p> <p>6/20/14</p>	<p>School District filed Conduct Unbecoming and Unprofessional Conduct charges against 16 year tenured teacher. In the third week of the teacher's first year as a Kindergarten Teacher, approximately half of the class were in their dimly lit classroom, watching a video while the remainder of the class completed standardized testing at a separate location. During this time, two students, one male and one female, went into the bathroom within the kindergarten classroom. After approximately 5 minutes, the teacher discovered the two students alone in the bathroom. The male student's shirt was on backwards, and both students commented that the other child had wanted to have sex. The teacher immediately reported the behavior, investigations by DYFS and the School District occurred, and the teacher was suspended with pay. The children admitted to removing their clothing and touching each other's private parts. It is possible that there may have been some "mutual tactile exploratory behavior involving their genital areas."</p> <p>DYFS determined that neglect/inadequate supervision was not established, and that the students involved did not suffer harm. The police report erroneously stated that the children were found nude in the bathroom, and the names and addresses of the students were included in the report that was made public.</p>	<p>The arbitrator determined that the teacher did not leave the children unattended in the classroom, abandon her professional responsibilities to pursue a personal errand, or focus her attention on any alternative activity that was deleterious to her students or inconsistent with her professional duties. Accordingly, her behavior does not rise to the level of misconduct necessary to justify a charge of conduct unbecoming or professional misconduct. However, the teacher is culpable for her five minute failure to provide adequate oversight. The arbitrator also noted several times in his opinion that the exacerbating factor in this case was attributable to the police department's inclusion of the erroneous information in the report, and its failure to protect the names of the families before the police report was made available to the press.</p> <p>Penalty: Tenure charges are denied. Teacher shall be issued a ten day school suspension. Teacher is reinstated to her former position, with uninterrupted seniority and service credit for all purposes with full back pay, medical insurance, and other fringe benefits from the commencement of her unpaid suspension until her reinstatement, less ten days wages attributable to her suspension, computed as a fraction of the entire school year.</p>	<p>Daniel F. Brent</p>

<p><i>In the Matter of Arbitration Between The State Operated Sch. Dist. Of the City of Paterson, Richard Vincenti</i></p> <p>6/11/14</p>	<p>School District filed tenure charges against a tenured Science Teacher for 8 counts of Conduct Unbecoming. The allegations included disrupting a class by retrieving food from a classroom refrigerator; leaving students unsupervised in his classroom; being volatile at staff meetings and exhibiting antagonistic behavior when confronting and harassing staff members at school about his opposition to doing more than what was required in the Collective Bargaining Agreement; exhibiting inappropriate, offensive and demeaning behavior, including consistent swearing, towards students; and exhibiting antagonistic and inappropriate verbal behavior towards a secretary.</p>	<p>The Arbitrator determined that the teacher is a "hothead" that "flies off the handle" frequently. However, while the teacher has the right to voice his opinion regarding his concerns, he does not have the right to be disruptive. Accordingly, a significant penalty is warranted, dismissal is not. Many of the School District's allegations were based upon unsubstantiated hearsay that was not corroborated at the time of the hearing. No proof was presented to establish that the teacher was a threat to the community or that he was incompetent. The Arbitrator opined that "were the teacher able to control his temper, the teacher would be a productive and desired member of the school staff."</p> <p>Penalty: Suspended without pay for the first half of the 2014-15 school year. As a condition of reinstatement on February 1, 2015, the teacher shall, at the District's request, undergo a psychiatric examination. Failure to do so or a report indicating he is unable to perform his duties shall result in his dismissal from service.</p>	<p>Howard C. Edelman, Esq.</p>
<p><i>In the Matter of Arbitration Between Sch. Dist. Of Township of Belleville, Michele Sacchiero</i></p> <p>5/21/14</p>	<p>School District filed tenure charges against 13 year tenured kindergarten teacher for (1) conduct unbecoming for failure to follow the School District's policy when she dismissed a 6 year old student without an approved person undertaking care and custody of the child, which therefore</p>	<p>The Arbitrator determined that the teacher could not have violated the policy cited in the tenure charges, because that policy had not been implemented at the relevant school on the date of the incident. However, the teacher had mistakenly released the child to someone</p>	<p>Gerald G. Restaino</p>

	<p>placed the child in danger of imminent harm when the student walked home unsupervised in the rain, and (2) insubordination for making knowingly false and misleading statements to hinder the investigation and conceal her neglect of her duties.</p>	<p>the teacher incorrectly believed to be the student's grandfather. The Arbitrator did not believe that the teacher had knowingly given false and misleading statements during the investigation. The BOE did have sufficient cause to file tenure charges, but did not have sufficient cause to have those tenure charges sustained and the teacher's tenure revoked, or justify a finding that the teacher must be removed from her teaching position and terminated.</p> <p>Penalty: Teacher returned to work without back pay, and to receive full seniority credit from the time of her suspension to the day she returns to work.</p>	
<p><i>In the Matter of Tenure of Marvin Davis, Sch. Dist. Of Asbury Park, Monmouth County</i></p> <p>5/15/14</p>	<p>School District sought removal of tenured custodian at Elementary School for engaging in conduct unbecoming, by having inappropriate physical contact with several students. A parent reported that she observed the custodian touch her daughter's hair, which caused discomfort to the child. Upon further investigation, the School District learned that the custodian had engaged in conduct involving several students which included: pulling students' hair so as to cause the students' heads to bend backwards, patting students on the back, and sneaking up on students. The custodian admitting to touching the students' hair and tapping some students on the shoulder, but claimed that he was just "playing around", that touching the students' hair was "natural", and that he had not intended to make any of the students uncomfortable. The custodian had been involved in similarly related incidents at two other schools, and had been counseled about inappropriate interaction with a</p>	<p>The Arbitrator determined that the tenured custodian engaged in conduct unbecoming a staff member that was flagrant and unjustifiable. The custodian had clearly violated a central tenant of the School District's fiduciary responsibility with respect to its students, had violated the trust of the students' parents, and probably would <u>not</u> refrain from engaging in this activity in the future.</p> <p>Penalty: Removal</p>	<p>Alan A. Symonette, Esq.</p>

	pupil during his probationary period.		
<p><i>In the Matter of Tenure of Nicholas Vitelli, Flemington-Raritan, Reg'l Sch. Dist., Hunterdon County</i></p> <p>5/3/14</p>	<p>Tenured Physical Education and Health teacher at middle school brought up on charges of conduct unbecoming for “play-fighting” with a student, which resulted in the teacher inadvertently slapping the student and causing a red mark on his face; and failing to report the incident. Additional conduct unbecoming charges asserted for: (1) the teacher having a history of inappropriately horsing around with students in gym class over the course of ten years, for which the teacher had never received a written reprimand and (2) hosting an unauthorized “cookie party” for sixth-grade girl students in a basement PE teacher lounge with no other adults present, for which the teacher had previously been punished by the school district with the withholding of his 2013-14 increment.</p>	<p>Play-fighting that resulted in the slap, was conduct unbecoming, as it caused the student physical harm and embarrassment, and showed poor judgment by the teacher. Such behavior warrants significant, corrective action. However, the school district cannot “reach back” through ten-plus years and use prior undisciplined conduct to add to the weight of an otherwise isolated, inadvertent incident to justify termination. The teacher has already been disciplined for the “cookie party” incident, and it does not relate to the play-fighting incident.</p> <p>Penalty: 60 calendar day suspension without pay. The District shall rescind its discharge and reinstate the teacher to his former position; expunge all references of discharge from the disciplinary records; and make the teacher whole for all losses of pay and benefits he suffered, except for losses associated with the 60 day suspension.</p>	<p>Timothy J. Brown, Esq.</p>
<p><i>In the Matter of the Arbitration of the Tenure Charge between Hamilton Township, BOE, Loretta Young</i></p> <p>5/2/14</p>	<p>Tenured Student Assistance Coordinator (SAC) charged with conduct unbecoming for directing that an exchange of marijuana and money occur between two students who were in her presence; permitting the students to leave her presence; failing to report to school administrators that the student who received the marijuana in the exchange was in possession of the marijuana on school premises; and failure to be truthful with school administrators about the circumstances</p>	<p>The Arbitrator determined that the SAC was not credible, and that the offense committed had eviscerated the BOE’s ability to ever trust the SAC to perform the duties of the sensitive SAC position again.</p> <p>Penalty: Removal.</p>	<p>Michael J. Pecklers, Esq.</p>

	surrounding the incident.		
<p><i>In the Matter of Tenure Charges Against Vice Principal Lawrence E. Hawkins, The State Operated Sch. Dist. of the City of Newark, Essex County, NJ</i></p> <p>3/10/14</p>	<p>Tenured Vice Principal brought up on charges of (1) inefficiency for failing to satisfy his duties as a Vice Principal (failure to timely complete reports and properly evaluate teachers); (2) unbecoming conduct for insubordination and using corporal punishment on a student (grabbing a student by the front of his shirt and dragging him across the playground to the principal's office); and (3) other just cause of excessive tardiness.</p>	<p>Arbitrator sustained charges relating to Inefficiency and Unbecoming Conduct for inflicting corporal punishment upon a student.</p> <p>Penalty: Removal.</p>	<p>Carol F. Laskin, Esq.</p>
<p><i>Tenure Charges against Regina Dzwonar, Sch. Dist. of City of Atlantic City, Atlantic County, NJ</i></p> <p>2/20/14</p>	<p>Tenured English teacher at alternative high school brought up on charges of conduct unbecoming, which were broken into three categories. (1) Misconduct in teaching activities consisted of use of racially charged, demeaning and inappropriate language in the classroom, using a personal video camera to film students in the classroom, publicly embarrassing students, giving racially insensitive assignments, and failing to refer a student suspected of being under the influence of drugs to the school nurse. (2) Misconduct with students outside of the regular school day consisted of driving students without written permission from the parents of the students and texting her students. (3) Unprofessional conduct towards co-workers consisted of sending an inappropriate email to a co-worker.</p>	<p>The arbitrator found that significantly fewer offenses had been committed, than were alleged by the school district. Many of the offenses were explained as caused by or exacerbated by personal problems. Some of the alleged infractions were deemed to likely have been exaggerated by student complainants. The email to the co-worker, though inappropriate, did not physically threaten the co-worker. Furthermore, the school district had attempted to lump all of the alleged infractions together in order to escalate the penalty immediately to discharge, rather than imposing successive increments of progressively severe discipline. The school district should have treated the teacher as a troubled employee rather than seeking to terminate her employment summarily.</p> <p>Penalty: The tenure charges are not upheld. Reinstatement to former position and eligible to resume duties as of September 1, 2014 if</p>	<p>Daniel F. Brent</p>

		<p>several conditions (proof of attendance at therapy with a licensed psychologist and AA sessions) are satisfied. The District may require a reasonable examination by an appointed psychologist to assess her progress. No salary increment for the 2013-14 or 2014-15 school years. The interval between the date of suspension in October 2012 and her potential reinstatement in September 2014 is a disciplinary suspension. The 2014-15 school year is a period during which a final warning is operative, and if misconduct similar to that which was alleged in this case occurs, it is grounds for terminating employment.</p>	
<p><i>Richard Graffanino, River Dell Reg'l Sch. Dist., Bergen County, NJ</i></p> <p>01/31/14</p>	<p>Computer technology teacher charged with conduct unbecoming for showing six female 8th grade students a video clip from his acting portfolio of himself partially clothed kissing a female in bed and then dressing; for communicating to students an allusion to his possible personal relationship with a married female teacher; sharing and betting food with students in the classroom; and showing music videos in class after being directed not to do so. The district's affirmative action investigation concluded that he violated the district's sexual harassment and nondiscrimination policies. His increment was withheld, he was suspended without pay and tenure charges were filed.</p>	<p>Arbitrator sustained charges relating to violation of the district's policy against sexual harassment by creating offensive educational environment for students and for a fellow teacher; and for disregarding administrative directive to stop bringing, sharing and accepting food with students. Dismissal was warranted due to the gravity of the sexual harassment charges and teacher's disregard of administrative directives.</p> <p>Penalty: Removal.</p>	<p>Walt DeTreux, Esq.</p>
<p><i>State-Operated Sch. Dist. of City of Newark and Richard Barnes-Bey, Essex County</i></p> <p>01/22/14</p>	<p>Board filed charges of conduct unbecoming against preK teacher for twice spanking a 4-year old preK student on the buttocks with an open hand in the presence of others. An assistant superintendent witnessed the spanking. The teacher said to the student, "come to school like a man, got to get a beating like a man."</p>	<p>Arbitrator sustained the charge; teacher changed his story during testimony and was less than credible.</p> <p>Penalty: Removal.</p>	<p>Edmund Gerber</p>

<p><i>Dale R. Orlovsky and Toms River Reg'l Sch. Dist., Ocean County</i></p> <p>01/06/14</p>	<p>Board filed charges of conduct unbecoming against 7th grade social studies teacher, accusing him of violating district's computer use policy by accessing websites unrelated to school activities and which contained sexual materials; for exchanging personal emails with graphic sexual dialogue; and disregard for school policy (tardiness and failure to sign in/out and to attend parent conferences)</p>	<p>Arbitrator held that recent computer-related charges and charges of pattern of disregarding administrative and school policy were proven; in addition, teacher was untruthful.</p> <p>Penalty: Removal.</p>	<p>Joyce M. Klein</p>
<p><i>Mark Boyle and School District of the Township of Pittsgrove, Salem County (453-13)</i></p> <p>12/20/13</p>	<p>Language arts teacher brought up on charges of conduct unbecoming when he kissed a female student at a basketball game, which was caught on video and made her feel uncomfortable, and after taking a female student to a non-school-related play.</p>	<p>Conduct did not rise to the level of removal but was more serious than what the teacher had proposed, a 60-day paid suspension.</p> <p>Penalty: Unpaid suspension from November 2013 to first school day in January 2014. Reinstatement ordered, and board ordered to follow recommendations of psychiatrist who conducted medical exam of teacher.</p>	<p>Scott E. Buchheit</p>
<p><i>John Carlomango and School District of the Township of Hillside, Union County (450-13)</i></p> <p>12/20/13</p>	<p>Tenured music teacher accused of 12 counts of corporal punishment, insubordination, conduct unbecoming and other just cause. Teacher was alleged to have thrown a student against his desk when the student was disruptive in class, and making inappropriate comments to students and adults.</p>	<p>Conduct unbecoming and corporal punishment were proven on several charges. Charges of insubordination dismissed because teacher was disciplined previously for several incidents.</p> <p>Penalty: Removal.</p>	<p>Melissa H. Biren, Esq.</p>
<p><i>In the Matters of Tenure Hearings of Bonita Baskay and John Nartowicz, School District of Borough of Carteret, Middlesex County (Consolidated) (440-13)</i></p> <p>12/10/13</p>	<p>Tenured biology teacher and tenured guidance counselor accused of conduct unbecoming by disclosing a student's confidential academic record. The biology teacher obtained a copy of a former student's transcript from a non-employee of the district; transcript showed that the student had graduated but had not met all graduation requirements. Guidance counselor's computer showed that student's transcript had been accessed on 3 dates.</p>	<p>Unbecoming conduct charges sustained against both staff members, but removal was unwarranted because student record had not been made public except to two board members.</p> <p>Penalty: 10-day suspension for guidance counselor (Baskay) and 20-day suspension for biology teacher (Nartowicz).</p>	<p>Edmund Gerber</p>

<p><i>In the Matter of Tenure Hearing of Emil Nell, School District of City of Beverly, Burlington County (426-13)</i></p> <p>11/22/13</p>	<p>Board filed 14 charges of inefficiency, incompetency, insubordination, and conduct unbecoming against longtime music teacher. Teacher alleged to employ poor classroom management & to have no determinable lesson plans. Also alleged to have used inappropriate language with students.</p>	<p>Inefficiency and insubordination charges sustained.</p> <p>Penalty: Removal.</p>	<p>Timothy Brown, Esq.</p>
<p><i>Tenure Hearing of Maureen Sugarman, School District of the City of Orange, Essex County (331-13)</i></p> <p>9/17/2013</p>	<p>Drama teacher was accused of using corporal punishment to discipline a student by slapping him in the face. School district filed conduct unbecoming charge.</p>	<p>Conduct unbecoming charge sustained--teacher recognizing her PTSD and taking immediate responsibility for her action didn't mitigate the class disruption, potential for re-occurrence, and ultimate embarrassment of the student.</p> <p>Penalty: Removal.</p>	<p>Joyce M. Klein</p>
<p><i>Tenure Hearing of Frank Flood, Cumberland County Technical Education Center, Cumberland County (97-5/13)</i></p> <p>7/29/2013</p>	<p>Shop teacher was accused of two incidents involving pushing students and resulting in bodily injury. Teacher was suspended with pay and district required a psychological evaluation before restoring employment. The evaluation did not recommend his return and district brought conduct unbecoming charges.</p>	<p>Conduct unbecoming charges sustained. The district's prior discipline of the teacher was found to be relevant to the issue of terminating employment. Even though the student's account of events has credibility issues and conflicts with the respondent's, the timing between incidents was sufficient to provide notice to the employee to correct his behavior.</p> <p>Penalty: Removal.</p>	<p>Timothy J. Brown, Esq.</p>
<p><i>In the Matter of Tenure Hearing of Scot King and School District of the Borough of Freehold, Monmouth County (31-2/13)</i></p> <p>7/22/2013</p>	<p>Middle school social studies teacher allegedly told an African-American student that "her people have come a long way since busting out of those chains." Also quoted as saying in class that states adopting same-sex marriage were "bastardizing marriage." School district filed conduct unbecoming charges.</p>	<p>Conduct unbecoming charges dismissed. King's actions didn't rise to racism or purposeful student humiliation as alleged by the District. King's comments were insensitive, but viewed in context were not malicious or reckless.</p> <p>Penalty: Unpaid suspension; no disruption in seniority</p>	<p>Daniel F. Brent</p>

<p><i>Gerald Carter, and the School District of the City of Camden, Camden County</i> (369-12/12)</p> <p>7/18/2013</p>	<p>Tenured special education teacher brought up on inefficiency, conduct unbecoming, and insubordination charges for several years of conduct (not turning in lesson plans, absenteeism, 20 times late, playing video games in class, leaving his class without notice or coverage, playing rap music for his students which was explicit). Teacher contested on the grounds that he never received a formal evaluation which is required under the new TEACH NJ law.</p>	<p>Inefficiency & insubordination charges sustained. District met its burden through 7 years of 'write ups' and constant reassignments to schools in the district. Conduct unbecoming charges not sustained</p> <p>Penalty: Removal.</p>	<p>Robert T. Simmelkjaer, Esq.</p>
<p><i>Bordentown Regional Board of Education v. Kimberly Blood</i> (71-3/13)</p> <p>7/15/2013</p>	<p>Teacher was accused of excessive absences. District sought termination, filed tenure charges for unbecoming conduct and suspended her without pay. Teacher resigned due to "disabilities" and "incapacity to continue as a teacher."</p>	<p>Teacher's letter of resignation rendered tenure charges <u>moot</u>. Letter of resignation is included with the final decision.</p> <p>(Arbitrator opinion and Commissioner approval unnecessary)</p>	<p>Robert T. Simmelkjaer, Esq.</p>
<p><i>Jodi Bocco, and the District of the Borough of West Long Branch, Monmouth County</i> (267-13)</p> <p>7/14/2013</p>	<p>Guidance Counselor and SAC of 25 years and former physical education teacher accused of conduct unbecoming and insubordination for not reporting incidents of physical and sexual abuse, refusing to cooperate with outside agencies, and inappropriate speech with students and co-workers. Mainly accused of refusing to turn over a taped interview with a sexually abused boy to an outside investigating agency.</p>	<p>Conduct unbecoming & insubordination charges sustained. District provided 31 witnesses (including teachers, administrators, prosecutor, police officers, and parents) who all were highly credible when their veracity was challenged. District was able to use the witness' testimony as an accurate portrayal of a pattern displayed by staff member over two years.</p> <p>Penalty: Removal.</p>	<p>James W. Mastriani</p>

<p><i>Robert J. Carter, and the State-operated School District of the City of Patterson, Passaic County (51-3/13)</i></p> <p>6/19/2013</p>	<p>Carter is accused of several incidents of inappropriate behavior with students & staff. Also has a record of excessive unexcused absences. District filed 21 tenure charges, including conduct unbecoming, incompetency and other just cause.</p>	<p>All tenure charges sustained: conduct unbecoming, incompetency and other just cause.</p> <p>Penalty: Removal.</p>	<p>Mattye M. Gandell</p>
<p><i>Nelson E. Evans, Jr. and Gloucester Twp. Board of Education (6-1/13)</i></p> <p>5/24/2013</p>	<p>Special education teacher of 10 years is accused of helping kids cheat on a standardized test. Teacher appealed termination and loss of tenure for conduct unbecoming.</p>	<p>Charges of insubordination and conduct unbecoming dismissed. Charge of incompetence sustained for chronic lateness, carelessness, incomplete lesson plans, failure to read IEP timely, and poor spelling.</p> <p>Penalty: Suspension without pay from May 24 to end of school year, and reinstatement.</p>	<p>Daniel L. Gregory (St. Johns University)</p>
<p><i>Michelle Gibbs, and the School District of the City of Jersey City, Hudson County (45-3/13)</i></p> <p>5/20/2013</p>	<p>Special education teacher charged with conduct unbecoming, neglect of duty, negative conduct toward students & staff, incapacity & insubordination. She worked 5 years at high school level. After suffering a mild heart attack, she sought a transfer and was assigned to an elementary school. In the next two years she experienced several school assignments, removals for medical evaluations and clearances to return to work.</p>	<p>Tenure charges for unbecoming conduct, neglect of duty and incapacity sustained.</p> <p>Penalty: Removal.</p>	<p>Edmund Gerber</p>
<p><i>School District of the City of Jersey City, and Adele Stapleton (284-9/12)</i></p> <p>5/7/2013</p>	<p>Teacher with 37 years in the school district had been absent 600 days. District sought to remove her for excessive absenteeism.</p>	<p>Tenure charges for excessive absenteeism sustained.</p> <p>Penalty: Removal.</p>	<p>Michael J. Pecklers, Esq.</p>

<p><i>John Radzik and School District of Woodbridge</i> (368-2/12)</p> <p>4/17/2013</p>	<p>Elementary teacher accused of unbecoming conduct or other just cause for dismissal by disclosing secure test materials when 100% of his students tested proficient. Should his past positive evaluations be considered?</p>	<p>Charges sustained. NJDOE's Office of Fiscal Accountability & Compliance investigation found evidence of gross misconduct, which arbitrator found to be highly credible.</p> <p>Penalty: Removal.</p>	<p>Joseph Licata, Esq.</p>
<p><i>Sarah Hancock and School District of the City of Bridgeton, Cumberland County</i> (7-1/13)</p> <p>4/10/2013</p>	<p>Special education teacher of 22 years accused of assaulting a student. District filed charges of conduct unbecoming.</p>	<p>Dismissal unwarranted. Hallway camera contradicted evidence brought by the school district.</p> <p>Penalty: 120-day suspension without pay; immediate reinstatement.</p>	<p>Timothy J. Brown, Esq.</p>
<p><i>Jose DaCosta, and the State-Operated School District of Newark, Essex County</i> (273-9/12)</p> <p>4/1/2013</p>	<p>High school teacher accused of conduct unbecoming for use of profanity, being confrontational with students, and enhanced assistance to a student while taking the High School Proficiency Assessment.</p>	<p>Charges sustained. District was well within its rights to terminate teacher based on the uncontradicted evidence supplied.</p> <p>Penalty: Removal.</p>	<p>Ernest Weiss</p>
<p><i>Felicia Pugliese, and the State-Operated School District of the City of Newark, Essex County</i> (272-9/12)</p> <p>2/15/2013</p>	<p>Can a tenured teacher who was assigned to teach out of subject under NCLB and who received inefficient ratings for 3 years be removed?</p>	<p>Ineffective rating for several years is irrefutable. Arbitrator sustained the charges.</p> <p>Penalty: Removal.</p>	<p>Daniel F. Brent</p>
<p><i>Lynderia Mansfield, and the State-Operated School District of Newark, Essex County</i> (273-9/12)</p> <p>2/6/2013</p>	<p>District brought tenure charges against teacher for inefficiency for poor annual performance assessment, not meeting improvements needed in 90 days, and poor attendance.</p>	<p>Charge of inefficiency for poor attendance was sustained; other charges dismissed. Since charges were filed before effective date of TEACHNJ, arbitrator did not decide case under TEACHNJ.</p> <p>Penalty: Reinstatement with back pay and benefits, minus 90 days' back pay for poor attendance.</p>	<p>Mattye M. Gandel</p>

<p><i>State -Operated School District of Newark, Essex County, and Darwin Hawthorne (266-9/12)</i></p> <p>2/6/2013</p>	<p>Staff member served as math teacher and math coach for nine years. He received unsatisfactory ratings for about three years prior to effective date of TEACH NJ. District filed inefficiency charges.</p>	<p>Inefficiency charges dismissed. Evidence of previous ineffectiveness was countered by years of effective service and lack of communication between teacher and principal.</p> <p>Penalty: Reinstatement with back pay, and arbitrator recommended transferring teacher to a different school.</p>	<p>Gerard G. Restaino</p>
<p><i>Edgard Chavez, and State-Operated School District of the City of Newark, Essex County (269-9/12)</i></p> <p>2/6/2013</p>	<p>Teacher taught adult education for almost 20 years, then was re-assigned to teach 6th grade math. Received unsatisfactory rating and an improvement plan, but performance didn't improve sufficiently. District filed tenure charges for inefficiency. Conduct and evaluations predated TEACHNJ.</p>	<p>Charges of inefficiency sustained. Arbitrator did not decide case under ch. 23 of TEACHNJ. Arbitrator held that despite district's efforts to supervise teacher and assist in transitioning to new position, insufficient improvement was demonstrated.</p> <p>Penalty: Removal.</p>	<p>Timothy J. Brown, Esq.</p>
<p><i>State-Operated School District of City of Newark, Essex County, and Owen Newson (276-9/12)</i></p> <p>1/10/2013</p>	<p>Teacher with 23 years of continuous employment at the same high school and evaluations of satisfactory and proficient received unsatisfactory rating, and was charged with inefficiency when failed to improve after a 90-day improvement period.</p>	<p>Inefficiency charge dismissed. Under totality of the circumstances, one poor evaluation should not invalidate 22 years of good service.</p> <p>Penalty: One-year loss of salary increment.</p>	<p>Michael J. Pecklers, Esq.</p>
<p><i>Lenore Francis, and Jersey City Board of Education, Hudson County, NJ (285-9/12)</i></p> <p>1/10/2013</p>	<p>An elementary special education teacher for 14 years was charged with chronic absenteeism causing an adverse effect on student achievement, incapacity, conduct unbecoming and neglect of duty. Teacher missed an average of 30 days per year for 6 years.</p>	<p>Charge sustained of incapacity due to absenteeism.</p> <p>Penalty: Removal.</p>	<p>Walt DeTreuX, Esq.</p>

<p><i>School Dist. of City of Atlantic City, Atlantic County, and Christopher Lorge (275-9/12)</i></p> <p>1/14/2013</p>	<p>High school music teacher threw items at student in his piano class, including paperback piano lesson book and tissue box. District filed charges in support of dismissal and alleging violation of board policies, corporal punishment and unbecoming conduct.</p>	<p>Arbitrator sustained charge of conduct unbecoming, but found dismissal to be unwarranted.</p> <p>Penalty: 120 days' suspension without pay, one-year increment withholding, and reinstatement.</p>	<p>Melissa H. Biren, Esq.</p>
<p><i>Randolph Township Board of Education, and Jill Buglovsky (265-9/12)</i></p> <p>12/21/2012</p>	<p>Teacher accused of unbecoming conduct and misuse of school district computers by emailing about her extramarital affair, which was sexually graphic and referred to drug use. Also accused of using another teacher's login and continuing to send emails after a reprimand.</p>	<p>Some charges of unbecoming conduct /other just cause sustained, others dismissed. District was able to prove only the misuse of the school district's computer. Termination unwarranted.</p> <p>Penalty: 120-day suspension without pay, one-year increment withholding; reinstatement.</p>	<p>Joseph Licata, Esq.</p>
<p><i>Thomas Williams, and the Newark, New Jersey School District Board of Education (264-9/12)</i></p> <p>12/18/2012</p>	<p>25-year veteran teacher had a history of tardiness and absenteeism. He was rated low in classroom instruction but the principal's evaluation narrative was glowing. Thereafter, the district filed charges of inefficiency.</p>	<p>Inefficiency charges dismissed. District's internally inconsistent evaluations of teacher did not support the charges. The evaluation failed to adhere substantially to the evaluation process. Arbitrator emphasized that "procedure matters."</p> <p>Penalty: None; charges were dismissed, and arbitrator ordered the board to make the teacher whole.</p>	<p>Daniel L. Gregory (St. Johns University)</p>

<p><i>School District of City of Jersey City, Hudson County, and Jason Levine</i> (286-9/12)</p> <p>12/16/2012</p>	<p>Special education teacher charged with chronic and excessive absenteeism. A prior settlement on similar charges had been reached, but the district alleged that teacher had not complied. District filed charges of incapacity, conduct unbecoming, and neglect of duty relating to his chronic absenteeism.</p>	<p>Tenure charges sustained of incapacity, conduct unbecoming, and neglect of duty relating to chronic absenteeism. Teacher did not adhere to previous agreement to get rehabilitation.</p> <p>Penalty: Removal.</p>	<p>Randi E. Lowitt</p>
<p><i>Marc C. Bringham, and School district of City of Vineland</i> (236-8/12)</p> <p>11/30/2012</p>	<p>Elementary teacher ran through an apartment complex naked and jumped into car. Teacher arrested for lewdness and pled guilty to a lesser offense. District filed charge of unbecoming conduct and sought dismissal. Teacher had no disciplinary problems, and was named district's "Teacher of the Year" in 2011-12.</p>	<p>Unbecoming conduct charge sustained.</p> <p>Penalty: Removal.</p>	<p>Robert Gifford, Esq.</p>