

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES

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TENURE HEARING

In the Matter of the Arbitration Between)
 SCHOOL DISTRICT OF THE TOWNSHIP)
 OF BELLEVILLE)
)
PETITIONER)
)
 And)
)
 MICHELE SACCHIERO)
)
RESPONDENT)
)
 Agency Docket 306-12/13)

OPINION

AND

AWARD

ARBITRATOR

GERARD G. RESTAINO, ASSIGNED BY NEW JERSEY
DEPARTMENT OF EDUCATION IN ACCORDANCE WITH
CHAPTER 26, P.L. 2012, AND 18A:6-17.1

APPEARANCES:

FOR THE PETITIONER

ALFONSE DEMEO, ESQ.
DR. HELENE FELDMAN
CARLOS RIVERA
EFRAIN ARROYO
MIRNA ALVAREZ
DORA CAVALLO

COUNSEL FOR PETITIONER
SUPERINTENDENT OF SCHOOLS
FATHER OF S.R.
GRANDFATHER OF S.R.
GRANDMOTHER OF S.R.
FORMER PRINCIPAL OF SCHOOL NO. 8

FOR THE RESPONDENT

TIMOTHY SMITH, ESQ.
NICHOLAS POBEREZHSKY
MICHELE SACCHIERO
ANTHONY SALESE
MELISSA GUARINO
AIDA CARDONA
JOSEPH PETRILLO
LORI GEORGEVICH
SANDRA PALADINO
MELISSA POWERS

COUNSEL FOR RESPONDENT
COUNSEL FOR RESPONDENT
RESPONDENT
FORMER PRESIDENT OF ASSOCIATION
PARENT
PRINCIPAL OF SCHOOL NO. 8
FORMER PRINCIPAL OF SCHOOL NO. 8
TEACHER SCHOOL NO. 8
FORMER SECRETARY SCHOOL NO. 8
ASSOCIATION REPRESENTATIVE

PROCEDURAL BACKGROUND

Pursuant to N.J.S.A.A. 18A:6-16, as amended by P.L. 2012 c.26 ("Teach NJ"), tenure charges were brought by the Board of Education of the Belleville School District, hereinafter referred to as the "Petitioner/Board", against Michele Sacchiero, hereinafter referred to as Respondent/Ms. Sacchiero. The charges grew out of an incident that occurred on May 23, 2013, at School No. 8 in Belleville, N.J.

On May 28, 2013, a meeting was held with Superintendent of Schools, Dr. Helene Feldman, Ms. Paula Cummins, Director of Curriculum, Mr. Anthony Salese, then President of the Belleville Education Association and the Respondent. After the meeting the Superintendent conducted an investigation and determined that the Respondent should be suspended. On May 29, 2013, Superintendent Feldman suspended the Respondent, with pay, pending further investigation.

The Superintendent testified that she continued with her investigation and hired a private investigation firm to interview all those involved in the May 23, 2013 incident.

On November 13, 2013, Superintendent Feldman submitted a five-page document filing tenure charges against the Respondent. Accompanied with that document was a sworn statement of evidence against Ms. Sacchiero. On November 14, 2013, Board Secretary, Michael Vezza, sent a letter to Ms. Sacchiero notifying her of the tenure charges of conduct unbecoming and/or other just cause. On November 29, 2013, the Respondent filed a document in opposition to the tenure charges. On December 9, 2013, the Board passed a resolution to certify tenure charges against the Respondent.

On December 10, 2013, the Board submitted tenure charges against Ms. Sacchiero to the Commissioner of Education. On December 30, 2013, the Respondent

74 18
"Board"), State of New Jersey. The Board maintains administrative offices at 102 Passaic Avenue. As the chief school administrator, I am charged with the general oversight of the school district and all employees serving therein.

2. At all times relevant herein, Michele Sacchiero was a tenured teacher employed by the Board. I am fully familiar with the facts and circumstances regarding the Sworn Tenure Charges against Michele Sacchiero. I have carefully reviewed the accompanying Sworn Statement of Evidence.
3. Based on the Sworn Statement of Evidence, I hereby charge Michele Sacchiero with CONDUCT UNBECOMING A TEACHING STAFF MEMBER specifically: the failure to follow District policies and procedure which resulted in a six year old child being unsupervised and placed in danger of imminent harm; INSUBORDINATION and other JUST CAUSE pursuant to N.J.S.A.A. 18A:28-5 and N.J.S.A.A. 18A:6-10, et seq., sufficient to require that her employment with the Board be terminated.

FACTS COMMON TO ALL CHARGES

1. Respondent, Michele Sacchiero, has been employed as a teacher in the elementary schools with Belleville since September 1, 1999. For the 2012-2013 school year she was assigned as a kindergarten teacher to Belleville Public School Number 8. On or about May 23, 2013, Ms. Sacchiero was responsible for the end of day release and dismissal of students in her class. On the same date, at approximately 3:05 p.m., Ms. Sacchiero dismissed a six year old student, S.R., in violation of the District policy and procedures without a parent, guardian or other designated escort undertaking the care and custody of the child. As a result of the neglect by Ms. Sacchiero, the six-year old child was allowed to leave the premise unattended and unsupervised. The child ultimately was found walking home alone at great peril to her safety and welfare and at great liability to the District.
2. As a result of the actions of Ms. Sacchiero, the District was subjected to potential liability for the unauthorized release of a student in violation of the District's policy and procedures.
3. On Tuesday, May 28, 2013, Ms. Sacchiero was interviewed by Superintendent Helene Feldmen regarding the events of May 23, 2013. During the course of the interview, Ms. Sacchiero made numerous false statements in an attempt to mislead the Superintendent and to hide her failure to follow District policy. Ms. Sacchiero made knowingly false statements in an effort to hinder the District's investigation of the events of May 23rd and to conceal her neglect of her duties under the District's policies and procedures.

4. On August 7, 2013, the District was notified of an investigation into the incident involving Ms. Sacchiero by the Department of Children and Families, Institutional Abuse Investigation Unit.

CHARGE ONE – UNBECOMING CONDUCT

(Violation of District Policies)

1. Michele Sacchiero engaged in unbecoming conduct as a teacher staff member during the 2012-2013 school year by failure to follow District policies and procedures regarding pupil release and as a result by placing the minor child, S.R., in danger of imminent physical harm, and in violation of District policies and procedures.
2. The foregoing acts by Michele Sacchiero, individually and cumulatively, constitute conduct unbecoming a teaching staff member and other just cause for dismissal.

CHARGE TWO – UNBECOMING CONDUCT

(Conduct Unbecoming – Placing Child in Danger of Imminent Harm)

1. Michele Sacchiero engaged in unbecoming conduct as a teaching staff member during the 2012-2013 school year by neglecting her duties regarding pupil release and supervision and by her placing S.R., a six-year old female student, in danger of imminent harm as a result of her negligent and reckless conduct. By doing so, she compromised student safety and exposed the District to liability.
2. The foregoing acts by Michele Sacchiero, individually and cumulatively, constitute conduct unbecoming a teaching staff member and other just cause for dismissal.

CHARGE THREE – NEGLIGENCE

(Conduct Unbecoming – Neglect of Duties)

1. On May 23, 2013, while acting in her capacity as a teacher and being charged with the supervision of S.R., Michele Sacchiero neglected her duties and responsibilities as a teaching staff member by failing to abide by District student release policies, placing a student at risk of substantial harm, and exposing the District to liability, as a result of her neglect of her duties to supervise the proper dismissal of S.R. The foregoing acts by Sacchiero, individually and cumulatively, constitute conduct unbecoming a teaching staff member, misbehavior, neglect, insubordination and other just cause for dismissal.

CHARGE FOUR – INSUBORDINATION

1. Michele Sacchiero intentionally and willfully violated District policies and procedures by making statements she knew to be false in an effort to mislead the Superintendent; to hinder the District's investigation of the events of May 23, 2013, involving the Respondent; and to prevent the District from taking disciplinary action against her.
2. Michele Sacchiero's intentional and willful misrepresentations to the Superintendent included misrepresenting the discharge policy for kindergarten students at School Number 9; misrepresenting the discharge policy for kindergarten students at School Number 8; misrepresentation of her actions on May 23, 2013 regarding dismissal of S.R.; and misrepresentation of the events affecting the minor child in question.
3. Michele Sacchiero's conduct in violation of the District's policies and procedures, and making statements she knew to be false and misleading, individually and cumulatively, constitute conduct unbecoming a teaching staff member, misbehavior, neglect, insubordination, and other just cause for dismissal.
4. Michele Sacchiero's actions of intentionally and wilfully making false statements to the Superintendent, individually and cumulatively, constitute conduct unbecoming a teacher, misbehavior, neglect, insubordination, and other just cause for dismissal.

Isl Helene Feldman
Dr. Helene Feldman, Superintendent

Sworn and Subscribed to
This 13th day of Nov., 2013

IN THE MATTER OF THE TENURE
CHARGES AGAINST MICHELE
SACCHIERO BY THE BELLEVILLE
BOARD OF EDUCATION, ESSEX
COUNTY, NEW JERSEY,

: BEFORE THE COMMISSIONER OF
: EDUCATION, OF THE STATE OF
: NEW JERSEY

: _____ AGENCY DOCKET NO.

: **SWORN STATEMENT OF EVIDENCE**
: **AGAINST MICHELE SACCHIERO**

STATE OF NEW JERSEY:

SS:

COUNTY OF ESSEX:

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

1. I am the Superintendent of Schools for the Belleville Township Board of Education (the "Board"), which has administrative offices at 102 Passaic Avenue, Belleville, Essex County, New Jersey.
2. During all times relevant, Michele Sacchiero was an employee and a member of the teaching staff. I am fully familiar with all of the facts and circumstances surrounding the accompanying Sworn Tenure Charges against Michele Sacchiero, and have personally reviewed the evidence in support of the accompanying charges against Michele Sacchiero, which is summarized as follows:
 - a) Michele Sacchiero (Sacchiero) has been employed as a teacher with the Belleville Township Board of Education since September 1, 1999. For the 2012-2013 school year, she was assigned as a kindergarten teacher in Belleville Public School No. 8.
 - b) On May 23, 2013, a six year old child, S.R., was a student in Sacchiero's kindergarten class at Belleville School No. 8.
 - c) On the date in question, the student release policy for the District required Ms. Sacchiero to release S.R. only to her parent or authorized guardian.
 - d) On May 23, 2013, Sacchiero did fail to follow the policy and the child was released on her own and unsupervised from school without being placed in the care and custody of a parent or authorized guardian.

- e) S.R. walked home in the rain crossing two streets and without adult supervision.
 - f) As a result of Sacchiero's failure to follow the policy, the child, S.R., was placed in harm's way and was unnecessarily endangered. Sacchiero's failure to follow the District policy resulted in District being exposed to liability for both civil damages and institutional reprimand.
 - g) On Tuesday, May 28, 2013, I convened a meeting with Sacchiero as part of an investigation regarding this matter. At that meeting, Sacchiero, in an attempt to mislead or to hinder the investigation, did intentionally misstate the District policy and the release policy of School No. 8. Sacchiero did also make false statements regarding her actions on the date in question.
 - h) The Department of Children and Families Institutional Abuse Investigation Unit investigated the incident and the actions of Sacchiero.
3. I hereby certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Dr. Helene Feldman
Dr. Helene Feldman, Superintendent

Sworn to and subscribed
before me this 13 day
of Nov., 2013

Notary Public

RELEVANT STATUTORY LANGUAGE

CHAPTER 26

AN ACT concerning school employees, revising various parts of the statutory law, and supplementing chapters 6 and 28 of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

4. N.J.S.A. 18A:6-9 is amended to read as follows:

Controversies, disputes arising under school laws; jurisdiction.

18A:-9. The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

Notwithstanding the provisions of this section to the contrary, an arbitrator shall hear and make a final determination on a controversy and dispute arising under subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes (c. 18A:6-10 et. seq.).

5. N.J.S.A. 18A:6-11 is amended to read as follows:

Written charges, statement of evidence, filing; statement of position by employee; certification of determination; notice.

18A:6-11. Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statement of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probable cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S.A. 18A:6-16, together with a certification of such determination. The consideration and actions of the board as to any charge shall not take place at a public meeting.

8. N.J.S.A. 18A:6-16 is amended to read as follows:

Proceedings before commissioner; written response; determination.

18A:6-16. Upon receipt of such a charge and certification, or of a charge lawfully made to the commissioner, the commissioner or the person appointed to act in the commissioner's behalf in the proceedings shall examine the charges and certification. The individual against whom the charges are certified shall have 15 days to submit a written response to the charges to the commissioner. Upon a showing of good cause, the commissioner may grant an extension of time. The commissioner shall render a determination on the sufficiency of the charges as set forth below within 10 days immediately following the period provided for a written response to the charges.

If following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator pursuant to section 22 of P.L. 2012 c.26 (c.18A:6-17.1) for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

P – (F) and R-1

RELEVANT PUPIL DISMISSAL POLICY, PROCEDURES AND EMERGENCY REFERENCE FORMS

8601 PUPIL SUPERVISION AFTER SCHOOL DISMISSAL

The Board of Education adopts this Pupil Supervision After School Dismissal Policy as a result of the New Jersey Supreme Court's decision in Joseph Jerkins, an infant by his Guardian Ad Litem, Charles Jerkins; Charles Jerkins and Toni Jerkins, individually, v. Soweto Anderson; Kemba N. Anderson; John Does 1-10 (fictitious individuals) and ABC Corporations 1-10 (fictitious entities) and Board of Education of Pleasantville Public Schools and Rosemary Clarke.

The New Jersey Supreme Court, in Jerkins, indicated dangers exist for younger pupils at dismissal as children are susceptible to numerous risks, including negligent conduct, when leaving school property. Because of these risks, the Board of Education adopts and requires the implementation of Policy 8601 for the supervision of younger pupils after dismissal. The supervision provisions of Policy Guide 8601 are applicable to parents or legal guardians of pupils attending district-operated schools or programs in grades Kindergarten to six who are not eligible for district-provided transportation after dismissal or are eligible and elect not to use district-provided transportation after dismissal.

Any parent(s) or legal guardian(s) of a pupil attending a district-operated school or program in grades Kindergarten to six, where the pupil is not eligible for district-provided transportation or is eligible and elects not to use district-provided transportation after dismissal may request the school or program not release the pupil to walk home after dismissal unless the pupil is released to the parent(s) or legal guardian(s) or escort(s) designated by the parent(s) or legal guardian(s). The parent(s) or legal guardian(s) requesting their children only be released to a parent(s) or legal guardian(s) or parent(s) or legal guardian(s)-designated escort after dismissal must submit a completed Request for Supervision at Dismissal from School Form to the Principal or designee, or program administrator.

The Form shall be made available in the Main office of the school building and classroom and to parent(s) or legal guardian(s) in the beginning of the school year.

Only those parents or legal guardians requesting the school or program not release their child(ren) to walk home after school dismissal unless the child(ren) is released to the parent(s) or legal guardian(s) or designated escort need to complete the Request Form.

In order for the school administration to effectively implement the requirements of this Policy and to ensure the safety and security of pupils that will be released to a parent(s) or legal guardian(s) or designated escort, the parental request shall be applicable for every school day and shall apply for a duration period of the entire school year. The Request form must be re-submitted at the end of the duration period. In addition, a parent(s) or legal guardian(s) may rescind their Request by submitting a written request to the Principal or program administrator indicating the date in which the parent(s) or legal guardian(s) no longer requests the school provide supervision of their child(ren) after school dismissal. The child(ren) will be dismissed in accordance with typical dismissal protocol effective the date indicated in the rescinding request.

The Principal or designee, upon receiving the Request for Supervision at Dismissal from School Form, shall notify the appropriate school staff member(s) who has supervision of the pupil at dismissal time at the end of the school day of the parent's or legal guardian's request. The supervising staff member that receive such notice shall retain supervision of the pupil when other pupils are dismissed from school at the end of the school day and send to the office if designated escort is not on time.

Each Principal will develop and implement a written Pupil Supervision After School Dismissal Plan for their school building. This Plan shall include the school building's or program's supervision procedures for pupils at the end of the school day to the designed area in the school building or program and the location of the designated area in the school building or program. The Plan shall be based on the school's or program's ability to provide supervision, the accessibility for the parent(s) or legal guardian(s) or designated escort to pick up the child without disrupting dismissal of the remaining school population, and other considerations unique to the school building or program location. The school's Pupil Supervision After School Dismissal Plan shall be provided to all parent(s) or legal guardian(s) that have submitted a Request Form.

In the event the parent(s) or legal guardian(s) or designated escort does not arrive to pick up their child(ren) after the dismissal time of school, the Principal or designee will attempt to contact the parent(s) or legal guardian(s) using the district's emergency call procedures.

The pupils(s) shall be supervised by the Principal in the designated area of the building and will only be released when the parent(s) or legal guardian(s) or designated escort arrives to pick up the pupil [Optional – and signs the pupil out of school].

In the event of an emergency such that, when an unforeseen event prevents a parent or legal guardian or designated escort from arriving for the child(ren) at dismissal within the time period designated by the Principal or program administrator, the pupil will be relocated to the Main Office in the school building and will remain in the Main Office supervised by the Main Office staff until the parent(s) or legal guardian(s) or designated escort arrives and signs the pupil out of school. Signature is required for early dismissal.

This Policy shall be published in pupil/school handbooks. In addition, the school district shall provide to parent(s) or legal guardian(s) in the beginning of the school year, the school's calendar to include the starting and dismissal times for full session, half-session and early dismissal days due to weather or other emergencies. Parent(s) or legal guardian(s) shall be required to return to school a signed acknowledgment of receipt of the pupil/school handbook, which shall include this Policy and the school calendar. In addition, any changes to the school's calendar made during the school year shall also be provided to parent(s) or legal guardian(s).

Adopted 24 January 2011§

P – (M)

September 6, 2013

To: Parents/Guardians

From: Ms. Aida Cardona, Principal

Re: Dismissal K-5 Students

Starting on Monday, September 9, 2013, all kindergarten, first, second, third, fourth, and fifth grade students will be lined up on the schoolyard, in their designated areas marked with their classroom.

Parents/Guardians may pick up students every day, in this location. Please do not block the entrance or the lines where the students are being dismissed. Parents may wait for their child on the far end of the schoolyard, by the field. Teachers will release students to parents/guardians upon arrival in the schoolyard. **NO CHILD WILL BE PERMITTED TO LEAVE BY THEMSELVES!** Children, whose parents are late, will be brought to the multi-purpose room until parents/guardians arrive.

If your child is permitted to walk home, please indicate below.

I, or a designated person, **will pick up my child:**

Student's name

Teacher's name

Parent/Guardian signature

My child **will walk home:**

Student's name (Print)

Teacher's name

Parent/Guardian signature

PLEASE RETURN THIS FORM TO YOUR TEACHER BY MONDAY, SEPTEMBER 9, 2013.

**Belleville School #8
Rainy Day and Severe Weather Dismissal Procedures**

In order to dismiss students in an orderly and timely fashion, we are asking you to please adhere to the following dismissal procedures during rainy days and severe weather. Your patience and cooperation will be greatly appreciated.

All bus students and aftercare students will be sent to the All Purpose Room at 3:10 p.m.

We will have a staggered dismissal procedure.

Kindergarten and First Grades:

- *Kindergarten will be dismissed at 3:05 p.m.*
- *First grade will be dismissed at 3:10 p.m.*
- *Students will be dismissed through the Main entrance.*

Second and Third Grades:

- Students will be dismissed at 3:15 p.m.
- Students will be dismissed on the Union Ave side entrance.

Fourth and Fifth Grades:

- Students will be dismissed at 3:15 p.m.
- Students will be dismissed on the New Street side entrance.

R-4

DISMISSAL AT END OF THE SCHOOL DAY PROCEDURES
REQUEST FOR SUPERVISION FROM SCHOOL FORM

March 3, 2014

Dear Parent/Guardian:

It is the intent of our school to provide a safe environment for your child before, during and after school.

Unless you waive the requirement, Kindergarten through Grade 5 students are required to have an authorized personal pick them up/escort them to a caregiver's location. Moreover, the school must be advised of the individual(s) who will be picking up/escorting your child at dismissal time. You may name up to three individuals, which the district recommends.

At any time, if an unauthorized person will be picking up your child, a note from you, the parent/legal guardian, is required. Please send it to your child's teacher, who will send it to the main office, where it will be kept. Additionally, the person picking up your child must present identification, before the child will be released.

All designated escorts/authorized individuals who are picking up your child must be at the school at dismissal time and at the correct location. All designated escorts must be 18 years of age, unless they are named as an authorized escort.

*The release/dismissal time for **kindergarten** students is 3:05 p.m. Single session/early dismissal time is 12:25 p.m. They will be released from the main entrance doors and escorted onto the blacktop, located directly in front of the building.*

*The dismissal time for **Grade 1 through Grade 5** students is 3:15 p.m. Single session/early dismissal time is 12:35 p.m. They will be released from the main entrance doors and escorted on the blacktop, located directly in front of the building.*

Please be advised: children will not be released with eye contact or a verbal exchange from a distance. The person picking up your child must walk up to the teacher. The teacher will physically hand your child to you or your authorized escort.

Students that are not picked up on time will be brought to the main office. If an unauthorized person is picking up your child, a note from you, the parent/guardian, must accompany that person. That person must also present identification, and will be required to sign-out your child before he/she is released.

Please complete the following form, Request for Supervision from School Form, and indicate your preferences for your child's end of the school day/dismissal procedures. This form must be completed annually and/or any time an authorized person/escort change is made. Please return the entire form to your child's classroom teacher by **March 10, 2014.**

Sincerely,

Principal,
c Ms. Helene Feldman, Superintendent of Schools

P – (H) and R-3

BELLEVILLE PUBLIC SCHOOLS, BELLEVILLE, NJ 07109
EMERGENCY REFERENCE CARD

Pupil's Name: _____ Home Phone: _____
(Last) (First) (Middle) Room # _____

Address: _____ Grade: ___ Date of Birth: _____

Mother/Guardian Name: _____ Father/Guardian Name: _____

Work Phone #: _____ Work Phone #: _____

Beeper/Cell #: _____ Beeper/Cell #: _____

E-Mail Address: _____ E-Mail Address: _____

If the school is unable to contact either parent at home/work, please list below two (2) relatives or friends who would have the authority to advise us regarding the welfare of your child.

Name: _____ Phone #: _____

Name: _____ Phone #: _____

Does this child have any health insurance including NJ FamilyCare/Medicaid, Medicare, private or other?

Yes _____ If Yes, name of insurance company _____

No _____ NJ FamilyCare provides free or low cost health insurance for uninsured children and certain low income parents.

For further information call 800-701-0710 or visit www.nifamilycare.org to apply online. You may release my name and address to the NJ FamilyCare Program to contact me about health insurance.

Signature: _____ Printed Name: _____ Date: _____

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Fill-out and return this form to Ms. Sacchiero

EMERGENCY FORM

PLEASE PRINT

Child's First and Last Name: _____

Address: _____

Home Phone #: _____ Date of Birth: _____

E-mail Address: _____

Mother's First and Last Name: _____

Cell Phone #: _____ Work Number: _____

Father's First and Last Name: _____

Cell Phone #: _____ Work Number: _____

First and Last Name of brothers and sisters at School #*. Please include their grade.

Person to contact in any emergency: _____

First and Last Name: _____

Home Phone #: _____ Work Phone #: _____

Name the individual(s) who has/have your permission to pick up your son/daughter from school.

Please list their name and a contact number on the lines below.

Is there anyone who does not have your permission to pick up your son or daughter?

Please indicate by circling Yes or No. If yes, please write their name(s) below:

Note: Form Developed by Respondent and Colleagues

POSITIONS OF THE PARTIES:¹

For the Petitioner:

The Petitioner argues that the Respondent was aware of the dismissal policy at School No. 8 and violated it on May 23, 2013, when she released S.R. The District contends that Ms. Sacchiero released her students for the day and allowed S.R. to walk home alone and did not release her to a parent or authorized individual. On that day, Mirna Alvarez, the Student's grandmother, was to pick her up after school. Ms. Alvarez arrived at school and was unable to locate S.R. and had a difficult time getting into the building because a security officer said she could not go into the building but that he would convey her concerns to the front office. She ultimately entered the building and determined that S.R. was not in the building. She called her son-in-law and her daughter and asked if they knew where S.R. was.

¹ TR1 refers to the February 19, 2014 hearing; and TR2 refers to the April 4, 2014 hearing and TR3 refers to the April 11, 2014 hearing.

Carlos Rivera, the father of S.R., testified that after he received the phone call from Ms. Alvarez, he left work and drove around looking for his daughter and found his daughter close by their house on Belleville Avenue. He stopped the car, put her in the car, and brought her home.² Mr. Rivera testified that he went to the school and confronted Mr. Vespignani, the Building Principal. Mr. Rivera testified that he was furious over the fact that his child was missing and that the Principal was not helping him and in fact the Principal said to him, "If you don't leave the building I will have you arrested."

Ms. Sacchiero left School No. 8 at approximately 3:20 p.m. on May 23, 2013, and returned at approximately 4:00 p.m. at which time she was also confronted by Mr. Rivera.³

Ms. Sacchiero testified that she has been releasing S.R. to her grandfather throughout the entire year. After the May 28, 2013, meeting and further investigation conducted by Superintendent Feldman, the Superintendent determined that she had sufficient cause to suspend Ms. Sacchiero with pay pending further investigation.⁴

The Petitioner argues that *"At no time during her interview, her opposition to the tenure charges, or her interrogatories, did the Respondent allege that she did not know the release policy at School No. 8."* In fact, her own witnesses testified that not only was she familiar with the release policy, but that she instructed other faculty members with regard to that policy. One of her witnesses, Sandra Paladino, a former secretary at School No. 8, testified that she was a secretary at School No. 8 for twenty-nine (29) years and that she served under five different Principals during her tenure and that none

² TR1, Pg. 10: 1-2

³ TR3, Pg. 339: 11-16

⁴ TR3, Pg. 377: 15-18

of them, to her knowledge, had a written policy or procedure on student dismissal.⁵ Ms. Paladino testified that *"The procedure was that the children were brought up to the doors that they were to be dismissed from and upon recognition of a parent, guardian or someone picking them up, they would have eye contact with whatever the child would be released out the door."*⁶ (Verbatim from transcript)

The testimony of former Principal Joseph Petrillo supported the testimony of Ms. Paladino as it relates to student dismissal at School No. 8. Dora Cavallo, another former Principal from School No. 8 testified in support of what Mr. Petrillo said, as well as did the Respondent. They all testified that the dismissal procedure had remained constant for at least thirty (30) years at School No. 8, including and up to May 23, 2013.

Ms. Sacchiero testified that she created her own form when she first began teaching in 1999 containing the confidential information for each student, including the persons authorized to pick up the children.⁷ Even though the Respondent testified about the form she created, she never produced a copy of that form at the arbitration hearings.

The Petitioner argues that by her own testimony, the Respondent acknowledges that she has followed the dismissal policy and its requirements for the last thirteen (13) years on a daily basis. Not only was this confirmed by her witnesses, but also by the Petitioner's witness, Dora Cavallo.

⁵ TR2, Pg. 374:1-25; TR2, Pg. 275: 1-18

⁶ TR2, Pg. 275:21-25, Pg. 276:1

⁷ TR3, Pg. 321:9-25, Pg. 322:1-24

The District asserts that the Arbitrator should determine that Ms. Sacchiero was aware of the dismissal procedures and policies, and any deviation from the policies and procedures is a violation by the Respondent.

The District strongly argues that Pupil Dismissal Policy 8601 does not require the District to provide the Respondent with the pupil supervision after school program. The District argues that the Policy speaks for itself and contrary to the Respondent's position, there is nothing in that Policy requiring the District to provide a copy to the Respondent. In fact, the Policy only speaks to providing the plan to "parent(s) and guardian(s)". Furthermore, the District contends whether the parent(s) or guardian(s) had a copy of the Plan is not a significant factor because Ms. Sacchiero's responsibilities under the policies of the District and procedures implemented at School No. 8 remain the same. The dismissal policies would be included in the student handbook, and Ms. Sacchiero testified that she had chosen not to review the student handbook despite being aware of the handbook and the opportunity to review it.

The Petitioner contends that the testimony of the Respondent should be rejected by the Arbitrator. Ms. Sacchiero maintained from May 23, 2013, until her testimony on April 11, 2014, that she released S.R. to her grandfather, Efrain Arroyo. However, on April 11, 2014, in a clear attempt to reconcile her version of events with that of her witness, Melissa Guarino, the Respondent suddenly claimed to have released the child to her grandfather and her maternal grandmother, Myrna Vasquez. At the meeting with the Superintendent on May 28, 2013, and in her opposition to the tenure charges, her interrogatory answers, and when questioned by the police, she maintained that she released the child to the grandfather and never made mention of the grandmother. Now

she is asking this tribunal to accept the fact that S.R. was released to her grandfather and grandmother and that S.R.'s family has simply concocted this story.

Mr. Arroyo testified, with the aid of an interpreter, that on May 23, 2013, he was not at School No. 8, he was at Dr. Abucci's (sic) office on Bloomfield Avenue in Newark, New Jersey from 12:00 p.m. to 3:00 p.m.⁸ The District argues that there was no evidence submitted to refute the testimony of Mr. Arroyo. Candidly, he was not at School No. 8 on May 23, 2013 and Mr. Arroyo further testified that he called his son the day before, May 22, 2013, and told him he could not pick up S.R. because he had an appointment.⁹

The District argues that the Respondent misrepresented her relationship with Ms. Guarino because in her answers to interrogatories she said that she did not meet Ms. Guarino until sometime in 2013, but she had Ms. Guarino's son as a student in her class in 2012-2013. Her response was that someone in the lawyer's office must have made a mistake, and there was a typographical error.¹⁰

Furthermore, the Respondent admitted that she violated a District policy with regard to leaving the building without punching out on her time card but said she had approval from Mr. Vespignani to do so. Unfortunately, Mr. Vespignani was not at the hearing so it is another example of Ms. Sacchiero blaming others for her actions.¹¹

The District contends that Ms. Sacchiero has both an interest and a motive to give misleading testimony because she wants to keep her tenure. She seeks to save

⁸ TR1, Pg. 48:1-25

⁹ TR1, Pg. 55:1-6

¹⁰ TR3, Pg. 346:11-25; Pg. 347:1-18

¹¹ TR3, Pg. 348:1-25; Pg. 349:1-9

her employment and, as such, as shown, she will say anything to avoid losing her tenure.

The testimony of Melissa Guarino must be rejected by the Arbitrator, because Ms. Guarino's testimony contradicts that of every other witness in the case, including Ms. Sacchiero. Ms. Guarino testified that on the date in question, she saw S.R. released to Ms. Vasquez.¹² The District contends that Ms. Guarino was confused about the date in question and said that she was in school for a spring concert, but yet the calendar introduced into evidence clearly establishes that on that day there was a multi-cultural event and not a spring concert.¹³

Moreover, the police report submitted into evidence (see Petitioner Exh. C), indicates that the police officers arrived at 16:00 or 4:00 p.m. Yet, Ms. Guarino testified that before she left the property at 3:25 p.m. she had seen the police arrive at School No. 8.¹⁴ The District contends that Ms. Guarino could not have witnessed Mr. Rivera inside the school arguing with the Principal and Ms. Sacchiero, nor could she have seen the police arrive based upon her testimony as to when she left the building. Her testimony flies in the face of reason. The District contends that Ms. Guarino's recollections are simply inconsistent with all of the objective proofs and the testimony of witnesses of both the Respondent and Plaintiff.

For all of the above-stated reasons regarding Ms. Guarino's testimony, the District asks that it be rejected in its entirety.

The Respondent violated the District's policy and procedure regarding student dismissal on May 23, 2013. At the meeting with Dr. Feldman, Ms. Sacchiero insisted

¹² TR1, Pg. 192:24-25; Pg. 193:1-25

¹³ TR2, Pg. 205: 18-23

¹⁴ TR2, Pg. 207:19-25; Pg. 206:1-5

that she dismissed the child to the grandfather and that he was standing at the flagpole. He waved to her and she dismissed the child to him.¹⁵ Moreover, Dr. Feldman testified that Ms. Sacchiero never indicated that she released S.R. to the grandmother.¹⁶

Additionally, Mr. Salese testified that Ms. Sacchiero released S.R. to her grandfather and never indicated that she released S.R. to her grandmother.¹⁷

The Plaintiff argues that Ms. Sacchiero admitted to violating District policies regarding her leaving the building without punching out, as well as the student confidential information policy. She admitted to collecting personal data from her students without Board authorization and failing to preserve the confidentiality of the information.

The Respondent intentionally made false and misleading statements to the Superintendent of Schools constituting insubordination. The District argues, as set forth in point 2 above, and incorporated herein by reference, there has been no evidence presented or testimony produced to dispute the fact that Mr. Arroyo was not at School No. 8 and that he was at his doctor's office on May 23, 2013. His testimony was forthright, candid and unwavering regarding his whereabouts. As previously indicated, Dr. Feldman and Mr. Salese both indicated that Ms. Sacchiero released the child to her grandfather. However, with her direct testimony on April 11, 2014, she stated,

"I remember grandpa coming from behind the flagpole and waving to me like he does every other day. I released her out the door and she went to a woman who took her hand, which I now know was grandma with grandpa and they left."¹⁸

¹⁵ TR1, Pg. 129:10-18

¹⁶ TR1, Pg. 129:25; Pg. 130:1-5

¹⁷ TR2, Pg. 213:9-18

¹⁸ TR3, Pg. 327:14-25; Pg. 328:1-3

The Board argues that the termination of the Respondent's tenure is the appropriate penalty in light of the Respondent's actions. The Board cites civil service employees' rights and duties governed by the Civil Service Act and for any public employee who was protected by the provisions of the Civil Service Act and also references determinations by the Commissioner of Education and the State Board of Education dealing with tenure cases. With respect to the charge of insubordination, the Board contends that, "*Insubordination is defined as the willful and intentional disregard of the lawful and reasonable directives of an employee's duly authorized supervisor.*"

In the instant matter, the District suggests that Ms. Sacchiero may not have been "abusive" and/or "rude", but she was clearly deceitful. The Board argues that she deliberately and intentionally deceived the Superintendent and other administrative members about her actions on May 23, 2013, which clearly affects the morale and efficiency of the school and has a tendency to disrupt public respect for school employees and public confidence in the operation of the schools.

The Board contends that the only suitable response to the actions of Ms. Sacchiero is the termination of her tenure rights and her employment with the District. She neglected her duties at dismissal time, and her intentional act of lying to the Superintendent rises to the same level or higher than those cases cited by the District. The District is firmly convinced that termination of her tenure rights is both warranted and justified.

For the Respondent:

The Respondent contends that that District has failed to prove the validity of the tenure charges filed against her, and therefore, those charges should be dismissed. In

support of that position, the Respondent argues that there was no written dismissal policy at School No. 8. Mr. Petrillo, former Principal, testified that there was no written dismissal policy when he was there. Dora Cavallo, Principal of School No. 8 for the 2010-2012 school year, testified in support of what Ms. Paladino, Mr. Petrillo and Ms. Sacchiero stated concerning the procedures for dismissing students at the end of the day.¹⁹ She further testified that there was no list in existence that teachers had in their possession as to who was authorized to pick up children. Information as to what parent was allowed to pick up a child at the end of the school day was kept on an emergency card.²⁰ Moreover, Ms. Cavallo could not testify how she became aware of the dismissal policy, and she did identify Exh. R-1 as Board Policy 8601. She testified that Ms. Sacchiero was aware of that Policy,²¹ but she could not testify how Ms. Sacchiero was aware of that policy.²²

Ms. Cavallo also testified that if someone was designated to pick up a student at the end of the day, that individual's name would have been on an emergency reference card.²³

Dr. Feldman testified that she found out about the May 23, 2013, incident three days after it occurred.²⁴ When she found out about it, she called Mr. Vespignani and immediately placed him on administrative leave and launched an investigation into the incident. She testified that when she interviewed Ms. Sacchiero, the Respondent stated

¹⁹ TR1, Pg. 75:13-22

²⁰ TR1, Pg. 76:16-25

²¹ TR1, Pg. 81:16-20

²² TR1, Pg. 82:18-23, Pg. 83:1-6

²³ TR1, Pg. 85:1-16

²⁴ TR1, Pg. 117:1-9

that she released the child to her grandfather as she had been doing all year long.²⁵ Dr. Feldman also testified that she charged Ms. Sacchiero because she believed that the Respondent had lied to her in stating she had dismissed the child to the grandparent and did not do so.²⁶

Dr. Feldman also testified that the Board was in violation of the requirement to implement a written pupil dismissal plan as no such written plan existed.²⁷ Dr. Feldman also had no first-hand knowledge as to whether or not the Respondent had ever been provided with Exh. R-1 and had no documentation to prove that she had been made aware of the policy.²⁸ Ms. Guarino further testified that on that date she saw an older woman whom she was assuming to be the grandmother standing outside of the school building. It was raining that day, and Ms. Guarino was underneath the area where she did not need an umbrella. She further testified that she saw S.R. leave the building and run to the woman, got under the umbrella the woman was holding, and they both walked away.²⁹

Anthony Salese, the then President of the Belleville Education Association, testified that at the May 28, 2013, meeting with Superintendent Feldman, Ms. Cummis, Ms. Sacchiero and himself, Ms. Sacchiero was not belligerent but she was very concerned about what she was being accused of.³⁰

Aida Cardona testified that she became the Principal of School No. 8 in September of 2013. She further testified that she did not find any records left by Mr.

²⁵ TR1, Pg. 129:10-23

²⁶ TR1, Pg. 154:1-11

²⁷ TR1, Pg. 161:2-11

²⁸ TR1, Pg. 165:13-22

²⁹ TR2, Pg. 193:2-18

³⁰ TR2, Pg. 212:1-6

Vespignani regarding student dismissal.³¹ She also testified that she submitted a memo to the parents dated September 6, 2013 (see Exh. P-(M)) concerning dismissal of K-5 students.³² That document also included what time students would be dismissed. Additionally, Principal Cardona testified that any letter that she distributes to parents must be approved by the Assistant Superintendent (at the time there was no Assistant Superintendent, but there was another individual in the central office responsible for such tasks) and that she created the September 6, 2013, document on her own.³³

Principal Cardona also testified that she created a second letter on March 3, 2014, that she sent to parents concerning student dismissal because she saw a need to improve her letter based upon what she was observing, and the March 3, 2014, letter was to clarify the September 6, 2013 memo.³⁴ (See Exh. R-4)

Mr. Lori Georgevich, a fourth grade teacher at School No. 8, testified that she was aware that a dismissal policy was in effect; however, she became aware that such a policy was posted on the District's website and that it was implemented two days after the May 23, 2013, incident involving S.R. It was implemented by a notice sent by the principal advising that we were to obtain copies of the policy and that the policy was going to start as soon as possible.³⁵

Sandra Paladino testified that she was a secretary at School No. 8 for twenty-nine (29) years and during the time she worked with Ms. Sacchiero the Respondent was the go-to person for just about everybody and was conscientious and diligent. She was concerned about the students and she would make sure that they go to where they had

³¹ TR2, Pg. 248:22-25

³² TR2, Pg. 218:2-12

³³ TR2, Pg. 225:4-25

³⁴ TR2, Pg. 226:10-15; Pg. 227:6-12

³⁵ TR2, Pg. 251:1-25

to go. She went above and beyond as far as Ms. Paladino was concerned. She helped her on a daily basis and she would work with the children and never had an instance where Ms. Sacchiero was derelict in the duties of student dismissal.³⁶

Joseph Petrillo, former Principal of School No. 8 for the years 2007-2009, testified that Ms. Sacchiero was an exemplary teacher.³⁷ He further testified that the procedure for end-of-the-day dismissal was that teachers had to release the students to make sure that the students were picked up again by someone of authority, be it a parent or a guardian.³⁸ Additionally, he testified that teachers had to escort students to either respective exit doors, and they would be picked up by someone who recognized the child.³⁹ Mr. Petrillo also testified that he relied upon the Respondent's abilities at dismissal time even though he never officially appointed her with some recognized title; nevertheless, she was very helpful to him and the rest of the teachers with student dismissal.⁴⁰

Ms. Sacchiero also testified that the kindergarten class would be dismissed a little earlier so that they would be at the door at the front of the building at approximately 3:05 p.m. The children would be about five steps down below on a landing where they would remain lined up. I, myself, would go to the front door and I would open the door as I would see parents, guardians or whomever was picking up the children, whether they made eye contact or came over to her, she would call each child one-by-one to walk out the door and go with the respective person.⁴¹ Ms. Sacchiero also testified that

³⁶ TR2, Pg. 271:21-25, Pg. 272:7-22

³⁷ TR2, Pg. 294:6-11

³⁸ TR2, Pg. 301:19-25

³⁹ TR2, Pg. 302:3-10

⁴⁰ TR2, Pg. 303:7-21

⁴¹ TR3, Pg. 320:2-13

the first couple days of the school year, parents would bring their children to the classroom, and she would explain different things about the year, including the importance of dismissal. At that point she would explain to parents that if somebody different was picking up the child, she needed to know that. She also had created her own contact form that she would hand out to the parents and that would indicate who could pick up the child at the end of the day.⁴² Moreover, Ms. Sacchiero testified, because there was nothing in effect to tell her who was allowed to pick up the children except for a verbal conversation with the parent, she wanted to have something in writing just in case somebody different came to pick up the child of whom she was unaware; therefore, she and some other teachers created that permission slip that was also utilized by other teachers and used that since she started teaching in 1999.⁴³

Concerning the emergency form that Ms. Sacchiero created, she testified that she kept it in the classroom, and it was in a manila-like folder or envelope that was pinned up by the door so that if there was a fire drill or something of that nature and the class had to leave the building, she could take that with her and know that all of the students were with her.⁴⁴ Most importantly, Ms. Sacchiero testified that on the day in question she saw the grandfather coming from behind the flagpole as he usually does every other day, waving to her. She released S.R. out the door and she went to a woman who took her hand, who she now realized was grandma with grandpa and they left.⁴⁵

⁴² TR3, Pg. 321:11-23

⁴³ TR3, Pg. 322:1-16

⁴⁴ TR3, Pg. 322:14-24

⁴⁵ TR3, Pg. 327:24-25; Pg. 328:1-3

The Respondent argues that the Board failed to prove that she did not properly dismiss S.R. In support of that position, she argues that the testimony presented in this matter demonstrates that it would be *“utterly bizarre to dismiss her from her position on the ground that she violated the Board’s written dismissal policy. That policy requires a child to walk home alone, unless a form that never existed, has been filled out designating an adult as authorized to receive that child at the end of the day. Thus, if Ms. Sacchiero had allowed S.R. to walk home alone, she would have been in compliance with the policy.”* Furthermore, the Respondent argues that had Dr. Feldman believed that S.R. had walked home with either her grandfather or grandmother on the 23rd, the instant charges would never have been brought. Additionally, *“the complete absurdity of these charges is shown by the fact that the emergency card filled out for S.R. did not have either the grandfather’s or grandmother’s name on it.”* The Respondent also contends that no one within the Belleville school district complied with that written policy, even though it existed on the website if anyone cared to look at it, but it did not exist in the real world. Most importantly, Dr. Feldman testified that the Board did not comply with the policy as well as did Principals Cavallo and Cardona. Mr. Petrillo testified that the only dismissal policy he was aware of was the one he was told about by the secretaries and teachers at School No. 8.

The Respondent argues that the testimony of Dr. Feldman establishes that the only dismissal policy that mattered in Belleville was the unwritten policy that the teachers were to use their good judgment to ensure that a child was dismissed to a responsible adult. Dr. Feldman further testified that:

“I would say that there evidently has been maybe not a written policy that I saw, but a policy that everybody seems to have been following for a very long time, because

part of what you learn in school as a teacher is about how to dismiss children as well. It's not something that has to be actually handed to you in writing. You know that a child has to be given to a parent; that a child can be in danger if a child is dismissed without—if you dismiss a child at the end of the day. This is inherent in what you learn, what you practice and evidently people have been practicing it because this is the first incident I have had since I'm here.”⁴⁶

“The Respondent asserts that the testimony of Dr. Feldman entirely dismantles the Board's contentions that Ms. Sacchiero should have followed the Board's written policy and that regardless of whether Ms. Sacchiero had ever actually read that written policy, that she was responsible for knowing it.” Dr. Feldman testified that she had not seen the written policy and that children walking home alone unless a parent filled out a form (a form that was never created) is dangerous.

Ms. Sacchiero also argues that,

“Teachers dismiss their students according to whatever the practice happened to be at the school where they taught, which means that the fundamental foundation of the charges against her, based upon S.R.'s dismissal, is non-existent and therefore follows that whatever happened on the 23rd, all the tenure charges against Ms. Sacchiero, based upon her supposed violation of the Board's dismissal policy, must be rejected”.

The Respondent argues that only three people testified as witnesses to what actually happened on May 23, 2013. Of those three, it is plain that Ms. Guarino was both a completely disinterested and a completely credible witness. She had absolutely no reason to lie or to shade the facts. She testified, without equivocation that S.R. left that day with her grandmother.

Moreover, the Respondent argues,

“Attempting to reconcile the testimony of all of the witnesses to reveal a single satisfying explanation as to what happened on May 23, 2013, may not be possible, but the burden of proof in this matter rests with the Board. To the extent that the record is unsatisfactory, its shortcomings defeat the Board's case.”

⁴⁶ TR1, Pg. 160: 8-21

The Respondent also argues that she was an exemplary teacher and was even put in charge by one Principal to make sure the children were dismissed safely for home and allowing S.R. to walk home alone in the rain makes absolutely no sense.

The Respondent argues that the original DYFS determination of an established finding of child abuse and neglect had been changed to not established after she had filed an appeal of the original determination.

The Board failed to prove that Ms. Sacchiero was insubordinate by lying to Dr. Feldman. There is no question that Ms. Sacchiero was upset during the meeting with Dr. Feldman because as Mr. Salese explained,

“She was being falsely accused of neglecting the welfare of one of her students. She did not lie. She stated her version of what had occurred, which is that she directed S.R. to her grandfather. However, she may or may not have been mistaken, but to express a mistake in belief is not to lie. The Board failed to prove that charge.

The sanction of this mission would be too harsh, even if all of the charges are sustained and certainly if only the charge of insubordination is sustained. Penalties must be assessed on a case-by-case basis and factors to be considered in assessing a penalty include the nature and gravity of the offense under all of the circumstances involved, any mitigating or aggravating factors, the impact of the penalty on the teacher’s career, and any harm or injurious affect which the teacher’s conduct may have had on the maintenance of discipline and the proper administration of the school system.”

The Respondent argues that even if all of the charges against her are true, she should not be dismissed from her position based upon the fact that she has been a teacher for 13 years, with an exemplary record, has shown care for students in the classroom, as well as for the end-of-the-day dismissal, and has been complimented by a prior Principal, as well as the school’s secretary, on how well she handles issues dealing with children.

Moreover, the Respondent contends that,

“There is a height of unfairness for the Board to call for the administrative death penalty for Ms. Sacchiero based upon her alleged single dereliction when Superintendent Feldman and every Principal that testified in this matter had to concede that they, themselves, failed on a systemic basis to abide by the District’s dismissal policy.”

For the foregoing reasons, it is respectfully submitted that Ms. Sacchiero should be found “not guilty” of all the tenure charges filed against her. Alternatively, the sanction of dismissal should not be imposed.

DISCUSSION AND ANALYSIS:

The focal point and/or central theme of the Petitioner’s argument is that the Respondent violated the District’s dismissal policy (see Exh. R-1/P(F)) which placed S.R., a minor child, in danger of imminent physical harm. Additionally, the Respondent is also accused of conduct unbecoming, neglect of duties and insubordination. However, all of the charges flow from the Petitioner’s claim that Policy 8601 was violated by the Respondent on May 23, 2013. That policy was approved by the District on January 24, 2011. Accordingly, when Mr. Petrillo was the Principal of School No. 8, that policy was not in effect, and it was only in effect the second year that Ms. Cavallo was the Principal at School No. 8 because she was hired in June of 2010.⁴⁷ Moreover, Ms. Cavallo testified under cross-examination that she did not follow that policy and in fact was in violation of that policy.⁴⁸

Mr. Vespignani, who did not testify, based upon the facts in evidence, was the Principal of School No. 8 effective the school year 2012-2013. However, Mr. Petrillo and Ms. Cavallo testified that they followed the procedures that were in effect when they arrived at the school. The Respondent testified that she followed the procedures for

⁴⁷ TR1, Pg. 113:23-25

⁴⁸ TR1, Pg. 94:5-18

dismissal as given to her by the other teachers and, in fact, that is exactly what Mr. Petrillo and Ms. Cavallo testified to. Even though District Policy 8601 states and, in particular on Page 2, paragraph 2, *"Each Principal will develop and implement a written pupil supervision after school dismissal Plan for their school building."* That did not happen at the time that the incident occurred on May 23, 2013.

The first time there was a written policy at School No. 8 occurred on September 6, 2013, when Principal Cardona sent a memo to the parents indicating what the dismissal for K-5 students would be and attached to that was the various dismissal times for the grades at School No. 8.

The next instance when there is a written policy at School No. 8 for dismissal is also from Ms. Cardona and dated March 3, 2014. Paragraph 7 specifically states, *"Please be advised: Children will not be released with eye contact or a verbal exchange from a distance. The person picking up your child must walk up to the teacher. The teacher will physically hand the child to you or your authorized escort."*

Ms. Sacchiero could not have been in violation of a District policy because none of the Administrators after January 24, 2011, adhered to Policy 8601. It is patently absurd and unfair to excuse Ms. Sacchiero of violating that particular policy when it was never implemented at School No. 8. If it had been implemented at any other school, it is basically irrelevant to the instant matter because we are only dealing with Ms. Sacchiero and School No. 8.

Ms. Sacchiero testified that parents would come into her classroom at the beginning of the school year, and she would introduce herself to the parents and explain what the procedures would be for in the classroom and then explain dismissal

procedures. The District has an emergency reference card introduced as Exh. R-3, and for S.R. there were two names listed as to who the emergency people would be: Myrna Alvarez, and Yelitza Stassa. Ms. Sacchiero testified that she was given verbal approval from S.R.'s mother in the beginning of the school year to release S.R. to Efrain Arroyo, S.R.'s paternal grandfather. Ms. Sacchiero also testified that she was concerned that there was no specific form to be utilized as to who a student would be released to at the end of the day so she created the form with the assistance of her colleagues (see Exh. R-9) that was used since 1999. She further testified that she was not told she could not use that form and that she knew that her building administration knew she and other teachers were using that particular form.

The record reflects that Ms. Sacchiero had been releasing S.R. to Mr. Arroyo since the beginning of the school year but again there is no reference to his name on any emergency contact form. Ms. Sacchiero also testified that on the day in question she released S.R. to her grandfather. She gave that statement to the Superintendent at the May 28, 2013 meeting, in her interrogatories and her response on November 29, 2013, where her attorney on her behalf states on page 2 of that document, *"Quite to the contrary, she left the child under the supervision of the child's grandfather."* On that same document, at page 3, appears the following, *"She was given verbal permission by S.R.'s mother to leave her child with the grandfather at the beginning of the school year."*

Ms. Sacchiero also testified that on May 23, 2013, she saw Mr. Arroyo at the flag pole where he usually is waiting, waving to her, and she opened the door and let S.R.

out to go to Mr. Arroyo. *"I released her out the door and she went to a woman who took her hand who I now realize was grandma with grandpa and they left."*⁴⁹

That statement in itself is problematic. Ms. Sacchiero stated, *"Which I now realize"* is open to various interpretations. Does which I now realize mean the day that she testified, April 11, 2014, or some other time after May 23, 2013, and up to April 11, 2014? That statement flies in the face of her responses to the Superintendent at the May 28, 2013, meeting, as well as flies in the face of the response from her attorney dated November 29, 2013, on pages 2 and 3. Ms. Sacchiero told the police when they arrived on the day in question that she released S.R. to her grandfather.

In order to determine whether or not Ms. Sacchiero did in fact release S.R. to her grandfather, it is important to review all of the testimony in evidence surrounding what occurred on May 23, 2013.

Mr. Arroyo, S.R.'s grandfather, testified that he was not at School No. 8 on May 23, 2013; he had a doctor's appointment from 12:00 p.m. to 3:00 p.m. Mr. Arroyo was a witness for the Petitioner. However, there is nothing in the record to show that the Respondent or Petitioner conducted an investigation to verify if, in fact, Mr. Arroyo had a doctor's appointment on May 23, 2013, between noon and 3:00 p.m. Therefore, Mr. Arroyo's uncontradicted testimony that he was not at School No. 8 on May 23, 2013, must be a major factor in my determination in the instant matter.

Ms. Myrna Vasquez, the maternal grandmother of S.R., testified that she went to School No. 8 around 3:00 p.m. Her daughter called her early in the morning on the 23rd and asked her to pick up S.R. because Mr. Arroyo could not do so. Contrast that with Mr. Arroyo's testimony that he notified his son on the 22nd that he could not pick up S.R.

⁴⁹ TR3, Pg. 328:1-3

on the 23rd because he had a doctor's appointment. In any event, Ms. Vasquez testified that she did not see S.R., tried to get into the building, had difficulty getting past the security officer, ultimately did get past him, went into the building, could not find S.R., came back out of the building, got into her car, drove to S.R.'s home, saw her daughter and asked her daughter if S.R. was at home, and her daughter said yes we have her here. Ms. Guarino testified that she saw S.R. leave the building and go with an older woman, who she believed to be S.R.'s grandmother. The clear, irrefutable, uncontroverted facts in evidence establish for the arbitrator that Mr. Arroyo was not at School No. 8 on May 23, 2013, which means Ms. Sacchiero was mistaken when she said she released S.R. to her grandfather.

Mr. Salese testified that at the meeting with the Superintendent on May 28, 2013, he did not hear Ms. Sacchiero say she released S.R. to her grandmother.⁵⁰ Superintendent Feldman testified that Ms. Sacchiero never mentioned that she released S.R. to her grandmother. Dr. Feldman also testified that Ms. Sacchiero never indicated during the May 28, 2013, meeting that she had released S.R. to her grandmother.⁵¹ Ms. Sacchiero's own representative, Mr. Salese, testified that he did not hear her indicate that she had released S.R. to the grandmother.

The May 28, 2013, meeting needs to be addressed. Ms. Sacchiero testified that on May 23, 2013, she was notified to be at a meeting on June 9, 2013, with Ms. Cummis but was not informed about the subject matter of said meeting. A few minutes later she was notified that the meeting would be on May 28, 2013, 8:00 a.m. at the

⁵⁰ TR2, Pg. 213:9-19

⁵¹ TR1, Pg. 130:1-5

District offices.⁵² She further testified that she spoke to one of the secretaries at the Board, but was not given any information as to what the meeting was about.⁵³

Dr. Feldman testified that the first time she became aware of the dismissal issue with S.R. was on May 28, 2013. She had no advance knowledge that there was going to be a meeting about S.R. and the Respondent. When she found out all of the information, she called for Ms. Sacchiero to be in attendance.. She doesn't recall if it was 8:00 a.m. in the morning or it may have been later.⁵⁴ However, Ms. Sacchiero testified that she was notified on May 24, 2013. There is a direct inconsistency between Ms. Sacchiero's testimony and Dr. Feldman's testimony about the establishment of the meeting for May 28, 2013.

Dr. Feldman further testified that her cabinet people work as a team and use a team approach to resolve issues.⁵⁵ Quite frankly, there is a direct contradiction as to how the meeting was established, but more importantly on May 24, 2013, the Respondent knew she was going to be at a meeting with Ms. Cummis. It was originally scheduled for June 9, but was changed to May 28, 2013. Dr. Feldman testified that she did not become aware of the incident with S.R. until the morning of the 28th. That is a different definition of team than I would expect from the Superintendent of Schools and her cabinet. There was further testimony that Ms. Correnti, (sic) the Director of Guidance, spoke with one of the guidance counselors at School No. 8 and the results of that conversation were given to Dr. Feldman.⁵⁶ Additionally, Dr. Feldman received a handwritten statement from Mr. Vespignani concerning the incident with S.R. on May

⁵² TR3, Pg. 332:10-25

⁵³ TR3, Pg. 333:1-3

⁵⁴ TR3, Pg. 393:5-22

⁵⁵ TR3, Pg. 386:23-25

⁵⁶ TR3, Pg. 400:1-4

23, 2013. However, she did not request that information of Mr. Vespignani until after she was informed by Ms. Cummis that there was an incident with the dismissal of S.R. on May 23, 2013. I consider this to be a significant issue as to how this meeting evolved. Dr. Feldman testified that she was annoyed that she did not find out about the dismissal incident with S.R. on May 23, 2013 until three days later. Nobody called her or reported it, and she was also annoyed that the police were at the building, and it was not reported to her.⁵⁷

Nevertheless, it is clear to me that the meeting scheduled for May 28, 2013, was established by Ms. Cummis and not Dr. Feldman. In fact Dr. Feldman testified that she just stood at the meeting and did not say much until the end of the meeting. It was Ms. Cummis' meeting to determine what had occurred on that day. Yet as part of the administrative team in the central office, Ms. Cummis did not tell Dr. Feldman on the 24th of the S.R. incident. Candidly, on that same day Ms. Cummis' office was arranging for a meeting with Ms. Sacchiero that was originally scheduled for June 9 but was changed to May 28, 2013. While it might not seem a major issue to some other people, as the trier-of-facts, I have to question why Dr. Feldman was so annoyed at Mr. Vespignani for not informing her on May 23, 2013, about the incident with S.R. that she placed him on administrative leave. Yet and most importantly, she allowed Ms. Cummis, a member of her administrative team, to keep her in the dark about the S.R. incident until May 28, 2013. It is irrelevant that school was closed on Memorial Day, May 27, 2013. It certainly appears to me that someone did not properly address or follow through with their administrative responsibilities.

⁵⁷ TR1, Pg. 117:1-9

Exhibit R-3, the Emergency Reference Card, lists two names, Mryna Alvarez and Yelitza Stassa. I am not sure if Myrna Alvarez is the same person as Myrna Vasquez, and, in fact, there was no testimony to that fact. Nevertheless, Myrna Vasquez has been identified as the maternal grandmother of S.R. In any event, the Petitioner is placing a lot of emphasis on the Emergency Reference Card. I have already discussed that the Emergency Reference Card is supposed to reference the names of the individuals who can pick up S.R. Ms. Sacchiero testified that the individuals listed on the emergency form she created and given to her on behalf of S.R. indicated that her mother, Ms. Rodriguez, her father, Mr. Rivera, her grandfather, Mr. Arroyo, and her grandmother, Ms. Vasquez, were allowed to pick up S.R. at the end of the school day.⁵⁸ She also testified that that emergency form was left in a folder in her classroom when she was suspended from school.⁵⁹ However, even after the arbitrator requested that the form be submitted into evidence, on April 22, 2014, counsel for the Petitioner notified me that the form could not be found.

Ms. Sacchiero also testified that on May 23, 2013, children were lined up below as they were required to be. It was a rainy day, and there were a lot of people outside with umbrellas waiting for the children to come out and they were also having a function after school, so a lot of people were hovering around the door because they were waiting for that event.⁶⁰ The issue of Ms. Sacchiero being confronted by Mr. Rivera was brought up only to reference the fact that a police report had been filed by Ms. Sacchiero against Mr. Rivera for his threatening manner when he confronted her at the end of the day on May 23, 2013. The Superintendent was equally annoyed with that

⁵⁸ TR3, Pg. 326:8-14

⁵⁹ TR3, Pg. 326:21-25

⁶⁰ TR3, Pg. 327:14-23

situation because she had not been informed that that had occurred. Moreover, the Superintendent was not sure if there was a policy in effect about parents or guests or non-District employees threatening a teacher.⁶¹ It certainly appears to me that the chief school administrator should be aware if the District has a policy about teachers or any District employee being threatened by a parent or any visitor to any school.

Turning to the issue of insubordination, Mr. Salese testified that he did not believe Ms. Sacchiero was nasty toward the Superintendent, but she was very concerned about her position and was concerned why she was being called to the meeting.⁶² Additionally, Mr. Salese indicated that Dr. Feldman stated that there would probably not be any discipline taken, but there was going to be an investigation.⁶³

Ms. Sacchiero left that meeting believing that there was not going to be any disciplinary action taken against her, but that is not exactly what the Superintendent said. Dr. Feldman said that there probably would not be any disciplinary action taken, but there was going to be an investigation. That was confirmed by Mr. Salese.⁶⁴ Certainly, due to that investigation, the Superintendent determined that disciplinary action in the form of suspension and tenure charges filed against Ms. Sacchiero was the appropriate course of action. I am not convinced that Ms. Sacchiero lied to the Superintendent on May 28, 2013. I am absolutely convinced based upon the testimony in the record and based upon the level of confusion that was occurring in front of the building, parents waiting to get into the building for the multi-cultural event which was to start at 4:00 p.m., parents and/or other responsible adults were waiting to pick-up

⁶¹ TR1, Pg. 178:1-3

⁶² TR2, Pg. 212:1-6

⁶³ *Ibid* :7-16

⁶⁴ TR2, Pg. 212:11-16

children to take them home, and with the inclement weather and people having umbrellas, there is a very distinct possibility that Ms. Sacchiero made a mistake when she thought S.R. was being released to Ms. Vasquez and then to Mr. Arroyo. Having already determined that Mr. Arroyo was not at School No. 8 on May 28, 2013, and having determined that Ms. Vasquez could not find S.R. on that day and drove to S.R.'s home and found that she was at home, the credible evidence establishes that Ms. Sacchiero did in fact make a mistake in releasing S.R. at the end of the day on May 23, 2013.

The Petitioner argues that Policy 8601 obligates that District to provide Parents with the pupil supervision after school dismissal plan but does not require that the Respondent receive such notice. However, page 2 of Policy 8601 (see Exh. R-1) clearly and unequivocally establishes that each building Principal shall establish a pupil supervision after school dismissal plan. It is not for Ms. Sacchiero or any other teacher in School No. 8 to establish such a plan. It is up to the building Principal to do so. As previously indicated, when that plan was created, the Principal of School No. 8 at the time was Ms. Cardona. She testified that she sent letters to parents dated September 6, 2013, (see Exh. P(M) and March 3, 2014, (see Exh. R-4) clarifying the dismissal procedure. Moreover, Ms. Cardona testified that:

"My letter is not policy. It's just—it's based on the policy and as a new principal, I found that it needed to be updated."⁶⁵

In other words, they were continuing the past practice that was utilized in that building going back to when Mr. Petrillo was the Principal and even before that. As testified to by Ms. Paladino, who was there for twenty-nine (29) years,

⁶⁵ TR2 217:22-24

the procedure utilized for student dismissal at School No. 8 was the same when she started working there as they were when Ms. Sacchiero became a member of the School No. 8 teaching staff. As such, the Respondent was well-aware of what that past practice procedure was with respect to student dismissal. While Ms. Sacchiero can argue she was not required to review the handbook or go on the District's website to review the dismissal policy (i.e., 8601) that does not eliminate the fact that she was fully aware of what the dismissal procedure was at School No. 8. In fact, when she created her own emergency form (see Exh. R-9), she was in compliance with that procedure.

No matter how this issue is viewed with respect to the dismissal of students for School No. 8, as to the go to person, Ms. Sacchiero had complete familiarity with that procedure.

However, it must be stressed that Policy 8601 was adopted on January 24, 2011, and as such would not have been controlling when Mr. Petrillo was the principal of School No. 8 and for only the second year Ms. Cavallo was principal of School No. 8. Since there was no dismissal procedure created by Mr. Vespignani, it must be assumed he continued with the practice in effect at School No. 8 concerning end of the day dismissal.

Clearly and without reservation, there was no administrative follow-up to the implementation of Policy # 8601. Dr. Feldman never took it upon herself and/or assigned someone to review Policy #8601 to verify that it was being implemented by building principals be it someone from the Central Office or a specific principal.

The Petitioner also raises an issue of Ms. Sacchiero violating confidentiality with respect to student records when she placed her emergency form in a

manila envelope and put it by the front door of her classroom. That is not before me because she was never charged with that and I will not address that. Similarly I will not address an argument from the Respondent concerning alleged interference in this matter from a particular media station and the offices of then Mayor of Newark, NJ, Cory Booker, now a United States Senator. There was no evidence presented to even remotely suggest that that had impacted the current issue.. In fact, the Superintendent denied that that influenced anything that she did.

The issue of insubordination is a major factor for the District and more importantly for Dr. Feldman, because she believes Mr. Sacchiero willfully lied to her on May 28, 2013. As the Board argued in its post-hearing brief at page 38, *"[i]nsubordination is defined as the willful and intentional disregard of the lawful and reasonable directives of an employee's duly authorized supervisor."* Nothing can be further from the truth in the instant matter. I do not believe, based upon all of the circumstances and in particular the inclement weather, the number of people outside the building, the use of umbrellas, that Ms. Sacchiero willfully released S.R. to a strange person. Similarly, I do not agree that she lied to the Superintendent of Schools on May 28, 2013. At that meeting, Dr. Feldman considered Ms. Sacchiero to be nasty, but Mr. Salese said she was not nasty. There is no verification from an additional person, such as Ms. Cummis, as to what actually occurred and it would be too late to have Ms. Cummis come forth as a witness right now because the hearings are not being reopened. The fact remains that Ms. Sacchiero honestly believes that she was releasing S.R. to Mr. Arroyo and testified on April 11, 2014, that she first released her to a woman she ultimately recognized to be her grandmother. Be that as it may, I am not

convinced that that was done deliberately and willfully to violate policies to create an unsafe situation for S.R., to put S.R. in harm's way, to be a person violating rules and regulations and/or to be considered insubordinate to the Superintendent of Schools.

I can readily understand the angst the Superintendent had on May 28, 2013. A student was dismissed from a school and walked home in the rain, and the Superintendent was not informed of it until May 28, 2013. Of course she was offended as she should be, and she took the action against Mr. Vespignani as the building Principal for not informing her of that incident, as well as not informing her of the police coming to the building. The culprit in not notifying the Superintendent is not Ms. Sacchiero, the chain of command requires that to come from the building Principal.

For whatever reason, Mr. Vespignani did not think it was an important matter or a critical matter to bring it to the Superintendent's attention. It may very well be that he chose not to inform the Superintendent because it was a holiday weekend. I have no idea what his reference point may be since he did not testify, and my analysis would be speculative.

Nevertheless, it was his obligation to inform the Superintendent of three specific situations that occurred on May 23, 2013: (1) S.R. was released from school and walked home in the rain; (2) the police were called to the school; (3) Mr. Rivera was menacing toward Ms. Sacchiero. That was Mr. Vespignani's obligation and no one else's. He should have taken the action to bring it to the Superintendent's attention. His lack of candor or interest in pursuing this matter to the Superintendent's level, led to the situation before me. It may very well be that had Mr. Vespignani acted quickly, the instant matter never would have reached the level it did. Again, that is also speculative

on my part, but it certainly seems that another approach could have been taken rather than filing tenure charges.

However, I am not convinced that the Superintendent acted out of pressure from either Mr. Rivera or the community at large, and/or the Board acted under political pressure. I believe that argument cannot be proven in the instant matter.

Ms. Sacchiero cannot be charged with making statements that she knew to be false and misleading, individually and cumulatively which would constitute conduct unbecoming a teaching staff member because she was not saying anything that she knew to be false and misleading. She honestly and truly believed when she was talking to the Superintendent that she released S.R. to her grandfather. Make no mistake, there will be a penalty imposed against Ms. Sacchiero for what she did. It was not deliberately, it was not wilfully, but nevertheless, S.R. was not released to her grandfather and/or her grandmother on May 23, 2013. The testimony establishes that could not have occurred.

The testimony of Ms. Guarino may very well be confusing because she said they were at school for a spring concert, but the record establishes that there wasn't a spring concert on that day, there was a multi-cultural event. She testified that she saw S.R. going to an older woman, but that could not have occurred, because the uncontradicted testimony of Ms. Vasquez is that when she got to school between 3:00 and 3:02 she waited until 3:16 for S.R. Alternatively, if Ms. Guarino's testimony is accepted, that has to then be tied in and read harmoniously with the testimony of Ms. Sacchiero that she released S.R. to a woman who she now recognizes to be the grandmother and S.R. and the grandmother left with the grandfather. Ms. Guarino never made that statement.

She simply said that she saw S.R. going to an older woman. The facts don't come together to support the position of Ms. Sacchiero that in fact she did release S.R. to her grandfather.

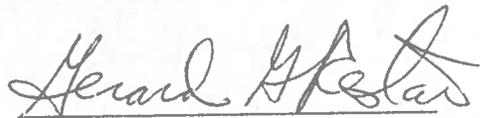
For the foregoing reasons, and having duly heard the proofs and allegations of the parties, I Award:

AWARD

The Board of Education did have sufficient cause to file tenure charges against Ms. Sacchiero, but did not have sufficient cause to have those tenure charges sustained and her tenure revoked. The fact pattern in evidence, mitigating factors and the credible testimony in the record is insufficient to justify a finding that Ms. Sacchiero must be removed from her teaching position and terminated.

Ms. Sacchiero shall be returned to work without any back pay and shall receive full seniority credit from the time of her suspension to the day she returns to work.

Dated: May 21, 2014



Gerard G. Restaino, Arbitrator

State of Pennsylvania)

County of Wayne) ss:

On this 21st day of May, 2014, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.

