

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION

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In the Matter of Tenure Charges filed by
The School District of the Borough of
New Milford, Bergen County, New Jersey
Against Lawrence Henchey

Agency Docket No. 322-11/14

OPINON AND AWARD

Issued: March 4, 2015

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ARBITRATOR

Joseph Licata, Esq.

APPEARANCES

FOR THE PETITIONER

Vittorio S. LaPira, Esq.
Fogarty & Hara, Esqs.

FOR THE RESPONDENT

Sheldon H. Pincus, Esq.
Bucceri & Pincus, Esqs.

NATURE OF DISPUTE

In accordance with N.J.S.A. 18A:6-10 et. seq. and N.J.A.C. 6A:3-5.1(b), on November 7, 2014, the New Milford Board of Education (“Board”) filed with the New Jersey Department of Education, Bureau of Controversies & Disputes tenure charges against Lawrence Henchey (“Henchey”) seeking to dismiss him from employment as a certificated Language Arts teacher based on five (5) Charges:

Charge No. 1 alleges that Henchey has consistently demonstrated inefficiencies and ineffectiveness in his teaching skills throughout the 2011-2012, 2012-2013 and 2013-2014 school years and as a result of the significant negative impact that his poor teaching performance has upon the quality of education that his students receive, Henchey must be dismissed from his position.

Charge No. 2 alleges that Henchey has consistently demonstrated inefficiencies and ineffectiveness in his teaching skills throughout the 2011-2012, 2012-2013 and 2013-2014 school years despite intensive and comprehensive assistance that has been continuously offered to him by the District Administration and his colleagues, and through multiple corrective action plans designed to address and improve his teaching deficiencies, which demonstrates either an inability or an unwillingness to improve, and which inability or unwillingness to improve constitutes inefficiency warranting dismissal from his position.

Charge No. 3 alleges that as a result of Henchey’s consistent failure to, among other things, implement District initiatives; implement a more interactive method of instruction; integrate core content in lesson plans and classroom instructional practices;

use effective teaching strategies; implement consistent grading practices; and meet the professional expectancies set forth in the New Jersey Professional Standards for Teachers, Board Policies and his job description, Henchey's increments were withheld by the Board for the 2013-2014 and 2014-2015 school years, and which ongoing inefficiencies and ineffectiveness warrant dismissal from his position.

Charge No. 4 alleges that in addition to Henchey's consistent failure to demonstrate effective and efficient teaching performance during the 2011-2012, 2012-2013 and 2013-2014 school years, Henchey has failed, since 2002, to remediate certain deficiencies and demonstrate improvement in areas of specific concern, including but not limited to, the use of varied instructional techniques/student-centered activities and the provision of adequate lesson closure, and which inability or unwillingness to improve, and the resulting impact on the education received by his students, constitutes inefficiency warranting dismissal.

Charge No. 5 alleges that, in addition to Henchey's consistent failure to implement effective and efficient teaching strategies, and in addition to his unwillingness or inability to improve upon the same, Henchey has also demonstrated a lack of professionalism throughout the 2011-2012, 2012-2013 and 2013-2014 school years which has included a lack of respect for the Administration and a complete disregard for the high professional standards placed upon him, and which unprofessionalism constitutes incapacity and conduct warranting dismissal.

On November 21, 2014, within the applicable 15-day timeline (N.J.A.C. 6A:3-5.3(a)), Henchey filed with the New Jersey Department of Education, Bureau of

Controversies & Disputes, an Answer and Affirmative Defenses to the Tenure Charges. However, Henchey did not file a Motion to Dismiss in lieu of an Answer within the same applicable 15-day timeline. See, N.J.A.C. 6A:3-5.3(a)1.

On December 1, 2014, Kathleen Duncan, Director, Bureau of Controversies and Disputes notified the parties' respective representatives (1) that the Tenure Charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary and (2) that the dispute was referred to the undersigned Arbitrator for resolution in accordance with N.J.S.A. 18A:6-16. On December 8, 2014, during a telephone conference, Counsel for Mr. Henchey notified Board Counsel and the undersigned of his intent to file a "Motion to Dismiss" the tenure charges. Ground rules governing the motion and hearing dates were discussed and set. The undersigned memorialized the results of the telephone conference in writing on the same day:

In addition, Mr. Pincus has notified Mr. LaPira and I of his intent to file a motion to dismiss the certified tenure charges. Since an Answer has been filed, I regard the motion as one for summary judgment and I agree, in an exercise of discretion only, to decide that portion of the motion that is not subject to a genuine dispute of material fact. The motion schedule is as follows: December 10 (motion papers due via email and in MS Word format); December 19 (opposition papers due via email and in MS Word format); and December 26, 2014 (reply papers, if any, due via email and in MS Word format). The motion will be decided in advance of the first day of hearing. I have set down five days of hearing as follows: January 8, 12, 13, 14 & 15, 2015. All hearing days shall begin at 9:30 a.m. and conclude by 5:00 p.m. The hearing will be held at the administrative offices of the New Milford Board of Education. Testimony should be very limited with respect to past incidents, events, etc. that are a matter of record and that were not contemporaneously contested. Finally, the hearing will be governed by the Labor Arbitration Rules of the American Arbitration Association pursuant to N.J.S.A. 18A:6-17.1c.

On January 3, 2015, I granted Mr. Henchey's Motion for Summary Decision with respect to Charges Nos. 1-4 of the November 7, 2014 Tenure Charges. I denied the motion with respect to Charge No. 5, pars. 12-19. On Sunday, January 4, 2015, the Board filed a letter brief/motion for reconsideration. The Board took issue with that portion of my Summary Decision holding that the Board failed to comply with the mandatory evaluation procedures of TEACH NJ for the 2013-14 school year because it did not conduct a mid-year evaluation of Mr. Henchey. On January 5, 2015, Mr. Henchey filed a letter in opposition to the Board's request for reconsideration.

On January 6, 2015, on reconsideration, I reaffirmed my grant of Summary Decision with respect to Charges Nos. 1-4 regarding the 2013-14 school year based on the first of two alternative rationales, i.e., the inapplicability of Section 8 to interfere with the first two operative years of Section 25 (2013-14 and 2014-15). Implicitly, I did acknowledge the accuracy of the Board's objection to the second rationale, i.e., the Board's failure to conduct a mid-year evaluation during the first operative year of TEACH NJ (2013-14).¹ In setting the stage for the hearing process to follow, I reiterated the following Case Management Order (originally set forth at the conclusion of my Summary Decision and Order) to the parties:

Case Management Order

1. The hearing is now limited to the following issue: Did the Board have just cause to dismiss Lawrence Henchey from his teaching position based

¹ In so concluding, I commented that, unless this matter is remanded, I need not address Mr. Henchey's additional point that the Board failed to comply with other aspects of TEACHNJ, e.g., failure to demonstrate that it timely secured the approval of the McREL rubric by the Commissioner of Education and, thus, could not rely on the 2013-14 evaluation, even if the lack of a mid-year evaluation in 2013-14 was appropriate.

on his alleged continued incapacity and related conduct unbecoming as specifically set forth by Charge No. 5, pars. 12-19?;

2. All documents relevant to the charges of incapacity and conduct unbecoming (including rebuttal letters, if any) prior to the 2013-2014 school year shall be admitted without testimony;

3. The parties may simply refer to the Statement of Evidence identifying markers without the need to separately introduce the same documents as exhibits; documents obtained in discovery that are not contained in the Statement of Evidence must be introduced in exhibit format; and

4. Testimony shall be limited to the events of the 2013-14 school year, although the “decision-maker” may testify in summary fashion as to how, if at all, he or she factored in Henchey’s overall work record (as reflected in the Statement of Evidence) in connection with the charges of incapacity and conduct unbecoming and the recommendation for dismissal. Mr. Henchey, of course, may refer to those portions of his prior work record that he deems supportive of his continued employment in the District.

I further elaborated upon CM Order #4, above, as follows:

“As to the distinction between inefficiency and incapacity, the latter offenses involve, among other things, a teacher’s chronic failure to meet professional expectations, and unprofessional and hostile reactions to supervision by district personnel. See, IMO School District of the Borough of Butler, Morris County, 2010 WL 5624390; Board of Education of the Township of Parsippany-Troy Hills v. Greg Molinaro, 96 N.J.A.R. (EDU) 268, 1995 WL 863033 (1995); Bd. of Ed. Lawrence Twp. v. Lester Helmus, 2 N.J.A.R. 334 (1980). The Board may introduce any and all evidence originating during the 2013-14 school year in support of Charge No. 5, pars. 12-19 to prove Henchey’s alleged incapacity and conduct unbecoming. Such evidence may include evidence of the assistance and/or constructive criticism provided to (or reiterated to) Mr. Henchey during the 2013-14 school year, no matter what the form – not to demonstrate inefficiency – but to serve as a predicate for the allegation that Henchey’s incapacity and conduct unbecoming continued as demonstrated by the manner of his responses, or lack thereof, to such assistance and/or constructive criticisms” (Summary Decision on Reconsideration, dated January 6, 2015, page 5).

On January 12, 13, 14 and 15, 2015, the parties appeared before me for a hearing at the administrative offices of the Borough of New Milford Board of Education. Both parties had a full and fair opportunity to introduce witness testimony and documentary evidence. Whitney Perro, Principal, David E. Owens Middle School, Timothy Coughlin, Vice Principal, David E. Owens Middle School, Antonio Giovinazzo, ScIP officer/teacher, David E. Owens Middle School, Danielle Shanley, ELA Director of Curriculum (K-8), and Michael A. Polizzi, Superintendent of Schools testified on behalf of the Board. Testifying for Mr. Henchey were David Wilson, teacher and NMEA President, Harris Hirsch, NJEA/UniServ representative, and Lawrence Henchey. The Board introduced sixty-eight (68) exhibits. Mr. Henchey introduced sixty (60) exhibits.² Post-hearing briefs were received from Mr. Henchey's Counsel on February 6, 2015 and from Board Counsel on February 13, 2015, whereupon I closed the record. At all times, both parties were expertly represented by skilled legal counsel.

THE POSITIONS OF THE PARTIES

Summary of Position (Board)

Respondent Lawrence Henchey has, for several years, been incapable of satisfying the professional expectations and responsibilities that the New Milford Board of Education has for all of its teaching staff members. He was placed on a corrective action plan for the 2012-13 school year to address deficiencies observed in the prior year. He not only failed to address them – his performance declined. As a result, the Board withheld his salary increments for the 2013-14 school year – which he did not contest –

² The Exhibit Lists of both parties are set forth in the Appendix to this Opinion and Award.

and placed him on another corrective action plan, which included many of the same items, as well as a new item to address his increasing tardiness to school.

Again, instead of responding with improvement, Henchey's behavior and performance continued to deteriorate, and the District's witnesses credibly testified that he demonstrated a consistent failure to adhere to the administration's directives during that year: He failed to consistently input his grades into the District's student information system, give students timely feedback, or provide meaningful assignments reflected in his grading distribution, as the administration continually directed him. He failed to implement District initiatives, such as Study Island and Writers' Workshop, despite the administration's repeated directives. He failed to address concerns raised by his evaluators in his observations and the directives they gave him regarding his instructional practices. These were major concerns that directly impact the students that he was teaching, and the administration clearly articulated its concerns to him. But those were not the only problems that he had. He failed to take advantage of the help offered to him by the District. He failed to timely comply with a multitude of other administrative directives, arrived at meetings late, and missed meetings. He even failed to come to work on time, coming in late to school for more than 70 out of 180 school days. His unprofessionalism and inability to meet even simple demands, let alone major ones, demonstrate his unfitness to be a teaching staff member.

These issues alone were significant and demonstrate a repeated failure to follow administrative directives that compromised the instructional program. And then, in April 2014, he publicly embarrassed a student in front of her class. Amazingly, he failed to see

the problem with his behavior at the time. Nine months later, he continued to show no remorse or recognition of the impropriety with his actions.

There is no real question that Respondent is guilty of both incapacity and unbecoming conduct. The record is replete with evidence of his failures, many of which he refused to acknowledge. The District's witnesses testified credibly as to these repeated failures, as did one of Henchey's own witnesses. Although Henchey testified on his own behalf, his testimony was not credible when asked about his performance and conduct: he was argumentative, evasive, and dismissive. He, frankly, refused to admit to any deficiencies in his performance, and that is critical, because there is no reason to believe, based upon both the overwhelming evidence, and Henchey's own testimony, that any further action on the Board's part will do anything to improve his performance. Indeed, Henchey demonstrated that even after the Board took major disciplinary action against him, he was incapable of and unwilling to change. As such, there is only one result that is appropriate here: dismissal from his tenured teaching position.

Summary of Position (Henchey)

This four day arbitration follows the grant of a partial summary judgment motion dismissing Tenure Charges 1-4 in their entirety, and Charge 5 ¶¶ 1-11. A Case Management Order was thereafter entered by the Arbitrator, which Order is more particularly set forth on Pages 40 and 41 of the January 3, 2015 Summary Decision. On January 6, 2015, the remaining issues were clarified by the Arbitrator in a Decision that denied the Petitioner Board's Motion for Reconsideration.

The Respondent, Lawrence Henchey, respectfully asserts the following arguments in this post-hearing brief:

1. The charges must be dismissed as the factual assertions set forth in Charge 5 ¶¶ 12-19 were devoid of competent proof.

2. The charges must be dismissed as the Board failed to prove incapacity or conduct unbecoming a teaching staff member.

3. The charges must be dismissed inasmuch as the evidence adduced at best demonstrated alleged inefficiencies on Henchey's part rather than incapacity or conduct unbecoming a teaching staff member.

4. The remaining charges must be dismissed as they are barred by double jeopardy and/or the concept of double punishment.

5. The charges must be dismissed as the Districts' actions were arbitrary and capricious.

6. The charges must be dismissed as they were based on mistakes of fact improvidently relied upon by the District administration.

7. The charges must be dismissed as they were based on a course of harassment visited upon Henchey by the District administration, rather than a good faith determination to help him.

8. For a remedy, Henchey must be reinstated to his tenured teaching position, together with back pay, seniority and all other emoluments and benefits of employment withheld from him during the course of his suspension.

FINDINGS

Background Leading Up To The 2013-2014 School Year

By way of introduction, and borrowing from the District’s website, the “Junior Academy at David E. Owens Middle School” is dedicated to providing high quality educational opportunities for 500 students in grades 6 through 8. The professional staff is comprised of highly qualified teachers and administrators who provide an excellent academic program wherein students are able to reach their maximum potential in accordance with their specific individual needs, abilities, and talents. The curriculum, with an honors program in 8th Grade Language Arts Literacy, Social Studies, Science, and Mathematics, is designed to be comprehensive and varied to provide for individual learning opportunities and learning styles. Curricula offerings include Connected Math, a new, standards-based math initiative in the 6th and 7th grades, and Writer’s Workshop in all three grade levels. The middle school is a “focus” school, as characterized by a significant gap in achievement between its highest and lowest student performers.³

Lawrence Henchey (“Henchey”) has been employed by the Borough of New Milford Board of Education since 2002. He is a member of the New Milford Education Association. After one year teaching at the District high school, Henchey transferred to the David E. Owens Middle School where he has taught 8th grade Language Arts ever since. Henchey holds a teacher’s certification in English, K-12.⁴ In the 2008-2009 school year, Whitney Perro first served as Principal of the Middle School. Subsequently,

³ As such, the DOE entrusts a Regional Achievement Center with monitoring and oversight responsibilities.

⁴ Prior to becoming a teacher, Henchey worked as an electronic and print journalist for twenty years.

Danielle Shanley became the Director of Curriculum for the English Language Arts program (K-8). In each school year, commencing 2002-2003 until 2010-2011, Henchey received satisfactory performance evaluations and salary and adjustment increments. As late as December of 2011, Principal Perro rated Henchey as an effective teacher and deemed his performance acceptable for the 2011-2012 school year (Exhibits P38 and P39). Having said this, however, Ms. Perro placed Henchey on a Corrective Action Plan (“CAP”) during the 2012-2013 and 2013-2014 school years (Exhibits P40 and 46).⁵

At the conclusion of the 2012-2013 school year, the Board voted to withhold Henchey’s salary increment for the 2013-2014 school year. It did so for, among other reasons, Henchey’s failure to meet the terms of his CAP, more specifically:

- Failure to implement District initiatives, including Writer’s Workshop and the Spivey Writing Method, in accordance with our May 2012 Action Plan for Professional Improvement (“Action Plan”);
- Failure to implement a more interactive method of classroom instruction in accordance with your Action Plan, resulting in pupil disengagement;
- Failure to display coursework of current students in accordance with your Action Plan;
- Failure to use a cohesive system of thematic instruction in accordance with your Action Plan;
- Failure to use multiple means of student assessment in accordance with your Action Plan;
- Inconsistent grading practices in accordance with your Action Plan;
- Incongruous student feedback practices; and

⁵ But for Henchey’s dismissal, he would have continued to serve under a CAP during the 2014-2015 school year (Exhibit P54). N.J.A.C. 6A:10-2.5 comprehensively describes the respective rights and obligations of an affected teacher and administrator/supervisor with respect to a CAP.

- Inappropriate comments in the presence of students in your classroom.

In addition to these performance-based reasons, which, standing alone, justify the decision to withhold your increments, our records further reflect that you have been tardy forty-one times during the current school year. This figure represents more than twenty percent of the teacher work year (Exhibit P56h).

The 2013-2014 School Year

Henchey's 2013-2014 CAP

In the 2013-2014 school year, Henchey's CAP reflected a continuation of his 2012-2013 CAP. Henchey's 2013-2014 CAP included the following nine points:

1. Implementation of an inquiry-based approach to instruction.
 - Weekly lesson plans documenting effective and authentic thematic units.
 - Lesson Plans will include collaborative group work and reflect authentic and planned student activities and not teacher-directed activities.
2. Implementation of District initiatives.
 - Including but not limited to effectively implementing Writer's Workshop and Spivey Method in a timely and consistent basis.
 - Facilitation and effective assessment of grade level national common core standards in ELA.
3. Assignment of Homework.
 - Homework assignments will be meaningful which correlate to the unit lesson and involve Higher Thinking Skills.
 - Homework assignments will reflect Board-adopted policy.
4. Classroom Instruction.
 - Increase movement and visibility in classroom.

- This includes limiting time sitting at computer when students are present.
- Circulate to allow increased interaction with student, clarification of directions and monitor student progress.
- Develop effective student-centered lessons with high levels of student engagements.
- Avoid long periods of direct instruction, writing or reading tasks.
- Provide daily evidence of active learning.

5. Classroom Environment.

- Increased presence of current student work displayed around the classroom that is content appropriate and reflects best work or exemplars of the students.
- The mural at the front of the room must be completed; this has been unfinished for two years.
- Classroom themes will be changed at a minimum of quarterly.
- The bulletin board outside the classroom must have background paper and a board including current student work.

6. Independent Reading.

- Independent reading will be no more than ten (10) minutes.
- Classroom library must be organized and records maintained for circulation.
- Teacher must daily model reading independently while the students are reading.

7. Tardiness to school.

- Mr. Henchey will report to work sign-in at the designated place at 8:00 a.m. each and every teaching day.

8. Discipline Referrals.

- Mr. Henchey will develop and display five classroom expectations by September 11, 2013.
- Expectations will be clear and be enforced consistently throughout the school year.
- Mr. Henchey will be provided with the resource Discipline with Dignity and will apply strategies from chapters 2, 3, 5, 6, 8 and 9.

9. Grading.

- Grades will be entered into PowerSchool no more than two weeks beyond the assignment date.
- Assignments will be graded in a timely manner (within one week) and returned to students with feedback for improvement.
- A variety of assignments will be given including authentic assessments.
- A true curve of grades will be represented.

Assistance Provided to Mr. Henchey

During the 2013-2014 school year, Antonio Giovinazzo (“Giovinazzo”), the District’s Teacher of the year in 2013-14, served as the ScIP officer for the Middle School, through which he was expected to assist struggling tenured and non-tenured teachers to improve. Specifically, Giovinazzo would meet with the administration on a monthly basis so it could advise him of teachers needing assistance. In response, Giovinazzo would contact the teacher, introduce himself and offer his assistance. At the start of the 2013-2014 school year, the administration brought Henchey’s performance issues to Giovinazzo’s attention and requested that Giovinazzo provide him with assistance. Giovinazzo assisted Henchey to, among other things, upload his McREL artifacts, complete his McREL logs and input his grades in a timely fashion.

Giovinazzo's involvement with Henchey extended from September 2013 through February 2014. Henchey was receptive to this assistance.

However, Giovinazzo testified that "towards that period [February] I had checked up on him once and he was kind of curt or short with me, and I felt that he was frustrated, maybe overwhelmed, so I thought, my interpretation was maybe I should back off a little" (2T 160:21-25; 161:1-6). When asked to clarify whether Giovinazzo believed Henchey had a problem with him specifically, Giovinazzo summarized as follows:

It was an internal feeling that he was just frustrated, you know, and maybe, maybe he was getting it from too many people, like everyone trying to help him and maybe he was overwhelmed you know, and so I was just, like, you, let me just back off a little, and if he needs me he knows where to find me, and he knows that I will always be available for him if he needs me. [2T 175:7-16 (emphasis added)].

In addition, for Henchey's benefit, the administration scheduled two non-evaluative training sessions with Meredith Alvaro, a Reading and Writing Workshop coach hired by the District to provide professional development to all staff members. Since Henchey had expressed an interest in working with Alvaro, the District hoped the training sessions would improve Henchey's teaching performance. Henchey attended one of the sessions. Principal Perro was able to verify that Alvaro actually modeled the entire lesson for Henchey. Principal Perro did not have first-hand knowledge as to whether Henchey was able to execute the lesson. Because Ms. Alvaro did not testify on such a pertinent topic in this type of proceeding, while admitting the testimony, ultimately, I do not accord significant weight to Principal Perro's hearsay statement that Ms. Alvaro told her that Henchey was unable to model her suggested lesson format. On

the contrary, Mr. Henchey's testimony and supported documentation (Exhibits R17A and B) show that he did "synthesize" Ms. Alvaro's techniques into a lesson entitled, "How to Write ASK Argumentative/Persuasive Essay – (Incorporating M. Alvaro techniques from Observation)".

Lastly, Principal Perro and Henchey, at Henchey's suggestion, agreed to meet weekly (subject to scheduling) to review Henchey's lesson plans and discuss his efforts to comply with the 2013-2014 CAP. The meetings were voluntary and non-disciplinary in nature (with the exception of April 1, 2014, discussed, *infra*). Exhibit P59 (a-n) set forth copies of Principal Perro's weekly meeting notes for three (3) meetings during the months of September, October, and November and one in December of 2013; and for one meeting on January 15, 2014, one on April 8, 2014 (after Principal Perro recommended tenure charges) and one last entry for May 14, 2014. Principal Perro authored various memoranda relating back to weekly meetings on February 10, 2014 (P57e), February 26, 2014 (P57f), March 6, 2014 (P57g), March 13, 2014 (P57h), and April 1, 2014 (P57i). Mr. Henchey introduced a copy of his weekly meeting notes as Exhibits R13 (A-M). In addition to the meetings mentioned above, Mr. Henchey documented a meeting on January 29, 2014 (13L) and February 14, 2014 (13M).

Henchey's 2013-2014 Observations and Evaluations

On October 4, 2013 (9:45 a.m. to 10:45 a.m.), Principal Perro conducted the first of Henchey's 2013-2014 performance evaluations. Perro contacted Henchey on September 11, 2013 to schedule a preconference meeting, and directed him to contact her secretary, Mrs. Moat, to set up the meeting by September 20, 2013 (Exhibit P60, p.16).

Ms. Perro then emailed Henchey on September 20, 2013 and advised him that because he failed to schedule the meeting, she set down the preconference meeting for September 26, 2013 (Exhibit P60, p.17). At the meeting, Perro reviewed Henchey's proposed lesson plan and discussed the planned observation with him.

The October 4, 2013 observation was introduced in evidence as Exhibit P48. In relation to Henchey's 2013-2014 CAP and the District's Independent Reading Initiative, Principal Perro did not see Mr. Henchey modeling the ten (10) minutes of reading. Principal Perro also expressed a concern over the pacing of the class. A concern was also noted in the observation that Mr. Henchey was not sufficiently providing a French-speaking ELL student with differentiated learning. In his post-observation conference with Vice Principal Coughlin and Danielle Shanley, Henchey explained that he paired the student with another student who is fluent in French. Ms. Shanley (who was not a co-observer) suggested that Mr. Henchey reach out to Ms. Vacarro to assist him locate materials – referred to by her as “high interest-low readability” texts. She also suggested that the student would benefit from more images or web-based translations until she mastered the foundations for reading English. Perro added under Standard 4, “Teachers Facilitate Learning for their Students” that all students were not engaged in the lesson, that Henchey was talking too much to one student at a time, that his pace was too fast, that he should slow down, stop and confer with a student, that he did not collect exit slips to measure student understanding of the lesson, etc. Perro offered Mr. Henchey additional coaching with Ms. Alvaro, the District's writing/reading trainer.

On November 20, 2013, Vice Principal Coughlin observed Mr. Henchey from 10:15 a.m. to 10:45 a.m. (Exhibit P49). As to pacing, Coughlin writes: “The pacing of the portion of the lesson that was observed was on target. Mr. Henchey took the time to delve into the writer’s notebook responses and allowed for a deep discussion and interaction with the students. He set a clear goal for the lesson, which was that all of the information discussed from the various students responses in their writer’s notebooks would be used to develop argumentative essays, and the students were able to relate to this objective.” Coughlin offered constructive criticism as well: “Mr. Henchey should focus on the use of data to understand the skills and abilities of his students, as well as the notion of how to identify if all of the students demonstrate the ability to understand the topic.” Consistent with Perro’s observations of October 4, 2013, Coughlin commented that there was no evidence of differentiation for the ELL (French-speaking) student and that only 8-16 students actively participated in the lesson. Coughlin commented: “She could have been provided with modifications since she is a port of entry student.” Lastly, Coughlin commented: “Mr. Henchey actively participates in professional development aligned with his professional goal, and considers and uses a variety of research based approaches to improve teaching and learning. He also recognizes the need to improve student learning in the classroom. Mr. Henchey is encouraged to continue implementing district initiatives with integrity and the full intent of the programs.”

On February 7, 2014, Danielle Shanley, Director of Curriculum observed Henchey’s class for Principal Perro. Ms. Shanley’s name is not listed on the District’s Observation/Evaluation Schedule as an evaluator of any tenured teacher (Exhibit R23)

and, yet she was substantially involved with Henchey's October 4, 2013 post-observation conference, Henchey's February 7, 2014 Observation and Henchey's February 20, 2014 post-observation conference. On the day of the observation, Henchey was preparing his students in their first attempt at writing an Explanatory Prompt Essay for the NJ ASK (believed to have been conducted in May of 2014). Based on her superior ELA skill sets and knowledge of the test (no longer administered due to the PARCC Assessment), Ms. Shanley offered comprehensive suggestions in both contemporaneous email communications with Henchey (Exhibit R24A) and within the text of the formal observation completed on February 20, 2014 (Exhibit P50) to improve upon his existing "Bull's eye" template. She did not direct him to discontinue using the template.

As to the items of observation that concerned Perro and Coughlin, Ms. Shanley observed too much teacher-directed conversation and a failure to model (IRB); instead, Mr. Henchey was setting up the Hovercam to display an explanatory writing prompt. Ms. Shanley encouraged Mr. Henchey to "travel the room to ensure participation and monitor their progress..." Ms. Shanley writes that there was no written feedback. Some students read, some spoke and essentially no students wrote today. In the positive, Ms. Shanley commented: "Mr. Henchey has established a warm classroom environment and treats students with respect. He encouraged them many times during this lesson, reminding them that the goals for this writing task are attainable and that he is sure they can do this... He highlighted the achievements of the 3 students whose work was reviewed by the class, and he provides constructive feedback for improvements." Ms. Shanley was aware that an ELL student was in the class but stated that she was unaware

of any modifications, except that Mr. Henchey pointed her out and told Ms. Shanley that “she is progressing nicely.”

On March 5, 2014, following a post-observation conference, Mr. Henchey authored a letter of rebuttal as his right to do so (Exhibit P51). He noted that Perro allows teachers to upload artifacts to McREL in advance of the post-observation conference. In turn, the artifacts could be considered by the evaluator in order to, for example, move a checkmark from the “developing” to the “proficient” column (a higher rating). Under Principal Perro’s approach, the artifacts did not have to be precisely tailored to the lesson observed. However, Ms. Shanley advised Mr. Henchey that she was only interested in artifacts related to the lesson she observed on February 7, 2014 (i.e., NJ ASK preparation). Since the lesson observed was only the second NJ ASK lesson taught by Mr. Henchey, there were no artifacts to upload in the narrow vein set by Ms. Shanley. Although Perro had agreed to meet with Mr. Henchey to review his concerns, according to Henchey’s letter of rebuttal, she cancelled the meeting and ultimately refused to acknowledge the artifacts.

The second concern expressed by Mr. Henchey in his letter of rebuttal is that Ms. Shanley did not give Mr. Henchey any credit for complying with her suggested improvements from the date of observation to the date of the post-observation conference (See, e.g., Exhibit R25C).

On or about April 30, 2014 the Principal Perro completed Henchey’s summative evaluation (Exhibit P52). The Summative Evaluation incorporates formal observations by Principal Perro on October 4, 2013 (Exhibit P48); by Vice Principal Coughlin on

November 20, 2013 (Exhibit P49); and by Director of Curriculum, Danielle Shanley on February 7, 2014 (Exhibit P50).

On June 9, 2014, Henchey signed off on his Professional Evaluation. Henchey scored 1.9 out of 4.0 which left him with a “Partially Effective” rating under TEACH NJ and ACHIEVE NJ and in the “Developing” category under the McREL rubric adopted by the Board, with the approval of the Commissioner of Education. A score in the range of 1.0-1.85 is deemed “Ineffective” under ACHIEVE NJ and “Developing” under McREL. A score of 2.65 is required to be considered “Effective” under ACHIEVE NJ and “Proficient” under McREL.

The Board’s Withholding of Henchey’s 2014-2015 Salary Increment

June 5, 2014 Letter from Superintendent Polizzi (Exhibit P57p)

The purpose of this letter is to inform you that on June 9, 2014, at 7:00pm in the New Milford High School Media Center, I will recommend to the New Milford Board of Education (the “Board”) that your employment and adjustment increments be withheld for the 2014-2015 school year. I am recommending this action based on your persistent refusal to provide effective instruction to the students in your classes as evidenced by the formal observations which were conducted during the 2013-2014 school year by multiple evaluators as well as the informal observations and walkthroughs.

Your teaching skills and professional performance in all five standards that were assessed are overwhelmingly in the “developing” domain and only secondarily in the “proficient” domain. Not one standard reflects any teaching skill or professional practice in either the “accomplished” or the “distinguished” domain, despite the history of ongoing assistance that you have received by the New Milford School District (the “District”) administration. Simply stated, your teaching performance does not meet the professional expectations of a teacher in the District.

Specifically, my recommendation that the Board withhold your employment and adjustment increments for the 2014-2015 school year is based upon your:

1. Failure to plan, pace and organize appropriately for instruction;

2. Lack of effective teaching strategies, such as scaffolding opportunities to demonstrate student learning; modeled, shared and independent practice; use of “Do Now” activities; and posting and referencing the daily agenda as well as objectives and essential questions;
3. Inability to engage all of the students in your class instead of just several students;
4. Failure to motivate and inspire students by using teachable moments effectively;
5. Failure to use classroom assessment data to guide program planning;
6. Failure to make necessary changes to instructional practice for the improvement of student learning;
7. Failure to integrate core content and 21st century content in lesson plans and classroom instructional practices;
8. Failure to apply and implement knowledge and skills attained from professional development activities;
9. Failure to consistently and effectively maintain a positive, productive, and nurturing learning environment for all students;
10. Lack of consistent and effective differentiation for students of varying skill levels;
11. Lack of student engagement with higher levels of thinking and the integration of technology;
12. Emphasis on teacher directed discussion rather than student participation and teamwork;
13. Failure to consistently and effectively incorporate writing within the students’ instructional regimen;
14. Failure to utilize research based approaches to improve teaching and learning; and
15. Consistent refusal to seek out and employ techniques and strategies for the improvement of instruction.

The Decision to File Tenure Charges

On April 3, 2014, Principal Perro recommended to Superintendent Polizzi the filing of tenure charges against Mr. Henchey (Exhibit P57j). Superintendent Polizzi rejected Perro's April 3, 2014 recommendation. In a follow-up document authored on either June 10 or 11, 2014, Perro shared with Superintendent Polizzi her statement to be presented to the Board in connection with the intended increment withholding action. It is clear from a reading of the summary that Principal Perro was not persuaded by Superintendent Polizzi's rejection of her request that tenure charges be filed against Henchey.

Principal Perro summarized what she considered to be Henchey's failure to comply with his CAP, i.e., failure to grade assignments on a true curve or enter grades with any consistency, failure to timely update his grade book, failure to implement district initiatives, failure to assign Study Island, failure to move about his classroom and engage students, failure to bring his Writer's notebooks to a weekly meeting on November 6, 2013, failure to display student work, tardiness to school (70 times), removal from his class on two separate occasions, failure to call in for substitute coverage or leave lesson plans in connection with a personal day granted on April 2, 2014 (and taken on April 14, 2014), failure to timely attend mandatory PARCC training on February 12, 2014, failure to achieve an effective rating on his ACHIEVE NJ evaluation, and failures to improve despite being present for workshops, having individual assistance from the ELA coach, being paired with a strong ELA peer, etc. Perro concludes her presentation: "If under the AchieveNJ system the hardest message we can send is to

withhold an increment I truly worry which 70 students will be assigned to his class next year. And what will happen if he begins to further fall apart if that first observation is poor.”

Since no determination had been made to file tenure charges against Mr. Henchey, Henchey was advised by Perro on June 9, 2014 that his Professional Development Plan (Exhibit P45) had been completed for the current year and renewal was being recommended with an increment withholding (Exhibit P53). Additionally, a CAP for 2014-2015 had been prepared on May 7, 2014 and given to Henchey on May 29, 2014 (Exhibit P54). Henchey was separately provided with a letter of intent to renew his contract on May 13, 2014 (Exhibit R50).

It is clear from this record that until such time after June 23, 2014, Superintendent Polizzi was amenable to allowing Henchey the opportunity to complete the second year of the TEACH NJ evaluation framework. However, according to Superintendent Polizzi, he reflected on certain concerns over the summer, such as, ten blank pages in the students Writer’s Workshop notebooks, concluding that Henchey’s intention to have the students go back and fill in the blank pages “seemed like a deliberate attempt at deceit, a kind of cover-up” (3T 29:9-10).⁶ Polizzi’s change of position was also influenced by further reflection on Henchey’s own misperceptions of his actions:

The perception of his own attendance, 70 days late, and interpreting that as three or four. That’s problematic. The perception that his students are doing well and have improved. And in looking at the data and doing the

⁶ It is noted that Henchey was not charged in this proceeding with engaging in deceit regarding the ten blank pages in the journals of his students.

analysis and doing the calculations, that was not the case. I think all of those things cumulatively resulted in a change in my position [3T 29:18-25; 30:1-6].⁷

Polizzi ultimately testified that after June 23, 2014, his feelings were aligned with Perro's, and both felt that they needed to file tenure charges (Tr. 3, 49:20-50:16).

The Tenure Charges (Post Motion for Summary Decision)

Charge No. 5

That, in addition to Henchey's consistent failure to implement effective and efficient teaching strategies, and in addition to his unwillingness or inability to improve upon the same, Henchey has also demonstrated a lack of professionalism throughout the 2011-2012, 2012-2013 and 2013-2014 school years which has included a lack of respect for the Administration and a complete disregard for the high professional standards placed upon him, and which unprofessionalism constitutes incapacity and conduct unbecoming warranting dismissal. . . .

12. During the 2013-2014 school year, Henchey's classroom conduct, attitude towards others, and overall work performance continued to worsen. As a result, and for the reasons set forth more fully herein, the Principal ultimately recommended to the Superintendent that tenure charges be formally filed against Henchey.

13. On September 18, 2013, the Principal had to draft a memorandum to Henchey after he failed to timely submit his "Class Expectations" letter to be sent to the parents of his students.

14. On February 12, 2014 the English Language Arts department scheduled a thirty-minute meeting for an important presentation on the Partnership for Assessment of Readiness for College and Careers ("PARCC") Assessments. Henchey arrived seventeen minutes late without any

⁷ Most of Henchey's students scored in the proficient range on NJ ASK. In essence, this is what Henchey accurately relayed to the Board during the increment withholding hearing. However, in response, Danielle Shanley took the initiative to analyze Henchey's NJ ASK scores over several years to demonstrate relative insufficient growth, and then she reported the resulting serial data to Superintendent Polizzi who, in turn, accepted the data in support of his belief that Henchey was not forthcoming with the Board.

explanation or apology. As a result, the Principal drafted a memorandum on February 14, 2014, which summarized that “[y]our action of being late was unprofessional and rude to the presenter.”

15. After a pattern of habitual late arrivals, on or about March 26, 2014 Henchey arrived to work at 9:45 a.m. – one hour and forty-five minutes after his contractual start time. Henchey missed his assigned morning duty, his weekly meeting with the Principal, and his common planning time. As a result, on or about April 1, 2014 the Principal drafted a memorandum regarding Henchey’s lateness to work which stated, among things, that “[y]our action of not calling the school and informing me you would be late was unprofessional.”

16. On or about April 9, 2014, K.C., the parent of a student in Henchey’s class (L.C.), emailed Henchey asking why her daughter’s book was taken away and was sitting on Henchey’s desk. Henchey responded to K.C. on April 10, 2014 advising that L.C.’s book had been taken away because she had lent it to another student who had misplaced their copy of the book. Henchey advised K.C. that L.C. has access to the book online. Then, on the following day, Henchey placed a redacted copy of the email on the Smartboard in the front of the classroom, and told all of the students in his class to inform their parents to stop contacting him. Students who were interviewed regarding the incident characterized Henchey’s statements as a “rant,” and some even added that such behavior was typical. Moreover, students reported that Henchey uttered the following statements, “I came in thirty minutes early and had to waste my time answering parent emails”; “I’m tired of students making up rumors about me...”; “I don’t have time to answer questions from parents”; “I’m tired of guidance calling me about this...”; and “I know how to write an email and your parents will never win.”

17. In response to this incident, the Principal and Vice Principal met with Henchey and two of his New Milford Education Association (“Association”) representatives to discuss the matter. While Henchey admitted to copying and pasting the email and sharing it with the class, and further admitted to spending class time complaining about parental

communications, he (amazingly) did not believe he had acted inappropriately because he had redacted the names and gender identifiers in the copied email (notwithstanding the fact that every student in the class was aware that Henchey had L.C.'s book on his desk and could thus easily conclude that the email was from one of L.C.'s parents). As a result, the Administration and the Association representatives agreed that Henchey should take the rest of the day off, get in contact with his therapist and return after the spring recess.

18. On or about April 14, 2014, Henchey utilized a personal day, which had been approved on April 2, 2014. Pursuant to established District practice, all teachers utilizing sick and personal days are required to individually call in and schedule substitute teachers. On April 14, 2014 Henchey failed to call out for a substitute and, as explained by the Principal, "once again we [the District] needed to scramble to cover your classes." Moreover, because Henchey did not leave any lesson plans for his classes, Ms. Carroll was required to create plans and activities for Henchey's students. On April 14, 2014, the Principal provided Henchey with a memorandum to address his failure to follow District protocol, call in for a substitute and leave or email lessons plans.

19. Finally, throughout the entire 2013-2014 school year, Henchey repeatedly and consistently failed to comply with the Principal's weekly directives relating to his 2013 Action Plan. Henchey's consistent failure to do anything requested by the Principal, including such easily achievable requests as "bring your Writer's Workshop notebook to our weekly meetings," constitutes both inefficiency and conduct unbecoming a professional. . . .

OPINION

Synopsis

N.J.S.A. 18A:6-10 allows for the dismissal of tenured teachers and other tenured personnel for "inefficiency, incapacity, unbecoming conduct, or other just cause." In the present matter, I find that the Board's proofs do not support a finding of incapacity above

and beyond inefficiency. However, the Board's proofs do satisfactorily demonstrate that on the heels of two consecutive years of a Corrective Action Plan and one increment withholding, Mr. Henchey engaged in various serious forms of unprofessional conduct during the 2013-2014 school year that support the reasonableness of the Board's ultimate determination to dismiss him from employment. Accordingly, I am constrained to uphold the Board's action under a just cause standard of review.

Disposition of the Charge of Incapacity

After carefully reviewing the experience of the Office of Administrative Law and the Commissioner in addressing the subject matter, I adopt the oft-quoted explanation of the difference between inefficiency and incompetence (or incapacity) set forth in School District of the Township of East Brunswick v. Renee Sokolow, 1982 S.L.D. 1358, 1362, aff'd State Board of Education, 1983 S.L.D. 1645:

The charge of incompetence, as distinguished from the charge of inefficiency, presumes that the proofs in support of the charge will demonstrate that respondent is so lacking in competency to perform the responsibilities of classroom teacher that the requirements of the 90-day improvement period, required for a charge of inefficiency, N.J.S.A. 18A:6-11, would be a useless exercise. Incompetence requires proof that the affected person regardless of the assistance offered by certified supervisors does not have the ability or capacity to be an effective teacher.

Charges of incapacity may be sustained when a teacher demonstrates a complete unwillingness or inability to correct or rectify significant performance-related shortcomings or improve the instruction provided to his students. See, e.g., Lawrence Twp. Bd. of Educ. v. Helmus, 2 N.J.A.R. 334 (N.J. Admin. Jan. 24, 1980) (tenured teacher with 17 years of experience was dismissed for lack of classroom control and

incapacity to teach in his assigned area); Parsippany-Troy Hills Bd. of Educ. v. Molinaro, 96 N.J.A.R.2d (EDU) 268 (N.J. Admin. Dec. 6, 1995) (incapacity charge sustained because teacher evidenced an inability to plan and implement curriculum and an inability to efficiently utilize classroom period for academic purposes); cf. In IMO Tenure Hearing of Patricia Finn, School District of Bordentown Regional School District, 2000 WL 266441, aff'd in part/remanded (Comm'r) 2000 WL 34401290 (nine year teaching staff member with history of positive teacher-student experience inappropriately charged with incompetency rather than inefficiency based on evidence indicating, over a 17-month period, lack of written lesson plans; disorganization; failure to utilize different teaching modalities; failure to report to class in a timely manner; failure to individualize lesson plans for special needs students; and, general failure to implement lessons which were planned in advance).

In conforming Sokolow and Finn to the present, and without yet addressing Henchey's unprofessional or unbecoming conduct during the 2013-2014 school year, I find that the record evidence does not support a finding of overall incapacity to teach, i.e., that it would be a useless endeavor to have provided Mr. Henchey with a full and fair opportunity under Section 25 of TEACH NJ to demonstrate teacher efficiency. I say this for many reasons.

First and foremost, I observe that the three 2013-2014 observations conducted of Mr. Henchey contain a mix of positive and negative findings that do not leave one with the impression that he is incapable of teaching. While the Board may rely upon its interpretation of the Perro, Coughlin, and Shanley observations to support the summative

evaluation and overall rating of partially effective, I disagree that the observations fairly lead to a conclusion of incapacity above and beyond inefficiency.

Second, within the framework of the observations-evaluation conducted, I find troubling certain actions by the administration. For example, although Principal Perro and Vice Principal Coughlin co-observed the October 4, 2013 lesson, Ms. Shanley, who was not present, plainly took the lead in conducting the post-observation conference and her writing permeates the bulk of the post-observation commentary. I am further concerned over the mechanics that left Henchey with no real meaningful opportunity to move the checkmarks by way of uploading artifacts to his February 7, 2014 observation conducted by Danielle Shanley (Exhibit P50). Not only was Ms. Shanley not listed as an observer on the master evaluator schedule but, contrary to Principal Perro's practice, Henchey's artifacts were not credited because they were not lesson-specific. Taken into account that the type of skills observed in a one-hour (or less) observation may be also demonstrated by uploading artifacts encompassing analogous skills or lesson implementation, I find it problematic that Henchey's artifacts were not considered by Ms. Shanley or Perro as a basis to "move a checkmark" on Henchey's behalf. Inserting an evaluator off-script may or may not be an arbitrary and capricious action. I need not determine as much in this case. Rather, what I deem problematic is the difference in practice or policy regarding the breadth of artifacts that may be uploaded to McREL between Mr. Henchey's primary evaluator, Principal Perro and the substitute evaluator, Danielle Shanley. By narrowing the category to lesson-specific artifacts, I agree with

Henchey that he was placed at a disadvantage and, at the very least, that he should have been permitted to submit for consideration the artifacts that he did have on file.

Third, contrary to the administration's belief, I am also satisfied that Mr. Henchey did show due diligence with respect to attempting to incorporate the comprehensive suggestions of Ms. Shanley within a reasonable period of time following her formal observation of Henchey on February 7, 2014. Ms. Shanley emailed Henchey certain suggestions that she believed should be implemented (Exhibit R24A). Henchey was receptive to Shanley's suggestions. Indeed, he replied that same day stating he would implement them and, that he looked forward to discussing the matter further when they met for a post-observation conference (Exhibit R24B).

Ms. Shanley sent Vice Principal Coughlin to visit Henchey's class on Wednesday, February 12, 2014 to see if Henchey had implemented the suggestions (Exhibit P60, page 037). Henchey, however, had undertaken to implement the suggestions in his class on Tuesday, February 11, 2014 (Exhibit R45J). He did so because February 12, 2014 was a half-day schedule, the afternoon of which he should have been in attendance at the PARCC lecture by Caitlin Carroll. Because of that schedule, he did not have Language Arts classes in the afternoon. He advised Shanley of this fact on February 12 (Exhibit R45J). To further the implementation of the efforts he had taken on February 11, Henchey worked during what normally would have been his lunchtime on February 12, 2014. He did so in order to prepare additional prompt materials to be used in the unit of studies then being addressed (Exhibit R25B). Accordingly, Henchey's reasonably

diligent responses to Ms. Shanley's suggestions indicate, quite frankly, the opposite of incapacity.

Fourth, I believe that Henchey has demonstrated compliance (or the Board has failed to demonstrate a lack of compliance) with regard to certain aspects of both his 2013-2014 CAP and/or comments made in the 2013-2014 observations. In particular, I find the record does not support a finding that Mr. Henchey did nothing to provide differentiated instruction to a French-speaking student. Even Perro acknowledged that as the year progressed, the ELL student developed her English-language skills, thereby implying that she was able to complete the class without any acrimony (Tr. 1, page 107). Additionally, Mr. Henchey testified that he paired the French-speaking ELL student with another student who speaks English-French; he had weekly meetings with his French-speaking ELL student; he provided Google-translate materials to both his French-speaking and Arabic-speaking ELL students; and that he did engage in an ongoing email dialogue with Vice Principal Coughlin and Isaam Helwani to obtain French-English novels.

Indeed, a review of the testimony of Vice Principal Coughlin and Mr. Henchey (as well as supporting email documentation) leaves an air of confusion as to who was responsible for purchasing the books in the first place. On November 27, 2013, Coughlin, referring to a list of novels in French-English suggested by Henchey and Mr. Helwani writes: "Larry, This is excellent! As soon as you get me that list I'll make sure we get her the books!" (Exhibit R47B). On December 4, 2013, Helwani refers Henchey to a list of bilingual novels for sale on Amazon.com. Mr. Henchey replies: "Many

thanks! I am including Mr. Coughlin in this reply as he is the one who will actually make the purchase (or approve me to do it)” (Exhibit R47A). On December 5, 2013, Mr. Coughlin advises both Henchey and Helwani that he found a publishing company that makes French/English novels; that he emailed the publisher a copy of the list of novels requested; and that the publisher was going to get back to him with the availability of such books or alternatives just in case they don’t have it (Id.). The email trail drops off at this point and Messrs. Coughlin and Henchey essentially fault the other for dropping the ball. Regardless, there does not appear to be a non-arbitrary basis to conclude that Henchey did nothing to help the ELL student in his class.

Fifth, Principal Perro formed a conclusion that Mr. Henchey could not or did not implement the ELA lesson modeled by Ms. Alvaro. With respect to a charge of incapacity, the question becomes not one of qualitative execution, but whether the teacher exercised due diligence and at least demonstrated some progress. Ultimately, Perro did not have first-hand knowledge as to whether Henchey was able to execute the lesson. Because Ms. Alvaro did not testify on such a pertinent topic in this type of proceeding, while admitting the testimony, ultimately, I do not accord significant weight to Principal Perro’s hearsay statement that Ms. Alvaro told her that Henchey was unable to model her suggested lesson format. On the contrary, Mr. Henchey’s testimony and supported documentation (Exhibits R17A and B) show that he did “synthesize” Ms. Alvaro’s techniques into a lesson entitled, “How to Write ASK Argumentative/Persuasive Essay – (Incorporating M. Alvaro techniques from Observation).” Thus, contrary to a finding of incapacity, I find that, similar to his reaction to Ms. Shanley’s critique, Mr. Henchey did

professionally respond to the assistance provided to him by Ms. Alvaro, he did exercise due diligence, and he was able to document his efforts at compliance, thereby escaping a conclusion of incapacity.

Sixth, Henchey's first year TEACH NJ score of partially effective (1.9) leaves one with an understandable impression that Henchey may or may not have made it past the second year of TEACH NJ, but it does not and cannot support a conclusion that he is a finished product under the current, two-year evaluation rubric. Indeed, if Henchey was able to submit artifacts and if such submission resulted in a movement of the checkmarks with respect to his February 7, 2014 observation, I note, he may have scored higher than a 1.9 in the overall summative rating. Regardless, under TEACH NJ, if Henchey was permitted to continue during the 2014-2015 school year as the Superintendent had initially envisioned, then he may have regressed into the realm of "ineffective" (1.0-1.85) and automatically faced tenure charges, or he may have progressed to "effective" (2.65) and have avoided tenure charges.

In 2014-2015, Henchey would have been the recipient of a fourth observation as well as a mid-year evaluation by the ScIP (consisting of the principal, vice principal and designated ScIP officer (not the Director of Curriculum) elected with the consent of the NMEA) N.J.A.C. 6A:10-3.1. Simply put, in light of some of the deficits pointed out regarding the 2013-2014 observations and summative evaluation, allowing Henchey a second year would have at least provided him with additional formalized observations and an opportunity to receive a first mid-year evaluation by the ScIP -- all designed to help struggling teachers pass muster under a new evaluation rubric, as approved by the

Commissioner and implemented for the very first time during the 2013-2014 school year. Thus, given Henchey's first TEACH NJ score of partially effective, the deficits noted in the observation process that lead to that rating, and the conclusions in the summative evaluation not supported by the evidentiary record, I cannot conclude that it would have been a "useless exercise" to allow Henchey a full and fair opportunity to achieve an effective rating in the second of two years of a new statewide educator evaluation model.

Seventh, Henchey has taught in the District since the 2002-2003 school year. The earliest formal sign of significant struggle is embodied by Henchey's CAP for the 2012-2013 school year (signed by Mr. Henchey and Principal Perro on June 21, 2012, Exhibit P40). Even acknowledging Henchey's various shortcomings complying with the CAP during the 2012-2013 and 2013-2014 school years, I observe, Henchey's prior ten years of acceptable service militates against a conclusion that the provision of the aforementioned novel supports would have been a futile exercise (adopting, with modernization, Sokolow and Finn, *supra*).

Eighth, it is apparent from this record that Henchey became overwhelmed by the amount of scrutiny being placed on him and that this approach backfired during the first year of the administration's adaptation and implementation of the evaluation rubric. Without question, the 2013-2014 school year involved a learning curve for both evaluators and teachers under a new set of evaluation rules. As of February of 2014, the President of the NMEA and Perro discussed Mr. Henchey's feelings of being overwhelmed by the amount of other administrator-teacher contact time, such as, frequent drive by visits from the administration and various observe for success sessions

(10-15 minutes each). Mr. Giovinazzo, the SCIP officer, reported that he too formed the impression that Henchey behaved as if he was inundated by the amount of “assistance” being provided to him.

Ninth, ample support from this record shows that even Superintendent Polizzi was not convinced that Henchey should be precluded from completing the second year of TEACH NJ, i.e., 2014-2015 until well after the Board had voted to withhold Henchey’s 2014-2015 increment. The Superintendent’s change of heart came not as the result of his perception of Henchey’s overall incapacity to teach ELA, but more out of a growing concern over Henchey’s alleged deceit, i.e., ten pages left intentionally blank in the journals of Henchey’s students (not charged) and Henchey’s representation to the Board that his students were performing well on standardized testing (not charged). Polizzi testified that he changed course also due to Henchey’s inability to appreciate the magnitude or impact of his chronic tardiness (expressed, in part, and implied, in part under Charge No. 5, par. 15).

Lastly, although I acknowledge that the Board has satisfactorily demonstrated Henchey’s more willful disregard of certain aspects of his CAP, as reinforced through weekly meetings with Principal Perro, other similar allegations have not been so demonstrated and the above-mentioned mitigating factors must be considered as well. Accordingly, I do not credit the Board’s evidence of Henchey’s conduct unbecoming during the 2013-2014 school year as sufficient to support a finding of overall incapacity under N.J.S.A. 18A:6-10.

Based on the foregoing, I find and conclude that the Board has failed to satisfactorily support a charge of incapacity under N.J.S.A. 18A:6-10, despite the existence of evidence of conduct unbecoming, discussed next.

Disposition of the Charge of Conduct Unbecoming a Professional

In light of the foregoing, I will address Tenure Charge No. 5, paragraphs 12-19 under the category of unbecoming conduct, although par. 19 reads more like a charge of insubordination.⁸ Charge No. 5, par. 19 states:

Finally, throughout the entire 2013-2014 school year, Henchey repeatedly and consistently failed to comply with the Principal's weekly directives relating to his 2013 Action Plan. Henchey's consistent failure to do anything requested by the Principal, including such easily achievable requests as "bring your Writer's Workshop notebook to our weekly meetings," constitutes both inefficiency and conduct unbecoming a professional.

As a general rule, in the area of labor relations, an employee cannot refuse to cooperate with the employer regarding legitimate work-related conduct. To do so is an act of Insubordination, subject to disciplinary action up to and including discharge. See, Prestige Stamping Co., 74 LA (BNA) 163; St. Joe Minerals Corp., 76 LA (BNA) 421; and City of Franklin, 81-1 ARB (¶8069). I will address the major aspects of this allegation below insofar as only the charge of conduct unbecoming/insubordination is at hand. If an item of Henchey's multi-factored 2013-2014 CAP is not addressed below, then the parties can assume that the allegation not discussed would lead to, at best, a finding of inefficiency, but not to a finding of conduct unbecoming/insubordination.

⁸ N.J.S.A. 18A:6-10 does not include an express disciplinary charge regarding insubordination. However, I am satisfied that the willful failure or refusal of a teacher to comply with significant directives from administrators, in the professional employment context of education, does constitute conduct unbecoming a professional.

Writer's Workshop/Spivey

District-wide initiatives are designed to improve student achievement. Implementation of District Initiatives, such as Writer's Workshop and Spivey method were part of Mr. Henchey's 2012-2013 and 2013-2014 CAPs (Exhibit P40 and P46). Deficiencies concerning the use of Study Island and Smart Responders were not set forth in either of Henchey's two CAPs or within the 2013-2014 increment withholding decision. Conversely, a failure to implement Writer's Workshop and the Spivey (preexisting District Initiatives) were made part of the 2013-2014 increment withholding.

In this matter, I conclude that the Board has failed to convincingly demonstrate that Mr. Henchey was, in essence, insubordinate, with respect to incorporating Writer's Workshop and Spivey. See, Exhibits R8A and B (showing the Spivey Tree and a representative example of the Spivey exercise); Exhibit R38 (showing the Spivey Tree Mural in Henchey's classroom for reference by students during class); Exhibit R32A (showing period submission of Writer's Workshop journals); Exhibit R32B (evidencing prompts created by Henchey to implement Writer's Workshop); Exhibit R13A-M (weekly meeting memos showing discussions, among other things, entries into Writer's Workshop notebook). In addition, during a formal observation of November 20, 2013 by Vice Principal Coughlin, Coughlin commented under Standard #4 that Mr. Henchey demonstrated positive interaction with students and, among other things, demonstrated a proper utilization of the Writer's notebook as an essential tool for the ELA classroom. Under Mr. Coughlin's Standard #1 comments, Coughlin noted that Henchey "took the

time to delve into the Writer’s notebook responses and allowed for a deep discussion and interaction with the students...” (Id.).

Mr. Henchey testified that Spivey is a “huge book” that can span grades k through 8 or even k through 12. In short, Henchey implemented Spivey chapters 29 and 30 because he believed it was more grade appropriate than other chapters.

In light of the foregoing, I cannot conclude that the Board has demonstrated a knowing failure to implement the administration’s directives concerning Spivey and Writer’s Workshop to the extent that a charge of unbecoming conduct/insubordination (as contrasted with inefficiency) is warranted.

Smart Responders

In this matter, I conclude that the Board has failed to convincingly demonstrate that Mr. Henchey was, in essence, insubordinate, with respect to incorporating one Smart Responder assessment by the end of the first semester (or by January 29, 2014). Approximately thirty (30) Smart Responders were donated graciously by the PTO for use in the 2013-2014 school year. During the January 15, 2014 weekly meeting, Principal Perro and Mr. Henchey discussed utilization of the District’s Smart Responders on Tuesday, January 19, 2014 regarding “Flowers for Algernon” (Exhibit P59I).⁹ According to Principal Perro, each teacher was responsible for facilitating one Smart Responder assessment in the first semester (first two marking periods) and an additional assessment in the second semester (or third and fourth marking periods). Importantly, Principal

⁹ Smart Responders enable students to enter questions at the conclusion of a lesson and receive instantaneous feedback.

Perro did not reject Mr. Henchey's suggestion that he implement the first semester Smart Responder assessment in the form of an exit slip on January 19, 2014, however, she was concerned that he was "cutting it close" based on the end of the first semester, i.e., January 29, 2014.

On February 4, 2014, Mr. Henchey apologized to Principal Perro in connection with her email communication dated February 3, 2014 asking him to submit the data from his Smart Responder assessment as requested for the first half of the year (Exhibit P60, page 33). Mr. Henchey explained that he intended to accomplish the task on January 22, 2014, but he learned on January 17, 2014 that he needed SchoolDude Adobe Flash for his desktop. Mid-term exams intervened and Henchey arranged to do a joint Smart Responder assessment with Ms. Carroll (whose classroom desktop did have SchoolDude Adobe Flash installed). Henchey assured Perro that he would have the data entered by February 7, 2014 – which fell in the second semester (Exhibit P68, page 18). In rejecting a finding of unprofessional conduct/insubordination above and beyond inefficiency, I note that the Board has failed to demonstrate that Henchey exhibited a knowing intent to disregard a directive concerning Smart Responders. Rather, Henchey clearly intended to comply, albeit at the end of the target date range.

Additionally, the Board does not dispute Henchey's assertion that his classroom lacked the technological capability of implementing Smart Responders.

Lastly, the Board makes no allegation that Henchey failed to timely implement a Smart Responder assessment in the second semester. Accordingly, I cannot conclude that the Board's evidence concerning Henchey's belated submission (by eight or nine days) of

the first semester Smart Responder assessment rises to the level of conduct unbecoming/insubordination, as opposed to teacher inefficiency.

Study Island

I sustain the charge of conduct unbecoming/insubordination with respect to Study Island. During a faculty meeting on September 4, 2012, among other topics, a weekly use of Study Island was discussed (Exhibit P66, page 1). According to Principal Perro, Study Island is a web-based program that has been in use at David E. Owens Middle School for several years. In Study Island, students can log on to the program and answer approximately ten questions. For example, in language arts, students may be asked to read a paragraph and then answer related questions about the reading. Principal Perro further explained that the Study Island questions at the time mirrored NJ ASK questions (presumably, now geared toward the PARCC Assessment). As discussed during the faculty meeting and periodically by administrators, Study Island was expected to be assigned on a weekly basis to 8th grade ELA students.

In relationship to the weekly meetings between Principal Perro and Mr. Henchey, I observe, Study Island had not been assigned in Mr. Henchey's class as of September 25, 2013 (Exhibit P59d). In handwritten commentary, Perro states: "Study Island needs to start". Notwithstanding Perro's commentary, following the pairs' October 30, 2013 weekly meeting, Perro noted in handwriting: "No Study Island." (Exhibit P59g).

As of the January 29, 2014 meeting between the pair, Principal Perro reiterated to Mr. Henchey, among other items, his obligation to assign Study Island one time per week to his classes and record his results in his grade book (Exhibit P57b). As of the following

weekly meeting, i.e., March 6, 2014, Perro reports that she again directed Mr. Henchey to “include Study Island at least once per week.” (Exhibit P57g). Then, following a March 13, 2014 weekly meeting, Principal Perro entered the following: “Study Island should be assigned once per week. To date you only have two posted Study Island assignments in over four weeks of the marking period” (implying that Henchey did post two Study Island assignments).

In Perro’s April 3, 2014 recommendation of increment withholding memo to Superintendent Polizzi, Perro notes, among other things, “Despite being told in writing that Study Island is to be assigned weekly, Mr. Henchey as of April 3, 2014 has only assigned/graded two assignments in the marking period.” In Perro’s update in the middle of June 2014, Perro states the following:

Mr. Henchey was repeatedly reminded to assign/collect and provide feedback on homework. To date in his grade book there are no homeworks assigned including Study Island which is a school initiative. He was directed to assign Study Island at our January 20, 2014 meeting which he did not comply. He was directed again in writing on February 26, 2014 which he did not comply. In a memo dated March 31, 2014, he was reminded again to assign Study Island. (Exhibit P57c).

In handwritten comments to our April 3, 2014 memorandum, as of May 27, 2014, Perro observed that Mr. Henchey had entered no Study Island assignments in the fourth marking period (Exhibit P57j, page 1).

In Mr. Henchey’s April 30, 2014 teacher evaluation summary, Perro writes in the comment section under Standard #4 (Teacher’s Facilitate Learning for Their Students) “Each teacher was required to assign Study Island once a week and you failed to do this.” (Exhibit P52, page 12).

Even Mr. Henchey, on cross-examination, acknowledged that he issued only nine Study Island assignments during the 2013-2014 school year (Exhibit R28).

In light of the importance of the initiative and the number of reminders provided by Principal Perro, I conclude that the Board has demonstrated conduct unbecoming/insubordination on the part of Henchey with respect to a critically important component of the 8th Grade ELA curriculum.

Grades

I sustain the Charge with respect to Henchey's failure to timely enter mid-term grades during the 2013-2014 school year. I dismiss the Charge in all other respects as more appropriately evidencing inefficiency.

On December 17, 2013, Vice Principal Coughlin sent an email communication to Mr. Henchey advising him that seventy (70) students had no grades entered or comments (progress reports) for the 2nd marking period. Coughlin discovered a technical error on Henchey's part in that, Henchey entered grades under the category of "Quiz" and the software program does not count quizzes as part of the grades (Exhibit P60, page 29). In response to Mr. Coughlin's email, Mr. Henchey thanked Mr. Coughlin for bringing the technical discrepancy to his attention and assured Mr. Coughlin that he would enter the progress report comments for all students prior to 12:00 noon and that he would confer with Ms. Carroll for the purpose of properly categorizing grades in the computer system. (Id.). Ultimately, Henchey's second marking period grades and progress reports were entered by December 18, 2013. Although demonstrating inefficiency, I cannot conclude that Henchey's failures rise to the level of insubordination.

The opposite holds true with respect to mid-term grades, that is, Henchey's conduct was more akin to insubordination. In the weekly meeting between Principal Perro and Mr. Henchey on February 26, 2014, Perro documented that "mid-term grades will be posted shortly." Principal Perro explained that contrary to Henchey's CAP, mid-terms were facilitated at the end of the January of 2014 and, yet, Henchey still had not posted mid-term grades as of February 26, 2014. As of the duo's March 6, 2014 weekly meeting, Henchey had not yet posted his mid-term grades (Exhibit P57g). Next, during the March 13, 2014 weekly meeting, Principal Perro expressly directed Henchey to continue updating his grade book and, moreover, to post his mid-term grades on or before the pair's next meeting date of March 20, 2014 (Exhibit P57h). As of April 3, 2014, Henchey still had not posted ten mid-term grades. Henchey's failure to comply with Perro's March 20, 2014 deadline, in light of previous reminders and the importance of the subject matter to students, parents and the administration of the 8th Grade ELA curriculum, in my opinion, amounts to conduct unbecoming/insubordination.

In sum, I find and conclude that, pursuant to N.J.S.A. 18A:6-10, the Board has demonstrated Henchey's unprofessional misconduct/insubordination in the form of his failure to assign Study Island, as directed and his failure to post mid-term grades by March 20, 2014, as directed.

I will next address the anecdotal evidence of Henchey's unbecoming conduct (not involving insubordination or inefficiency) as set forth under Charge No. 5, pars. 12-18.

As both parties can readily observe, par. 12 is introductory and factual resolution is unnecessary. Par. 13 states:

On September 18, 2013, the Principal had to draft a memorandum to Henchey after he failed to timely submit his “Class Expectations” letter to be sent to the parents of his students.

This charge alleges that Henchey engaged in conduct unbecoming and/or demonstrated incapacity in accordance with a memorandum that Perro wrote to Henchey on September 20, 2013 (Exhibit P57a). The memorandum set forth that Perro had not received a copy of the class expectations letter which was to have been sent to parents and that she wanted a copy no later than September 23, 2013.

In the Weekly Meeting memo for September 18, 2013, Henchey noted that he had sent the letter out to parents on September 17, 2013, and Perro’s handwritten notation indicates that she requested Henchey to send her a copy (Exhibit P59c). Henchey did, in fact, send Perro a copy of the letter via email on September 20, 2014 (Exhibit R45T). The Weekly Meeting memo for September 25, 2013 (Exhibit P59d) confirmed this fact. Accordingly, I dismiss the disciplinary specification laid out under Charge No. 5, par. 13.

Par. 14 states:

On February 12, 2014 the English Language Arts department scheduled a thirty-minute meeting for an important presentation on the Partnership for Assessment of Readiness for College and Careers (“PARCC”) Assessments.¹⁰ Henchey arrived seventeen minutes late without any explanation or apology. As a result, the Principal drafted a memorandum on February 14, 2014, which summarized that “[y]our action of being late was unprofessional and rude to the presenter.”

¹⁰ According to the PARCC website, the PARCC is a group of states working together to develop a set of assessments that measure whether students are on track to be successful in college and their careers. These high quality, computer-based K–12 assessments in Mathematics and English Language Arts/Literacy give teachers, schools, students, and parents better information whether students are on track in their learning and for success after high school, and tools to help teachers customize learning to meet student needs. The PARCC assessments will be ready for states to administer during the 2014-15 school year. In New Jersey, the standardized PARCC Assessment replaced NJ Ask testing.

On February 12, 2014, Henchey arrived seventeen (17) minutes late to a thirty (30) minute mandatory training session concerning the PARCC Assessment model and implementation in place of NJ ASK. Henchey explained his actions as follows:

Q: This email is written by you at 1:13 p.m. on February 12, 2014 to Ms. Shanley?"

A: Yes

....

Q: Now what time was Ms. Collins—Carroll's program due to commence?

A: I believe it was 1:30

...

Q: And you had done this, and then you concluded this up, and emailed it to her at 1:13, and what did you do at that point, you know, notwithstanding that there was a meeting scheduled approximately 17 minutes later at 1:30?

A: Well, I was famished, and I estimated I could get to Wendy's in Bergenfield and back, and eat a burger on the way back, within the course of 15 minutes.[4T 37:14-25; 39:15-23 (emphasis added)]

In making the decision to leave school grounds to purchase lunch seventeen (17) minutes before an important PARCC training session, I agree with the Board that Henchey displayed a significant lapse in judgment. Assuming Henchey immediately left the school building after his email to Ms. Shanley and walked to his car, I surmise, he likely had no more than fifteen (15) minutes to make it to and from Wendy's in time for the meeting and that is not factoring in either traffic delays and/or ordinary delays ordering and receiving lunch at Wendy's.

According to MapQuest, the round trip from David E. Owens Middle School (470 Marion Avenue, New Milford, New Jersey) to Wendy's (150 N. Washington Avenue,

Bergenfield, New Jersey) is approximately ten (10) minutes without traffic.¹¹ Any significant delay at either the drive-thru or at the counter inside Wendy's during lunch hours, I observe, would have made it almost impossible for Henchey to make it back for the start of the meeting, even without a train delay, which Henchey assumed the risk of experiencing, and which he did experience. Put simply, Henchey is at fault; that he was preoccupied trying to address his February 7, 2014 observation by Ms. Shanley and did not eat lunch sooner is not an acceptable excuse for his actions. That Ms. Carroll took the additional time and effort to provide individual orientation to Mr. Henchey does not serve as a mitigating factor either. On the contrary, Ms. Carroll was left with little choice but to take unplanned, additional time away from her schedule to accommodate Henchey's belated arrival. In addition, throughout this proceeding, in various ways, Henchey expressed his perception that he was under the microscope throughout the 2013-2014 school year. Feeling this way, one must query why Henchey would engage in such a game of chance when there must have been a food source within the borders of New Milford or even within the Middle School itself? Given the importance of the PARCC Assessment training and the lack of mitigating factors presented, I sustain specification/par. 14 as evidence of unprofessional conduct, pursuant to N.J.S.A. 18A:6-10.

Par. 15 states:

After a pattern of habitual late arrivals, on or about March 26, 2014 Henchey arrived to work at 9:45 a.m. – one hour and forty-five minutes after his contractual start time. Henchey missed his assigned morning duty,

¹¹ As a lifelong resident of the area, I am confident in the accuracy of the MapQuest results.

his weekly meeting with the Principal, and his common planning time. As a result, on or about April 1, 2014 the Principal drafted a memorandum regarding Henchey's lateness to work which stated, among things, that "[y]our action of not calling the school and informing me you would be late was unprofessional."

On March 26, 2014, Mr. Henchey arrived to work at 9:45 a.m. for an 8:00 a.m. start without notice. In relation to Mr. Henchey's daily schedule, he missed hall duty, his weekly meeting with Principal Perro and his common planning time with Ms. Carroll. He did not miss any instructional time. Henchey overslept, explaining that the stress that he was experiencing by this juncture in the school year left him with anxiety and sleeplessness at times. Although I do not disbelieve Henchey's explanation, unlike his typical late arrival at or slightly after 8:05 p.m. (the commencement of hall duty) the March 26, 2014 incident directly impacted the schedules of Principal Perro and Ms. Carroll. As such, I agree with the Board that Henchey's inaction was, nonetheless, an example of his unprofessional conduct during the 2013-2014 school year.

As to the assertion that Henchey's tardiness to that point in time was "chronic", I observe that when the Board undertook to withhold Henchey's 2013-2014 increments, its' action was based, in part, on Henchey's 41 alleged instances of tardiness (Exhibit P56h). However, when the Board again undertook to withhold Henchey's increments for 2014-2015, while tardiness was not one of the listed reasons for the Board doing so (Exhibit P57r), it was nonetheless raised by the Board at the informal hearing and considered when resolving to withhold his increments. Suffice it to say that the issue of Henchey's frequent episodes of *de minimis* tardiness as of March 26, 2014 does not alter my decision in any significant respect. Importantly, Henchey's day-to-day tardiness was

not significantly addressed in real time throughout the 2013-2014 school year, with the exception of a reference by Principal Perro in her weekly meeting minutes of October 30, 2013 (Exhibit P59g). If the issue was truly problematic from an educational or operational standpoint, then one would have expected to see much more prompt remedial action from the administration. Accordingly, while I sustain the charge of conduct unbecoming a professional employee based on Henchey's March 26, 2014 partial no-show, no-call, I dismiss the balance of the charge in all other respects.

Par. 16 states:

On or about April 9, 2014, K.C., the parent of a student in Henchey's class (L.C.), emailed Henchey asking why her daughter's book was taken away and was sitting on Henchey's desk. Henchey responded to K.C. on April 10, 2014 advising that L.C.'s book had been taken away because she had lent it to another student who had misplaced their copy of the book. Henchey advised K.C. that L.C. has access to the book online. Then, on the following day, Henchey placed a redacted copy of the email on the Smartboard in the front of the classroom, and told all of the students in his class to inform their parents to stop contacting him. Students who were interviewed regarding the incident characterized Henchey's statements as a "rant," and some even added that such behavior was typical. Moreover, students reported that Henchey uttered the following statements, "I came in thirty minutes early and had to waste my time answering parent emails"; "I'm tired of students making up rumors about me..."; "I don't have time to answer questions from parents"; "I'm tired of guidance calling me about this..."; and "I know how to write an email and your parents will never win."

I sustain this charge, in part. *Animal Farm* is part of the 8th Grade ELA curriculum. The District had purchased new paperback copies of the book. Teachers Henchey and Carroll were experiencing problems with the students losing the books that each of them had individually assigned. Consequently, Henchey and Carroll instituted a policy/practice that, if a student lost his/her book, he/she would not be assigned another

one. Instead, that student was required to access the book in the public domain where it was obtainable. And, in the event that Carroll or Henchey found that a student had borrowed a copy of the book from another student, they would take that book and similarly subject the lending student to the terms of the policy.

On April 9, 2014, the parent of L.C. understandably emailed Henchey seeking to have him return the copy of *Animal Farm* which L.C. had either lost or, had taken away by Henchey because she had lent it to another student who then misplaced it (Exhibit P57k). According to the email communication of L.C., she questioned why the book was taken away, she stated that her daughter had been without the book for two weeks, and she commented that her daughter was falling behind.

On the next day, April 10, 2014, Henchey emailed a polite reply to the mother of L.C. explaining what occurred and the basis for his actions (Exhibit P57k). Unfortunately, Henchey's reaction did not end at this point. Rather, Henchey deemed it useful and not inappropriate to redact L.C.'s identifying information and place the email on a projection screen for all students to take note of. He then commented to the class that he had to waste 30 minutes addressing the email. To me, the combination of Henchey's acknowledged actions and admitted verbiage were plainly designed to send a message to both parents and students alike that parental complaints were not welcome and, in any event, they would not end the policy (Tr. 4, pages 195-196). Additionally, Henchey noted that he had heard from guidance about this issue on too many occasions (Tr. 4, pages 49-55).

Henchey's action in projecting the redacted email was allegedly reported to Vice Principal Coughlin by two students. The students and others who were allegedly interviewed by Coughlin allegedly attributed certain other statements or actions being made by Henchey in class on April 10. These include:

- a) That Henchey was in a "rant" on the day in question;
- b) That Henchey typically behaved that way;
- c) That Henchey complained about having to waste his time responding to parent emails;
- d) That Henchey stated he was tired of students making up rumors about him;
- e) That Henchey stated he did not have time to answer questions from their parents; and
- f) That Henchey stated he knows how to write an email and their parents will never win (Exhibit P571) (Tr. 4, pages 56 and 60-61).

None of the students who allegedly made the report or were interviewed by Coughlin testified at the arbitration (Tr. 2, page 125). Nor did the Board introduce any written statements from any student. Henchey denied making the statements other than complaining about a waste of time.

In sustaining the allegation of unprofessional conduct, I observe that Henchey's actions/verbiage carried the realistic potential of emotionally upsetting the student whose parent complained, even if Henchey took efforts to protect her identity from the remainder of the class. Imagine instead a teacher reading to the class an example of a poorly written essay without identifying the author. If the author is still a student and in

that very class one can easily imagine how upset he or she would be. Henchey's actions on April 10, 2014 carried the realistic potential of causing a similar degree of emotional harm to the student who did not have her Animal Farm book for over two weeks. In addition, Henchey's actions/verbiage likely would be shared by K.C. to L.C. and by other students with their parents. I find it difficult to believe that the parents of students in Mr. Henchey's class would be satisfied with such a mode of teacher-parent communications.

On the contrary, I would doubt that any parent wants to find out that a legitimate communication about his or her son or daughter with a teacher ended up on an overhead projector for the purpose of deterring other students from complaining to their parents and/or for the purpose of deterring other parents from similarly communicating with the teacher of his son or daughter. Even if the end was justifiable (which Principal Perro answered in the negative by directing the cessation of the policy), the means used by Henchey alone on April 10, 2014 to reinforce the policy was unprofessional and properly chargeable in this proceeding.

Lastly, I am troubled that Mr. Henchey engaged his students in such a manner in light of being reprimanded in the 2011-2012 school year for reprimanding a student in front of her class (Exhibit P55a) and after receiving an increment withholding for the 2013-2014 school year for, among other things, "making inappropriate comments in the presence of students" (Exhibit P56h).

Based on the foregoing, I conclude that the Board has demonstrated that Henchey's actions on April 10, 2014 constituted conduct unbecoming a professional teacher within the meaning of N.J.S.A. 18A:6-10. Accordingly, I sustain this charge.

Par. 17 states:

In response to this incident, the Principal and Vice Principal met with Henchey and two of his New Milford Education Association (“Association”) representatives to discuss the matter. While Henchey admitted to copying and pasting the email and sharing it with the class, and further admitted to spending class time complaining about parental communications, he (amazingly) did not believe he had acted inappropriately because he had redacted the names and gender identifiers in the copied email (notwithstanding the fact that every student in the class was aware that Henchey had L.C.’s book on his desk and could thus easily conclude that the email was from one of L.C.’s parents). As a result, the Administration and the Association representatives agreed that Henchey should take the rest of the day off, get in contact with his therapist and return after the spring recess.

In light of my findings concerning Par. 16, above, I dismiss this specification due to redundancy.¹²

Par. 18 states:

On or about April 14, 2014, Henchey utilized a personal day, which had been approved on April 2, 2014. Pursuant to established District practice, all teachers utilizing sick and personal days are required to individually call in and schedule substitute teachers. On April 14, 2014 Henchey failed to call out for a substitute and, as explained by the Principal, “once again we [the District] needed to scramble to cover your classes.” Moreover, because Henchey did not leave any lesson plans for his classes, Ms. Carroll was required to create plans and activities for Henchey’s students. On April 14, 2014, the Principal provided Henchey with a memorandum to address his failure to follow District protocol, call in for a substitute and leave or email lessons plans.

I sustain the above charge and note the following circumstances for contextual support. Henchey was directed to leave school early on April 11, 2014 as a result of his

¹² The Board’s allegation (based on Coughlin’s testimony) that Henchey demanded the names of those students complaining (implying intent to retaliate) cannot be processed herein because it was not expressly subsumed within the tenure charges. For the record, Henchey testified that he demanded names because he did not trust the accuracy of the administration’s complaints against him based on his perception of past experiences. Lastly, I agree with Counsel that references to Mr. Henchey’s therapist do not advance the Board’s cause in this proceeding.

emotional state following the meetings with Principal Perro and Superintendent Polizzi. He remained out for the week of April 14-18, 2014. When Henchey returned, Perro provided him with a Memo/reprimand that she had issued in his absence (Tr. 4, pages 63-64; Exhibit P57m). Principal Perro testified that the Memo issued for failing to call the substitute service for the scheduled personal day and causing the need “to scramble to cover his classes” (Exhibit P57m). He was further reprimanded for not leaving lesson plans for April 14, 2014. Ms. Carroll had to pick up the slack again. Page 11 of the Teachers Handbook (Exhibit P68) requires teachers to call the substitute service when a personal day is granted. Similar to Henchey’s failures to timely attend the PARCC assessment training on February 12, 2014 and to timely call-in a late arrival on March 26, 2014, I cannot credit Henchey’s experience of stress caused by other employment-related events as an excuse for his ensuing, separate misconduct. Accordingly, I sustain the charge of Conduct Unbecoming a professional teacher with respect to this allegation.

Summary of Disposition of Charges

The Tenure Charges (Post Motion for Summary Decision)

Charge No. 5

That, in addition to Henchey’s consistent failure to implement effective and efficient teaching strategies, and in addition to his unwillingness or inability to improve upon the same, Henchey has also demonstrated a lack of professionalism throughout the 2011-2012, 2012-2013 and 2013-2014 school years which has included a lack of respect for the Administration and a complete disregard for the high professional standards placed upon him, and which unprofessionalism constitutes incapacity and conduct unbecoming warranting dismissal. . . .

12. During the 2013-2014 school year, Henchey’s classroom conduct, attitude towards others, and overall work

performance continued to worsen. As a result, and for the reasons set forth more fully herein, the Principal ultimately recommended to the Superintendent that tenure charges be formally filed against Henchey. [Dismissed].

13. On September 18, 2013, the Principal had to draft a memorandum to Henchey after he failed to timely submit his “Class Expectations” letter to be sent to the parents of his students. [Dismissed].

14. On February 12, 2014 the English Language Arts department scheduled a thirty-minute meeting for an important presentation on the Partnership for Assessment of Readiness for College and Careers (“PARCC”) Assessments. Henchey arrived seventeen minutes late without any explanation or apology. As a result, the Principal drafted a memorandum on February 14, 2014, which summarized that “[y]our action of being late was unprofessional and rude to the presenter.” **[Sustained].**

15. After a pattern of habitual late arrivals, on or about March 26, 2014 Henchey arrived to work at 9:45 a.m. – one hour and forty-five minutes after his contractual start time. Henchey missed his assigned morning duty, his weekly meeting with the Principal, and his common planning time. As a result, on or about April 1, 2014 the Principal drafted a memorandum regarding Henchey’s lateness to work which stated, among things, that “[y]our action of not calling the school and informing me you would be late was unprofessional.” **[Sustained, in part].**

16. On or about April 9, 2014, K.C., the parent of a student in Henchey’s class (L.C.), emailed Henchey asking why her daughter’s book was taken away and was sitting on Henchey’s desk. Henchey responded to K.C. on April 10, 2014 advising that L.C.’s book had been taken away because she had lent it to another student who had misplaced their copy of the book. Henchey advised K.C. that L.C. has access to the book online. Then, on the following day, Henchey placed a redacted copy of the email on the Smartboard in the front of the classroom, and told all of the students in his class to inform their parents to stop contacting him. Students who were interviewed regarding the incident characterized

Henchey's statements as a "rant," and some even added that such behavior was typical. Moreover, students reported that Henchey uttered the following statements, "I came in thirty minutes early and had to waste my time answering parent emails"; "I'm tired of students making up rumors about me..."; "I don't have time to answer questions from parents"; "I'm tired of guidance calling me about this..."; and "I know how to write an email and your parents will never win." **[Sustained, in part].**

17. In response to this incident, the Principal and Vice Principal met with Henchey and two of his New Milford Education Association ("Association") representatives to discuss the matter. While Henchey admitted to copying and pasting the email and sharing it with the class, and further admitted to spending class time complaining about parental communications, he (amazingly) did not believe he had acted inappropriately because he had redacted the names and gender identifiers in the copied email (notwithstanding the fact that every student in the class was aware that Henchey had L.C.'s book on his desk and could thus easily conclude that the email was from one of L.C.'s parents). As a result, the Administration and the Association representatives agreed that Henchey should take the rest of the day off, get in contact with his therapist and return after the spring recess. **[Dismissed].**

18. On or about April 14, 2014, Henchey utilized a personal day, which had been approved on April 2, 2014. Pursuant to established District practice, all teachers utilizing sick and personal days are required to individually call in and schedule substitute teachers. On April 14, 2014 Henchey failed to call out for a substitute and, as explained by the Principal, "once again we [the District] needed to scramble to cover your classes." Moreover, because Henchey did not leave any lesson plans for his classes, Ms. Carroll was required to create plans and activities for Henchey's students. On April 14, 2014, the Principal provided Henchey with a memorandum to address his failure to follow District protocol, call in for a substitute and leave or email lessons plans. **[Sustained].**

19. Finally, throughout the entire 2013-2014 school year, Henchey repeatedly and consistently failed to comply with the Principal's weekly directives relating to his 2013 Action Plan. Henchey's consistent failure to do anything requested by the Principal, including such easily achievable requests as "bring your Writer's Workshop notebook to our weekly meetings," constitutes both inefficiency and conduct unbecoming a professional. . . .**[Sustained – Study Island and Mid-Term Grades; dismissed in all other respects].**

The Penalty Of Dismissal

Arbitrators widely apply the following standard of review when asked to judge the appropriateness of a disciplinary penalty: If a preponderance of the evidence supports the disciplinary allegations, an employer must also show that the penalty imposed is just in light of factors, such as: [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, if applicable; [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). *Elkouri and Elkouri*, How Arbitration Works, 5th Edition, pages 930, et. seq. The determination as to whether a teacher has engaged in conduct warranting dismissal from a tenured position requires consideration of the nature of the act, the totality of the circumstances and the impact on the teacher's career. I/M/O Tenure Hearing of Molokwu, OAL Dkt. No. EDU 9650-04 (2005) citing In re Fulcomer, 93 N.J.Super. 404, 421 (App. Div. 1967).

In the present case, I have dismissed any allegation proving to be pure inefficiency or that may have been brought about by the evaluative opinion of an administrator(s). What remains, however, is, among other offenses, Henchey's willful failure to comply

with Principal Perro's important directives concerning the assignment of Study Island on a weekly basis and to post mid-term grades by March 20, 2014. Henchey's disregard of Perro's directives constitutes serious offenses that impact negatively the District's initiative to assess student feedback and growth (Study Island) and to timely assess student performance (mid-term grades). Henchey further compounded matters by exhibiting other episodes of unprofessional conduct during the 2013-2014 school year, such as his late arrival to a mandatory PARCC Assessment training lead by Ms. Carroll in favor of a failed attempt to timely make it to Wendy's and back; his late arrival to work without notice on March 26, 2014 (missing a weekly meeting with Principal Perro and collaborative planning with Ms. Carroll); his projection of a parent email to all students designed to deter further student/parent complaints regarding his book confiscation policy; and his failure to call in a substitute and leave lesson plans for a personal day absence on April 14, 2014 (leaving the administration scrambling to cover his classes). At the end of the day, Henchey alone had control over his destiny with respect to the aforementioned behaviors.

In addition, I am satisfied that Principal Perro did attempt non-disciplinary interventions in good faith over the course of the 2011-2012-2012-2013-2014 school years, including weekly meetings, two CAPs, and the deployment of the SCIP officer in 2013-2014, etc. prior to requesting the filing of tenure charges on April 3, 2014.

Lastly, although I acknowledge Henchey's service to the District since the 2002-2003 school year, his record is not unblemished. Rather, Henchey has received reprimands and he did not challenge the imposition of an increment withholding for the

2013-2014 school year.¹³ Thus, as I observed in my January 3, 2015 Summary Decision and Order, . . . “this means that Mr. Henchey enters the hearing process with a major disciplinary record in the form of an increment withholding under Title 18A for incapacity and related conduct unbecoming. . .” In my opinion, given the precarious position in which Henchey entered the 2013-2014 school year in the New Milford School District, there simply was no room for Mr. Henchey to have engaged in the number and type of professional misconduct incidents that he did. Accordingly, I conclude that the Board’s dismissal of Mr. Henchey from employment as a teacher in the New Milford School District was for just cause.

¹³ Based on my previous double jeopardy ruling, and the Board’s position regarding double jeopardy, I did not consider the Board’s withholding of Henchey’s increment for the 2014-2015 school year for any purpose in this proceeding.

AWARD

For the reasons more fully set forth herein, I find and conclude that the Borough of New Milford Board of Education has demonstrated just cause to dismiss Lawrence Henchey, a tenured teacher for conduct unbecoming a professional school teacher pursuant to N.J.S.A. 18A:6-10.

Respectfully submitted,


Joseph Licata

Dated: March 4, 2015

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

On the 4th day of March, 2015, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.


Notary Public

Susan Linda DeMare
Notary Public of New Jersey
My Commission Expires,
March 30, 2015



APPENDIX

BOARD EXHIBITS CONSIDERED

I. Observations, Evaluations, Action Plans

2002-2003 School Year

1. October 18, 2002 Professional Performance Observation
2. January 21, 2003 Professional Performance Observation
3. February 10, 2003 Mid-Year Performance Evaluation
4. February 13, 2003 Letter from Henchey to Dr Moncrief re: Mid-Year Performance Evaluation
5. March 28, 2003 Professional Performance Observation
6. May 8, 2003 Year End Performance Evaluation

2003-2004 School Year

7. December 9, 2003 Observation Report
8. December 22, 2003 Observation Report
9. February 2, 2004 Memo from Mr. Corso to Henchey re: Failure To Attend Professional Development Meeting
10. February 4, 2004 Mid-Year Performance Evaluation
11. March 31, 2004 Observation Report
12. June 2, 2004 Year End Evaluation
13. June 2, 2004 Professional Improvement Plan

2004-2005 School Year

14. November 1 , 2004 Observation Report
15. February 10, 2005 Observation Report
16. February 17, 2005 Mid-Year Performance Evaluation
17. March 31, 2005 Observation Report
18. May 12, 2005 Year End Performance Evaluation

19. June 22, 2005 Professional Improvement Plan

2005-2006 School Year

20. October 31, 2005 Observation Report

21. November 21, 2005 Observation Report

22. May 24, 2006 Year End Performance Evaluation

23. May 24, 2006 Professional Improvement Plan

2006-2007 School Year

24. February 2, 2007 Observation Report

25. March 30, 2007 Year End Performance Evaluation

26. 2007-2008 Professional Improvement Plan

2007-2008 School Year

27. October 30, 2007 Observation Report

28. March 28, 2008 Year End Performance Evaluation

29. March 25, 2008 Professional Improvement Plan

2008-2009 School Year

30. January 27, 2009 Observation Report

31. March 24, 2009 Year End Performance Evaluation

32. March 25, 2009 Professional Improvement Plan

2009-2010 School Year

33. March 2, 2010 Observation Report

34. April 16, 2010 Year End Performance Evaluation

2010-2011 School Year

35. March 4, 2011 Professional Performance Assessment

36. May 27, 2011 Year End Performance Evaluation

37. May 13, 2011 Professional Improvement Plan

2011-2012 School Year

38. December 22, 2011 Professional Performance Assessment

39. May 7, 2012 Year End Performance Evaluation

40. May 2012 Corrective Action Plan

2012-2013 School Year

41. March 21, 2013 Professional Performance Assessment

42. May 14, 2013 Professional Performance Assessment

43. May 16, 2013 Correspondence from Henchey to Vice-Principal Coughlin re: May 14, 2013 Professional Performance Assessment

44. May 30, 2013 Year End Performance Evaluation

45. April 18, 2013 Professional Growth Plan

46. June, 2013 Corrective Action Plan

47. June 14, 2013 Rebuttal to Professional Performance Evaluation

2013-2014 School Year

48. October 4, 2013 Formal Observation

49. November 20, 2013 Formal Observation

50. February 7, 2014 Formal Observation

51. March 5, 2014 Letter from Henchey to Director of Curriculum re: February 7, 2014 Formal Observation

52. April 30, 2014 Teacher Evaluation Summary

53. May 16, 2014 Formal Professional Evaluation

54. June, 2014 Corrective Action Plan

II. Correspondence and Inter-Office Memoranda

55. Correspondence from the 2011-2012 School Year

a. December 5, 2011 Memo from Principal to Henchey re: Student Discipline

b. March 5, 2012 Memo from Principal to Henchey re: Timely Grade Entries

56. Correspondence from the 2012-2013 School Year

a. December 11, 2012 Memo from Principal to Henchey re: Action Plan

- b. March 18, 2013 E-mail from Principal to Henchey re: Scheduling Action Plan Meeting
- c. April 4, 2013 Memo from Principal to Henchey re scheduling Action Plan Meeting
- d. April 16, 2013 Memo from Principal to Henchey re: Phone Call During Class
- e. April 19, 2013 Memo from Principal to Henchey re: Forwarding Unsigned Action Plan
- f. April 25, 2013 Memo from Principal to Henchey re: Failure to Submit Timely Authentic Assessment
- g. June 5, 2013 Letter from Superintendent to Henchey re: Increment Withholding
- h. July 16, 2013 Letter and Resolution from B.A. to Henchey re: Increment Withholding

57. Documents from 2013-2014 School Year

- a. September 20, 2013 Memo from Principal to Henchey re: Class Expectations Letter
- b. January 29, 2014 Memo from Principal to Henchey re: Summarizing Weekly Meeting
- c. February 4, 2014 Memo from Principal to Superintendent re: Henchey's Deteriorating Performance and Behavioral Concerns
- d. February 14, 2014 Memo from Principal to Henchey re: Late Arrival to PARCC Assessment Presentation
- e. February 14, 2014 memo from Principal to Henchey re: Smart Response Lesson Completion
- f. February 26, 2014 Memo from Principal to Henchey re: Actionable Items
- g. March 6, 2014 Memo from Principal to Henchey re: Actionable Items
- h. March 13, 2014 Memo from Principal to Henchey re: Actionable Items
- i. April 1, 2014 Memo from Principal to Henchey re: Late Arrival to Work
- j. April 3, 2014 Memo from Principal to Superintendent re: Henchey's 2013-2014 Performance Deficiencies

- k. April 10, 2014 E-Mail Correspondence from L.H. (parent) to Henchey re: Animal Farm Book
- l. April 11, 2014 E-mail from Vice Principal to Principal re: Animal Farm Book Incident
- m. April 14, 2014 Memo from Principal to Henchey re: Failure to Schedule Substitute
- n. May 6, 2014 Letter from Superintendent to Henchey re: Increment Withholding
- o. May 29, 2014 RICE Notice from B.A. to Henchey
- p. June 5, 2014 Letter from Superintendent to Henchey re: Increment Withholding
- q. June 20, 2014 E-mail from Superintendent to Henchey Attaching Copies of Student Progress Levels
- r. June 24, 2014 Letter and Resolution from B.A. re: Increment Withholding

III. Additional Documentation

58. Additional Documentation from the 2012-2013 School Year

- a. Copy of Grade Distributions from First and Second Quarter of 2012-2013 School Year
- b. Copy of PowerSchool Grades for Three Students
- c. E-Mail from Vice Principal to Principal re: Total Eighth Grade Write Ups
- d. Principal's Discussion Topics for March, 2013 Discussion re: Action Plan
- e. Log of Henchey's Building Entries and Exits
- f. Student Test Scores from 2010-2011 through 2012-2013 School Years
- g. Principal's Informal Notes re: Observations, Classroom Displays, Assignments and Lesson Plans

59. Additional Documentation from the 2013-2014 School Year

- a. Copy of Grade Distributions for Each Quarter of 2013-2014 School Year
- b. September 11, 2013 – Principal's Notes re: Weekly Meeting
- c. September 18, 2013 – Principal's Notes re: Weekly Meeting

- d. September 25, 2013 – Principal’s Notes re: Weekly Meeting
- e. October 4, 2013 – Principal’s Notes re: Weekly Meeting
- f. October 16, 2013 – Principal’s Notes re: Weekly Meeting
- g. October 30, 2013 – Principal’s Notes re: Weekly Meeting
- h. November 6, 2013 – Principal’s Notes re: Weekly Meeting
- i. November 14, 2013 – Principal’s Notes re: Weekly Meeting
- j. November 20, 2013 – Principal’s Notes re: Weekly Meeting
- k. December 4, 2013 – Principal’s Notes re: Weekly Meeting
- l. January 15, 2014 – Principal’s Notes re: Weekly Meeting
- m. April 8, 2014 – Principal’s Notes re: Weekly Meeting
- n. May 14, 2014 – Principal’s Notes re: Weekly Meeting

60. Assorted E-Mail Messages

- November 11, 2012 – E-mail from Perro to various individuals..... Page 001
- March 14, 2013 – E-mail from Perro to Henchey Page 002
- March 18, 2013 – E-mail from Perro to various individuals Page 003
- April 1, 2013 – E-mail from Perro to various individuals Page 004
- April 4, 2013 – E-mail from Perro to Henchey Page 005
- April 5, 2013 – E-mail from Perro to Henchey, bcc: Coughlin Page 006
- May 15, 2013 – E-mail from Perro to various individuals Page 007
- June 20, 2013 – E-mail from Perro to various individuals Page 008
- June 21, 2013 – E-mail from Perro to Henchey, bcc: Coughlin Page 009
- September 9, 2013 – E-mail from Coughlin to certain teachers..... Page 012
- September 11, 2013 – E-mail from Perro to Henchey Page 013
- September 11, 2013 – E-mail from Perro to Henchey Page 014
- September 11, 2013 - E-mail from Perro to various individuals Page 016
- September 20, 2013 – E-mail from Perro to Henchey Page 017

- September 20, 2013 – E-mail from Perro to Henchey Page 018
- September 24, 2013 – E-mail from Coughlin to Perro Page 019
- October 17, 2013 – E-mail from Perro to Henchey,
cc: Coughlin, Polizzi, Shanley Page 021
- October 17, 2013 – E-mail from Henchey to Perro Page 022
- October 21, 2013 – E-mail from Henchey to Perro Page 024
- November 18, 2013 – E-mail from Perro to Henchey Page 025
- November 27, 2013 – E-mail from Henchey to Perro Page 026
- December 2, 2013 – E-mail from Perro to Henchey Page 027
- December 17, 2013 – E-mail from Coughlin to Henchey Page 029
- January 27, 2014 – E-mail from Perro to Henchey Page 032
- February 4, 2014 – E-mail from Henchey to Perro Page 033
- February 6, 2014 – E-mail from Perro to various teachers..... Page 034
- February 6, 2014 – E-mail from Perro to Henchey Page 035
- February 7, 2014 – E-mail from Henchey to Perro Page 036
- February 12, 2014 – E-mail from Coughlin to Shanley Page 037
- February 25, 2014 – E-mail from Perro to Henchey Page 060
- March 26, 2014 – E-mail from Perro to Henchey Page 042
- March 31, 2014 – E-mail from Perro to Henchey, David W. Wilson ... Page 043
- March 31, 2014 – E-mail from Perro to Henchey, David W. Wilson ... Page 044
- April 11, 2014 – E-mail from Coughlin to Perro Page 045
- April 21, 2014 – E-mail from Perro to Henchey, Wilson, bcc: Polizzi Page 047
- May 20, 2014 – E-mail from Henchey to Perro Page 048
- June 3, 2014 – E-mail from Perro to Henchey Page 049

61. Tardiness Records

62. April 4, 2013 Memo and Summary of Action Plan Mtg

63. December 17, 2012 Board Minutes

64. Professional Development Requests

65. Policy and Regulation 2230 - Homework
66. Documents relating to Study Island
67. Collective Negotiations Agreement – 2011-2014
68. 2013-14 Teacher Handbook

LAWRENCE HENCHEY EXHIBITS CONSIDERED

- 1 Emails 5/27/11; 5/31/11/ 6/1/11 from/to Henchey and Shanley (2 pages)
- 2 Lesson Plans and Alignment to Action Plan 2012-2013 (2 pages)
- 3 On Course Lesson Plans from 9/17/12 to 5/19/14 (128 pages)
- 4 On Course Common Core Standards Referenced by Content Area, 9/1/11 to 6/30/14 (19 pages)
- 5 On Course Lesson Plan Comments Report (7 pages)
- 6 Memo from Henchey to Perro dated 12/18/12 Re: Action Plan (2 pages)
- 7 (A) Rebuttal to Coughlin Observation dated 3/8/13 (2 pages)
- 7 (B) Materials From 3/8/13 Lesson (4 pages)
- 8 (A) Spivey Tree (1 page)
- 8 (B) Spivey Exercises (4 pages)
- 9 Memo from Henchey to Perro, dated April 5, 2013 (2 pages)
- 10 (A) Email from Henchey to Perro 4/5/13 with rubrics and auth. Assessment annexed (3 pages)
- 10 (B) Memo from Henchey to Perro dated April 22, 2013 (1 page)
- 10 (C) Post-It from Perro to Henchey (1 page)
- 11 (A) Perro Observe4Success Form 12/20/12 (2 pages)
- 11 (B) Perro Observe4Success Form 1/30/13 (3 pages)
- 11 (C) Coughlin Observe4Success Form 2/26/13 (3 pages)
- 11 (D) Perro Observe4Success Form 3/25/13 (3 pages)

- 11 (E) Coughlin Observe4Success Form 4/24/13 (3 pages)
- 11 (F) Perro Observe4Success Form 10/28/13 (3 pages)
- 11 (G) Coughlin Observe4Success Form 1/8/14 (3 pages)
- 11 (H) Coughlin Observe4Success Form 3/4/14 (3 pages)
- 11 (I) Perro Observe4Success Form 3/6/14 (3 pages)
- 11 (J) Perro Observe4Success Form 4/1/14 (3 pages)
- 11 (K) Coughlin Observe4Success Form 6/4/14 (3 pages)
- 12 Lesson Plans and Alignment to Action Plan 2013-2014 (3 pages)
- 13 (A) Weekly Meeting No. 1 9/11/13 (2 pages)
- 13 (B) Weekly Meeting Notes for 9/18/13 (1 page)
- 13 (C) Weekly Meeting Notes for 10/9/13 (1 page)
- 13 (D) Weekly Meeting Notes for 10/16/13 (1 page)
- 13 (E) Weekly Meeting Notes for 10/30/13 (1 page)
- 13 (F) Weekly Meeting Notes for 11/6/13 (1 page)
- 13 (G) Weekly Meeting Notes for 11/20/13 (1 page)
- 13 (H) Weekly Meeting Notes for 12/4/13 (1 page)
- 13 (I) Weekly Meeting Notes for 12/11/13 (1 page)
- 13 (J) Weekly Meeting Notes for 1/8/14 (2 pages)
- 13 (K) Weekly Meeting Notes for 1/15/14 (1 page)
- 13 (L) Weekly Meeting Notes for 1/29/14 (1 page)
- 13 (M) Weekly Meeting Notes for 2/14/14 (1 page)
- 14 (A) 8th grade expectations (1 page)
- 14 (B) The Program (4 pages)

- 14 (C) The Program (5 pages)
- 14 (D) The Plan (2 pages)
- 15 (A) Elizabethan Letter / Examples of Use / Mr. Henchey/10-8-13 (1 page)
- 15 (B) Mr. Henchey / Language Arts 8 / Romeo & Juliet / Authentic Assessment - Sonnet (1 page)
- 15(C) Rules for Shakespearean Sonnets (1 page)
- 15 (D) Authentic Assessment –Newspaper Teams/Responsibilities (1 page)
- 15 (E) Grading Rubric for Newspaper Authentic Assessment (2 pages)
- 15 (F) Authentic Assessment – Creating a Resume for Anne Frank (1 page)
- 15 (G) Anne Frank Resume Writing Rubric – Authentic Assessment (1 page)
- 15 (H) Materials for Anne Frank Authentic Assessment (5 pages)
- 15 (I) Authentic Assessment – Animal Farm Speech (1 page)
- 15 (J) The Lady, or the Tiger Poster Teams 12/18/2013 and Rubric (2 pages)
- 15 (K) Authentic Assignment No. 2 -2013 The Lesson of the Moth (2 pages)
- 15 (L) Plans for Authentic Assessment on Multimedia Literacy (2 pages)
- 15 (M) Authentic Assessment for MP4 – The Odyssey (2 pages)
- 15 (N) Authentic Assessment for MP4 – Flowers for Algernon Team Challenge Maze Race (1 page)
- 15 (O) Animal Farm Poster Group Project (3 pages)
- 15 (P) Authentic Assessment: Propaganda Patrol (1 page)
- 15(Q) Poetry Based Project – 5/21/13 (1 page)
- 15 (R) Scoresheet for Various Projects 2013 (5 pages)
- 15 (S) Anne Frank Final Project/ Prompt Based Writing (1 page)
- 15 (T) Rubric For Assessing Group Work (1 page)

- 16 (A) Questioning Authority Essential Questions (1 page)
- 16 (B) Reading Strategy/Exit Slips (2 pages)
- 16 (C) Word Wall Assignments (4 pages)
- 17 (A) M. Alvara Persuasive/Argumentative Essay Instructions (1 page)
- 17 (B) How to Write an ASK Argumentative /Persuasive Essay (Incorporating M.Alvaro Techniques from Observation) (1 page)
- 17 (C) N.J. ASK Persuasive Prompt Writing 4-18-13 (2 pages)
- 18 (A) Smart Responder Animal Farm Quiz, 3/6/14 (6 pages)
- 18 (B) Smart Responder Animal Farm Quiz grades Period 5-7 (1 page)
- 18 (C) Smart Responder Animal Farm Quiz Raw Material (McRel Data) (12 pages)
- 18 (D) Smart Responder Flowers for Algernon (1 page)
- 18 (E) Smart Responder Flowers for Algernon Quiz grades (1 page)
- 18 (F) Smart Responder Flowers for Algernon Quiz Raw Material (McRel Data) (17 pages)
- 19 Emails Regarding Common Formative Assessments (5 pages)
- 20 (A) Common Formative Assessments Period 8-10 (5 pages)
- 20 (B) Common Formative Assessments Period 13-15 (5 pages)
- 20 (C) Common Formative Assessments Period 16-18 (5 pages)
- 20 (D) Common Formative Assessments All Periods w/SGO Essay (4 pages)
- 20 (E) Common Formative Assessments All Periods/Color Coded (4 pages)
- 20 (F) Grade Scale: Middle School Marks (1 page)
- 21 (A) Animal Farm Study Guide (10 pages)
- 21 (B) 8th Grade L.A. Curriculum Guide and Resource Material (22 pages)
- 21 (C) 8th Grade L.A. Curriculum Guide and Resource Material – Revised (12 pages)

- 21 (D) Grade 8 L.A. Curriculum 2012-2013/Student Texts and Teacher/Professional Resources (4 pages)
- 22 (A) Dr. Jekyll and Mr. Hyde Differentiated Project (1 page)
- 22 (B) Dr. Jekyll and Mr. Hyde Differentiated Project 2/25/13 (1 page)
- 23 2013/2014 Observation/Evaluation Schedule (2 pages)
- 24 (A) Email from Shanley to Henchey 2/7/14 @2:54 pm (3 pages)
- 24 (B) Email from Henchey to Shanley and Perro dated 2/7/14 (1 page)
- 24 (C) Email from Shanley to Henchey 2/14/14 @11:36 am. (1 page)
- 24 (D) Email from Shanley to Henchey 2/16/14 @ 7:40 pm. (1 page)
- 24 (E) Email from Henchey to David Wilson dated 2/24/14 @ 6:56 pm (1 page)
- 24 (F) Email from Perro to Henchey 2/27/14 @6:01 am (1 page)
- 24 (G) Email from Wilson to Henchey 2/28/14 @ 12:07 pm (1 page)
- 25 (A) Lesson Plan for 2/7/14 (2 pages)
- 25 (B) Informative and Explanatory Prompt materials (2 pages)
- 25 (C) Prompt Instructions to Students Incorporating D. Shanley Changes Per Her Notes from Observation #3 (1 page)
- 26 Internal Job posting dated June 19, 2014 (1 page)
- 27 8th Grade ELA Curriculum Calendar 2014-2015, Draft as of March 2014 (4 pages)
- 28 Data 2013-2014 (3 pages)
- 29 (A) Informal observation notes (3 pages)
- 29 (B) Drive By Observations 2013 – Background Notes (2 pages)
- 30 Log of Meeting with T. Giovinazzo Meeting #1 (1 page)
- 31 Lesson Plans for 11/20/13 Observation. Continuation of Argumentive Essay Lesson (per SGO) (22 pages)
- 32 (A) Memo to Perro from Henchey Re: Writer’s Journals (1 page)

- 32 (B) Writing Workshop Prompts (11 pages)
- 33 IRB Records 2013-2014 (39 pages)
- 34 Miscellaneous H/W Assignments (16 pages)
- 35 (A) Email from Perro to Staff dated 4/10/14 (3 pages)
- 35 (B) Email from Perro to Staff dated 9/27/13 (1 page)
- 35 (C) Power Point (16 pages)
- 35 (D) Perro Emails Regarding Authentic Assessments: 3/14/13, 3/21/13, 4/2/13, 4/3/13 (4 pages)
- 35 (E) Perro Email dated 3/5/13 Re: SMART Responders (1 page)
- 36 Homework Assignments by Date (2 pages)
- 37 (A) Emails between Henchey and Perro dated 6/21/13 (2 pages)
- 37 (B) Emails between Henchey and Perro dated 5/16/13 (2 pages)
- 38 Flashdrive with 47 photos
- 39 Log of Homework Review by Administration (3 pages) (Bd. Doc Prod.No. 36)
- 40 (A) Bell Schedule 2012-2013 (1 page)
- 40 (B) Bell Schedule 2013-2014 (1 page)
- 41 (A) Henchey Teaching Schedule for 2012-2013 (1 page)
- 41 (B) Henchey Teaching Schedule for 2013-2014 (1 page)
- 42 2012-2013 Informal Observation of Staff Records (38 pages)
- 43 (A) Board Policy 3221 on Evaluation
- 43 (B) Board Policy 3150 on Discipline
- 43 (C) Board Policy 2330 Homework (4 pages)
- 43 (D) Board Regulation R2330 Homework (9 pages)
- 44 Attendance Record for 2013-2014

45 EMAILS FROM 2013-2014

- 45 (A) 5/20/14 Emails between Perro and Henchey Re: Summative Evaluation (2 pages)
- 45 (B) 5/20/14 Email between Henchey and Perro Re: 2014-2015 Action Plan (1 page)
- 45 (C) 5/7/14 Email from Henchey to Perro Re: 2013/1014 Smart Res Quiz II (1 page)
- 45 (D) 5/1/14 Email from Henchey to Perro Re: SGO 1 (1 page)
- 45 (E) 4/23/14 Emails between Perro and Henchey Re: Follow-up to 4/23/14 Mtg. (1 page)
- 45 (F) 4/21/14 Emails between Perro and Henchey Re: Conversation (1 page)
- 45 (G) 3/10/14 Email from Henchey to Perro Re: Color-Coded Assessments (1 Page)
- 45 (H) 2/25/14 Email from Henchey to Carroll and Perro Re: Smart Responders-Animal Farm (1 page)
- 45 (I) 2/12/14 Email from Henchey to Carroll and Perro Re: Honors Prompt 2014 (1 page)
- 45 (J) 2/12/14 Emails between Henchey, Shanley and Perro Re: Writing (2 pages)
- 45 (K) 2/7/14 Emails between Henchey and Perro Re: Smart Responder Data (1 page)
- 45 (L) 1/28/14 Email from Henchey to Perro Re: Follow-up SGO 1 Data (1 page)
- 45 (M) 11/14/13 Emails between Perro, Alvaro and Henchey Re: Henchey Model Lesson 11/15/13 (2 pages)
- 45 (N) 11/14/13 Email from Perro to LA Staff Re: Visit from Meredith (1 page)
- 45 (O) 10/21/13 Email from Henchey to Perro Re: Tuesday 8:30 Meeting (1 page)
- 45 (P) 10/17/13 Emails between Henchey and Perro Re: Signature (2 pages)
- 45 (Q) 10/7/13 Email from Henchey to Perro/Coughlin Re: Resubmitting 2013/14 SGOs w/correx (1 page)
- 45 (R) 10/2/13 Email from Henchey to Perro Re: 2013-2014 SGOs (1 page)
- 45 (S) 9/27/13 Email from Henchey to Perro Re: Lesson Plan for 10/4/13 Observation (1 page)

- 45 (T) 9/20/13 Email from Henchey to Perro Re: Student Classroom Expectations (1 page)
- 46 EMAILS FROM 2012-2013
- 46 (A) 6/21/13 Emails between Henchey and Perro Re: McRel (3 pages)
- 46 (B) 6/20/13 Email from Perro to Henchey and Staff Re: McRel (2 pages)
- 46 (C) 5/16/13 Emails between Henchey and Perro Re: Lesson Plans (3 pages)
- 46 (D) 4/15/13 Emails between Henchey and Perro Re: Authentic Assessment (1 page)
- 46 (E) 2/20/13 Emails between Henchey and Perro Re: Lesson Plans (1 page)
- 46 (F) 2/6/13 Emails between Henchey and Perro Re: Lesson Plans (1 page)
- 46(G) 1/25/13 Email from Henchey to Perro Re: Mid-term Instructions & Rubric (1 page)
- 46 (H) 12/17/13 Emails between Coughlin and Henchey Re: Grades and Comments for Progress Reports (3 pages)
- 47 (A) 12/5/13 Emails between Henchey and Coughlin Re: French Translations for ELL Student (3 pages)
- 47 (B) 11/27/13 Email from Coughlin to Henchey Re: Student/ELL
- 48 ASK L.A. Scale Scores 2012-2014 (2 pages)
- 49 ASK L.A. Scale Scores worksheets (10 pages)
- 50 Letter from Polizzi to Henchey dated 5/13/14 (1 page)
- 51 Scip Log (2 pages)
- 52 Emails between Perro and Henchey dated 5/16/14 (1 page)
- 53 Emails between Coughlin and Henchey dated 11/13/12 (1 page)
- 54 Emails between Coughlin and Henchey dated 1/23-24/13 (1 page)
- 55 Henchey 11/16/13 E-Mail Reply to Perro E-Mail dated 11/16/13 (2 pages)
- 56 Henchey 3/19/13 E-Mail Reply to Perro E-mail dated 3/18/13 (1 page)
- 57 Henchey 4/4/13 E-Mail Reply to Perro E-Mail dated 4/4/13 (1 page)

- 58 Henchey 5/16/13 E-Mail Reply to Perro E-Mail dated 5/15/13 (1 page)
- 59 Henchey 1/22/13 E-Mail Reply to Perro E-Mail dated 1/22/13 (2 pages)
- 60 Henchey 2/20/13 E-Mail Reply to Perro E-Mail dated 2/20/13 (1 page)