

159-17

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of Tenure Charges Against Richard D. Allen:

**HUNTERDON CENTRAL REGIONAL HIGH
SCHOOL DISTRICT BOARD OF EDUCATION**

Agency Dkt No.
191-7/16

Petitioner,

**OPINION
AND
AWARD**

- and -

RICHARD D. ALLEN

Respondent.

**Before
Joyce M. Klein
Arbitrator**

Appearances:

For the Petitioner:

John B. Comegno, II, Esq.
Alicia D. Hoffmeyer, Esq.
Comegno Law Group, P.C.

For the Respondent:

Joseph R. Donahue, Esq.
Brickfield & Donahue, Esquires

Pursuant to N.J.S.A. 18A:6-16, as amended by *P.L. 2012, c. 26* ("TEACHNJ"), the tenure charges brought by the Hunterdon Central Regional High School District Board of Education (the "Board" or "Petitioner") against Richard D. Allen ("Allen" or "Respondent") were referred to me by the Director of the Bureau of Controversies and Disputes, Department of Education, for a hearing and decision. I conducted hearings at the Board's offices in Flemington, New Jersey on September 26, November 7, November 21, December 1,

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December 14, 2016, January 3, January 17, February 1, February 16, March 2, March 16, March 24 and March 30, 2017.

At the hearings, the parties argued orally, examined and cross-examined witnesses, and introduced documentary evidence into the record. Testimony was received from Christina Steffner, Superintendent of Livingston Board of Education, previously Superintendent of Hunterdon Central Regional High School District, John Fenimore, retired Director of Curriculum and Instruction, Michael Carr, Vice Principal, Karen Batista, retired Science Department Supervisor, Matthew Thompson, Vice Principal, C.L.,¹ Parent, Lori Bluffield, Member of the Board of Education, Sara Jane Mahan, Manager of Human Resources, Vincent Panico, a member of the Board of Education, Cynthia Fink, Chemistry Teacher, Sharon Cooper, Chemistry Teacher, Jay Kriesman, Chemistry Teacher, Leon Copeland, Chemistry Teacher, B.B., Parent, B.C., student, K.S., student, C.J., student, P.G., parent, Bonnie Berenger, Science Teacher, S.B., student, Eric Wasserman, Calculus Teacher, S.H., parent, Lars Wendt, Physics Teacher, Kenneth Macai, previously Science Supervisor, S.P., parent, Lisa Allen, Respondent's spouse, Sean Chappe, Physics Teacher and Association Representative and Dr. Richard (Dan) Allen.

Post-hearing briefs were received on May 15, 2017, whereupon the record was closed. An extension of time to issue an award until June 7, 2017 was granted by the Director of Controversies and Disputes, Department of Education.

RELEVANT REGULATIONS AND POLICIES

N.J.A.C. 6A:9-3.3: Professional Standards for Teachers

Standard Eleven: Ethical Practice. The teacher acts in accordance with legal and ethical responsibilities and uses integrity and fairness to promote the success of all students.

i. Performances:

...

(3) The teacher promotes aspects of students' well-being by exercising the highest level of professional judgment, and working cooperatively and productively with colleagues and parents to provide a safe, healthy, and emotionally protective learning environment;

¹ Parents and students are referenced by initials only to protect their privacy.

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(4) The teacher maintains the confidentiality of information concerning students obtained in the proper course of the educational process and dispenses such information only when prescribed or directed by Federal and/or State statutes or accepted professional practice;

(5) The teacher maintains professional relationships with students and colleagues;

...

(7) The teacher fosters and maintains a school environment which protects students from sexually, physically, verbally, or emotionally harassing behavior by recognizing, understanding, and conducting themselves in a sound and professionally responsible manner.

ii. Essential Knowledge:

...

(2) The teacher understands laws related to learners' rights and teacher responsibilities (for example, for educational equity, appropriate education for learners with disabilities, confidentiality, privacy, appropriate treatment of learners, reporting in situations related to possible child abuse, and responding to harassment, intimidation, bullying, and suicide);

(3) The teacher understands his or her professional responsibilities as reflected in constitutional provisions, statutes, regulations, policies, and collective negotiations agreements;

Discipline Board / Policy 3150

The Board of Education directs all teaching staff members to observe statutes of the State of New Jersey, rules of the State Board of Education, policies of this Board, and duly promulgated administrative rules and regulations governing staff conduct. Violations of those statutes, rules, and policies will be subject to discipline.

National Education Association Code of Ethics / Board Policy 3211

The NEA Code of Ethics has been codified by the Board as Board Policy 3211-Code of Ethics. The policy provides:

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Principle I -- Commitment to the Student

The educator strives to help each student realize his or her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals.

In fulfillment of the obligation to the student, the educator—

...

- 4. Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.
- 5. Shall not intentionally expose the student to embarrassment or disparagement.

...

- 8. Shall not disclose information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose or is required by law.

Professional Responsibilities/ Board Policy 3270

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

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

Inappropriate Staff Conduct / Board Policy 3281

...

- Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district

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- School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils

Acceptable Use of District Technology / Board Policy 3360

V. Unacceptable Use

Unacceptable use shall include, but not be limited to, the following.

...

5. Use of the school district system to transmit, receive, access, review, upload, download, store, print, post, or distribute pornographic, prurient, obscene, abusive, profane, lewd, vulgar, rude, inflammatory, threatening, disrespectful, or sexually explicit language, images or other material that is lacking educational merit, socially redeeming value or that is disruptive to the educational process.

VI. State and Federal Compliance

State and federal laws may impact or limit the use of technologies. Users of those technologies must be aware of and comply with requirements of the Family Education Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA) and the Children Internet Protection Act (CIPA). Except in instances as specifically provided by law, any student records which are made, maintained, or transmitted technologically must be kept confidential.

CHARGES

The tenure charges brought against Dr. Richard Allen on June 14, 2016 alleging that he engaged in conduct unbecoming a public employee are voluminous and include both factual allegations and argument. This statement of the charges includes the charges, but not the extensive supporting factual allegations and argument.

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COUNT ONE-UNBECOMING CONDUCT
(Retaliation)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

Dr. Allen's retaliatory conduct, as demonstrated in his May 6, 2016, email, wherein he threatened to lower K.P.'s grade due to her mother questioning his lesson planning, violates Standard Eleven² by creating an emotionally harassing environment for K.P. Threatening retaliation against students is at odds with his professional obligation to foster a safe and healthy learning environment. As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position to protect the students at HCRHS, and ensure they are free from retaliation.

COUNT TWO-UNBECOMING CONDUCT
(Disrespect for Supervisor)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

When Dr. Allen told Ms. Batista, his direct supervisor, "F*** you" in his May 6, 2016, email, he violated Standard Eleven by displaying open hostility and disrespect for a supervisor, in the virtual presence of other colleagues, and a parent, D.P. In doing so, he evidenced his refusal to work cooperatively and productively with his colleagues, and conducted himself in a professionally irresponsible manner by copying D.P. on his email tirade.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can maintain a community of respect and integrity amongst the students, parents and staff at HCRHS.

COUNT THREE-UNBECOMING CONDUCT
(Violation of Student Confidentiality)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

Dr. Allen's disclosure of confidential information regarding K.P. and C.N. to his wife, in his May 6, 2016, email violates Standard Eleven. Dr. Allen failed to maintain student confidentiality, ultimately exposing C.N. to harassment by her peers.

In fact, Dr. Allen purposely and knowingly shared confidential student information to his wife on multiple occasions, knowing full well that the law requires him to keep this information confidential. His behavior in this regard

² The New Jersey Administrative Code sets forth "Professional standards for teachers" at N.J.A.C. 6A:9-3.3, enumerating eleven (11) standards that govern teacher behavior and practice in New Jersey public schools.

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served no purpose other than to spread gossip for his own gratification. Dr. Allen's behavior makes it unreasonable for the Board to continue trusting him with confidential student information.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can ensure the confidentiality of student information at HCRHS.

COUNT FOUR-UNBECOMING CONDUCT
(Disrespect for Students)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

Dr. Allen not only disclosed student information in his multiple email communications to his wife, he often spoke in a derisive and pejorative manner about his students, in violation of Standard Eleven. Dr. Allen referred to a student as "annoying" and deserving of a bad grade. He questioned C.L.'s parenting ability and C.N.'s character merely because C.L. questioned her child's progress in his class. Even more troubling is his email to M.W., apparently expressing concern for her son, which he then forwarded to his wife saying "haha" and later seemed to laugh about that student's bad grade.

Dr. Allen's unprofessional behavior in this regard makes it impossible to ask parents to trust Dr. Allen's judgment, and leave their own children's educational well-being in his hands. His behavior deteriorates the safe, healthy, and emotionally protective learning environment that he is obligated to foster, and which HCRHS strives to maintain.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can ensure the confidentiality of student information, and continue providing a healthy and safe learning environment for all students at HCRHS.

COUNT FIVE-UNBECOMING CONDUCT
(Failure to Teach)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

Dr. Allen's conduct, as demonstrated by his failure to complete lesson plans for AP Chemistry, subsequent to the AP exam, violates Standard Eleven, which tasks him with understanding his professional responsibilities "as reflected in constitutional provisions, statutes, regulations, policies, and collective negotiations agreements." Dr. Allen is the only AP teacher who is refusing to

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teach after the AP exam, in violation of the terms of the collective bargaining agreement between that governs the terms of his employment.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can ensure its students receive the full amount of instructional time to which they are entitled.

COUNT SIX-UNBECOMING CONDUCT
(Violation of Student Confidentiality)
(Violation of National Education Association
Code of Ethics/Board Policy 3211)

Dr. Allen's conduct violates the National Education Association's ("NEA") Code of Ethics, which sets forth the high ethical standards to which teachers are held.

Dr. Allen's conduct in habitually disclosing student information to his wife via his HCRHS email account, for no compelling professional purpose, rather only in pursuit of his own gratification, violates the NEA's Code of Ethics, as set forth above.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can ensure the confidentiality of student information at HCRHS.

COUNT SEVEN-UNBECOMING CONDUCT
(Disparaging Students)
(Violation of National Education Association
Code of Ethics/Board Policy 3211)

Dr. Allen's conduct in mocking struggling students to his wife via his HCRHS email account, violates the NEA's Code of Ethics, as set forth above, in that he has intentionally exposed his own students to embarrassment and disparagement.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can ensure the confidentiality of student information, and continue providing a healthy and safe learning environment for all students at HCRHS.

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COUNT EIGHT-UNBECOMING CONDUCT
(Violating Student Confidentiality)
(Violation of National Education Association
Code of Ethics/Board Policy 3211)

Dr. Allen's conduct, as demonstrated by his May 6, 2016, email, wherein he disclosed confidential student information regarding K.P. and C.N. to his wife, violates the NEA Code of Ethics. By failing to maintain C.N.'s confidentiality, Dr. Allen exposed C.N. to harassment by her peers, who came to believe that C.N. and C.L. were trying to get him fired. In doing so, Dr. Allen failed to protect C.N. from conditions that are harmful to learning, health and safety, and further exposed her to embarrassment and disparagement.

Dr. Allen's disclosure, or his failure to prevent additional disclosure, was done in a completely self-serving context, namely to garner support in opposition to disciplinary action against him. His actions make it unreasonable for the Board to return him to a position of trust with respect to confidential student information. By prioritizing his personal campaign over the rights of his students, Dr. Allen has made it impossible for the Board to expect parents to trust his judgment, and objectivity, and to leave their own children's educational well-being in his hands.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can ensure the confidentiality of student information, and continue providing a healthy and safe learning environment for all students at HCRHS.

COUNT NINE-UNBECOMING CONDUCT
(Retaliation)
(Violation of National Education Association
Code of Ethics/Board Policy 3211)

Dr. Allen's conduct, as demonstrated by his May 6, 2016, email, wherein he threatened to lower K.P.'s grade in retaliation for her mother questioning his lesson planning, violates the NEA Code of Ethics. Dr. Allen has exposed K.P. to conditions that are harmful to learning, health and safety, and has caused her mother to fear retaliation for simply inquiring about Dr. Allen's lesson plans after the AP exam, an inquiry which turned out to be well-justified.

Dr. Allen's behavior makes it untenable to expect prospective parents to trust Dr. Allen's judgment, and objectivity, and to leave their own children's educational well-being in his hands.

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As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can continue providing a healthy and safe learning environment for all students at HCRHS.

COUNT TEN-UNBECOMING CONDUCT
(Violation of Board Policy 3281 - Inappropriate Staff Conduct)

Dr. Allen's conduct, as demonstrated by his May 6, 2016, email, wherein he told Ms. Batista, his direct supervisor, "F*** you" violates Board Policy 3281- Inappropriate Staff Conduct, which provides "The Board strongly believes that school staff members have the public's trust and confidence to protect the well-being of all pupils attending the school district" and further provides:

- Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district
- School staff's conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils

Dr. Allen's palpable disrespect for his supervisor, and his use of profanity multiple times, in the virtual presence of other colleagues, and a parent, D.P., and in response to a mundane parent inquiry demonstrate clearly inappropriate conduct, which should not be tolerated.

Dr. Allen's conduct was knowing and deliberate, as evidenced by his email to Sean Chappe, saying "See you in court" with a smile. Dr. Allen's email demonstrates that his tirade was not the result of a momentary loss of temper or professionalism, but rather a calculated and knowing exposure of his disdain for his colleagues. His behavior undermines the public's trust and confidence, and erodes the professional environment at HCRHS.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position, so that the Board can maintain a community of respect and integrity at HCRHS.

COUNT ELEVEN-UNBECOMING CONDUCT
(Violation of Board Policy 3150-Discipline)

Dr. Allen's conduct, as demonstrated in the foregoing paragraphs, violates Board Policy 3150- Discipline.

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Dr. Allen's disclosure of confidential student information violates the Federal Educational Rights and Privacy Act ("FERPA"), New Jersey Statutes, New Jersey Administrative Code, as well as Board Policy. Dr. Allen's violation of the aforementioned laws has caused exposure and embarrassment to a student, and compromises the public's trust in the Board.

As such, Dr. Allen is guilty of unbecoming conduct, and should be removed from his tenured position.

COUNT TWELVE-UNBECOMING CONDUCT
(Violation of Board Policy 3360-Acceptable Use of District Technology)

Dr. Allen's disclosure of confidential student information via his HCRHS email, as well as his profane and disrespectful tirade toward his supervisor, violates Board Policy 3360- Acceptable Use of District Technology.

Dr. Allen's conduct violates both State and Federal confidentiality laws, as set forth herein. Further, Dr. Allen used his HCRHS email account to transmit vulgar, rude, inflammatory, threatening, and disrespectful content to Ms. Batista, and D.P., in his May 6th email tirade.

Dr. Allen's conduct in violating Board Policy 3360-Acceptable Use of Technology renders him guilty of unbecoming conduct, and requires his removal from his tenured position.

COUNT THIRTEEN-UNBECOMING CONDUCT
(Violation of Board Policy 3270-Professional Responsibilities)

Dr. Allen's refusal to teach AP chemistry after the AP exam, combined with his failure to have emergency lesson plans on file, failure to provide tests and lesson plans to his ICS teacher, and refusal to use common assessments violate Board Policy 3270-Professional Responsibilities.

Dr. Allen's conduct in failing to teach or have lesson plans subsequent to the AP Chemistry exam is an abdication of his professional responsibilities. Further, his emergency lesson plans were determined to be non-existent, and contained the name of his 2014-2015 students. Finally, by failing to provide lesson plans and tests to his ICS teacher, Dr. Allen has failed in his professional responsibility to 504 and IEP students, and compromised the Board's ability to fulfill its legal obligations to these students.

Accordingly, Dr. Allen's conduct in violation of Board Policy 3270 constitutes conduct unbecoming, requiring his removal from his tenured position.

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BACKGROUND

Dr. Richard (Dan) Allen is a tenured member of the Science Department at Hunterdon Central Regional High School (HCRHS), teaching Advanced Placement Chemistry ("AP Chemistry") and CP (College Prep) Chemistry during the 2015-2016 school year. Dr. Allen began teaching for the school district at the beginning of the 2004-2005 school year. Dr. Allen gained tenure in his position as of October 5, 2007.

Dr. Allen has received a variety of training, including annual training via computer on the Federal Educational Rights and Privacy Act ("FERPA") for the past four (4) years. Dr. Allen has received satisfactory or better evaluations throughout his career at HCRHS. Dr. Allen received a written reprimand in 2012 after he suggested to parents at a Back to School Night that Superintendent Christina Steffner's motivation for increasing the number of students taking the AP exam was tied to her compensation.

During the 2014-2015 school year, HCRHS changed from a "semester block schedule" to an "A/B block schedule." This resulted in a significant change for AP teachers because they previously taught their courses over either a half year or three quarter year period. Before the 2014-2015 school year, the District's semester block schedule resulted in completion of the AP Chemistry class and curriculum a few weeks before the national AP exam that is given during the first week in May each year. Beginning in the 2014-2015 school year, the District adopted and implemented an A/B block scheduling model that resulted in students continuing in the same class through the entire school year. Under the new schedule, AP courses were taught over the course of the entire school year, including the portion of the school year after the national AP exam. As a result, teachers who taught AP classes were required to develop a curriculum for the classes after the AP exam in early May until the end of the school year. AP teachers were provided with support and training to prepare them for this change. Science Supervisor Karen Batista testified that in preparation for the schedule change, AP science teachers were given first priority at summer curriculum writing money, given access to a teacher forum through the College Board website, and offered the opportunity to observe AP teachers in other districts using the A/B block schedule. Preparing AP teachers for the schedule changes was discussed at faculty meetings in Professional Learning Communities ("PLCs"), as well as at department meetings.

For the 2014-2015 school year, Dr. Allen developed a series of research projects and associated assignments and presentations, but found that most students did not work up to their potential and did not produce good work. So, for the 2015-2016 school year, Dr. Allen planned to show a series of video

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lectures on chemistry topics that related to those topics covered by the AP Chemistry curriculum. Initially, Dr. Allen had not planned to require graded assignments associated with the lectures, but after showing the first lecture had determined that he needed to do so in order to make sure the class paid attention. As of May 6, 2016, Dr. Allen had not advised the class that there would be graded assignments based upon the video lecture series.

The charges arise primarily out of the events that occurred on and around May 6, 2016 and shortly thereafter.

During the 2015-2016 school year, Students K.P. and C.N. were students in one of Dr. Allen's two AP Chemistry classes. Neither student excelled and both of their parents were in touch with Dr. Allen and Ms. Batista during the school year. C.L., a parent, met with Dr. Allen and her daughter, C.N. in January of 2016 to determine why C.N. did well on homework and labs, but not on tests. According to C.L., she did not find the results of the meeting to be satisfactory. In February, after C.N. continued to struggle in Dr. Allen's class, C.L. met with Ms. Batista and C.N.'s counselor, Casey Roupon.

Similarly, D.P. was in touch with Dr. Allen and Ms. Batista because her daughter, K.P., also struggled in Dr. Allen's AP Chemistry class. D.P. complained that Dr. Allen consistently told K.P. to do homework and attend tutorials but did not offer specific help. During the school year, K.P. consulted with counselors, but did not approach Dr. Allen. Dr. Allen speculated that K.P. went "behind [his] ... back" to counselors because she was looking to drop the course.

In 2016, the national AP Chemistry exam was given on Monday, May 2, 2016. Several students missed class during the remainder of the week as they sat for AP exams in other subjects. For the remainder of classes that week, Dr. Allen showed videos of chemistry lectures and did not give students an assignment regarding those lectures. According to Dr. Allen, K.P. and C.N. were not attentive during those videos and their behavior bordered on disruptive. Apparently, K.P. told her mother, D.P., that Dr. Allen told the class that he did not plan to teach for the rest of the school year since the AP Chemistry exam had now been administered. After K.P. described the classes to her mother, on Friday, May 6, 2016, D.P. sent the following email to Ms. Batista and school counselors, asking about Dr. Allen's lesson plans for the remainder of the school year:

Good morning all on this very wet, yet again, dreary day! Hope this finds you all well. Question pertaining to K.P.'s Chem class. The students were informed this week by Dr. Allen that he has decided this year "due to lack of interest and effort" on the students part,

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that he will no longer be basically teaching them for the rest of the school year. That for the next six weeks, they will be watching videos and having study halls where they can complete their other work. This past Tuesday was free time and yesterday they watched a video. I am fully aware that at the AP level, their finals are over and so is the AP Exam but there is nothing else these kids can be doing? Mini-labs, anything? That does not sound right to me giving the amount of time left. This to me sounds like a perfect opportunity to give assignments to help boost their grades. I understand that these types of lessons don't have to be everyday but to just sit there in a block length course with nothing to do is ridiculous. Other AP classes are slowing down but still giving some type of assignment. I am not trying to ruffle anymore feathers at this point but I do find this academically sad and a waste of school time.

Thanks for listening to me and hoping that maybe something can be resolved from this.

Upon receiving D.P.'s email during the afternoon of May 6, Ms. Batista responded to her and assured her that Dr. Allen was most likely trying to make a point and that she would speak to him. Ms. Batista forwarded D.P.'s email to Dr. Allen, seeking his response. Ms. Batista's email to Dr. Allen read as follows:

Dan,

Do you have a response to this? I'm assuming that you are trying to make a point. If not, understand that you are under contract (even if the new one hasn't been negotiated yet) until June 30th.

Karen

Ms. Batista expected that she and Dr. Allen would have a discussion about D.P.'s email and she would learn what caused K.P.'s impression. Dr. Allen was angered by Ms. Batista's email and initially sent three brief emails to her during that evening.

At 6:37 p.m., Dr. Allen sent an email providing:

Wow. What the f*** is that? Maybe ask about it me first before you accuse me of violating my f****ing contract?

A moment later, at 6:38 p.m., he wrote:

I'm too angry to reply now. Later

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Then, at 6:51 p.m., he followed up, again expressing his anger, and listing the Chemistry lectures he was showing in class:

I am so angry right now. Here is the title of the Eric Smith video I showed on Thurs (Paste it into youtube) & the Robert Hazen one I am showing on Mon. Please watch them (1hr each) before I talk to you again, so you have some background. Just f****ing unbelievable.

...
McCloskey Speaker Series – New Theories on the Origin of Life
with Dr. Eric Smith

...
ROBERT HAZEN - CHANCE, NECESSITY, AND THE ORIGINS
OF LIFE

Dr. Allen testified that he was "upset" and very "angry" when he sent these three emails. Dr. Allen mentioned D.P.'s email to his wife and daughter and then took a walk and did some gardening. Dr. Allen, believing that he had calmed down, then composed, and sent, the following response to Ms. Batista, the two counselors, D.P. and his wife (agape). Dr. Allen's response, at 8:40 p.m. on May 6, 2016, reads as follows:

Hi Karen.

Well, first off, that is certainly an interesting version of what goes on in my class. Here is my version:

There are about 16 class days for each section of AP Chemistry after the final exam & national AP Exam. Last year I gave the students a large list of possible research topics that tied into the course material & that they might find interesting. The assignment was for each student to pick three topics to research -- followed by the submission of a two page summary and a short presentation to the class. Each report/presentation was worth a lab grade. Unfortunately, a majority of the (very grade-savvy) kids realized that three lab grades would not statistically affect their overall course grade and thus did a barely acceptable, low-effort job on the reports. Frankly it was a waste of everybody's time. Just one girl did serious research on a topic she eventually went on to study in college, but the other 59 students basically gave me crap -- just good enough to no drop their overall grade. One obvious option on

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my part would be to bump up the worth of these assignments so the kids would have a penalty for bad work. But I rejected that option because most would just bump up the quality slightly (still crap) to stay even. Some would do a great job to get a better grade but (from experience) these kids would be mostly kids who already had an A. And in my opinion, the "AP Chemistry" grade at HCRHS should be based solely on the "AP Chemistry" curriculum, which has now ended.

So this year I decided to do something different. I conceived a sort of mini-course of video lectures by college professors that would show the kids real-world & scientific research applications of the things we learned in class. I came up with seven "units" (origin of life, biogeochemistry, climate change, energy, limits to growth, etc.) for which I would devote two class periods each (an hour-long lecture in each block). I am developing this on the fly based on my feel for the material and the kids. At first I was thinking I would just show the videos and that was that. After showing the first video that way and gauging their reaction, I am reconsidering -- now planning a mini-discussion before & after, along with a two-paragraph summary and reflection (with course tie-ins) of the video. I'm feeling my way through this, my first foray into video lectures.

My first video was (search youtube) "McCloskey Speaker Series - New Theories on the Origin of Life with Dr. Eric Smith" I showed this to A-day on Thurs and B-day today. I encourage you to watch it in its entirety. On student applauded after the video ended. My second (and last) video of the first unit will be "Robert Hazen - Chance, Necessity and the Origins of Life". Again, highly recommended. This stuff is the real deal -- a good metric for them to see if science is really what they want to do, and which parts of real-world science do they find most interesting and necessary.

Unfortunately I did have some trouble with two students for most of the block: C----- N----- and K----- P----- were talking loudly and laughing in the back of the room -- loudly enough that I had to interrupt the video and ask them to quiet down THREE different times during the block. I had to speak to nobody else in either block I showed this video. I suspect this may be partially why K---- P---- did not join in the applause at the end -- I don't think she actually saw the video, which I would consider one of the very best lectures I have ever seen in my life (-- a life where I have seen hundreds of them).

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One other note about K----- P-----: after entering the final exam grades, she actually ended up with an F in AP Chemistry. I understand that she was exempted into the class -- an error of judgement for which I don't think she deserves blame. So I bumped up her final exam grade until she just barely had a D. I did not inform her of this because I didn't want to embarrass her. Nice guy, huh?

So...here's the way it'll go: I'm bumping her grade back down to the original F (I will inform her). And from now on I'll collect and grade the class reflection on each video.

Karen, I am deeply disappointed in your handling of this matter. "Understand that you are under contract"???!!! Frankly, f*** you. I work my f***ing ass off to be a great teacher and I expect the common courtesy of at least checking in more tactfully (or in person!) when receiving second hand (and erroneous) information you received from the parent. But a threat right off the get go? No thanks.

Have a great weekend & thank you for ruining mine -- Dan

Only moments after sending the 8:40 p.m. May 6th email, Dr. Allen forwarded that email to Sean Chappe, a science teacher who was also an HCEA representative with this note: "See you in court, my friend :-)." Shortly after he sent the email, both Dr. Allen and his wife, Lisa Allen, were concerned about the content of the email and called Mr. Chappe for advice.

Suzanne Cooley, then HCRHS Principal, received the email from one of the counselors and forwarded it to Superintendent Christina Steffner. Over the weekend, Ms. Steffner sought and received permission from the Board President to suspend Dr. Allen, and commence an investigation into his actions.

D.P. replied to Dr. Allen's May 6th email on May 7, 2016, copying Ms. Batista, and asking Dr. Allen to please reconsider lowering K.P.'s grade and promising to speak with K.P. regarding Dr. Allen's contention that she was talking while he was showing the class videos. Also over the weekend, C.L. learned that Dr. Allen named her child, C.N. in his May 6th email, and that he copied "agape" on the email. C.L. emailed Ms. Batista to express her concern. She questioned why C.N. had been brought into the discussion, and asked for the "name and title of the individual with the agape email."

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On Monday, May 9, 2016, Superintendent Steffner interviewed Dr. Allen. Director of Curriculum John Fenimore, Manager of Human Resources, Sara Jane Mahan, Shari Calabrese, President of the Hunterdon Central Education Association and Sean Chappe, another HCEA representative were present.

At the May 9th meeting, Dr. Allen was asked about his AP Chemistry lesson plans for the remainder of the 2015-2016 school year. At that time, approximately twenty-six (26) school days, including approximately 15 AP Chemistry classes, remained in the 2015-2016 school year. Dr. Allen responded "[t]hat class is over." Dr. Allen explained that he was not able to give a full answer or explanation, but that he was "outrageously excited" about his planned lecture series for the remainder of the school year. Dr. Allen was also asked about his lesson plans for his CP Chemistry class. Dr. Allen advised that the class was preparing for a test later in the week. Dr. Allen acknowledged that the test had not yet been prepared, and that his ICS (in-class support) teaching partner had not been provided with the test.³ Dr. Allen explained that his ICS partner did have a collection of unit worksheets and she was aware that the test would "closely mirror" the worksheets.

Dr. Allen's emergency lesson plan folder in Ms. Batista's office contained only class rosters from his classes for the 2014-2015 school year and an instruction to complete an assignment that was not provided. Dr. Allen testified that his emergency lesson plans for the 2015-2016 school year, along with current rosters, were in his mailbox and were easily accessible to any substitute teacher. Some science teachers testified that emergency lesson plans were typically filed with Ms. Batista and other science teachers typically provided necessary information to the substitute when one was needed at the last minute.

At the conclusion of the meeting, Dr. Allen was advised that he was being suspended with pay pending the outcome of an investigation into his conduct.

The administration sets aside time designated as "PLC (professional learning community) time" for all teachers within each department, to learn from and collaborate with one another. Mr. Fenimore testified that Dr. Allen did not meet regularly with his PLC. Chemistry Teacher Sharon Cooper recalled that Dr. Allen participated in Chemistry PLCs. Ms. Batista did not recall that there was any issue regarding Dr. Allen's attendance at PLCs.

As part of the investigation, Vice Principals Matthew Thompson, and Michael Carr, interviewed eight students from Dr. Allen's two AP Chemistry courses. Each student was asked the same set of questions: 1) Have you taken

³ The ICS teacher's role is to support special education students and/or students with § 504 plans. This entails reviewing lesson plans and tests to ensure that students are provided with the accommodations set forth in their IEP and/or § 504 plans, as required by law.

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any AP tests yet? How have they gone? How many AP classes are you currently taking?; 2) What do you think you'll be doing from now on since you've taken your AP test?; 3) How do you know that?, and 4) What did you do last week after your test?

The AP Chemistry students interviewed generally confirmed that they had watched videos on chemistry topics during the week that began with the AP exam. The students believed that they would continue to watch videos for the remainder of the school year and did not believe that they would be required to complete assignments or otherwise be graded based on the videos.

After the meeting with Dr. Allen, Ms. Steffner asked Mr. Fenimore to speak with the supervisors from each department that offers AP coursework, to ensure that other teachers of AP classes were continuing to teach for the remainder of the school year. In response to Mr. Fenimore's inquiry, the Social Studies, Math, Fine Art, World Language, Science and English Department Supervisors all confirmed that their AP teachers were still teaching, and had lesson plans in place for post AP coursework. Mr. Fenimore also conducted seventeen (17) "drop-ins" of AP courses, to observe that AP instruction was still occurring. The drop-ins confirmed other AP teachers were providing instruction and assessment.

Ms. Steffner was also concerned that Dr. Allen had copied his wife (agape) on the May 6, 2016 email so she reviewed all of Dr. Allen's emails to his wife from his HCRHS email from September 4, 2013 through his May 9, 2016 suspension. At Ms. Steffner's direction, the Board's IT manager, Michael Marron, searched Dr. Allen's email for any other emails between his school email and his wife's email address, agape7769@comcast.net. The search yielded ten (10) additional instances of Dr. Allen disclosing student information to his wife from his HCRHS email account. Eight of these emails were sent during the 2015-2016 school year. Dr. Allen's emails that included his wife are as follows:

On April 3, 2014, Dr. Allen forwarded an email to his wife, containing a string of emails between himself and M.K., the parent of a student, E.K., discussing E.K.'s progress in his class. M.K. expressed concern over E.K.'s stress levels. E.K. is a friend of Dr. Allen's daughter.

On April 23, 2014, Dr. Allen forwarded an email that came directly from a student, who inquired about her grade to his wife. Dr. Allen forwarded the email to his wife stating "Here's the email the student sent to me before her charade was revealed. ..."

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Hi Dr. Allen,

I logged into Aspen yesterday and noticed that the report card for Marking period 3 was very different from quarters 1 and 2.

I saw that my averages were C+ and C but on the report cards from the beginning of the year, my averages showed as A- and A. I was wondering if we could resolve this problem as soon as possible.

Thank you.

Hey babe. Here's the email the student sent to me before her charade was revealed. Tsk tsk tsk. What was she thinking I would do—forget her grades for the whole class & give her a A?! luv u!

On October 8, 2015, Dr. Allen forwarded an email to his wife from D.P., mother of K.P. D.P. emailed Dr. Allen to introduce herself, apparently having missed the opportunity to do so at back to school night. In Dr. Allen's response, he notes that his wife says hello. D.P. returned the greeting, and Dr. Allen forwarded the email to his wife.

Good morning. Hope this finds you well. I unfortunately cannot attend this evening's Back to School night but wanted to touch base to say hi and introduce myself. I am K.P.'s mom, D. If at any time there are any questions or concerns, please feel free to contact me at your convenience. My information is listed below.

Dr. Allen replied as follows, also copying his wife:

Hi D. Lisa (my wife) says hi. :-) ... K's done better on the past 2 tests, so as long as she keeps up the effort she'll be fine. Make sure she's keeping up with the problem set on a daily basis -- since getting even a day behind is a bit deadly with the amount of content they get each day. Let me know if you have any questions! -- Dan :-)

On November 16, 2015, Dr. Allen forwarded another email containing student information to his wife. Dr. Allen initiated this email exchange with M.W., parent of W.W. Dr. Allen reached out to express concern for W.W.'s response to his latest grade. M.W., who responded, thanking Dr. Allen. Dr. Allen then forwarded the email to his wife with the subject line "haha from M-----."

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Hi M. R. seemed bummed out about his last test (84 on Liquids & Solids), but I just wanted to say that he's doing a really great job -- working really hard to understand the material. It's nice to have kids who care about their work as much as R.!! Some units he'll find easier than others, so just tell him to keep up the good work & he'll be fine. -- Dan :-)

--

Thanks for the note.

Four days later, on November 20, 2015, Dr. Allen sent his wife an email that simply stated "there's gonna [sic] be hell to pay--[W.W.] got a 64% on test today :-)."

On December 1, 2015, in an email exchange with his wife, Dr. Allen responded to her inquiry about his day "...going ok...the annoying kid who kept pushing back his makeup test got his deserved bad grade (hee hee)..." The student was not named in the exchange.

How's your day?

Lis

--

hey :-) going ok...the annoying kid who kept pushing back his makeup test got his deserved bad grade (hee hee)

otherwise going well. low stress day :-)

how about you?

On February 29, 2016, Dr. Allen forwarded emails to his wife from a student's parent, C.L., mother of C.N., and his response. C.L. emailed Ms. Batista to express concern over C.N.'s performance in Dr. Allen's class, and questioned Dr. Allen's teaching skills based on her assessment of C.N.'s efforts as compared to the grades she was receiving. Ms. Batista forwarded the email to Dr. Allen, who wrote a lengthy response. Dr. Allen then forwarded the email to his wife, who responded:

Wow!! She's a jerk. So her kid is finally being challenged and she is attacking you? What will Karen respond?

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Dr. Allen wrote back to her:

I'm sure Karen will just try to defuse it. I mean, it's the first kid in 10 years of AP to say I don't do it right :-)

Mrs. Allen replied:

Interesting fact-- lady is friends with D.P. I would hope that Karen has your back bc it's clearly not you with your exemplary track record.

Lis

And Dr. Allen finished the conversation:

Ha ha. Her and D. (or D.'s kid at least) really laying into me this year. :-) Maybe invite them over for tea so they can fill you in. :-)

Dr. Allen again included information about C.N. in an email to his wife on March 3, 2016. Apparently, Ms. Batista met with C.L. to discuss her email, later providing an email summary of the meeting to Dr. Allen. Dr. Allen responded referencing his opinion on C.L.'s parenting skills and C.N.'s character. He then forwarded Ms. Batista's email, along with his response, to his wife with the message "This is my response to Karen's email—she met with C.N.'s mom yesterday. **Bold type is Karen & normal type is mine. :-)**"

This is my response to Karen's email--she met with C.'s mom yesterday. **Bold type is Karen & normal type is mine. :-)**

Hi Karen. Lots of stuff, so I'll respond within your text:

*The meeting was actually cordial. She asked me to look at your review sheets as compared to the tests to make sure there was alignment. *

The review sheets are the problem sets. I'll let you look at them if you want, but it'd be hard to decipher without actually doing all the problems, which would take days. I can tell you that they are **COMPLETELY** in alignment. One thing I'm very good at is picking out the essence of each unit -- i.e. the key points/skills/ideas that they need to get. I make sure I stress them during class & I pick the key problems from the book (often spanning several chapters) that illustrate them. ...That said, C. has several times approached me after a test & said that the material on the test did not match the

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problem set. This is a refrain I ONLY ever hear from kids who don't understand the material. Check in with kids who do and you'll hear the opposite of what C. says. It's a "let me blame someone else" tactic, and its use at this stage is a sign of some really bad parenting. Although I don't say anything, it reflects VERY poorly on the kid's character.

I told her I'd look at C.'s four worst tests. She also asked for a grade distribution, which I did yesterday afternoon. (everything looks well within the norm, btw) She said that they already hired a tutor (Carolyn Wilhelm from North Hunterdon). I told her I would contact her to see if there is anything that we could provide to help.

I can speak with (or email) the tutor too if you like.

*She liked the idea of you checking in (with formative assessments) for the remainder of the year with C. to gauge her understanding. *

Fire drill caused B3 test to be postponed until Monday (so observation would be Wed or Fri now).

To be honest, C. mostly just screws around during class. She has her work open, but she's constantly getting sidetracked by her phone or her friends (mostly K.P. who has a D. & is also blaming me for her trouble). I can give her assigned seat, but I think you didn't want me to single her out, right? She asks me token questions & makes token appearances at tutorial. She is just not a serious student in Chemistry for whatever reasons. I usually let the AP kids check in with me as needed, so it would feel weird to check in only for C.

I certainly can do it (& will if you want), but personally I think it's a disservice to the AP kids for me to babysit them at this age because they need to start transitioning to college. They need to start figuring out (1) the work and discipline it takes to master a difficult subject, (2) if they like it (3) if they're good at it.

*She did not get personal at all. (Which is good because I was prepared to nip that in the bud.) She was concerned about curves being applied unevenly, but I assured her that you and Leon speak often about lessons, labs, tests and grading. By the end of the meeting, she was looking to get an accurate assessment of C.'s abilities. At one point she said, "look, if she's not a chemistry type,

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that's okay. It's just that no one has actually said that to me." I told her that I would speak to you, Cindy Fink (her hon chem teacher) and the tutor to try to get an accurate picture for her.*

Repeat after me: "My daughter is not the chemistry type" :-). C. doesn't seem like the material much, she doesn't try very hard at understanding it, and she doesn't seem quick to pick up even the simpler concepts that the "chemistry types" absorb immediately. What kind of parent is confused about something like that at this age? Her Dad (a horse breeder) came up to me at BTS and said very jovially, "I heard you like farming -- we'll need to talk about that sometime instead of this boring Chemistry stuff." ...Ummm...Mom...maybe your daughter is a bit more like her Dad?

That's it in a nutshell. I need to take a look at the 4 tests and would like to just speak to you about the latest one to see how you are going to handle the situation (10 failures and a D class average). I don't want to add fuel to the fire. Can you swing by after class, or would you like me to go to you during block 5?

Don't worry about this one. We'll answer some of the questions and let this blow over.

The best thing for C. at this point is to work very hard with her tutor at one of those AP Exam Chemistry review books -- e.g. Princeton Review, Barrons, or the one I lent the students. There is simply no time for her to go back and nitpick over some questions on a few bad tests when an epic twenty-unit test is staring her in the face in 8 weeks. AP Chem is like a firehose of material (that's still going full blast for the next 7 weeks), and her micro-examining a few bad tests is like stopping down to gather a few cupfuls of water that spilled. That said, I understand if the Mom is insistent on this. I fully understand that this is not a good model for education, but that's the requirements of this AP model we're implementing.

So ... let me know if you have any more questions -- Dan

Dr. Allen again forwarded his wife a lengthy email exchange between Ms. Batista and C.L. on March 18, 2016. This email contained C.N.'s test scores, as well as class averages and median grades for several tests.

Finally, on March 21, 2016, Dr. Allen forwarded his wife an email that he sent to HCRHS administrators earlier in the day. Dr. Allen's email to his wife said

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"Ugh. One of the General Chemistry students, J.B., released a wildly inappropriate video last night. It's on youtube under "J BloG p*\$y destroyer."

Ugh. One of my General Chemistry students, J.B., released a wildly inappropriate video last night. It's on youtube under "J BLoG p*\$y destroyer."

Not sure what jurisdiction you have over off-campus-filmed youtube video, but he's waving a fake gun around.

I really really really like J.B., but he worries me sometimes, and this video is a good example.

PLEASE DO NOT TELL HIM I 'RATTED HIM OUT'!!!!

Thanks, Dan

When asked why he copied his wife on the May 6th email, Dr. Allen testified as follows:

I didn't know they were FERPA violations at the time. This is not -- even in my -- even in my not quite complete understanding of FERPA at this stage, I would have to know that copying my wife where other people can see she's copied is completely inappropriate. But back to your question, the reason is, because she's my advisor in the sense that she's my better half. She's good under pressure, she's good in emergency situations, she cool-headed, and I'm emotional. And she's my sounding board for things, you know, as we'll get to. Not in the sense where I should pass on names and grades to her. But she's in a true sense, she is my -- she is my -- she is my partner in teaching, you know. So that's why.

Dr. Allen's testimony was similar to his wife's understanding of FERPA. She believed that an educator could not share student information with the public, but believed that there was an exception for one's spouse.

Dr. Allen's May 6, 2016 email had further repercussions within the school.

On May 12, 2016, C.N.'s mother, C.L., wrote to Ms. Steffner advising that other students were accusing C.N. of being responsible for Dr. Allen getting "fired." C.L. included a social media post by C.N. where she attempted to set the record straight in an effort to end the attacks on her.

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On May 15, 2016, D.P. sent a letter to the Board raising concern that K.P. might be exposed to Dr. Allen in the future, as well as questioning his fitness to be in a teacher. D.P. pointed to the vindictive and threatening tone of his email, and noted his inclusion of her on an email wherein he used profanity toward his supervisor. D.P. directed that neither of her children be placed in Dr. Allen's classes in the future.

The Board met on May 16, 2016 to discuss his employment. The meeting was in an open session at Dr. Allen's request. The meeting room was filled mostly with Dr. Allen's supporters. At that meeting, Dr. Allen addressed the Board and apologized for his actions. Many parents and students spoke. The vast majority expressed their support for Dr. Allen. Both before and after the meeting, the Board received many letters of support for Dr. Allen's teaching.

For example, one current student wrote, "AP Chemistry was one of the classes that made coming to school worth it every day..." Another former student wrote, "Dr. Allen's passion for the subject is part of what gave me the drive to pursue a degree in biochemistry..." A parent wrote that Dr. Allen "cares about his students and teachers in an engaging and interesting manner." Another parent, S.P., testified that her daughter had Dr. Allen as a teacher for AP Chemistry and it "was an extremely challenging class ... it was the kind of class I would want for her." That parent described Dr. Allen as "very fair" and always available after school if the kids needed help..." Science teacher Sharon Cooper described Dr. Allen's teaching as "engaging" and using cartoon characters and music to illustrate points and reach students. Ms. Cooper also testified to Dr. Allen's positive interaction with Ms. Batista and Dr. Macai, the previous science supervisor.

In addition to those letters, several students and parents testified to Dr. Allen's skills as a teacher, motivating students to pursue higher education and careers in science. Parents also testified to his good character and his contributions to the community, including a community garden. Had time permitted, numerous additional students, parents, colleagues, former colleague and members of the community were eager to testify to Dr. Allen's skills as a teacher and his good character and reputation. The record reflects that these potential additional character witnesses would have provided testimony that is substantially similar and complementary to the supportive character testimony described above.

After the May 16th Board meeting, many members of the administrative staff, which includes the department supervisors, among others, expressed concern that Dr. Allen's behavior would be viewed as a minor infraction. The Board President received letters from Edward Brandt, President of the Hunterdon Central Administrator's Association, as well as Sandra Chronic, Supervisor of

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Health and Physical Education, Sara Jane Mahan, Human Resources Manager, Don Thornton, Operations Manager, Sue Cooley, HCRHS Principal, and Gymlyn Corbin, School Business Administrator/Board Secretary. These letters urged the Board's to support appropriate consequences commensurate with Dr. Allen's actions.

Dr. Allen admits that there were "so many warning signals to [him] along the way," which should have prevented him from sending the emails. He acknowledged that his wife told him not to send the email until she read it, although he ignored that advice. He further acknowledges that the series of emails he sent only to Ms. Batista in the lead up to the May 6th email were the result of a "gross overreaction." He characterizes his tone in those emails to Ms. Batista as "scolding her like she's a kid" and "ordering" her to watch the videos he references. With respect to his email to Mr. Chappe, Dr. Allen testified that he was not intended to show disdain, but rather was letting Mr. Chappe know he had "screwed up." He further claimed that the ":)" was not intended to be a happy smiley face, but was instead a "rueful" smiley face.

Dr. Allen testified that he was upset because D.P.'s email "grossly misrepresented what was happening in his class." He explained that his anger toward Ms. Batista derived from his perception that she accepted D.P.'s statements as true. Dr. Allen took issue with D.P.'s statement that Dr. Allen told the class that "due to lack of interest and effort" he would not be teaching them for the rest of the year. Dr. Allen acknowledged that he had permitted students to do other work during an AP Chemistry the day after the AP Chemistry exam. Dr. Allen explained that he recognized students had additional AP exams that week and it was time to "pull back a little bit." Dr. Allen denied that he would not be teaching for the rest of the school year and cited his excitement about the lecture series he was developing. Dr. Allen knew that D.P. was "not privy" to his excitement for the lecture series he had planned, but nonetheless was very upset and hurt by D.P.'s email.

DISCUSSION

N.J.S.A. 18A:6-10 provides that no tenured employees of the public school system "shall be dismissed or reduced in compensation ... except for inefficiency, incapacity, unbecoming conduct, or other just cause." The District bears the burden to establish that it met this standard.

The New Jersey Supreme Court has defined "unbecoming conduct" as conduct "which has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services." In re Young, 202 N.J. 50, 66 (2010) (quoting Karins v. City of Atl. City, 152 N.J. 532, 554

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(1998) (citation omitted). The New Jersey Supreme Court further defined "unbecoming conduct" as that which violates "the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct." Bound Brook Bd. Of Ed. v. Ciripompa, Dkt. No. A-57-15, __ N.J. __ (February 21, 2017) (quoting Karins v. City of Atlantic City).

With this standard in mind, I turn to Dr. Allen's conduct in sending the four emails on May 6, 2016, as well as the remaining charges that arose from the investigation. In evaluating these charges, I have reviewed and considered the testimony, documentary evidence and arguments submitted by both parties. That consideration is incorporated into the discussion of the charges.

COUNT ONE-UNBECOMING CONDUCT

(Retaliation)

(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

COUNT NINE-UNBECOMING CONDUCT

(Retaliation)

**(Violation of National Education Association
Code of Ethics/Board Policy 3211)**

Most troubling is the charge that Dr. Allen expressed an intention to retaliate against K.P. by lowering her grade from a D to an F after her mother D.P., sent the original email to Ms. Batista suggesting that Dr. Allen did not intend to teach AP Chemistry for the remainder of the school year because the AP Chemistry exam had been completed.

That portion of the May 6 email provided as follows:

One other note about K----- P-----: after entering the final exam grades, she actually ended up with an F in AP Chemistry. I understand that she was exempted into the class – an error of judgement for which I don't think she deserves blame. So I bumped up her final exam grade until she just barely had a D. I did not inform her of this because I didn't want to embarrass her. Nice guy, huh?

So...here's the way it'll go: I'm bumping her grade back down to the original F (I will inform her). And from now on I'll collect and grade the class reflection on each video.

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Ms. Steffner, Ms. Batista and D.P. all interpreted this portion of the email to threaten retribution. Ms. Steffner testified that she was "concerned that there was a tone of retribution, that because mother had sent an e-mail apparently asking about the practice of teaching after the AP exam, that we were going to drop a student's grade..." Ms. Steffner cited "the volatile manner in which he responded and his threat of lowering a student's grade because a parent asked a question was deeply concerning..." and created concerns about him returning to the classroom. Ms. Batista also read Dr. Allen's words as threatening retaliation:

What did become very upsetting to me was the part about K's grade being changed in particular as a result of the e-mail sent by the mom.

Q. So let's get to that. That's the next paragraph. The next paragraph, so, it reads, quote, So. . .here's the way it'll go. I'm bumping her grade back down to the original F (I will inform her). And from now on I'll collect and grade the class reflection on each video, close quote.

Q. So what's your reaction to that?

A. Clearly it's retaliation for something that a parent had written, a parent questioned what was going on in the class, and as a result, he was going to change a grade.

Ms. Batista further stated "As I read through the e-mail, it looked to me like after he gave the explanation of what he was going to do, he still was angry and mentioned that he was going to change a student's grade, which, of course, is the worst thing he could have possibly said."

That D.P. believed that Dr. Allen might retaliate against K.P. is expressed first in a May 7 email to Dr. Allen where she seeks to insulate K.P. from blame for her previous emails:

... As for the info I received, I heard not from K.P. or C.N. but another student in your class on Tuesday. I never spoke to K.P. about it until Thursday night. I was just hoping, call it greedy, that maybe she would have the opportunity, not just for her but for others too, to maybe bump up her grade slightly more. My apologies for being presumptuous. As for the talking and disturbing class, they said they were told they could talk. I will speak to her about her volume. She can be loud. Any further questions/concerns you have please feel free to contact me. I seriously hope

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you will consider my request and continue in with your plan as you feel necessary.

D.P.'s May 15, 2016 letter to the Board of Education crystalized her concerns that her daughter K.P. might be the victim of retribution by Dr. Allen:

I recently sent an email questioning if during the last few weeks of school the students might have the opportunity to "lift" their grades slightly. In response, I received a very disturbing reply that I felt not only threatened my child, but myself. The email also contained vulgarities directed towards Dr. Allen's supervisor, which I know you have read. How Dr. Allen believes a response can be sent in that tone makes me even more concerned about his mental equanimity and classroom behaviors.

D.P. continued "I am appalled that he felt he could threaten me and my child in writing instead of reaching out to me to explain the situation."

Ms. Batista also spoke to this specific issue of the apparent threat and the ever present parents' concern that a teacher will retaliate against their child when a parent complains:

I mean, as a supervisor, one of the things that happens, parents will call about a complaint about a particular teacher, and you'll say to the parent, well, you know, can I speak to the teacher about their complaint, and their first response is well, please don't use my student's name. And, in fact, you know it's not that you don't -- you wouldn't go to a teacher and give the student's name, but, of course that's the first thing the teacher asks when you go to the teacher and say, you know, I've gotten this complaint from a parent. You know, the first question the teacher will ask: Well, which parent? And the implication is that it's a kid that's a problem in class and therefore that's why there's a parent complaint. On the parent's side of that issue is that, you know, if you mention my kid's name, the teacher is going to retaliate against my kid. I mean, this is the exact thing that you don't want to get to a parent, and he's put it in writing now, and has notified people, and so now, you know, every other parent has now got something that they can use to say that a teacher is retaliating against their kid because in fact, here's a teacher that did it.

Ms. Steffner also emphasized the importance of being able to maintain parents' trust:

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... the trust that has to be placed between parents and teachers was seriously compromised. In the 40 plus years that I've been doing this, I often hear from parents oh, I would never say anything because the teacher will take it out on my child. And I as an administrator have always said that doesn't happen. It won't happen. You know, you have a right, this is your child. You have a right to ask questions. You have a right to be a part of it. A teacher, a professional would never take it out on a child. This e-mail spoke to me about the serious interruption of that trust, the serious breakdown and it reinforced that constant comment that we hear from parents often that I'm afraid to say anything because my child will suffer.

This e-mail from D. was almost apologetic, not almost, it was apologetic and it was almost pleading please don't take it out on my daughter. I found that very disconcerting, very upsetting and certainly is not the kind of relationship we want with our parents.

Dr. Allen acknowledged that his language was "ambiguous-ish." As such, regardless of his intention, Dr. Allen's words were perceived as threatening to lower K.P.'s grade in response to D.P.'s email. Dr. Allen claims that he did not intend to fail K.P. He testified that when he wrote "I'm bumping her grade back down to the original F (I will inform her). And from now on I'll collect and grade the class reflection on each video..." Rather, this language reflected "a change in strategy." He testified as follows: "This reflects a change in strategy, that I was saying, look, I'm not -- I am not going to be able to, I'm not going to be able to not give grades for the rest of the course and have kids pay attention at all."

Dr. Allen testified that he does not fail students, and that he would have bumped K.P.'s grade back up to a "D" at the end of the course. In other words, Dr. Allen planned to lower K.P.'s grade back to the "F" she had earned to allow her to improve her grade for the remainder of the school year, and if she did not improve her grade on her own, he would then bump K.P.'s grade back to a "D".

To Dr. Allen, if he left K.P.'s grade as a "D" and then allowed her to earn extra credit and perhaps raise her grade to a "C", that would be a "gift onto a gift." Dr. Allen believed that D.P. was trying to get her daughter's grade to improve to a "C", which, to his mind, K.P. had not earned.

Dr. Allen testified that he made it a practice not to fail students and he did not intend the email as retaliation against K.P. Rather, Dr. Allen explained that he had already bumped K.P.'s grade from an F to a "D" because he had not planned additional assignments. Once he determined to grade assignments

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related to the videos, he no longer needed to bump up K.P.'s grade, because she would have an opportunity to bump her own grade up from an F to a D. Dr. Allen acknowledged that he was "borderline off the rails" when he wrote this but thought it would be a "logical solution to a problem" rather than a "vindictive grade change."

Dr. Allen testified both that he was concerned not to embarrass K.P. and his view of K.P.'s visits to her counselor concerning AP Chemistry:

So, yeah, I don't want to embarrass K.P. even if she was -- I knew she was coming at me the whole year. I knew she was going to her counselor, I didn't know exactly what she was saying to her counselor, but I knew it probably wasn't true..."

Dr. Allen characterized K.P.'s actions in going to her counselor as "unprecedented" for him in that he had never "had a kid go behind [his] back."

Turning to the question of whether Dr. Allen threatened retaliation against K.P. and, if so, whether this conduct violated Standard Eleven of Professional Standards for Teachers, N.J.A.C. 6A:9-3.3 and/or the National Education Association Code of Ethics/Board Policy 3211, I must look beyond Dr. Allen's intent to his actual words. Dr. Allen did not explain that he intended to knock K.P.'s grade back to the grade she had actually earned, to allow her the opportunity to increase her grade through additional assignments or extra credit assignments as suggested by her mother. Rather, Dr. Allen wrote that K.P. "ended up with an F in AP Chemistry" and he bumped her final exam grade up "until she just barely had a D." He continued:

So...here's the way it'll go: I'm bumping her grade back down to the original F (I will inform her). And from now on I'll collect and grade the class reflection on each video.

Returning to Dr. Allen's words in his email, he stated "I'm bumping her [K.P.'s] grade back down to the original F..." He then indicated that he would grade the class reflections from the video, but did not explain that K.P. would have the chance to improve her grade, and once the school year was completed he would bump her grade back to a passing grade if she did not do so on her own.

Dr. Allen also stated, "I will inform her," lending credence to the thought that he would inform K.P. that she would get an "F" for the class. When taken in context of the entire email, including the angry and disgruntled tone, and the inappropriate language directed at Ms. Batista, it is difficult to interpret his statement that he would lower K.P.'s grade as anything but retaliation for her

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mother's email. When viewed in light of his testimony that he knew she was coming at him the whole year, the notion that Dr. Allen had a retaliatory motive is reinforced.

Regardless of whether Dr. Allen actually intended to fail K.P., he unquestionably created the impression that he would, and compromised the necessary trust between parents and the Board. In doing so, he has irreparably damaged his own credibility with both the Board and parents. Dr. Allen had made it almost impossible for the Board to ask parents to trust him.

Accordingly, I find that Dr. Allen's statement that he would bump K.P.'s grade back to an F, by itself, leads to the conclusion that Dr. Allen engaged in conduct unbecoming a public employee. This statement, on its own, by apparently threatening to lower K.P.'s grade in retaliation for her mother's email, cannot be tolerated from any teacher. Such a statement breaches the trust between teacher and student, teacher and parent, and teacher and Board of Education. That trust is necessary for the teacher to be a successful educator. The charge of retaliation, by itself, is sufficiently serious to sustain tenure charges against Dr. Allen, but must be viewed in light of all of the facts and circumstances, including those supporting Dr. Allen.

COUNT TWO-UNBECOMING CONDUCT
(Disrespect for Supervisor)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

COUNT TEN-UNBECOMING CONDUCT
(Violation of Board Policy 3281-Inappropriate Staff Conduct)

I now turn to the charges that Dr. Allen was knowingly and deliberately hostile and disrespectful to his supervisor, Ms. Batista by using profane language in his May 6, 2017 email, by copying both colleagues and D.P., a parent with this disrespectful electronic communication.

In response to Ms. Batista's email forwarding and asking about D.P.'s email, Dr. Allen initially sent three brief emails to her, two of them using some version of "f***" or "f***ing", but not necessarily directing the profanity at Ms. Batista. For example, in his first email at 6:37 p.m., Dr. Allen wrote, "[W]ow. What the f*** is that? Maybe ask ... before you accuse me of violating my f***ing contract?"

Then, in the lengthy email sent to Ms. Batista with copies to colleagues and D.P. at 8:40 p.m., Dr. Allen directed profanity at Ms. Batista as follows:

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Karen, I am deeply disappointed in your handling of this matter. "Understand that you are under contract"???!!! Frankly, f*** you. I work my f***ing ass off to be a great teacher and I expect the common courtesy of at least checking in more tactfully (or in person!) when receiving second hand (and erroneous) information you received from the parent. But a threat right off the get go? No thanks.

Have a great weekend & thank you for ruining mine – Dan

Administration officials, parents, students and other teachers uniformly testified that Dr. Allen's use of profanity, even in its censored state was inappropriate. Ms. Steffner testified to her concern both "about the use of abject profanity" and the "continued escalation of Dr. Allen's anger." John Fenimore, then the Director of Curriculum, testified that use of such language was inappropriate in any professional setting. The profanity was directed at Ms. Batista who testified that she was "offended, shocked and disappointed." Dr. Fink, a science teacher, agreed that Dr. Allen's email was "disrespectful." Another chemistry teacher, Ms. Cooper, thought directing the phrase "fuck you" to a supervisor was "inappropriate." Numerous other colleagues, as well as parents and students supporting Dr. Allen found such language to be unprofessional and/or inappropriate. D.P. cited Dr. Allen's use of profanity in her May 15, 2016 letter to the Board of Education noting that Dr. Allen's response to her email included "vulgarity directed towards Dr. Allen's supervisor." In that letter, D.P. also stated her belief that Dr. Allen needed to "accept full responsibility for his behaviors, threats, outbursts and obscenity laced emails."

Dr. Allen agreed and has apologized both to Ms. Batista and to the Board of Education. There is no dispute that Dr. Allen's use of profanity in his May 6, 2016 emails directed at Ms. Batista was both inappropriate and disrespectful. Such conduct from a teacher meets the definition of conduct unbecoming in that it violates the "implicit standard of good behavior" expected of a teacher. See Karins v. Atl. City, 152 N.J. 532, 554-555 (1998). Dr. Allen's May 6, 2016 email also violates Board Policy 3281 which provides "[i]nappropriate conduct and conduct unbecoming a school staff member will not be tolerated ..."

Dr. Allen's use of profanity directed at Ms. Batista in an email that was also sent to colleagues and a parent is unbecoming conduct. The use of profanity directed at a supervisor in this situation is serious, but on its own might not be sufficient to warrant removal. Dr. Allen's use of profanity cannot be examined in a vacuum but must be considered in light of all of the facts and circumstances present in this case.

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COUNT FIVE-UNBECOMING CONDUCT
(Failure to Teach)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

COUNT THIRTEEN-UNBECOMING CONDUCT
(Violation of Board Policy 3270-Professional Responsibilities)

The Board has charged Dr. Allen with a failure to teach by failing to complete lesson plans, failing to have current emergency lesson plans on file, refusing to teach AP Chemistry after the AP Chemistry exam, failing to provide tests and lesson plans to his ICS teacher, and refusing to use common assessments.

Citing Mr. Fennimore's testimony, the Board contends that Dr. Allen failed to complete lesson plans and failed to have current emergency lesson plans on file. Mr. Fennimore testified that he checked Dr. Allen's emergency lesson plan folder in his mailbox in the 11/12 building and found only a class roster from the prior school year and a direction to work on "problem set 912". Mr. Fennimore viewed this and similar instructions as an activity rather than a lesson plan. Mr. Fennimore also expressed concern that Dr. Allen had not supplied lesson plans for CP Chemistry and in particular, had not supplied lesson plans to his ICS teacher.

Dr. Allen's supervisor, Karen Batista recalled that if she asked for lesson plans, Dr. Allen would typically be one of the first teachers to turn them in. Ms. Batista did not recall an issue with Dr. Allen turning in either lesson plans or emergency lesson plans. Ms. Batista also acknowledged that she permitted tenured teachers to submit unit plans but required non-tenured teachers to submit weekly lesson plans. Dr. Allen had provided unit plans to his ICS teacher. Dr. Allen testified that his emergency lesson plans could be found in his mailbox.

Science teachers, including Dr. Leon Copeland and Sharon Cooper, testified that when a science teacher would be absent unexpectedly, the teacher would typically call another teacher and ask that colleague to make sure that the substitute had whatever was necessary for lessons.

The Board contends that Dr. Allen planned simply to show videos during the gap period between the AP Chemistry exam and the end of the school year. It is not disputed that Dr. Allen did show a video lecture "McCloskey Speaker Series – New Theories on the Origin of Life with Dr. Eric Smith" to his AP Chemistry classes between May 2, 2016, the date of the AP Chemistry exam and May 6, 2016, his last day in the classroom. Dr. Allen described his thoughts and plans for the video lecture series in his May 6, 2016 email as follows:

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So this year I decided to do something different. I conceived a sort of mini-course of video lectures by college professors that would show the kids real-world & scientific research applications of the things we learned in class. I came up with seven "units" (origin of life, biogeochemistry, climate change, energy, limits to growth, etc.) for which I would devote two class periods each (an hour-long lecture in each block). I am developing this on the fly based on my feel for the material and the kids. At first I was thinking I would just show the videos and that was that. After showing the first video that way and gauging their reaction, I am reconsidering -- now planning a mini-discussion before & after, along with a two-paragraph summary and reflection (with course tie-ins) of the video. I'm feeling my way through this, my first foray into video lectures.

My first video was (search youtube) "McCloskey Speaker Series - New Theories on the Origin of Life with Dr. Eric Smith" I showed this to A-day on Thurs and B-day today. I encourage you to watch it in its entirety. One student applauded after the video ended. My second (and last) video of the first unit will be "Robert Hazen - Chance, Necessity and the Origins of Life". Again, highly recommended. This stuff is the real deal -- a good metric for them to see if science is really what they want to do, and which parts of real-world science do they find most interesting and necessary.

However, in his May 6, 2016 email, Dr. Allen, also expressed his opinion on the grading of AP Chemistry and the period between the AP Chemistry exam and the end of the school year:

And in my opinion, the "AP Chemistry" grade at HCRHS should be based solely on the "AP Chemistry" curriculum, which has now ended.

During the meeting on May 9, Mr. Fenimore asked Dr. Allen about lesson plans for AP Chemistry for the remainder of the year. According to Mr. Fenimore, Dr. Allen reiterated the sentiment from his email and replied, "that class is over." But during his testimony, Dr. Allen testified that he realized after his classes on May 5th and May 6th that he was going to need some sort of "carrot stick" mechanism to keep his students engaged for the remainder of the year.

Mr. Fenimore also asked Dr. Allen about his plans for CP Chemistry and he indicated that students were working on a test review sheet but he had not yet written the test. Mr. Fenimore expressed concern because this meant that Dr.

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Allen's ICS partner, who was relatively new, did not have a copy of the test and she was legally bound to work on accommodations. Dr. Allen had not provided a test to be administered at the end of the week to his ICS partner by the morning of May 9, but had provided the unit worksheets and his ICS partner was aware that the test would closely track the problem sets included with the worksheets.

Mr. Fenimore distinguished between Dr. Allen's idea to use a video lecture series and Dr. Allen's implementation of the lecture series. According to Mr. Fenimore, "the actual implementation wasn't occurring." Mr. Fenimore based this conclusion on Dr. Allen's statement at the May 9 meeting as well as the May 6 email.

The Board has not established that Dr. Allen failed to continue to teach AP Chemistry by May 9, 2016. Rather, the AP Chemistry exam was administered on May 2, the previous Monday. The AP Chemistry exam is among the first AP exams administered and many students in AP Chemistry were absent during that week as they took other AP exams. Many students who did attend the class were focused on other AP exams they would take later in the week. Dr. Allen testified that he knew when "to pull back a little bit" as he was after the AP Chemistry exam. So, for the remainder of that week, Dr. Allen had shown the first of the video lectures in the lecture series he had developed. As noted in his May 6 email, he had initially conceived of the lecture series to complement the topics covered in AP Chemistry, but without related assignments. Dr. Allen acknowledged that he was "feeling... [his] way through" his first series of video lectures, but had already determined to add assignments and grades to the lecture series.

There is no doubt that Dr. Allen believed that the AP Chemistry class should end after the AP Chemistry exam, and that he had not developed formal lesson plans for his lecture series. Nonetheless, Dr. Allen was aware that he was required to teach for the remainder of the school year. He had developed a lecture series and was showing the lectures to his students. Given the block scheduling, Dr. Allen had shown only the first video in the lecture series without a graded assignment while students were in the process of completing other AP exams. At this point, Dr. Allen was removed from the classroom and had no further opportunity to develop his anticipated lecture series. Based upon this evidence, I find that the Board has established only that Dr. Allen had a personal belief that AP Chemistry should end with the AP exam. The Board has not established that Dr. Allen failed to teach or intended to stop teaching after the AP exam.

Mr. Fenimore testified that Dr. Allen participated in PLCs (Professional Learning Communities) only occasionally and did not use common assessments that were developed in the PLCs. This testimony was not fully supported. Ms.

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Batista did not recall that Dr. Allen failed to attend or participate in PLCs. Ms. Batista recalled only one PLC meeting where Mr. Fenimore attended and had found that Dr. Allen was inattentive. Mr. Fenimore offered no evidentiary support for his allegation that Dr. Allen did not use common assessments in either CP Chemistry or AP Chemistry. Dr. Copeland testified that he and Dr. Allen collaborated on the teaching of AP Chemistry and that he used Dr. Allen's handouts and worksheets with his students.

In sum, I find insufficient evidence that Dr. Allen failed or refused to teach AP Chemistry after the AP exam, failed to provide tests and lesson plans to his ICS teacher, and refused to use common assessments. Dr. Allen did have current lesson plans, though the emergency lesson plans in the folder in his mailbox were not current. Dr. Allen attended and participated in PLC meetings and collaborated with his colleagues. Dr. Allen had not provided a single test to his ICS partner one week before the test. Dr. Allen did not fail to meet his professional obligations. To the extent that these charges are supported, they are not sufficient to warrant tenure charges. Charges 5 and 13 are dismissed.

COUNT THREE-UNBECOMING CONDUCT
(Violation of Student Confidentiality)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

COUNT SIX-UNBECOMING CONDUCT
(Violation of Student Confidentiality)
**(Violation of National Education Association
Code of Ethics/Board Policy 3211)**

COUNT EIGHT-UNBECOMING CONDUCT
(Violating Student Confidentiality)
**(Violation of National Education Association
Code of Ethics/Board Policy 3211)**

COUNT ELEVEN-UNBECOMING CONDUCT
(Violation of Board Policy 3150-Discipline)

COUNT TWELVE-UNBECOMING CONDUCT
(Violation of Board Policy 3360-Acceptable Use of District Technology)

These charges allege that Dr. Allen breached student confidentiality, violated the Federal Educational Rights and Privacy Act (FERPA) and Board Policies involving Discipline (3150) and Acceptable Use of Technology (3360) by sharing confidential student information with his wife Lisa Allen for no valid educational purpose. The charges also allege that Dr. Allen breached the

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confidentiality of student C.N. when she was discussed in the May 6, 2016 email sent to D.P. as well as to Lisa Allen.

The Board contends that Dr. Allen engaged in unbecoming conduct when he sent four (4) unprofessional, insubordinate and hostile emails to his supervisor, including the May 6th email, which included the counselors, D.P., and his wife; violated the confidentiality rights of C.N. and K.P. by virtue of copying his wife, and D.P. on the May 6th email; threatened to lower K.P.'s grade as a result of D.P.'s email; and habitually violated student confidentiality rights by emailing his wife confidential student information.

Dr. Allen copied his wife on a total of ten emails referencing students and/or confidential student information, such as grades in addition to the May 6, 2016 email. That email referenced K.P. and C.N., their conduct in AP Chemistry, and K.P.'s final grade. In addition to confidential information, Dr. Allen demeaned and mocked students in some of the emails to Lisa Allen, referring to a student's "charade" and labeling another student "annoying."

Turning to the May 6, 2016 email, Dr. Allen discussed his difficulties with K.P. and C.N., and then copied D.P., K.P.'s mother, as well as Mrs. Allen on the email. Specifically, Dr. Allen discussed C.N. and K.P.'s lack of focus on the video as follows:

Unfortunately I did have some trouble with two students for most of the block: C----- N----- and K----- P----- were talking loudly and laughing in the back of the room -- loudly enough that I had to interrupt the video and ask them to quiet down THREE different times during the block. I had to speak to nobody else in either block I showed this video. I suspect this may be partially why K--- P---- did not join in the applause at the end -- I don't think she actually saw the video, which I would consider one of the very best lectures I have ever seen in my life (-- a life where I have seen hundreds of them).

One other note about K----- P-----: after entering the final exam grades, she actually ended up with an F in AP Chemistry. I understand that she was exempted into the class -- an error of judgement for which I don't think she deserves blame. So I bumped up her final exam grade until she just barely had a D. I did not inform her of this because I didn't want to embarrass her. Nice guy, huh?

As a result of this email, C.N. believed her confidentiality and privacy was violated. C.N.'s mother, C.L., learned of the email on Saturday, May 7, 2016 and

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promptly sent an email to Ms. Batista asking the identify of "agape" and expressing concern that her daughter "had been brought into this discussion."

Subsequently, C.L., C.N.'s mother, explained that C.N. was concerned about discussion on social media that "plastered" her name everywhere in connection with Dr. Allen's suspension. On May 12, 2016, C.N.'s mother sent an email to Ms. Steffner expressing her concern for her daughter stating:

My daughter came home today and informed me that members of the senior and junior class have accused her of "getting Dr. Allen fired." She is very upset. She feels helpless and harassed.

The Board would tie C.N.'s concern to a social media post from Dr. Allen's stepdaughter asking students to attend the upcoming Board of Education meeting and to write letters in support of Dr. Allen. The Board bases its conclusion on its assumption that Dr. Allen's stepdaughter sought students' support at his behest. The record does not establish that Dr. or Mrs. Allen urged or directed Dr. Allen's stepdaughter to post this request to social media. Although there is insufficient support for the Board's contention that his stepdaughter's post was at Dr. Allen's behest, this post, which did not include C.N., along with other posts circulated by students seemed to result in C.N. being perceived by other students as the reason for Dr. Allen's suspension. Regardless of the factual basis that led to Dr. Allen's suspension and subsequent tenure charges, Dr. Allen's inclusion of C.N. in his email to D.P., a parent, but not C.N.'s parent, and to his wife, led to C.N.'s name being connected to his tenure charges. Thus, the result of Dr. Allen's violation of C.N.'s privacy and confidentiality under FERPA and Board Policy 3360 may have lead to negative publicity for C.N.

Dr. Allen also violated both K.P.'s and C.N.'s confidentiality as students when he copied his wife on the May 6, 2016 email. That email included specific information about K.P.'s grades and K.P.'s and C.N.'s conduct. While Dr. Allen regards his wife as his "sounding board," "advisor" and "partner in teaching," she is not employed by the District and plays no role in the education of Dr. Allen's students, including K.P., C.N. and the other students specifically referenced in Dr. Allen's emails. By sending emails to his wife that included confidential student information, Dr. Allen violated the privacy rights of these students pursuant to FERPA, and Board Policy 3360 (Acceptable Use of District Technology) which requires users of the Board's email system to comply with FERPA. That policy also provides:

Except in instances as specifically provided by law, any student records which are made, maintained, or transmitted technologically must be kept confidential.

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Both Dr. Allen and Mrs. Allen seemed to think their emails were permitted as some sort of spousal privilege or exception to the student privacy requirements included in Board Policy and in FERPA. Dr. Allen acknowledged receiving FERPA training each year for the past five years but did not pay sufficient attention and take the training seriously because it was computer-based training, and thus did not think it applied to communications with his wife.

Dr. Allen explained that the emails "were just between me and my wife and not to be shared further." Dr. Allen testified that he "didn't know they were FERPA violations at the time." Explaining why he copied his wife on emails, Dr. Allen characterized his wife as his "advisor" who is "cool-headed" and his sounding board and "partner in teaching." Yet Dr. Allen acknowledged his error stating that "I would have to know that copying my wife where other people can see she's copied is completely inappropriate."

It is not clear whether Dr. Allen acknowledged that copying his wife on emails is inappropriate or that allowing others to see that she received the email is his mistake. It is troubling that Dr. Allen seemed to focus on whether others were aware that he copied his wife rather than the fact that he did so, thus violating student privacy and confidentiality.

Dr. Allen relies upon what he believed to be spousal privilege to suggest that he had a right to share confidential student information with his wife. Spousal or marital privilege as codified in the New Jersey Rules of Evidence 509 permits spouses to refrain of disclosure of spousal "communications made in confidence" without the consent of the spouse. N.J.S.A. 2A:84A-22. Rule 509 does not address the situation where one spouse presumes that he or she is able to disclose confidential information about another individual, in this case a student, to the other spouse because the information will then be protected from disclosure. Regardless, the Board's policy directs that any student records which are made, maintained, or transmitted technologically must be kept confidential. Additionally, FERPA prohibits the disclosure of student records, which include, but are not limited to, grades and student disciplinary files.

By copying his wife on the May 6, 2016 email which included K.P.'s grade in AP Chemistry, as well as several other emails disclosing student grades, Dr. Allen violated both FERPA and Board Policy 3360. Dr. Allen also violated C.N.'s privacy by disclosing her conduct in his class to both his wife and to D.P. These violations of privacy and confidentiality constitutes unbecoming conduct which violates "the implicit standard of good behavior" expected of a teacher. The charges of violating student privacy and confidentiality on their own might warrant discipline short of removal. Dr. Allen's violation of student privacy and confidentiality, as with other charges, cannot be examined in a vacuum, but it must be considered in light of all of the facts and circumstances present in this case.

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COUNT FOUR-UNBECOMING CONDUCT
(Disrespect for Students)
(Violation of N.J.A.C. 6A:9-3.3, Standard Eleven)

COUNT SEVEN-UNBECOMING CONDUCT
(Disparaging Students)
**(Violation of National Education Association
Code of Ethics/Board Policy 3211)**

Dr. Allen is charged with disparaging and disrespecting students by speaking in a derisive and pejorative manner about them. The Board relies upon the series of emails Dr. Allen either forwarded to his wife or copied to her that include unprofessional statements such as calling a student "annoying" or laughing at a bad grade.

The language and tone of Dr. Allen's emails to his wife were, on occasion, derisive. For example, Dr. Allen forwarded one email to his wife on April 23, 2014 where a student asked about her grades. Dr. Allen's comment was "[h]ere's the email the student sent to me before her charade was revealed. Tsk tsk tsk." In another email on December 1, 2015, Dr. Allen referred to a student as annoying, stating "... the annoying kid who kept pushing back his make up test got his deserved bad grade (hee hee)." Dr. Allen also seemed to mock C.L.'s parenting skills and C.N.'s interest in chemistry in a March 3, 2016 email exchange with Ms. Batista.

Standard Eleven of Ethical Practice requires teachers to maintain "professional relationships with students ..." and to "conduct themselves in a sound and professionally responsible manner."

The NEA Code of Ethics as incorporated into Board Policy 3211 provides that teachers "[s]hall not expose the student to embarrassment or disparagement."

While these email exchanges were not public and did not expose students to public disparagement, they were unprofessional and inappropriate in that they mocked, disparaged and laughed at students and suggested that Dr. Allen took pleasure or felt vindicated in his opinions when students who did not excel met his expectations with poor grades, conduct or performance. These exchanges were unprofessional and violate the implicit standard of good behavior expected of a teacher. These emails disparaging students constitute unbecoming conduct. As with each of the charges, the charge that Dr. Allen disparaged students must be considered in light of all of the facts and circumstances present in this case.

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Based upon the foregoing, Dr. Allen engaged in conduct unbecoming a teacher when he threatened retaliation against student K.P.; directed profanity at his supervisor, Ms. Batista in an email sent to colleagues, a parent and his wife, as well as Ms. Batista; violated the confidentiality of students K.P. and C.N., as well as others by copying his wife on emails discussing their grades and classroom behaviors; and by disparaging or mocking students in email exchanges with his wife over the District's email server.

As the appropriate penalty for Dr. Allen's misconduct is evaluated, the question of progressive discipline and mitigating factors warrants consideration. The New Jersey Supreme Court explained:

[T]he concept of progressive discipline has been utilized in two ways: (1) to 'ratchet-up' or 'support imposition of a more severe penalty for a public employee who engages in habitual misconduct'; and (2) 'to mitigate the penalty' for an employee who has a record largely unblemished by significant disciplinary infractions.' On the other hand, progressive discipline is not 'a fixed and immutable rule to be followed without question' because 'some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.'

In re Stallworth, 208 N.J. 182, 196 (2011) (citations and internal punctuation omitted). The Court explained the analytic framework to be considered in evaluating the issue of progressive discipline:

To assure proper progressive discipline, and a resulting penalty based on the totality of the work history, an employee's past record with emphasis on the reasonably recent past should be considered. This includes consideration of the totality of the employee's work performance, including all prior infractions.... Progressive discipline is a flexible concept, and its application depends on the totality and remoteness of the individual instances of misconduct that comprise the disciplinary record. The number and remoteness or timing of the offenses and their comparative seriousness, together with an analysis of the present conduct, must inform the evaluation of the appropriate penalty.

Id. at 199.

Virtually all of Dr. Allen's misconduct occurred in a series of emails on May 6, 2016 and approximately ten emails with his wife from September 2014 through May 6, 2016. The question of penalty and any circumstances which might

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mitigate the penalty begins with Dr. Allen's repeated apologies to the Board and to Ms. Batista. Dr. Allen has recognized that he should not have sent the May 6, 2016 emails in anger and that he overreacted to Ms. Batista's inquiry. This acknowledgement of fault is one of the several factors that Dr. Allen cites in support of a penalty short of removal. Dr. Allen also cites Ms. Steffner's alleged grudge against him, disparate treatment when compared to other District teachers, that students did not witness the conduct, his personal circumstances, his relatively clean record and his reputation as a popular and exciting teacher.

Dr. Allen has asserted that Ms. Steffner held a grudge and was out to get him both for his inadvisable comments to parents about her compensation in 2012 and because his mother, a local political force, is asserted to have backed successful board of education candidates Lori Blutfield and Vincent Panico and is asserted to have worked to defeat current Board President Deb Labbadia's candidacy for board of education in another district. Dr. Allen suggests that this family grudge caused Ms. Steffner to recommend termination rather than a lesser penalty. While Dr. Allen's testimony supports his contentions, this testimony is comprised predominantly of suggestion and innuendo rather than direct evidence. Dr. Allen went to great lengths to explain the intricacies of local board of education politics and established that his mother and Ms. Steffner were in opposing political camps, but did not offer direct and credible evidence connecting any possible animosity between Ms. Steffner and Dr. Allen's mother to his removal. Given that the allegation was not proven, it cannot be treated as a mitigating factor when considering the appropriate penalty for Dr. Allen's misconduct.

Similarly, Dr. Allen sought to establish a connection between the present tenure charges and the basis for his 2012 reprimand. In 2012, Dr. Allen received a written reprimand after he opined to parents at a Back to School Night that the push to increase the number of students taking AP exams was tied to Ms. Steffner's compensation. In support of this theory, several teachers testified to their perceived concern or fear that Ms. Steffner might have harmed their careers or make their work life more difficult based upon real or perceived past infractions. There were no examples of Ms. Steffner either disciplining teachers or seeking to enhance negative consequences based upon this testimony. There is insufficient evidence that Ms. Steffner held a grudge against Dr. Allen for his conduct in 2012 or that this influenced her recommendation that the Board terminate Dr. Allen.

To the extent that the Board relies upon the reprimand Dr. Allen received in 2012 and suggests that this reprimand supports removal in this instance, Dr. Allen has been disciplined for his statements to parents in 2012 suggesting that Ms. Steffner's compensation may have been placed ahead of the best interests of students. For purposes of progressive discipline, the issues in dispute in this

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instance also involve incautious statements. The import of Dr. Allen's 2012 reprimand, however, is limited to the fact that he received it.

Dr. Allen compares his conduct to that in In re Geiger, 2015 WL 721458 (N.J. Super. Ct. App. Div. Nov. 18, 2015) and In re Watson, 2014 WL 2480173 (N.J. Super. Ct. App. Div. June 4, 2014). Specifically, in In re Watson, a teacher called educationally disabled students who were predominantly African American "stupid" and said they were "acting like monkeys." This teacher also grabbed a student's shirt and hit him, cursed at students and snapped a rubber band against a student's wrist. Although profanity was used in both cases, In re Watson is not analogous to Dr. Allen's situation in that there, the totality of the circumstances resulting in dismissal included corporal punishment against middle school age students. Dr. Allen emphasizes that no students witnessed his misconduct. While that is true, a situation where a teacher used profanity, made racially insensitive remarks and hit a student is not analogous to retaliation by lowering a student's grade.

Similarly, Dr. Allen would compare his circumstances, where his inappropriate conduct was not in the presence of students to In re Geiger, where students overheard two teachers making racially insensitive and profane remarks. In that instance, teachers made comments including "[t]hese negros think they're fucking tough shit," and "yeah, that's what they are, they're fucking, negros, negros, negros, negros." The Appellate Division found removal to be too extreme a penalty for Appellants because the "punishment is so disproportionate to the offense, in light of all of the circumstances, as to be shocking to one's sense of fairness." In re Geiger at 7 quoting In the Matter of Polk, 90 N.J. 550, 578 (1982).

Dr. Allen notes that this case does not include racially charged statements, but does include profanity or an edited stand-in for profanity, i.e. f***. As noted above, Dr. Allen's situation is not analogous to Geiger, but Dr. Allen suggests that it raises factors that must be considered, including whether the statement at issue were directed at students, whether the statements were intended to be heard by students, his prior record, and disparate treatment of other teachers.

In support of a lesser penalty, Dr. Allen also asserts that removal would amount to disparate treatment. Dr. Allen points to another situation in the District where a tenured teacher allegedly swore at her class, then left the class and the school and abandoned her class. Dr. Allen knew about this incident from a former student who was in the class. Dr. Allen was not aware of any of the circumstances surrounding this incident. In that instance, the teacher received a letter of reprimand for a first infraction similar to the letter Dr. Allen received for his misconduct in 2012. Dr. Allen also points to instances where teachers at

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HCRHS engaged in misconduct without investigation or charges. These allegations include two different DUIs.

It is difficult to compare the other disciplinary situations that have arisen at HCRHS in recent years because the facts and circumstances are different. It is important to distinguish between these other situations, none of which included retaliation against a student, and the instant case. Those circumstances did not include a teacher's plan to lower a student's grade after a parent sent an email critical of the teacher. I find the other instances of discipline at HCRHS are not comparable and do not support a claim of disparate treatment.

Dr. Allen asserts that his conduct, although regrettable, does not rise to the level of warranting termination in light of all of the circumstances at issue in this case. Dr. Allen cites his distinguished career as a teacher and relatively unblemished disciplinary record. Dr. Allen cites testimony by parents, students and colleagues revealed how Dr. Allen went above and beyond in order to encourage and inspire his students. Dr. Allen also cites the numerous letters of support, as well as the approximately 150 individuals, mostly character witnesses, who were willing and eager to testify on his behalf.

Dr. Allen also sought to put the May 6th email in context by explaining the "stress" he was under both as a result of K.P. and C.N. challenging his teaching and grading all year and stress related to the illness of his eleven year old daughter. Dr. Allen also cites his efforts over the school year to assist C.N., while C.L., her mother continued to complain about his teaching causing him great stress. Dr. Allen emphasizes that the May 6, 2016 email was out of character and an aberration. This helps to explain, but does not excuse, Dr. Allen's conduct on May 6, 2016.

Dr. Allen has offered substantial support for his popularity as a teacher. Indeed, almost 150 individuals, including parents, students and colleagues were prepared to testify to his inspiring teaching ability and good character. Dr. Allen's teaching skills and character are significant and notable, and provide some defense to the pending charges.

The record establishes that Dr. Allen is an exciting and inspiring chemistry teacher who is beloved by many students and parents. Dr. Allen influenced and encouraged many students to pursue a career in science, including many who had been previously discouraged or turned off by science classes. The importance of this teaching skill and character evidence cannot be over emphasized. This evidence might be sufficient to outweigh the angry and disrespectful tone and language of Dr. Allen's May 6, 2016 email as well as his failure to maintain strict confidentiality of student information. It does not

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outweigh his apparent threat to retaliate against K.P. for her mother's email to Ms. Batista questioning Dr. Allen's teaching for the remainder of the school year.

Dr. Allen has raised many factors supporting the use of progressive discipline and/or forming a basis to mitigate his termination, most notably his reputation and skills as a science teacher. As noted in In re Stallworth,

[P]rogressive discipline is not 'a fixed and immutable rule to be followed without question' because 'some disciplinary infractions are so serious that removal is appropriate notwithstanding a largely unblemished prior record.'

Threatening or planning to retaliate against a student as a response to criticism from that student's parent is one such infraction. Retaliation by lowering a student's grade or even suggesting that the grade might be lowered eviscerates the trust necessary for teaching and learning to occur. In this instance, Dr. Allen responded to a parent's email critical of his use of class time with a statement that he would lower the student's grade from a "D" to an "F". There can be no mitigation of such apparent retaliation. Although each of the remaining infractions might be mitigated by Dr. Allen's record of exciting and inspiring teaching, the retaliatory language in his May 6, 2016 email, which was copied to the parent of the student at issue cannot be revoked. Likewise, Dr. Allen's reputation and the ability of the Board, parents and students to trust Dr. Allen cannot be rehabilitated. Threatening retaliation against a student is not suitable for progressive discipline.

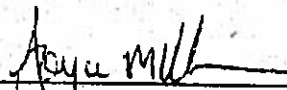
In sum, I find that Dr. Allen engaged in unbecoming conduct when he threatened retaliation against student K.P., directed profanity at Ms. Batista, his supervisor; violated the confidentiality and privacy of students K.P., C.N. and others, and by disparaging or mocking students in email exchanges with his wife over the District's email server. The significant mitigating circumstances of Dr. Allen's popularity as a teacher might serve to reduce the penalty for most of the proven charges, but cannot overcome the charge that Dr. Allen threatened to lower K.P.'s grade in retaliation for her mother's email to Ms. Batista which angered him. As a result of his threat, which was sent to K.P.'s parent, there is no basis for the Board, parents or students to trust him as a teacher in the future. Accordingly, I find that the Board has established that Dr. Allen has engaged in unbecoming conduct that supports his dismissal from his position as a tenured teacher at HCRHS.

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AWARD

The Hunterdon Regional High School District Board of Education had just cause to dismiss Dr. Richard D. Allen from employment.

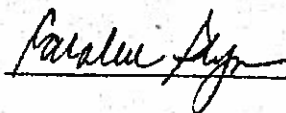
Dated: June 7, 2017
Ocean Grove, New Jersey



Joyce M. Klein

State of New Jersey }
County of Monmouth } ss:

On this 7th day of June, 2017, before me personally came and appeared Joyce M. Klein to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.



CAROLINE E. GLYNN
NOTARY PUBLIC OF NEW JERSEY
I.D. # 2291875
My Commission Expires 10/1/2017