

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges

**BERNARDS TOWNSHIP SCHOOL
DISTRICT, BOARD OF EDUCATION,
SOMERSET COUNTY**

Petitioner,

-and-

BRENDA BRUNI,

Respondent.

AGENCY DOCKET
NO.: 207-9/17

OPINION AND AWARD

BEFORE: RUTH MOSCOVITCH, Arbitrator

Appearances:

For the Petitioner:

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For the Respondent:

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This matter comes before me on tenure charges brought under N.J.S.A. 18A:6-10, 6-11, 6-16, 6-17.1, 6-17.2 AND N.J.A.C. 6A:3-5.1 by Petitioner Bernards Township School District, Board of Education, Somerset County (the "District) against Respondent Brenda Bruni. The tenure charges at issue here were certified to the Bureau of Controversies and Disputes by the District on August 28, 2017. I was appointed the arbitrator to adjudicate this matter on October 2, 2017.

In this proceeding, I heard testimony from 5 witnesses over 2 days at the offices of the District in Basking Ridge, New Jersey. Both sides were represented by counsel

and were afforded the opportunity to call witnesses, present evidence and to cross-examine witnesses offered by the opposing party.

The District presented the testimony of Superintendent Nick Markarian and three Raritan Township police officers: Ismael Mendez, Anthony Moreno, and Ryan Garbolino. The District placed 19 exhibits into evidence, consisting of 18 documents and two video recordings. Respondent testified in her own behalf and placed 28 exhibits in evidence. All witnesses were sworn and their testimony was recorded by a court reporter.¹ The parties submitted post-hearing briefs on January 10, 2018. No objection has been made to the fairness of this proceeding.

TENURE CHARGES

FACTS COMMON TO ALL CHARGES

1. The charges stated herein are based upon my personal knowledge, on information and belief derived from personnel records and other records maintained by the District, including but not limited to those set forth in the accompanying Statement of Evidence, and other information imparted to me by and from other staff members.

2. At all times relevant, Bruni has been employed by the District as an Italian teacher at the William Annin Middle School and Ridge High School.

3. On March 22, 2017 at approximately 5:49 p.m., Bruni was operating a motor vehicle on Hillsborough Road in Raritan Township when she was stopped for speeding by the Raritan Township Police Department.

4. At the time of the stop, Bruni was unable to produce the vehicle registration or proof of insurance.

¹ The transcripts will be referred to as T1 for the November 20, 2017 proceedings and T2 for the November 30, 2017 proceedings.

5. The police officer noted that Bruni was very agitated throughout the motor vehicle stop. He observed her moving about within the vehicle and "fumbling though [sic] something" within the vehicle.

6. Bruni told the officer that she needed to get home to check on her mother-in-law and that she had left meatballs in the oven and the timer was about to go off. She threatened to leave the scene.

7. The officer advised Bruni that she was not free to leave the scene. He also called for backup,

8. At about 6:02 p.m., shortly after the backup offer [sic] arrived, Bruni sped off in her vehicle in direct contradiction of the police officer's instructions.

9. The two police officers then began a pursuit of Bruni in their respective vehicles, activating their emergency lights and sirens.

10. Bruni did not stop her vehicle and proceeded down Hillsborough Road, which eventually became Three Bridge Road, for half a mile with the officers in pursuit, reaching speeds well in excess of the posted speed limit.

11. Eventually, one of the officers was able to maneuver his car to head her off and force her to stop.

12. Even after exiting the vehicle, Bruni was slow to respond to the commands of the officers who had their guns drawn.

13. Bruni was handcuffed and placed in the rear of a patrol car. In the meantime, one of the officers smelled an odor of marijuana emanating from the inside of her vehicle. A further search revealed a metal "one hitter" pipe that resembled a white cigarette. Bruni admitted taking the pipe and putting it in her purse, although she denied smoking in the vehicle.

14. The officers spoke with Bruni's mother in law and confirmed that she was not in need

of medical attention or experiencing a medical emergency that would require Bruni to need to rush home.

15. Bruni was arrested, fingerprinted and processed at police headquarters. She was charged with the following criminal offenses arising out of the incident: eluding -3rd degree crime, possession of marijuana under 50 grams - disorderly persons offense, possession of drug paraphernalia - disorderly persons offense. She was also charged with the following motor vehicle offenses: careless driving, CDS in motor vehicle, failure to maintain lane, failure to exhibit documents, failure to signal turns and maintenance of lamps.

16. Details of Bruni's arrest subsequently appeared online and in the press and the school community, including students, became aware of her conduct.

CHARGE ONE

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

2. Bruni fled the scene and attempted to elude a police officer despite having been specifically instructed by the officer that she was not permitted to do so.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE TWO

3. The Board repeats the allegations set forth above and incorporates them herein by reference.

4. Bruni violated NJ.S.A. 2C:29-2b by knowingly fleeing and attempting to elude a police officer.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE THREE

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

2. Bruni was knowingly in possession of drug paraphernalia, namely a metal "one hitter" pipe that resembled a white cigarette.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE FOUR

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

2. Bruni violated N.J.S.A. 2C:36-2 by knowingly possessing drug paraphernalia.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE FIVE

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

2. Bruni's inappropriate and unprofessional conduct violated Board Policy 3210 in that she failed to treat all others with dignity, courtesy and respect and/or failed to conduct and present herself in a manner that would create a positive impression of the school district.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE SIX

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

2. Bruni's conduct violated Board Policy and Regulation 3230 in that she engaged in conduct that, if given publicly, would tend to have an adverse effect upon pupils or the school community.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE SEVEN

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

2. Bruni's conduct violated Board Policy and Regulation 3281 in that she engaged in inappropriate conduct and conduct unbecoming a staff member.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE EIGHT

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

2. Bruni failed to exercise the level of behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children.

3. Bruni's actions put the police officers and members of the public at risk of

harm.

4. Bruni acted carelessly and recklessly.
5. Bruni violated the public trust
6. Bruni's actions demonstrate that she is no longer fit to serve as a teaching staff member or a role model for her pupils.
7. Bruni's actions were sufficiently flagrant and egregious to warrant the termination of her employment.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE NINE

1. The Board repeats the allegations set forth above and incorporates them herein by reference.
2. All of the foregoing Charges and the Facts Common to All Charges, jointly and severally, demonstrate a series of infractions on March 22, 2017 constituting unbecoming conduct and/or other just cause warranting her dismissal from employment.

The foregoing conduct by Bruni constitutes conduct unbecoming a teaching staff member and/or other just cause for dismissal.

CHARGE TEN

1. The Board repeats the allegations set forth above and incorporates them herein by reference.

The foregoing conduct by Bruni constitutes other just cause sufficient to warrant her dismissal from employment.

ISSUE PRESENTED

The Parties agreed upon the following statement of the issue:

Whether the Board has demonstrated by a preponderance of the credible evidence that the Respondent has engaged in conduct unbecoming a teaching staff member. If so, what shall be the penalty? If not what be the remedy?

FACTUAL BACKGROUND

The Respondent. Respondent is a tenured teacher of Italian to both middle and high school students in the District. She has been so employed for the past 15 years. (T2 at 78) She holds a Masters degree in Italian and a teaching certificate for grades K-12. (T2 at 77) She has no disciplinary history. (T2 at 32)

The District's witness, Superintendent Markarian, testified that there is no issue about the quality of her teaching or any other aspect of her professional performance. (T2 at 31-2, 50) His testimony is supported by documentary evidence of commendations for her teaching ability over many years, including Annual Evaluations from April 2005 through August 2014, and classroom observations from October 2004 through October 13, 2011. (R. Ex. 1-21) The Evaluations contain such praise as:

- “demonstrated excellent rapport with her students” (R. 1);
- “inspires the students’ interest and desire to learn” (R. 2);
- ”Her lessons were consistently well planned and executed” (R. 3);
- “flexibility and collaboration with colleagues make her an asset to the program” (R. 4);
- “contributes to the school community” by participating in school-wide activities (R 7); and
- motivates “students with her upbeat personality and friendly nature” (R. 8).

Also in the record is a lengthy letter to the District from one of her students, urging that Respondent be retained and praising her as an “exceptional teacher” who has “changed my attitude toward learning tremendously.” (R. 24) The student’s mother wrote a separate letter to the District, urging it to consider Respondent’s “long, stellar record” and retain a teacher who “is one of those ‘once in a lifetime teachers.’” (R. 25)

The Incident. The incident giving rise to the present charges occurred on March 22, 2017. That day, Respondent was alone with her mother-in-law at their home after the end of the school day. Her husband had taken their boys to baseball practice.

Respondent lives with her husband and children in a home in Hillsborough, New Jersey. Her husband’s mother moved in with them in the fall of 2016 after losing her husband. (T2 at 80-2) The mother-in-law suffers from Parkinson’s (T2. at 81) and has exhibited symptoms of weakness, confusion, and some dementia (R. 22). She also has fallen down and had accidents. (T. 22, T2 at 91-2) Respondent’s husband is a self-employed contractor in the landscaping business, who uses his truck to transport workers on jobs. At that time of the year, in March, he had few jobs and generally was home with his mother (T2 at 116), although he would leave her alone for short periods of time in the mornings to run errands while she napped. (T2 at 115)

On the afternoon of March 22, the mother-in-law had been disoriented after a nap, but when Respondent got home from work and played music for her and put on the television, she was “okay.” (T2 at 97) Respondent used her own cell phone to play the music. (T2 at 98–99) Respondent was cooking meatballs for her mother-in-law, and had the dish in the oven with a timer on. (T2 at 97) Realizing that she needed to go to a store to buy canned tomatoes, Respondent got in her husband’s truck and drove to a nearby supermarket. She felt it was safe to leave her mother-in-law alone for that brief

period of time: she did not expect to be gone more than 25 minutes, thinking she would return before the timer was due to go off. (T2 at 99-100) Respondent left her phone at home so that her mother-in-law could continue to listen to music. (T2 at 101)

On the way back from the supermarket, Respondent was observed speeding and was pulled over by officer Ismael Mendez of the Raritan Township police force. (T1 at 28) Officer Mendez approached the car to ask Respondent for her car registration, insurance and drivers' license; Respondent provided her drivers' license. Almost immediately, Respondent told the officer "My mother-in-law is home alone, she has Parkinson's and she has hallucinations." (T1 at 34, 105) Respondent was worried that the oven timer going off might disorient her mother-in-law or cause her to panic. (T2 at 100)

Officer Mendez returned to his squad car to write Respondent a ticket. (T1 at 32) While doing so, he observed Respondent moving from the drivers' side of her vehicle to the passenger side and returned to ask her if she was okay. (T1 at 34) Respondent asked if the officer could follow her home so that she could check on her mother-in-law, and issue the summons there. Officer Mendez denied that request and called for backup. (T1 at 34)

As Officer Mendez was in his car checking Respondent's record, he was joined by another Raritan Township police officer, Anthony Moreno, who drove up in a separate vehicle. Officer Moreno got out of his car, approached Officer Mendez's vehicle on the passenger side, and asked what was going on. As he did so, Respondent drove off in her vehicle. (T1 at 37-8, 118)

The two officers got into their respective vehicles and pursued her with their lights and sirens on. At times their driving exceeded 50 mph. (T1 at 38-40) Their

pursuit lasted no more than a mile and a half, perhaps 2-3 minutes (T1 at 38; 118-9); then Officer Moreno pulled in front of Respondent's vehicle and she stopped. At the time she stopped, she was across the street from her home. (T1 at 42) The officers drew their guns and ordered Respondent to get out of her car and kneel on the ground, with her hands up. She complied (T1 at 44-45, 121-22), but immediately started talking about her mother-in-law, wanting to check on her inside the house. (T1 at 122) The videos confirm that Respondent spoke to the officers several times about her concern for her mother-in-law, including while she was handcuffed in the back of the squad car, and repeatedly asked them to check on her well-being, explaining that the oven was on and a timer would go off. The officers did not tell Respondent they would check on her mother-in-law and made no effort to do so, having decided for themselves that the situation was not an emergency. (T1 at 59-60).

Meanwhile, the officers searched Respondent's vehicle. Officer Mendes testified that he had not observed any odor of marijuana when he initially stopped Respondent (T1 at 97) nor did he see any sign of impairment. (T1 at 100, 148) However, Officer Moreno testified that he smelled a faint odor of marijuana when he opened the vehicle door. (T1 at 126) That led the officers to search the vehicle carefully. The officers also searched Respondent's purse, where they found a small, white metal tube, 2.5 inches in length, smaller than, but shaped like a cigarette, which they identified as a "one-hit" pipe used for smoking marijuana. (T1 at 77, 80, 128, 130) Officer Moreno observed some burnt plant residue in the pipe, which he believed to be marijuana. (T1 at 129) There was also a dog in the vehicle.

Respondent testified that she had found the pipe in her husband's truck some time before March 22 – perhaps a week or two earlier. (T2 at 119) Her husband

transports workers in the truck, and Respondent did not know to whom the pipe belonged. (T2 at 105) She knew that the pipe could be used to smoke marijuana but also tobacco. (Tr. 120) She put the pipe in her purse intending to dispose of it, so that her husband would not get into trouble. (T2 at 105, 120) She then forgot about it. (T2 at 105)

Eventually, after more than twenty minutes had gone by, Officer Moreno returned the dog to Respondent's home and spoke with Respondent's mother-in-law, who appeared to him to be okay, not in any distress. (T1 at 133-4)

Two video cameras on the front of Officer Mendez's patrol car and another inside the car facing the passenger seat as well as a microphone on Officer Mendez's person recorded his initial stop of the respondent, his chase of her vehicle after she drove off, and her behavior while sitting in the back of the car after being placed under arrest. Those videos were entered into evidence as SD Ex. 19a and played for me during the hearing. Another camera on Officer Moreno's car similarly recorded the chase and stop. That recording was entered into evidence as SD Ex. 19b and played for me during the hearing. The recordings confirm Respondent's frequent requests to check on her mother-in-law and growing agitation as the stop went on.

Eventually, the officers transported Respondent to the police station for booking. She was charged with: 1. Possession of less than 50 grams of marijuana; (2) possession of drug paraphernalia; and (3) knowingly attempting to elude a patrolman." (D. 10)

Shortly after this incident, Respondent wrote to the Superintendent and District Board, expressing remorse for her conduct on March 22, saying in part:

Out of fear for the safety of my mother-in-law I made a grave mistake and decided to drive the short distance home instead of waiting for the officers to complete their traffic stop. I can't take that decision back, but please know that it

was done out of concern and I never imagined it would escalate to the point it did. I made a mistake. I absolutely acknowledge it, but I can only ask that you consider the entire picture. I made this irrational decision based on the safety of my mother-in-law.

Although I cannot change what I did I can accept responsibility for my transgression and I am asking for a second chance.

(R. 23, T2 at 53)

Disposition of the Criminal Charges. In the Superior Court of New Jersey, Hunterdon County, on May 15, 2017, the controlled substance and paraphernalia charges were dismissed. (R. 27, p. 7 or 7) On the same day, Respondent, who had no prior criminal record, was admitted into one year of Pre-Trial Intervention (PTI) on the charge of “Eluding,” with the following conditions:

- Respondent was required to submit to random urine screens for the duration of the PTI;
- She was required to perform 50 hours of community service;
- She was required to report to her probation officer as directed; and
- Pay \$125 in court costs;

(R. 27, p. 1-4) During PTI, her drivers’ license was not suspended. (R. 27, p. 3 of 7) At the successful conclusion of the one-year period, the remaining eluding charge will be dismissed as well.

Current Tenure Charges. Superintendent Markarian ordered Respondent to be suspended pending investigation, when he learned from Assistant Superintendent Sean Siet that she had been arrested after a traffic stop. (T2 at 34-5) Superintendent Markarian testified that Siet showed him a couple of online news reports about the arrest, which they reviewed together. (S.D. Ex. 17, 18; Tr. 11.30.17 p. 7-34-36)

According to Markarian, Siet also told him that news of the arrest “was out there among the staff. “ (T2 at 38)

Before making his recommendation to the District, Superintendent Markarian reviewed the police reports and videos when they were made available to him. (T2 at 39-40) He then recommended that tenure charges be brought against Respondent for Conduct Unbecoming. (T2 at. 42)

POSITIONS OF THE PARTIES

The District argues that it has met its burden to prove the tenure charges by a preponderance of the credible evidence in that (1) Respondent’s actions on March 22, 2017 violated her position of public trust as a role model for her students, when she exhibited a blatant disregard for the law and a serious lack of judgment by eluding the police and possessing drug paraphernalia, actions that are anathema to the responsibilities of a teacher; (2) Respondent’s excuse that she was concerned about her mother-in-law and needed to check on her does not survive close scrutiny, since she left her mother-in-law alone earlier in the day to work, and again to go to the store, and, in fact, when the police officer checked on her mother-in-law, she was fine; it is more probable that her conduct was motivated by her concern that the police would discover the marijuana pipe in her purse; (3) Respondent’s testimony regarding the pipe was contradictory and illogical, as she testified that the pipe belonged to her husband, could be used for smoking tobacco, and that she was concerned her husband would get in trouble; yet if it was a tobacco pipe, there was no reason to fear that her husband would get into trouble; (4) Respondent’s admission that she had carried the pipe in her purse for two or three weeks is an admission that she brought drug paraphernalia into the school with her every day; (5) the fact that Respondent was allowed to enter into Pre-

Trial Intervention and had the drug charges against her dismissed is of no relevance in this matter; as the Commissioner of Education has held, it is the fact of unbecoming conduct that is relevant, not the disposition of criminal charges; in this case, there is no dispute that Respondent engaged in the conduct charged and that such conduct is unbecoming a teacher; (6) termination is appropriate here because of the egregious nature of Respondent's misconduct; her decision to disobey a police officer and leave the scene constituted a serious disrespect for law enforcement; further, requiring the officers to chase her for some miles on country roads exposed the officers, herself and the public to danger; (7) the fact that Respondent has no prior disciplinary record and is a satisfactory teacher does not negate the egregious conduct she engaged in on March 22, 2017; a single incident, even outside the school setting, can justify termination when the incident involves egregious conduct, as took place here. For all these reasons, the Arbitrator should uphold the charges and sustain the decision of the District to terminate Respondent from her tenured teaching position.

On the other hand, the Respondent argues that the circumstances of March 22, 2017 do not warrant Respondent's termination from her tenured teaching position in that (1) while there is no issue of fact that Respondent did drive away from the police on March 22, 2017, and was found to be in possession of what appeared to be a "one-hit" metal pipe with a trace residue of plant substance inside, these facts alone do not justify the termination of her position as a tenured teacher; indeed, there is no competent evidence from any laboratory to prove that the plant substance was in fact marijuana; and while a single, sufficiently flagrant violation, even outside of school, may be grounds for termination, generally progressive discipline is applied to findings of unbecoming conduct, particularly where the misconduct does not involve cruel, premeditated or

vicious actions and where, as here, the employee has a long, discipline-free record; (2) as the Superintendent freely acknowledged, the District had no concerns regarding her teaching performance; further, Respondent has received very positive feedback in annual performance reviews, and one of her students and that student's mother, wrote to the District to express their strong support for her positive impact in the classroom;

(3) the court proceedings arising out of the misconduct, while not binding upon the District, are nonetheless relevant here: Respondent was admitted into a one-year Pretrial Intervention program which will soon terminate, leaving her without any criminal record; the drug charges were all dismissed at the same time; Respondent has not pled guilty to any offense, that not being required for Pretrial Intervention; (4) the circumstances surrounding Respondent's arrest on March 22, 2017 were all captured on video; the videos and the testimony of the arresting officers confirm Respondent's testimony that she was agitated and worried about her mother-in-law as the stop was prolonged by the officers; further, when Respondent drove away from the officers, she drove directly to her home, and was across the street from her home when the officers stopped her again; while her actions were unwise, there is absolutely no grounds for concluding that she was motivated by anything other than concern for her mother-in-law; (5) Respondent wrote to the District after her arrest promptly and sincerely acknowledging that she had made a mistake – an irrational decision based on concern for the safety of her mother-in-law – and pledging to work tirelessly to accept responsibility for that mistake and set a positive example for her students in the future;

(6) The District has failed to prove that it notified its employees, including Respondent, of its disciplinary policies or applied discipline uniformly against its arrested employees.

For all of these reasons, termination is not warranted, and the Arbitrator should exercise her discretion to issue a penalty less than discharge.

DISCUSSION

There is no dispute about what happened on March 22, 2017: Respondent admits, and the arresting officers' testimony and videos confirm, that she drove away from police during a traffic stop after being ordered not to do so, and that a metal pipe – of a type the officers identified as used for smoking marijuana – was found in her purse. There is also no dispute that this conduct showed very bad judgment on her part. This was conduct unbecoming a teacher. The issue before me then is whether the District has sustained each and every part of the ten charges brought against Respondent, and whether the proven misconduct warrants the ultimate penalty of loss of Respondent's tenure as a teaching professional. I find that it does not.

There is no doubt that Respondent displayed very poor judgment on March 22, 2017 when she drove away from patrol officers who had stopped her for speeding. But Respondent explained why she did so – that she was very concerned about having left her ailing mother-in-law alone in the house with the oven on and a timer about to go off. This was the same explanation she gave to the officers at the time of the stop, and her testimony is supported by theirs and also by the video and audio recordings of the arrest. Her reasons do mitigate her misconduct on that day.

The District urges me to find that her real reason for leaving the scene was something else, perhaps her fear that the officers would find the pipe in her purse. But there is absolutely no basis for the District to speculate on such a motive, nor for me to accept that speculation. The respondent stated her concern for her mother-in-law repeatedly at the beginning and throughout the stop; the officers agree that she

explained the situation to them; and the videos and audio completely support her story. Indeed, that she became more agitated as time went on and the officers continued to ignore her requests to check on her mother-in-law is also substantiated by the officers' testimony and the videos. The officers plainly did not think the situation was as urgent as she did, and they prolonged the stop, first waiting for backup, and then after the arrest, waiting more than 20 minutes before going to the house to check on her mother-in-law as Respondent requested. Her agitation was understandable in those circumstances; her conduct was not venal or corrupt – it was simply poor judgment.

The District has cited cases where a loss of tenure has been sustained for a single instance of misconduct outside of and unrelated to school. In particular, the District relies upon a 2005 Hearing Officer decision upholding termination of a tenured teacher for a single incident involving failure to stop his vehicle when pursued by an arresting patrolman. That decision was subsequently upheld by both the Commissioner of Education and the Superior Court of New Jersey, Appellate Division, in an unpublished opinion. *In the Matter of the Tenure of Thomas Wachendorf, 2007*. That case is not binding precedent. But in any event, it is worth noting that the case is factually distinct from the present one in several important respects. First, the tenured teacher there taught in a correctional facility and was an employee of that facility; adherence to the orders of law enforcement officials must be of prime importance for employees of such facilities. Second, he not only failed to stop, but was deemed to have resisted arrest when he finally did stop his car and was slow to get out in response to the patrolman's order. Finally, he failed to report his arrest in a timely fashion as required by the rules,

Here when the Respondent drove away from the officers, she wasn't fleeing – she was driving to her home, where her ailing mother-in-law had been left alone. Of course,

she was not justified in taking off, especially when she had asked and was denied permission to do so. However, she was not otherwise uncooperative and did not resist arrest once she stopped her vehicle at her home. Finally, she did report her arrest as required. Thus, Respondent's conduct was not in fact as egregious as the conduct in *Wachendorf*.

Nor is there evidence to support the District's claim that Respondent's behavior after a traffic stop demonstrates "a series of infractions on March 22, 2017." This was a single incident; one, moreover, that took place outside of school and had no connection whatsoever to the school environment or community. The District has represented that the arrest was injurious to the school community. However, the only evidence that the school community knew anything about the incident was testimony from the Superintendent that he was informed of two online news articles and was told that Respondent's arrest was "out there" among staff. He had no direct knowledge or specific information about impact on any particular students or students or other members of the school community.

The District has argued, in Charge Six, that Respondent engaged in public conduct that "would tend to have an adverse effect upon pupils or the school community." It bases the "tend to have an adverse effect" standard on several policies that were admitted into evidence:

3210 – Teaching Staff Members Code of Conduct: the teaching staff member "Shall conduct and present himself/herself in a manner that would create a positive impression of the school district." (D. 12);

3230 – Outside Activities: teaching staff members "are advised to refrain from conduct, associations, and offensive speech that, if given publicly, would tend to have an adverse or harmful effect upon pupils or the school community." (D. 13);

3281 – Inappropriate Staff Conduct: the District “holds all school staff to the highest level of professional responsibility in their conduct with all pupils. Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district.” (D. 15)

While these policies appear to set forth self-evident standards of conduct, the Respondent correctly points out that there is no evidence in this record that Respondent was trained on or notified about these standards, which, according to Superintendent Markarian, are only maintained online. (T2 at 67) The Superintendent himself admitted that he did not review the District’s Discipline Policy before recommend the charges against Respondent. (T2 at 71) That policy, among other things, calls for the Superintendent to “deal with disciplinary matters on a case by case basis;” “provide, wherever possible, for progressive penalties for repeated violations;” and give notice “to the teaching staff member in ordinary and concise language of the “text of the statute, policy, or rule that the member is alleged to have violated.” (R. 28) The Superintendent testified that he felt no need to review the policies in relation to Respondent’s conduct because:

“I just felt that this was egregious and I couldn't think of a better example of conduct unbecoming, honestly.”

(T2 at 71)

Before applying the ultimate penalty for violation of District policies, the District has an obligation to make certain that its policies are well known. It has not met its burden to prove that it did so in this case. Further, while a single instance of egregious conduct can trump the need for notice and progressive discipline, I find that Respondent’s conduct here was not so outrageous, motivated as it was by Respondent’s concern for her ailing mother-in-law and the officers’ failure to act on her repeated pleas to check on her mother-in-law’s well being. Finally, immediate termination is

inappropriate in light of the Respondent's lengthy history as an excellent teacher, with no prior discipline.

I am also unpersuaded by the District's argument that Respondent should be held accountable for having carried the marijuana pipe in her purse for two weeks, including into school. This argument is based upon her testimony that she found the pipe in her husband's car, placed it in her purse intending to dispose of it, but then forgot about it. We have only Respondent's guess as to when she put the pipe in her purse. There is no evidence that anyone in the school knew about the pipe or that Respondent ever took it out of her purse. Significantly, the district has not charged her with possession of the pipe at school.

The Respondent has cited other cases where conduct was arguably more egregious and/or directly involved students, yet the teacher was not terminated. In each case, it is the totality of the circumstances that must be considered.

Here, we have conduct that did not touch any students or other members of the school community. The conduct was a single instance of poor judgment – motivated by concern for an ailing family member – that will not result in any criminal conviction. The teacher is a long-term employee with a stellar record of positive interaction with her students and her peers and no history of discipline of any kind. Given all of those circumstances, termination is simply too harsh a penalty.

In light of the foregoing, I make the following judgments regarding the Charges:

Charges One and Two – the allegations contained therein regarding fleeing the scene and attempting to elude a police officer are sustained. This conduct constitutes conduct unbecoming a teaching staff member, but does not constitute just cause for dismissal;

Charges Three and Four– the record evidence supports that Respondent was in possession of drug paraphernalia. However, the evidence further does not support that Respondent was “knowingly” in possession of drug paraphernalia” at the time of her arrest, in that her testimony was that she had placed the pipe in her purse at an earlier time and forgotten about it, and there is no evidence in this record that the pipe in fact contained a controlled substance. Accordingly these charges are only sustained to the extent that Respondent was in possession of a metal pipe of a type used for smoking marijuana; the remaining allegations are not sustained and are dismissed.

Charge Five – the allegation that Respondent’s conduct violated Board Policy 3210 in that she failed to treat all others with dignity, courtesy and respect and/or failed to conduct and present herself in a manner that would create a positive impression of the school district is not sustained in that the District failed to prove that Respondent was made aware of that policy or that her conduct created a negative impression of the school. Accordingly, this charge is dismissed.

Charge Six – the allegation that Respondent’s conduct violated Board Policy 3320 in that she “engaged in conduct that, if given publicly, would tend to have an adverse effect upon pupils or the school community” is not sustained in that the District failed to prove that Respondent was made aware of that policy or that the conduct became public or had any adverse effect upon pupils or the school community. Accordingly, this charge is dismissed.

Charge Seven – the allegation that Respondent’s conduct violated Board Policy 3281 in that “she engaged in inappropriate conduct and conduct unbecoming a staff member” is not sustained in that that the District failed to prove that Respondent was

made aware of that policy or that the conduct created a negative impression of the school. Accordingly, this charge is dismissed.

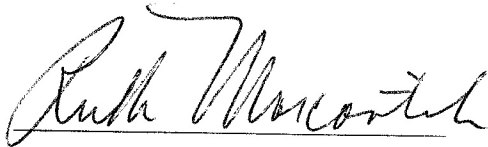
Charge Eight – the allegations in subparts (3) that Respondent ‘s actions “put the police officers and members of the public at risk of harm;” and (4) that she “acted carelessly and recklessly” are sustained. The remaining allegations of this charge in subparts (2) that she “failed to exercise the level of behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children;” (5) “violated the public trust;” (6) “demonstrate[d] that she is no longer fit to serve as a teaching staff member or a role model for her pupils; and (7) her actions “were sufficiently flagrant and egregious to warrant the termination of her employment are not sustained. Those parts are dismissed.

Charges Nine and Ten incorporate by reference the earlier charges. As set forth above, the sustained allegations in Charges One, Two, and portions of Three, Four and Eight do constitute conduct unbecoming a teaching staff member, but do not constitute “just cause” or “other just cause” for dismissal.

For the sustained charges, the appropriate penalty is for Respondent to serve a disciplinary suspension without pay for two months. In that Respondent has already been suspended with pay for many months, she may reimburse the District in lieu of serving the actual suspension.

AWARD

The District has established the allegations in Charges One, Two and portions of Three, Four, Eight, Nine, and Ten. The District has failed to establish that the proven allegations constitute cause sufficient to warrant Respondent's dismissal from employment. Instead, the appropriate penalty for the proven conduct is a two-month suspension without pay.



Ruth Moscovitch, Arbitrator

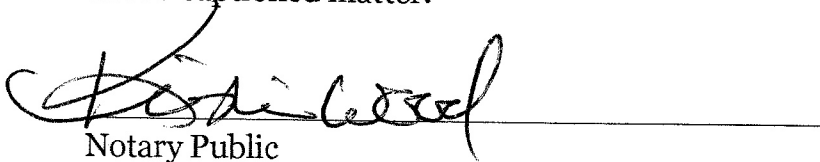
KRISTIN E. WOOD
Notary Public, State of New York
No. 01WO6342711
Qualified in Nassau County
Commission Expires May 23, 2020

Date: February 9, 2018

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On February 9, 2018, RUTH MOSCOVITCH, whom I know, came before me and acknowledged that she executed the foregoing as and for her Opinion and Award in the above-captioned matter.



Notary Public
My Commission expires