#138-13

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

In the Matter of the Arbitration Between

SCHOOL DISTRICT OF THE CITY OF BRIDGETON,

Petitioner

AND

NICHOLAS BROWN

Respondent

Agency Docket: 5-1/13

OPINION

AND

AWARD

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

APPEARANCES:

FOR THE PETITIONER:

A. PAUL KIENZLE, ESQ.	COUNSEL FOR PETITIONER
THOMASINE JONES Ed.D	SUPERINTENDENT OF SCHOOLS
CYNTHIA WILKS	DIRECTOR OF ATHLETICS
HASSAN HAMEED-EL	PARENT
HASSANA HAMEED	STUDENT
DANYEL THOMAS	STUDENT
MARK WILLIS	DIRECTOR OF TECHNOLOGY
ROBERT STEVENS	DIRECTOR OF SAFETY/SECURITY
JOHN WILSON	DISTRICT SOFTWARE SPECIALIST
BRIAN HALPIN	COMPUTER FORENSICS CAPSICUM GROUP
NEDD JOHNSON	ASSISTANT SUPERINTENDENT

FOR THE RESPONDENT:

NED ROGOVOY, ESQ.	COUNSEL FOR RESPONDENT
NICHOLAS BROWN	RESPONDENT

PROCEDURAL BACKGROUND

The instant matter arises out of tenure charges filed by the School District of the City of Bridgeton, hereinafter referred to as the Petitioner/District, against Nicholas Brown, hereinafter referred to as the Respondent/Mr. Brown.

The record reflects that Mr. Brown was a graduate of Bridgeton High School and received a full athletic scholarship to Essex County College, a two year institution. He transferred to Norfolk University, also with a full athletic scholarship. He was certified as a physical education and health teacher by the State of New Jersey in 2009 and was hired by the Petitioner on September 14, 2009. He received tenure in September of 2012.

On September 17, 2012, Tanaya Tukes, a parent of a student who had graduated from Bridgeton High School sent a letter to Thomasina A. Jones, Ed.D, Superintendent of Schools, concerning a situation with her daughter, Tatiauna Nock, and the Respondent. Ms. Tukes also stated she has one child STILL in the school system. In her letter, Ms. Tukes indicated that when she was opening up her Facebook tab she realized that it was not her Facebook page but her daughter's. She read a message that said, *"When you going to give me some P...y?"* When her daughter came home that night she discussed the message with her daughter who said *"she likes talking with him."* Ms. Tukes indicated that when she saw who the message was from she recognized that the Respondent was Tatiauna's spring track coach and also her younger daughter Deja's track coach. Ms. Tukes was very concerned about the message and wanted to know *"what would happen when her younger daughter reaches 18 and graduates from school?"*

On October 17, 2012, at a meeting with Mr. Brown, his representative, the Superintendent and Assistant Superintendent Johnson, Mr. Brown admitted *"making inappropriate comments to students via electronic media."* (see October 18, 2012, suspension letter) On January 18, 2013, the Petitioner passed a resolution certifying tenure charges against the Respondent. On that same date, the Petitioner submitted a Certification of Determination to the Commissioner of Education certifying the following:

1. The Bridgeton Board of Education has determined that probable cause existed to credit the evidence in support of the charges and that the charges and evidence in support thereof against Nicholas Brown are sufficient and true, in fact, to warrant dismissal or reduction in salary of Nicholas Brown.

3. The Board of Education suspended Nicholas Brown without pay on January 8, 2013.

The Superintendent of Schools certified charges of conduct unbecoming Mr. Brown as follows:

Charge No. 1: Conduct unbecoming a teaching staff member

Charge No. 2: Accessing Facebook, numerous private and non-private non-school related websites.

Charge No. 3: Accessing pornography, x-rated videos and materials.

Charge No. 4: Maintaining pictures of scantily clad females on his school issued computer.

Charge No. 5: Communicating with a former female track student and current female track athletes by using obscene and inappropriately suggestive language.

Charge No. 6: Making and engaging in inappropriate comments to female students and using profanity with students while they were under his supervision as a track coach.

On January 17, the Respondent submitted a response to the charges against him which stated:

"NICHOLAS BROWN, of full age, hereby certifies as follows:

1. Nicholas Brown admits that he did access different Facebook friends on his school computer while he was at home. It is alleged that while he did view certain movie sites and websites which were not pornographic whatsoever, pop-ups briefly appeared and were quickly closed. No inappropriate use was accessed during the school day if these are considered inappropriate. Nicholas Brown is an elementary physical education teacher. He did not use the computer for instruction; his computer has its own access code and the computer was never available to the students. Also, there is a filter in the school which blocks inappropriate domains.

2. Tatiauna Nock is an adult and the exact communications are just not exact.

3. Nicholas Brown does admit that following a poor performance by the girls track team which he coached on May 14, 2012 at Widener College, he did say that his team ran like "pussies" which he acknowledged was inappropriate, but was meant to give them the message that they were not trying as hard as they should, and there was no sexual connotation. The school investigated the incident. Mr. Brown was forthcoming and was granted tenure the following year by being rehired. That incident should have no sexual connotation in this proceeding."

In accordance with Chapter 26, P.L. 2012, upon receipt of the written response to the Charges, the Commissioner of Education shall review the Charges and the response, and if he determines that they are sufficient to warrant dismissal or reduction

in salary of the person in charge, he shall refer the case to an arbitrator pursuant to Section 22 of P.L. 2012 c.26 (C.18A:6-17.1).

On February 4, 2013, Kathleen Duncan, Director of the New Jersey Department of Education, Bureau of Controversies and Disputes, appointed the undersigned as Arbitrator in the instant matter.

A hearing was held on March 14, 2013, and in accordance with Chapter 26, the Arbitrator has a maximum of 45 days in which to render an Award in the matter at bar.

N.J.S. 18A:6-10:

> *No person shall be dismissed or reduced in compensation....*
>
> *Except for inefficiency, incapacity, unbecoming conduct or other just cause, and then only after a hearing held pursuant to this sub article, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as this sub article provided.*

ISSUE

Was the Respondent's conduct unbecoming a teacher, as well as being unprofessional, and warrant dismissal pursuant to 18A:6-10? If not, what shall be the remedy?

SUMMARY OF FACTS

On May 30, 2012, Cynthia Wilks, the Supervisor of Athletics, sent a Memo to the Respondent with a copy to Human Resources which stated,

> *"Following our conversation on May 14, 2012, it is vital that you are cognizant of your language whenever addressing your student athletes. Although athletics can bring out a very competitive environment, as the adult and the coach, you must always keep your composure and remain professional at all times. This letter of warning is being placed in your file."*

Ms. Wilks testified that in the spring of 2012, she believed that the Respondent was on tenure, when he in fact he did not receive tenure until September of 2012. She also testified that she did not talk with any student athletes about the Respondent and did not believe there were any sexual connotations in any of Mr. Brown's comments toward the student athletes.

Mr. Hassan Hameed-El testified that his daughter was on the track team and that she told him that Mr. Brown cursed at the athletes, called them *"bitches"*, called his daughter a *"punk"* and also stated that, *"If you were all males, I could talk to you differently."* He was very upset about the comments from the Respondent and indicated that his daughter was crying, and that *"No one curses at my daughter."* He also testified that he did not speak to Mr. Brown until the ending of the track season.

Furthermore, Mr. Hameed-El also testified that Ms. Wilks has cursed at student athletes calling them *"bitches."*

Mr. Hameed-El testified his daughter Ms. Hameed confirmed her father's testimony concerning Mr. Brown's comments to her and the track team and also said that Mr. Brown, besides calling them *"bitches"* stated, I wish I could treat you like *"n _ _ _ _ _."* She was upset and also testified that Mr. Brown should not be allowed to call student athletes obscene words. In particular she did not appreciate when he would say to them, *"You are going to get your asses kicked."* Furthermore, she testified that she did not dislike Mr. Brown, but she would prefer for him not to be her track coach. She also felt that he should have been the bigger person and that attitude is part of coaching and that she did not appreciate his attitude.

Danyel Thomas, a 16 year old student, testified that when the Respondent was mad at the team he would call them bitches and other than that she never heard him use inappropriate language.

The record reflects that the Petitioner provides computers for staff and students. At the end of the school year teachers are to return their computers to the IT Department. Because Mr. Brown was working on curriculum, he kept that computer during the summer and returned it in September 2012. According to Mark Willis, the Director of Technology, staff members are required to sign a technology resources form indicating, *"I have read, or have had read to me, and/or have discussed the Acceptable Use Agreement and agree to use technology resources in an appropriate and responsible manner."* Parts of the Acceptable Use Agreement are two issues that Superintendent Jones felt Mr. Brown violated.

> *"Staff members will not harass another person. Harassment is persistently acting in a manner that distresses or annoys another person. If a staff member is told by another person to stop sending messages, they must stop.*
>
> *Staff members will not display, access or send offensive messages or pictures."*

The record reflects that Mr. Brown signed the Acceptable Use Agreement on September 13, 2011, and as Mr. Willis testified, that form is updated on a yearly basis.

Robert Stevens, the Director of Safety/Security for the Petitioner, testified that he was contacted by the Superintendent in the fall of 2012. He met with her and Assistant Superintendent Johnson, and they asked for an analysis of the laptop computer used by the Respondent. Mr. Stevens gave that laptop computer to Mr. Willis who in turn gave it to John Wilson, one of the IT Department members.

Mr. Stevens testified that he also took the Respondent's laptop computer to the Bridgeton Police Department, as well as the Cumberland County Prosecutor's Office. Neither entity could find any evidence of criminal activity on the Respondent's laptop. He also testified that there were no criminal charges filed against the Respondent.

Brian Halpin from the Capsicum Group testified concerning his involvement with the Respondent's laptop. Mr. Halpin is the Vice-President and Director of Computer Forensics for the corporation. He is also an attorney but does not practice anymore. He is a former FBI Agent and was trained at Quantico, Virginia in a one-year program on National Security, child-pornography and intellectual theft. He was hired by the District to find any evidence on Mr. Brown's laptop that he was communicating with students via Facebook. He testified, *"Our analysis of the Internet history and artifacts showed that there were pornographic websites being accessed by someone signed-in (profile or website sign-in name) as "nbrown". The analysis also recovered a list found under the profile of again "nbrown" that appears to be a Facebook Friends list which included the names of Tatiauna Nock and Ms. S.*[1] *No chat or communication was found between either Brown and Nock or Sadler. Finally, while Internet history shows browsing activity to pornographic sites, no pornographic file images were recovered."*

Mr. Halpin also determined that *"nbrown"* visited www.xnxx.com and www.pornhub.com websites over a four month period beginning July 5, 2012, and ending October 13, 2012.

Mr. Halpin also testified, *"Based upon the pornographic sites visited, one would expect to see some image files depicting pornography. However, Google Chrome*

[1] The record reflects that Ms. S. is a senior (2012-13 school year) at Bridgeton High School. Therefore, she will be indentified as Ms. S.

Incognito mode when used does not save files to Cache.[2] He further testified that the page file .sys did not render any pornographic images. One explanation for the recovery of no pornographic images is that a prior investigation of the computer was conducted on the original media subsequent to when Nick Brown no longer had possession of the computer. In fact, there are 7,296 files created on the computer since November 12, 2012, with 935 of the files created "nbrown" profile. Seven (7) files related to the investigative findings were added to "nbrown's" profile between November 13 and 14, 2012.

Moreover, Mr. Halpin testified that, *"the NTUSER.DAT file for "rfink" showed that a wipe utility program called CCleaner by Piriform was installed on September 6, 2012. The User Assist key reveals that the program was executed twice. The analysis of the two above-referenced Registry keys did not provide evidence regarding user "nbrown's" internet activity. Additionally, the registry did not provide evidence of a wipe utility executed by "nbrown".*

Capsicum concluded that, *"of the forensically-acquired image on the hard drive used by "nbrown", evidence was found of Internet activity to include pornographic websites. No pornographic images were recovered. There was Facebook activity for user "nbrown", keyword search hits for Nock and Ms.S return hits on what appear to be a Facebook Friends list. The name Ms. S. took additional Facebook hits where the name was part of a list of other Facebook user names that were "liking or commenting" on a post. No chat or communication was found between nbrown and either Nock or Sadler."*

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[2] When a user chooses to save a website using his or her Internet browser, the website page will then be cached to the user's computer and the user will not have to access the Internet to access the information on that web page.

Furthermore, the report indicated, *"There is evidence that the investigation was conducted on the original hard drive subsequent to nbrown no longer having possession of the computer. Literally thousands of files were created in November 2012 on the computer. Files and notes of the investigation were saved to the desktop for user nbrown, and investigative software tool, ChromeAnalysis was installed and executed. This would have cleared whatever evidence would have resided in the page file .sys such as pornographic images."*

The District introduced 15 exhibits as PD-1, et al., and for purposes of clarity I am referencing those as District exhibits. D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10 and D-11 show the Respondent accessing pornographic websites for the period of September 25, 2012, through October 14, 2012. Exhibits D-12 and D-13 are pictures of a female taken from Mr. Brown's computer. Exhibit D-14 is a copy of four pictures which the District alleges were scantily-clad females on Mr. Brown's computer.

John Wilson, the educational software specialist employed by the Petitioner, testified that he received the Respondent's laptop after the Bridgeton Police Department had examined it. He testified that he found Exhibits D-3 through D-14 on the Respondent's computer. Those exhibits referenced the pornographic websites that the Respondent visited in a period of time from September 25, 2012 through October 14, 2012, as well as pictures of females. He provided color copies of the females and those copies were introduced as Exhs. D-12, D-13 and D-14.

Mr. Halpin further testified that Capsicum took custody of the Respondent's computer on February 12, 2013, from Mr. Stevens at the Administration Building. The record reflects that rfink is employed as a Technical Coordinator and is assigned to

Broad Street School. Furthermore, the IT Department receives computers that teachers used the prior year and scrubs them so that when the computer is given to another teacher, it is clean and there are no images or documents on that computer.

These are the essential, uncontroverted facts in the matter at bar and the issue now comes to me for resolution.

POSITIONS OF THE PARTIES

For the Petitioner

The Petitioner strongly argues that the evidence is overwhelming that the Respondent is guilty as charged. He was accessing pornography, and he was maintaining pictures of, as the Superintendent alleges, scantily-clad females on a school-issued computer.

Assistant Superintendent Johnson testified that the Respondent stated at the meeting they had with him in October of 2012 that students sent texts to him indicating that they wanted to have sex with him. He responded by asking, *"Where would they have sex and he was married and his wife would be upset?"* The Respondent also admitted that he made the statement, *"when you going to give me some p_ _ _y?"* He also indicated that there was no proof offered that Mr. Brown had any personal or physical relationship with Tatiauna Tukes. Furthermore, Ms. Tukes graduated from Bridgeton High School on June 20, 2012, and at the time of her graduation she was 19 years of age.

Dr. Jones testified that the Respondent's conduct was unbecoming a teaching staff member. His response that the sexual comments were only for entertainment was

offensive to her and, most importantly, clearly and unequivocally shows that he does not have a clear understanding of his role as a teacher.

Dr. Jones also testified that the Respondent indicated that he would resign, and she was bothered by the fact that he did not resign. Dr. Jones also testified that the pictures introduced as Exhs. P-12, P-13 and P-14 are, as far as she is concerned, scantily-clad individuals, and she sees sexuality in the pictures. She also testified that none of the females in the pictures are students in the school system. Under cross-examination, Dr. Jones testified that there is no prohibition about utilizing Facebook between teachers and students. While it should be spelled out very clearly in a policy, it does not exist at the current time. Additionally, there is no prohibition against a staff member communicating via computer with a former student. Most importantly, Dr. Jones testified that computers are only searched when there is a valid reason for such search. In the instant matter, the letter from Ms. Tukes and the Respondent's comments to her at the meeting she had with him on October 17, 2012, establishes without reservation that the Respondent must be dismissed as a teaching staff member in the Bridgeton school district.

For the Respondent

The Respondent testified that he was in possession of the laptop computer from the District during the summer of 2012 because he was working on curriculum. He turned that laptop computer in to the IT Department in September of 2012 and received a different laptop computer. The Respondent testified that because he has Google Chrome software, he did transfer documents or images from the old laptop computer to the one that he received in September of 2012. However, he completed the transfer so

that he did not have to go through any sign-up procedures and would have instructional material from the prior laptop computer to be used on the newly assigned laptop computer.

Respondent strenuously testified that while he did access porn sites, he did not use the school computer to do so. Accessing porn sites was done with his personal computer at home. He also testified that he does not allow students to use his computer and did not give his password to anyone.

He admits that at Rowan College his use of the word *"p_ _ _ _ _s"* was inappropriate, but it was not meant in a sexual manner. It was meant to address the way the track team was performing at that particular meet.

He also testified that he has no physical relationship with anyone whose name was mentioned at the hearing and as he testified at the meeting with the Superintendent, it was meant in fun, in jest, there was no seriousness attached to anything he said to anyone.

The Facebook comments with Ms. S. were not done on the school computer, but on his personal computer. He does admit that he said to Ms. S, *"F_ _ k you, you are dumb as hell."* Respondent was contrite, candid, frank and remorseful at the hearing and asked that a careful analysis of what had occurred would show that he should not be dismissed and should be returned to work. Moreover, the Respondent argues that the incident that occurred was in the spring of 2012, yet he was granted tenure in September of 2012. It certainly stands to reason that if the incident was so searing and so severe, why would he have been granted tenure?

He also indicated that there is a filter for using computers at the schools, and they block any inappropriate domains. Therefore, if the Respondent had visited sites that the Petitioner finds to be offensive, the filters would have blocked them, and they would not have been utilized at the school setting.

Accordingly, the Petitioner asks that he be reinstated as a teacher in the Bridgeton School District.

DISCUSSION AND OPINION

At first glance, it appears that there is a significant amount of circumstantial evidence in the matter before me and a lot of that circumstantial evidence is being utilized by the Petitioner to find the Respondent guilty as charged. However, the facts in the record, the testimony of the students and the Respondent's admissions clearly and without reservation establish the matter at bar is devoid of circumstantial and hearsay evidence/testimony. This is not a case of Much Ado About Nothing. For some strange reason, the Bridgeton Police Department and the Cumberland County Prosecutor's Office could not access any information on that laptop, and no criminal charges were filed. However, John Wilson, an IT Specialist, testified that when he received the laptop after the Bridgeton Police Department had looked at it, he discovered visits to pornographic sites which were introduced as Exhibits D-3 to D-11.

The Respondent met with Dr. Jones and Mr. Johnson to discuss the letter from Ms. Tukes. After he was suspended, he also had to turn over any and all school related materials, possibly keys, as well as his laptop computer. Therefore, from October 18, 2012, forward, anything found on the Respondent's laptop computer cannot be assessed against the Respondent. As Mr. Wilson determined, from September 25,

2012, through October 14, 2012, the Respondent visited quite a few pornographic sites. The computer forensic analysis done by the Capsicum Group shows that the Respondent visited two porno websites, www.xnxx.com and www.pornhub.com over a four month period beginning July 5, 2012, and ending October 13, 2012. Mr. Wilson and the Capsicum Group confirm porn site visits by the Respondent with the laptop computer given to him by the District.

The Respondent also testified that he did not allow access to his computer by anyone and that he did not give his password to anyone. Therefore, the argument that has to be addressed is what computer was alleged to have been used for visits to the pornographic sites, as well as the comments made to students and one former student?

The record reflects that when a teacher turns in his or her laptop computer to the IT Department and receives a new one, the former is cleansed by the IT Department. The purpose of this to make sure that when the laptop computer is given to another staff member, there are no images on it, no documents on it, nothing on it that would prevent the new staff member from using that laptop computer.

When Capsicum Group took custody of the Respondent's computer on February 12, 2013, any comments, images and files found on that computer between the period of October 18, 2012, and February 12, 2013, as previously indicated, cannot be assessed against the Respondent. Even though Mr. Wilson, Mr. Stevens, Mr. Willis and Mr. Halpin testified as to what role they played in examining the Respondent's laptop, there was no testimony that anything on that computer after the dates referenced above were put on by Mr. Brown. In fact, the Capsicum report stated that there were 7,295 files created on the computer since November 12, 2012, and 935 of the files were

created with the nbrown profile. Seven (7) files related to the investigative findings were related to nbrown's profile between November 13 and 14, 2012. Moreover, I do not find that there was any breach in the chain of custody.

At page 5 of the Capsicum report, the following is found:

> *"The NT USER.DAT file for rfink showed that a wipe utility program called CCleaner by Piriform was installed on September 6, 2012. The User Assist key revealed that this program was executed twice."*

Think of the enormity of that statement. On September 6, 2012, the Respondent had a different laptop computer. He turned in the laptop computer that he used during the summer of 2012 to the IT Department and received another laptop. R. Fink was identified as an IT Department employee and, therefore, he was cleaning the computer assigned to Mr. Brown for the 2012-2013 school year. The record does not reflect the specific date in September that the Respondent turned in his laptop and received a new one. In fact, it might have been in the ending of August. Additionally, the Capsicum report further states, *"The registry did not provide evidence of wipe utility executed by nbrown."*

There are three computers in the equation before me. The first computer is the Respondent's personal computer, the second computer is the one the District gave him for the 2011-2012 school year, and the third computer is the one he received in September 2012. The Capsicum Group analysis was done on the laptop computer that the Respondent had in his possession on October 18, 2012. That could not have been the laptop computer assigned to him during the 2011-2012 school year. It had to be the one he received in either the ending of August or the beginning of September 2012.

Ms. Tukes was concerned, as she should be, about what would happen to her

younger daughter when she reached 18 and graduated from high school. She was most concerned about her younger daughter Deja receiving the same type or similar text as Tatiauna received from the Respondent.

The testimony of the students, and in particular, Ms. Hameed, was very telling. She specifically referenced the unprofessional comments that the Respondent made which offended her, and she further indicated that she does not want him to be her track coach anymore. The Respondent admitted that he made the statements about how they were running because he wanted to show them in his own way what they were doing wrong and how they were going to be perceived.

The Respondent's exuberances at athletic events can be looked at as a method of motivation as many coaches try to do with their young athletes. However, the comments here go beyond exuberances. The comments at center stage clearly establish that the Respondent does not understand how a teacher is to conduct himself when working with students or student athletes.

The uncontradicted testimony of Superintendent Jones is that Ms. S. was a student in the spring of 2012 and at the day of the hearing she was a senior at the high school. Therefore, when the Respondent sent a message *"F_ _k you, you are dumb as hell"* to Ms. S. in the spring of 2012, she was still a student in the school system, and he committed a serious transgression and is guilty of conduct unbecoming a teacher. Additionally his conduct was absolutely outrageous and unprofessional. It is of no moment that as he alleges, the comment was made on his personal computer.

Mr. Wilson did not offer a specific date as to when he received the Respondent's laptop computer from the Bridgeton Police Department, but it had to be before February

12, 2013, when Mr. Stevens gave that laptop computer to the Capsicum Group. Mr. Wilson's uncontradicted testimony was that there were twenty-five (25) incidents of Mr. Brown visiting a least two (2) porn sites from September 25, 2012 to October 14, 2012.

The off-duty conduct of Mr. Brown is not the District's concern unless that conduct actually creates a nexus with his role as a public school teacher. However, the testimony of Mr. Wilson does in fact show that the twenty-five (25) incidents of Mr. Brown visiting a least two (2) porn sites was found on the District's laptop computer assigned to Mr. Brown for the 2012-2013 school year. The District did not and probably could not legally access the Respondent's personal computer.

Mr. Brown argued that he used Chrome Goggle to transfer from his old laptop assigned to him during the 2011-2012 school year to the one assigned to him for the 2012-2013 school year. The Respondent also testified that he did not use the District's computer to access any porn sites. Granting him the benefit of doubt that he inadvertently transferred documents from his personal computer to the District's is a plausible answer as a stand-alone issue. Nevertheless, when the visits to the porn sites were discovered on his school issued laptop in conjunction with his comments to female students, as well as his admitted comments to Ms. S. lucidly establishes that he has relinquished his role as a public school teacher. He was no longer a responsible adult and member of the District's teaching staff and instead became a social media "pal."

There is nothing improper with a teacher emailing a student or track team members about school related materials/information. Yet Mr. Brown told Superintendent Jones that *"the students wanted to have sex with me and he asked them where we would have sex."* In his defense the Respondent told the students *"his*

wife would not like that." More importantly, Mr. Brown told Dr. Jones that the comments were meant to be entertaining.

The Respondent had recourse for assistance with the District's Counselors and/or administrative staff, but did not take advantage of that professional support and assistance. When Ms. S talked about having sex with him, the Respondent was obligated as a teacher and adult to seek administrative assistance. Moreover, he was obligated to tell her to stop, this is wrong, and I am required to notify the high school principal of your comments. Mr. Brown did nothing of the sort. He continued the sexual commentary by asking "*where would we have sex."*

I find it irresponsible that any teacher would believe those comments to be entertaining. The Respondent also told Dr. Jones in the presence of Mr. Johnson that he and Ms. S. cursed each other out on Facebook. Whether it was during the 2011-2012 or 2012-2013 school years, Ms. S was a student in the District. There is no defense to his unprofessional actions.

Ms. Tukes was very upset about the comments she found on her daughter's Facebook page and was concerned about her younger daughter who is also on the track team. That comment to Tatiauna Nock underscores Mr. Brown's propensity for making those types of comments. He made them to Ms. Nock, who is not a student in the District and to Ms. S., who is a student in the District.

The issue of inappropriate comments by a coach to the athletes was addressed by Ms. Wilks on May 30, 2012. She specifically stated, *"Although athletics can bring out a very competitive environment, as the adult and coach, you must always keep your composure and remain professional at all times."* The key word there is adult. He was

not the adult when he used that type of language to the students. It is completely inappropriate for a coach to call students *"bitches."* The District never followed up with any further testimony from Ms. Hameed when she said Mr. Brown also used the "N" word. I was somewhat stunned at the hearing that the District did not probe any further on that because that is more serious and more egregious than using profanity to the student athletes. Nevertheless, the District chose not to pursue that, but the record is replete of inappropriate comments from the Respondent to students.

The Superintendent took great umbrage with the pictures introduced as Exhs. P-12 through P-14, by referencing them as scantily-clad females that were found on the Respondent's school-issued computer. I find that D-12 and D-13 are nothing more than the rage existing in the Country today called sexting. It is obvious the way the pictures are being taken what is occurring there. More importantly, I don't find that the four pictures of the females introduced as Exh. D-14 represents scantily-clad individuals. Most importantly, none of the females (Exh. D-12, 13, 14) are students in the Bridgeton School District. While it might be argued that that is not the type of attire someone would wear to class, it certainly could be something that a student might wear to a school function such as a dance. I don't find that there is anything suggestive or sexual in nature at all with those pictures.

The Respondent is also charged with improper access to Facebook and numerous private and non-school related websites. There is nothing in the record and/or in the District's Acceptable Use Agreement to prevent something like that. In fact, Superintendent Jones also testified that there is nothing to prevent that from

occurring. Addressing it specifically from Facebook and nothing else, the Respondent did nothing wrong.

Accessing pornography, x-rated videos and materials must be reviewed in the context of that access. While the Respondent argued that he really did not do that with the school laptop computer, but rather his own computer, the testimony of IT Specialist Wilson and Mr. Halpin from the Capsicum Group established it was his school issued computer where visits to porn sites were found. The fact that there were no pornographic images on the school issued laptop computer is significant based upon Charge No. 3. The Capiscum Group's analysis (see Exh. C-3) relied upon heavily by the District presents exculpatory evidence that exonerates Mr. Brown from having x-rated videos and materials on the laptop computer assigned to him in September 2012.

Under the Executive Summary Heading section of Exh. C-3 the following appears:

> *"Finally, while Internet history shows browsing activity to pornographic sites, no pornographic image files were recovered."*

Moreover, in the conclusion section of Exh. C-3 the following appears:

> *"There is evidence that an investigation was conducted on the original hard drive subsequent to nbrown no longer having possession of the computer. Literally thousands of files were created in November 2012 on the computer. Files (notes of the investigation) were saved to the desktop for user nbrown, and an investigation software tool (ChromeAnalysis) was installed and executed. This work cleared whatever evidence would have resided in the pagefile.sys, such as pornographic images."*

As previously indicated any images found on the laptop computer assigned to Mr. Brown for the 2012-2013 school year after October 18, 2012, cannot be used as

part of the District's case in chief because the computer was no longer in Mr. Brown's possession. More importantly, R. Fink an IT Department employee assigned to the Broad Street School installed a wipe utility program called CCleaner by Piriform was executed twice on September 6, 2012.

The Impact of that wipe utility program cannot be overlooked. Mr. Fink was simply doing his job and clearing a laptop computer of any prior images/documents before it was assigned to Mr. Brown. However, and most importantly, the record is not clear as to when Mr. Brown returned the laptop computer assigned to him for the 2011-2012 school year in order to receive a laptop computer for the 2012-2013 school year.

Visiting a porn site cannot be considered the same as accessing x-rated videos and materials. Their simply is no evidence in the record to sustain that charge against Mr. Brown.

Even if the Respondent inadvertently transferred material from his personal computer to the District issued laptop computer (2011-2012 laptop computer) he returned that laptop to the District, which showed visits to twenty-five (25) porn sites.

Even though there is a filter at the school that would prevent some of that material from being utilized beyond Mr. Brown's laptop or for that matter on Mr. Brown's laptop, it does not excuse what he did. For whatever reason, a 32 year old married man needed to access porn sites from July 5, 2012, through October 13, 2012. I can't get into his mind to determine why he did that; it is not my role. It is my role to assess whether or not what he did was inappropriate and if tenure charges should be sustained.

The right of guaranteed privacy in one's home is not subject to debate. If the

issue before me was simply the twenty-five (25) visits to porn sites; a different result might be obtained. Nevertheless, this not a stand-alone case and all facts must be reviewed harmoniously.

I am sustaining the charge of making inappropriate comments to female students and using profanity with students when they were under his supervision as a track coach. The testimony of Ms. Hameed and Ms. Thomas clearly and lucidly show that he made those comments, and they were offended by them. Ms. Hameed was more offended than Ms. Thomas because of the way the comments were addressed to her and the manner in which they were addressed to her and where they were addressed to her. Had the Respondent talked to her one-on-one on certain issues, she might not have been as offended as she was, but she was offended because of what he did and how he did it.

Charge No. 5 of communicating with a former female track student and current female track athletes by using obscene and inappropriately suggestive language has to be bifurcated. Communicating with a former female track student cannot be part of the charges against the Respondent because that female no longer has a relationship with the school district. However, with Ms. S. that is another issue. She was student in the spring of 2012 and was identified as a senior by the Superintendent during the hearing. That was inappropriate for him to make those types of comments and for the Respondent to say it was only entertainment absolutely confirms that he does not have a true understanding of the role of a classroom teacher. To attempt to raise that type of defense in a critical issue such as tenure charges against a teacher is ludicrous at best. If that is entertainment, where does the Respondent draw the line on entertainment?

The first aspect of that Charge is dismissed. The second part, communicating with current female track athletes by using obscene and inappropriate suggestive language is sustained.

The Respondent's conduct in with students/athletes, and with visiting porn sites cannot be condoned utilizing a school-issued computer. If he wanted to do that on his own time, nobody could challenge what he wanted to do on his own. Whatever happens in his house, or with consenting adults, no one can challenge, unless, of course, there is a violation of some type of archaic law but that is a different issue. Nevertheless, what he did was inappropriate, irresponsible and absolutely unacceptable. A reduction of salary in the matter at bar would be a gratuitous insult to the facts in evidence.

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

AWARD

Charge No. 1: Conduct unbecoming a teaching staff member:

Sustained.

Charge No. 2: Accessing Facebook, numerous private and non-school related websites

Denied.

Charge No. 3: (a) Accessing pornography, (b) x-rated videos and materials.

Sustained (a), Denied (b)

Charge No. 4: Maintaining pictures of scantily clad females on his school issued computer.

Denied.

Charge No. 5: Communicating with a (a) former female track student and (b) current female track athletes by using obscene and inappropriately suggestive language.

Denied (a), Sustained (b)

Charge No. 6: Making and engaging in inappropriate comments to female students and using profanity with students while they were under his supervision as a track coach.

Sustained.

The seriousness of charges 1, 3 (a), 5 (b) and 6 establishes without reservation that the Respondent, Nicholas Brown, crossed the line more than once and is guilty of conduct unbecoming a teacher. Accordingly, of the six (6) tenure charges against the Respondent, four (4) are sustained and he is to be removed as a teaching staff member from the Bridgeton School District.

Dated: April 13, 2013

Gerard G. Restaino, Arbitrator

State of Pennsylvania)

County of Wayne) ss:

On this 13th day of April, 2013, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.

Judith K. Restaino

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Judith K. Restaino, Notary Public
Lake Twp., Wayne County
My Commission Expires Nov. 10, 2013
Member, Pennsylvania Association of Notaries