

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

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In the Matter of Arbitration Of
Certified Tenure Charges Between

**THE WOODBRIDGE TOWNSHIP
BOARD OF EDUCATION,**

Docket No. 368-12/12

Petitioner,

OPINION & AWARD

-and-

Issued: April 17, 2013

JOHN RADZIK,

Respondent.
-----X

ARBITRATOR:

Joseph Licata, Esq.

HEARING INFORMATION

Dates: March 5, March 6, March 21, March 26 and March 27, 2013

Time: 10:00 a.m.

Location: Woodbridge Municipal Office Complex (Council Chambers)

APPEARANCES

FOR THE WOODBRIDGE TOWNSHIP
BOARD OF EDUCATION

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FOR JOHN RADZIK

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INTRODUCTION

On December 20, 2012, pursuant to N.J.S.A. 18A:28-5 and 18A:6-10, et. seq., Petitioner, Woodbridge Township Board of Education (“Board”) filed with the New Jersey Department of Education (“NJDOE”), Bureau of Controversies and Disputes the following sworn Tenure Charges against John Radzik, a third grade and Academic Support Instruction (“ASI”) teacher assigned to Avenel Street School (Exhibit J1):

Charge I

With respect to the 2010 and 2011 NJ ASK tests, John Radzik discussed and disclosed secure test items both before and during the test administration, influenced examinees’ responses, and provided feedback, including hints about the correctness of examinees’ responses, as more specifically set forth below:

Count 1

According to witness accounts given to the OFAC investigators, during the 2010 NJ ASK test, Mr. Radzik allowed students to speak openly, discuss the test, and interact with each other in the room during the administration of the test. When students called out answers, Mr. Radzik would react as if he was not encouraging such actions; however, he would reply by making statements similar to “Aw, come on guys, you can’t tell everyone the answer to number five is A.”

Count 2

According to the OFAC investigators, the 2010 NJ ASK third grade security checklist receipt and return times on Day One of the LAL testing revealed that Mr. Radzik was in possession of the tests one hour prior to the other third grade classrooms.

Count 3

According to witness accounts given to the OFAC investigators, during the 2010 NJ ASK test, Mr. Radzik told stories to the class and encouraged

students to remember the stories. During the test, Mr. Radzik read the writing prompt, reminded the students of the story he told the day prior to testing, and recommended they use the story to complete the writing assignment.

Count 4

According to witness accounts given to the OFAC investigators, prior to handing out the tests on Day One of the MATH testing, Mr. Radzik drew a shape on the board and then discussed with the class two different ways smaller shapes could be assembled into the larger shape he had drawn. One of the Math problems on the Day One MATH test required students to assemble small colored shapes into a larger shape by way of two different combinations. The larger shape in the test was exactly like the one Mr. Radzik had drawn on the board.

Count 5

According to witness accounts given to the OFAC investigators, during the MATH test, Mr. Radzik read numerous consecutive “sample” questions and provided answers to the class in the beginning of each Math section. However, the Grade 3 Examiner Manual provided only one sample question in each new section of the MATH test.

Count 6

According to an analysis of the NJ ASK tests administered by Mr. Radzik in 2011 to six children, the children were inappropriately assisted, in that, on Day One of the LAL test, they were given a poem to read to themselves as Mr. Radzik read it aloud, and then afterwards given a writing task and asked to use the poem for ideas on writing. Analysis revealed a startling similarity on the students’ test responses.

Count 7

According to an analysis of the NJ ASK tests administered by Mr. Radzik in 2011 to six children, the children were inappropriately assisted, in that, on Day Two of the LAL test, Mr. Radzik gave them an open-ended writing task, resulting in them providing strikingly similar responses on the test.

Charge II

Each and every one of the foregoing allegations is incorporated by reference as if fully set forth herein. In addition to his personally engaging in the inappropriate conduct set forth above, John Radzik conspired with, acted in concert with and/or aided and abetted a fellow teacher, Lisa Sivillo, in undertaking such conduct.

Charge III

Each and every one of the foregoing allegations is incorporated by reference as if fully set forth herein. In addition to his personally engaging in the inappropriate conduct set forth above, John Radzik enticed, solicited, promoted and/or otherwise encouraged the participation of Stephanie Klecan, a newly hired, young teacher who happens to be his cousin, which resulted in her interference with students' work on tests through the use of non-verbal cues.

Charge IV

Each and every one of the foregoing allegations is incorporated by reference as if fully set forth herein. Each of the foregoing Charges and Counts individually warrants dismissal. Additionally, viewed in their totality within the context of Mr. Radzik's behavior, it is evident that he has been engaged in a pattern of unbecoming conduct and/or other just cause, also warranting dismissal. The allegations, jointly and severally demonstrate his unfitness to continue to serve in a position of public trust.

On January 3, 2013, Mr. Radzik's attorney filed an Answer to the Charges (Exhibit J2).

The Tenure Charges stem from the results of an investigation by the NJDOE's Office of Fiscal Accountability and Compliance ("OFAC") into alleged breaches of security concerning the administration of the NJ ASK standardized Math and Language Arts Literacy ("LAL") testing during the 2009-2010 and 2010-2011 school years at, among other locations, Avenel Street School.¹

¹ The NJDOE was aware of a then recent case out of Georgia where several teachers and/or test administrators were charged criminally for breaching test security and altering the outcomes of student scores. In addition to Avenel Street School, OFAC investigated (or was investigating) other schools in Woodbridge Township and throughout New Jersey.

In accordance with N.J.S.A. 18A:6-16, on January 14, 2013, the Director of the Bureau of Controversies & Disputes designated the undersigned Arbitrator to hear and decide the merits of the Board's request for the dismissal of Mr. Radzik from employment for unbecoming conduct and/or other just cause as set forth in the tenure statutes. A hearing was held on March 5, 6, 21, 26 and 27, 2012.

Board witnesses included OFAC Investigators Terresita Munkcasy and Jeffrey Gale, Mark Filoramo, a tenured music teacher, Stephanie Klecan, a proctor in 2010 and teacher-examiner in 2011 (as well Mr. Radzik's first cousin), Barbara McCormick, a fifth grade and Assisted Support Instruction ("ASI") teacher, Linda Netta, a Resource Center teacher, Robert Callahan, District Test Coordinator and Dr. Robert Zega, current Superintendent of Schools. I admitted in evidence Board Exhibits P1 through P20 (a)-(g). Mr. Radzik, Kimberly Derewsky, a third grade teacher, Gina Speers, a school aide and hall monitor during the 2010 NJ ASK, and "D.M.", a former third grade student present in Mr. Radzik's classroom during the 2010 NJ ASK, testified on behalf of Mr. Radzik. I admitted in evidence Exhibits R1 through R30.

The parties submitted post-hearing written summations on April 3, 2013 in lieu of oral closings. Both parties were expertly represented.

FINDINGS AND DISCUSSION

JOHN RADZIK'S EMPLOYMENT HISTORY

John Radzik holds certifications as both an elementary school teacher and as a Principal/Administrator. Radzik has been continuously employed by the Woodbridge Township Board of Education since the 2004-2005 school year. Radzik began his

employment as a teaching staff member and became tenured in that position commencing with the 2007-2008 school year. During the 2009-2010 school year, Radzik was a third grade teacher at Avenel Street School 4 and 5. During the 2010-2011 school year, Radzik was assigned as an ASI teacher for third and fourth grade students.

Radzik did receive an observation that reprimanded him for failing to clean his classroom at the end of the 2005-2006 school year. Radzik's annual review for the following school year, however, indicated that:

Mr. Radzik has made a remarkable recovery from the observation dated 8/29/06. Mr. Radzik is a respected member of the faculty and always willing to assist the students, his fellow staff members and the administration...(Exhibit R12).

Moreover, Radzik's observations and evaluations during subsequent years are positive:

Mr. Radzik was noticeably well-prepared and offered students with an engaging educational experience, using the Woodbridge Township School District's curricula. Mr. Radzik's lesson was outstanding, exemplary, and enjoyable to observe. Mr. Radzik created his own unique style to teach reading and writing; the observer was "blown away" by his instruction and student responses. (Exhibit R11).

Additionally, it was evident that Mr. Radzik had a strong background in the core curriculum of the lesson which enabled the students to receive a plethora of knowledge that can be spiraled into future lessons on geometry. Overall, Mr. Radzik's students were eager, motivated and on task during the entire lesson, and it is a pleasure to see a "true teacher" compassionate about his occupation. (Exhibit R28).

It is noted that despite budgetary constraints, Mr. Radzik devoted his personal time to provide students with supplementary services and activities (N.J.A.C. 6A:9-3.3 #8 Communication). Mr. Radzik is appreciated for going above-and-beyond the call of duty. (Exhibit R2).

Prior and subsequent to the 2009-2010 school year, the positive observations and evaluations of Radzik were significantly tied to NJ ASK preparation, NJ ASK public relations, and the performance of his students on the NJ ASK:

Mr. Radzik is a dedicated teacher who takes pride in offering a positive classroom environment to all of his students. During the 2008-2009 school year, Mr. Radzik served as the schools [sic] Learnia Leader, Affirmative Action Representative, and is a Field Day Coordinator. He is the Director of Intramurals, and served on the School Curriculum Cabinet and the College Theme Committee. Mr. Radzik has also served School 4-5 as an intricate part of NJ-ASK test prep. He was the lead instructor at NJ-ASK Parent Night, and a member of our NJ-ASK Pep Rally Committee. Mr. Radzik also worked as a presenter for the Everyday Math Parent Program, and is one of the stars of our school districts [sic] "Math 1 on 1" (TV show)(Exhibit R4).

Mr. Radzik is commended for using the Woodbridge Township School District's Census Lesson while extending the lesson by distributing Tiger Tokens, encouraging students to use mental Mathematics, and creating an essay using an effective technique. This, in turn, encouraged school spirit and addressed various core curriculum content standards. This lesson offered students with a plethora of opportunities ranging from technology to New Jersey ASK preparation. This experience enabled students to meet learning objectives in several content areas. (Exhibit R9).

Mr. Radzik and his colleagues initiated the NJ ASK Test Preparation Family Fun Evening by explaining the paradigm of the Language Arts Portion of the NJ ASK...Mr. Radzik is commended for providing families with an informational seminar on the language arts portion of the NJ ASK. Mr. Radzik continues to offer students with an academic environment rich in real life reading and writing experiences. Mr. Radzik afforded parents with purposeful information regarding NJ ASK while including each parent in their child's education. Mr. Radzik displays expertise in the area of the NJ ASK and volunteered his personal time to educate parents.

On both the language arts and Mathematics portion of the NJ ASK 2009, 100% of Mr. Radzik's students were proficient and advanced proficient. Mr. Radzik is praised for this feat; it is a credit to Mr. Radzik's direct and explicit instruction. To this end, Mr. Radzik displayed knowledge of the importance of the home-school connection. Mr. Radzik presented the NJ ASK workshop in an enthusiastic, interesting, and helpful manner....

As a result of Mr. Radzik employing effective pedagogical practices, his students continue to meet and exceed expectations....Mr. Radzik's [sic] is praised for his goal that all of his students will achieve one hundred percent on the NJ ASK. Mr. Radzik uses a combination of exemplary pedagogical practices and his own creativity to meet the needs of his students. (Exhibit R10).

Mr. Radzik then declared, "This week is going by too fast," and "You will be at the finish line waiting to eat that NJ ASK up..."it is extraordinary how students were enthusiastic and excited about reading, employing their metacognitive reading strategies, and tackling the NJ ASK. (Exhibit R11).

Mr. Radzik was also commended for utilizing "successful co-teaching strategies" including "station teaching, parallel teaching, alternative teaching, and team teaching..." (Exhibit R1). Radzik has been the recipient of a Teacher of the Year Award.

THE NJ ASK TEST

The NJ ASK test is a statewide test that is administered to assess the skills and knowledge of each student with respect to New Jersey's Core Curriculum Content Standards. (Exhibit P16; 5T:951-24 to 25).² In addition, these assessments fulfill the requirements under the 2001 "No Child Left Behind Act". The NJ ASK in Language Arts Literacy ("LAL") and Mathematics is administered at grades three through eight. Science is added to the testing with respect to grades four through eight. Testing is administered in the spring of each year to allow school staff and students the greatest opportunity to achieve the goal of proficiency.

² "T" refers to the transcript of March 5, 2013; "2T" refers to the transcript of March 6, 2013; "3T" refers to the transcript of March 21, 2013; "4T" refers to the transcript of March 26, 2013; and "5T" refers to the transcript of March 27, 2013.

THE NJ ASK TEST TRAINING

Prior to the administration of the NJ ASK test, the New Jersey Department of Education trained District representatives in security protocols, etc. (T:50-21 to 23). After training from the State, the District then “turns around and trains the school test coordinators.” And school test coordinators are charged with the responsibility to properly train their staff. Testing examiners are instructed, among other things, not to “review any test items or passages with students before, during, or after the assessment.”

Testing examiners were instructed to and agreed not to:

Copy, reproduce, transmit, distribute, or use “in any manner inconsistent with test security all or any section of any secure test materials.”

Coach “students during testing or” alter or interfere “with the students’ responses in any way.”

Participate in, direct, aid, counsel, assist in, or encourage “any of the acts prohibited in this section.” (Exhibit P12).

With respect to the 2011 NJ ASK, Radzik signed the “New Jersey Department of Education Statewide Assessments Test Security Agreement” and agreed to comply with those guidelines set forth therein. Conversely, I note the absence of evidence concerning explicit prohibitions against teaching-to-the-test strategies imparted to Avenel Street School third grade teachers in 2010 (or prior) and the lack of proper training in 2010 at Avenel Street School, including the lack of evidence that a Security Agreement was signed by Mr. Radzik in 2010.³

³ While I credit the testimony of Dr. Zega and Christopher Callahan, District Test Coordinator concerning their respective experiences with NJ ASK training outside of Avenel Street School, neither individual possessed reliable firsthand knowledge regarding how NJ ASK testing protocol and training were actually imparted to third grade

Christopher Callahan, the District's Test Coordinator, is familiar with NJ ASK testing procedures. Through his "role as a department head . . . Callahan was involved in state testing." Callahan testified that other than interpreters and/or translators for the hearing impaired, "test coordinators may not review tests in advance." (3T:489-13 to 16). In training provided to all NJ ASK examiners, it was stressed that advanced access to actual NJ ASK test questions is prohibited. (Exhibit P12; 5T:957-13 to 959-16).

Having said this, however, Callahan testified that there was no specific time at which the NJ ASK test administration is supposed to commence. (3T:524:20-525:5). He also testified that, beyond the reference in the examiner manual to translators for the hearing impaired having test materials "one to two" hours before the test, there is nothing in the examiner manual which states when examiners (i.e., teachers) are permitted to receive testing materials. (3T:526:6-21).

THE NJ ASK ATMOSPHERE AT AVENEL STREET SCHOOL

When Mark Filoramo was asked by the OFAC investigators about the atmosphere surrounding the NJ ASK examination at Avenel Street School, he answered, "It's everything." (Exhibit R17:18:4 to 8). From this record, it appears that some teachers felt threatened by higher-ups with reassignments or that some were actually reassigned based on testing results (Mark Filoramo to OFAC, Exhibit R17, 101-104). Numerous witnesses, including Radzik, Klecan, and Filoramo have laid blame for the undue

teachers at Avenel Street School in 2010. Based on the OFAC Report, and the testimony of Radzik, Klecan, and Filoramo, I believe it is obvious that Avenel Street School was marching to the beat of a different drummer!

pressure at the door step of former Assistant Superintendent, Lois Rotella -- whose resignation in or about August of 2012 was directly linked to OFAC-related concerns.

Mr. Radzik testified that Rotella had berated teachers about poor test scores and expressed the need for success in 2010 “no matter what.” Ms. Klecan testified that she had questioned Ms. Sivillo about the appropriateness of “active proctoring”, i.e., non-verbal cues designed to keep a student on task and to correct his or her wrong answer. According to Ms. Klecan, Ms. Sivillo “said this is what they were told to do by the principal and the assistant superintendent, Lois Rotella, because she said Ms. Rotella came into the school saying their test scores were a disgrace and they should be ashamed of themselves and I kind of went off her words.” (2T:373-16-24). Principal Kurlander acknowledges discussing the aforementioned definition of “active proctoring” with staff during training leading up to the 2010 NJ ASK examination. (Exhibit P16, P0488).

Klecan’s account of what Sivillo said about Rotella is independently noted in an anonymous letter to the OFAC from an administrative staff member using the pseudonym, “Fed Up.” “Fed Up” urges OFAC to investigate his or her concerns very thoroughly, because “the children of our school district are being done a great disservice by these practices and staff members are being placed in an untenable position by the actions of an administrator attempting to force them to violate their principles and risk their futures in education.” (Exhibit P3).⁴

⁴ The same correspondence identifies Radzik as a teacher providing answers to students on the NJ ASK examination.

Filoramo was asked in September of 2009 to write a song to help students memorize topics of concern for the May of 2010 NJ ASK examination; the School held NJ ASK Family Fun Night, sponsored NJ ASK pep rallies and other workshops, etc; and teachers engaged students in months of test preparation, presumably at the expense of other valuable teaching lessons. Mr. Radzik testified that a tremendous amount of emphasis was placed on preparing students to be successful on the NJ ASK test. (3T:548:17-549:4). Radzik's 2009 Annual Performance Review completed by Barbara Balog identified one of three criteria in his professional development plan as "analyzing data available from Study Island and Learnia to increase the number of students achieving proficient scores on the NJ-ASK" (Exhibit R4).

Mr. Radzik estimated that during the 2009-2010 school year, he spent approximately one third to a "little less than half" of each school day on NJ ASK Test preparation. (3T:551:9-13). He estimated that his students did "hundreds" of practice multiple choice questions each week. (3T:553:9-23). Additionally, students took mock tests in order to prepare for the NJ ASK test. Radzik estimated that during the 2009-2010 school year, his students took at least five to ten mock tests. He also explained that he sometimes had his students answer fourth and fifth grade level questions on mock tests to make the tests more challenging. (3T:571:22-572:20).

Based on the foregoing, I find that there was an inordinate amount of pressure surrounding the 2010 NJ ASK examination at Avenel Street School, especially at the

third grade level.⁵ The alleged improper responses of Principal Kurlander, John Radzik, Lisa Sivillo, Joan Johnson and Stephanie Klecan to a system of undue pressure became the subject of a thorough investigation by OFAC that, in turn, uncovered numerous breaches of test security procedures, including the provision of direct assistance to students during testing.

THE OFAC INVESTIGATION AND REPORT

The OFAC undertook a comprehensive investigation into the administration of the NJ ASK during 2010 and 2011 at Avenel Street School. Following receipt of an “erasure analysis” report from Measurement Incorporated (a third party vendor used to score student tests on a statewide basis), as well as a number of anonymous letters and telephone calls (Exhibit P3; T:21-8 to 22-2; 23-2 to 27-14), the OFAC Investigators sent a letter to the District “letting them know that . . . [the OFAC] would be reviewing three of their schools.” (T:29-12 to 14). The OFAC first asked the District to “do their own review of the schools that . . . [were] flagged.” (T:29-15 to 17).

After the District returned its review, the OFAC Investigators began their investigation with the Avenel Street School 4 and 5, “because of . . . [the] anonymous information that . . . [they] received . . . [and because of the] exceptionally high erasure rate in the third grade in comparison to the state mean.” (T:27-22 to 28-7; 29-2 to 6). The number of wrong-to-right erasures (“WTR”) detected by Avenel Street School students

⁵ Although students take standardized tests prior to third grade, the NJ ASK is administered for the first time statewide at the third grade level.

was exceptionally high, resulting in probabilities in excess of five standard deviations above the State mean. (Exhibit P16 at P0481).

As part of the investigation, the OFAC Investigators requested documentation from the District, as well as interviewed staff members. (T:29-20 to 32-2). Additionally, the OFAC Investigators examined student multiple choice and open-ended responses “to determine whether any form of feedback or intervention, including any hint about the correctness of a response, was provided to any student.” (Exhibit P16 at P0481).

In August 2012, OFAC Investigators, Terresita Munkcasy and Jeffrey Gale, a retired State Police Captain presented their findings to the OFAC Director, Robert J. Cicchino and to Thomas C. Martin, Manager, OFAC Investigations Unit (Exhibit P16). The statistical evidence presented in the OFAC Report notes, among other things, that the probability of 45% of the third grade students at the Avenel Street School attaining a perfect score (300) on the Math Test is one in one hundred million. (Exhibit P16, at P 0482).

The OFAC Report identified those staff members believed to have improperly breached testing security procedures in order to elevate scores as including Mr. Radzik, Lisa Sivillo (a third grade teacher who later married Radzik in June of 2012), Stephanie Klecan (a relatively new teacher and cousin of Radzik), Joan Johnson (a retired teacher and proctor in Ms. Klecan’s third grade class during the 2011 NJ ASK) and Dara Kurlander, Principal and School Testing Coordinator. With respect to Mr. Radzik, the OFAC concluded that Radzik “discussed and disclosed secure test items both before and during the testing administration, influenced examinees’ responses, and provided

feedback, including hints about the correctness of examinee responses during both the 2010 and 2011 NJ ASK test administration.” (Exhibit P16 at P 0482).

The OFAC Report noted numerous testing security irregularities involving Principal Kurlander, including, but not limited to: (1) nine third grade Math test booklets signed out by examiners two days prior to the Math test, (2) prior to the 2010 NJ ASK, encouraging staff to identify students struggling during test prep so that may be funneled into Section 504 status for the test, (3) examiners in grades three through five described the training provided as limited or not at all, (4) receiving assistance from the head school custodian, who was not trained in security procedures, in delivering and collecting test booklets, (5) failing to provide OFAC with a copy of training agenda, with a complete training attendance sign-in sheet (missing signatures for three examiners, two proctors, the school secretary, and the school custodian), (6) allowing the head custodian and secretary access to her office where test booklets were stored both prior to and after testing, (7) allowing testing to take over ten hours in contrast to the seven to eight hours specified in the Test Coordinator Manual and (8) allowing Radzik to determine to pair family-member proctors with teachers in 2010 and 2011. “When questioned about this, Ms. Kurlander acknowledges granting the requests; however, she stated that she now regrets having done so” (Exhibit P16, P 0488-0490).

The OFAC Report accuses Ms. Sivillo, Ms. Klecan and Ms. Johnson of engaging in what has been referred to as “active proctoring.” The activity is attributed to instruction from Principal Kurlander:

For example, an Avenel 2010 NJ ASK proctor recalled hearing the phrase “active proctoring” at a staff meeting led by Ms. Kurlander. During the meeting, Ms. Kurlander indicated that staff could point to examinees tests to encourage students to re-read directions, or if staff saw the “wrong answer” to encourage students to correct the answer. When questioned as to whether or not the proctor had participated in “active proctoring” the proctor stated that because the boss, Ms. Kurlander, recommended this directive, the proctor did indeed participate. Another 2010 NJ ASK proctor informed the investigators that the proctor recalled attending a meeting led by Ms. Kurlander, during which she informed the staff that if examiners or proctors were to see a student with an incorrect answer, to bring it to their attention by tapping and pointing on the desk. The proctor dismissed the directive at the time, believing that Ms. Kurlander must have been joking. During the interview with investigators, Ms. Kurlander acknowledged discussing “active proctoring” and pointing to and tapping on tests at a staff meeting that included NJ ASK training.

DISPOSITION OF SWORN TENURE CHARGES

Charges Sustained -- Charge I, Counts 1, 3 (in part), 4 And 5

After carefully reviewing the record evidence and skilful arguments of the parties’ representatives, to the extent discussed below, I find that the Board has carried its burden of proof with respect to Tenure Charge I, Counts 1, 3, 4 and 5 regarding the 2010 NJ ASK Examination and Charge III regarding the 2011 NJ ASK Examination.

Initially, the circumstantial evidence is very strong, albeit not determinative on its own. Radzik’s examinees on the 2010 NJ ASK test attained extraordinary results. Of the twenty (20) students tested by Mr. Radzik in 2010, eleven (11) students received perfect scores on the Math Test; fifteen (15) scored 95% or higher; everyone scored 90% or higher. Compared to the mock Math Test administered in January of 2010, the eleven (11) students scoring 100% in the actual test averaged lower than 70% on the mock test (Exhibit P6). In addition, in the fourth grade – just one (1) year later, an analysis of the

scores of the same students on the multiple-choice section of the 2011 Math Test reveals precipitous declines. No student received a perfect score. In fact, only one (1) student managed to achieve a score higher than 90%. Seven (7) students scored in the 60-to-69% range; four (4) managed to score between 70% and 74% and seven (7) scored in the 80s. (Exhibit P5).

Measurement Inc. informed OFAC that the probability of 45% of the third grade students at the Avenel Street School attaining a 300 on the Math Test is one in one hundred million! (Exhibit P16 at P0482). Extrapolating this information to the performance of Radzik's students in 2010, the probability of eleven (11) out of twenty (20) (i.e., 55%) of his students receiving a 300 has to be at least one out of one hundred million or greater. This is 100 times more unlikely than being struck by lightning. See, NOAA website: www.lightningsafety.noaa.gov/medical.htm (odds of being struck by lightning in any given year are 1 out of 1-million). In addition, the testimony of Filoramo and Klecan (discussed later) supports a finding that Radzik did have advanced knowledge of the content of at least a portion of the 2010 NJ ASK student test booklet. Thus, notwithstanding Radzik's teaching skills and pedagogical acumen, I am satisfied that the circumstantial evidence in this case presents a viable reason to believe that something extraordinarily unusual or wrong had occurred in connection with the 2010 NJ ASK examination administered by Mr. Radzik.

Having said this, however, I do not believe that the entirety of the aforementioned Math scores or other test results can be attributed to Radzik's misconduct. This record contains evidence that Radzik was otherwise a very good teacher and that school

administrators repeatedly sang his praises and held him out to the community as a leader with respect to NJ ASK preparation. These factors are noted. Nonetheless, as will be discussed, against the backdrop of such stark statistical data, the Board has satisfactorily demonstrated that Radzik provided several answers and other improper direct assistance during actual 2010 NJ ASK test taking, he attempted to assist other teachers by reviewing a student test booklet in their presence prior to testing in the same year, and he improperly encouraged Ms. Klecan in 2011 to employ non verbal cues to assist her third grade students excel on the NJ ASK examination.

In terms of direct evidence, a threshold credibility issue surrounds the testimony of Filoramo and Klecan. Filoramo served as a proctor in Radzik's classroom for three (3) out of four (4) testing days during the 2010 NJ ASK (Exhibits P4 at ¶4; P17 at DOE 13; and 2T:285-7 to 9). Filoramo was absent only on Day 2. Ms. Klecan served as a Proctor in Ms. Sivillo's room during the 2010 NJ ASK and she had her own classroom in 2011. In this case, both Filoramo and Klecan made initial statements to the OFAC investigators that did not implicate Radzik or themselves. However, they subsequently recanted such statements. Filoramo did so on April 5, 2012, prior to the conclusion of the OFAC Report. Klecan did so only after she was named in the OFAC Report.

Counsel for Mr. Radzik understandably points out that, although both witnesses admit to breaching testing administration procedures themselves, the OFAC did not identify Filoramo as an alleged violator in the August 2012 Report and the Board currently employs Filoramo as a tenured Music teacher. Similarly, the Board has retained Klecan, a non-tenured teacher, on paid suspension since August of 2012, despite

OFAC's identification of her as one of the employees not in compliance with standard test administration security procedures. Counsel argues that the change in recollection of events by both witnesses was improperly influenced by their favorable treatment by the Board and/or by threats from OFAC investigators.⁶ Given the foregoing, it may be fairly asked did Filoramo and Klecan lie earlier in the chronology, or did they lie later to the OFAC and to this Arbitrator?

The choice of accepting or rejecting the witness' testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See, Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A fact finder is expected to base credibility decisions on common sense, which is also referred to as intuition or experience. Barnes v. United States, 412 U.S. 837, 93 S. Ct. 2357, 37 L. Ed. 2d 380 (1973). A credibility determination requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions

⁶ I recognize that testing examiners and coordinators may have been viewed as the "bigger fish" and that catching and bringing them to justice depended upon, in part, the cooperation of personnel such as Klecan and Filoramo. Absent a finding of disparate treatment, i.e., dissimilar treatment of employees in substantially the same shoes, such evidence is only relevant to a determination of credibility.

which alone or in connection with other circumstances in evidence excite suspicion as to its truth.” In re Perrone, 5 N.J. 514, 521-522 (1950). See, D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997). Also, “[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the... [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony.” State v. Salimone, 19 N.J. Super. 600, 608 (App. Div. 1952). Arbitrators frequently are called upon to make credibility determinations.

As stated by Arbitrator Berquist in Abbott-Northwestern Hospital, 94 LA 621 (1990) in upholding the discharge of an employee for stealing an answering machine, the following factors are relevant in determining credibility:

1. Interest or lack of interest in the outcome of the case;
2. Their relationship to the parties;
3. Their ability and opportunity to know, remember, and relate the facts;
4. Their manner and appearance;
5. Their age and experience;
6. Their frankness and sincerity or lack thereof;
7. The reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case;
8. Any impeachment of their testimony; and
9. Any other factors that bear on believability and weight. 94 LA at 629-30.

Consistent with the above factors, it is very important in most cases to observe the character and demeanor of witnesses as they testify because the manner in which they present themselves during testimony is not otherwise transmitted by the record. State v. Locurto, 157 N.J. 463, 474 (1999); State v. Jamerson, 153 N.J. 318, 341 (1998); and Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

In this matter, I have kept in mind the shaky background leading up to the respective testimony of Filoramo and Klecan. Nonetheless, after having had the opportunity to observe the demeanor of both witnesses and listen to their accounts of what transpired, in conjunction with other reliable evidence, I find that both Filoramo and Klecan failed to speak the truth earlier in the chronology. For reasons relating to their own occupational and reputational welfare and/or to have peace of mind, both individuals did eventually provide credible, probative evidence in this matter.

Initially, the demeanor and personal traits of these two witnesses, as observed by the Arbitrator, cannot be overstated. In stark contrast to Mr. Radzik, Filoramo and Klecan project themselves as relatively passive, people-pleasing types -- likely incapable of independently carrying out the misconduct to which they eventually admitted. Frankly, Filoramo does not look like he could purposely hurt a fly! He talked about his role leading the school in the pledge of allegiance and in singing a patriotic song to commence each school day. His statement to OFAC on April 5, 2012 and his March 6, 2013 testimony are seasoned with religious references. Klecan appears to be even younger than her likely age, i.e., somewhere in her mid to late twenties. She speaks in a semi-squeaky voice. She holds dear the story about her father building a classroom setting in her basement when she was seven years old so that she could play teacher. Klecan was a neophyte in the teaching profession in 2010.

During their March 6, 2013 respective testimony, Filoramo and Klecan displayed a wide range of emotions regarding their personal and professional relationships with Radzik. It was plain to this Arbitrator that both witnesses, at one point, clearly looked up

to, trusted, and relied upon him. Ms. Klecan cried at several points during her testimony over the loss of familial relationship with the Radziks, over the deleterious start (and possible finish) to her childhood dream to teach, and over the stress caused to her parents by this ordeal. She also authored a letter to the Board and corresponding Certification to the OFAC understandably reflecting her anger and resentment of Radzik and expressly criticizing him as a teacher. (Exhibits R29 and P18, respectively).

Filoramo expressed sadness over his loss of what he considered to be a personal friendship with Radzik. Even as of the date of his testimony on March 6, 2013, Filoramo characterized Radzik as one of the best teachers in the school district. In June of 2012, Filoramo was singing at the Radzik/Sivillo wedding and dancing with Radzik, despite tendering his April 5, 2012 statement to the OFAC investigators. He referred to his part of the celebration of Radzik's wedding as participating "in the Last Supper." Filoramo's relief, as he testified, flowed from the truth setting him free from sleepless nights and anxiety-filled days prior to April 5, 2012, the date on which he came forward and presented a letter to OFAC and was interviewed on tape.

Conversely, Radzik notably expressed no emotion over the loss of relationships with either Klecan or Filoramo. On the contrary, he asserted that Klecan was a poor teacher who stayed out all night. Radzik added that he was able to talk Kurlander out of giving Klecan a poor evaluation.⁷ Radzik presents much more of a street-savvy, assertive, if not dominant, personality. During Filoramo's April 5, 2012 statement to

⁷ Contrary to Radzik's testimony, all of Klecan's annual evaluations and observations are positive (Exhibits P20 (a)-(g)).

OFAC, Filoramo described Radzik as an “extremely” competitive person (Exhibit R17:104:16-20). By holding a dual certification as a Principal/Administrator, Radzik’s career goal is somewhat obvious. He wants to be in charge of a school one day and, to some extent, he has acted accordingly. For example, Principal Kurlander readily acceded to Radzik’s suggested pairing of proctors with teachers during both 2010 (Klecan and Sivillo) and 2011 (Radzik’s brother and a fourth grade teacher). In fact, as Klecan testified, Radzik took the lead in hiring and placing her and she had comparatively little interaction with Principal Kurlander. Filoramo informed OFAC that Radzik picked him to serve as a proctor (Exhibit R17:124:8-19). Thus, to some extent, this record, though limited, shows Radzik acting as a *de facto* administrator with respect to the administration of the 2010 NJ ASK. For the purpose of assessing the comparative personal characteristics of the witnesses before me, I am satisfied that Mr. Radzik clearly was in the driver’s seat vis-à-vis Filoramo and vis-à-vis Klecan.

In addition, both Filoramo and Klecan separately, yet similarly testified to Radzik’s attempts to control or influence their interviews by OFAC. Specifically, Radzik commented to Filoramo about the investigation prior to Filoramo’s interviews. Filoramo reacted to Radzik’s influence by thinking twice about telling the truth. (2T:307-3 to 9). Specifically, Radzik told Mr. Filoramo, “If we go down . . . we go down together.” (Exhibit P17 at DOE 14). Mr. Filoramo’s following explanation rings true to this Arbitrator with respect to the internal conflict experienced by Filoramo that led him to recite inconsistent versions of what had occurred inside Mr. Radzik’s classroom during the 2010 NJ ASK:

I was—I was scared, you know, I didn't know—I didn't know what to do. . . Giving up what I did as a person, I felt bad about and I have loyalty to John [Radzik] . . . He was a good friend to me. . . An it was hard to let a friend down but I also has a fear of, you know, his reaction . . . he always isn't so good to people that aren't on his side. (2T:303-19 to 304-12).

Mr. Radzik had already been interviewed, and he told me that the state was very concerned with SB; that they had problems with other rooms but they were concerned in his room with the student SB; . . . ;--and he said if we're going down, we're going down together, . . . which intimidated me and made me think twice about telling the truth. . . and then we kind of did a mock—he asked me a bunch of questions doing a mock interview in the gym at the Avenel Street school. . . coaching what I should answer. (2T:306-23 to 307-22).

Similarly, according to Ms. Klecan, during the subsequent OFAC investigation, Ms. Sivillo contacted her and told her that OFAC investigators might interview her because she was a proctor in her classroom. Klecan testified that Sivillo said “my role was to pass out pencils and tissue and then I'm like well, do they know what else happened and she said no.” (2T:380-19 to 381-4). In the background, Klecan heard Radzik (whose voice she obviously recognizes) repeating “your only role was to hand out pencils and tissues.” (2T:381-10 to 12).

In the end, both Klecan and Filoramo admitted to their own improper conduct during the administration of the NJ ASK at Avenel Street School. Filoramo's admission against his interest came on April 5, 2012 prior to the conclusion of the OFAC investigation into Avenel Street School. According to Filoramo, Radzik instructed Filoramo to stand by Student S.B. who was hard to control. I note that S.B. scored 23%

on the 2010 LAL mock test and 73% on the actual NJ ASK exam. (Exhibit P6). S.B. scored 65% on the MATH mock test and 100% (300) on the actual NJ ASK exam. Filoramo particularly recounted that Radzik instructed him further to “tell her to check her answers if she was answering wrong.” (Exhibit R17; 2T:289-3 to 290-16). Filoramo candidly admitted that he pointed out incorrectly answered questions for student S.B. (Exhibit P17) and that he suggested a writing topic when S.B. asked him for help.⁸ Importantly, however, I find that Filoramo’s April 5, 2012 admission against interest occurred prior to any assurance that he would not face legal consequences for his own misconduct.

I further find it highly implausible that either Filoramo or Klecan had the wherewithal, let alone a reason, to independently engage in misconduct designed to elevate NJ ASK scores. Conversely, I observe, Radzik was very much invested in NJ ASK, as demonstrated by prior observations and evaluations that inextricably link the continuation of his “rising star” status with a desire to become a principal to his NJ ASK performance. Radzik also had an ongoing relationship with his students in 2010 and wanted to see them through the NJ ASK examination with as little stress as possible. (5T:571:6-13; 656:6-10). Thus, I find that, whereas Klecan and Filoramo had no rational motive to independently engage in NJ ASK-related misconduct in 2010, Mr. Radzik, comparatively speaking, did.

⁸ The Board did not independently charge Radzik with improperly influencing Filoramo (*cf.*, Charge III re: Klecan) and correspondingly did not charge Filoramo with providing direct assistance to a student, or with violating NJ ASK security procedures.

Additionally, based on my observations of both Filoramo and Klecan, I find it highly unlikely that they would assert themselves to the level of fabricating testimony against Mr. Radzik. Filoramo clearly expressed fear and concern at the end of his April 5, 2012 meeting with OFAC investigators, repeatedly trying to ascertain when Mr. Radzik would find out about his whistle-blowing activity (Exhibit R17:126-129). Klecan clearly expressed a concern and respect for family members to the extent that I am unwilling to believe that she would intentionally throw Mr. Radzik, her first cousin “under the bus”.

In light of the foregoing, I am willing to evaluate the testimony of Filoramo and Klecan without discrediting either witness’s testimony based on prior inconsistent statements to the OFAC. I will begin by addressing Charge I, Counts 1, 3, 4 and 5.

“With respect to the 2010 and 2011 NJ ASK tests, John Radzik discussed and disclosed secure test items both before and during the test administration, influenced examinees’ responses, and provided feedback, including hints about the correctness of examinees’ responses, as more specifically set forth below:

Count 1

According to witness accounts given to the OFAC investigators, during the 2010 NJ ASK test, Mr. Radzik allowed students to speak openly, discuss the test, and interact with each other in the room during the administration of the test. When students called out answers, Mr. Radzik would react as if he was not encouraging such actions; however, he would reply by making statements similar to “Aw, come on guys, you can’t tell everyone the answer to number five is A.”

In support of Charge I, Count 1, Filoramo recalled that Radzik actually repeated the correct answer to a particular question when a student, on at least one occasion, blurted it out. (2T:298-12 to 299-10). Filoramo testified that the students would blurt out

a particular answer (e.g., like number 6 is C) “and then . . . [Radzik would] say like, you can’t tell them -- you can’t tell the class the answer, [to] number six is C.” (Exhibit R17; 2T:298-16 to 20). I credit Filoramo’s testimony over that offered by former student D.M. (now in 6th grade) or Hall Monitor, Gina Spears. I agree with the Board that Spears was not as close to the action and sound as Filoramo and that, throughout her testimony, D.M.’s memory of what happened three years prior was extremely strained. Accordingly, I credit Filoramo’s specific recollection of the foregoing misconduct engaged in by Mr. Radzik.

Count 3

According to witness accounts given to the OFAC investigators, during the 2010 NJ ASK test, Mr. Radzik told stories to the class and encouraged students to remember the stories. During the test, Mr. Radzik read the writing prompt, reminded the students of the story he told the day prior to testing, and recommended they use the story to complete the writing assignment.

In support of Charge I, Count 3, I note that Filoramo explained:

He did tell a story before the test and tell the kids that they could use his story in the writing prompt. He might even of had told three stories before that were for different responses. . . . He then alluded to the right story to use as the test was being taken. (Exhibit P17).

Counsel for Mr. Radzik asks that this Arbitrator discredit Mr. Filoramo for, among other reasons, Filoramo’s failure to inform OFAC on April 5, 2012 that Radzik engaged in such conduct during the test and similar failure to testify to that effect on March 6, 2013. Although I partially agree with Counsel’s representation of the record, I find that Filoramo did advise OFAC that Radzik advised students which story to use after reading

the prompt (Exhibit R17:095:8 to 096:21) and he did testify that Radzik alluded to the story when the test was being taken. (2T:296:3-13). Filoramo also testified that everything he wrote in Exhibit P17 was true, "Absolutely true" as he phrased it. (2T:305:2-8). To reiterate, based on the protocol in place at Avenel Street School during 2010 and 2011, I do not find that Radzik breached test security by his pro-active test prep methods regarding LAL (e.g., repetition of writing stories to fit any prompt). Rather, I find that he crossed the line when he alluded to the precise story to be used by students after reading the prompt. Accordingly, I credit Filoramo's testimony in support of Charge I, Count 3.

Count 4

According to witness accounts given to the OFAC investigators, prior to handing out the tests on Day One of the MATH testing, Mr. Radzik drew a shape on the board and then discussed with the class two different ways smaller shapes could be assembled into the larger shape he had drawn. One of the Math problems on the Day One MATH test required students to assemble small colored shapes into a larger shape by way of two different combinations. The larger shape in the test was exactly like the one Mr. Radzik had drawn on the board.

In support of Charge I, Count 4, Filoramo also recounted that during the Math portion of the 2010 NJ ASK test, the students "had to fit shapes into like a . . . hexagon type of shape and they had to fit these different shapes into it." (2T:299-19 to 22). Radzik showed the students how to "fit the shapes in" a minute before that section of the NJ ASK test began. (2T:299-24 to 14). On this point, Filoramo recalled the following series of events taking place:

Q. Did Mr. Radzik write anything on the chalkboard?

A. The only thing I remember was like a geometric shape.

Q. Tell us what you remember.

A. They had to fit shapes into like a . . .hexagon type of shape and they had to fit these different shapes into it..
. .He showed how you could fit the shapes in. That was before the section had started.

Q. Before the test began?

A. Right, it wasn't in the middle, it was before. . .It was before that section. . . maybe a minute before. . .

Q. And he put that on the chalkboard?

A. Yes. (2T:299-13 to 300-14).

Filoramo did inform OFAC on April 5, 2012 of the foregoing; however, he did not divulge that Radzik put the shape up one minute prior to the examination. Rather, he said that Radzik put the shape on the board and filled it in on the test day, but before the test. (Exhibit R17:42:7-14). On cross examination, Filoramo explained that he did not specify a precise time because he was not asked. (2T:346:10-15).

Consistent with what may be deduced from Filoramo's testimony, OFAC Investigators learned:

- a. "Nineteen of the twenty students of . . . [Radzik's] class solved the first part of this problem identically.
- b. One student, [who was/is dyslexic,] reproduced a mirror image of the assembled shape pattern used by the nineteen other students.
- c. Fourteen of the twenty students solved the second part of this question identically.
- d. Four students assembled the same shapes in reverse order of the fourteen students.

- e. One student, [who was/is dyslexic,] reproduced a mirror image of the pattern used by the fourteen students.
- f. One student repeated the pattern that was used in the first problem.” (Exhibit P16 at P0484; T:231-8 to 232-22).

The Board asks this Arbitrator to infer that Radzik read material to be tested and thereafter provided direct assistance prior to the students having to answer the same material. Mr. Radzik contends that he taught his students the simplest way to solve a problem whenever possible: “[i]f the change machine was going to give you 50 cents, all my kids would tell you they would get two quarters. Yes, they could go five nickels and a dime but I always taught them the easiest way to do it...” (3T:557:18-558:9). However, as stated above, this Arbitrator is not convinced that Radzik should be disciplined for “teaching-to-the-test” methods, especially given the atmosphere permeating Avenel Street School regarding the 2010 and 2011 NJ ASK examinations. Nonetheless, the testimony of Filoramo and the circumstantial evidence mentioned above lead me to believe that Radzik did improperly provide direct assistance to students just prior to their receipt of test booklets containing the identical geometric question placed on the chalkboard. Accordingly, I sustain Charge I, Count 4.

Count 5

According to witness accounts given to the OFAC investigators, during the MATH test, Mr. Radzik read numerous consecutive “sample” questions and provided answers to the class in the beginning of each Math section. However, the Grade 3 Examiner Manual provided only one sample question in each new section of the MATH test.”

In support of Charge I, Count 5, Filoramo further testified that Radzik read extra multiple choice “sample” questions aloud to the class and that some of those “sample” questions “were actually part of the testing questions.” (Exhibit R17:7:2-6, 8:2-6; 2T:297-4 to 9). (Exhibit P16 at P0484) (noting “The Grade 3 Examiner Manual provided only one sample question in each new section of the MATH test”). Filoramo was aware that some of the “sample” questions were actual test questions because he “was standing next to a student and looking at the book” as Radzik read the same aloud. (2T:297-24 to 298-1). As Radzik read the “samples,” the students would fill in the answers: “...the first two or three would be direct give aways since the students were under the impression that they were writing down samples.” (2T:326-5 to 10). Filoramo later admitted that he did not know whether students perceived the additional questions and answers to be samples.

Filoramo’s testimony is ironically corroborated, at least in general, by student S.B., via the hearsay testimony of Barbara McCormick. During the following school year (i.e., 2010-2011), S.B. was a student in Shelby Schoenfeld’s fourth grade class. (2T:420-5 to 11; 424-25 to 425-24). There came a point in time during the 2010-2011 school year when student S.B. had an “emotional melt down [and t]he other students in the classroom were escorted out of the room.” (2T:422-2 to 3). Ms. Schoenfeld remained with student S.B. and sat “in the back of the room with . . . [S.B.], trying to calm her down and by then she had her pretty [much] calmed down, talking to her about what had happened.” (2T:422-7 to 10).

At this time, Ms. McCormick, who was then an ASI Teacher at the Avenel Street School 4 and 5, entered Ms. Schoenfeld’s classroom. (2T:422-5 to 7). Ms. McCormick

heard Ms. Schoenfeld say to student S.B., “Why do you get so upset when we have to do this work? You’re so smart. You did so great on the NJ ASK.” (2T:422-13 to 16 and 425-4 to 6). In response to Ms. Schoenfeld’s statements, student S.B. “looked up and smiled and said you know Mr. Radzik gave us the answers.” (2T:422-16 to 17; 425-7 to 8). Because I am satisfied that Ms. McCormick was a relatively unbiased witness whose testimony withstood cross examination, I credit S.B.’s hearsay statement under the residuum rule of evidence as generally supporting Filoramo’s observations.

Similarly, the anonymous letters from “A Mom” (received by OFAC on October 21, 2010) and “Fed Up” (received by OFAC on August 16, 2011) were relied upon by OFAC to launch its investigation into Avenel Street School. “A Mom” admits that her son is not too smart and does not read and write well. She claims that her son can’t get extra help now because of his 2010 NJ ASK scores. When she pressed her son for an explanation as to how he did so well, he said “it was easy because if you don’t know the answer you just have to raise your hand and the teacher Mr. Radzik will help you.” “Fed Up”, an insider, confirms his or her belief that Radzik assisted students as well. (Exhibit P3). Because it is clear that Filoramo was not cooperating with OFAC until April 5, 2012, it must be presumed that Filoramo is not “A Mom” or “Fed Up.” Thus, in light of Filoramo’s testimony, these hearsay statements are admissible under the residuum rule of evidence. See, Weston v. State of New Jersey, 60 N.J. 36, 51 (1972). For all these reasons, I will sustain Charge I, Count 5.

Charge III

Each and every one of the foregoing allegations is incorporated by reference as if fully set forth herein. In addition to his personally engaging in the inappropriate conduct set forth above, John Radzik enticed, solicited, promoted and/or otherwise encouraged the participation of Stephanie Klecan, a newly hired, young teacher who happens to be his cousin, which resulted in her interference with students' work on tests through the use of non-verbal cues.

In sustaining Charge III, I do so only to the extent that I credit Klecan's testimony that "in passing in the hallway he [Radzik] might have just said that if you want to keep your job, like make sure your kids pass... If you see wrong answers he made like a tapping motion, like check your answers." (2T:377-14 to 378-3). In her Certification to OFAC, Ms. Klecan states that Radzik's improper instruction was made perhaps in the spring of 2011, either immediately preceding or during the 2011 NJ ASK. (Exhibit P18, ¶24). Klecan had formed a belief based on her 2010 experience and lack of training to the contrary (until 2012) that active proctoring was acceptable. Thus, even if Radzik said nothing to Klecan in 2011, she was already improperly trained and likely to employ the tapping procedure during administration of the NJ ASK in 2011, as she did.

Nonetheless, just as it was improper for Principal Kurlander and/or other administrators to impart such an instruction to teachers, I find that it was improper for Radzik, again acting like a *de facto* supervisor involving NJ ASK, to so instruct Klecan, who was not his proctor in 2011. To that extent, I sustain Charge III.⁹

⁹ Although the Board asks the Arbitrator to conclude that Radzik intentionally recruited Klecan to be an unwitting participant in a conspiracy to improperly raise NJ ASK scores, I cannot do so based on this limited record. Having said this, I acknowledge that Filoramo and Klecan would be understandable selections based on their respective relationships to Radzik and their personal traits discussed previously.

Charges Dismissed – Charges I, Counts 2, 6 & 7, II & IV

Count 2

According to the OFAC investigators, the 2010 NJ ASK third grade security checklist receipt and return times on Day One of the LAL testing revealed that Mr. Radzik was in possession of the tests one hour prior to the other third grade classrooms.

In light of the eyewitness testimony of Kimberly Derewsky and Ms. Kurlander's signature next to a corrected entry of 9:34 a.m. (Exhibit P8, at P 0898), I find that the Board has not carried its burden of proof with respect to Charge I, Count 2. Importantly, this record is dismissed based on a lack of persuasive evidence that the time of test booklet distribution on Day 1 of the LAL to Mr. Radzik, i.e., 8:33 a.m. is accurate.¹⁰

Count 6

According to an analysis of the NJ ASK tests administered by Mr. Radzik in 2011 to six children, the children were inappropriately assisted, in that, on Day One of the LAL test, they were given a poem to read to themselves as Mr. Radzik read it aloud, and then afterwards given a writing task and asked to use the poem for ideas on writing. Analysis revealed a startling similarity on the students' test responses.

Count 7

According to an analysis of the NJ ASK tests administered by Mr. Radzik in 2011 to six children, the children were inappropriately assisted, in that, on Day Two of the LAL test, Mr. Radzik gave them an open-ended writing task, resulting in them providing strikingly similar responses on the test.

In 2011, Radzik signed a Testing Examiner Security Agreement (Exhibit P12). He agreed not to:

¹⁰ In light of this finding, I need not address Counsel's alternative argument that early distribution is not a per se breach of then-existing security procedures.

Copy, reproduce, transmit, distribute, or use “in any manner inconsistent with test security all or any section of any secure test materials.”

Coach “students during testing or” alter or interfere “with the students’ responses in any way.”

Participate in, direct, aid, counsel, assist in, or encourage “any of the acts prohibited in this section.” P-12. (emphasis added).

In 2011, Mr. Radzik administered the NJ ASK to six students having special needs. No proctor was placed in the classroom. I agree with the Board that the test results for Radzik’s 2011 examinees are especially conspicuous because all six students had special needs, including one child with a traumatic brain injury having an IQ in the low 70s, (2T:462-22 to 25; 463-11 to 13; 464-7 to 10) and another cognitively impaired student with an IQ of 68. (2T:433-1 to 3). Remarkably, the former student attained a perfect score on the Math Test, and scored “Advanced Proficient” on the Language Arts Test; and the latter student scored “Advanced Proficient” and “Proficient,” on each portion of the NJ ASK, respectively.

Linda Netta, a Resource Center Teacher who has been employed in that capacity for the last thirty (30) years, is also a member of the District’s Intervention and Referral Services (“I&RS”) team and she testified in this matter. Ms. Netta testified that when the I&RS team determines what services, if any, a student is to receive, it takes into account the student’s NJ ASK scores. (2T:434-7 to 8). A student who does “very well on the New Jersey ASK [will] receive different services from one who does not.” (2T:434-13 to 17). Specifically, a student who does well on the NJ ASK “doesn’t need a smaller group, maybe taught in a different style, different way, different style and directions.” (2T:434-

20 to 22). Moreover, a student who is “Advanced” would be precluded from receiving services from the I&RS committee. (2T:435-12 to 19).

In particular, Ms. Netta has provided assistance to student E.S., who was administered the 2011 NJ ASK test in Radzik’s class. (2T:431-17 to 23). On the 2011 NJ ASK test, student E.S. scored a 226 (i.e., “Proficient”) on the Language Arts section and a 273 (i.e., “Advanced Proficient”) on the Math section. Ms. Netta provided direct opinion testimony that it would be:

impossible [for E.S. to obtain those scores on the 2011 NJ ASK]. . . . [E.S.] was classified mild cognitively impaired. His IQ is a 68. He can’t remember from when I work with him from a model of a Math problem, if I give him a model he can do maybe two or three of the problems. If it’s changed, added a decimal or a comma, he’s lost. He can never do a cumulative combination of skills and get that kind of score.

On a daily basis he has no recollection of what happened. Sometimes from the morning until the afternoon we have to reteach the skill. See (2T:433-1 to 13). (emphasis added).

As a result of E.S.’s high 2011 NJ ASK scores, the I&RS team “couldn’t test him that year.” (2T:434-24 to 25). In other words, E.S.’s eligibility for services was “preempted by his high third grade New Jersey ASK score.” (2T:435-4 to 7).

Although I recognize, based on the cognitive limitations of these students, it is likely that Radzik improperly lent direct assistance during testing -- especially in the absence of a proctor -- I cannot set forth a specific finding(s) of guilt in the absence of reliable evidence showing how Radzik improperly assisted these students. If any lesson is learned from this case it is the importance of placing trained and independent proctors

in testing rooms, regardless of class size, to serve as second pair of eyes concerning test security. Other than asking this Arbitrator to extrapolate Radzik's 2010 alleged misconduct, noted above, the Board cannot provide such necessary evidence.

Although I feel constrained to dismiss the Charges pertaining to Radzik's administration of the NJ ASK in 2011, I will, nonetheless, discuss the concerns raised by Ms. Netta's testimony (as echoed by the testimony of Ms. McCormick concerning S.B. and Dr. Zega) during the penalty phase of this Award.

Charge II

Each and every one of the foregoing allegations is incorporated by reference as if fully set forth herein. In addition to his personally engaging in the inappropriate conduct set forth above, John Radzik conspired with, acted in concert with and/or aided and abetted a fellow teacher, Lisa Sivillo, in undertaking such conduct.

I dismiss Charge II regarding a conspiracy between Mr. Radzik and Ms. Sivillo to engage in improper NJ ASK practices. American jurisprudence frowns upon "guilt by association" without more. The record before me does not show any level of a romantic relationship between the two prior to NJ ASK 2010, although the two married in June of 2012. However, even if the two were involved romantically in 2010, Ms. Klecan testified that, unlike Radzik, Sivillo did not use favorite stories to assist her students. (2T:414, 12-17). Moreover, Sivillo, like Klecan, but unlike Radzik, is accused of employing non-verbal cues (tapping on a student's desk and pointing to a wrong answer) consistent with instructions from higher administrative authority. Ms. Klecan testified that Sivillo informed her that she [Sivillo] was acting at the direction of school administrators. Principal Kurlander admitted to OFAC that, as School Test Coordinator she discussed the

active proctoring method relied upon by both Sivillo and Klecan (Exhibit P16, at 0488). Dr. Zega acknowledged that Assistant Superintendent Rotella resigned and Principal Kurlander had been suspended for their respective misconduct.

In addition, from this record, unlike Sivillo and Klecan, Radzik was involved in the pairing of proctors, he went out of his way to influence other teachers in 2010 and Klecan in 2011 and he had much more of a committed investment in NJ ASK than either Klecan or Sivillo. Comparatively speaking, I cannot say the same about Klecan or even Sivillo (both of whom followed instruction concerning use of “active proctoring”). Put simply, this record does not fairly implicate Sivillo in a conspiracy with Radzik.

At most, Klecan witnessed Radzik enter Sivillo’s class at the end of the LAL and prior to the first day of the MATH portion of NJ ASK in 2010, whereupon he prepared the combined class to answer a “rectangular” shape question. Filoramo testified that, immediately before the Math section, he witnessed Radzik draw a “hexagon” on the chalkboard. Klecan did not testify that she overheard Radzik or Sivillo discussing the problem, as if they had prior knowledge of the question, e.g., by previously obtaining a student booklet. There is no evidence to suggest that Sivillo invited Radzik into her room for any improper purpose. Since no rule prohibited test preparation in a combined class format in advance of the next day’s test, I cannot enter a finding of unbecoming conduct against Radzik based on this observation of Klecan.

Conversely, I do find that it was plainly improper for Radzik to enter Sivillo’s classroom bearing a student test booklet prior to testing. This occurred in the morning and in the presence of other third grade teachers including, Ms. Sivillo, Joan Johnson and

Kim Derewsky. In her testimony on behalf of Radzik, teacher Kim Derewsky, who was and still is a close friend of Radzik's wife, testified that she did not observe Radzik do this, but rather simply look at a Test Examiner's Manual. (4T:855-7 to 23). Derewsky's testimony may be accurate only for the days that Radzik was present when she was there, and does not account for the day(s) she was not in the room when he was there prior to testing. (2T:866-5 to 19). No evidence suggests that any teacher took note of what Radzik was saying, or that Sivillo particularly used the information acquired to assist students during testing. Put simply, Klecan's testimony means to me that it was improper for Radzik to bring the student booklet into Sivillo's room, and it lends credibility to Charge I, Counts 4 and 5 against Radzik.¹¹ Beyond that, this observation of Ms. Klecan does not provide a basis for me to tie Sivillo to Radzik's misconduct. For all these reasons, I will dismiss Charge II.

Charge IV

Each and every one of the foregoing allegations is incorporated by reference as if fully set forth herein. Each of the foregoing Charges and Counts individually warrants dismissal. Additionally, viewed in their totality within the context of Mr. Radzik's behavior, it is evident that he has been engaged in a pattern of unbecoming conduct and/or other just cause, also warranting dismissal. The allegations, jointly and severally demonstrate his unfitness to continue to serve in a position of public trust.

I will dismiss Charge IV, to the extent it purports to set forth a separate offense, i.e., a pattern of misconduct. Although I recognize that the theory has been embraced by the Office of Administrative Law and former (and current) Commissioners of Education,

¹¹ I note that the OFAC Report claimed that numerous student Math test booklets were released to examiners two or three days prior to the Math test.

frankly, I do not believe that finding Radzik guilty of Charge IV (pattern of misconduct) adds anything to the outcome of this case. Ultimately, Radzik's individual violations will be viewed collectively for the purpose of measuring the severity of his misconduct in the penalty phase of this proceeding. Accordingly, I will address in more detail below the basis for feeling constrained to uphold the Board's request for Radzik's dismissal from this particular place of employment, without judging his ability to continue in the profession elsewhere.

DISCIPLINARY PENALTY

In the State of New Jersey, a tenured teacher shall not be dismissed from his position or reduced in compensation "except for inefficiency, incapacity, unbecoming conduct, or other just cause." N.J.S.A. 18A:6-10. The determination as to whether a teacher has engaged in conduct warranting dismissal from a tenured position requires consideration of the nature of the act, the totality of the circumstances and the impact on the teacher's career. I/M/O Tenure Hearing of Molokwu, OAL Dkt. No. EDU 9650-04 (2005) citing In re Fulcomer, 93 N.J.Super. 404, 421 (App. Div. 1967). Arbitrators widely apply the following standard of review: In terms of an appropriate penalty, if a preponderance of the evidence supports the disciplinary allegations, an employer must also show that the penalty imposed is just in light of factors, such as: [1] the gravity of the offense; [2] the employee's overall record and length of service; [3] proper notice of rules and penalties; [4] adherence to progressive discipline, if applicable; [5] whether there has been lax enforcement of rules; and [6] whether the employer's actions or failure

to act contributed to the disciplinary offense(s). *Elkouri and Elkouri*, How Arbitration Works, 5th Edition, pages 930, et. seq. [emphasis supplied].

In this matter, I find that Radzik's misconduct is especially egregious and fits plainly within the definition of conduct unbecoming a teacher. In the Matter of the Certificates of William Masuch, 2007 WL 3287687, OAL Dkt. No. EDE 458-07 (teacher/proctor provided test answers to the students, used coins to indicate the value of answers and allowed extra time for the students to finish the test after he was told to end a particular section of the test).

Radzik's 2010 misconduct, in particular, was potentially harmful to students and their families. A child's performance on standardized testing is a measure of his or her understanding of the Core Curriculum Content Standards taught to all students in the same grade on a statewide basis. The NJ ASK also fulfills the requirements of the No Child Left Behind Act. As Ms. Netta credibly testified, improperly inflated NJ ASK scores can disturb a child's eligibility for special education services. (2T:434-7 to 8). A student who does "very well on the New Jersey ASK [will] receive different services from one who does not." (2T:434-13 to 17). Specifically, a student who does well on the NJ ASK "doesn't need a smaller group, maybe taught in a different style, different way, different style and directions." (2T:434-20 to 22). Moreover, a student who is "Advanced" would be precluded from receiving services from the I&RS committee. (2T:435-12 to 19). In fact, student S.B. had a meltdown in 2011 that initially Ms. McCormick could not understand based on S.B.'s improperly inflated NJ ASK score in 2010.

Radzik's misconduct was also potentially harmful to fourth grade teachers in 2011 who inherited Radzik's 2010 students. As the 2011 scores of these students bear out, Radzik was "a tough act to follow" to say the least. In light of Filoramo's testimony concerning what he had witnessed in prior years, teachers have been reassigned to non-testing grades in order to increase NJ ASK scores. Potentially, Radzik's misconduct could have resulted in undue reassignments and/or poor evaluations for the fourth grade teachers who inherited his students. At the very least, it placed undue pressure on such personnel.

Radzik's misconduct was potentially harmful to the morale of other teachers as well. Radzik was rewarded in 2011 by Kurlander with an ASI assignment based on his students' performance on NJ ASK. Although the record is not precise, I can imagine the chagrin of one of Radzik's colleagues who may have desired that assignment.

Perhaps most glaring, Radzik's misconduct was extremely harmful to the reputation of the Woodbridge Township School District in the eyes of the public. As this record bears out, Radzik was held out by the School to parents and the community as the face of NJ ASK at Avenel Street School with respect to third graders:

He was the lead instructor at NJ-ASK Parent Night, and a member of our NJ-ASK Pep Rally Committee. Mr. Radzik also worked as a presenter for the Everyday Math Parent Program, and is one of the stars of our school districts [sic] "Math 1 on 1" (TV show)(Exhibit R4).

Mr. Radzik and his colleagues initiated the NJ ASK Test Preparation Family Fun Evening by explaining the paradigm of the Language Arts Portion of the NJ ASK...Mr. Radzik is commended for providing families with an informational seminar on the language arts portion of the NJ ASK. . . . Mr. Radzik afforded parents with purposeful information regarding NJ ASK while including each parent in their child's education. Mr. Radzik

displays expertise in the area of the NJ ASK and volunteered his personal time to educate parents.

The adverse publicity that will be associated with Radzik's misconduct will likely be particularly acute based on Radzik's former status as a NJ ASK liaison to parents.

Radzik's misconduct was a disservice to Filoramo and Klecan as well. Although Filoramo may have been treated with "kid gloves" in order to help him relax and not hold anything back, the man obviously suffered emotionally throughout the entire OFAC process. Unlike Filoramo, Klecan's occupational future is uncertain. Klecan clearly does not deserve to have her teaching career cut short because she freely, and without proper training to the contrary, trusted Radzik, Sivillo and school administrators concerning the use of non-verbal cues.

Unlike Klecan (and perhaps even Sivillo), I do not believe that Radzik was a bona fide victim of the undue pressure placed on teaching staff by administrators, at least not to the extent that the disciplinary penalty imposed should be mitigated. Rather, unlike Klecan and Sivillo, Radzik ran parallel with the improper influences of the administration, he employed his own improper means (apart from non-verbal cues) to achieve those goals, he selected proctors for placement, he improperly attempted to influence other teachers and, in the end, he simply went too far -- he wound up being at least as much a volunteer as he was a victim.

Radzik's misconduct was a disservice to himself. Radzik is, from this record, an effective teacher. Although only employed since 2004, so much of Radzik's professional status and achievements have been tied to NJ ASK that a motive to do what he did is

readily ascertainable from this record. Indeed, the symbiotic relationship between Radzik and his supervisors and administrators had much to do with his students' performances on NJ ASK:

On both the language arts and Mathematics portion of the NJ ASK 2009, 100% of Mr. Radzik's students were proficient and advanced proficient. Mr. Radzik is praised for this feat; it is a credit to Mr. Radzik's direct and explicit instruction. To this end, Mr. Radzik displayed knowledge of the importance of the home-school connection. Mr. Radzik presented the NJ ASK workshop in an enthusiastic, interesting, and helpful manner....

As a result of Mr. Radzik employing effective pedagogical practices, his students continue to meet and exceed expectations....Mr. Radzik's [sic] is praised for his goal that all of his students will achieve one hundred percent on the NJ ASK. Mr. Radzik uses a combination of exemplary pedagogical practices and his own creativity to meet the needs of his students. (Exhibit R10).

Mr. Radzik then declared, "This week is going by too fast," and "You will be at the finish line waiting to eat that NJ ASK up."...it is extraordinary how students were enthusiastic and excited about reading, employing their met cognitive reading strategies, and tackling the NJ ASK. (Exhibit R11).

As another example, Radzik's 2010 NJ ASK results earned him an ASI assignment from Principal Kurlander in 2011. By way of his misconduct, Radzik did a great disservice to himself, to those students whom he would have taught at Avenel Street School or elsewhere in the District in the future, and to his bid to become a school administrator one day.

Having said this, however, I would be remiss in not observing that another likely motive behind Radzik's improper actions appears from this record and it is far more benevolent in nature. In several places, the record reveals Radzik talking about trying to

keep students as stress free as possible in what obviously was a pressurized atmosphere.

This was the idea behind NJ ASK Family Fun Night:

“At the end of the day you’ve got to remember these are eight year old kids taking a test. It’s not the end all and be all of their education. The stress is immense. It’s nice to have a fun day and try to make the test preparation fun.” (5T:571:6-13).

Regarding Radzik’s teaching-to-the-test drills, Counsel for the Board asked whether Mr.

Radzik saw anything wrong with his methods. He replied:

“No. I don’t. Because I have kids when they take the test who are going to breakdown and cry. Just write the story. I don’t judge how good of a teacher I am by their scores, nor do I judge how much they learn.” (5T:656:6-10).

Unfortunately, Radzik did not distance himself from the professional accolades and positive evaluations associated with his NJ ASK performance mentioned above. Nonetheless, even if Radzik acted purely to protect his students, there is a profound difference between giving a student a push in the right direction and riding the bicycle for him. Regardless of which motive (if not both) was at play, the aforementioned negative impact to his students, other staff members, the school, the public, etc. would be no different. In the end, Radzik did not let his students spread their wings and fly and this was a disservice to them.

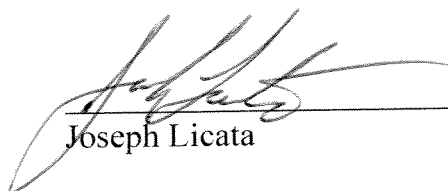
Based on the foregoing, this Arbitrator is regrettably left without a credible reason to mitigate the penalty requested by the Woodbridge Township Board of Education. The severity of the misconduct in question pierces the heart of the employment relationship and Radzik’s prior commendable record cannot stop the bleeding. While it is clear that Mr. Radzik has irreparably breached his position of employment in the Woodbridge

Township School District, I leave the improper broad-based misconduct and lack of training found to exist at Avenel Street School for further evaluation by the State Board of Examiners, who must ultimately decide whether Mr. Radzik is permitted to retain his professional certifications. I uphold the Board's request for dismissal.

AWARD

For the reasons discussed more fully herein, I find and conclude that the Woodbridge Township Board of Education has demonstrated unbecoming conduct on the part of John Radzik with respect to Sworn Tenure Charge I, Counts 1, 3, 4 and 5 and Charge III. I further find and conclude that the penalty of dismissal requested by the Board is justifiable, and hereby awarded, based on the severity of Mr. Radzik's misconduct and the absence of mitigation.

Respectfully submitted,



Joseph Licata

Dated: April 17, 2013

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

On the 17th day of April, 2013, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.



Notary Public

TRACY McKENNA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 26, 2014