

Coordinator/Affirmative Action Officer Angela Williams ("AAO Williams"), Teacher Mary Brown ("Teacher Brown"), Superintendent Henry Bermann ("Superintendent Bermann") and Middle School Principal Priscilla I. Ocasio-Himenez ("Principal Ocasio-Himenez"). Testifying on behalf of Respondent were Respondent himself, Respondent's daughter and former student/athlete SB¹, the mother of AS ("Parent CS") and Teacher Darren Harris ("Teacher Harris").

On December 10, 2013, Petitioner and Respondent submitted post-hearing briefs.

Throughout the proceeding, the Petitioner was represented by Kerri A. Wright and Suzanne E. Peters, Esquires. Keith Waldman, Esquire represented Respondent.

STATEMENT OF CHARGES

I, Henry Bermann, Superintendent of Schools, do herewith charge that Mark Boyle, employed by the Pittsgrove Board of Education as a tenured teacher at the Pittsgrove Middle School, is guilty of unbecoming conduct and other just cause sufficient to require that his employment in the Pittsgrove School District (the "District") be terminated pursuant to the provisions and restrictions of N.J.S.A. 18A:6-11. More particularly, it is charged that:

1. Mr. Boyle has been employed by the District as a language arts teacher since the 1989-1990 school year. From the 1989-1990 school year to the present, he has taught at Pittsgrove Middle School. From the 1992-1993 school year to the current school year, he served

¹ The names of all students, former students and parents of students are not used in this Decision. Rather, initials are used.

as a track coach for the District, including as a track coach at Arthur P. Schalick High School ("Schalick High School").

Charge No. 1
(The N.A. Incident)

2. Mr. Boyle, a tenured teacher, is guilty of conduct unbecoming a teaching staff member in violation of N.J.S.A. 18A:6-10 in that he has demonstrated poor judgment with respect to female high school students and has been involved in an extremely inappropriate incident with a female student.
3. On or about Friday, January 25, 2013, N.A., a current Schalick High School student attended a basketball game at the school. During this game, Mr. Boyle approached N.A., sitting next to her and engaging her in a conversation. During this conversation, Mr. Boyle placed his arm around N.A. and kissed her on the cheek. A review of the surveillance footage from January 25, 2013 confirms that Mr. Boyle kissed N.A. on the cheek. Attached hereto as Exhibit A is the video surveillance tape from January 25, 2013.
4. On or about Monday, January 28, 2013, Ms. Angela Williams, Affirmative Action Officer for the District, received an anonymous note regarding this incident. The author of the note reported that Mr. Boyle had kissed N.A. during the basketball game and that N.A. reported that Mr. Boyle had done other things in the past to make her feel uncomfortable. Attached hereto as Exhibit B is the anonymous note received by Ms. Angela Williams on January 28, 2013.
5. The District immediately reported this incident to DYFS and to the New Jersey State Police. DYFS concluded that it could not open a file on the incident because N.A. was 18 years old. The New Jersey State Police conducted an investigation. Attached hereto as Exhibit C are the New Jersey State Police Investigation Reports.
6. N.A. admitted that Mr. Boyle kissed her and that it made her feel uncomfortable. N.A. also revealed that she had previously received text and Facebook messages from Mr. Boyle. These messages also made her

feel uncomfortable. In one text message, Mr. Boyle commented inappropriately on N.A.'s physical appearance. N.A., a former member of the track team, also revealed that she had previously felt uncomfortable around Mr. Boyle because of his interactions with other female athletes.

7. The District also learned that Mr. Boyle texted N.A. after the incident at the basketball game and during the pending investigations. N.A. advised the District that this text message also made her feel uncomfortable. Attached hereto as Exhibit D is the text message sent to N.A. from Mr. Boyle.

8. Mr. Boyle admitted that he kissed N.A. on the cheek during the basketball game. Mr. Boyle further acknowledged the inappropriate nature of his behavior.

9. Mr. Boyle had served in the capacity of N.A.'s track coach when she was a minor.

10. Mr. Boyle's acts of invading N.A.'s personal space and kissing her have substantially disrupted and/or interfered with the orderly operation of the school.

11. Mr. Boyle's actions were extremely inappropriate and highly egregious given the heightened standards of conduct to which educators are held.

12. Mr. Boyle's inappropriate conduct with N.A. touches upon his character and highlights his propensity to engage in inappropriate and disturbing behavior.

Charge No. 2
(The A.S. Incident)

13. Mr. Boyle, a tenured teacher, is guilty of conduct unbecoming a teaching staff member in violation of N.J.S.A. 18A:6-10 in that he has demonstrated poor judgment with respect to female high school students and has been involved in an extremely inappropriate incident involving a female student.

14. During the District's investigation of the above-referenced incident, Mr. Boyle admitted to having taken a female Schalick High School student, A.S.,

alone, to a play at the Academy of Music in Philadelphia, Pennsylvania on January 12, 2013. A.S. is a minor. Although Mr. Boyle allegedly had obtained prior permission from A.S.'s mother, he failed to inform the District of his intentions to do so before taking A.S. and he failed to inform the District after taking her, until it was raised during the course of this investigation. This was not a school-related function.

15. When the inappropriate nature of this incident was discussed with Mr. Boyle, he indicated an intention to engage in similar behavior with A.S. in the future.

16. Mr. Boyle's act of taking A.S., alone, to an out-of-state function without notifying any District administrator substantially disrupts and/or interferes with the orderly operation of the District.

17. Mr. Boyle's actions were extremely inappropriate and highly egregious given the heightened standards of conduct to which educators are held.

18. Mr. Boyle's inappropriate conduct with A.S. touches upon his character and highlights his propensity to engage in inappropriate and disturbing behavior.

Charge No. 3
(Other Sufficient Cause)

19. The District restates the allegations contained in Charges 1 and 2 and re-alleges and incorporates them by reference as if fully set forth at length herein.

20. During the District's investigation of the above-referenced incident with N.A., the District learned that Mr. Boyle has engaged in other inappropriate behavior with female students. In particular, and by way of example only, Mr. Boyle has been observed on school grounds carrying female students on his back. Mr. Boyle has also communicated with students via Facebook and text messages on non-school related matters. In particular, and by way of example only, Mr. Boyle has texted female students about their physical appearance.

21. This inappropriate behavior is unacceptable and substantially disrupts and/or interferes with the orderly operation of the District.

22. Based on the cumulative information received by the District, the Board of Education of the Pittsgrove Township School District (the "Board") passed a resolution on March 7, 2013 ordering that Mr. Boyle undergo a psychiatric examination administered by a physician appointed by the Board of Education. Attached hereto as Exhibit E is the resolution passed by the Board.

23. On March 21, 2013, a psychological evaluation was conducted by Dr. Harry A. Green. Dr. Green concluded that Mr. Boyle's admitted lack of close personal adult relationships leads him to seek a sense of worth, comfort and support in inappropriate places (i.e. with students). Attached hereto as Exhibit F is Dr. Green's psychological evaluation report.

24. Due to the findings of the psychological evaluation and the cumulative effect of Mr. Boyle's misconduct, his actions constitute other sufficient cause sufficient to warrant dismissal or a reduction in salary.

25. Mr. Boyle has engaged in multiple acts of unbecoming conduct by engaging in unwelcome physical contact with a female student; accompanying a minor female student alone to an out-of-state play unrelated to school; contacting female students outside of school on non-school related matters; and other behavior that demonstrates a severe lack of judgment. Based on the findings of the psychological evaluation and the cumulative effect of Mr. Boyle's misconduct, Mr. Boyle's tenure should be revoked and his employment with the Pittsgrove Board of Education terminated.

FACTS

Respondent has been employed by the Board for twenty-four (24) years. Throughout his career, he worked as a language arts teacher at the middle school. Boyle has also coached sports, including girls track and field hockey, at the Schalick High School.

Until the events giving rise to the current tenure charges, Respondent had an unblemished employment record. He had never been subject to a suspension, increment withholding or a reprimand. Boyle had excellent evaluations.

Respondent has two daughters who were students in the Pittsgrove School System and athletes on teams coached by Boyle. Daughter SB graduated in 2009 and daughter MB graduated in 2012. Both daughters are now at college.

Petitioner has a written policy concerning "Transportation of Students/Athletes". That policy, most recently re-issued to all coaches on September 1, 2012 states as follows:

No teacher or coaches shall provide transportation for students/athletes without prior permission from the Superintendent of Schools. This permission is obtained through appropriate channels by first discussing the request with the Athletic Director who will forward it through the Building Principal to the Superintendent.

Petitioner does not have a written policy on social media use or the use of personal technology. Principals have, however, included information concerning these matters in staff meetings. On March 1, 2010, Principal Ocasio-Himenez made a slide show presentation to the middle school faculty that included the topic of "Befriending Students". Respondent attended this session.

At the time of events now at issue, Respondent was "Friends" with a number of the District's current and former students on Facebook. Many of these "Friends" were present or former members of the sport teams he coached.

Starting in late 2011, Respondent had a series of personal difficulties. In December 2011, both of his parents were diagnosed with cancer. In May 2012, Respondent's mother died. In October 2012 his marriage ended.

On January 28, 2013, AAO Williams found an anonymous note that had been placed under her office door. That note concerned an incident involving female high school student NA that took place at a freshman basketball game on Friday afternoon, January 25, 2013. The note stated as follows:

Pittsgrove Township School District Affirmative Action Officer,

NA, a Schalick High School student, reported that Mark Boyle, a Pittsgrove Township School District employee, kissed her on the cheek at a Schalick girls basketball

game. She also reported that it made her feel uncomfortable and Mr. Boyle has done additional "things that make (her) feel uncomfortable."

AAO Williams promptly commenced an investigation. She interviewed those who were present at the basketball game and were aware of the incident, specifically, NA, Teacher Brown and minor student TI. AAO Williams also interviewed NA's mother and Respondent. AAO Williams interviewed the witnesses individually and took detailed notes, recording what each witness said.

During her investigation, AAO Williams spoke with Superintendent Bermann. A decision was made to report the matter to the Institutional Abuse Investigation Unit ("DYFS")² and the State Police³.

During the course of her investigation, AAO Williams learned of possible other incidents involving inappropriate behavior by Respondent. More specifically, AAO Williams was told that on January 12, 2013 Respondent took female

² "DYFS" chose not to investigate the incident because NA was 18 years old at the time.

³ The State Police did conduct its own investigation of Boyle. In a detailed report issued on or about February 22, 2013, the State Police concluded as follows:

Based on the facts established in this investigation, Boyle has not been proven to have violated any of the laws enumerated in the New Jersey Title 2c-Code of Criminal Justice. Based that (sic) and the fact that there is no pending evidence, this case is considered Unfounded and Closed.

high school student AS alone to Philadelphia to see a play. AAO Williams also was told that Respondent had been texting and communicating via Facebook with then current students on issues that were not related to academics or sports.

Sometime between February 10 and 19, 2013, while AAO Williams' investigation was underway, Respondent sent a text to NA. That text stated as follows:

I shouldn't be texting you. If the school found out I would be in trouble so please don't mention it to them. I want you to know that none of this is your fault. You didn't do anything to get me in trouble. They just used that kiss on the cheek as an excuse to dig into every rumor about me. They have been waiting to try and stop me from coaching. If it wasn't this incident it would have been another. You and I know that I would never hurt you or any girl in that school but they want to make every text or facebook like (sic) seem like something its not. This doesn't change the fact that you are a great kid in my eyes. I have enjoyed coaching you and watching you play. I blame you for nothing and I will do my best to come watch you play for Delaware. Tell your mom and dad I'm sorry for this mess and I apologize to you for making you go through this.

On February 20, 2013, AAO Williams issued a report of her investigation. That Report contained the following Summary and Action Plan:

There is evidence and admission from Mr. Mark Boyle that he kissed a student on the cheek. Also, Mr. Boyle confirmed that he has interacted with a current student off school grounds at a nonschool related event. Therefore, based on the findings, the accusations related to Mr. Boyle's conduct and interactions are substantiated.

Mr. Boyle is advised to follow the recommendations listed below:

- Mr. Boyle should have no physical contact with students currently attending Pittsgrove Township Schools.
- Mr. Boyle will not engage in nonschool related activities with students currently attending Pittsgrove Township Schools.
- Mr. Boyle will refrain from communicating via social networking sites with students currently attending Pittsgrove Township Schools.
- Mr. Boyle must complete the GCN training entitled Ethics and Boundaries for School Employees prior to June 30, 2013.
- Mr. Boyle is advised (to) seek Psychological/Therapeutic Services related to appropriate and ethical workplace relationships.

Boyle expressed willingness to follow each of these recommendations. He did "un-Friend" all current students and attended training and sought out a therapist.

On March 7, 2013, the Board referred Respondent for a psychological evaluation to a Psychologist of its choosing, Harry A. Green, Psy.D. ("Dr. Green"). Dr. Green met with Respondent in his office and conducted approximately four hours of testing. Dr. Green's Summary and Conclusion were as follows:

Mark Boyle is a 49 year old male who was referred for an evaluation in light of a student's allegation that he kissed her on the cheek. Based on the findings of this evaluation, Mr. Boyle is a man who has struggled to cope effectively with a number of interpersonal losses over the past two years. He has experienced a variety of depressive symptoms which he attempted to manage initially by self-distraction (e.g. exercising), and later by medication. These strategies were effective to a degree but appear to

have attenuated what has at least been relatively adequate judgment in his relationships with the students he teaches and coaches. His general lack of close personal relationships further left him vulnerable, this absence leading him to seek a sense of worth, comfort, and support in inappropriate places (i.e. with students).

There are no indications in the testing or the documents reviewed as part of this evaluation that Mr. Boyle is sexually attracted to children or adolescents. It is noteworthy that despite years of exposure to teenage girls, the present represents the first known allegation of this kind.

In sum, this evaluation supports the perspective that Mr. Boyle is an individual for whom the symptoms of depression and a propensity for social isolation attenuated historically intact judgment. He demonstrates at least some understanding of the problematic nature of his behavior and its underlying antecedents. It is this writer's assessment, with a reasonable degree of psychological certainty, that given his adherence to the recommendations stated below, he is psychologically appropriate to return to work as a teacher and coach.

After the above summary, Dr. Green set forth his "Diagnostic Impressions", which included "Major Depressive Disorder, Single Episode, In Partial Remission". Dr. Green then concluded his report with the following Recommendations:

1. It is strongly recommended that Mark Boyle engage in regular and consistent treatment with a therapist who specializes in treating clients with depressive issues. Such treatment can be on outpatient basis.

- i. Mr. Boyle would benefit from treatment where the focus is on identifying and expressing emotions, and facilitating the formation of emotionally supportive relationships is indicated.

ii. Given his aversive response to forming close interpersonal bonds, treatment of a cognitive behavioral nature is recommended.

iii. Ongoing assessment of treatment progress with regular updates to the School Board about treatment compliance and present functioning is recommended.

2. It is recommended that Mr. Boyle continue to be prohibited from engaging with present students via social media.

3. It is recommended that he refrain from after-school trips or outings with present students without prior written approval from the School Board.

Boyle expressed willingness to comply with all of Dr. Green's recommendations. He subsequently began counseling and treatment with a therapist.

Superintendent Bermann reviewed Green's Report. The Superintendent mistakenly believed that Dr. Green did not have before him the State Police report. Bermann rejected Dr. Green's conclusion that Boyle was fit to return to teaching. Bermann was of the belief that behavior does not change and therefore believed the risk of continuing Boyle as a teacher in the District was too great.

Accordingly, on August 5, 2013, Bermann brought the tenure charges set forth above against Respondent.

POSITION OF PETITIONER

As demonstrated through the testimony of Petitioner's four witnesses, Respondent's witnesses, and the exhibits presented at the arbitration hearing, the evidence demonstrates that Boyle engaged in unbecoming conduct for a teacher by kissing a student, taking a student to an out-of-state play without notifying the administration, communicating with students via text messages and social media on non-academic and non-sports related matters, and engaging in physical contact with students. Despite being told not to engage in such conduct - and despite being an educator with 24 years of experience and judgment - Boyle engaged in this inappropriate behavior.

Respondent's conduct clearly warranted dismissal. Boyle should not be permitted to return to the classroom or athletic fields, as there is no guarantee that he will refrain from such inappropriate behavior in the future. Petitioner therefore requests that Boyle's tenure be revoked and that he be terminated from his employment with the Pittsgrove Board of Education.

POSITION OF RESPONDENT

The District cannot avoid the legal significance of the psychological examination it ordered Respondent to undergo with Dr. Green, who found Respondent fit to return to teaching and coaching. The Board did not "reasonably arrive at" its decision to place Respondent out of work.

Respondent's actions did not warrant the harsh penalty of termination, particularly given mitigating circumstances. Boyle does recognize, however, that the behaviors giving rise to this case, and which arose from a diagnosed mental health condition, were inappropriate. He has, therefore, followed each of the recommendations of AAO Williams and Dr. Green. Under all of the circumstances, a 60-day suspension is appropriate.

Given that Boyle has already lost coaching stipends worth more than \$15,000.00 each year, such a suspension would equate to the out-of-pocket impact of a 120-day suspension this year and an increment withholding in future years.

OPINION

Petitioner has carefully established the basic facts supporting each of the three charges. Respondent, in large part, acknowledges these facts.

More specifically, Petitioner has established the following. First, on the afternoon of January 25, 2013, at a freshman basketball game, Respondent placed his arm around student NA and kissed⁴ her on the cheek. Second, on January 12, 2013, Respondent took a female high school student, AS, alone to a play in Philadelphia, Pennsylvania, without informing the administration of his intentions to do so before taking AS and without informing the administration after he took AS. Third, on school grounds Respondent gave a piggy-back ride(s) to student KM, and communicated with students through Facebook and text messages on non-school related matters, including sending to two female students comments about their physical appearance.

This case is also not complicated insofar as it concerns the question of whether Respondent's actions constituted "unbecoming conduct" within the meaning of N.J.S.A. 18A:6-10. As convincingly argued by Petitioner, Respondent should not have kissed NA on the cheek, should

⁴ The nature of the "kiss" is of significance and will be discussed later in this Opinion.

not have taken AS alone to the play, and should not have given "piggy-back ride(s)" and engaged in the communications he did with students on non-school related matters. As argued by the Petitioner, these actions individually, but especially collectively, were a breach of the physical and social boundaries that must exist between teachers and students. His conduct had a tendency to destroy public respect for teachers and confidence in the operation of the School system. It was inconsistent with the high degree of self-restraint and controlled behavior expected of teachers. It understandably upset student(s) and parent(s).

While Respondent explains his behavior, in large part, by contending that it happened as a result of an extremely difficult period in his life which caused him to look for relationships in inappropriate ways, that cannot excuse what occurred. Although Respondent may have been suffering from depression, his medical condition likewise cannot excuse his behavior.

The real question in this case, therefore, is whether Respondent's "unbecoming conduct, or other just cause", warranted his dismissal as a tenured teacher pursuant to N.J.S.A. 18A:6-10. While Petitioner argues forcefully that Respondent's conduct not only warranted, but indeed

required, his termination, I am compelled to conclude otherwise.

The most important consideration to me in reaching this conclusion is, of course, that there is not the slightest proof that any inappropriate sexual or romantic activity ever took place as a result of Respondent's interactions with students. If there were suspicions to that effect, there was no evidence whatsoever uncovered in the extensive investigations undertaken by either the Petitioner or the State Police to support such suspicions. Moreover, the Board appointed psychologist who examined Respondent, Dr. Green, found that "(t)here are no indications in the testing or the documents reviewed as part of this evaluation that Mr. Boyle is sexually attracted to children or adolescents."

Concerning what did occur between Respondent and students, the unbecoming conduct here at issue was neither as egregious as Petitioner portrays nor to the degree that warrants the termination of a teacher with 24 years of unblemished service and excellent evaluations. Petitioner's assertions do not fully account for the context in which the events took place. Petitioner has also not fully accounted for mitigating factors.

As to the first charge (the NA incident), the evidence supports Respondent's assertion that his kiss on NA's cheek was a misguided attempt to reassure NA that he was not mad at her because she had decided not to be a member of the track team Respondent was coaching that year. Although NA did not testify at the arbitration hearing, she was extensively interviewed by AAO Williams during her investigation. The notes taken by AAO Williams during that investigation record the following exchange between them.

AAO: Tell me about the incident at the game?

NA: "I was sitting talking to T and we were talking about track and out of nowhere he just kissed me on the cheek."

AAO: What were you and Mr. Boyle talking about?

NA: "I asked him if he was mad at me for not running track this year, because we do not communicate as much and he leaned over and kissed me on the cheek and said, no I am not mad at you."

A review of the video recorded of the incident reveals that the kiss was fully on NA's cheek and was exceedingly brief. Respondent is not inaccurate in characterizing this kiss as a "peck on the cheek". While it was clearly wrong for Respondent to initiate any physical contact with NA, it is also clear that at this public event, in front of many people, with security cameras present, there was no intention of Respondent to make any kind of improper advances towards NA.

As to the second charge (the AS incident), Petitioner's analysis does not properly account for the fact that until recently Respondent's own two daughters were students in the District and athletes on the teams he coached, and that Respondent was therefore a parent as well as a teacher/coach. Respondent's daughters had since childhood been classmates and friends with students involved in this case, most notably AS.

All of the evidence before me supports Respondent's assertion that his family and AS's family were close friends. At the arbitration hearing, Respondent's daughter SB gave persuasive and compelling testimony concerning that relationship. AS's mother, CS, also gave compelling testimony about that family friendship, and testified that she considered Respondent a close family friend.

The evidence is undisputed that the trip Respondent took with AS to the play in Philadelphia was completely consistent with the understandings and expectations of AS's parents. Mother CS, who is a very involved parent as well as a teacher in a different school district, testified that she and her husband not only knew of Respondent taking their daughter to the play, but that on the day of the play she gave Respondent a written permission slip for that trip, and that she would have attended herself but for the

expense. Daughter SB likewise testified that her family knew of the outing and that her sister would have attended but for a scheduling problem. While Superintendent Bermann and Petitioner have repeatedly referred to the outing as a "date", the evidence is clear that this is not how it was viewed by anyone in the Boyle or S family.

Respondent also correctly notes that the District's policy concerning transportation of students does not explicitly state that it applies to non-school functions. This is a relevant fact, given that in the tenure charges brought against Respondent it is specifically noted that his trip with AS to the play was not a school-related function. Furthermore, Teacher Harris testified at the arbitration hearing that he had in the past transported minors who were current students for non-school events, specifically church outings, without notifying the administration or obtaining approval. While Petitioner correctly notes that the circumstances pursuant to which Teacher Harris took multiple students on church outings were far different than Respondent taking a single student to a play, the fact remains that Respondent was not the only teacher who believed it was unnecessary to obtain permission to take a current student to a non-school event under Petitioner's policy.

As to the portion of the third charge (other sufficient cause) concerning Respondent giving a "piggy-back" ride to a student, it is once again apparent that there was no inappropriate intent by Respondent. This happened, at most, on two occasions. On one of the occasions, student KM jumped on Respondent's back without his knowledge, and he immediately told her to get off. Moreover, I accept Respondent's contention that he never touched the student's buttocks, at least not intentionally. Others were present, and AAO Williams, who testified that she observed the incident, did not then admonish Respondent, let alone report him for misconduct. As to the second reported "piggy-back" incident, Respondent transported an injured athlete on his back. While this was unwise, I once again accept that he had no improper intent. Other student athletes were present, and he clearly was not intending to do anything more than transport the injured student from one location to another.

As to the other portion of charge No. 3, concerning Respondent's use of Facebook and text messages to communicate with students about non-school and non-sports related matters, the evidence once again does not prove any intent by Respondent to make sexual or romantic overtures. While Respondent did on several occasions inappropriately

refer to how students looked, these were not comments of a sexual or romantic nature. For example, while Petitioner correctly notes that Respondent told one student athlete "you looked a little out of shape", it is apparent that he meant this in an athletic sense, as he followed that comment by saying "I thought the Olympics would inspire you."

Furthermore, at times here relevant, Petitioner did not have any written policy for social media or personal technology usage. While the Board correctly notes that a slide show was presented by Boyle's Principal in March 2010 that involved social media usage, it is not clear that at this session teachers were explicitly told not to interact with students on Facebook or other social media. Although I do not doubt that this was the intent of Principal Ocasio-Himenez, Boyle testified credibly that the "main take" he had was to "protect yourself", not that there was an outright prohibition on use of social media with students. Boyle's "take" is not inconsistent with the slides from the presentation that were placed into evidence, as they stated things such as "Facebook - Friend or Foe?" and "Beware the Network!". No slide specifically stated do not use social media and/or text message with students.

For all these reasons, I reject Petitioner's assertion that Respondent's past conduct was so egregious as to warrant his dismissal. Just as important, I reject Petitioner's additional contention that retention of Respondent as a teacher would create an undue risk for his future students.

Respondent argues correctly that the belief of Superintendent Bermann, which was presumably adopted by the Board, that retention of Respondent was an undue risk is directly contrary to the conclusion reached by Dr. Green, the Board-appointed psychologist who examined Respondent extensively after the allegations now at issue came to light. Dr. Green stated in his report that the strategies used by Respondent to address "a variety of depressive symptoms...were effective to a degree but appear to have attenuated what has at least been relatively adequate judgment in relationships with students he teaches and coaches". Most importantly, Green concluded that:

...with a degree of psychological certainty, that given his adherence to the recommendations stated below, he is psychologically appropriate to return to work as a teacher and a coach.

Respondent has stated and demonstrated his willingness to follow Dr. Green's recommendations.

Moreover, Respondent correctly notes that when Superintendent Bermann rejected Dr. Green's conclusions he

had a mistaken understanding of what information Dr. Green had before him when concluding that it was appropriate for Respondent to return to teaching. More specifically, Superintendent Bermann testified at the arbitration hearing that he did not believe Dr. Green had available to him the report issued by the State Police at the conclusion of its investigation. This State Police report was very thorough and covered most, if not all, of the matters which led to Respondent's dismissal. As noted in Dr. Green's report, he did have available to him both the initial and supplemental reports of the State Police, as well as the Report of AAO Williams.

Superintendent Bermann's belief that Respondent's unbecoming conduct could not be corrected was also not consistent with the recommendations made by AAO Williams, the individual who conducted the Board's own investigation. AAO Williams, like the State Police, conducted a very thorough investigation. Following that investigation, in a report dated February 20, 2013, AAO Williams found that the accusations related to Boyle's conduct and interactions were substantiated. She then made five specific recommendations, each of which is premised upon Respondent's continued employment.

Respondent also correctly argues that Superintendent Bermann's decision to bring tenure charges against Respondent, notwithstanding the conclusions of the District's own psychologist and Affirmative Action Officer, was based upon an understanding of human behavior which is not supported by medical evidence in this record. More specifically, Superintendent Bermann testified at the arbitration hearing that he believed that individuals do not change, and therefore Boyle's continued employment would create too great a risk for the District. The conclusion of Dr. Green that Respondent is psychologically appropriate to return to work as a teacher is, however, far more persuasive than the medically untrained conclusion of Superintendent Bermann. While I do not in any way doubt the sincerity of Superintendent Bermann, and there is certainly no "guarantee" concerning the future actions of any teacher, all of the objective evidence before me leads to the conclusion that retention of Respondent as a teacher does not create any undue risk.

Finally, Respondent's continued employment as a middle school teacher would not place him into contact with the students with whom he had the boundary issues that led to the tenure charges being filed. It was high school students who were, or had been, connected to the high

school teams Respondent coached that were at the center of the incidents that led to tenure charges being filed against Respondent.

For all of these reasons, I find that Petitioner cannot establish that Respondent's "unbecoming conduct, and other just cause" warranted his dismissal as a tenured teacher. This conclusion does not, of course, excuse or justify Respondent's behavior. To the contrary, it is appropriate that he suffer substantial loss of compensation as a result of his actions.

I reject Respondent's assertion that a 60-day suspension is appropriate. The seriousness of Respondent's unbecoming conduct requires a more stringent penalty and negates any possibility of Respondent receiving back pay. It is my determination that Respondent's unbecoming conduct warranted his being suspended without pay until the first school day occurring in January 2014 that follows the holiday break.

AWARD

Petitioner has substantiated all three charges against Respondent. Respondent's "conduct unbecoming, and other just cause" did not warrant his dismissal as a middle school teacher. Petitioner shall reinstate Respondent to his former position, without back pay, on the first school day occurring in January 2014 that follows the holiday break. Respondent shall comply with all recommendations made by the Petitioner appointed psychologist Dr. Green in his report of April 15, 2013, until such time as Dr. Green, or another Petitioner appointed psychologist, eliminates or modifies those recommendations.

Signed this *20th* day of December 2013.



SCOTT E. BUCHHEIT, ARBITRATOR

State of New Jersey
County of Camden

Mattia P. Kaylin
My Commission Expires
February 5, 2019

