

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

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In the Matter of the TENURE hearing of the

SCHOOL DISTRICT OF THE CITY OF ATLANTIC CITY,
ATLANTIC COUNTY

Agency Dkt. No.
275-9/12

Complainant,

and

CHRISTOPHER LORGE,

Respondent.

**OPINION
AND
AWARD**

-----X
Before **MELISSA H. BIREN, Esq.**, Impartial Arbitrator

APPEARANCES:

For the Complainant

Cooper Levenson, P.A.

William S. Donio, Esq.

Rebecca D. Winkelstein, Esq.

For the Respondent

Selikoff & Cohen, P.A.

Stacey C. Schor, Esq.

Keith Waldman, Esq.

Pursuant to *N.J.S.A. 18A:6-16*, as amended by *P.L. 2012, c 26* ("TEACHNJ"), the tenure charges brought by the School District of the City of Atlantic City, Atlantic County (the "District") against Christopher Lorge ("Lorge") were referred to me for a hearing and decision. I conducted a hearing at the offices of Cooper Levenson in Atlantic City, NJ, on November 30, 2012 and December 4, 2012.¹ In addition to counsel for each party, Donna L. Haye, Superintendent of

¹ The hearing was originally scheduled for November 6 and 12, 2012. Due to the impact of Hurricane Sandy on the District, a request was timely made to the Commissioner for an extension of time, which request was granted on November 8, 2012.

the Atlantic City Schools, was present on behalf of the District and Marcia Genova, ACEA President, and Vincent Perna, NJEA Representative, were present on behalf of the Respondent.

At the start of the hearing, the parties agreed that the issue to be decided in this tenure hearing is as follows:

Has the School District of the City of Atlantic City, Atlantic County, established that the Respondent, Christopher Lorge, engaged in conduct unbecoming his position as a tenured teacher and, if so, what shall be the penalty?

Both parties were represented by counsel in this proceeding and had a full opportunity to adduce evidence, to cross-examine each other's witnesses and to make argument in support of their respective positions. Neither party has raised any objection to the fairness of this proceeding. The evidence adduced, the legal authorities cited and the positions and arguments set forth by the parties have been fully considered in the preparation and issuance of this Opinion and Award.

The Charges:

The Statement of Charges and Specifications brought against Lorge include nine charges alleging violations of New Jersey law and Board policies and regulations arising from essentially the same set of facts. Charges 1, 3, 5, 7 and 8 each includes the following factual allegations:

“Specification: Christopher Lorge is a tenured teaching staff member employed by the Board who is assigned to teach, among other courses, a piano course at Atlantic City High School (“ACHS”) for the 2011-2012 school year...

Specification: B.V.-C.² is an ACHS student assigned to Christopher Lorge 's piano class for the 2011-2012 school year.

Specification: On February 16, 2012, while in piano class Christopher Lorge threw a textbook at B.V.-C., which hit B.V.-C. in her head and injured her. B.V.-C.'s injuries resulting from being hit in the head with the textbook included a laceration.

Specification: Administration interviewed the students assigned to Christopher Lorge's piano class, who substantiated B.V.-C.'s allegation that Christopher Lorge threw a book at B.V.-C. and said book hit B.V.-C. in the head.

Specification: On Tuesday, February 21, 2012, by electronic mail Christopher Lorge admitted to John DeStefano, a Supervisor at ACHS, that on February 16, 201, he 'threw a paperback piano lesson book' in B.V.-C.'s direction as a means of discipline because she appeared to be talking on the telephone and wearing earphones instead of the piano headphones required of her and that 'the book landed on [the student's] head.'"

(Joint Exhibit 1.)

Charges 2, 4, 6 and 9 each includes the following factual allegations:

"Specification: Christopher Lorge is a tenured teaching staff member employed by the Board who is assigned to teach, among other courses, a piano course at Atlantic City High School ("ACHS") for the 2011-2012 school year...

Specification: B.V.-C. is an ACHS student assigned to Christopher Lorge 's piano class for the 2011-2012 school year.

Specification: On February 16, 2012, while in piano class Christopher Lorge threw a textbook at B.V.-C. which hit B.V.-C. in her head and injured her. Approximately three weeks prior to the incident on February 16, 2012, Christopher Lorge threw a box of tissues at B.V.-C. B.V.-C. informed Christopher Lorge that he almost hit her with the box of

² The full name of B.V.-C ("B.V.") was provided to the Respondent, as were the full names of other students in that class, for purposes of this tenure hearing. To protect student confidentiality, however, only initials are used in this Opinion and Award.

tissues, to which Christopher Lorge responded that 'next time there will be no almost.' Christopher Lorge also previously threw a book at B.V.-C's head as a warning but missed.

Specification: Administration interviewed students assigned to Christopher Lorge's piano class. Those interviews revealed that on more than one occasion Christopher Lorge used a supervision and discipline technique that involved throwing items at his students in order to get their attention, include (sic) textbooks, boxes, and erasers."

The Charges allege that by Lorge's conduct as set forth, Lorge violated the following:

- Charges 1 and 2: *N.J.S.A. 18A:6-1*, regarding corporal punishment.
- Charges 3 and 4: Atlantic City Board of Education Policy No. 3280, Liability for Pupil Welfare.
- Charges 5 and 6: Atlantic City Board of Education Policy No. 3217, Use of Corporal Punishment.
- Charge 7: Atlantic City Board of Education Policy No. 3211, Code of Ethics.
- Charges 8 and 9: Atlantic City Board of Education Regulation No. 3280, Liability for Pupil Welfare.

Following receipt of Respondent's response to the charges, the Atlantic City Board of Education (the "Board") voted that there was "probable cause to credit the evidence and that the charges are sufficient to warrant dismissal pursuant to *N.J. Stat. Ann.* 18A:6-11, and determined to suspend [Lorge] without pay pursuant to applicable law." (Joint Exhibit 1.) The Board certified the charges and forwarded them to the Commissioner of Education on September 13, 2012. The Board seeks Lorge's dismissal from his position as a tenured teacher in the District.

Background:

The following is a summary of the relevant evidence in this case. Lorge is a tenured teacher in the District, having worked in the Atlantic City High School (“ACHS”) for 10 years prior to his suspension in connection with these charges. Before teaching in the District, Lorge taught for four years in another public school in New Jersey. Lorge taught music at ACHS.

During the 2011-2012 school year, Lorge taught a piano class, scheduled for the last period of the day. The classroom for the piano class is set up with a piano in the front and four rows for students, each with three positions across, for a total of 12 students in the classroom. Each student has a Yamaha keyboard/piano, with a fold-up music stand. The students and the teacher wear headphones that are connected to the individual keyboards and to a console in the front of the room sitting on the teacher’s keyboard. Wearing the headphones, each student can hear his or her own piano playing. The teacher can also listen to each student’s individual piano playing by pushing the appropriate button on the console in front of him. In addition, the headphones allow for communication between the teacher and all students or just one student. (Headphones, admitted into evidence as Board Exhibit 2, were shown to the arbitrator at the hearing.³)

The charges in this case arise from an incident in the piano classroom during last period on Thursday, February 16, 2012, the last day before a four-day weekend; the District was closed on both Friday, February 17, 2012 and Monday, February 20, 2012. Student B.V. testified that she needed to call her sister during piano class to pick her up after school to take her to work. She asked Lorge if she could use her cell phone. Although he did not respond to her

³ The arbitrator did not take possession of the headphones, the piano book or the box of tissues, although each were admitted into evidence as Board Exhibits 1, 2 and 3.

request, she assumed it would be all right to use her cell phone in class. She testified that she had the ear bud for her phone in one ear, but that she kept the headphones on her head as well. With her head down, she began to call her sister on her cell phone. After a couple of rings, but before her sister answered the call, she felt a piano book hit her in the head. It was a thin, soft covered piano lesson book. (A book similar to the book that was thrown was shown to the arbitrator and admitted into evidence as Board Exhibit 3.) B.V. looked up and saw Lorge looking at her. She stood up and asked why he threw the book. He responded that she should put her phone away. B.V. told Lorge that he let other people use the phone so why not her. She testified that she was angry and upset that he was telling her to get off the phone. According to B.V., although everyone laughed at what had occurred, she did not feel embarrassed.

B.V. told Lorge that she was going to see her guidance counselor and she left the room. She testified that she wanted to let her guidance counselor, Beatrice Corvitto, know what had happened. B.V. stated that she had a red mark, a scratch, on her forehead. Corvitto took her to the nurse's office. The nurse gave her an ice bag to put on her forehead and asked questions about what had happened. By this time, B.V. had called her sister, who came to the school and was with her in the nurse's office. John DeStefano, a Supervisor of Curriculum at ACHS, was also called to the nurse's office. DeStefano asked B.V. to provide a written statement, which she did. That statement read as follows:

"I asked Mr. Lorge if I can make a call, so my sister can come to pick me up. He didn't say anything so I thought it was okay then I hanged up but I have my earphones on. Then he through (sic) me the book in my face and like weeks ago he threw me one but skip it but this time he hit me in my face."

(Joint Exhibit 5D.)

B.V. also testified that at some point prior to this incident, she and a friend were talking in class and Lorge threw a box of tissues at her. The box did not hit her. She did not know if the box was full. (A box of tissues that B.V. testified was similar to that thrown was shown to the arbitrator and admitted into evidence as Board Exhibit 1.) In response, B.V. told Lorge that he almost hit her and that she does not “play like that.” According to B.V, Lorge then told her words to the effect of “next time it will not be almost”. B.V. testified that Lorge had thrown other things in class as well, sometimes at the intercom during afternoon announcements, and that he “joked around a lot.”

Corvitto testified that she has been B.V.’s guidance counselor for four years and that the two have a good rapport. On February 16, 2012, B.V. came to her office towards the end of eighth period upset and crying. B.V. told Corvitto that her music teacher threw a textbook at her because he was mad that she was using her earphones. Corvitto also testified that B.V. said she was embarrassed. B.V. had a red mark on one side of her forehead; there was no scratch. Corvitto asked if the mark on her forehead hurt and B.V. responded “a little bit” so Corvitto took her to the nurse. Corvitto did not write an incident report at that time because the nurse would do so. DeStefano, however, did ask her to provide a report, which she did when she returned to school after the long weekend. (Joint Exhibit 5C.) Corvitto testified that Lorge did not contact her that afternoon.

DeStefano testified that on February 16, 2012, he received a call from the nurse that a student had been injured. It was approximately 2:00 PM; dismissal for students and staff that day was 2:10 PM. He went to the nurse’s office and spoke to the nurse, Juanita Hyman, as well as to B.V. B.V. alleged that her teacher, Lorge, had hit her in the head with a book. B.V. was upset and was crying. She had a red mark visible on her forehead. Her sister was present as

well. DeStefano asked B.V. for a written statement and for a list of the other students in the class so he could investigate; he could not interview the other students that afternoon, however, as they had already left for the day. He then contacted Oscar Torres, the Principal, Chief Parker, who is in charge of security at ACHS and he made other notifications as were appropriate.

DeStefano also tried to speak to Lorge that afternoon. He asked his secretary to call the classroom, but there was no answer. By that time, Lorge had left for the day. DeStefano finally spoke to Lorge on his cell phone and told him that there was an incident at the school and that he needed Lorge to provide a statement. Lorge said he could not return that afternoon. DeStefano told Lorge that he should report to DeStefano's office on Tuesday morning and provide a written statement before that time. DeStefano received an e-mail from Lorge on Tuesday, February 21 at 7:15 AM, which stated as follows:

"On Thursday, 2/16/12, there was an incident in my classroom involving me and a student. The student was wearing earphones and not the piano headphones. She appeared to be talking into a telephone. To get her attention, I threw a paperback piano lesson book in her direction. Unfortunately, the book landed on her head. I told her to stop talking on the phone and play the piano. She responded angrily and left the room.

Please let me know if any further description of this incident is required."

(Joint Exhibit 5B.)

When Lorge arrived on Tuesday morning, he reported to the office as directed. DeStefano asked him to be seated, but did not otherwise speak to Lorge about what occurred. Because Lorge's statement matched the allegation from B.V., DeStefano viewed it as an admission. He forwarded the e-mail to Torres and then attended a meeting with Torres and Lorge; although Lorge was advised of his right to Union representation at this meeting, he declined.

According to DeStefano, Torres did the talking. Lorge was given a letter at that time advising that he was suspended with pay, pending investigation. (Joint Exhibit 3A.) Lorge did not ask about B.V. or otherwise express remorse for his actions during that meeting.

On cross-examination, DeStefano was asked about the statements made by other students as part of his investigation. (DeStefano's notes of his interviews with the students were introduced as Respondent Exhibit 1.) DeStefano testified that he asked each student whether he/she was in music class on Thursday, February 16, 2012, and whether he/she was aware of anything that happened that day. He then listened to what was said, but asked no follow up questions. He also did not request that the students prepare written statements. According to DeStefano, based on his interview notes, the students made the following statements to him: (a) S.A. stated that Lorge had previously thrown books in class, but made no reference to a book being thrown on February 16, 2012; (b) M.A. stated that Lorge was kidding around and threw a piano book at B.V. which hit the music stand and may have touched her and that Lorge threw a tissue box to get their attention, but was just "playing around"; (c) J.P. said that Lorge has thrown a box or eraser that hit the wall; (d) J.D. said that B.V. was using her phone and Lorge hit her with a book to get her attention, that Lorge had thrown a book at him for not paying attention while playing piano, and that Lorge "jokes around because he is just trying to be happy"; and (e) K.R. said he was not paying attention. (Respondent Exhibit 1.)

Donna Haye, Superintendent,⁴ testified that Torres called her on February 16, 2012 to report what had allegedly occurred in Lorge's classroom and to

⁴ At the time of the incident, Haye was Assistant Superintendent of Curriculum, a position she held for 11 years. By the time that tenure charges were discussed with the Board and then certified and forwarded to the Commissioner, Haye had been appointed Superintendent.

advise that they were investigating. On Tuesday morning following the long weekend, she also received a copy of Lorge's e-mail regarding the incident. After speaking with then Superintendent, Fredrick Nickles, Haye obtained a letter from Human Resources suspending Lorge, which she signed on Nickle's behalf. (Joint Exhibit 3A.) That letter was presented to Lorge at his meeting with Torres. Thereafter, on April 26, 2012, Haye interviewed B.V., with Torres present. According to her notes of the meeting, B.V. told her that Lorge gave her permission to use her cell phone. Then he threw a piano book across the room, hit her on top of the head and "made a lump and red mark." B.V. said she left the room to go to the nurse. B.V. also told Haye that prior to this incident, Lorge threw a tissue box that almost hit her and then said that "next time there will be no almost." Haye did not interview any of the other students in the class nor did she interview Lorge prior to preparing the tenure charges for presentation to the Board.

Haye testified that the District has a diverse population, with many students who do not speak English as a first language and many who come from poor homes and face various challenges. Among Haye's priorities are to raise expectations for the students, to be student focused and provide opportunities for the students that are the same or similar to those provided in suburban schools. Safety and security are also paramount concerns in the District. Haye stated that students cannot learn if they do not feel safe. Similarly, the environment must be safe for the staff; there is zero tolerance for any student who touches or throws something at a teacher. Haye noted that while ACHS was designated a "persistently dangerous school" in 2001 based on the level of violence, it was removed from that designation in 2003.

With this background, Haye testified that significant action was required to address Lorge's conduct. Throwing a book at a student under any

circumstances is not conduct that could be tolerated. That B.V. may have been on her cell phone, itself a violation of school policy, would not justify the action taken whether it was to discipline B.V. or to get her attention. Haye described the various policies, as described in the charges, that were violated by Lorge's conduct. (Joint Exhibits 3C, 3D, 3E and 3F.) Finally, she testified that teachers must be role models in the classroom; Lorge did not model good behavior to his students.

The final witness was Lorge. Lorge testified that at the start of class on February 16, 2012, B.V. was using her cell phone. He made eye contact with her and shook his head and she put the cell phone away. He proceeded to work with other students. Towards the end of class, he noticed that B.V.'s head was down below the music stand, almost resting on the keyboard. He could see the top of her head. She was not wearing the class headphones. He observed, however, that she had an ear bud from a cell phone in one ear and she was talking. According to Lorge, he pushed the button on the console to try to speak with her, but she did not respond. He took his headphones off and tried to call to her, but she still did not respond.

Lorge testified that at that point, he picked up the paperback piano lesson book and tossed it in her direction to get her attention; B.V. was seated in the back row of the classroom.⁵ The book landed on her head. After the book landed on her, B.V. stood up. Lorge told her not to use the cell phone. She argued that he let others use their phones.⁶ Lorge repeated that she had to put the phone away. B.V. became angry and said she was going to the nurse and would tell her parents. She did not say she was injured or give any other indication that she

⁵ The District's counsel demonstrated the distance to B.V.'s desk at the hearing, estimating that she was seated 20 feet away from Lorge.

⁶ At the hearing, Lorge denied that this was true.

was hurt. Lorge testified that he threw the piano book towards B.V. intending for it to fall near B.V. He did not intend for the book to hit her, much less to cause injury. Further, he did not throw the book as a means of discipline; he was simply trying to get her attention.

Lorge said he did not have the opportunity to say more to B.V. at that time as it was the end of the day and that after the long weekend, he was suspended and directed not to come on District property. He admitted that he did not contact the guidance counselor or nurse to follow up or otherwise make a report of the incident before leaving school that day. When he spoke to DeStefano that afternoon, DeStefano gave him the option of returning or giving a statement on Tuesday. As he was on his way to a rehearsal out of state, he said he would provide the statement on Tuesday. After providing his written statement on Tuesday morning, DeStefano did not ask him any questions, nor did any other member of the administration interview him. He was never asked about B.V.'s allegation regarding the tissue box or the alleged statement that he made to B.V. after throwing the tissue box or whether he had thrown other items in the classroom.

Lorge, however, admitted at the hearing that he had thrown a tissue box in class towards B.V. to get her attention on a prior occasion. It did not hit her. He denied that he ever made any threatening comment to B.V.; he did not say that "next time would not be almost" or any words to that effect. He also testified that these were not the only instances in which he threw an item in class. On three or four occasions during the 2011-2012 school year (and probably six or seven instances in his career), he has thrown a tissue box or the paperback piano lesson book to try to get a student's attention without disrupting others in the class, or simply joking around. For example, he recalled throwing a tissue box at the intercom after being interrupted by announcements correcting prior

announcements several times; the intercom was not near any student. He was trying to be funny and indicated that the students enjoyed that. At no other time had any item ever hit a student.

Lorge testified that during his 10 years at ACHS, he received positive evaluations; indeed, almost all of the ratings for the categories upon which he was evaluated, including classroom management and discipline, were either “Satisfactory” or “Exemplary” throughout his employment. Classroom observations were also deemed satisfactory. (Joint Exhibit 3B.) Further, he received no discipline prior to these charges, nor had he received any warnings.⁷

Positions of the Parties:

On this record, the District argues: (a) that Lorge’s actions in the classroom on February 16, 2012, i.e., throwing a book at B.V. and hitting her in the head, are not disputed; (b) that prior to February 16, 2012, Lorge threw a tissue box at B.V. that almost hit her; (c) that after throwing the tissue box at B.V., Lorge told her words to the effect that “next time would not be almost”; (d) that B.V. was a credible witness; (e) that Lorge showed no remorse or concern about B.V.’s wellbeing following the incident; (f) that Lorge acted with reckless disregard of the rules; (g) that by his actions, Lorge put every student in danger; (h) that Lorge engaged in conduct unbecoming a tenured teacher in violation of the statute, policies and regulations cited in the charges; (i) that all the charges should be sustained; and (j) that termination is warranted given Lorge’s egregious misconduct.

Respondent, on the other hand, contends: (a) that the tenure charges in this case are inflated to suggest something more egregious than occurred; (b)

⁷ Lorge testified that at one point he did have an Attendance Correction Plan.

that the District presented no evidence that Lorge intended to hit or to injure B.V. or anyone else; (c) that the District failed to properly investigate the charges, in particular, the allegation that Lorge made a threatening comment to B.V., despite Haye's testimony that this was a critical fact; (d) that Lorge credibly denied that he made any threatening statement; (e) that B.V.'s statements did not mention a threat and no other student mentioned a threat; (f) that there is no proof that the incident had any destabilizing effect on the District or that it made students feel unsafe; (g) that under the *Fulcomer* standards,⁸ various factors must be considered to decide whether termination is appropriate; (h) that applying those factors to this case, including Lorge's length of service with a clean record and lack of malice or intent to cause injury, makes clear that termination is not appropriate; (i) that Lorge is remorseful and will not engage in this conduct again; and (j) that the appropriate penalty is one that is far less severe than termination.

Discussion:

On the record before me, including my assessment of witnesses' credibility and the probative value of evidence, I find that the District has established that Lorge engaged in conduct unbecoming his position as a tenured teacher, but that the penalty is properly reduced from termination to reduction in salary equal to the 120-day period of Lorge's suspension without pay and loss of a salary increment for the 2012-2013 year only. The reasons for these conclusions are set forth below.

First, as to the factual allegations in the tenure charges, it is undisputed that Lorge threw the paperback piano lesson book towards B.V. on February 16,

⁸ *In re Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967).

2012, that the book hit B.V. and left a red mark on her forehead.⁹ That the “textbook” was a paperback piano lesson book, and that there was a red mark, but no “laceration” does not change the essence of what occurred that day. It is also undisputed that at some point prior to February 16, 2012, Lorge threw a tissue box in B.V.’s direction to get her attention; the tissue box did not hit her. Finally, Lorge admitted that on three or four other occasions that school year, he had thrown items in the classroom in an effort to get students’ attention or to be funny; none of these items hit a student.

Significantly, I am not persuaded that Lorge threw the paperback piano book at B.V. for disciplinary purposes. Contrary to the District’s allegations, Lorge’s February 21, 2012 statement was not an admission that he threw the book as a means of discipline, but rather that he threw the book to get B.V.’s attention. His hearing testimony was consistent with this statement and was credible. Similarly, there is no evidence in this record that Lorge threw a tissue box at B.V. or any other item in the classroom as a form of discipline. Again Lorge credibly testified that he threw the items to get the students’ attention or to be funny, not to punish or discipline.

Indeed, while the District alleges that the administration interviewed other students who stated that Lorge had thrown items in class to get their attention as a “supervision and discipline technique,” the District presented no evidence to prove this allegation. None of the students interviewed (other than B.V.) were called to testify and neither DeStefano’s interview notes nor his testimony regarding these other interviews support this claim. To the contrary, the evidence regarding the students’ statements is consistent with Lorge’s

⁹ Although the specifications provide that the administration interviewed other students who substantiated that Lorge threw a book and it hit B.V. in the head, none of those students were called to testify and were not subject to cross-examination; little weight is given to these statements. Nonetheless, given B.V.’s testimony and Lorge’s admission, these statements are unnecessary to prove these allegations.

testimony, i.e., that when Lorge threw the items in class, it was to get a student's attention and that he "was kidding around", "playing around" and "jok[ing] around because he is just trying to be happy", (Respondent Exhibit 1.) Even B.V. testified that Lorge "joked around a lot" and "goofed around with other students" when testifying that Lorge had thrown other things in the classroom. On this record, therefore, the evidence does not establish that Lorge threw any item, including the book that hit B.V., as a means of discipline or that any student, including B.V., was apprehensive in Lorge's classroom or fearful that Lorge would use force as a means of punishment or discipline. To the extent, therefore, that any of the charges allege that Lorge's actions were a means of discipline, that portion of the charge must be dismissed.

I am also not persuaded that Lorge made a threatening comment to B.V. as alleged. The only support for this allegation was B.V.'s testimony; Lorge denied making any such comment. In assessing credibility, I note that B.V. made no mention of this incident at the time it occurred and further, while referring to a prior incident in her statement, did not make any reference to a threat of any kind. In fact, notwithstanding that she testified that the prior incident involved a tissue box, in her initial statements, as reflected in her own written statement and in DeStefano's interview notes, she stated that Lorge previously threw a book, not a tissue box at her. There were also inconsistencies in her testimony and prior statements as to whether Lorge had given her permission to use her cell phone or whether she simply assumed that he would allow her to do so.

In contrast, Lorge's testimony was entirely credible. He testified consistent with his prior statement. Moreover, he testified candidly as to his actions on February 16, 2012 and on prior occasions. He admitted that he threw the book and a tissue box at B.V., and also admitted that he threw other items in the classroom consistent with what the other students interviewed had said to

DeStefano, notwithstanding that the District had not called those students to testify and, therefore, had not provided sufficient proof of those allegations in its direct case. Given these admissions and the overall candor of his testimony, I credit Lorge's denial that he made any threatening comment. I also note that the evidence that was presented as to the interviews with other students contained no reference to any alleged threat or similar comment. Further, Lorge was never questioned about whether such a comment had been made to B.V. before these charges were brought against him, despite Hays's testimony that this was an important fact.¹⁰ To the extent, therefore, that any of the charges are based on the alleged threatening statement to B.V., that portion of the charge must be dismissed.

The District also did not prove that Lorge previously threw a book at B.V.'s head as a warning, but missed. B.V. testified only with respect to Lorge throwing the book at her on February 16, 2012 and throwing a tissue box at some prior time. Although her statement reads that he "threw me one" weeks ago and DeStefano's interview notes reflect that she told him that Lorge previously threw a book at her, her testimony was clear that she was referring to the tissue box incident, not a third incident. Further, she made no mention of another book being thrown at her in her interview with Hays. Accordingly, this allegation must also be dismissed.

Given the above factual determinations, I find that Lorge engaged in conduct unbecoming a tenured teacher by his conduct on February 16, 2012, as well as by prior instances when he threw items in class. This conduct

¹⁰ Respondent also maintains that the investigation of this allegation was inadequate; I agree. The fact that Lorge admitted to throwing the book on February 16, 2012 did not eliminate the need for an investigation as to other allegations that the District chose to include in the tenure charges, yet no investigation was done as to these allegations. At no time was Lorge asked by the administration about B.V.'s claim that Lorge threw a tissue box and threatened her, nor were any other students in the class questioned about this incident, including whether such a comment was made in the class.

demonstrated a serious lack of judgment and disregard of the appropriate standard of care expected of a tenured teacher. Further, his conduct was reckless, putting students at risk of injury. Notwithstanding that Lorge did not intend for the book to hit B.V. or to injure her, throwing a paperback book approximately 20 feet across the room in the direction of a student risks injury to that student or another. Indeed, throwing any item in a classroom risks injury to students or anyone else who may be present. It is fortunate that no other item hit a student and that B.V. was not seriously injured; these facts, however, do not excuse the misconduct or render it less reckless. That Lorge's actions were intended to get a student's attention or to be funny also does not excuse the misconduct. By his actions, Lorge failed to serve as a proper role model for his students.

Turning to the specific violations of law, policy and regulation alleged in the Charges, I find that Lorge violated Board Policy No. 3280, Liability for Pupil Welfare (Charges 3 and 4), as well as Board Regulation 3280, Liability for Pupil Welfare (Charges 8 and 9), by throwing a book that hit B.V. on February 16, 2012 and by throwing a tissue box and other items in the classroom, notwithstanding that this conduct was not intended as a means of discipline. The Board Policy provides in pertinent part that:

"Teaching staff members are responsible for supervision of pupils and must discharge that responsibility with the highest levels of care and prudent conduct. All teaching staff members of this district shall be governed by the following rules in order to protect the well-being of pupils...Each teaching staff member must maintain a standard of care for supervision, control and protection of pupils commensurate with the member's assigned duties and responsibilities."

(Joint Exhibit 3C.)

Similarly, the related Regulation provides that:

“A teaching staff member must maintain a standard of care for supervision, control, and protection of pupils commensurate with the member’s assigned duties and responsibilities.”

(Joint Exhibit 3F.) It is true, as Respondent argued, that while the Regulations contain a list of prohibited conduct, the Regulations do not specifically provide that a teacher may not throw items in the classroom or at students. As Hays testified, however, it should not be necessary to expressly prohibit such conduct in order for a teacher to know that such conduct is wrong and inconsistent with the standard of care owed to students under this Regulation.¹¹

While Lorge claimed that he had no specific knowledge of these policies, Lorge acknowledged in his hearing testimony that he understands that throwing a book at a student to get his/her attention is inappropriate conduct, even if there is no intent to hit the student or cause injury and it is not intended to be disciplinary. By throwing a book at B.V. hitting her in the head, and by throwing a tissue box and other items in the classroom to get students’ attention, Lorge failed to discharge his duties with a high level of care and prudent conduct and did not maintain a standard of care for supervision, control and protection of pupils consistent with his responsibilities as a teacher at ACHS, in violation of both Board Policy and Regulation.¹²

Similarly, by his conduct on February 16, 2012, Lorge violated Board Policy 3211, Code of Ethics, as set forth in Charge 7. (Joint Exhibit 3E.)

¹¹ As set forth in the Charges, the Regulations specifically provide that “equipment shall not be used for purposes other than the instructional purposes for which the equipment was provided...” Needless to say, the purpose of the piano book was not as an item to be thrown in the classroom to get a student’s attention. Nonetheless, while the general provisions of the Regulation are clearly applicable in this case, as they discuss a standard of care to be used by the teacher in the classroom, the specific allegations cited in the Charges regarding “equipment” are evidence of Respondent’s claim that the District was trying to “pile on” allegations. Indeed, it would be difficult to find that a tissue box has any instructional purpose, as alleged in Charge 9.

¹² While I find that Lorge violated Board Regulation 3280 as set forth above, I do not find that Lorge actions were intended as a “means of discipline, supervision and control” as alleged in these charges; the charges are sustained only to the extent that they are consistent with the conclusions reached in this Opinion and Award.

Throwing a book at a student, for any reason, and hitting the student in the head is inconsistent with Lorge's obligations under this policy to "make reasonable effort to protect the student from conditions harmful to learning or to health and safety." Further, while B.V. testified that she was not embarrassed, she testified that everyone was laughing; Corvitto also testified that B.V. was crying and upset when she came to her office. Under these circumstances, there is sufficient evidence that by throwing the book towards B.V., hitting her in the head, Lorge also "exposed the student to embarrassment or disparagement" in violation of the Code of Ethics.

Contrary to the District's allegations in Charges 1 and 5 involving the February 16, 2012 incident, however, I do not find that Lorge engaged in corporal punishment. While it is true that the paperback piano book hit B.V. in the forehead, it was not Lorge's intention to hit B.V. with the book or to cause any bodily harm. His only intent was to get her attention to tell her to get off the cell phone and to play the piano. Lorge did not act out of anger or due to loss of control or the absence of self-restraint. He did not throw the book to hit B.V., to injure her, or for the purpose of punishing or disciplining B.V. The evidence does not establish that Lorge's conduct caused B.V. to be fearful or apprehensive of use of force or physical harm; indeed, the evidence demonstrates that immediately after the incident, B.V. expressed anger because Lorge did not allow her to use her cell phone, not because the book hit her.

Similarly, the allegations of corporal punishment in Charges 2 and 6 cannot be sustained.¹³ I do not find that throwing the tissue box or any other item in the classroom as charged constituted corporal punishment. Once again,

¹³ Although Charges 2 and 6 also include reference to the February 16, 2012 incident, these charges are primarily focused on the other incidents. To the extent that these charges include the February 16, 2012 incident, the charge is duplicative of Charges 1 and 5 and does not constitute separate violations.

Lorge testified that he threw these other items to get the students' attention or to be funny, not to address misconduct or otherwise discipline or punish students; there is no evidence to dispute this testimony. Indeed, as discussed above, the student statements as reflected in DeStefano's testimony and notes confirm Lorge's testimony. Moreover, it is undisputed that in these other instances, there was no physical contact with any student or individual and there is no evidence that Lorge's actions caused any student to be fearful or apprehensive in the classroom.

Accordingly, for the reasons set forth, I find that the District has proven Charges 3, 4, 7, 8 and 9, to the extent consistent with the findings in this Opinion and Award. By his conduct, Lorge has engaged in conduct unbecoming a tenured teacher for which disciplinary action is appropriate. The remaining charges are properly dismissed.

As to penalty, the District maintains that Lorge's conduct warrants dismissal due to the severity of the misconduct, Lorge's apparent lack of remorse or concern at the time of the incident and the particular attributes of ACHS. It maintains that such conduct would not be tolerated of any student and must also not be tolerated of any teacher. Respondent argues that a penalty less than termination is appropriate in this case, citing Lorge's length of service and record, the lack of any intent to injure anyone and the lack of serious injury as well as other factors set forth in *In re Tenure Hearing of David Fulcomer*, 93 N.J. Super. 404 (App. Div. 1967).

Both parties cited cases to support their respective positions on penalty.¹⁴ Although most of the cases involve corporal punishment, among other charges,

¹⁴ Each of the cases cited by the District to support termination is distinguishable based on the nature of the misconduct and other factors described above. See, *In re Tenure Hearing of Kenneth Miller*, OAL Dkt. No. EDU 8612-97, Agency Dkt. No. 312-8/97, 1998 N.J. AGEN Lexis 605 at *64 (1998) (Teacher was terminated for throwing a street hockey puck at a student *and* the fact that the teacher was involved in other incidents and had

the cases are instructive as to the factors to consider in deciding upon the proper penalty. Indeed, a review of these cases demonstrates that whether termination is appropriate must be decided on the facts and circumstances of each case. Citing *Fulcomer* and other cases, in a recent decision the Commissioner of Education summarized the factors to be considered as follows:

“[f]actors to be taken into account in making a penalty determination include the nature and circumstances on the incidents or charges, any evidence as to provocation, the teacher’s prior record and present attitude, the effect of such conduct on the maintenance of discipline among the students and staff and the likelihood of such behavior recurring.”

In re Tenure Hearing of Errol J. Goodwater (Board of Education of the City of Camden) (April 27, 2012) at page 4.¹⁵

Applying these factors to the present case, termination is not warranted. Lorge has been teaching in the District for 10 years, during which time he has

received a number of prior warnings about inappropriate conduct); *In re Tenure Hearing of Errol J. Goodwater*, OAL Dkt. Nos. EDU 8377-11 and EDU 9196-11, Agency Dkt. Nos. 185-7/11 and 187-7/11) (2012) (Teacher was terminated for intentionally swinging a computer cord which forcibly struck a student, where act was not in self defense as the teacher claimed, the act was “cruel and vicious” and the teacher had still not taken any responsibility for his actions); *In re Certificate of Mary Tyson*, State Board of Examiners, Docket No. 0506-186 (2006) (Teacher was terminated for slapping a student and repeatedly hitting him with a chair causing severe injury to the student and demonstrating a total lack of self restraint); *In re Tenure Hearing of Gilbert Alvarez* OAL Dkt. No. EDU 10067-09 (EDU 0736-09 on remand), Agency Dkt. No. 36-2/09, 2010 NJ AGEN LEXIS 740 (2010), aff’d 2011 N.J. Super. Unpub. LEXIS 2721 (2011) (Teacher was terminated where he repeatedly demonstrated an inability to control his frustration, demonstrated anger, violence and loss of control causing students and staff to feel apprehensive, used inappropriate language and pushed a desk in a manner where he must have known that it would cause another desk with a student in it to be pushed as well); *In re Tenure Hearing of Andrew Gall*, OAL Dkt No. EDU 2953-07, Agency Dkt. No. 114-4/07, 2007 NJ AGEN LEXIS 896 (2007), aff’d 2010 N.J. Super. Unpub LEXIS 216 (2010) (Termination was appropriate where a teacher, working for the Department of Human Services, struck a developmentally disabled student with an open hand, particularly given the special environment and DHS’ need to safeguard its disabled charges); *In re: Tenure Hearing of V.R.*, 2005 N.J. AGEN LEXIS 1235 (2005), aff’d 2006 N.J. Super. Unpub. LEXIS 1484 (App. Div. 2006) (Teacher was terminated after a DYFS proceeding concluded that the teacher engaged in child abuse or neglect, where the teacher slammed the door on a young student’s fingers and left him bleeding and screaming in pain alone in the hallway); *In re Certificates of Lorraine Watkins*, OAL Dkt. No. EDE 4668-02S, Agency Ref. No. 654-10/01, 2003 N.J. AGEN LEXIS 14 (2003) (Teacher was terminated where DYFS determined that she had physically abused a 14 year old student by pushing the student, causing her to fall against a desk, bruising her back and then striking and bruising the student’s face); *Department of Children and Families v. R.A.*, 2011 N.J. Super. Unpub LEXIS 1178 (App. Div. 2011) (Vice Principal was terminated for inflicting corporal punishment on two students, including hitting a student with a wooden yardstick several times as confirmed by medical evidence.)

¹⁵ OAL Dkt. Nos. EDU 8377-11 and EDU 9196-11, Agency Dkt. Nos. 185-7/11 and 187-7/11) (2012).

received no disciplinary action or warnings. His reviews indicate that he has been considered a valued teacher with satisfactory and higher ratings. Significantly, as noted above, I am persuaded that Lorge did not intend to cause any injury or physical harm. He did not act out of anger, nor did his actions involve a loss of control or otherwise demonstrate cruelty or a violent disposition. Further, while B.V. was hurt, as evidenced by the red mark on her forehead, she was not seriously injured. There is also no evidence that any student, including B.V., was fearful, apprehensive or felt unsafe as a result of Lorge's actions on February 16, 2012 or his actions in prior instances where an item was thrown in the classroom.

I am also persuaded that Lorge is remorseful and that he will not repeat this conduct again. Although Lorge did not follow-up with the guidance counselor or nurse or apologize to B.V. at the time of the incident as would have been appropriate, it was clear from his hearing testimony that Lorge understands that what he did was wrong and that it cannot be repeated. A significant penalty short of termination will serve to emphasize the seriousness of the misconduct and to assure that Lorge corrects his conduct and his classroom management methods and that he serves as a proper role model for his students in the future.

In so finding, I have carefully considered Haye's testimony that due to the demographics of the District and the prior designation of ACHS as a "persistently dangerous school", such conduct by a teacher cannot be tolerated and that a student engaging in similar misconduct against a teacher would have suffered serious consequences. There is no doubt that such conduct by a teacher (or a student) at ACHS or in any other District cannot be tolerated and that disciplinary action is warranted. Just as expulsion is not the only penalty for a student, however, termination is not the only penalty available to demonstrate

that such conduct by a teacher will not be tolerated at ACHS. As a tenured teacher, it is appropriate to consider the facts and circumstances in deciding the proper penalty; while the facts discussed above cannot excuse Lorge's conduct, they do serve to mitigate the penalty to be imposed. A reduced penalty does not suggest that Lorge's conduct was acceptable or that it was or will be tolerated in the District.

Lorge has been suspended since immediately after the incident in February 2012 and has been without pay since September 13, 2012. Lorge shall be returned to his teaching position in the District following the conclusion of a 120-day suspension period without pay.¹⁶ He shall not receive any back pay for the period of his unpaid suspension. Rather, the penalty in this case shall be a reduction in salary in an amount equal to the loss of salary for the 120-day suspension period without pay, as well as the loss of a salary increment for the 2012-2013 school year only.

By reason of the foregoing, I issue the following:

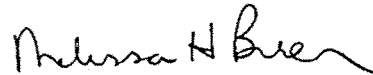
AWARD

- a) Charges 3, 4, 7, 8 and 9 are sustained, to the extent consistent with the findings in this Opinion and Award; by these actions, Christopher Lorge engaged in conduct unbecoming a tenured teacher. All other charges are dismissed.
- b) For the violations set forth above, the penalty shall be a reduction in salary equal to the salary lost during the 120-day suspension period without pay and the loss of a salary increment for the 2012-2013

¹⁶ It is anticipated that the 120-day period will end shortly after the issuance of this Opinion and Award.

school year only. The District shall reinstate the Respondent to his position immediately following completion of the 120-day suspension period without pay.

Dated: January 4, 2013

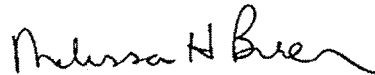


Melissa H. Biren, Arbitrator

AFFIRMATION

I, Melissa H. Biren, do hereby affirm that I am the individual described in and who executed this instrument, which is my Opinion and Award.

Dated: January 4, 2013



Melissa H. Biren