

STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION

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In the Matter of the Tenure Hearing  
Between

**THE FRANKLIN TOWNSHIP  
BOARD OF EDUCATION,  
SOMERSET COUNTY,**

Docket No. 65-3/13

**Petitioner,**

**OPINION & AWARD**

-and-

**Issued: June 25, 2013**

**DORRELL HILLIMAN,**

**Respondent.**

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**ARBITRATOR:**

Joseph Licata, Esq.

**HEARING INFORMATION**

Dates: May 16 and May 21, 2013

Time: 10:00 a.m.

Location: Franklin Township Board of Education (Administrative Office)

**APPEARANCES**

For The Petitioner

John E. Collins, Esq.

Parker McCay

For The Respondent

Edward A. Cridge, Esq.

Mellk O'Neill

## **INTRODUCTION**

On March 20, 2013, pursuant to N.J.S.A. 18A:28-5 and 18A:6-10, et. seq., Petitioner, Franklin 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 Dorrell Hilliman, an In-School Suspension (“ISS”) teacher at Franklin Middle School:

### **PART A: Unbecoming Conduct**

The charge of unbecoming conduct is based on the following facts:

On October 23, 2012, Mr. Hilliman threw vitamin water on a student (T.M.) and pushed her head knocking her glasses off. Mr. Hilliman then threw numerous books at T.M. in response to her throwing them at him, causing injuries to T.M.’s arm and rib cage.

### **PART B: Other Just Cause**

The charge of other just cause is based upon the specifics supporting the foregoing charge of unbecoming conduct (Exhibit J1).

On March 27, 2013, Mr. Hilliman’s attorney filed an Answer to the Charges (Exhibit J2).

In accordance with N.J.S.A. 18A:6-16, on April 8, 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. Hilliman from employment for unbecoming conduct and/or other just cause as set forth in the tenure statutes. A hearing was held on May 16 and 21, 2013. Board witnesses included Student T.M., Nikki Tatum, Vice Principal, Franklin Middle School and Ammon Barksdale, Vice

Principal, Franklin Middle School. Pursuant to N.J.S.A. 18A:6-17.1, I sustained the objection of Counsel for Mr. Hilliman to preclude the testimony of Orvyl Wilson, High School Principal based on the Board's failure to provide the requisite advanced notice to Mr. Hilliman concerning its intent to call Mr. Wilson as a witnesses against him.<sup>1</sup> I admitted in evidence Board Exhibits P1 through P9. Mr. Hilliman and Student D.M. testified on behalf of Mr. Hilliman. I admitted in evidence Exhibits R1 through R26. At the Arbitrator's request during the hearing of May 21, 2013, Mr. Hilliman drew a layout of the ISS classroom where the incident occurred. The drawing was received in evidence as Exhibit J3. The parties submitted post-hearing written summations on June 13 and 14, 2013 in lieu of oral closings. Both parties were expertly represented.

### **FINDINGS AND DISCUSSION**

#### **HILLIMAN'S EMPLOYMENT UP TO OCTOBER 23, 2012**

Dorrell Hilliman holds an Associate's degree from Christ of the Nation in practical theology and family counseling. He received his Bachelor's degree in psychology from the University of Pittsburgh. Presently, he is enrolled at Seton Hall University in a Master's degree program in educational leadership and personnel management. He is certified by the New Jersey Department of Education to teach Kindergarten through Eighth Grade, in all subjects. Mr. Hilliman has been employed by the Board since 1999. He served as an ISS teacher at Franklin High School for nine school years. He then

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<sup>1</sup> Pursuant to the same statutory provision, I acknowledged that the Board, acting with a good faith basis, was not precluded from calling Mr. Wilson as a rebuttal witness to impeach the testimony of any witness testifying for Mr. Hilliman. The Board ultimately did not recall Mr. Wilson.

transferred to Franklin Middle School as an ISS teacher beginning in the 2008-2009 school year.

Nikki Tatum testified that in ascending order of the severity of student misconduct, the Middle School provides (1) detention run by the applicable classroom teacher, (2) Central Office Detention, (3) ISS and (4) home-based suspension. The role of an ISS teacher is to supervise students who have been assigned to ISS due to, among other potential reasons, use of profanity, class cutting, fighting, chronic lateness, and disrespectful behavior. As the ISS teacher, Mr. Hilliman supervised students, maintained order and discipline, disseminated work to students that is assigned by their regular-classroom teachers, assist students with that work as necessary, and assign class work to students who had not been given assignments by their regular teachers.

During the course of his employment Mr. Hilliman's teaching evaluations have ranged from satisfactory to commendable. His most recent evaluation of April 18, 2013 (Exhibit R11) stated that:

Mr. Hilliman has set clear expectations for student behavior in ISS. His ability to manage student behavior has enabled him to establish and run the ISS program effectively....

Mr. Hilliman communicates clearly and accurately to students and seeks ways to ensure that students understand their actions and the consequences that come from their actions...

The teacher demonstrates a genuine sense of professionalism by participating in school and district events and engaging in activities for professional development. Mr. Hilliman contributes to the Franklin Township School District as the boys track coach at Franklin High School. He communicates with parents and families of students who have been assigned to ISS to inform them of this instructional

program. He is growing and developing professional [sic] as a graduate student at Seton Hall University.

However, Hilliman has received various forms of professional criticism as well. By correspondence of December 7, 2010 (Exhibit P7), Principal Roberta Mitchell summarized a meeting that she had with Hilliman on November 22, 2010 concerning Hilliman's use of "low-level profanity" while speaking to students during ISS. Although the parties debate the import of the document, upon reflection, I note that the letter satisfies the attributes of a documented verbal warning or written warning.<sup>2</sup>

In addition, the Board introduced as Exhibit P8 a memo to Hilliman from then – Principal Orvyl M. Wilson regarding Hilliman's use of ineligible students in interscholastic track meets. Wilson expressed his intent to recommend to the Board of Education that Respondent be placed on "coaching probation" for the remainder of the 2006-2007 school year and the entire 2007-2008 school year. Exhibit P9 is a 2012 letter to Hilliman from Mr. Wilson relieving him of his duties as Boys Track Head Coach for the remainder of the 2012 track season two serious incidents involving lack of student supervision. The parties' representatives differ in opinion as to the fair use of such evidence in this proceeding.

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<sup>2</sup> The letter reflects that Hilliman declined Principal Mitchell's offer to have an Association Representative present during the November 22, 2010 meeting. The letter concludes: "Any further reports that are received and investigated could result in further disciplinary action, which will include a Corrective Action Plan and could also be an increment withholding."

## HILLIMAN'S INTERACTION WITH T.M. ON OCTOBER 19, 20 & 23, 2012<sup>3</sup>

### October 19-20, 2012

I observed Hilliman as a slender to medium athletic-built individual, i.e., a former Track Coach. He appears somewhere between thirty-five and forty years old. In October of 2012, T.M. was a fourteen-year old, eighth grade student. I observed T.M. on May 16, 2013 (now 15) as a relatively strong-built young woman.<sup>4</sup> Hilliman testified that T.M. was serving ISS time for the use of profanity and other disrespect toward teachers, security personnel, and Nicholas Solomon, Dean of Schools. Hilliman spoke to his problematic experience with T.M. during the latter part of the preceding week. Hilliman specified that T.M. commented, "Shut the fuck up. Black mother fucker. Fuck You, Dorrell. No, I'm not going to do what you say. Fuck you. Shut up, nigger." T.M. admitted that on the first day that she was in ISS, she called Mr. Hilliman by his first name, even though he asked her not to do so. She recalled that she "probably" used the "F-word" and the "N-word," and that she called Mr. Hilliman the "N-word" in class.

Hilliman telephoned Dean Solomon on Thursday to complain about T.M. Solomon informed Hilliman that T.M.'s mother was scheduled to come in for a conference on Monday, October 23, 2012. T.M. recalled that her behavior on the second day of her suspension was "probably" identical to the behavior that she engaged in on the

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<sup>3</sup> Hilliman testified that T.M. was a student of his for three consecutive school days, inclusive of Monday, October 23, 2012. Reference is made to Thursday, October 18, 2012 and Friday, October 19, 2012. However, since it is not disputed that October 23, 2012 fell on a Monday, I correct the record to reflect that the preceding Thursday was actually October 19, 2012 and the preceding Friday was actually October 20, 2012.

<sup>4</sup> T.M. was accompanied by an individual believed to be her mother until that individual identified herself as T.M.'s older sister.

day before. According to Hilliman, on Friday, T.M. was at her worst and he gave her an assigned seat for the remainder of her ISS stay.

**October 23, 2012 (Pre-Book Fight)**

On October 23, 2012, Hilliman's ISS class consisted of three students: T.M., D.M. and D.D. T.M. entered the classroom but refused to sit in her assigned seat. T.M. was seated in front of the class and Hilliman's desk was positioned to give him a side view of the students. Approximately four feet away was a telephone which could be used to call security by dialing "3108." Hillman described the following procedure for dealing with disruptive students in his ISS class:

I call the administrator first that assigned them to the ISS in order for them to know that the student is being disruptive and misbehaving. If the student's behavior continues, I then call security and security comes and removes them and takes them to the administrator that assigned them.

T.M. was seated closest to Hilliman, D.M. was seated one row over and one seat back from T.M. and D.D. was seated one row over and one seat back from D.M. A factual dispute arose as to whether Hilliman through vitamin water on T.M. and made some form of open-handed contact (less than a "mush") to the side of T.M.'s face causing her glasses to fall off. The following pre-book fight testimony is noted.

T.M. candidly, if not proudly admits that she was "acting crazy" and refusing to obey Hilliman's instruction to sit down. Hilliman first allegedly threatened to throw a bottle of "green vitamin juice" at her and then did throw the juice (not the bottle) on her from approximately 6-7 feet away. T.M. claims that she went to the bathroom to clean her jeans as Hilliman cleaned the spilled juice. T.M. testified that the juice incident

occurred two hours before the book fight. According to T.M., two hours later, T.M. left her seat and sat in Mr. Hilliman's red chair near one the classroom bookshelf closest to Mr. Hilliman's desk. When told by Hilliman to return to her seat, T.M. admittedly refused to do so, Hilliman approached her, T.M. started to laugh, stating to Hilliman, "I'm not scared of you." With an open hand, Hilliman made some contact with the side of T.M.'s head (less than a "mush" or shove). The contact caused T.M.'s glasses to fall off. T.M. became very angry, took a soft cover book from the bookshelf and commenced the book fight.

Conversely, Hilliman testified that the juice was actually Vitamin Water. T.M. was displaying her cell phone. Hilliman, who was then seated behind his desk, told T.M. to put the phone away. Mr. Hilliman recalled that she engaged in a "rant" when he asked her to put her phone away and return to her seat. He then told her that her mother was coming to the school later that day, and that he was going to inform her mother of her behavior in ISS. In reply, T.M. became very upset; she told Mr. Hilliman that if he did not "shut the fuck up," she would throw a pen at him. Hilliman stood up and walked to the corner of his desk to address T.M. more directly. He was holding his open bottle of Vitamin Water. As Hilliman continued to admonish and instruct T.M. (from approximately ten feet (direct examination) or 12-15 feet (cross examination) away, T.M. threw the pen toward Hilliman's face, he blocked the pen with his hand holding the water bottle, inadvertently squeezed the bottle, and sprayed water onto T.M. Hilliman claims that he then attempted to call Dean Solomon and while waiting for Dean Solomon to answer his phone T.M. walked over to the bookshelf, Hilliman looked up and noticed a



book flying at him. Hilliman denies making contact with or “mushing” the side of T.M.’s face or head.

Student D.M. testified on behalf of Mr. Hilliman. She is now thirteen years old. She is friends with T.M. D.M. testified that she was present all morning in ISS on October 23, 2012. D.M. witnessed Hilliman drinking his Vitamin Water and T.M. errantly throwing a pencil or pencils at Hilliman. D.M. testified on cross examination that Hilliman did not throw the Vitamin Water at T.M. Unlike the testimony of T.M. and Hilliman, D.M. stated that she witnessed T.M. and Hilliman “tugging back and forth with his Vitamin Water and he spilled it on her shirt and she got mad” and started cursing at Hilliman. According to D.M., Hilliman directed T.M. to sit down. However, T.M. would not listen and, instead, she became angry and threw a book at Hilliman. D.M. did not witness Hilliman make contact with T.M. in the face or knock her glasses off.

### **Book Fight**

Although the precise details concerning the events leading to the book fight are conflicting, the details of the book fight that occurred at approximately 8:45 a.m. on October 23, 2012 are more easily ascertainable from this record. I note the following credible testimony regarding the details of the book fight. T.M. became very angry, took a soft cover book from the bookshelf and threw it at Hilliman. Hilliman caught the book and threw it back at T.M. (his version) or he picked up another book and threw it at T.M. (her version). T.M. continued throwing books at Hilliman and he reciprocated by throwing books at her, creating what T.M. described as a book “war”. T.M. testified that that the two were running around the class, throwing books at each other, ducking and

that both used the book shelf, which she referred to as “home base”, to reload. She described this process “like a game.” T.M. testified that “we went from small books, soft books, to hard books, to big old textbooks.” T.M. acknowledged that the two each were struck by books during the process, that she, in fact, hit Hilliman in the head with one book, but that she “didn’t care because I wanted the last hit.” T.M. further stated that she was hit in the side with a book, i.e., her ribcage was sore and later was hit in the arm “because my arm was bleeding.”

T.M. testified that the book fight lasted for approximately five minutes and that approximately twenty books were thrown in total. D.M. testified that the book fight lasted four or five minutes. On direct examination, D.M. testified that she observed T.M. through more than five but less than ten books at Mr. Hilliman. On cross examination, D.M. testified that she witnessed Hilliman throw approximately ten books at T.M.

In his written statement, dated October 23, 2012, Hilliman stated that T.M. “threw a book at me and I threw the book back at her. She threw a few more books at me and I threw them back at her.” (Exhibit P3). Hilliman agreed that his actions exacerbated the classroom incident instead of calming it, although he also characterized his book-throwing actions as a “defensive posture.” Hilliman testified that he intentionally threw only one book at T.M. and that he only “knocked” the remainder of the books back at her. However, Hilliman later claimed that he deliberately threw “two” books at T.M. and “blocked” (not “knocked”) the remainder (including the hardcover books) at her.

According to Nikki Tatum, Ms. Regan, a behavioral specialist informed her that she went into the room immediately after the incident and observed “books everywhere” and “all over the floor.”

### **Book Fight Aftermath**

The classroom incident concluded after Hilliman allowed T.M. to hit him in the chest with a hard cover book. T.M. called Hilliman “childish”, he replied, “I’m being like you”, T.M. became angry and left the ISS room. D.M. testified that T.M. ran out of the ISS room crying. T.M. did not testify that she was crying. A security guard(s) entered the ISS room as T.M. left. The guard informed Ms. Tatum that T.M. had left the ISS room and was on her way to the main office. By the time Ms. Tatum reached the main office, T.M. and Hilliman were already there. Based on the testimony and investigative statement of Ms. Tatum (Exhibit P5), I note the following facts. Hilliman stated to Ms. Tatum that he had to speak with her about T.M. Ms. Tatum then took both the student and teacher into the main office conference room. When they entered the conference room, Hilliman and T.M. were arguing about the events that previously took place in the ISS room. Ms. Tatum asked T.M. to stop talking back so that Hilliman could tell her what occurred and that T.M. would have an opportunity to tell her side afterward.

T.M. quieted down and Hilliman then began telling Ms. Tatum that, upon T.M.’s entering the ISS room that morning, she was very disrespectful to him. He stated that when he asked her to be quiet and do her work, she responded to him by telling him to “Shut the fuck up!” She also called him by his first name. Hilliman stated that T.M. called him other derogatory names and then she threw a book at him. He said that he

caught the book and then threw it back at her and that this exchange went on until she threw a big book at him, which hit him in the head. Hilliman informed Tatum further that while T.M. hurled the books at him, she continued to use profanity towards him. Hilliman admitted that T.M. had been in ISS for two days and that he could not take her disrespect any longer. When Ms. Tatum asked Hilliman why he did not contact someone regarding her behavior, he stated that he called Dean Solomon to speak about T.M.'s behavior.<sup>5</sup>

After Ms. Tatum heard what transpired in the classroom, she immediately separated T.M. and Hilliman, and she asked T.M. to write a statement about what occurred. She then took Hilliman to a smaller conference room in the main office and asked him to write a statement about what happened. While in the room with Hilliman, Ms. Tatum also asked him if he needed to see the nurse or file a police report. He stated that he did not feel it was necessary at that time, but did ask to speak to T.M.'s mother who was coming in later that morning for a conference with school administrators regarding her behavior. Ms. Tatum informed Hilliman that she would let him know if T.M.'s mother wanted to speak with him and that if she did not, he would not be able to.

After speaking with Hilliman, Ms. Tatum then re-entered the main office conference room and asked T.M. what happened. T.M. handed Ms. Tatum her written statement (Exhibit P1) and proceeded to tell her about what occurred in the ISS room. T.M. stated that, upon entering the room that morning, she and Hilliman engaged in back

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<sup>5</sup> Ms. Tatum testified at hearing that Dean Solomon told her that he had spoken to Hilliman about another student, not T.M. However, Dean Solomon informed Hilliman during the same conversation that T.M.'s mother was scheduled to come in for a conference on October 23, 2012. Neither party called Dean Solomon as a witness.

and forth banter and then he threw vitamin water on her that wet her sweater. Then T.M. said that he got in her face and subsequently “mushed” her in the head, which knocked her glasses off her face. T.M. then stated that she got mad and started throwing books at Hilliman and that he threw them back at her. T.M. then showed Ms. Tatum a two-inch long bruise (or welt) on her arm, which T.M. said was caused when she was struck by one of the books that Hilliman threw back at her. She also stated that her ribcage on the right side was hurting as well, and asked to go to the nurse. Ms. Tatum granted T.M.’s request and walked her to the nurse’s office for observation. T.M. testified that the school nurse gave her an ice pack for her rib cage and a band aid for her arm. Ms. Tatum acknowledged that she did not ask the school nurse to prepare any report regarding any injury to T.M. nor did she examine T.M. to see if she had any mark on her torso. She also did not photograph, nor have anyone else photograph, any mark on T.M.

Lastly, T.M. received a three day out of school suspension for her misconduct. The Board proffered tenure charges against Mr. Hilliman and this matter ensued.

#### **DISPOSITION OF SWORN TENURE CHARGES**

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 Board bears the burden of proof. 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 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 initially find and conclude that the Board has failed to satisfactorily demonstrate that Hilliman intentionally threw Vitamin Water on T.M. or “mushed” her in the face or head causing her glasses to fall off. T.M. testified that the book fight commenced two hours after the Vitamin Water incident. Counsel for Hilliman persuasively argues that class started at 7:30 a.m. and the book fight occurred at approximately 8:45 a.m. and, thus, T.M.’s timeline could not be true. D.M., though friends with T.M., was called to testify by Mr. Hilliman. D.M. admitted that she was present all morning in ISS on October 23, 2012. D.M. witnessed Hilliman drinking his Vitamin Water and T.M. errantly throwing a pencil or pencils at Hilliman. D.M. testified on cross examination that Hilliman did not throw the Vitamin Water at T.M. D.M. stated that the accidental spilling of Vitamin Water occurred during a tug of war between Hilliman and T.M. over the bottle. T.M. started cursing at Mr. Hilliman, Hilliman directed T.M. to sit down, and T.M., instead, commenced the book fight. D.M.’s

testimony more closely supports Hilliman's testimony (that the water spilled as he defended against the first book thrown by T.M.) as contrasted with T.M.'s testimony (that Hilliman intentionally threw Vitamin Water on her two hours prior to the start of the book fight). Therefore, in view of the Board's burden of proof and the conflicting evidence noted above, I dismiss the charges with respect to the Vitamin Water allegation.

Due to a similar conflict in testimony, I will dismiss the charge that Hilliman made contact to the side of T.M.'s head with his open hand, i.e., "mushed" her in the side of her head. T.M. claims that this action on the part of Hilliman is what led her to throw the first book. As discussed above, both Hilliman and D.M. attribute the Vitamin Water incident as playing a more immediate role in the book throwing misconduct of T.M. Moreover, D.M. testified, consistent with Hilliman's denial, that she did not witness Hilliman make any contact to T.M.'s face with his hand. Accordingly, in light of the Board bearing the burden of proof regarding this very serious allegation against Hilliman, I must dismiss the charge alleging that Hilliman struck or "mushed" T.M.'s face or head with an open hand causing her glasses to fall off. Instead, I find that the book throwing incident commenced shortly after Hilliman's Vitamin Water splashed on T.M.

Having said this, however, I find that the Board has demonstrated Hilliman's misconduct with respect to the main event, i.e., the book fight, and has done so close in line with the respective testimony of T.M. and D.M., Hilliman's written statement and Ms. Regan's observation of the ISS room immediately after the incident. With respect to the book fight, T.M. not only made no effort to hide her own culpability but, sadly, she seemed proud of it. She freely admitted calling Mr. Hilliman virtually every name under



the sun, she made no bones about first throwing a pen or pencil at Mr. Hilliman, then a book – hitting Hilliman in the head -- then running around the room (as was Hilliman) ducking and throwing more books (both soft cover and hard cover) until Hilliman allowed her to get the last hit that she desired. T.M. served a three day suspension out of school and did not file an appeal.

D.M. corroborated T.M.'s testimony regarding the duration of the book fight (4-5 minutes) and the number of books thrown by each participant (more than five but less than ten thrown by T.M. and approximately ten thrown by Hilliman). Mr. Hilliman's written statement to Ms. Tatum corroborates the mutuality of the book fight, although he understates the quantity of books thrown. (Exhibit P3). Under the residuum rule of evidence, I credit the hearsay testimony of Ms. Regan (via Ms. Tatum) that after contemporaneously entering the ISS room, she observed "books everywhere" and "all over the floor." Thus, I find that Hilliman and T.M. did engage in what can be described as a book fight or book war (akin to Dodge Ball) in the presence of two other ISS students at about 8:45 a.m. on October 23, 2012. I credit T.M.'s testimony and her more contemporaneous statements to Ms. Tatum that Hilliman's contributions caused minor, temporary injury to T.M. (sore rib cage treated with an ice bag by the school nurse and a raised abrasion or welt on her forearm requiring a band aid).

I agree that, absent justification or mitigation, Hilliman's contributions to the book fight amounts to a serious or flagrant offense, albeit a single incident. In The Matter Of The Tenure Hearing Of Anthony Ashley, State Operated School District of Jersey City, Hudson County, 2002 WL 31628727 N.J. Adm. Sep 20, 2002, an Administrative Law

Judge, quoting, In the Matter of the Tenure Hearing of David Fulcomer, imparted the following instructive comments about the prohibition on a teacher's use of physical force against a student:

The frustrations that often accompany the teacher's functions, he cannot condone resort to force and fear as appropriate procedures in dealing with pupils, even those whose recalcitrance appears to be open defiance. The Commissioner finds in the century-old statute prohibiting corporal punishment (N.J.S.A. 18A:6-1) an underlying philosophy that an individual has a right not only to freedom from bodily harm but also to freedom from offensive bodily touching even though there be no actual physical harm.... .. such a philosophy with its prohibition of the use of corporal punishment or physical enforcement does not leave a teacher helpless to control his pupils. Competent teachers never find it necessary to resort to physical force or violence to maintain discipline or compel obedience..... Thus, when teachers resort to unnecessary and inappropriate physical contact with those in their charge [they] must expect to face dismissal or other severe penalty. Petitioner's own manufactured testimony reveals his "refusal to accept responsibility" for the violent acts he exhibited towards a student. Morris School Dist V Brady, *supra*, 92 N.J.A.R.2d ( EDU) at 420. His physical aggression towards T.B. and his overt hostility towards the Principal show a lack of the kind of self-restraint and controlled behavior which are compelled by his position as a professional employee in the public school system. See In re Tenure Hearing of Lucarelli, *supra*, 97 N.J.A.R.2d ( EDU) at 543; Parsippany- Troy Hills Bd of Educ v Molinaro, *supra*, 96 N.J.A.R.2d (EDU) at 276. His behavior poses too great a chance for repetition, too great a risk of further harm to students, and too great a potential for further abuse of his professional obligations. "In his own mind, he was the victim not aggressor. His [student] was the menace, he the innocent. In such a state of the case, the prospect of his continued employment in the district is insupportable." Board of Educ of High Point Reg'l Dist v Samilijan, 1988 S.L.D. 722, 732, *aff'd*. 1988 S.L.D. 739 (State Bd.) I CONCLUDE that the Petitioner's unbecoming conduct is sufficiently flagrant a departure from the standards expected of professional teacher

employees as to lead to the Petitioner's removal from employment with the Jersey City School District.

Having said this, unlike the loveable “Sweat Hogs” from the 70s hit “Welcome Back Kotter”, some modern day ISS students can pose a genuine risk of harm to others and to ISS teachers, such as Hilliman. Indeed, Hilliman had been injured by an ISS student in the past. Teachers do not have to tolerate being pummeled by books in order to maintain their jobs. Toward that end, Hilliman’s actions could be excused or at least mitigated based on the doctrine of self defense. N.J.S.A. 18A:6-1 states:

No person employed or engaged in a public school or educational institution, whether public or private, shall inflict or cause to be inflicted corporal punishment upon a pupil attending such school or institution; but any such person may, within the scope of his employment, use and apply such amounts of force as is reasonable necessary:

- (1) to quell a disturbance threatening physical injury to others;
  - (2) to obtain possession of weapons or other dangerous objects upon the person or within the control of a pupil;
  - (3) for the purpose of self-defense; and
  - (4) for the protection of persons and property;
- and such acts, or any of them, shall not be construed to constitute corporal punishment within the meaning and intentment of this section.

In light of the foregoing, this case presents the more finely tuned questions did Hilliman have a right of self-defense and, if so, did he lose the defense somewhere in the exchange of books with T.M. on October 23, 2012? Counsel for Hilliman argues:

Should he have fled the classroom, leaving [T.M.] in control, and the other students in the room unsupervised and unprotected? Should he have attempted to place a call to security, leaving himself exposed to the books [T.M.] was throwing? Should he have attempted to physically restrain

[T.M.], which would certainly have only escalated her violent behavior? Even with the benefit of hindsight, the Board, while proclaiming what Mr. Hilliman should not have done, cannot clearly identify what he should have done.

In answer to the above, I find that Hilliman's most critical mistake was throwing the first book back at T.M. which, by all credible accounts, led T.M. into more of a tirade. Although T.M. may or may not have continued throwing books anyway, we will never know because Hilliman did not exercise thereafter any reasonable degree of restraint or employ any constructive ISS skill that he presumably acquired over the course of nine years in that position. Instead, I find, Hilliman escalated the book war based on his angered state. As Ms. Tatum aptly commented during her testimony:

Well, my concern was that Mr. Hilliman, perhaps driven by anger, did not think through his actions. Me, as an educator, being trained and certified as a teacher myself, working with difficult students as an administrator and as a teacher, I didn't think it was appropriate that he threw books back at this young lady. And if it was any kid, I just think that's something that, as a professional, you shouldn't engage in.

Indeed, based on his anger, Hilliman did not timely contemplate productive alternatives to his course of conduct. T.M. had been disrespecting Hilliman for the two days and Hillman could not tolerate her presence and disrespect any longer. As testified by Ms. Tatum:

He just said to me, you know, he's not going to be disrespected, you know, by the young lady. That she was calling him by his first name for the past two days and this morning. She's been cursing at him and he wasn't going to take it anymore. You know, he wasn't going to take it anymore.

Hilliman's acting out his state of mind is what caused Hilliman to throw "big books" at T.M. clearly capable of causing injury to her and which did cause injury to her, albeit minor. However, the potential for serious injury to T.M. plainly existed at any point during the 4-5 minutes of the book war and the emotional impact on two ISS student bystanders could not have been positive.

Indeed, Hilliman's anger, I observe, caused him to miss yet another opportunity later in the book war to call security. In describing the layout of the ISS room, including the location of the two bookshelves, Hilliman informed the Arbitrator that T.M. was mostly arming herself at the second book shelf, which is located in the back of the classroom and further away from either the phone or exit according to Hilliman's drawing (Exhibit J3). Thus, I find that Hilliman did have an opportunity to at least somewhat shorten the book war and, instead, he continued it until either his rage was satisfied, and/or until he grew tired. Then, and only then, Hilliman allowed T.M. to get the last hit. It is both Hilliman's initial book throwing and his additional participation in, or escalation of, the book fight that leads me to conclude that Hilliman lost the justification of self-defense. In fact, I conclude that both Hilliman and T.M. were equally aggressive and defensive which is what leads this incident to be fairly characterized as a book war in the first place.

In addressing the appropriateness of the penalty in cases involving tenure charges, I note that relevant factors "include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher's prior record and present attitude, the effect of such conduct in the maintenance of discipline among the students and staff,

and the likelihood of such behavior recurring.” In the Matter of the Tenure Hearing of Erroll Goodwater, School District of the City of Camden, Agency Docket Nos. 185-7/11 and 187-7/11 (April 27, 2012). The Commissioner has previously stated that “unfitness to remain a teacher is best demonstrated by a series of incidents but might be shown by a single incident if sufficiently flagrant”. In the Matter of Norma Pollard, 96 N.J.A.R. 2d (EDU) 170 at 190. Although the teacher in Pollard was found to have committed several offenses requiring dismissal from employment, the Commissioner found that even “the single allegation that respondent placed several pupils in a closet as punishment is sufficiently flagrant to warrant dismissal.” Pollard, supra, at 190. The Goodwater decision reveals that length of service alone is not reason to deny a penalty of termination if the act underlying the tenure charges is “sufficiently flagrant” under Fulcomer, supra, and Pollard, supra. Arbitrators understand this concept in determining the appropriateness of the discharge penalty under a just cause provision in a collective bargaining agreement. Perhaps Arbitrator McCoy said it best many years ago in International Harvester Co., 12 LA 1190, 1193 (McCoy 1949) when he articulated the relationship between the severity of an offense and the need to observe principles of progressive discipline:

The Company imposes a mild penalty for a first offense, a somewhat more severe penalty for a second, etc., before abandoning efforts at correction and resorting to discharge. . . . The theory is that this is in the interest of both management and employees. . . . **I might uphold a discharge without any prior discipline in the case of some offenses**; in the case of other offenses it might be held that discharge did not become reasonably necessary for a long time and after many fruitless efforts at correction [emphasis supplied].

In my opinion, the Board has satisfactorily demonstrated that Hilliman's complete loss of control visited upon T.M., and unfortunately witnessed by two other ISS middle school students, warrants the dismissal penalty, notwithstanding his thirteen years of employment, nine of which were served as an ISS teacher. Hilliman's willing and continuous participation in the remainder of the book war with an obvious intent to hit T.M. (using several soft cover and hard cover books) while two other ISS students looked on leaves him, in my opinion, beyond the point of no return. Cf., In the Matter of the Tenure Hearing of the School District of Atlantic City and Christopher Lorge, Agency Docket No. 275-9/12(dismissal penalty modified to long term suspension and increment withholding where music teacher threw a single soft cover piano lesson book at student who was speaking on her cell phone instead of playing her piano).

If Hilliman's anger was accumulating based on T.M.'s misconduct on October 19-20, 2012 then, I observe, he should have had T.M. removed before class started on October 23, 2012, even if he was aware that T.M.'s mother was scheduled for a meeting later that day. Indeed, in the face of this same knowledge, Hilliman caused injury to T.M. literally one or two hours before T.M.'s mother was scheduled to meet with administrators. Clearly, Hilliman demonstrated a complete lack of appreciation for his surroundings and his role as ISS teacher on October 23, 2012.

Additionally, Hilliman stated at one point that he viewed T.M.'s course of conduct as being calculated to "get under his skin" so that she would be sent home and not have to attend school. Hilliman claims that he initially kept T.M. in his class because he did not

want to play into her strategy. Ironically, Hilliman ended up doing just that. T.M. got under his skin, he retaliated, and T.M. went home on suspension. Meanwhile, what lesson did troubled students D.D. and D.M. learn from Mr. Hilliman, their ISS instructor, about how to handle provocation? Whether or not he realizes it, Hilliman let T.M. win not only the battle, but the war. If Hilliman is reinstated, other ISS students will now have additional reason to disrespect Hilliman or the ISS program at Franklin Middle School. The Board would have to be very concerned about a recurrence, knowing the character of some ISS students, and now knowing the character of the teacher to whom they entrusted the ISS program. Based on the totality of the circumstances presented, I believe that the Board should not be required to take that risk.

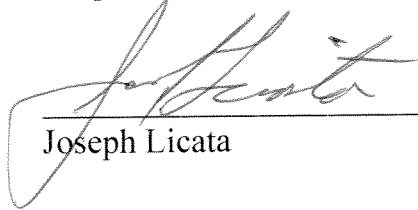
For all these reasons, I will uphold the Board's request for the dismissal of Mr. Hilliman from employment.



**AWARD**

For the reasons discussed more fully herein, I find and conclude that the Franklin Township Board of Education has demonstrated that the dismissal of Dorrell Hilliman from employment is warranted based upon unbecoming conduct and other just cause.

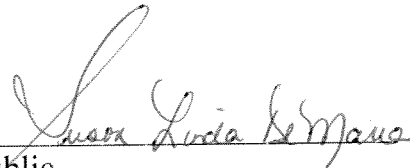
Respectfully submitted,

  
\_\_\_\_\_  
Joseph Licata

Dated: June 25, 2013

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

On the 25<sup>th</sup> day of June, 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  
Susan Linda DeMaria  
Notary Public of New Jersey  
My Commission Expires,  
March 30, 2015