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In the Matter of the Arbitration :

- between - :

Agency Docket Nos.
342/11/14 & 379/12/14

THE STATE OPERATED SCHOOL DISTRICT :
OF THE CITY OF JERSEY CITY :

"Complainant" or "District" :

Opinion and Award

v. :

GILDA NICOLE HARRIS :

"Respondent" or "Harris" :

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A tenure proceeding pursuant to
NJSA 18A: 16-2

APPEARANCES

For the District

Derlys M. Gutierrez, Esq., Attorney
Adam S. Herman, Esq., Attorney
Carlyne Turner-Beverly, Esq., Assistant General Counsel

For the Respondent

Gilda Nicole Harris, Pro Se

BEFORE: HOWARD C. EDELMAN, ESQ., ARBITRATOR

BACKGROUND

Respondent, Gilda Nicole Harris, a tenured Elementary teacher in the Jersey City Public Schools, was served with two sets of charges pursuant to N.J.S.A. 18.A. The first set of charges was served on Respondent on or about September 23, 2014; the second set on or about November 21, 2014. The charges were properly certified to the Commissioner of Education in accordance with appropriate regulations.

Another arbitrator was previously assigned to this matter and held a hearing on April 23, 2015. That arbitrator recused himself on April 28, 2015. Pursuant to the selection process under State law I was assigned to hear and decide the charges. Hearings were held before me on May 29, 2015, June 5, 11, and 23, 2015. Thereafter, the parties submitted briefs. I received the District's brief on or about August 14, 2015. Respondent's brief was received on or about August 21, 2015.¹ The District's Reply was received on or about August 28, 2015 whereupon I closed the record. This Opinion and Award follows.

THE CHARGES

I. The charges served on or about September 23, 2014 (342/11/14) read, in relevant part, as follows:

¹ Respondent's brief was submitted late. I accepted the brief over the District's objection, but allowed the District an additional week to respond.

CHARGE ONE: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. Ms. Harris, a tenured teaching staff member, was hired by the District on or about September 1999. She has worked in the recent past as a Grammar School Teacher at the District's James F. Murray School (School #38) and as a head teacher at the Adult Evening Program located at PS#11.
- b. During the 2013-14 school year, Ms. Harris was assigned to teach fourth grade students.
- c. On April 4, 2014, Ms. Harris demanded that all her fourth grade students who were either struggling and/or receiving failing grades stand up in front of the entire class.
- d. Ms. Harris' contemptible conduct served to humiliate and demean several fourth grade students in her class.
- e. Ms. Harris improperly utilized her authority as a teacher to intimidate and disparage several fourth grade students in front of the entire class.
- f. Ms. Harris' conduct was intentionally cruel and abusive.
- g. Ms. Harris' deprived her students of the right to attend school without fear that their teacher will seek to bully and embarrass them.
- h. As a teacher, Ms. Harris is entrusted with the care and custody of children with the hope that this trust will result in the maximum educational growth and development of children. However, Ms. Harris breached her obligations by engaging in intentional inappropriate, irresponsible and unprofessional behavior.
- i. Ms. Harris' conduct violates District policy and law.
- j. Ms. Harris' conduct violates the tenets and policies that the James F. Murray School and the Jersey City Public Schools uphold.
- k. Ms. Harris' conduct placed her students at risk of harm.

- l. Ms. Harris' completely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.
- m. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE TWO: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations set forth above.
- b. In addition to the conduct described in Charge One, Ms. Harris, on April 4, 2014, also required her fourth grade students to form two lines in the classroom.
- c. Ms. Harris demanded that the African American and/or other students with dark skin to line up on one (1) side of the room.
- d. Ms. Harris demanded that Caucasian and/or other students with light skin to line up on the other side of the room.
- e. Ms. Harris then proceeded to make statements comparing both lines of students.
- f. Ms. Harris' conduct in separating her class on the basis of race is outrageous and shocks the conscience.
- g. Ms. Harris' conduct made her students feel humiliated and degraded because of their race, ethnicity and/or color of their skin,
- h. Ms. Harris deprived her students of the right to attend school without the fear that their teacher will harass, intimidate or bully them on the basis of race, ethnicity or any other characteristic.
- i. As a teacher, Ms. Harris is entrusted with the care and custody of children with the hope that this trust will result in maximum educational growth and development of

- children. However, Ms. Harris breached her obligation by engaging in intentional inappropriate, irresponsible and unprofessional behavior.
- j. Ms. Harris' conduct was intentionally cruel and abusive.
 - k. Ms. Harris conduct was repugnant and offensive.
 - l. Ms. Harris exercised exceptionally poor judgment and failed to act as a role model for her students.
 - m. Ms. Harris failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children.
 - n. Ms. Harris' deplorable and unprofessional conduct violates the District policy and law.
 - o. Ms. Harris' conduct violates the tenets and policies that the James F. Murray School and the Jersey City Public Schools uphold.
 - p. Ms. Harris' inappropriate and unprofessional conduct placed students at a risk of harm.
 - q. Ms. Harris' absolutely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.
 - r. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE THREE: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.

- b. On April 4, 2014, Ms. Harris also yelled at her students and told them that they betrayed her.
- c. Ms. Harris then proceeded to tell a student that she would be moved to another classroom.
- d. Ms. Harris inappropriately spoke to her class about other District employees.
- e. Ms. Harris' conduct served to embarrass her students.
- f. Ms. Harris failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children.
- g. Ms. Harris' inappropriate conduct violates District policy and law.
- h. Ms. Harris' conduct violates the tenets and policies that the James F. Murray School and the Jersey City Public Schools uphold.
- i. Ms. Harris' inappropriate and unprofessional conduct placed students at a risk of harm.
- j. Ms. Harris' absolutely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.
- k. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE FOUR: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. District Policy 6121 provides that "[n]o student enrolled in the Jersey city School District shall be excluded from participation in, denied the benefit of, or

be subjected to discrimination in any educational program or activity of this district on the basis of race, color, creed, national origin, ancestry..."

- c. Ms. Harris' deplorable and unprofessional conduct as set forth above violates District policy.
- d. Ms. Harris' actions demonstrate that she is not fit to serve as a teaching staff member.
- e. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE FIVE: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. District Policy 5145.4 provides that the District "shall provide equal and bias-free access for all students to all school facilities, courses, programs, activities and services and give them the maximum opportunity to achieve their potential regardless of race, creed, color, national origin, ancestry..."
- c. Ms. Harris' deplorable and unprofessional conduct as set forth above violates District policy.
- d. Ms. Harris' actions demonstrate that she is not fit to serve as a teaching staff member.
- e. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE SIX: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. District Policy 51454.4 further provides that "[s]taff members shall maintain professional relationships with students at all times and develop wholesome and constructive relationships with them."
- c. Ms. Harris' deplorable and unprofessional conduct as set forth above violates District policy.
- d. Ms. Harris' actions demonstrate that she is not fit to serve as a teaching staff member.
- e. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE SEVEN: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. District Policy 5145.4 further provides that "[s]taff members shall be expected to regard each student as an individual and to accord each student the rights and respect that are his/her due.
- c. Ms. Harris' deplorable and unprofessional conduct as set forth above violates District policy.
- d. Ms. Harris' actions demonstrate that she is not fit to serve as a teaching staff member.

- e. Ms. Harris's conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE EIGHT: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations set forth above.
- b. District Policy 5145.4 provides that "No one-including students, staff members, vendors, or visitors-shall commit an act of harassment/ discrimination of any kind against any member of the school community on any of the grounds prohibited by law."
- c. District Policy 5145.4 defines "harassment" as "any gesture that is reasonably perceived as being motivated by an actual or perceived characteristic, such as race, color, religion, ancestry, national origin...that will have the effect (perceived or actual) of harming a student..."
- d. District Policy 5145.4 also defines "harassment" as "any gesture that demeans or insults a student or group of students in such a way to cause substantial disruption or interference with the orderly operation of the school."
- e. Ms. Harris' deplorable and unprofessional conduct as set forth above violates District policy.
- f. Ms. Harris' actions demonstrate that she is not fit to serve as a teaching staff member.
- g. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to

require that her employment with the District be terminated.

CHARGE NINE: CONDUCT UNBECOMING (EXCESSIVE ABSENTEEISM)

Ms. Harris is guilty of Conduct Unbecoming and Excessive Absenteeism by way of the following:

- a. During the 2007-2008 school year, Ms. Harris was absent from her employment on approximately thirty-nine (39) occasions.
- b. During 2008-2009 school year, Ms. Harris was absent from her employment on approximately twelve (12) occasions.
- c. During the 2009-2010 school year, Ms. Harris was absent from her employment on approximately fourteen (14) occasions.
- d. During the 2010-2011 school year, Ms. Harris was absent from her employment on approximately thirteen (13) occasions.
- e. During the 2011-2012 school year, Ms. Harris was absent from her employment on approximately thirteen (13) occasions.
- f. During the 2012-2013 school year, Ms. Harris was absent from her employment on approximately seventeen (17) occasions.
- g. During the 2013-2014 school year, Ms. Harris was absent from her employment on approximately ten (10) occasions.
- h. Ms. Harris' conduct has negatively impacted her students by consistently interrupting the continuity of instruction.
- i. Ms. Harris' conduct violates District Policy.
- j. Despite warnings, memoranda and counseling, Ms. Harris' attendance has not improved.
- k. Ms. Harris' conduct constitutes conduct unbecoming.

Ms. Harris' excessive absenteeism as described above has had a profoundly negative impact upon the James F. Murray School and the Jersey City Public Schools Community, and requires that her employment with the District be terminated.

CHARGE NUMBER TEN: OTHER JUST CAUSE

Ms. Harris is guilty of Other Just Cause by way of the following:

- a. The District repeats and reiterates the allegation in all the charges set forth above.

Ms. Harris' conduct as described above has had a profoundly negative impact upon the James F. Murray School and the Jersey City Public Schools Community, and requires that her employment with the District be terminated.

II. The charges served on or about November 21, 2014 (379/12/14) read, in pertinent part, as follows:

CHARGE ONE: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. Ms. Harris, a tenured teaching staff member, was hired by the District on or about September 1999. She has worked in the recent past as a Grammar School Teacher at the District's James F. Murray School (School #38) and as a head teacher at the Adult Evening Program located at PS#11.
- b. During the 2013-14 school year, Ms. Harris was assigned to teach fourth grade students.
- c. On September 23, 2014, Ms. Harris was served with Tenure Charges alleging Conduct Unbecoming and Other Just Cause.
- d. The aforementioned Tenure Charges allege that on or about April 4, 2014, Ms. Harris demanded that all her fourth grade students who were either struggling and/or receiving failing class stand up in front of the entire class.

- e. The aforementioned Tenure Charges also allege that on April 4, 2014, Ms. Harris required her forth grade students to form two lines in the classroom demanding that African American and/or other students with dark skin line up on one (1) side of the room and that Caucasian and/or other students with light skin to line up on the other side of the room. The aforementioned Tenure Charges also allege that Ms. Harris proceeded to make statements comparing both lines of students.
- f. The aforementioned Tenure Charges allege that Ms. Harris' conduct violated law and District policy, and that her absolutely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.
- g. In accordance with N.J.S.A 18A:6-11, Ms. Harris submitted a Statement of Position in response to the Tenure Charges to the District on or about October 9, 2014.
- h. Along with her Statement of Position in response to the Tenure Charges, Ms. Harris included an Appendix of Exhibits, which includes approximately forty-seven (47) documents.
- i. Ms. Harris' Appendix of Exhibits improperly includes un-redacted confidential pupil records and public information.
- j. The un-redacted confidential pupil records and pupil information included in Ms. Harris' Appendix of Exhibits sets forth, among other things, pupils' full names, pupil's grade levels and classes attended.
- k. The un-redacted confidential pupil information included in Ms. Harris' Appendix of Exhibits includes documents dated between 2005 and 2014.
- l. Ms. Harris intentionally misappropriated and disclosed pupil records and pupil information.
- m. Ms. Harris did not obtain consent from any of the pupil's parents or guardians prior to utilizing the confidential pupil records and information in connection with her Tenure Charges.

- n. Ms. Harris did not obtain consent from the District prior to utilizing the confidential pupil records and information in connection with her Tenure Charges.
- o. The un-redacted confidential pupil records and pupil information included in Ms. Harris' Appendix of Exhibits are not even relevant to the allegations in the underlying Tenure Charges that she demanded that all her fourth grade students who were either struggling and/or receiving failing grades stand up in front of the entire class or that she required her fourth grade students to form two lines in the classroom, demanding that African American and o/or other students with dark skin line up on one (l) side of the room and that Caucasian and/or other students with light skin line up on the other side of the room.
- p. Ms. Harris' intentional inappropriate and unprofessional conduct in submitting un-redacted confidential pupil records and pupil information violates Federal and State Law, including but not limited to, the Family Education Rights and Privacy Act, 20 U.S.C. sec. 1232G and the New Jersey Pupil Records Regulations, N.J.A.C. 6A:32-7.1, et.seq.
- q. Ms. Harris violated the confidentiality of her pupils.
- r. Ms. Harris' inappropriate and unprofessional conduct in submitting un-redacted confidential pupil records and pupil information violates District policy.
- s. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE TWO: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. Ms. Harris' Appendix of Exhibits includes several statements from pupils purportedly written on or about February 15, 2013.
- c. Ms. Harris took significant time away from her pupils' educational day and had her pupils write negative statements about another teaching staff member with whom Ms. Harris was apparently having a conflict.
- d. Ms. Harris elicited and/or encouraged her pupils to write that the other teaching staff member was gossiping, was unprofessional and was a bully.
- e. Ms. Harris also elicited and/or encouraged her pupils to write that the other teaching staff member was constantly late, was not responsible, and did not teach the class anything.
- f. Ms. Harris also elicited and/or encouraged her pupils to write that the other teaching staff member was spreading lies.
- g. Ms. Harris even elicited and/or encouraged one pupil to write the following statement about the other teaching staff member: "I have to not do art. In stead, I have to hear all of that CRAP&TRASH she's talking to a bunch of 10 year olds about."
- h. The aforementioned writing assignment was not part of the curriculum or any lesson plan approved by the District.
- i. Ms. Harris failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children.
- j. Ms. Harris' inappropriate and unprofessional conduct violates District policy and law.
- k. Ms. Harris' inappropriate and unprofessional conduct placed students at risk of harm.
- l. Ms. Harris' absolutely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.

- m. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE THREE: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. Ms. Harris' Appendix of Exhibits includes several statements from pupils purportedly written on January 8 2014.
- c. Ms. Harris took significant time from her pupil's educational day and had her pupils write negative statements about their study habits and home life.
- d. Ms. Harris had each of her pupils begin the written statements with the following paragraph: "We are halfway through the fourth grade. Since the beginning of the school year in September, you have stressed the importance of daily study habits and hard work. We have discussed the reasons why I get the grades I do in school. I want to be completely honest with you and explain my study habits at home."
- e. Ms. Harris elicited and/or encouraged one student to write, "[w]hen I am home I get disturbed. The reason I get disturbed is my sister. My sister bothers me by ask (sp.) me for thing and I don't get help very much. This is why I don't' do homework."
- f. Ms. Harris elicited and/or encouraged another student to write that "When I get home I want my mom to help me with my homework. But every other night she's talking on the phone or too busy for me.

- And it takes hours to get off the phone. So I do homework alone..."
- g. Ms. Harris elicited and/or encouraged another student to write that "[b]ut I just want to say I'm sorry I should have done my homework. I hope we can start all over. I didn't mean to not do homework."
- h. Ms. Harris elicited and encouraged another student to write that "I don't do my homework because my dad has to work, my grandma has to help my sister, so I don't do homework because I have to do it by myself, my mom use to help me but now I have to do by myself."
- i. Ms. Harris elicited and/or encouraged another student to write that "[a]t home I do not do my homework....In my house it sometimes really noisie (sp.) My problem is that I have a hard time doing homework..."
- j. Ms. Harris elicited and/or encouraged another student to write that"...the reason I don't do my homework before is my dad wouldn't help me with my homework he did not cheak (sp.) it...when my mom came all she did was yell about my room not being clean or the dishes were not clean and sometimes she would yell about everything and my sister would say are you done are you done. I wanted them to stop but they wouldn't...I have no door in my room so my mom would turn on the TV in my room they would not tell you this because it makes them look bad."
- k. Ms. Harris elicited and/or encouraged another student to write that "[t]o be honest to you Ms. Harris I do not do my homework always. Because I'm to (sp.) lazy."
- l. Ms. Harris elicited and/or encouraged another student to write that "[a]t home I don't do my homework...At home when I'm supposed to be doing homework I actually do on the I-Pad and use it."
- m. Ms. Harris elicited and/or encouraged another student to write that "I do not do my homework daily...Sometimes I've lied to my mom that I was done with my homework but I really wasn't. I make excuses to my mom and

- dad all the time about homework. When I get home I do not always so my homework immediately or pick up a book. Sometimes I just lay back and watch T.V."
- n. Ms. Harris elicited and/or encouraged another student to write that "[n]o I don't do homework everyday. After school I go home do the stuff my mom say and then I sit down in the kitchen and do noting (sp.) but sit or go in the room and watch TV. That (sp.) what I do at home after school."
 - o. Ms. Harris elicited and/or encouraged another student to write that "[a]t home my grandma watches T.V.... and its to (sp.) loud and sometimes my mom and me watch Japanese anime...but my mom watches it more than me and both of them use there (sp.) phone instead of helping me..."
 - p. Ms. Harris provided numerous other examples of this improper writing assignment with her Appendix of Exhibits.
 - q. The aforementioned writing assignment was punitive in nature.
 - r. The aforementioned writing assignment made her students feel humiliated and embarrassed.
 - s. The aforementioned writing assignments made her students disclose private and personal information about their families.
 - t. The aforementioned writing plan was not part of the curriculum or any lesson plan approved by the District.
 - u. Ms. Harris failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children.
 - v. Ms. Harris' inappropriate and unprofessional conduct violates District policy and law.
 - w. Ms. Harris' inappropriate and unprofessional conduct placed students at risk of harm.
 - x. Ms. Harris' absolutely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.
 - y. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE FOUR: NEGLECT OF DUTY

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. As a teaching and staff member, Ms. Harris is responsible for following the curriculum and her lesson plan to ensure that her pupils receive the best possible education.
- c. Ms. Harris intentionally ignored her educational responsibilities and took significant time from her pupil's educational day while eliciting her pupils to write the statements detailed in Charge Two and Charge Three above.
- d. In doing so, Ms. Harris neglected her teaching duties and responsibilities.

Ms. Harris has engaged in neglect of duty that provides just cause to require that her employment with the District be terminated.

CHARGE FIVE: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. N.J.S.A. 18A:36-34 governs the administration of student surveys.
- c. N.J.S.A. 18A:36-34 mandates that written consent be obtained from the parents and/or guardian prior to students being asked about certain topics, such as "illegal, anti-social, self-incriminating and demeaning

- behavior;" and "critical appraisals of other individuals with whom a Respondent has a close family relationship."
- d. Although Ms. Harris asked her students to openly and outwardly answer questions concerning the aforementioned topics, Ms. Harris never obtained, nor attempted to obtain, written consent from her students' parents and/or guardians.
 - e. Ms. Harris willfully violated N.J.S.A 18A:36-34.
 - f. Ms. Harris' conduct could subject the District to monetary penalties by the New Jersey Commissioner of Education.
 - g. Ms. Harris failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children.
 - h. Ms. Harris' inappropriate and unprofessional conduct violates District policy and law.
 - i. Ms. Harris' inappropriate and unprofessional conduct placed students at risk of harm.
 - j. Ms. Harris' absolutely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.
 - k. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGE SIX: CONDUCT UNBECOMING

Ms. Harris is guilty of Conduct Unbecoming by way of the following:

- a. The District repeats and reiterates the allegations in all the charges set forth above.
- b. The Pupil Rights Amendment ("PPRA"), 20 U.S.C. sec. 1232h, also governs the

administration of student surveys and is intended to protect the rights of parents and students.

- c. The PPRA mandates that written consent be obtained from parents and/or guardians prior to students being asked about certain topics, such as "illegal, anti-social, self-incriminating and demeaning behavior," and "critical appraisals of other individuals with whom a Respondent has a close family relationship."
- d. Although Ms. Harris asked her students to openly and outwardly answer questions concerning the aforementioned topics, Ms. Harris never obtained, nor attempted to obtain, written consent from her students' parents and/or guardians.
- e. Ms. Harris willfully violated PPRA.
- f. Ms. Harris failed to exercise self-restraint and controlled behavior which is required and mandated for a teaching staff member entrusted with the care and custody of children.
- g. Ms. Harris' inappropriate and unprofessional conduct violates District policy and law.
- h. Ms. Harris' inappropriate and unprofessional conduct placed students at risk of harm.
- i. Ms. Harris' absolutely unacceptable actions demonstrate that she is not fit to serve as a teaching staff member.
- j. Ms. Harris' conduct was sufficiently flagrant and egregious to warrant termination.

Ms. Harris has engaged in conduct unbecoming that provides just cause to require that her employment with the District be terminated.

CHARGES NUMBER SEVEN: OTHER JUST CAUSE

Ms. Harris is guilty of Other Just Cause by way of the following:

- a. The District repeats and reiterates the allegation in all the charges set forth above.

Ms. Harris' conduct as described above has had a profoundly negative impact upon the James F. Murray School and the Jersey City Public Schools Community, and requires that her employment with the District be terminated.

POSITIONS OF THE PARTIES

A. District

The District asserts that it has proven the first set of Tenure Charges, Docket 342-11/14, preferred against Respondent, Gilda Nicole Harris.

Charge One and Charge Two concern consecutive actions which took place in Respondent's classroom on or about April 3, 2014 when Respondent was returned to her fourth grade classroom after a three-month assignment to the Central Office stemming from an unrelated matter. The evidentiary record demonstrates that during the afternoon of April 3, 2014, Respondent did demand that her fourth grade students, who were either struggling and/or receiving failing grades, stand up in front of the class. Respondent then called the names of her students and had them stand in one of two lines. One line was for light skin or white students and the other for darker skin or black students. Respondent compared the two lines, indicating that the white or light skin line was going to pass fourth grade while the black or dark skin line would not pass.

In support of the charges, the District offered the testimony of student witnesses,² who it claims offered consistent and credible testimony detailing Respondent's inappropriate actions.

Student J.N. testified how on the day Respondent returned to the classroom, Respondent separated the class into two lines. "One line was like depending on the skin color, one line was black people and the other line was white people." (T. 4/23, 22:2-5). J.N. continued that Respondent told the class that "the white people has more better behavior than the black people." (T. 4/23, 22:7-8).

Student X.R. explained that Respondent "lined [the class] up in blacks and whites." (T. 4/23, 38:17). XR explained that Respondent "put people on the white side and she put people on the black side." (T. 4/23. 38:19-20). X.R. understood from Respondent's actions that historically "white kids or white people were always the richest, the black and other slaveries were like stupid or they couldn't like get higher grades [and] usually get left back." (T. 4/23, 39:8-11). Respondent's behavior and comments made X.R. feel " a little mad or sad because [his] skin color is black so [I] thought it was offensive." (T. 4/23. 39:17-19).

Student E.B. testified that Respondent directed the class to form two lines. E.B. testified, "There were people on my line that had the same skin tone as me. And on the other line, there were other people

² Due to the ages of the students, I did not swear them in. I determined through voir dire of each student that he/she had the capacity to differentiate what is the truth and is not the truth and was able to give competent testimony.

darker, like a lot darker than me. And [Respondent] was saying that a woman [E.B.'s] color to her to pass [E.B.] and her line because we work hard and the others don't." (T. 4/23, 51:1-6).

Student D.H testified that Respondent "...just came back and she put--she said everybody who was failing in the class to stand up and she said some people to sit down and they were doing better at the time. And she was putting us in two lines." (T.5/29, 90:19-23). D.H. explained there was one black line and one white line. D.H. was placed in the black line. (T. 5/29, 90:24-25 and 91:1-6). D.H. explained she felt "kind of sad" to be separated into one of the lines.(T. 5/29, 92:4-7).

Melissa Chismar (Chismar) was assigned to take over Respondent's class in January 2014 and again in April 2014. Chismar testified that when she was reassigned to Harris' classroom on April 4, 2014, the students immediately advised her that on the previous day Respondent "lined [the students] up according to race" and "told [the students] this is why black children fail." (T. 4/23, 115:7-25, 116:1-2). Chismar testified that there was never any list of students created based upon race and no list containing student names was placed on any classroom wall or bulletin board. (T. 4/23, 118:1-20). The District's Chief Academic Officer, Jason Bing (Bing), testified that it is never appropriate for a teacher to separate a class based on race. (T. 6/5, 15:7-10).

Respondent offered the testimony of student, J.M., whom she called as a witness. J.M. testified that Respondent had shown the class a video on April 3

and that they had discussed race as a result of the video (T. 6/5. 236:4-22). Respondent was not able to produce this video. The District argues that Harris' proffered excuse - that the students were separated by race as a result of watching the video - fails. The District contends Respondent did not present any credible evidence disputing the fact she lined students up by their race on that date.

The District argues that Respondent's outrageous conduct caused the students to feel humiliated and degraded because of their race and skin color. In light of the evidence it is clear that Respondent acted in an inappropriate and deplorable manner. Respondent's action of separating the children by skin color constitutes conduct unbecoming and removal from her tenure position is the only proper penalty.

The District argues this is not the first time Harris has separated students. In addition to the April 3, 2014 incident, the District contends that the credible evidence supports Respondent having seated the students based on their grades during the 2013/14 school year. Respondent organized the classroom into four groups of tables, which were named after various colleges, and the students were assigned based on their grades.

Chismar testified that upon arriving in Respondent's classroom in January 2014, she observed groups of desks, along with two desks facing the blackboard and one desk facing the window. The students advised Chismar that Respondent made student J. face the window and two boys face the blackboard (T. 4/23, 108:1-10). The students further advised

Chismar that they were seated according to their reading grade levels. (T. 4/23, 111:14-16). Chismar testified that children should not be seated according to their reading grade levels because it has a negative impact upon them, preventing them from helping each other and harming their self esteem. They would also know who was passing and failing. Chismar changed this arrangement so all the students could work together. (T. 4/23, 110:13-22). She explained that the students were afraid of Harris and thought every time the phone rang Respondent was going to return. (T. 4/23, 113:1-3).

Student J.N.'s testimony corroborates that Respondent organized the classroom into four (4) groups. The students were assigned to one of the groups based upon their grades, (T. 4/23, 19:5-10), with all the "A" students together, all of the "B" students together, the "C" students together and all of the "F" students together. (T. 4/23, 19:11-18). Respondent named the tables after colleges. The "A" table was Princeton University, the "B" table was Rutgers University, the "C" table was New Jersey City University and the "F" table was "Drew University." (T. 4/23, 19:21-25 and 20:1-6). J.N. was a "B" student and sat at the Rutgers Table. (T. 4/23, 19:19-20). Other students such as J, X and D, who received bad grades, sat at the "F" table. (T. 4/23, 20:12-20) One female student, J, was not in a group at all and was forced to face the wall. (T. 4/23, 23:9-20).

Student E.B. testified similarly that during the 2013-14 school year, Respondent organized the classroom into groups of tables named after universities (T. 4/23, 48:16-18). When Chismar took over the class, the students were assigned to rows with all students facing the front of the classroom and the smart-board. (T. 4/23, 49:17-23). When Harris returned on April 3, 2014, she rearranged the rows back to the university groups. (T. 4/23, 50:21-23).

The District argues that Respondent acted in an inappropriate and unwarranted manner. Her actions, which involved separating children by their academic performance, constitute conduct unbecoming. Respondent's actions served to embarrass the students and violate their privacy rights, as each student was aware if his/her classmates were "A", "B", "C" or "F" students.

In support of Charge Three, the District offers the Statement of Student T.N. (D2 and D4) who in addition to describing the separation of students based upon race, indicates that Harris had asked where the picture of President Obama that she kept in the class was placed. Respondent then yelled at the students and said they betrayed her. T.N. alleged Respondent told another student, J, she was going to be moved to another class.

The District asserts that Respondent's actions violated the District's non-discrimination and Equal Educational Opportunity Policies. Charge Four alleges violations of District Policy 6121, "Nondiscrimination/Affirmative Action", (D-6) which provides, "No student enrolled in the Jersey City

School District shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in any educational program or activity of this district on the basis of race, color, creed, national origin..."

The District argues that Respondent is guilty of Charge Five, Charge Six, Charge Seven and Charge Eight, which constitute violations of District Policy 5145.4, "Equal Educational Opportunity." (D-7).

District Policy 5145.4 provides, "The Jersey City School District shall provide equal and bias-free access for all students to all school facilities, courses, programs, activities and services and give them maximum opportunity to achieve their potential regardless of race, creed, color, national origin, ancestry..."

The District contends that staff members are required to maintain wholesome and constructive relations with students, regard each as an individual and accord each student the rights and respect that are his/her due. Staff members are obligated to promote a learning environment that encourages fulfillment of each student's potential, consistent with district goals. The goals are achievable by adapting instruction to individual needs by insisting on standards of scholastic accomplishment for all students and creating a positive atmosphere in and out of the classroom, extending the same courtesy and respect expected of students and treating all students with fairness. (D-7).

Policy 5145.4 prohibits harassment by staff members against students which is defined as "any

gesture that is perceived as being motivated by an actual or perceived characteristic, such as race, color...that will have the effect (actual or perceived) of harming a student...or any gesture that demeans or insults a student or group of students in such a way as to cause substantial disruption in or interference with the orderly operation of the school. (D-7).

The District maintains Respondent's actions of separating the students into two lines based on race and skin color, and then advising them that the white students would pass and the black students would not, is shocking. The students attended Respondent's class to learn math and language arts, not to be discriminated against and humiliated by their teacher. Respondent made her students feel inferior, stupid and ashamed because of their race and skin color, it submits.

Bing testified Respondent's actions were a blatant violation of District Policy 6121 and 5145.4 (T. 6/5, 15:19-25 and 16:1-3). Respondent committed a discriminatory practice, which impeded educational improvement and also denied equal access to educational opportunities. (T. 6/5, 16:4-9). Respondent failed to create a positive classroom atmosphere and failed to treat all students with fairness. The District argues that Respondent's actions violated all aspect of Policies 6121 and 5145.4 and cannot be tolerated.

Respondent is guilty of Charge Nine, conduct unbecoming and excessive absenteeism according to the District. It insists that the Commissioner of Education has sustained tenure charges and ordered

dismissal when an employee is culpable of excessive tardiness and absenteeism, even where the absences are for legitimate medical or health reasons. Despite a teacher's performance being sufficient in the classroom and, even if the absences were approved leave or sick days, they may be considered material to the issue of excessive absenteeism and can justify removal of the teacher. Excessive or chronic absenteeism of a tenured employee, even if related to legitimate medical or health problems, has been held to constitute "incapacity," "unbecoming conduct," and/or "just cause," within the meaning of N.J.S.A. 18A:6-10, to warrant dismissal from employment, it urges.

The District contends there is no dispute that Respondent was absent on 118 occasions over the course of seven school years. (D-10). Respondent's absence records demonstrate she was absent as follow:

- 2007-2008, thirty-nine (39) occasions
- 2008-2009, twelve (12) occasions
- 2009-2010, fourteen (14) occasions
- 2010-2011, thirteen (13) occasions
- 2011-2012, thirteen (13) occasions
- 2012-2013, seventeen (17) occasions
- 2013-2014, ten (10) occasions

Respondent's poor attendance negatively impacted her students by consistently interrupting the continuity of instruction. Despite warnings, memoranda and counseling, her attendance has not improved (D-11). Respondent's excessive absenteeism between 2007 and 2014 had a negative impact upon the James F. Murray School and the Jersey City Public

Schools community and warrants termination, according to the District.

The District asserts that it has proven the second set of Tenure Charges preferred, Docket 379-12/14.

It argues Respondent was guilty of Charge One, conduct unbecoming, when she violated students' privacy rights by distributing un-redacted student records. In accordance with N.J.S.A. 18A:6-11, Respondent submitted to the District a Statement of Position in response to the First Tenure charges. Along with this document, Respondent included an Appendix of Exhibits, which included approximately forty-seven (47) documents with un-redacted confidential pupil records and information. (T. 6/23, 78:12-15). The information included in Respondent's Appendix contained documents dated between 2005 and 2014 and set forth pupils' full names, grade levels and classes attended (T. 6/23, 79:11-25).

Respondent intentionally misappropriated and disclosed these confidential records and information without consent from the students' parents or guardians, the District avers. Respondent did not obtain consent from the District prior to utilizing the records and information in connection with her Tenure Charges. A school board employee has a duty to safeguard these student documents and cannot share them with a third party. The District proffers that Respondent's intentional, inappropriate and unprofessional conduct in submitting un-redacted confidential pupil records and information violates Federal and State Law, including the Family Education

Rights and Privacy Act, 20 U.S.C. sec. 1232g (FERPA) and the New Jersey Pupil Records Regulations, N.J.A.C. 6A:32-7.1, et. Seq. FERPA protects the privacy of student education records and prohibits dissemination without written permission of the student's parent or guardian, except under limited circumstances involving legitimate educational interests, such as a school official reviewing the record to fulfill his/her professional responsibility. This was not the case with Respondent, whose disclosure of the records was to defend against her tenure charges. Respondent ignored her role and responsibility under FERPA to protect the records and uphold the parents' and students' right to privacy.

The District argues Respondent is guilty of Charge Two, conduct unbecoming, in that she encouraged and solicited her pupils to write letters about another teaching staff member alleging that this staff member was always late, spreading lies, did not teach the class anything, was gossiping and a bully. Respondent had one student write: "I have to not do art. Instead I have to hear all of that CRAP & TRASH, she's talking to a bunch of 10 year olds about." (emphasis in the original, D-8). These writing assignments were not part of the curriculum or lesson plan approved by the District. Bing testified that the letters, which seemed to be prompted by an adult, were not an appropriate exercise or activity for fifth grade students. (T. 6/5, 18:2-11 and 21:8-16).

Respondent denied prompting the students to write letters; yet, her own witness, Student S.Y.'s mother, N.M, testified concerning her own belief in writing

letters "when you feel you need to get something off your chest." N.M. was glad Respondent reinforced what N.M. taught her son. (T. 6/11, 88:12-21). This supports the conclusion that Respondent encouraged and/or solicited her students to write these letters.

Respondent is guilty of Charge Three, conduct unbecoming, for having students write negative letters concerning their study and home life. (D-9) Respondent had the students write similarly worded statements: "We are halfway through the fourth grade. Since the beginning of the school year in September, you have stressed the importance of daily study habits and hard work. We have discussed the reasons why I get the grades I do in school. I want to be completely honest with you and explain my study habits at home." (D-9). The letters all contain various reasons or excuses concerning the students' failure to do homework such as, "I don't do my homework because my dad has to work, my grandma has to help my sister, so I don't do homework because I have to do it by myself, my mom use (sic) to help me but now I have to do by myself." (D-9). The District argues that the writing assignment made the students feel humiliated and embarrassed. The writing assignment also required Respondent's students to disclose negative, private and personal information about their families. The assignment was not part of the curriculum or any lesson plan approved by the District. Bing testified concerning the letters. (D-8). Bing proffered that these letters were not an appropriate exercise or activity as they lacked any educational value. (T. 6/5, 23:2-3).

The District argues that Respondent's actions of soliciting her students to write the negative letters for Respondent's personal use in Charge Two and the letters detailed in Charge Three took away from the students' educational day and are a breach of her professional responsibilities. Accordingly, Respondent is guilty of Charge Four.

The District did not address Charge Five or Charge Six in its brief, but did present evidence related to these charges concerning the content of the letters in Charge Three. The District argues that the letters were negative and contained critical appraisals of family members.

The District insists that conduct unbecoming is conduct that adversely affects the morale or efficiency of the agency of which the employee is a member, which has a tendency to destroy public respect for government employees and confidence in the operation of government services, or which violates an implicit standard of good behavior. Such a finding does not require that any specific rule or regulation has been violated but may be based on the violation of the standard of good behavior. Educators must be held to an enhanced standard of behavior. Teachers are professional employees to whom the people have entrusted the care and custody of tens of thousands of school children with the hope that this trust will result in the maximum educational growth and development of each child. This heavy duty requires a degree of self-restraint and controlled behavior not normally found in other types of employment.

The District argues that this case does not involve an isolated incident; but, rather, involves a pattern of unacceptable conduct culminating in a racially discriminatory incident. Respondent is not a role model or a mentor for the students of the Jersey City Public Schools. Her actions constitute conduct unbecoming and are sufficiently flagrant and egregious as to warrant termination. Respondent engaged in conduct which placed her students at undue risk of harm. The District concludes that it has proven by a preponderance of the evidence that there is just cause to terminate Respondent. One incident in the charges alone would warrant termination. The combination of charges demonstrates through un-refuted evidence offered by the District that Respondent is unfit to be a teacher and must be removed from her tenured teaching position.

B. Respondent

Respondent testified she is a tenured teacher in the Jersey City Public Schools and was hired as a Teacher Assistant in 1997. She is currently an Elementary Teacher assigned to the James F. Murray Elementary Public School No. 38, a position Respondent has held since 1999. Prior to these proceedings Respondent has had an unblemished disciplinary record. She recounts her career, which contains many notable achievements.³ However, Respondent did not respond to most of the Charges in her brief. Her defenses are

³ Respondent's career history was not in question. Respondent was advised multiple times during the hearing to address the facts of what happened, (T. 6/23, 27:21-23, 29:14-18) which she does not do in depth in her brief.

contained in the opening argument and testimony she gave during the Hearing.

Respondent testified as to her actions on April 3, 2014, which serve as her response to the allegations in Charges One through Eight of Tenure Charges, Docket 342-11/14. She maintains she did not do what the District claims and the charges should be dismissed.

Respondent testified that in January 2014, she was placed in an alternative assignment with the Jersey City Public Schools Human Resource Department. Respondent remained assigned to the Human Resources Department until April 3, 2014. Upon her arrival that day, Respondent was unexpectedly directed to report to School 38 and return to her previous assignment. Despite her belief that proper protocols were not followed, she left the Human Resources Department at approximately 8:30 A.M. and reported to PS 38. Between her arrival at PS 38 and 10:30 A.M. she waited in the main office. (T. 6/23, 31: 9-25 and 32:1-16). Respondent testified that she emailed several staff within the Jersey City Public School that she was no longer assigned to PS 38. She referred to emails to demonstrate the times she was not actually in the classroom. Respondent was not performing instructional duties when she returned. (T. 6/23, 33:14-18). During this time she had discussions with the Principal's Clerk, Camillo, about her direct deposit pay stub. She did not have a record of her salary. On April 4, Respondent testified she returned to the "rubber room" and was advised her payroll stubs were shredded. Respondent continued to detail issues that

she had with her pay stub, which she had discussed the morning of April 3. (T. 6/23 34:7-17). At approximately 10:30 A.M. on April 3, she was called into a meeting with Principal Jones, Ileya and Chismar. (T. 6/23, 35:3-6). Respondent was directed by Jones to complete marking period three electronic report cards by April 9. Respondent was to obtain the information from Chismar who advised the administrator that all grades for marking period three were completed and ready for report cards. (T. 6/23 35: 13-18).

Harris testified that she asked what information had been given to the students concerning her absence. Anticipating the students would query her as to her absence, she wanted her response to be consistent with what the students might have been told. She stated that after a contentious reply from Jones, the meeting concluded. She stated she was reprimanded for having her lunch in her hand when she exited the principal's office and responded she did not have time to unpack personal items or put things away. (T. 6/23, 36:1-11).

Approximately 10:45-11:00, Ileya escorted Respondent to Room 218, her fourth grade classroom. He introduced Respondent as a new teacher and reminded the students that he was available if they needed to talk to him and asked if they were ok. (T. 6/23 36:12-18). Ileya, and another teacher who was present, then left the room.

Respondent stated that other staff entered the room: Joseph Romano, the Fourth Grade teacher in the next room; Cassandra Bronson, the security guard with whom she worked and Chismar. Benjamin DiFranco

(DiFranco) was allegedly in the room and Respondent testified DiFranco discussed loyalty with the children as part of an early morning tutorial vocabulary. He wrote on the black board: Loyalty and Betrayal. (T. 6/23 36:23-25 and 37:1-12). Respondent testified that DiFranco informed the students he kept Respondent up-to-date on their progress. The students reacted to Respondent's return. Some cried, "Oh, my God, where have you been?" (T. 6/23 37:16-18). Student E.B. stated, "I'm going to have to transfer" (T. 6/23 37:18-19). Student D.H. said, "I am getting left back." (T. 6/23 37:20). Respondent testified some students hugged her and asked about her absence. The students allegedly told her that students E and J claimed to have gotten her fired and that another, who was at-risk, had been suspended. (T. 6/23 38:1-15). Harris denies this allegation. (T. 6/23 38:16-19). The children told Respondent they were upset because she failed them on their report cards and had not given them extra credit. Respondent advised the students she completed all the second marking period report cards but that the extra credit was still on the table. (T. 6/23, 39:5-16). They told her that they were passing now but had bad behavior and could not go to field day. Respondent testified how, during her absence, she tried to keep up with the students' activities during her reassignment and submitted anything she could to help them. She also told them she had continued to study for her doctorate.

Respondent stated, "I instructed the students to line up into two lines, girls and boys, common. Take coats and lunches in case we were running late." (T.

6/23 42:7-10). Respondent submitted her schedule with her evidence. The students had what was called a special activity, which would also be referred to as her teacher prep or lunch. Jones had assigned certain of her duties to DiFranco who was there again to walk with her and the students to the gym. (T. 6/23, 42:6-17).

Respondent testified DiFranco returned these students to the classroom. Respondent indicated she was disappointed in the students' progress and behavior during her absence. She stated she had organized them into cooperative group seating arrangements of which the District, as well as Jones, were aware. (T, 6/23, 44:1-12).

Respondent claimed to have named all of her students as scholars and told them they were all going to college. She testified she did not put them as tables one, two, three, four or use the terms "a", "b", "c" and "d" as all the students would not understand what this meant. She told them what the numerical grades related to during the time of report cards. (T. 6/23. 44:14-25). Respondent, upon her return, reorganized the cooperative groups' seating arrangement and reactivated what was called Peer Leader and Study Buddies, one of each at every table. Respondent inquired if the students had retained their on-line academic accounts, which the students said they did not use. (T. 6/23, 45:1-9).

Harris stated Ileya returned again to the classroom to ask the students if they need to tell him anything. The students did not; but Respondent wanted to know why a particular student was returned to the

classroom when Ileya had removed her. She was advised to inform him in writing of the issue. Respondent then testified she completed a Closed Reading activity in review for a test. (T. 6/23, 45: 10-22). Respondent had the students organize desks and restructure the classroom into what she believed to be a functional and organized environment that existed previously.

Respondent testified she then began to distribute school picture packets. Since she had not been there previously, she had to use a bunch of lists that remained in the classroom. She went through the shortest lists first. Some of the lists were those who ordered pictures, school T-shirt, who sold candy or student identified items. (T. 6/23, 46:17-23). Respondent stated there was a final list that was longer and was posted on the bulletin board, which was previously her Vision Board. Only positive things went on her Vision Board. (T. 6/23, 46:24-25 and 47:1).

Respondent stated, "With the last list, as we prepared for the close of the day, I announced that if-since it was a longer list-I announced that if I call your name, please stand, thinking it was another distribution list as well. I called the names on the list. And when I looked up, many students were standing. And I asked, what was this? And several students offered several explanations." (T. 6/23, 47:13-23).

Respondent testified she inquired of the students, "what was wrong with this picture?" as the students stated their reasons for the unknown list of

those with recurrent behavior problems. There were few students who were not on the list or who were not standing." (T. 6/23, 48:11-16). Respondent proffered that Student T.N., who is African American, repeatedly insisted that students who were listed were black. Respondent pointed out that not all were black and that simply because a person's complexion or skin color is brown does not make him or her black. The fact a person is fair-skinned complexion doesn't make him or her white. (T. 6/23, 48:19-25 and 49:1). Harris stated this was a theme she had to teach students in an urban school many times and she reiterated it that day. Every student in Respondent's Fourth Grade 2013/14 classroom was a person of color. (T. 6/23, 49:1-5). Respondent testified repeatedly on cross-examination that she did not line anybody up because of his or her race. (T. 6/23, 68:18-22). She did not tell African-American or darker skin students that they would not pass; nor did she tell lighter skin students they would pass. As an African American woman she was offended by the accusation. (T. 6/11, 68:8-16).

In support of this assertion, Harris offered the testimony of Teacher Assistant Corinne Decker-Gingles (Gingles). Gingles testified that she came into Respondent's classroom a few times during the 2013/14 year. When she entered, the children were always engaged and working. There was always something new on the bulletin board and the children were well mannered. (T. 6/11, 25:17-23). On the days she came into Respondent's classroom, she did not observe any

groups or lines in the classroom.(T. 6/11, 25:24-25; 26:1).

Respondent did not contest her absences in Charge Nine. Nor did she offer direct testimony on this charge. Respondent did argue that her use of contractual days throughout her tenure does not constitute excessive absenteeism. (T. 6/23, 20:10-12). She admitted taking a leave from the District in 2007 and 2008 for a medical procedure of which the District was aware weeks in advance. Respondent argued further that on many days she was absent, if she was not hospitalized and able to visit, she did return to the school at some point in the day even though she was marked absent. She communicated with the school staff on those days and used technology to communicate with the substitute teacher and the students.(T. 6/23, 21:8-16).

In Tenure Charges, Docket 379-12/14, Charge One, Respondent admitted submitting, as part of her defense, a 200-plus page packet of student letters. She acknowledges that none of the student names were crossed out. (T. 6/23 78:12-15). Her understanding was that these proceedings are private. Respondent argued she did not violate FERPA.

Respondent's former fifth grade student, S.Y., testified on her behalf concerning the February 2013 complaint involving letters sent about an art teacher, which is the subject of Charge Two of the second Tenure Charges. S.Y. felt that the manner the art teacher spoke of Respondent was unprofessional and he disagreed with what was being said. He testified he and the whole class decided to write to Principal

Jones. (T. 6/11, 69:20). He testified that the art teacher left him and the other students and she did not teach them anything. (T. 6/11, 70:14-16). When learning of this issue, Respondent asked her students what they did when they have a problem. They responded they write a letter and that's how they got the idea. (T. 6/11, 71:1-4). S.Y. testified Respondent did not force them to write a letter. (T. 6/11, 71:7-14).

S.Y.'s mother, N.M., also testified on Respondent's behalf. She confirmed that her son related the incident with the art teacher to her. (T. 6/11 84:1-17). She stated she loved that Respondent had a chance to teach her child and that Respondent taught the children skills as well as education and wished there were more teachers like her. (T.6/11 88:6-12). N.M. believes that when someone does something wrong, it should be written down and documented. N.M. testified she was glad Respondent reinforced what N.M. taught her son. (T. 6/11, 88:14-22).

On cross-examination, Respondent maintained that she did not require the students to write the letters related to what another teacher said about her. She recalled that the Principal provided her with copies of the letters. (T. 6/23 82:18-19). She testified the students had reported that another teacher said bad things (T. 6/23 82:23-24). There was no evidence that the letters were written during school, Harris insisted. (T. 6/23 84:11-12). She saw no reason the students couldn't do journal writing or any other type of writing at any time if the statements are truthful. (T. 6/23, 84:16-19). Students can write during recess

and journal writing time. Since this occurred in February, the students would spend most of their free time indoors, which constitutes a denial of Charge Four as the letter writing did not take away from instructional time.

Respondent does not address Charges Three, Five or Six which are related to the letters concerning the students' writing about their home environment.

Respondent argued that she has been involved in community activities, chaired committees and embraced the servant leadership work ethic. (T. 6/23, 13-18) In her overall defense, Respondent stated, "To insist that the students fail, contribute to an environment in which they would fail, would be like suicide to me. As the District and the State now has a policy that students' progress is tied to teacher progress, it serves no benefit to undermine, humiliate, embarrass, or do anything to students." (T. 6/23, 22:10-16). Respondent insists that she has not done what the District alleges she did. (T. 6/23, 23:22).

Respondent argues the following as an appropriate remedy.⁴

1) All tenure charges brought against her by the District of the Jersey City Public Schools should be dismissed and/or denied; her suspension be permanently removed and expunged from the State of New Jersey and District's files and her personnel records; and,

⁴ Respondent's brief contained lengthy discussion related to the settlement conferences. While one was held, issues and offers discussed at that conference are inappropriate for inclusion in the arbitration hearing or this decision.

2) She should be immediately reinstated to a tenured position in the Jersey City Public Schools with full back pay and seniority, including stipends and extra compensatory income that supplemented her regular income for the entirety of her employment as a tenured teacher and quasi-administrator for District programs, and made whole for any and all loss of benefits suffered during her suspension without pay from the District from November 19, 2014 to the present.

DISCUSSION AND FINDINGS

Several introductory comments are appropriate. Respondent has raised procedural issues in her brief and during the hearing related to due process, back pay concerns, and issues related to the removal of her attorney by the former arbitrator.

The former arbitrator did not remove Respondent's attorney. By letter dated April 8, 2015, Respondent's attorney advised the former arbitrator that the law firm was declining to represent her and that the original April 14, 2015 hearing should be adjourned for Respondent to obtain new counsel, with whom they would cooperate, before the April 23, 2015 hearing date.

On June 3, 2015, I answered Respondent's concerns related to due process issues which had been raised. I assured Respondent that her due process rights were not affected if I were to review the transcript, which I did, of the individuals who testified before the previous arbitrator, thus negating the need to start

the process over. Respondent was assured she had the same due process rights as she did with the previous arbitrator. She was advised she could call any witness who could give relevant testimony regarding the charges preferred against her.

On June 11, 2015, I issued an award in response to Respondent's motion for back pay and restoration to the payroll. I granted Respondent full pay for the period of April 28, 2015 through May 29, 2015. In all other respects, I denied Respondent's motion for restoration to the payroll.

Other issues Respondent raised in her brief concerning the Board's procedures are not relevant to this hearing. Accordingly, I turn to the merits of this dispute.

There are two sets of Tenure Charges which have been joined in this action. Tenure Charges 342-11/14 were served on or about September 23, 2014 and certified to the Board on November 19, 2014. Tenure Charges 379-12/14 were served on or about November 21, 2014 and certified to the Board on December 16, 2014. Each set will be analyzed independently.

Tenure Charges 342-11/14

Charges One and Two arise from the same events and are discussed together. The record reveals that Respondent did demand on April 3, 2014, that her fourth grade students, who were either struggling and/or receiving failing grades, stand up in front of the class. The record further indicates that Respondent then separated her students into two lines according to race. Students from Respondent's fourth grade class of 2013/14 testified credibly as to the

manner in which Respondent asked the students to stand up and form two lines based upon skin color. One line was for black or dark skinned students; and, the other line was for white and/or light skinned students. For example, Student D.H. described how Respondent said that everyone who is failing should stand up and she told certain others to sit down. (T. 5/29, 90:19-23). Respondent then separated the students into two lines, one line with black students and one line with white students. D.H. was placed in the line with black students. (T. 5/29, 90:19-25 and 91:1-5) D.H. testified further that everyone who got F's had to stand up. Respondent then separated the students into two lines. (T. 5/29, 91:10-14).

The students also testified consistently concerning Respondent's comments comparing the two lines, indicating that the white or light skin students would pass fourth grade while the black or dark skin students would not. The students expressed various forms of discontent and anger at Respondent's actions. Several students advised their parents which led to inquiries concerning the possible racial segregation of the class. Student D.H.'s comment characterizes the students' feeling when she stated she felt "kind of sad." (T. 5/29, 92:4-7). Student X.R. felt "a little mad or sad because skin color is black so [I] thought it was offensive." (T. 4/23, 39:17-19). I do not credit Respondent's testimony that the lines were formed based upon her reading of a large list posted on the classroom bulletin board. This testimony was contrary to testimony provided by Chismar that no list containing student names was

placed on any classroom wall or bulletin board. (T. 4/23, 118:1-20). I concur with the testimony of Chief Academic Officer Bing that it is never appropriate to separate a class based upon race, (T. 6/5, 15:7-10).

The April 3, 2014 incident was not the first time Respondent separated her students. The students' testimony also demonstrated that they were separated in class according to their academic ability. Respondent organized the classroom into four specific seating tables with the students assigned based upon their grades. The record supports the conclusion that she created "A", "B", "C" and "F" tables and named the tables Princeton University, Rutgers University, New Jersey City University and Drew University respectively. Melissa Chismar, Respondent's replacement during her reassignment to Human Resources, testified the classroom was separated into the aforementioned groups and that she returned them to rows. Chismar testified that Respondent's seating method did not provide an opportunity for students to work together or help each other out.

Such an arrangement affects the student's self-esteem, as all the students know who is passing or failing. The testimony of the students supports the potential negative effect of this arrangement on self-esteem. Respondent testified credibly that she believed she was forming cooperative groups and, when Respondent returned from the Human Resources assignment, she again restructured the classroom into what she believed to be a functional and organized environment that previously existed. Her testimony demonstrates she was not cognizant of the negative

impact such an arrangement might have on her students and did not seek to cause intentional harm. Respondent's action of separating students by their academic ability supports Charge One and Charge Two to the extent it demonstrates a continued pattern of separating students into categories by racial categories.

There is insufficient factual evidence to refute the students' testimony stated above. I concur with the District's argument that Respondent's conduct was inappropriate and demonstrated exceptionally poor judgment. I do not find, however, that Respondent's conduct was intentionally cruel and abusive or that she intended to create racial animus. Rather, I am convinced, she wanted students to feel the sting of discrimination so they would know how not to act in potentially racially charged situations.

Teachers often attempt to impart an understanding to their students concerning racial issues. Respondent testified that she explained to her students that simply because a person's complexion or skin color is brown does not make him or her black. The fact a person is fair-skinned complexion does not make him or her white. (T. 6/23 48:19-25 and 49:1). Respondent stated this was a theme she had to teach students in an urban school many times and she reiterated it that day. Every student in her Fourth Grade 2013/14 classroom was a person of color. (T. 6/23, 49:1-5). Respondent, an African American teacher, apparently was attempting to teach her students a lesson concerning race, but should have chosen a more suitable methodology.

Accordingly, based upon the record, I find Respondent culpable of Charge One, items c, d, e, g, h, i, j, and k; and, I find Respondent culpable of Charge Two, items b, c, d, e, f, g, h, i, k, l, m, n, o, and p.

The record does not support by a preponderance of the evidence that Respondent yelled at her students, saying they betrayed her, nor that she openly disparaged other teachers to the students. While one student, T.N., did include this in her written statement (D-2), there is insufficient testimony or other evidence to support the statement. Further, Respondent testified credibly that DiFranco had been discussing loyalty in an early morning vocabulary tutorial of April 3, 2014, and the words "loyalty" and "betrayal" were written on the board (T. 6/23, 37:5-12), which raises doubt as to Respondent's culpability. I find that Respondent is not culpable of Charge Three.

District Policy 6121 provides in part that no student may "...be subject to discrimination in any educational program or activity of this district on the basis of race, color, creed, national origin, ancestry..." The actions of Respondent in separating the students by race, as sustained in Charge Two, are discriminatory in nature and technically violate District Policy 6121. As such, I find Respondent culpable of Charge Four, items b and c.

Charge Five relates to that part of District Policy 5145.4 which provides for equal and bias-free access for all students to all school facilities, courses, programs, activities and services regardless

of race, creed, color, national origin, ancestry. The record does not establish by a preponderance of the evidence that Respondent's actions on April 3rd affected the students in such a manner. No child was deprived of access to any facility, course, etc., as a result of what she said. Thus, I find the Respondent is not culpable of Charge Five.

District Policy 5145.4 provides that "staff members shall maintain professional relationships with students at all times and develop wholesome and constructive relationships with them." The record does not support Charge Six by a preponderance of the evidence. The credible testimony suggests that some students were pleased to see Respondent return while others were fearful of not passing, suggesting only that Respondent might be very demanding of her students. N.M., the parent of student S.Y., testified she was pleased that Respondent taught her child and wished there were more teachers like her. (T. 6/11, 88:6-12) Teacher Aide Gingles testified that when she came into Respondent's classroom, the children were always engaged and working. There was always something new on the bulletin board and the children were well mannered. (T. 6/11, 25:17-23). The record does not contain credible evidence that the Respondent did not maintain a professional manner with her students. I find that Respondent is not culpable of Charge Six.

District policy 5145.4 states, "...staff members shall be expected to regard each student as an individual and to accord each student the rights and respect that are his/her due." Having sustained Charge

Two, I found Respondent culpable of separating her students into two lines based upon race on April 3, 2014. The students testified about their anger and humiliation at this action. Such action denies the students the rights and respect which are due him/her. Further, I find Respondent's separating students into university groups allowed students to know which were passing and which were failing, and did not protect students' right to privacy regarding grades. Respondent's actions, even if unintended, failed to treat all students with fairness. Hence, they violate this section. Accordingly, I find Respondent culpable of Charge Seven, items b and c.

District Policy 5145.4 prohibits any act of discrimination or harassment against any member of the school community. It further defines harassment in part as "any gesture that is reasonably perceived as being motivated by an actual or perceived characteristic, such as race, color, religion, ancestry, national origin...that will have the effect (actual or perceived) of harming a student." It is also defined as "any gesture that demeans or insults a student in such a way to cause substantial disruption or interference in orderly school operation." Students are members of the school community.

While the record does not reveal that Respondent intended to cause harm, Respondent's action of separating the students into two lines based on race, sustained in Charge Two, is a discriminatory act, which had a harmful effect. The students testified that it made them feel bad, sad or angry about themselves with the resulting effect of harming their

self-esteem. Respondent's misconduct demeaned the students, caused anger amongst the parents with a resulting investigation and reassignment of Respondent and another teacher assigned to perform her duties. I find Respondent culpable of Charge Eight, Items b, c, d, and e.

The Record supports the charge of excessive absenteeism. Respondent does not contest that she was absent on 118 occasions during the seven-year period. This amounts to an average of approximately seventeen (17) days per year which I find, is excessive. Respondent errs in her belief that because an absence is contractually permitted it cannot rise to the level of being excessive. I concur with the District's argument that it is well established that excessive or chronic absenteeism, even if related to legitimate or health problems, could be grounds for disciplinary action. Excessive absenteeism by a teacher can have a negative impact on the students by disrupting the continuity of instruction. Accordingly, I find the Respondent culpable of Charge Nine.

Charge Ten is a summary allegation and need not be addressed here.

I find, therefore, that Respondent is culpable of Charge One, Items c, d, e, g, h, i, j, k; Charge Two, Items b, c, d, e, f, g, h, i, k, l, m, n, o, p; Charge Four, Items b, c; Charge Seven, Items b, c; Charge Eight, Items b, c, d, e; and Charge Nine of the charges preferred against her on or about September 23, 2014. Respondent is not culpable of the remaining allegations and charges preferred against her on or about September 23, 2014.

Tenure Charges: 379/12/14

In response to the Tenure Charges 342/11/14, Respondent submitted a Statement of Position, which included approximately forty-seven (47) documents. Respondent's Appendix of Exhibits included documents that set forth the students' full names, grade levels and classes attended. The District maintains this violates Federal and State law, including the Family Education Rights and Privacy Act (FERPA) and the New Jersey Pupil Records Regulations.

Schools must have written permission from the parent or eligible student in order to release information from a student's records, except for legitimate educational interests, of which, the District argues, Respondent's defense of her tenure charge is not one. Respondent admits submitting the documents and admits she did not obtain consent from any of the students, students' parents or the District in transmitting these documents. She argued that her understanding of FERPA is that it is between the government and institutions. (T. 6/23 18:7-8.). Respondent believed that these proceedings are private and the use of the documents would be permissible.

While I find Respondent did provide the un-redacted information, based on Respondent's testimony, I do not find that Respondent intentionally misappropriated and disclosed confidential student records and information. Respondent's actions are still a technical violation, however. Accordingly, I find Respondent culpable of Charge One, Items g, h, i, j, k, m, n, q, and r.

The District argued that Respondent is culpable of Charge Two in that she encouraged or elicited her pupils to write letters complaining about another staff member. I concur with this position. There is sufficient evidence from students that the Respondent told them that if they had a complaint they knew what to do. Respondent's former student, S.Y., testified on behalf of Respondent. S.Y. testified it was the students in February of 2013 who informed Respondent that an art teacher was speaking inappropriately about her. He testified that the students took it on their own initiative, not as a homework assignment, to write the complaint letters. However, on direct and cross-examination, S.Y. admitted that Respondent asked the students what they usually do when they have a problem. S.Y. admitted that the students responded that they write a letter. (T. 6/11, 71:1-4 and 75:10-17). Testifying for the District, Bing stated the letters were inappropriate and looked as if prompted by an adult. (T.6/5, 182-11). I concur with the District's position that Respondent, as a teacher, plays a leadership role for her students. While she did not order the students directly to write the letters, through her actions she did elicit and encourage their production. I concur with the District's argument that, in this instance, Respondent acted unprofessionally and failed to exercise the restraint that is expected of a professional by using her students for her own devices. There are other methods Respondent could have utilized to bring another teacher's inappropriate comments to the school administration. However, the record does not reveal

that Respondent's conduct in having the students write these letters rises to a level of placing the students at risk of harm or causes her to be unfit to be a teacher. Accordingly, I find Respondent culpable of Charge Two, Items d, e, f, h, i, and j.

District Exhibit 9, which was accepted into evidence, contains a series of letters which Respondent's students wrote to explain why they did not complete their homework and is the basis of Charge Three. The letters do contain information regarding the students' home life. Respondent included these letters as part of her response to the Tenure Charges. Bing testified that he believed the letters lacked educational value and that such discussions of teachers having issues with a student and homework should be held with a parent present on a one-on-one basis. (T. 6/5, 23:2-11). The District argued that the letters are not part of the curriculum. I concur with the District's position that this writing assignment caused students to disclose private and personal information about their families and that this information was often negative. However, there has been no showing that students were placed at a risk of harm from these letters or were humiliated because of them. The record does not demonstrate that the letters were punitive in nature, that Respondent failed to exercise self-restraint and control behavior, or that the assignment made the students feel humiliated and embarrassed. Thus, to the extent discussed herein, I find that Respondent is culpable only of Charge Three, Items d through p, s, and t.

There has been no showing by a preponderance of the evidence that Respondent intentionally ignored her educational responsibilities and took significant time from her pupils educational day in their writing the letters which are the subject of Charges Two and Three. Nor is there evidence that Respondent neglected her teaching duties and responsibilities. Prior to the instant matter, the record contains no evidence of complaints concerning Respondent's ability. There is some evidence in the record to suggest that some parents were pleased with Respondent's educational approach. (Testimony of N.M., T. 6/11, 88:1-22). Further, Respondent testified on cross-examination that the February 2013 letters were written as part of journal writing and during recess. Since it was February, students would spend most of their free time in the classroom. (T. 6/23, 84:25 and 85:1-3). There is no evidence to the contrary. Accordingly, I do not find Respondent culpable of Charge Four.

Charge Five references N.J.S.A. 18A:36-34 and Charge Six references The Pupils Rights Amendment (PPRA), 20 U.S.C. section 1232h. The pertinent language of both mandates that written consent be obtained from parents and/or guardians prior to students being asked about certain topics such as "illegal, anti-social, self-incriminating and demeaning behavior" and "critical appraisals of other individuals with whom a respondent has a close family relationship." While not specifically arguing these sections in its brief, the District has demonstrated that Respondent required her pupils to write statements about their home life. Each letter began

with a similarly worded paragraph. (D-9). The students wrote about their home and family circumstance, resulting in the students providing negative information about their personal lives and family members. The record does not contain evidence that Respondent had the permission of a parent or guardian for this assignment. While technically violating both these sections, there is no evidence that Respondent's action was willful, placed the students at a risk of harm, or demonstrated she is unfit to be a teacher. In this light, I find Respondent technically culpable of Charge Five, Items b, c, d, g, h; and Charge Six, Items b, c, d, f, and g.

Charge Seven is a summary allegation and need not be addressed here.

As indicated above, I find Respondent culpable of Charge One, Items g, h, i, j, k, m, n, q, r; Charge Two, Items d, e, f, h, I, j; Charge Three, Items d through p, s, t; Charge Five, Items b, c, d, g, h; and Charge Six, Items b, c, d, f, g of the charges preferred against her on or about November 21, 2014. Respondent is not culpable of the remaining allegations and charges preferred against her on or about November 21, 2014.

Having found Respondent culpable of the charges on Agency Docket Numbers 342/11/14 and 379/12/14 to the extent stated above, I turn to the appropriate penalty for these infractions.

The District argued vigorously in its brief, and reiterated in its reply brief, that Respondent must be terminated. The District proffered that Respondent's conduct is sufficiently egregious that even one

incident in the charges is sufficient to warrant termination.

While I find a significant penalty is warranted, Respondent's termination is not. Respondent is a long-term employee who has no prior discipline. The record demonstrates that Respondent is a highly credentialed instructor and, prior to the instant matter, had participated in a myriad of positive school and community activities. The record does reveal she exercised poor judgment in her actions and is culpable of the charges to the extent discussed above. However, Respondent did not act in a manner that was willful, vindictive, or with malicious intent. The record does not support the allegation that Respondent is not capable of returning to her position as a teacher. There is testimony that parents are pleased Respondent taught children and that when entering Respondent's classroom, the students were always engaged and working and that the students seeming well mannered. I believe Respondent is aware of her mistakes and will conform to the District's rules and standards.

Concerning excessive absenteeism, while Respondent was warned concerning attendance, there is no indication in the record that Respondent previously received any discipline for this infraction. While some discipline is now warranted, termination is not the appropriate penalty. A lengthy suspension should sufficiently place Respondent on notice concerning her need to improve her attendance.

Accordingly, I find that Respondent shall be restored to her teaching position effective September

8, 2015. Respondent's record shall reflect a "time served" suspension from the period when she was first suspended on November 19, 2014 until her restoration to the payroll on September 8, 2015, less the period for which she was awarded back pay pursuant to my June 11, 2015 decision. Further, Respondent is given a final warning concerning time and leave violations. It is so ordered.

AWARD

(Agency Docket Nos. 342/11/14 and 379/12/14)

1. Respondent Gilda Nicole Harris is culpable of Charge One, Items c, d, e, g, h, i, j, k; Charge Two, Items b, c, d, e, f, g, h, i, k, l, m, n, o, p; Charge Four, Items b, c; Charge Seven, Items b, c; Charge Eight, Items b, c, d, e; and Charge Nine of the charges preferred against her on or about September 23, 2014.
2. Respondent is not culpable of the remaining charges preferred against her on or about September 23, 2014.
3. Respondent is culpable of Charge One, Items g, h, i, j, k, m, n, q, r; Charge Two, Items d, e, f, h, i, j; Charge Three, Items d through p, s, t; Charge Five, Items b, c, d, g, h; and Charge Six, Items b, c, d, f, g of the charges preferred against her on or about November 21, 2014.
4. Respondent is not culpable of the remaining charges preferred against her on or about November 21, 2014.
5. The appropriate penalty for Respondent's culpability in (1) and (3) above is a "time served" suspension for the period of November 19, 2014 until Respondent's restoration to the payroll on September 8, 2015, less the period for which she was

