

STATE OF NEW JERSEY
COMMISSIONER OF EDUCATION

**IN THE MATTER OF THE ARBITRATION
OF THE TENURE CHARGE**

DOE DOCKET NO.24-2/16

between

TRENTON BOARD OF EDUCATION,

OPINION

Petitioner

AND

-and-

AWARD

CHARAI BOWMAN,

Respondent

BEFORE: SUSAN WOOD OSBORN, ARBITRATOR

DATE(S) OF HEARING: April 7 and 8, 2016

DATE OF AWARD: May 23, 2016

APPEARANCES:

For the Petitioner:

Adams, Gutierrez & Lattiboudere
(Adam Herman, of counsel and on the brief)
(Kimberly G. Williams, on the brief)

For the Respondent:

Mellk O'Neill
(Edward A. Cridge, of counsel)

Witnesses:

Elizabeth DeJesus, Asst. Superintendent for Special Education
Lissa S. Johnson, Asst. Superintendent for Talent Acquisition
& Development

Ann Sciarrotta, Trenton Educational Secretaries Association
Vice-President

Stephanie Gregg, Senior Secretary Department of Special Education
Charai Bowman, Senior Secretary, Department of Special Education

BACKGROUND OF THE CASE

On December 17, 2015, Charai Bowman ("Bowman" or "Respondent") was served with tenure charges. Bowman did not file a response to the charges. On February 3, the Commissioner of Education certified the tenure charges and on February 16, Respondent filed an Answer with the Department of Education essentially denying all allegations. Pursuant to N.J.A.C. 6A:11-6.3, I was appointed on February 29, 2016 as the arbitrator to hear and decide the tenure charges filed by the Trenton Board of Education against employee Charai Bowman. Arbitration hearings were conducted on April 7 and 8, 2016 at which time the parties each presented witnesses and documentary evidence. Witnesses were sequestered during the hearing. The parties filed letter briefs by May 11, 2016, and the record closed on that date. N.J.A.C. 6A:11-6.3 provides that the decision in this matter shall be issued within forty-five days of the beginning of the hearing, and that the decision shall be final and binding.

STATUTOTRY AND REGULATORY CONSIDERATIONS

N.J.S.A. 18A:6-10: Dismissal and reduction in compensation of persons under tenure in public school system. No person shall be dismissed or reduced in compensation,

(a) If he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state or

(b) If he is or shall be under tenure of office, position or employment during good behavior and

efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution conducted under the supervision of the commissioner, except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

* * *

18A:6-16 Proceedings before commissioner; written response; determination

* * *

. . . If, however, [the Commissioner of Education] shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator pursuant to section 22 of P.L. 2012 Ch. 26 (C.18A:6-17.1) for further proceedings, . . .

18A:6-17.1 Panel of arbitrators

* * *

b. The following provisions shall apply to a hearing conducted by an arbitrator pursuant to N.J.S. 18A:6-16, except as otherwise provided pursuant to P.L. 2012, c. 26 (C.18A:6-117 et al.):

(1) The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case;

* * *

c. The arbitrator shall determine the case under the American Arbitration Association labor arbitration rules. In the event of a conflict between the American Arbitration Association labor arbitration rules and the

procedures established pursuant to this section, the procedures established pursuant to this section shall govern.

d. Notwithstanding the provisions of N.J.S.A. 18A:6-25 or any other section of law to the contrary, the arbitrator shall render a written decision within 45 days of the start of the hearing.

e. The arbitrator's determination shall be final and binding and may not be appealable to the commissioner or the State Board of Education. The determination shall be subject to judicial review and enforcement as provided pursuant to N.J.S.A. 2A:24-7 through N.J.S.A. 2A:24-10.

POSITIONS OF THE PARTIES

Petitioner Trenton Board of Education

The Board alleges that during the 2015-2016 school year, Respondent Charai Bowman failed to fulfill her responsibilities as a senior secretary for the District, committed insubordination, engaged in excessive tardiness, and accepted a substitute teaching assignment in the Trenton Schools while simultaneously accepting payment for her secretarial job. It alleges that Bowman is guilty of conduct unbecoming a tenured employee, neglect of duty, and other just cause sufficient to warrant her dismissal from employment by the District.

Respondent Charai Bowman

Bowman's representative, the Trenton Educational Secretaries Association, argues that the Board has failed to demonstrate that Bowman is guilty of the offenses charged by a preponderance of the evidence. With regard to the

allegation that Bowman neglected her filing responsibilities, it alleges that there was a tremendous backlog of filing well before the 2015-2016 school year. It further contends that she was not insubordinate but merely asked questions in response to a directive. It asserts that the Board has significantly "inflated" her tardiness record, and the Board's time and attendance policies were lax. Finally, it denies that Bowman performed a teaching assignment for "Source 4 Teachers" while on duty as a District secretary. It maintains that the tenure charges should be dismissed.

STATEMENT OF CHARGES

On December 17, 2015, the Board brought the following charges against Charai Bowman by an affidavit of Elizabeth DeJesus, Assistant Superintendent of Special Education for the City of Trenton Public Schools:

CHARGE 1:

Ms. Bowman is guilty of conduct unbecoming a tenured employee by way of the following:

- a. At all relevant times, Ms. Bowman has been employed by the District as a tenured senior secretary.
- b. During the 2015-2016 school year, Ms. Bowman was employed as a senior secretary at the District's Systems, Data Management & Accountability Department.
- c. Ms. Bowman's position requires her to work Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m. As a senior secretary, Ms. Bowman is expected to provide secretarial services during those times.

d. On Thursday, September 17, 2015 at approximately 8:30 a.m., Ms. Bowman reported to work and signed in at the Systems, Data Management & Accountability Department.

e. Although Ms. Bowman left the Systems, Data Management & Accountability Department after 11:30, she failed to sign out.

f. Ms. Bowman did not return to the Systems, Data Management & Accountability Department after 11:30 a.m. on September 17, 2015.

g. Ms. Bowman did not advise her supervisor that she was leaving for the day.

h. Ms. Bowman did not perform any of her secretarial duties after 11:30 a.m. on September 17, 2015.

i. Even though Ms. Bowman did not perform any of her secretarial duties after 11:30 a.m. on September 17, 2015, Ms. Bowman was paid for a full day, and accepted compensation from the District, for performing her secretarial duties.

j. Ms. Bowman's inappropriate and unprofessional conduct of falsifying time sheets and theft of time violates law and District policy.

k. Ms. Bowman's actions were sufficiently flagrant and egregious to warrant termination.

l. Ms. Bowman's actions demonstrate that she is not fit to serve as a senior secretary.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming sufficient to warrant dismissal from employment.

CHARGE 2:

Ms. Bowman is guilty of conduct unbecoming by way of the following:

a. The District repeats the allegations set forth in charge number one and makes the same a part hereof by reference thereto.

b. Even though Ms. Bowman is employed as a senior secretary and was expected to perform secretarial duties

in the Systems, Data Management & Accountability Department on September 17, 2015, she nevertheless accepted a substitute teaching assignment through an entity called Source-4-Teachers to work at the Dunn Middle School from 11:30 a.m. to 2:55 p.m.

c. In addition to receiving her full secretarial compensation from the District for September 17, 2015, Ms. Bowman was also compensated by Source-4-Teachers for her duties as a substitute teacher on that day.

d. Ms. Bowman abandoned her District secretarial duties on September 17, 2015 in order to receive additional compensation as a substitute teacher.

e. Ms. Bowman's inappropriate and unprofessional conduct violated law and District policy.

f. Ms. Bowman's actions demonstrate that she is not fit to serve as a senior secretary.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming sufficient to warrant dismissal from employment.

CHARGE 3:

Ms. Bowman is guilty of neglect of duty by way of the following:

a. The district repeats the allegations set forth in charge number one and two and makes the same a part hereof by reference thereto.

b. Ms. Bowman failed to perform her secretarial duties after 11:30 a.m. on September 17, 2015.

c. Ms. Bowman's inappropriate and unprofessional conduct violated law and District policy.

d. Ms. Bowman's actions demonstrate that she is not fit to serve as a senior secretary.

Ms. Bowman's willful and intentional misconduct as described above constitutes neglect of duty sufficient to warrant dismissal from employment.

CHARGE 4:

Ms. Bowman is guilty of conduct unbecoming a tenured employee by way of the following:

- a. The district repeats the allegations set forth in charge number one through three and makes the same a part hereof by reference thereto.
- b. On October 19, 2015, Ms. Bowman was scheduled to report to work as a senior secretary at the District's Systems, Data Management & Accountability Department.
- c. On October 19, 2015, Ms. Bowman did not report to work, but instead, used a vacation day in order to accept a teaching assignment from Source-4-Teachers to work as a substitute teacher at the Martin Luther King Elementary School.
- d. Ms. Bowman's inappropriate and unprofessional conduct violated law and District policy.
- e. Ms. Bowman's actions were sufficiently flagrant and egregious to warrant termination.
- f. Ms. Bowman's actions demonstrate that she is not fit to serve as a support staff member.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming a tenured support staff member sufficient to warrant dismissal from employment.

CHARGE 5:

Ms. Bowman is guilty of conduct unbecoming a tenured employee by way of the following:

- a. The District repeats the allegations set forth in charge number one through four and makes the same a part hereof by reference thereto.
- b. On October 29, 2015, Ms. Bowman was scheduled to report to work as a senior secretary at the District's Systems, Data Management & Accountability Department.
- c. At approximately 8:30 a.m., Ms. Bowman reported to work in the Systems, Data Management & Accountability Department and signed in.

d. Although Ms. Bowman left the systems, Data Management & Accountability Department sometime before 11:30, she failed to sign out.

e. Ms. Bowman did not return to the Systems, Data Management & Accountability Department after 11:30 a.m. on October 29, 2015.

f. Ms. Bowman did not advise her supervisor that she was leaving for the day.

g. Ms. Bowman did not perform any of her secretarial duties after 11:30 a.m. on October 29, 2015.

h. Even though Ms. Bowman did not perform any of her secretarial duties after 11:30 a.m. on October 29, 2015, Ms. Bowman was paid for a full day, and accepted compensation from the District, for performing her secretarial duties.

i. Ms. Bowman's inappropriate and unprofessional conduct violated Board policy.

j. Ms. Bowman's actions were sufficiently flagrant and egregious to warrant termination.

k. Ms. Bowman's actions demonstrate that she is not fit to serve as a support staff member.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming a tenured support staff member sufficient to warrant dismissal from employment.

CHARGE 6:

Ms. Bowman is guilty of neglect of duty by way of the following:

a. The district repeats the allegations set forth in charge number one through five and makes the same a part hereof by reference thereto.

b. Ms. Bowman failed to perform her secretarial duties after 11:30 a.m. on October 29, 2015.

c. Ms. Bowman's inappropriate and unprofessional conduct violated law and District policy.

d. Ms. Bowman's actions demonstrate that she is not fit to serve as a senior secretary.

Ms. Bowman's willful and intentional misconduct as described above constitutes neglect of duty sufficient to warrant dismissal from employment.

CHARGE 7:

Ms. Bowman is guilty of conduct unbecoming a tenured employee by way of the following:

a. The District repeats the allegations set forth in charge number one through six and makes the same a part hereof by reference thereto.

b. On October 30, 2015, Ms. Bowman took an extended lunch break without permission.

c. Ms. Bowman's inappropriate and unprofessional conduct violated Board policy.

d. Ms. Bowman's actions were sufficiently flagrant and egregious to warrant termination.

e. Ms. Bowman's actions demonstrate that she is not fit to serve as a support staff member.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming a tenured support staff member sufficient to warrant dismissal from employment.

CHARGE 8:

Ms. Bowman is guilty of conduct unbecoming a tenured employee by way of the following:

a. The District repeats the allegations set forth in charge number one through seven and makes the same a part hereof by reference thereto.

b. During the 2015-2016 school year, Ms. Bowman has been excessively tardy when reporting to work and has frequently left work early without obtaining approval.

c. During the period of July 8, 2015 through October 29, 2015 alone, there have been at least eight (8) recorded occasions on which Ms. Bowman reported to work late.

- d. On July 8, 2015, Ms. Bowman arrived late to work and failed to record the time of her arrival.
- e. On July 10, 2015, Ms. Bowman arrived a half hour late to work.
- f. On July 24, 2015, Ms. Bowman arrived a half hour late to work.
- g. On August 7, 2015, Ms. Bowman arrived fifteen minutes late to work.
- h. On September 1, 2015, Ms. Bowman arrived forty minutes late to work.
- i. On September 28, 2015, Ms. Bowman arrived twenty-five minutes late to work.
- j. On October 9, 2015, Ms. Bowman arrived an hour late to work.
- k. On October 23, 2015, Ms. Bowman arrived an hour late to work.
- l. Ms. Bowman has frequently left work before the end of her scheduled shift without requesting or obtaining approval to leave early.
- m. On September 4, 2015, Ms. Bowman took her lunch at 2:10 p.m. and then went home at 3:10 p.m. without obtaining approval to leave early.
- n. On October 29, 2015, Ms. Bowman left the grounds at 11:40 a.m. without notice and without obtaining approval to leave early.
- o. Ms. Bowman's inappropriate and unprofessional conduct violated law and District Board policy.
- p. Ms. Bowman's actions were sufficiently flagrant and egregious to warrant termination.
- q. Ms. Bowman's actions demonstrate that she is not fit to serve as a support staff member.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming a tenured

support staff member sufficient to warrant dismissal from employment.

CHARGE 9:

Ms. Bowman is guilty of conduct unbecoming and neglect of duty by way of the following:

- a. The District repeats the allegations set forth in charge number one through eight and makes the same a part hereof by reference thereto.
- b. As a senior secretary in the Systems, Data Management & Accountability Department, Ms. Bowman was expected to perform secretarial duties, which includes filing.
- c. For the past year, Ms. Bowman has neglected to properly file pupil records and instead created "dummy files".
- d. Instead of placing the pupil records in the appropriate pupil file, Ms. Bowman simply placed the pupil records in boxes.
- e. Even after Ms. Bowman was instructed to properly file the pupil records, Ms. Bowman failed to follow proper protocol.
- f. Ms. Bowman's inappropriate and unprofessional conduct violated law and District policy.
- g. Ms. Bowman's actions were sufficiently flagrant and egregious to warrant termination.
- h. Ms. Bowman's actions demonstrate that she is not fit to serve as a support staff member.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming a tenured support staff member sufficient to warrant dismissal from employment.

CHARGE 10:

Ms. Bowman is guilty of conduct unbecoming, insubordination and neglect of duty by way of the following:

a. The District repeats the allegations set forth in charge number one through nine and makes the same a part hereof by reference thereto.

b. As a senior secretary in the Systems, Data Management & Accountability Department, Ms. Bowman was expected to perform secretarial duties, including shredding documents which have been approved for shredding.

c. Pursuant to an arrangement with Ms. Bowman's union representative, it was agreed that Ms. Bowman would shred documents which have been approved for shredding.

d. On November 19, 2015 at approximately 10:00 a.m., Ms. Bowman was directed by Elizabeth DeJesus, ("Ms. DeJesus"), her superior, to shred two boxes of documents in Ms. DeJesus's office, which she had approved for shredding.

e. Ms. Bowman refused to shred the two boxes of documents as directed by Ms. DeJesus.

f. Ms. Bowman stated to Ms. DeJesus that she would only shred one box of documents and advised Ms. DeJesus to ask another secretary to shred the other box of documents.

g. After refusing to fully perform the task as directed, Ms. Bowman grabbed one box of documents and told Ms. DeJesus, who was standing by the door to her office, to "get out of the way".

h. Ms. Bowman then walked toward Ms. DeJesus and abruptly brushed passed her with the box of documents.

i. Ms. Bowman then left the office and did not return until 2:30 p.m.

j. Upon Ms. Bowman's return to the office four and a half hours later, she only briefly remained in the office before leaving again.

k. Ms. Bowman's inappropriate and unprofessional conduct violated law and District policy.

l. Ms. Bowman's actions were sufficiently flagrant and egregious to warrant termination.

m. Ms. Bowman's actions demonstrate that she is not fit to serve as a support staff member.

Ms. Bowman's willful and intentional misconduct as described above constitutes conduct unbecoming, neglect of duty and insubordination of a tenured support staff member sufficient to warrant dismissal from employment.

CHARGE 11:

Ms. Bowman is guilty of conduct unbecoming and other just cause by way of the following:

a. The District repeats the allegations set forth in charge number one through ten and makes the same a part hereof by reference thereto.

b. All of the foregoing charges, counts and the facts alleged in the tenure charges are incorporated by reference as if fully set forth herein. The acts of misconduct described above, jointly and severally, demonstrate a series of ongoing infractions over an extended period of time, despite prior warning, constituting a pattern of conduct unbecoming, neglect of duty and/or other just cause warranting her dismissal.

The foregoing misconduct by Ms. Bowman constitutes conduct unbecoming, neglect of duty and/or other just cause warranting her dismissal.

FINDINGS OF FACT

Elizabeth DeJesus has been with the Trenton Board of Education since 2001; first, as a Special Education supervisor and Special Education teacher. She has been the Assistant Superintendent for Special Education since July, 2015. Her responsibilities include assuring that the students' Individualized Education Plans (IEPs) are implemented with fidelity and are in compliance with the New Jersey Special Education Code.

The Department is responsible for insuring that students with disabilities receive the education and related services that they are entitled to under federal and State laws. The Department must be compliant with State and federal regulations including the maintenance of a complete file for each educationally-classified student. The State audits the District's Department of Special Education every three years. The most recent audit occurred in the Spring of 2016.

DeJesus supervises the Special Education Department, including the Child Study Teams (CSTs), support staff, speech and occupational learning disability specialists, and a social worker. The Department has six senior secretaries whom she also supervises and two administrative secretaries; each senior secretary is assigned to three Child Study teams. The senior secretary's main responsibility is to support the CSTs. They type student IEP's and correspondence; coordinate meetings between the CST members and parents; and prepare for mailing any paperwork that needs to be distributed to parents.

The senior secretaries are also responsible for the maintenance of the individual students' files to include the IEP's, all student evaluations such as psychological, learning, social, and/or neurological evaluations. The secretaries also handle telephone calls from parents and the schools and others. They are also required to shred duplicate copies of documents as needed. Student files which are "aged out" (students 25 or

older), remain with the Department and are archived in a warehouse to ensure that prior students' requests for copies of their transcripts, IEPs and evaluations are met.

Senior secretaries play an integral role in ensuring that classified students' files are legally compliant and contain all up-to-date documents. This task encompasses maintaining the files in an organized sequence; specifically, one section of the permanent file should include a log of file access; another section includes the evaluations; another section for correspondence; and another section for the student's IEPs.

Charai Bowman has been employed by the Trenton Board of Education since 2001. During the 2015-2016 school year, Charai Bowman was employed as a tenured senior secretary in the District's Department of Special Education and Services. Her position required her to work Monday through Friday, between the hours of 8:30 a.m. and 4:40 p.m. DeJesus was her immediate supervisor.

Soon after DeJesus was appointed as Assistant Superintendent in July 2015, she learned that there was a significant backlog of duplicate files that required shredding (T-24). Over the summer she also learned that there were approximately 60 file boxes of inactive files that needed to be labeled and logged so that they could be sent to the District's archives.

By September, DeJesus was getting complaints from members of the CST that Bowman could not be counted on to properly file

documents or to even schedule parental meetings (T-102-103). It was also brought to DeJesus' attention by the other senior secretaries that the Department's file room had approximately twenty copy paper boxes of paperwork lined up on the floor. As she reviewed the content of the boxes, she learned that they contained various documents which were not in any sequential or alphabetical order that she could understand. DeJesus testified that these records should have been in the student's individual permanent files. These documents included IEPs, evaluations, parental notices, et cetera. DeJesus was informed that the boxes contained Bowman's unfiled student records (T-5; T-26).

Around the very end of September, 2015, DeJesus discovered that Bowman had been creating "dummy files" by placing each new student document in a manila folder and writing the student's name on it, and placing the folders in the boxes. It was brought to DeJesus' attention that this practice had been going on for at least a year.

In addition, DeJesus started to receive complaints from the CSTs that they were afraid to give documents to Bowman because they knew they would not be able to later locate them in the student files. One CST member who went out on medical leave and who had completed ten IEPs, gave her files to DeJesus rather than have Bowman file them because she wanted to be sure they would not be lost (T-28-29). DeJesus testified that the dummy files created a

major problem because now the student's permanent files were not in compliance; nor, did they have updated IEPs or evaluations.

DeJesus met with Bowman to inquire about the dummy files. DeJesus asked Bowman about why she had created dummy files instead of filing the documents into the student's records. Bowman responded that she believed it would be a more efficient way of doing the filing. DeJesus noted that in some cases there were multiple dummy files for the same student. Bowman acknowledged that she had been creating dummy files and placed them in boxes instead of filing required materials in students' individual permanent files. Bowman testified that when DeJesus questioned her as to why she had created the dummy file system, she responded,

I told her that it was easier and smarter to do it that way instead of constantly taking paper and going back to the same, you know, as I found the same name. I told her it was easier.

Bowman testified that she started creating the "dummy files" in 2013 when Alexa Ingram was the Assistant Superintendent. Bowman stated that by the time DeJesus arrived in July of 2015, she had created nine to ten boxes with dummy files. According to Bowman's testimony, DeJesus initially told her the method made sense. However, Bowman acknowledged that DeJesus put her on notice that she would have get her dummy files incorporated into the permanent files, and Bowman agreed. But Bowman testified that DeJesus did not give her a completion deadline at that time. I

infer that this was the first conversation the two had about the files. (T-128 through 133) DeJesus told Bowman that she wanted the documents removed from the dummy files and placed in the students' permanent files and that the boxes should be cleared from the floor.

DeJesus stated that she was a bit surprised that Bowman really did not know how to file the files. She provided Bowman with a tutorial that had a sample file with all of the different pockets and the identification of what belonged in each pocket. DeJesus then demonstrated the filing to Bowman. DeJesus also asked the Special Education Coordinator to come over and assist with the tutorial (T-30). Bowman responded, "This is really, really hard." (T-31)

By late October, DeJesus had discovered that a lot of Bowman's boxes of filing were no longer on the file room floor. She learned from the senior secretaries that Bowman had placed handfuls of her dummy files in random order throughout the file cabinets -- but not in the students' permanent files.

DeJesus met with Bowman and TESA representative Elizabeth Gill, in the file room on October 30, 2015. They discussed the importance of filing properly and timely. DeJesus wanted to make it clear to Bowman that this was a very serious matter which required immediate action; and she also wanted to discuss Bowman's lateness when arriving to work. (T-34)

DeJesus challenged Bowman as to why she moved the dummy files into random spaces in the file cabinets. Bowman replied that she was not trying to hide the files, but had moved the dummy files to the cabinet so that she could file them correctly at a later time; in the meantime, Bowman reasoned that she was following DeJesus' directive to get them off of the floor. Bowman also acknowledged that she thought this would give her more time to complete the job. DeJesus stated to Bowman that her process was not best practice and she should cease immediately. She gave Bowman a student file checklist and one week to correct the problem by removing the dummy files from the file cabinets (T-36).

DeJesus' followed this meeting with a letter to Bowman, dated November 1, 2015 (P-17). The letter stated that DeJesus and Bowman had agreed upon the following four-prong approach during the October 30, 2015 meeting:

- All dummy files will be removed by the end of next week from the student files.
- All dummy files will be reviewed and pertinent information will be inserted into the student's permanent files as per the Student File Check List. This task should be completed by the end of the month. (underlining in original)
- Duplicate student information will be set aside for shredding.
- I [DeJesus] will review all materials before shredding can commence.

DeJesus concluded her letter to Bowman by stating that it was Bowman's professional responsibility to adhere to her contract and

the duties of her position; moreover, Bowman also had a legal responsibility to maintain the integrity of their files and to adhere to the District's policies and regulations (P-17).

By the first week in December, DeJesus realized that while Bowman had done some of the filing, she had not completed the elimination of the dummy files and the filing of documents into students' permanent files (T-39). DeJesus was still receiving complaints from the CSTs that they were still unable to locate documents in students' files. DeJesus explained that despite the agreed-upon action plan, multiple meetings, and memorandum, Bowman failed to rectify the "dummy" file issue. Instead, after Bowman left the District in December, a substitute secretary and the other senior secretaries "pitched in" to ensure all of Bowman's files were in order and in compliance.

Bowman testified that in the October 30 meeting, she told DeJesus it was a lot of work to get done by the end of November because she would have to go through all the records one by one. DeJesus originally told her to dedicate one hour after lunch every day to clean up the filing backlog; however, when Bowman told her it was not enough time, DeJesus extended the daily time period Bowman was to dedicate to the filing. Bowman stated that she continued to work on the records. (T-26-27)

On December 7, 2015, DeJesus held another meeting with Bowman along with her Union representatives Ann Sciarrotta, Pat Vogt and Elizabeth Gill. DeJesus asked Bowman for an explanation of why

the filing project had not been completed by the agreed-upon deadline. Bowman responded,

I told her, I said, well, Miss Liz, I was out sick. I had documents, I was sick, so -- I was out sick. And I said, I wasn't here. So I wasn't at work every day (T-145).

Bowman also told DeJesus that the task was virtually impossible to complete in that time frame (T-146).

On December 10, 2015, DeJesus sent a memo (P-18) to Bowman concerning that meeting. DeJesus's memo recited that they had all previously agreed that all dummy student files would be filed in the appropriate student records in the file room by the end of November. She indicated that a substantial number of dummy files still had not been filed; and as a result, it continued to be difficult to locate student files. DeJesus stressed that it was imperative that all student files are in compliance with the New Jersey Administrative Code for Special Education. (P-18) Bowman wrote a rebuttal letter to DeJesus on December 15, 2015 but did not address the filing issue.

* * *

Ann Sciarrotta was employed by the Trenton Board of Education since July, 1967 until March 1, 2013. Since 2000, Sciarrotta has been the Vice-President of TESA. According to Sciarrotta, at one time there were previously 14 CSTs and 14 secretaries, or one secretary per Child Study Team.

Sciarrotta stated that the filing situation in Special Services goes back several years. Sciarrotta testified that in 2010, she also visited the file room on several occasions and saw numerous boxes all over the room with papers just thrown in the boxes (T-9).

In 2012, the District abolished all of the CST senior secretaries' positions, which resulted in a complete disarray of the CST files; the CST's were left to prepare, type and file all of their own paperwork with no secretarial support. The CSTs could not perform the work they were hired to do and keep up with the administrative duties previously performed by the secretaries.

Sciarrotta testified that in 2012, TESA filed an unfair labor practice with PERC regarding the secretaries doing the file work left over from the abolishment of the senior secretaries. A settlement at PERC was reached on January 9, 2013, in which seven of the CST secretary positions would be restored to service the Child Study Teams;¹ and any of the filing which pre-dated their return would be performed on an overtime basis. Alexa Ingram, who was the Assistant Superintendent at that time, tried to arrange for the overtime but it never occurred.

The District decided to move all of the files from all of the CSTs offices and place them in the Special Education records room,

¹At that time, the CST's were scattered through the school district. Sometime thereafter, Special Services was moved to the Board headquarters on South Clinton Avenue.

on the second floor of its headquarters building. Prior to school year 2013-14, there were two secretaries assigned to the Special Education records room. However, these two positions were abolished on July 1, 2013. Thereafter the CST filing work was transferred to the CST senior secretaries. In 2014, the file work showed up on the senior secretaries' desks. During the 2014-2015 school year, upon her visit to the file room, Sciarrotta stated that there were two secretaries surrounded by numerous boxes all around the entire room (T-10).

Sciarrotta explained that all the senior secretaries had a responsibility with the boxes; to go through the boxes, see what was in them, and place the contents into the permanent files.

Sciarrotta visited the file room around September of 2015 and noticed that many of the boxes had been removed from the file room. She stated there was another instance where she had visited the other side of the building and in an outer office along the front side of the building there were probably 80 to 100 boxes stacked three to four feet high, with several rows down on that side which took up at least a quarter of that side of the building. I infer that this was the 60 boxes of inactive files that were ready to be sent to the archives.

Two to three times a week in 2015, Sciarrotta testified that she visited the Special Education records room and personally reviewed the contents of maybe four to five boxes that were near to where she was standing; knowing that some of the documents were

confidential student records. She stated that the files were just sitting there open with no lids and she proceeded to take pictures of the boxes. (T-19) No photographs were introduced into evidence.

The "Insubordination Incident"

DeJesus sent Bowman a memo (P-18) on December 10, 2015, re: "Misfiling of Student Files, Coding of Absences and Documentation of a November 19th Incident". DeJesus informed Bowman that she had discussed with her an incident that occurred on November 19, 2015, at approximately 10:00 AM in her office. According to DeJesus, she approached Bowman's desk area to inform her that she had her permission to shred a box of duplicate documents which Bowman had placed in her office. Bowman proceeded to walk to DeJesus' office where DeJesus informed Bowman that there was another box of materials that required shredding in the file room. Bowman responded by telling DeJesus that she would only shred the box in DeJesus' office and that she should ask the other secretaries to shred the other box. DeJesus informed Bowman that she was giving Bowman a directive and her refusal would constitute "insubordination". At that point of the conversation DeJesus was standing by the door; Bowman proceeded to grab the box in her office and told DeJesus, "Get out of the way." DeJesus informed Bowman that she was being extremely disrespectful and unprofessional. Bowman, in turn, informed DeJesus that she was not being disrespectful, and then she walked towards DeJesus and

squeezed by her, which made DeJesus feel very uncomfortable.

DeJesus requested that Bowman's behavior stop immediately. (P-18)

Bowman responded to the Assistant Superintendent's memo on December 15, 2015 (R-5). The Respondent explained that DeJesus told her to shred the other box in the file room too; in which Bowman responded, "Whose box is that!" DeJesus responded that "It did not matter . . . just shred it". Bowman stated that she would shred DeJesus' box of documents. DeJesus replied, "No! You will not! . . . You shred the other box too." And then you can grieve it later." Bowman stated that she got up from her desk to retrieve the box from her office and DeJesus began to follow her. As they were in DeJesus' office she started pointing and shaking her finger towards Bowman stating, "You will shred the other box, it doesn't make any difference whose box it is." Bowman explained that DeJesus then mentioned that, "It's not fair to give any other secretary, another secretary['s] work load." Bowman told DeJesus to not talk to her in that manner, she wasn't a child. Bowman picked up the box and DeJesus moved towards the door and stood there. Bowman said, "Excuse me! Excuse me!" DeJesus did not move according to Bowman, so she had to squeeze pass her. Bowman denied that she told DeJesus to get out of her way; and that she (DeJesus) was the one who was not acting in a professional manner. (R-5)

Bowman testified that she refused DeJesus' directive to take the second box of files; and instead took one of her boxes to

shred and continued to work until the end of the day or 4:30 p.m. (T-39-40; T-152). Bowman testified that she did not like the way DeJesus spoke to her on November 19, and agreed that she could have shredded the box, but chose to decline the supervisor's directive. (T-153-154)

Substitute Teaching Assignments

Lissa Johnson, Assistant Superintendent for the Office of Talent Acquisition and Development, had been employed by the District since July, 2015. Her office has the responsibility for all of the recruitment and firing of employees within the District; and all benefits, pensions and retirements. Moreover, her office is responsible for talent development under Achieve NJ and all the evaluations for employees, as well as teachers and administrators. (T-13)

Johnson testified that the Department has a District Policy #4230, Outside Activities for its support staff, which states in relative part (P-21),

The Board of Education recognizes that support staff members enjoy a private life outside their job responsibilities in the school district. The Board believes that school employees exert a continuing influence away from the school district. **Accordingly, the Board reserves the right to determine if activities outside the support staff member's job responsibilities interfere with their performance and the discharge of the support staff member's responsibilities to this district.**

All support staff members are advised to be governed in their activities outside the school by the following guidelines:

1. Support staff members shall not devote time during their work day to an outside private enterprise, business, or business organization. **They shall not solicit or accept customers for a private enterprise, business, and/or business organization on school grounds during their work day without the express permission of the Superintendent; (emphasis mine)**

The accompanying Board Regulation provides that:

A full time employee may engage in outside employment only when such employment does not: **constitute a conflict of interest, occur at a time when the employee has assigned district duties,** or diminish the employee's efficiency in performing assigned district duties. **A full-time employee who engages in employment outside the district shall report that employment to the Superintendent. (emphasis mine)**

Johnson testified that she first learned that Bowman had accepted a substitute teaching position with Source 4 Teachers² when DeJesus came to discuss it with her. (T-17) Bowman testified that she did not notify the Superintendent when she was officially hired in 2014 for Source 4 Teachers (T-63).

Johnson testified that there is a process by which a teacher would advise of his or her absence, thus, triggering the need for a substitute teacher. Substitutes on the Source 4 Teachers list can access the system and select the absence that they would like to cover for the following day or in the future. (T-16)

Johnson testified that she had the opportunity to see Source 4 Teachers' documents reflecting that Bowman had accepted

²Source 4 Teachers is a private company that the District has contracted with for the current year to provide substitute teacher services.

substitute teaching assignments from them, which included assignments in the Trenton school district. Exhibits P-1, P-2 and P-3, Substitute History by Date and Available Subs, report that Bowman accepted and filled two substitute teaching positions in the 2015-2016 school year as follows:

- 9/17/2015 - Bilingual Science Teacher, Trenton - Dunn Middle School (11:30 AM - 2:55 PM)
- 10/19/2016 - Elementary Teacher Gr-3, Trenton - Martin L. King Elementary (8:30 AM - 3:15 PM)

Bowman testified that she received a call about 6:30 a.m. or so from Source 4 Teachers on the morning of September 17, 2015. She was asked (via automated system) if she would like to substitute as a bilingual-science teacher at the Trenton's Dunn Middle School on September 17; and, she thought she would take a vacation day in order to substitute for that day. She testified that she accepted the substitute position but then thought better of her decision since she did not know how to speak Spanish. She decided to not accept the position and disconnected the call.

(T-10)

Bowman stated that she reported to work on September 17, 2015 at 8:30 and signed in her arrival time and initialed. She basically started the process of shredding, reviewing overtime work boxes, answering the phone, taking messages, and Xeroxing. Bowman stated that she left work at 4:30 p.m. that day. (T-14)

However, Source 4 Teachers issued Bowman a check for the substitute teaching assignment on September 17. Bowman cashed the check. Johnson stated that Bowman was paid by both Source 4 Teachers and by the Trenton School District for that day. Bowman accepted the position; however, she never reported to the Dunn Middle School that day. Johnson testified that upon receiving an invoice from Source 4 Teachers, that included a teaching assignment for Bowman on September 17, Johnson checked with Source 4 Teachers. She was advised that Bowman had not signed in to the Dunn Middle School as having taught there that day. Upon further review, Source 4 Teachers credited the District's account for any payment made to Bowman that day. (T-30)

In January, 2016 -- after tenure charges were filed against Bowman -- Bowman contacted Brandon Murphy from Source 4 Teachers and asked him where they got the information that she worked September 17, 2015. Brandon pulled the Dunn Middle School sign-in card and scanned it to see if Bowman did or did not sign in for that day. Murphy saw that she did not work the day in question and told Bowman that he would contact his supervisor to have her pay straightened out.

Bowman testified that she contacted Source 4 Teachers again and informed them that the correction was never made to her pay; she told them that they were to have deducted one-half a day's pay from her (T-32). Respondent's exhibit R-6, is an email from

Elisheva Lane from Source 4 Teachers stating that she had made the change to finance but apparently they had not credited it yet.

On October 19, 2015, Bowman took a vacation day and she substituted at the Martin L. King Middle School through Source 4 Teachers. On that morning, she called Donna Covell Brenna, the administrative secretary that took their attendance, to request a vacation day and Brenna acknowledged her with, "OK, I'll put you down as a vacation day." She stated that she was not aware that she had to obtain approval from DeJesus to use a vacation day.

Lissa Johnson testified that she received weekly invoices from Source 4 Teachers for all the absences for which they provided substitutes; she validated the invoices prior to approving the bills and the invoices for payment. Bowman was paid by the Trenton Board of Educations for the substitute teaching assignment on October 19, 2015, along with her senior secretary pay for that day. Bowman had recorded a vacation day on the office sign-in sheet for that day. Johnson believed that the incident was a conflict of interest because the Board was paying Bowman twice for the same day, yet her daily secretary job was not fulfilled that day. (T-22)

Absences/Tardiness/Leaving Early

The District's Regulation 4211 (R-2), Support Staff Attendance, provides as follows:

A. Reporting Intended Absence

1. A support staff member who anticipates absence from work will call the immediate supervisor two hours prior to commencement of work shift, whenever possible.
2. The following information will be given by the caller:
 - a. The employee's name, job title, assigned school, and shift (if applicable);
 - b. The day and date of the intended absence; and
 - c. The reason for the absence.

* * *

D. Staff Attendance Patterns-Tardiness

It is the expectation and goal of the Trenton Board of Education that all Trenton School District employees shall report on time to their assigned duties whenever scheduled to work in order to effectuate the continuous delivery of the education services (for which the Board has contracted). A prerequisite for the efficient performance of a staff person's assigned duties is regular and punctual attendance.

Therefore, any employee who is tardy, in reporting to work according to the schedule of the school or department to which he/she is assigned without approval, two times in a school year shall have a conference with his/her immediate supervisor regarding such tardiness. On the third time an employee is tardy in a school year without approval, he/she shall receive from his/her immediate supervisor a written communication indicating (setting forth) the dates of the tardies (tardiness) and a notification that continuation of such tardiness shall result in disciplinary action. This written communication shall be copied to the teaching staff's personnel file.

Once an employee is tardy the fourth time without approval the employee's salary shall be deducted at fifteen minute intervals for every fifteen minutes or less that an employee is tardy. For example, an employee shall be docked fifteen minutes for being late between one through fifteen minutes, docked thirty minutes for being late between sixteen through thirty

minutes, docked forty-five minutes for being late between thirty-one through forty-five minutes, docked one hour for being late between forty-six minutes through one hour, etc. Similar deductions shall be made for each additional incidents of tardiness, in any given year. Approval of tardiness must be in writing and state the reason. All tardiness must be recorded. . .

E. Record of Attendance

1. A record shall be kept of the attendance of each support staff member, including administrators. Any absence, for part or all of a school day, shall be recorded along with the reason for the absence. An employee's attendance record shall be part of the employee's personnel file.

2. The record will distinguish paid leave, such as sick leave, unpaid leave, such as excessive sick or personal leave. The employee's attendance record will include notation of verification of an absence where such verification is required by Policy No. 4432.

The Trenton Board of Education's District Policy for support staff #4211 (P-19) on Attendance, provides as follows:

Employee attendance is an important factor in the successful operation of any school district and in the maintenance of the continuity of the educational program. The Board of Education is vitally and continually interested in the attendance of each employee and considers satisfactory attendance an important criterion of satisfactory job performance.

The privilege of district employment imposes on each employee the responsibility to be on the job on time every scheduled working day. This responsibility requires that the employee maintain good health standards, take intelligent precautions against accidents both on and off the job, and manage personal affairs in order to satisfy district attendance requirements.

The Board is required by the high cost of absences a disrupted work schedules to give continuing attention to the maintenance of regular attendance by employees.

Chronic absenteeism and tardiness are subject to discipline and may be cause for dismissal.

The Superintendent shall develop regulations to implement this policy.

District Policy #4215, Code of Ethics for support staff, states in relative part, that employees will,

Report to work as scheduled;

Complete thoroughly their assigned tasks;

Commit themselves to providing the best possible services for pupils;

Keep the trust under which confidential information may be given;

Adhere to all the conditions of a contract;

Protect and care for district property.

The current expired agreement between the Trenton Board of Education and Trenton Educational Secretaries Association (TESA), covering the period July 1, 2009 through June 30, 2012, Articles 13 and 14, provide in relative part, as follows:

Article 14
Vacations and Holidays

- A. Vacations may be taken during any time of the year at times approved by the immediate supervisor.

Bowman had previously been advised that she was required to submit requests for vacation leave in advance. On August 28, 2008, Bowman was advised in writing by the then Director of Special Services, that she had been failing to seek and

obtain advanced approval for vacation leave. This apparently continued to be the policy of the department as DeJesus' December 10 memo to Bowman recited that "Vacation days require prior approval and should not be used at will".

* * *

On November 1, 2015, DeJesus sent Bowman a letter, re: "Excessive Lateness, Attendance Falsification and Misfiling of Student Files" (P-18). This memo recited the substance of the October 30 meeting with Bowman and her Union representative Elizabeth Gill. During the meeting they discussed the importance of coming to work on time and taking the allotted time for lunch as per the contract. DeJesus informed Bowman that she had been averaging 2-3 late arrivals per week, along with taking extended lunch breaks.

During the meeting DeJesus pointed out that between the period of July 8, 2015 through October 29, 2015 alone, there have been at least eight recorded occasions on which Bowman reported to work late: July 8, 2015; July 10, 2015; July 24, 2015; August 7, 2015; September 1, 2015; September 28, 2015; October 9, 2015; and October 23, 2015. DeJesus informed Bowman of her work schedule, lunch schedule and her two breaks. Moreover, DeJesus explained to Bowman that the meeting served as her "final" verbal warning and hereafter, she would be docked for arriving to work late/or taking extended lunch breaks. (P-17)

Furthermore, DeJesus informed Bowman that on October 29, 2015, Bowman left work at 11:30 AM and she did not sign-out, nor, did she inform Brenna, administrative secretary, that she was taking a half-day. She was informed that she would be docked for that time immediately.

DeJesus emphasized to Bowman that District Policy #4211 states that chronic absenteeism and tardiness are subject to discipline and may be cause for dismissal. The regulation for Policy 4211 states that you must report all absences. Bowman's failure to adhere to this policy would lead to the following progressive discipline:

Daily Salary (Annual Salary/260-261)/8 hours (Daily Work Hours) X (Amount 15 Minute Interval Tardy) = Deduction.

Bowman testified that the District had asked her questions about her arriving late for work or not late for work. Upon her review of her daily attendance records she testified that she was not late on July 8, 2015 and did not know who wrote "late" next to her name on the sign-in sheet. On July 24, 2015, Bowman testified that DeJesus assigned ESY overtime for that day at the P.J. Hill School; her sign-in sheet was annotated with her arrival at 9:00 a.m. Bowman stated that she was not aware of who signed in for her since her start time for that day was 9:00 a.m. at the P.J. Hill School. (T-46-47)

Bowman stated that she reported to work at 8:30 a.m. for her job as a senior secretary on September 17, 2015. She testified

that she left work at 4:30 p.m. that day and could not think of any idea why DeJesus could not find her. She explained that she could have been in the basement, the file room, or at the Xerox machine on the second floor. (T-14-15)

Bowman testified that on days where she knew she would be late to work she would always contact Brenna to let her know. She testified that contacting her was the office procedure when you were going to be late. (T-49)

On October 9, 2015, the sign-in sheet depicted Bowman arrived late at 9:30 AM. Bowman testified that she was not late that day; she stated that she initialed her departing time for that day on the sheet, however, the sign-in time of 9:30 was not her writing. (T-52) On October 23, 2015, Bowman's attendance record indicated that she was late and arrived at 9:30 a.m. and departed at 2:00 p.m. due to back issues. She denied being late for that day and testified that she did not depart work at 2:00 p.m. as reflected on the sign-in sheet, but closer to 3:00 p.m. (T-53; T-93) On October 29, 2015, Bowman signed in at 8:30 a.m. and signed-out at 11:45 a.m. with a question mark (?); however, she denied leaving early that day. (T-55)

Bowman stated in her November 3 rebuttal letter that on October 29, 2015, she did leave the building mid-day to locate Ms. Grady regarding a coaching position. Bowman explained that she had a deadline and had to reach Grady; she attempted to call her, but to no prevail; she left the Board of Education building to

find Grady and returned around 12:45 p.m. She then took a lunch hour from 1:00 p.m. to 2:00 p.m.; after returning she proceeded back into the basement to shred documents. She admitted that she had failed to sign out at the end of the day. Bowman told DeJesus that if tardiness was to be addressed she felt that everyone should be monitored as her co-workers were also frequently late.

(R-41; P-17)

Bowman testified that she was at work on October 30, 2015 when around 11:00 a.m., her co-workers were organizing a lunch with a Halloween theme. Bowman stated that the party raised some concern with her because of her religious beliefs that Halloween was a pagan holiday. Bowman stated that the majority of the Special Services Department employees participated in the luncheon; which lasted more than an hour and a half. (R-4; P-17)

Bowman testified that she decided to see DeJesus to tell her that she did not believe in Halloween and she would leave the office. However, Bowman was unable to locate DeJesus and left the office around 12:30 p.m. She did not return until approximately 2:10 p.m. Bowman acknowledged that she did not get permission to take an extended lunch break on that day and that she was paid for an entire day (T-116). Upon Bowman's return, she went to the basement to shred documents and to the Xerox to do the report cards and finished work for the day. (T-57-58)

Stephanie Greg, a senior secretary and co-worker of Bowman in 2015, was called to testify on Bowman's behalf. She testified

that every month there would be a birthday celebration at work. Greg testified that there is never a party theme for the birthdays; she could not recollect if there were any form of decorations at the October 30 birthday party. (T-11) Bowman testified that she did not participate in these monthly celebrations (T-111). She stated that she really did not socialize with the vast majority of the co-workers in the Trenton Board of Education; she stated that she was more of a loner (sic).

Trenton Public Schools Daily Attendance Records, Petitioner's exhibits P-6 through P-16, reflect the daily sign-in sheets for Bowman for numerous days in 2015. Bowman's co-worker's names were redacted on the exhibits; however, the times for her co-worker's arrival and departure were not redacted but were blank on some days throughout the exhibits. Bowman addressed her attendance and reporting absences as [being in compliance] with Article 13, Leave Policies and Article 14, Vacation and Holidays.³

Past Disciplinary/Evaluative Records

Several of Bowman's past disciplinary and evaluative records⁴ (P-22 through P35) are depicted below in summary detail:

- o April 15, 2014, 2013-14 Annual Appraisal of Classified Employees: Overall "Average" rating; "Below Average" rating for ability to work

³No written District or Board policy on requesting approval of vacation days in advance was submitted. However, it is evident from the record that as far back as 2008, Bowman was put notice that this was the Department's policy.

⁴I admitted Bowman's past disciplinary and evaluative records over the objections of Bowman's counsel. These documents were admitted because they are relevant to the issue of whether Bowman had previously been warned about inappropriate conduct which was identified in the tenure charges herein.

harmoniously with others; and attendance /infrequently tardy.

- o February 26, 2009, Official Reprimand for errors and lateness within legal timeframes for IEPs.
- o December 18, 2008, Written Warning from Director of Special Education/Support Services for lateness; recommendation of withholding of 2009-10 salary increment.
- o October 8, 2008, Annual Evaluation was "Below Average"
- o September 5, 2008, Continued pattern of lateness and a refusal or unwillingness to conform to professional standards; Director of Special Education/Support Services to coordinate with Assistant Superintendent for Human Resources for further action.
- o April 29, 2008, Annual Appraisal of Classified Employees, Recommendation for Re-employment: With Reservation due to repeated issues of unexcused lateness and early departures; lack of problem-solving abilities.
- o August 28, 2008, Directed by Director of Special Education/Support Services to: 1. Arrive to work on time; 2. Submit and receive authorization, in advance, for vacation days; 3. Report to an administrator [for] leaving work before your contractual time.
- o July 1, 2004, Entire increment withheld for 2004-05 school year.
- o June 7, 2004, Assistant Director of Human Resources memo: Attendance needs much improvement.

ANALYSIS

N.J.S.A. 18A:6-10 provides that a tenured employee may only be removed from his or her position because of inefficiency, incapacity, unbecoming conduct, or other just cause. The parties acknowledge that the Board bears the burden of demonstrating

unbecoming conduct by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

Even where a board of education demonstrates unbecoming conduct, the next question is whether the conduct warrants the employee's removal. The determination of the penalty includes consideration of several factors: [1] the nature and gravity of the offense(s); [2] the impact on the staff member's career; [3] any extenuating or aggravating circumstances; [4] and the harm or injurious effect the conduct may have had on the proper administration of the school system. In re Fulcomer, 93 N.J. Super. 401, 422 (App. Div. 1967).

Sometimes the conduct in a single incident is so egregious, it standing alone would warrant removal. More often, the unbecoming conduct charge is based upon a series of infractions or pattern of conduct. See Redcay v. State Board of Education, 130 N.J.L. 369 (Sup. Ct. 1943), aff'd. o.b. 1341 N.J.L. 326 (1944). In such cases, one would expect to find that the principles of progressive discipline have been applied especially if the present conduct is similar in nature to that for which the employee has previously been disciplined. Further, in analyzing whether the employee's conduct, assuming the board has met its burden of proof, is sufficient to justify termination, one would consider whether the employer had a clear work rule or policy, whether the rules were known to the employee, whether the employee had previously been warned that his/her conduct was unacceptable to

the employer, and whether the employees was warned that repeated infractions might result to more serious discipline.

Failure to File Student Records

Bowman's responsibilities included filing student records into the student's individual permanent file folders. Such records included IEP's, evaluations, reports and correspondence. Senior secretaries in the Special Services office each maintain a file basket on their desks. Documents are put into the basket for filing by the members of the CSTs to which the senior secretary is assigned.

The record shows that there was a backlog of filing in the file room starting in 2013. It appears from the record that this backlog consisted mainly of inactive records waiting to be archived at the District's warehouse. This was initially caused by District's decision to eliminate all 14 secretaries assigned to the Child Study Teams, leaving the teams to do their own filing. Although 7 of the CST secretaries were rehired, it appears from the record that two file clerks assigned to the Special Services file room were relieved of that assignment. Former Assistant Superintendent Ingram agreed to clear the backlog through the use of overtime, but that plan never materialized. She then assigned each of the senior secretaries a set of the boxes of the backlogged filing and directed them to complete the task.

By the time DeJesus was appointed in July 2015, Bowman's filing was accumulating in 10-20 copy paper boxes lining the floor of the file room. When DeJesus asked the senior secretaries about the boxes, she was told that the boxes contained Bowman's unfiled documents. Bowman acknowledged that she had started her "dummy file" system two years before this. Whether the collection of Bowman's 10-20 boxes in the file room consisted of documents she was given for filing during that period or whether it also included the backlogged filing, cannot be determined from the record. The record also does not indicate whether the other senior secretaries had their filing up to date or not. However, I infer that Bowman was the only senior secretary to have a significant backlog of filing -- if this were not the case, the other senior secretaries would not have been so willing to complain to DeJesus about Bowman's failure to file. In addition, Bowman did not claim that she received disparate treatment over the directive to clean up her filing backlog.

In any event, DeJesus met with Bowman for the first time in either September or early October about her filing and her use of the dummy files. DeJesus emphasized the importance of maintaining the records in the students' permanent files and she went through a tutorial on the proper protocol for document organization in the file. Bowman understood DeJesus' directions as a result of this meeting to include

the need to eliminate the dummy files and get them off the floor. While TESA characterizes this directive as evidence that DeJesus wanted to put a "clean face" on the problem by eliminating the boxes, I do not ascribe that theory to the directive. Rather, it is evident to me that DeJesus did not merely want to make the boxes of unfiled documents disappear, but rather, she wanted the documents to be filed in the students' permanent records.

After this initial meeting with DeJesus, Bowman began to "make the boxes of files disappear" by inserting handfuls of dummy files randomly throughout the file cabinets. Apparently DeJesus believed that by doing so Bowman was trying to hide the problem. When she challenged Bowman as to why she had placed the dummy files in the cabinets, Bowman denied attempting to hide the files, but suggested that she was merely placing the files inside the cabinets to be corrected filed at a later time. She also reasoned that this would give her more time to complete the task.

By the end of October, when it did not seem to DeJesus that Bowman had made much progress on accomplishing the task, she met with her again, along with Bowman's union representative. An action plan was developed at that time, which Bowman did not contest.⁵ If, as Bowman later claimed,

⁵At the arbitration hearing, Bowman was careful to distinguish her reply to DeJesus' action plan. Bowman testified that she responded to DeJesus's plan by

it was an impossibility to complete the task within the timeframe set up by DeJesus, she could have taken alternative action. She should have either so advised DeJesus at the October 30 meeting that the time period being set was unrealistic; or at the least, she could have written a rebuttal to the action plan; or she could have notified DeJesus at any time in October that the plan was proving unworkable and requested more time. She chose none of these options.

By early December, DeJesus met again with Bowman and her Union representatives about Bowman's filing backlog. By this point, some of the filing had been done, but there was still a backlog. According to DeJesus, CST's were still concerned that the documents of students assigned to them were getting lost. Bowman's "excuses" for her failure to complete the task included that she was out sick and that the task was "really hard."

The problem here is not limited to Bowman's last six weeks of her employment before she was put out on tenure charges; the real focus is her failure to file her CST's documents over the last two years. While she thought that creating the dummy files would simplify the filing process, the reality is that she created

stating that she "would try" to complete the task by the end of the month, she denied that she told her she agreed to perform as per the plan. If Bowman believed that it was not possible to complete the action plan, she and her union representative should have promptly so advised DeJesus.

dummy files instead of actually filing anything in the students' permanent files.

The maintenance of the records is critical, especially because these are records of students with learning disabilities or other handicaps. The mission of the Department of Special Education and Services is to insure that these students get the best education that can be achieved and that their disabilities are adequately addressed. The mission is not just the Board's policy -- it's a statutory mission. Bowman's failure to properly maintain the files put those classified students with incomplete files at risk of being disenfranchised from getting the proper educational protocols. Without a complete file, the child study team cannot fulfill its responsibilities to the students to get them the most appropriate help for their needs. It also put the District at risk of being found in violation of the State Board of Education's requirements for file compliance.

Bowman's excuses for having failed to complete the filing are an indication of the real problem here. The real problem is that this is an employee who is way behind on her work, and yet is chronically coming in late, taking long lunch hours, leaving work early, and taking time off to attend to personal business and accept substitute teaching assignments. I find that Bowman is guilty of count #9 of the tenure charges and engaged in conduct unbecoming an employee

and neglect of duty by her failure to perform her assigned duties.

Insubordination Incident

It is undisputed that on November 19, 2015, Bowman committed insubordination towards Assistant Superintendent DeJesus. DeJesus gave Bowman a directive to shred two boxes of documents. Bowman acknowledged that the first box was "her documents" but questioned why she should "have to" shred the other box, which she believed was someone else's job. Bowman directly refused to shred the second box even after DeJesus made it clear that she was giving her an order and she expected Bowman to comply. This latter statement put Bowman on notice that her continued refusal to shred the second box would be viewed as a direct act of insubordination. The message was clear: comply with the directive (and grieve if you believe it to be "unfair"), or face discipline. Still, Bowman did not shred the second box of documents.

Insubordination is a serious offense in the workplace. It undermines the supervisor's authority and causes a loss of respect for the supervisor in the workplace. If left unchecked, this may lead to workplace anarchy.

By this act of insubordination, Bowman violated Board's Code of Ethics policy for support staff, which provides in relevant part, that employees must:

Complete thoroughly their assigned tasks;

Commit themselves to providing the best possible services for pupils;

Further, it is an axiom of every work place setting that employees must obey all lawful directives of their supervisors whether they agree with the fairness of those directives, or not.

Insubordination is never a tolerable offense in the work place.

Rather, employees are to obey the adage "work now; grieve later".

Clearly, Bowman's conduct in refusing to follow DeJesus' directive amounts to insubordination and conduct unbecoming an employee.

I find that the Board has proven Charge #10 against Bowman and that she is guilty of insubordination, conduct unbecoming an employee and neglect of duty.

Substitute Teaching Assignments

Source 4 Teachers is a private vendor contracted by the Trenton School District, and other surrounding districts, to place daily substitute teachers in its classrooms to cover the absences of its regular teachers. The record establishes that in 2014, Bowman was approved by Source 4 Teachers to be placed on its list of qualified substitute teachers. It is unclear whether the District administration knew of this fact prior to 2015, when it received an invoice from Source 4 Teachers which included Bowman's name as having fulfilled a substitute assignment at Dunn Middle School. In any event,

the Board's policy regarding outside activities provides that:

. . .the Board reserves the right to determine if activities outside the support staff member's job responsibilities interfere with their performance and the discharge of the support staff member's responsibilities to this district.

All support staff members . . . **shall not solicit or accept customers for a private enterprise, business, and/or business organization on school grounds during their work day without the express permission of the Superintendent; (emphasis mine)**

The accompanying Board Regulation provides that:

A full time employee may engage in outside employment only when such employment does not: **constitute a conflict of interest, occur at a time when the employee has assigned district duties,** or diminish the employee's efficiency in performing assigned district duties. **A full-time employee who engages in employment outside the district shall report that employment to the Superintendent. (emphasis mine)**

Pursuant to this policy and regulation, Bowman was obligated to report her employment with Source 4 Teachers as soon as she was appointed to the substitute list.

Bowman acknowledged that she had not informed the Superintendent of her retention by Source 4 Teachers. If she had, the Superintendent (or his/her designee) would have then had an opportunity to inform Bowman that the Board would view her acceptance of teaching assignments in the Trenton School District as presenting a conflict of interest. Therefore, I find that Bowman's failure to advise the Superintendent that

she was hired by Source 4 Teachers was in violation of District Policy and constituted conduct unbecoming an employee.

On September 17, 2015, Bowman accepted a teaching assignment from Source 4 Teachers to teach a half-day class at Dunn Middle School.⁶ She testified that her intention was to call in to the Special Services Department and report herself as taking a vacation day. According to Bowman's testimony, she then reconsidered the assignment and decided she had to decline it because she is non bilingually qualified. She testified that she notified Source 4 Teachers that she was declining the assignment. She then reported to her regular job at 8:30. What happened next is controverted. Bowman testified that she signed in and worked her regular hours that day until 4:30. However, the log does not show that she signed out at 4:30 or any other time. DeJesus testified that Bowman "disappeared" at about 11:30 a.m., and that she "could not find" her for the rest of the day. Bowman contends that she spent the afternoon of September 17 shredding paper in the basement, and left at her regular quitting time. Sometime prior to November, 2015, Source 4 Teachers issued Bowman a check for the September 17 half-day teaching assignment. Bowman accepted and cashed the check.¹

⁶ This acceptance was accomplished electronically on the vendor's website.

On November 17, Lissa Johnson processed an invoice from Source 4 Teachers (P-1), which included Bowman's serving as substitute at the Dunn Middle School on September 17. After Bowman was served with the tenure charges on December 17, 2015, she then contacted Source 4 Teachers and arranged to return the amount of the payment.

On October 19, Bowman accepted another teaching assignment from Source 4 Teachers and taught at Trenton's M.L.K. Elementary School. To do this, she notified the Special Services Department that she would be taking a vacation day that day.

The Board maintains that by accepting payment for the substitute teaching assignment on September 17 and simultaneously accepting salary from her regular secretarial job with the district, Bowman was "double-dipping" the District. It contends that this violated its Outside Employment Policy, its Ethics Policy, and amounted to conduct unbecoming an employee.

The Board argues that on October 19, Bowman again double-dipped by accepting payment from both the substitute teaching assignment and being in paid status from her secretarial job. It contends that this created a conflict of interest and violated the public trust. Further, it maintains that Board Policy dictates that employee must submit an advance request for vacation time off.

TESA argues that Bowman never actually worked the substitute job on September 17 and that her acceptance of payment was merely an oversight. With regard to the substitute teaching job on October 19, TESA maintains that since Bowman was on a vacation day that day, she was entitled to do whatever she wanted on her vacation time, including working for another employer. It contends that Bowman engaged in no wrongdoing on either date and that the charges #1 through #4 should be dismissed.

The conflicting evidence concerning Bowman's whereabouts after 11:30 a.m. on September 17 require me to make credibility resolutions. I do not find Bowman's assertions that she was at work all day to be credible. I find it implausible that she would accept a teaching assignment and then renege on it and just go to work for the day. Additionally, I find it illogical that DeJesus would not be able to locate Bowman for a five-and-one half hour period that day. She testified that Bowman was not at her desk, not in the hub, not in the filing room, and not in the basement. Five hours plus is a long time for someone to be at work and not be noticed. Moreover, contrary to her customary and usual habit, she did not sign out that day, although she was aware that employee sign in and sign out was expected. While Source 4 Teachers confirmed to Johnson that Bowman had not signed in to substitute teach at Dunn Middle School on

September 17, there is no way for me to determine whether she actually engaged in the teaching job that day or not. I credit DeJesus's account that Bowman was not at work after 11:30 a.m. The point is that she was not at work that afternoon. More importantly, Bowman accepted payment for the teaching assignment without another thought until she was served with tenure charges.

I find that Bowman accepted payment for both her regular secretarial job and for the substitute teaching job for September 17, thus, engaging in conduct unbecoming an employee and violating the Board's ethics policies.

In addition, I find that Bowman violated the Board's policies and rules by not submitting an advance request for a vacation day for October 19. TESA's contract states in Article 14 that secretaries are given a vacation allowance annually but vacation approval is at the discretion of the employee's supervisor.

Further, Bowman had previously been warned about her failure to submit advance requests for vacation leave. Once an employee is warned that conduct is unacceptable to the employer, the employee is certainly expected to modify her behavior in the future and comply with the employer's expectation. I therefore find that Bowman's acceptance of both the substitute teaching assignments from Source 4 Teachers on September 17 and October 19 amounted to conduct

unbecoming an employee, violation of Board policies concerning required notice to the Superintendent concerning outside activities, and violation of the Board's ethics policies. I find Bowman guilty of charges #1, 2, 3, and 4.

Chronic Tardiness/Leaving Early

The record demonstrates that between July 1 and November 1, the Department's attendance logs show eight tardiness occasions by Bowman. In addition, she left early on several occasions, some of which were without permission. Further, she took an extended lunch period and/or left work in the middle of the day on two occasions during that period.

The Union argues that the Employer's attendance control policies are lax and inconsistently applied. For example, DeJesus could not say with certainty whether her department's policies required employees to sign-in and sign-out with just their initials or whether the sign-in time was also required. The log shows that some employees included only their initials while others also included the time. There was apparently no rule or enforcement about employees not signing-in/out at all. These lax procedures make it difficult to enforce its time and attendance policies.

Unfortunately, Bowman's disciplinary record shows that she has a long history of repeatedly being warned about her issues with punctuality and taking unauthorized time off.

Had the Department followed the attendance policies as set forth in Board Policy 421, it would have engaged in progressive discipline including written warnings, the docking of pay, and formal discipline prior to the latest round of time infractions.

However, all of Bowman's time away from the job after July 1, 2015, resulted in a meeting between DeJesus, Bowman and Bowman's union representative on October 30 and a follow-up memorandum on November 1, 2015. In the November 1 memorandum, DeJesus noted her tardiness patterns and the fact that she had left early on October 29, without permission and took an extended lunch on October 30. DeJesus' memo continues,

I informed you [on October 30] that this was your final verbal warning and henceforth, you will be docked for arriving to work late and/or taking extended lunch breaks. . . You will be docked accordingly [for the time taken after 11:30 on October 29]. (P-17)

TESA argues that once the Employer engaged in this form of discipline -- a written warning, any additional discipline for the same events would amount to "double jeopardy". I agree. The record does not show that Bowman was tardy or took time off from work at any time after the November 1 written warning. The purpose of a written warning is to put the employee on notice that the conduct engaged in is unacceptable to the Employer and that future infractions will lead to additional discipline. Here, there were no further infractions that would trigger additional discipline. Once

an Employer decides to implement one level of discipline, it cannot double back and re-discipline the employee for the same set of infractions.

I therefore find that Bowman is not guilty of conduct unbecoming an employee or neglect of duty for her tardiness between July 1 and November 1, 2015. Charge #5, 6, 7, and 8 are dismissed.

Disciplinary Record

I note that Bowman's record shows that she has been sporadically warned about her failure to perform the duties of her job, as well as her absence record. In 2008, an employee improvement plan was developed by the then Assistant Director of Special Services to assist her with resolving performance issues. Her evaluation cautioned that she was not meeting performance expectations. In 2009, she was reprimanded again, in writing, concerning IEP revisions that were two months late and contained many errors. Her record of past discipline is remote in time to the contemporaneous events herein, and therefore not particularly relevant to the issue of whether she should be terminated from her position.

However, I find based upon the totality of circumstances of the events of 2015, including the seriousness of her failure to file student records, her insubordination, and her acceptance of payment for a substitute teaching assignment while simultaneously accepting pay for her District's

secretarial job results in the conclusion that her conduct is sufficiently egregious to warrant termination.

AWARD

I conclude that Charai Bowman is guilty of conduct unbecoming an employee, neglect of duty, and other sufficient cause to warrant her termination. I find that she is guilty of charges #1, 2, 3, 4, 9, and 10 as set forth in the tenure charges filed by the Board and certified by the Commissioner of Education on February 3, 2016. The remaining charges are dismissed. Her tenure as a senior secretary with the Trenton School District is revoked and she is terminated immediately.

Susan W. Osborn
Susan Wood Osborn
Arbitrator

DATED: May 23, 2016
Trenton, New Jersey

State of New Jersey)
County of Mercer)

On this 23rd day of May, 2016, before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela Jean Sutton-Browning
PAMELA JEAN SUTTON-BROWNING
ID # 2424173
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires August 20, 2017