

**NEW JERSEY DEPARTMENT OF EDUCATION  
BUREAU OF CONTROVERSIES AND DISPUTES**

In the Matter of the Tenure Hearing of John McEntee, Jr.:

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**STATE OPERATED SCHOOL DISTRICT  
OF THE CITY OF PATERSON**

“Petitioner,”

- and -

**JOHN MCENTEE, JR.**

“Respondent.”

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**OPINION  
AND  
AWARD**

Agency Docket No. 61-3/17

**Before  
James W. Mastriani  
Arbitrator**

**Appearances:**

**For the Petitioner:**

Mark J. Blunda, Esq.  
Apruzzese, McDermott, Mastro & Murphy, P.C.

**For the Respondent:**

Sanford Oxfeld, Esq.  
Oxfeld Cohen, P.C.

This arbitration proceeding arises under the terms of N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1 and concerns tenure charges filed by the State Operated School District of the City of Paterson [the “Petitioner” or “District”] with the Commissioner of Education on March 29, 2017 seeking an unpaid suspension for tenured teacher John McEntee, Jr. [the “Respondent” or “McEntee”]. Respondent McEntee also serves in a full-time capacity President of the Paterson Education Association. He was serving as President at the time of the incident that led to the tenure charges and continues to do so. The Petitioner alleges that the Respondent engaged in Unbecoming Conduct or other inappropriate behavior on December 19, 2016 in his interactions with Dr. Sharon Davis, Vice Principal of the Napier Academy<sup>1</sup> and by submitting a written report to the Superintendent of Schools, and widely circulating it to others, stating that Dr. Davis “had me forcibly ejected from the building by security” on December 19, 2016.

The statutory reference for evaluating tenure disciplinary action is set forth in N.J.S.A. 18A:6-10: “[n]o person shall be dismissed or reduced in compensation ... 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 ... except for inefficiency, incapacity, unbecoming conduct, or other just

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<sup>1</sup> Dr. Davis is no longer employed by the District and currently serves as Principal of a new middle school in the Hoboken Public School District.

cause.” Petitioner has the burden to prove, by a preponderance of the evidence, that the tenure charges must be sustained and, if so, that the penalty of an unpaid suspension be imposed in the amount to be determined by the arbitrator. On April 13, 2017, the Respondent filed an Answer to the tenure charges. While admitting to many underlying facts that are not in dispute, Respondent denied engaging in any conduct that would support the District’s position that he engaged in any conduct unbecoming or any other inappropriate behavior and rejected any basis claimed by the District as authority it has to take any disciplinary action against him. Pursuant to N.J.S.A. 18A:6-16, as amended by P.L. 2012, Chapter 26 and P.L. 2015, Chapter 109, this controversy and dispute is subject to arbitration and was assigned to this arbitrator to hear and decide on April 21, 2017.

In addition to the record developed in this proceeding, the record includes documents associated with an unfair practice charge filed by the Paterson Education Association [the “Association”] filed with the New Jersey Public Employment Relations Commission [“PERC”] against the District on February 10, 2017 and amended on April 17, 2017 in connection with the same incident that gave rise to the tenure charges. The initial charge alleged that the District violated various sections of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et. seq. by conduct exhibited by Dr. Sharon Davis alleged to have been discriminatory and retaliatory to Respondent during and after the December 19, 2016 meeting. The Association amended the unfair practice

charge on April 17, 2017 alleging that the District filed tenure charges in retaliation for the Association's filing of the February 10, 2017 unfair labor practice charge. The Association also applied for interim relief, requesting that "PERC should enjoin the matter from proceeding pursuant to TEACHNJ..." The Association asserted that PERC had exclusive jurisdiction, or in the alternative, predominant interest over the issues in light of Respondent's position as President of the Paterson Education Association and its claim that the tenure charges filed by the District in late March 2017 were in retaliation for the Association's filing of the initial unfair practice charge on February 10, 2017. A PERC Designee conducted an interim relief proceeding. He issued an Interlocutory Order on July 28, 2017 denying the Association's request for interim relief. He found that the dispute involving both the tenure proceeding and the unfair labor practice charge was one of first impression for PERC and further, that there were material facts in dispute from which he could not determine that the Association could establish a substantial likelihood of success. Thereafter, the unfair labor practice charge, as amended, has been held in abeyance by PERC pursuant to party request pending the disposition of this tenure arbitration proceeding.

This arbitrator held an informal pre-hearing conference on May 16, 2017 at which time the parties reached several procedural agreements that allowed for formal hearings to be conducted in a timely and efficient manner. Arbitration hearings were originally scheduled on August 13, 14 and 15, 2017 but were

adjourned due to witness unavailability. Arbitration hearings were then held on September 14 and 19, 2017. During the course of the arbitration hearings, the parties argued orally, examined and cross-examined witnesses and submitted documentary evidence into the record. Testimony was received from six witnesses: Dr. Sharon Davis, former Vice Principal, Dr. Frank Napier, Jr. Academy of Technology, Irene DelRosso, District Supervisor, Federal Programs – No Child Left Behind (NCLB), Captain James Smith, Executive Director Security, Internal Investigations and Transportation, Diane Caparso, Instructional Assistant Special Education, Sasha Wolf, Esq., Field Representative, New Jersey Education Association Passaic County and John McEntee, Jr., Respondent and President, Paterson Education Association. A transcript of proceedings was taken. Post-hearing briefs were filed by the Petitioner and the Respondent on or about November 1, 2017. An extension of time to issue an award until December 26, 2017 was granted by the Director, Office of TEACHNJ Arbitration.

## **BACKGROUND**

### **The Encounter in the Office of Dr. Davis**

The facts giving rise to the tenure charges center mainly on events occurring during and shortly after an unscheduled meeting took place between Respondent and Vice-Principal Sharon Davis in the office of Dr. Davis at approximately 1:37 p.m. on December 19, 2016. NJEA Field Representative Wolfe accompanied Respondent. Prior to this time, Dr. Davis had been meeting

with Irene DelRosso, the District's Supervisor of Federal Programs - NCLB. According to Ms. DelRosso, her meeting with Dr. Davis was to discuss grant funding for two staff members, a review of their schedules and responsibilities and the students that they serve. The meeting in Dr. Davis' office lasted just shy of four minutes. DelRosso was seated at a desk to the left of the doorway that opens to Dr. Davis' office. Prior to the time that Respondent entered the office, the door to Dr. Davis' office was closed. A sign hung from the door covering most of a door window stating there was a "Meeting in Conference." A portion of the bottom of the window below the sign allowed for a limited view into the office. Dr. Davis testified that she normally hung this sign when she conducted a meeting.

At approximately 10:30 a.m., some three hours prior to the meeting, Respondent entered the school on the first floor along with PEA Vice President Charles Ferrer and NJEA Field Representative Sasha Wolfe, Esq. According to District testimony, their visit to the school was part of scheduled visits and was prearranged. The Association representatives followed protocol by signing in and going to the second floor office of the school's principal, Marc Medley. Principal Medley's office is a short distance from the office of Dr. Davis on the same side of the hallway. On the other side of Dr. Davis' office on the same side of the hallway is a teachers' lounge. The three met with Principal Medley for approximately three minutes. They then left his office accompanied by Principal Medley, walked past the office of Dr. Davis and entered the teachers' lounge

located adjacent to the office of Dr. Davis. Principal Medley then returned to his office. Respondent, Mr. Wolfe and Mr. Ferrer met with staff members in the lounge for approximately three hours until 1:37 p.m. Respondent testified that during this time, he was made aware of Dr. Davis' use of a confidentiality statement in her emails to staff. Respondent and Mr. Wolfe then left to go next door to Dr. Davis' office while Mr. Ferrer remained in the lounge.

Video surveillance cameras are in the school and reflect all of the above actions except what occurred inside of the office. The video also shows that when Respondent and Mr. Wolfe left the lounge, they went next door where Dr. Davis' office is located. After Mr. Wolfe knocked on the door, Ms. DelRosso opened the door and the two entered to see Dr. Davis. There is no video of what transpired inside the office of Dr. Davis. Some facts as to what happened during the next few minutes are not in dispute but some facts central to the conduct of Respondent and Dr. Davis during their interactions are in conflict and are directly relevant to the merits of the disciplinary action sought by the Petitioner/District.

After entering the office, the Respondent asked Dr. Davis if she was busy. Because the meeting between the two had not been previously scheduled, Dr. Davis was unaware of the reason Respondent went to her office. Dr. Davis responded that she was busy but that Respondent and Mr. Wolfe could enter the office. She asked if they wished to sit but they decided to remain standing. She asked and received business cards from the two. Drawings of the desk where

Dr. Davis was sitting, the desk where Ms. DelRosso was sitting and the locations of where Respondent and Mr. Wolfe were standing were submitted into evidence. There is disagreement in the testimony over precisely where Respondent and Mr. Wolfe were situated in relation to Dr. Davis. According to Dr. Davis, after standing up and greeting the two, she went back to sit behind her desk while Respondent stood in close proximity to her desk with Mr. Wolfe standing behind him facing her. Their backs were to the hallway door while Dr. Davis was facing the door. The drawings in evidence as well as testimony confirm that there was little space to the left of Dr. Davis as she sat behind the desk. To the right of where Dr. Davis was seated, there was a door to the main office and to the left was a door to the teachers' lounge. Both doors were closed. According to Respondent, he was standing by the right-hand portion of Dr. Davis' desk. There is sufficient room between this side of the desk to enter and exit from behind the desk towards the front doorway. According to Mr. Wolfe he stood to Respondent's left and both were up against the edge of the desk. All witnesses testified that the office was small. Mr. Wolfe described it as "cramped." Respondent said that the "quarters" were "tight."

The initial discussions came from Respondent and concerned the practice of Dr. Davis to include confidentiality language in emails she sent to staff.<sup>2</sup>

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<sup>2</sup> Dr. Davis testified that at the time of the meeting she had already ceased using the confidentiality statement in her emails. However, Respondent said she made no mention of this during the December 19, 2016 meeting and said he was unaware it had ceased. Respondent testified that he and Director of Labor Relations Luis Rojas had dealt with a similar issue at School No. 8 and he was under the impression that email references to confidentiality had been resolved. Respondent said he believed that Dr. Davis was continuing to use the confidentiality statement based upon what he was told in the teachers' lounge.

According to Dr. Davis, Respondent asked “are you familiar with the confidentiality law?” She responded “why do you ask?” Respondent referred to an email that he had in his hand. Dr. Davis responded “why are you asking me if you already know the answer?” She said to Respondent that he entered her office under “false pretenses” because she was unaware of Respondent’s intent to raise a grievable matter. Respondent said that there could be a grievance filed over whether her practice was a contract violation. In response, Dr. Davis said if Respondent was raising a grievance issue she needed to call Principal Medley to have him present for the discussion. She was unable to reach Principal Medley because he had left the main office to go downstairs. After this unsuccessful attempt to reach Principal Medley, an interchange occurred between the two that escalated beyond normal conversation.

According to Dr. Davis, Respondent’s demeanor changed after she tried to reach Principal Medley. She described that Respondent moved around the desk to Respondent’s right and to her left while saying loudly “you can get whoever you want.” Because she perceived that Respondent’s tone had changed, she said “if you’re going to discuss a grievance with me, I wish you would have extended the same courtesy as your building delegates do which is Dr. Davis we may have a possible grievance, can we talk about it?” According to Dr. Davis, Respondent said “I am not one of your teachers” while gesturing with his hand and pointing his index finger while shaking his hand. Dr. Davis testified that Respondent came within 12 to 18 inches of her. Dr. Davis testified that

because his hand with shaking finger moved closer to her face and this led her to move her head back. She testified that Respondent continued to state loudly that he was not one of her teachers. She testified that she feared she was going to get hit by Respondent whose physical dimensions far exceeded that of Dr. Davis. Mr. Wolfe remained silent during the interchange. Dr. Davis testified that she changed her tone at that time because of Respondent's yelling and his actions and said to him "we're done. I'm going to ask you to leave my office and to leave the building." She testified that Respondent was standing in the only exit path available to her in a place that would have blocked her. According to Dr. Davis, Respondent then said "you can't kick me out of this building. You can't kick me out of this building. I have a right to be here. You can't kick me out of this building. Who do you think you are? You think I am one of your teachers?" She described Respondent as continuing to gesture with his hand while getting red in the face. According to Dr. Davis, Respondent said "I will say it the way I want to say it. I will talk to you the way I want to talk to you. You're going to get grieved." At that point, Dr. Davis testified that she said "I'm calling security. I'm calling security" because she felt that Respondent made no effort to leave. She said that Respondent then said "you can't throw me out of the building." She explained that Respondent and Mr. Wolfe began to exit her office after she said she was going to call security. While the two were exiting into the hallway, Dr. Davis testified that Respondent continued to yell "She's telling me I have to leave the building, she's telling me I have to leave the building." Later that day, at 5:49 p.m., Dr. Davis sent an email to the then District Superintendent Donnie Evans

and several others with a letter attachment recounting her version of the interaction with Respondent earlier that afternoon.

According to Respondent, while he was in the staff lounge a teacher had raised the issue of Dr. Davis using the confidentiality statement and this was the reason he went next door to see Dr. Davis. He confirmed her testimony as to the first part of their dialogue and testified he said to her that “if you’re still utilizing it, it could be a violation of the contract and we want it to stop.” Respondent testified that after saying this he observed a change in the body language of Dr. Davis. He said to her:

Are you aware that unless you are a priest, a therapist or a doctor, you do not possess the confidentiality that you’ve put into these statements? We had members complaining saying administrators were saying if this is included in your email you can’t send our emails to the union. And that’s why we dealt with this.”

According to Respondent, he elevated his own voice but only after Dr. Davis started to elevate her voice. After saying that he could file a grievance, he saw Dr. Davis stand up, walk to her phone and attempt to call Principal Medley. He said “I don’t care who you call, you can call anybody you want, but we want to resolve this here, today.” He acknowledged that he raised his voice to the same level or possibly even higher than that of Dr. Davis. He said “listen, you can’t speak to me this way. I am not one of your teachers. You can’t put me on a CAP the same way you’re putting your teachers on CAPS, so let’s resolve this

thing.”<sup>3</sup> Respondent recalled that Dr. Davis then called for security. He denied that he refused to leave the office prior to the call to security. According to Respondent, he had stayed in the same position he was in when he first walked in front of the desk and denied moving to the right of the desk to impede Dr. Davis. He acknowledged he gestured with his finger but denied coming close to her at any time. He explained the use of the finger gesture as helping him make a point and that it was normal and routine for him to speak with his hands. He recalled that Dr. Davis said “I want you out of this building at once. I’m directing you to leave” before she called security. He testified that he then turned around and walked out of the office and opened the door with Mr. Wolfe behind him. Mr. Wolfe’s testimony concerning this phase of the incident prior to exiting the office essentially corroborated that testified to by Respondent.

Ms. DelRosso also offered testimony as to what occurred inside the office of Dr. Davis. She recalled that Respondent raised the issue of the confidentiality statement and said he had an email with him. This prompted Dr. Davis to respond “why are you asking me if you already know the answer?” She also recalled Respondent saying it could become a grievance issue and that, in response, Dr. Davis picked up the phone to call Principal Medley. According to Ms. DelRosso, Respondent began to get upset and yelled “you can call whoever you want.” She said that after Dr. Davis put the phone down, Respondent said “who do you think you are ... is this how you talk to one of your teachers?” and

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<sup>3</sup> Respondent’s reference to the CAP was his knowledge that Dr. Davis had placed “at least 20 teachers on a Corrective Action Plan” during a past year.

“I’ll talk to you I want to talk to you, speak to you the way I want to speak to you.” She testified that Respondent was about 12 inches from Dr. Davis when he made the finger pointing hand gesture. At hearing, she provided an animated impression of Respondent’s actions with emphasis on having a sharp tone while finger pointing. She recalled that Dr. Davis said: “I’m done here. You need to leave my office and you need to leave the school.” After this, Respondent said “you can’t tell me what to do. I will leave when I want to leave and I will go when I want to go.” She observed Dr. Davis picking up the phone to call security. She described Dr. Davis as having been calm but that towards the end of the interchange with Respondent her voice was quivering. She testified that she felt afraid for Dr. Davis “because she was cornered. She was cornered in a way that if he continued to get close to her, I don’t know what he was thinking and I was afraid he might hit her and hurt her. There was no other way for her to get out. He was blocking the only way out.” Ms. DelRosso wrote an “Incident Report” to Captain James Smith, Executive Director of Security later that day detailing her version of the events that occurred in Dr. Davis’ office. At hearing, she also provided handwritten notes describing the events as they were occurring.

Each of the above witnesses was cross-examined without significant variation from their direct testimony as to the verbal interchanges. Dr. Davis believed that Respondent went into a tirade when he gave her the list of categories such as a priest as one who could properly use a confidentiality statement. She said she felt he entered her office under “false pretenses”

because he did not initially state that he was there for grievance purpose and because when he asked her if she was aware of the confidentiality statement he was already aware that she had used the statement in her emails and had one in his possession. She acknowledged that she did not tell him that she was no longer using the confidentiality statement after he said he could grieve the issue. She maintained that Respondent moved to the open side of the desk during his interactions with her and that any statement he made to the contrary was incorrect. She denied that Respondent began to walk out of her office before she made the call to security.

Respondent denied that he moved from his original position in front of Dr. Davis' desk to the side of her desk to impede her movement during the encounter. He acknowledged that the meeting was unscheduled, that Dr. Davis was initially not aware that he entered her office to discuss a possible grievance and that neither Dr. Davis nor Ms. DelRosso had shown any animosity towards him prior to the meeting. He also acknowledged saying that he yelled at Dr. Davis in a police report but that it was Dr. Davis that began the yelling. He confirmed Dr. Davis' testimony that she said if a grievance was going to be filed she needed to have Principal Medley present. He confirmed that he exited the office at the same point in time that Mr. Ferrer left the teachers' lounge and knocked on Dr. Davis' door. District testimony suggests that Mr. Ferrer went to knock on the door because of commotion in Dr. Davis' office but there is no supporting evidence for this suggestion.

Mr. Wolfe was questioned by District counsel as to what was the meaning of the allegation in the unfair practice charges and in emails from Respondent that he and Respondent had been “forcibly ejected” from the building. He stated that it meant “we did not have a choice to remain.” He acknowledged that there was a “very heated exchange” between Respondent and Dr. Davis. He confirmed Respondent’s testimony that he never refused to leave the office after being told to by Dr. Davis.

Ms. DeRosso acknowledged that upon witnessing the encounter between Respondent and Dr. Davis, she did not leave the office to ask for assistance nor did she say anything inside the office. She denied she did nothing and watched the events because she took notes of what she observed as the events unfolded.

Additional testimony as to the interchange in the office of Dr. Davis was provided by Ms. Diane Caparso. Ms. Caparso is a retired School Aide. She testified she was in the teachers’ lounge during the brief time that Respondent was in Dr. Davis’ office. According to Ms. Caparso, she heard voices that were louder than normal “but it wasn’t anything like, oh my God.” She testified that she heard a male voice and a female voice whose levels were “basically the same.” According to Ms. Caparso:

It wasn’t like somebody was screaming louder than - - and I don’t even mean screaming, speaking louder than the other. And that’s when I turned around and I said to whoever was sitting there, I

says, "I'm going to go" and I walked out the door. As I walked out, I will say this, I saw security coming so I was like, oh, and then I walked down the hall.

So evidently somebody had called for security at that point.

### **The Events in the Hallway and Building Shortly After Respondent Left Dr. Davis' Office**

The tenure charges include allegations referencing Respondent's conduct as he was exiting the office and shortly thereafter. According to the District, Respondent continued to shout "you can't make me leave" and "who do you think you are," or language similar in nature as he was exiting the office and entered into the hallway. Dr. Davis testified that she observed Respondent continuing to shout as he walked back and forth in front of her door in the hallway. This sequence of post-meeting events also concerns District allegations that Respondent falsely stated in an email shortly after the meeting that Dr. Davis "forcibly ejected" him and his colleagues from the school by security. Dr. Davis testified that after Respondent exited the office:

I stayed by my desk. And then to see him in front of my office door going back and forth, back and forth, and I could hear him yelling in the hallway in the presence of students, in the presence of teachers. "She's telling me I have to leave the building, she's telling me I have to leave the building."

Upon questioning by Respondent's counsel, Dr. Davis acknowledged that Respondent was not confrontational or argumentative in the hallway but that he was more volatile and vocal while he was in her office. Dr. Davis testified that

she had concern that when Respondent was in the hallway she felt unable to leave her office.

The District also charges Respondent with making false statements he widely circulated by email and in the unfair labor practice charge that he and Mr. Wolfe were “forcibly ejected” from Dr. Davis’ office and the building. On this point, the District relies heavily on the video to contradict this claim. Although Dr. Davis’ call to security resulted in Security Officer Benjamin arriving and entering her office and briefly chatting with Respondent and Mr. Wolfe, the District submits that the video shows Respondent and his colleagues interacting with a classroom teacher and lingering for several minutes in the hallway both near the stairs and near Dr. Davis’ door and then exiting the building without any coercion whatsoever by security or anyone else.

Respondent denies that he acted in a confrontational manner after he exited Dr. Davis’ office and entered the hallway. Pointing to what appears on the video, Respondent asserts that there is nothing that shows him screaming or upset and he refers to the testimony of Dr. Davis acknowledging that the video did not show him being confrontational or argumentative in the hallway. The video also depicts that it was Mr. Wolfe walking back and forth in front of her door and not Respondent.

An additional issue was raised at hearing concerned an alleged action by Respondent after he exited the office. The video shows Respondent turning around to face the doorway to Dr. Davis' office. The District contends that it shows Respondent pursing his lips and blowing a kiss in the direction of Dr. Davis. Respondent denies this and asserts instead that he was getting in "the last word." The video on this point was shown at the hearing and is in the record as an exhibit. Ms. DelRosso testified that she observed the alleged kiss, although she did not include it in her report.

### **The Post-Incident Events**

The record includes events occurring after the date of the incident that refer back to the December 19, 2016 meeting. Many documents were authored by all key participants describing the 1:37 to 1:41 p.m. actions that took place in the office of Dr. Davis on December 19, 2016. These documents have been thoroughly reviewed and considered but will not be detailed in their entirety. A summary of these documents is as follows:

- Handwritten notes from Ms. DelRosso taken during the meeting on December 19, 2016 in Dr. Davis' office recording her observations of what she witnessed, including a map depicting the locations of Respondent and Dr. Davis.
- An Incident Report written by Ms. DelRosso on December 19, 2016 detailing events occurring in Dr. Davis' office and sent to Executive Director Smith.
- Respondent's email to Dr. Davis on December 19, 2016 at 2:41 p.m. that was blind copied to staff. The email thanks Dr. Davis for meeting with him, accuses her of terminating the discussion and

having him forcibly ejected from the school by security and requests a resumption of their discussions concerning the confidentiality statement.

- An email with letter attachment from Dr. Davis to Superintendent Donnie Evans at 5:49 p.m. on December 19, 2016 summarizing the events occurring in her office earlier that afternoon. It incorporates Respondent's 2:41 p.m., December 19, 2016 email to her. Dr. Davis' letter includes a request that the District take certain actions against Respondent, including:
  - A written and public apology to Dr. Sharon V. Davis
  - A written and public apology to Paterson Public School District as a result to the email that was blind copied
  - Removed from his position as president of the PEA
  - Supervision when Mr. McEntee is in School 4 or in my proximity.
  
- A December 19, 2016 email sent by Respondent to Principal Medley at 6:27 p.m. attaching a grievance he filed with Director of Labor Relations Luis Rojas alleging a violation of contract by Dr. Davis and alleging that she refused to discuss the issue with him on December 19, 2016.
  
- A December 20, 2016 letter from Respondent to Superintendent Donnie Evans detailing the events of the December 19, 2016 meeting and alleging that Dr. Davis prematurely terminated discussions and had him forcibly ejected from the building by security. The letter was copied to District administrators and staff.
  
- A December 20, 2016 report from Captain Lucilla Johnson explaining the role of Security Officer Benjamin who reported to Dr. Davis' office and followed Respondent as he left the building.
  
- A December 20, 2016 Offense Report written by a City of Paterson police officer after a complaint Dr. Davis filed over Respondent's alleged actions during the December 19, 2016 meeting in her office. The Report included a one page narrative of the police officer summarizing his understanding of Ms. Davis' complaint, including that she wanted to "scare him straight."
  
- A December 20, 2016 email with letter attachment written at 3:10 p.m. by Respondent and sent to Superintendent Donnie Evans with blind copy to District staff. The letter summarizes Respondent's

account of the events occurring in Dr. Davis' office on December 19, 2016.

- A December 21, 2016 email from Dr. Davis to Superintendent Donnie Evans noticing him of Respondent's Facebook posting that described the remedies sought by Dr. Davis and her contact with the Paterson Police Department.
- Three December 22, 2016 emails to and from Dr. Davis and Executive Director of School Security James Smith regarding Dr. Davis' request to have a security escort while she entered and left District premises.
- A December 23, 2016 email from Dr. Davis to Superintendent Donnie Smith with copies to several individuals objecting to a second Facebook posting by Respondent and alleging that Respondent misstated that she told the Paterson Police Department that she wanted to "scare me straight."
- A January 6, 2017 Summary Report of the December 19, 2016 incident authored by Executive Director of Security James Smith. The report chronicles the December 19, 2016 events, including timelines after Director Smith interviewed and obtained written reports from Dr. Davis, Ms. DelRosso, PEA President John McEntee, Jr. (Respondent) and Mr. Wolfe. The written reports from these individuals Director Smith interviewed were separately submitted into the record.
- A January 12, 2016 Summary Analysis from Director Smith setting forth his conclusions as to what happened in Dr. Davis' office on December 19, 2016 and the reasons upon which he made credibility determinations.

### **The Investigation**

James Smith, Executive Director of Security for the District,<sup>4</sup> was asked by Superintendent Donnie Evans to investigate the December 19, 2016 incident. He testified that before this request he was aware of the incident because he was copied on the December 19, 2016 email from Dr. Davis to Superintendent Evans

and he had also spoken to Respondent that day. He interviewed and received reports from Dr. Davis, Ms. DelRosso, PEA President/Respondent John McEntee, Jr. and NJEA Field Representative Sasha Wolfe, Esq. Based upon his investigation, Director Smith submitted a lengthy report on January 6, 2017 summarizing the December 19, 2016 incident. The Report contains a timeline of events based on the video, a summary of each person he interviewed, their written reports and his own observations. His report contains no recommendations on what course of action, if any, should be taken by the District. Instead, his Report served as one significant source of information for the District's review of the events. Director Smith also submitted a summary of the events on January 12, 2017. The District and Respondent both offer extensive arguments in support of their conflicting interpretations of Director Smith's Reports as they relate to the merits of the tenure charges.

On direct and cross-examination, Director Smith also offered insights as to what he believed occurred through descriptions of the video. Respondent made objections to Director Smith's opinions that served as interpretations of his reports and the events shown on the video. Director Smith testified that he spoke with the police officer whose report summarized what Dr. Davis described to him. According to Director Smith, the officer told him that the reference to "scare him straight" was not a quote he received from Dr. Davis but rather was "his own thing."

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<sup>4</sup> Director Smith had formerly served as Captain in the Paterson Police Department and is commonly referred to as Captain Smith. He has been employed by the District for fifteen years.

## The Positions of the Parties

The positions of the parties are comprehensive and well articulated. They reference witness testimony, exhibits, as well as liberal citations to decisions on similar subject matters from the courts, PERC, the Commissioner of Education, the Civil Service Commission, as well as private sector labor law cases, all of which address standards to measure whether Union representatives were properly or improperly disciplined for their interactions with management and whether disciplinary actions taken against union representatives were justified or evidence of retaliation.<sup>5</sup> Of particular note is the Respondent's emphasis on In the Matter of Bridgewater Twp., 95 NJ 235 (1984). In that case, the New Jersey Supreme Court essentially adopted the National Labor Relations Board Wright Line Test (251 NLRB 1083, 1980) when evaluating disputes alleging anti-union animus. I will not summarize the extensive number of cases cited by the parties

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<sup>5</sup> These include: Pietruni v. Board of Education of Brick Township, 128 N.J. Super. 149, 162-163 (App. Div. 1974); In the Matter of the Tenure Hearing of Carol Ziznewski and the Edison Board of Education, 2010 WL 1846768 (ALJ 5/5/10); adopted 2010 WL 5624384 (Comm'r 8/3/10); aff'd 2012 WL 1231874 (App. Div. 4/13/12); cert denied 211 N.J. 608 (2012); In re the Tenure Hearing of I. Toorzani and the Elmwood Park Board of Education, 2011 WL 7068333 (ALJ 2011); In re Tenure Hearing of Christopher Molokwu and the State-Operated School District of the City of Paterson, <http://www.state.nj.us/education/legal/commissioner/2005/dec/447-05.pdf> (Comm'r 2005); aff'd, <http://www.state.nj.us/education/legal/sboe/2006/may/sb56-05.pdf> (State Board of Ed. 2005); Morris School District Board of Education v. Brady, 92 N.J.A.R. 2d (EDU) 410 (1992); IFPTE, Local 195 and Stockton State College, PERC Dkt. CO-2008-321 citing Blackhorse Pike Reg'l Bd of Ed., 7 NJ PER 502 (¶ 12223) (1981); In the Matter of the Tenure Charges of Jill Buglovsky, Opinion and Award of Joseph Licata (December 21, 2012); Tenure Hearing of Wachendorf, OAL Dkt. No: EDU 6860-04 (May 3, 2005); West New York vs Bock, 38 NJ 500, 523; Pietruni v. Board of Education of Brick Township, 128 N.J. Super. 149, 162-163 (App. Div. 1974); A. Hollander & Son vs Imperial Fur Blending Corp., 2 NJ 35, 235 (1949); Matter of Bridgewater Twp., 95 NJ 235 (1984) citing Wright Line, 251 NLRB 1083 (1980); Orange Board of Ed., 20 NJPER 25146 (1994); Borough of Glassboro, 12 NJPER ¶ 17117 (1986); Township of Mine Hill, 12 NJPER 17156 (1986); Belleville Ed Assn., on Behalf of Michael Mignone vs. Belleville Bd of Ed., 42 NJPER ¶ 12 (2015); Township of Hillsborough, 26 NJPER 31000 (1999); Lakehurst Board of Ed., 30 NJPER 5 (2004); Harrison Board of Ed., 34 NJPER 98 (2008); Township of Winslow, 33 NJPER ¶16 (2007); New Jersey Transit Corp., 31 NJPER 122 (2005); New Jersey Dep't of Corrections, 19 NJPER ¶ 24087 (1993); Manchester Reg. High School Board of Ed., 25 NJPER ¶ 30166 (1999); In the Matter of Jose Santana (OAL Dkt No: CSV277-09); Blackhorse Pike Reg'l Bd of Ed., 7 NJ PER 502 (¶ 12223) (1981); IFPTE, Local 195 and Stockton State College, PERC Dkt. CO-2008-321; City of Garfield and Garfield PBA Local 46 (App. Div. Dkt # A-5842-12T3) (41 NJPER 63, 2014); City of Asbury Park, 5 NJPER 389 (¶ 10199 1979).

but will fully consider their applicability to this case in my analysis of the evidence of this proceeding.

The District contends that Respondent engaged in bullying and physically intimidating conduct when he interacted with Dr. Sharon Davis on December 19, 2017. It further contends that he falsely stated in a report he sent to the Superintendent of Schools and widely circulated to the school community that he had been forcibly ejected from the building by security upon instruction from Dr. Davis. While acknowledging Respondent's role as President of the Paterson Education Association, the District submits that applicable case law fully supports the ability of a school district to discipline an employee for misconduct even when the employee is acting on behalf of the Union when such conduct threatens workplace discipline, order and respect.

The District seeks to credit the testimony of Dr. Davis that after she tried to contact Principal Medley, Respondent moved to her side of the desk, came within twelve (12) to eighteen (18) inches from her and loudly yelled "you can get whoever you want" and "I'm not one of your teachers" while pointing his index finger and shaking his hand close to her face. This, the District contends, caused Dr. Davis to be scared and fearful because of Respondent's conduct and because he was blocking her way while verbally attacking her. After telling the Respondent that "we're done" because of his alleged intimidating conduct, Dr. Davis asked him to leave her office. The District urges credit be given to Dr.

Davis' testimony that Respondent then got red in the face while yelling "you can't kick me out of the building" and "I will say it the way I want to say it. I will talk to you the way I want to talk to you." Although Respondent then exited the office, it was not until Dr. Davis threatened to call security. The District contends that he continued to shout these or similar statements as he was leaving the office. According to the District, Dr. Davis' version of the events are wholly supported by her and the testimony and written contemporaneous notes taken by Ms. DelRosso who witnessed the events while working inside the office of Dr. Davis. Ms. DelRosso's testimony and her notes are said to mirror Dr. Davis' version of the events and confirmed by her testimony. The District points out that Ms. DelRosso was in the office solely for business reasons and her testimony graphically depicted Respondent's actions as they were occurring. Ms. DelRosso also expressed that she had fear for Dr. Davis' safety as a result of Respondent's conduct. The District also points out that Dr. Davis testified that she had fear for her safety as a result of the incident and called City police to make an incident report the next morning, as well as asking the District to provide a security escort for her to and from her car as she came and left the building.

The District also takes issue with the report Respondent wrote to the Superintendent of Schools on December 20, 2016 representing that Dr. Davis had him forcibly ejected from the building by security. The District refers to "video proof" showing that no one from security forcibly ejected Respondent walked down the hall, down the stairs and out of the building and there is no

evidence of physical or forceful removal. Instead, the video reflects Respondent voluntarily leaving the building after engaging in social interaction with colleagues and teachers as he left. The video shows the security guard in an unremarkable exchange with Respondent and his colleagues and simply following them as they left. The District further notes that, despite the evidence to the contrary, Respondent repeated the allegation that he was forcibly ejected in a certified unfair practice charge the Association filed with PERC.

The District contends that Respondent's denials of misconduct are not credible for several reasons. In addition to the forcible ejection allegation, the District points to Respondent's denial that he puckered his lips and blew a kiss at Dr. Davis while he faced her doorway after exiting the office. It submits that Respondent's testimony that he was only getting in the last word with Dr. Davis as clearly inconsistent with what is clearly shown on the video. The District also cites the testimony of Ms. DelRosso who testified that Respondent made this facial gesture. The District further notes Respondent's admission that he contacted the President of the Hoboken Education Association after Dr. Davis accepted a position as principal in the Hoboken District for the 2017-2018 school year because he wanted to let her new district know what they were in for. This latter incident is said to support its belief that Respondent has acted with malice towards Dr. Davis.

Respondent seeks dismissal of the tenure charges for several reasons. Initially, he contends that he was clearly engaged in protected activity as President of the Association when he approached Dr. Davis to question her about her use of a confidentiality statement in her remarks to staff. Respondent emphasizes a decision from PERC that an employer may criticize a union representative's conduct during a meeting but may not discipline the representative as an employee when that conduct is unrelated to job performance.<sup>6</sup> Here, as a full-time released President of the Paterson Education Association, Respondent had no teaching duties yet tenure charges were filed against him as a District employee.

Moreover, Respondent contends that Dr. Davis refused to discuss a grievable issue, terminated the meeting and instead called security to have him removed. This, it submits, showed hostility towards Respondent for his having exercised his statutory rights. The filing of tenure charges some three months after the incident and a month after the unfair labor practice charge is claimed to have been an act of retaliation for filing an unfair practice over the incident. Respondent alleges that the District has unlawfully threatened his employment, has interfered with his rights to advocate on behalf of his membership, and has had a chilling effect on the rights of all other union representatives to engage in protected activities. In support of these arguments, Respondent cites to numerous cases supporting its his belief that Respondent's conduct was justified and that the District's actions in response were unlawful. Respondent submits

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<sup>6</sup> Blackhorse Pike Reg'l Bd of Ed, 7 NJ PER 502 (¶ 12223) (1981)

that the District has not met its burden to establish that it had any legitimate business justification to interfere with his rights as President of the PEA or to have filed tenure charges against him.

Citing Garfield and Garfield PBA Local 46 (App. Div. Dkt # A-5842-12T3) (41 NJPER 63, 2014), Respondent contends that the District has not met its burden to establish that his conduct rose to the level of that which “indefensibly threatens workplace discipline, order and respect. On this point, it is urged that his testimony and that of Mr. Wolfe be credited over the diametrically opposite testimony of Dr. Davis and Ms. DelRosso.

Respondent takes issue with Dr. Smith’s Investigation Report as to his assessment of credibility. It points to his reference to Ms. DelRosso only meeting with Dr. Davis approximately twice per year as a basis to support his statement that “I can see no reason why her account wouldn’t be credible.” It points to Ms. DelRosso’s testimony that she would meet with Dr. Davis a few times a month either in teachers’ classrooms or in Dr. Davis’ office. Respondent also points to the testimony of Ms. Caparso who testified that she was in the teacher’s lounge between 1:37 p.m. and 1:41 p.m. on December 19, 2017 and overheard a male and a female voice speaking loudly but not more loudly than the other and was not alarmed over the loud voices she heard. Ms. Caparso was not alarmed over the conversation. This is said to contrast with the testimony of Ms. DelRosso and Dr. Davis that Respondent was yelling while Dr. Davis remained calm.

Respondent also questions the lack of any investigation into who else was in the teachers' lounge at the time and what they may have heard. Respondent further cites to the video showing nothing of an irregular nature occurring in the hallway after he exited Dr. Davis' office. On this point, Respondent argues:

If the testimony of both Dr. Davis and Ms. DelRosso is to be credible, the video should show a very upset Mr. McEntee, who has just lost control of himself, who was screaming while they remained calm and who almost hit Dr. Davis, leaving her office in a huff/rage, red in the face. Yet the very second he comes into view in the hallway, the exact opposite occurs – Mr. McEntee is his usual jovial self. There is no one indication from the video that he was upset or that he was red in the face from screaming inside the office. There is no one indication of any hostility towards anybody in Dr. Davis' office. Also, the video shows Dr. Davis following him out. So much for Dr. Davis being fearful of being close to Mr. McEntee.

Respondent also notes that Ms. DelRosso filed a written report after the incident that, unlike her testimony, did not mention Respondent blowing a kiss to Dr. Davis after he exited her office. Respondent further contends that Dr. Davis' filing a police report the day after the incident and her request for security two days after the incident were totally at odds with the video depicting an unremarkable conclusion to the meeting. He points to the reference in the police report that Dr. Davis wanted to "scare him straight." In respect to the request for security, Respondent notes the testimony of Dr. Davis that it was the social media posting that prompted her fear yet Respondent was not responsible for the postings of others and there were no threats made to Dr. Davis in the postings.

## DISCUSSION

Pursuant to N.J.S.A. 18A:6-10, “[n]o person shall be dismissed or reduced in compensation ... 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 ... except for inefficiency, incapacity, unbecoming conduct, or other just cause.” The burden is on the District to establish that there was unbecoming conduct or other just cause and, if so, whether it had just cause to issue an unpaid suspension to Respondent McEntee.

I first address the record’s reference to the unfair labor practice charge filed by the Paterson Education Association against the State Operated School District of the City of Paterson. This charge, as amended, has been held in abeyance by PERC pending a decision in this tenure proceeding. It is beyond my authority to decide the merits of the PEA’s contention that PERC has exclusive jurisdiction over its claims that Dr. Davis interfered with Respondent’s statutory rights and that the tenure charges were filed in retaliation for the Association’s filing of an unfair practice charge. PERC has not deferred the unfair practice charge to this arbitration proceeding. Nevertheless, the core of the Respondent’s answer and defense to the tenure charges raises the very standards set forth in Bridgewater. The issues raised in this proceeding require consideration of those standards in this tenure proceeding when evaluating whether the District has met its burden to meet the standards necessary to support a reduction in compensation as set forth in N.J.S.A. 18A:6-10.

The parties have offered many citations to cases they assert support their respective positions. They are all applicable to this analysis because they help describe what constitutes protected activity, they relate to the proper scope of conduct allowable for union representatives in their efforts to engage in protected activity, the boundaries for such conduct during those efforts, the rights and obligations of employers when responding to an employee who has engaged in protected activity, as well as what constitutes unbecoming conduct or other just cause. A review of these cases underscores the requirement to examine all specific relevant facts and circumstances surrounding events that give rise to deciding whether a union representative is engaging in protected activity, to whether an employer exhibits hostility to a union representative engaging in protected activity and whether the conduct of the union representative when doing so gives rise to corrective or punitive action that an employer would have taken in any event.

The record reflects that the December 19, 2016 meeting was unscheduled. Nevertheless, Respondent's first comments to Dr. Davis after he entered her office raised an issue protected by statute. It challenged her use of a confidentiality statement in emails to staff. Respondent testified that he went to Dr. Davis' office to discuss her use of the confidentiality statement based on what he had been told by a teacher in the teachers' lounge. While it is clear that Respondent had the right to raise this issue with Dr. Davis, the location chosen

for this purpose is not unlimited in scope. In this instance, no grievance had been filed concerning Dr. Davis, nor was a meeting scheduled with her or anyone else to discuss an issue that could become grievable. Nevertheless, despite the fact that Dr. Davis was conducting school business at the time, she initially allowed for discussions on the issue. Respondent was aware that a similar issue had previously been raised at School No. 8 and had been resolved through intervention by Luis Rojas, Director of Labor Relations. Respondent and Dr. Davis both testified that they were aware of this resolution at the time that Dr. Davis allowed Respondent entry to her office on December 19, 2016. Dr. Davis testified that she had ceased using the confidentiality statement in her emails prior to December 19, 2016 because of the understanding reached at School No. 8. However, she did not mention this to Respondent when he made his inquiry. Respondent asserts he did not know that Dr. Davis' use of confidentiality statements in her emails had ceased. There are no emails in evidence contradicting Dr. Davis' testimony that she ceased using the confidentiality statements.

After entering her office, Respondent asked Dr. Davis if she uses a confidentiality statement in her emails. She responded "why do you ask?" Prior to this, Dr. Davis voluntarily permitted Respondent and Mr. Wolfe to enter her office despite the fact that she was busy at the time and no meeting had been scheduled. She was aware of who they were after asking and receiving business cards from them. There also had been one unremarkable prior interaction

between Respondent and Dr. Davis that would have led Dr. Davis to be aware that Respondent was President of the PEA. This knowledge, coupled by the response “why do you ask,” placed the meeting in the context of protected activity because at that time this interchange was voluntary, it involved a potentially grievable issue and it opened the door for further discussion. There is no allegation of impropriety in Respondent being in Dr. Davis’ office despite the fact that the meeting was unscheduled since Respondent was voluntarily admitted into the office and was given an opportunity to state his reason for being there. Because Dr. Davis was in a business meeting with Ms. DelRosso she could have, but did not, deny Respondent entry and then provide him with the opportunity to meet at a different time. Instead, she appeared to be willing to continue the discussions if Principal Medley were present.

The record shows that Dr. Davis was initially without knowledge that Respondent would raise the issue of a potential grievance with her. Upon learning this, Dr. Davis said if a grievance was going to be discussed or filed she wanted to involve Principal Medley and have him present. There is no evidence that Principal Medley had been advised earlier by Respondent that an issue over the email existed. She then unsuccessfully tried to contact him by telephone. Respondent, without any evidence of provocation from Dr. Davis, questioned her decision to call Principal Medley by saying and repeating “I don’t care who you call.” At this point, the testimony of Respondent and Dr. Davis conflict as to who began to raise the voice and tone level. Dr. Davis clearly indicated that she was

not going to allow for an impromptu grievance meeting without the presence of Principal Medley and communicated this to Respondent. Under these circumstances, Dr. Davis acted within her rights to terminate the unscheduled meeting during the conduct of official school business while maintaining an obligation to be available to Respondent to continue discussion of the issue at a time to be scheduled. Similarly, Respondent maintained the right to file a grievance at any time over the issue of the confidentiality statement. There is no evidence during this initial phase of the brief meeting that Dr. Davis was hostile to Respondent or that her request to have Principal Medley present was improper or was evidence of hostility. On the contrary, Dr. Davis showed a willingness to continue the discussion and did not ask Respondent to leave merely because he said a grievance might be filed. Based on the evidence existing at the time, had Principal Medley been contacted and was able to participate, it is reasonable to conclude that the discussions would have continued and that the events that followed would not have occurred.

The dialogue between Respondent and Dr. Davis grew in intensity after Respondent said "I don't care who you call." Respondent acknowledged that he did make a finger gesture while making this statement. I credit the testimony of Dr. Davis and Ms. DelRosso that Respondent first raised the volume level after and repeating this statement. This occurred in close proximity to Dr. Davis when she asked Respondent why he did not extend her the same courtesy as building delegates by simply asking her if they could discuss a possible grievance.

Respondent at that time said “I’m not one of your teachers” and, according to Dr. Davis and Ms. DelRosso, moved aggressively to the side of Dr. Davis’ desk. I find that Respondent did make this movement, and while doing so made gestures to Dr. Davis that she deemed to be aggressive and made her feel uncomfortable. However, I do not find sufficient evidence supporting the view expressed by Dr. Davis that Respondent deliberately moved in a fashion that prevented her from leaving the office.

Ms. DelRosso testified that Dr. Davis remained calm but that later her voice quivered. I accept Respondent’s characterization that both he and Dr. Davis got loud and that the level of his voice may have exceeded that of Dr. Davis. Dr. Davis told Respondent that “we are done” and asked him to leave the office. This statement, under all of the verifiable circumstances, was not unlawful. Dr. Davis was not under an obligation to convert her business meeting into a grievance meeting. The events thereafter unfolded very swiftly and gave rise to differing interpretations. I credit the testimony of Dr. Davis that Respondent was saying “you can’t throw me out of the building” and “I’ll talk to you the way I want to talk to you” after she asked him to leave. Dr. Davis asserts that Respondent refused to leave her office until the point that she said she was going to call security. Respondent denies refusing to leave before Dr. Davis called security. There is insufficient evidence to support Dr. Davis’ testimony that Respondent refused to exit her office and did so only in response to her saying she was going to call security. I do not find this to be an issue of credibility. The

interchange at that point occurred within a few brief seconds and it reasonably may have appeared to Dr. Davis that Respondent refused to leave. However, I find it more than likely that the sequence of events occurred so quickly that Respondent's alleged refusal to leave came very soon before the call to security and reasonably gave rise to different perceptions over the timing of these events. It is clear, however, that he initially did not honor the request to leave the office. Respondent did exit voluntarily but continued to challenge Dr. Davis as he was leaving the office. However, as acknowledged in Dr. Davis' testimony, Respondent was not argumentative or confrontational in the hallway. The charge that Respondent paced back and forth in the hallway is not supported by the video footage and indeed appears to show Mr. Wolfe instead. The differing opinions in this issue appear to arise due to the limited view through the bottom of the window that depicted a person walking back and forth without the ability to identify the individual who was doing the pacing.

An additional charge made by the District is that Respondent falsely accused the District of forcibly ejecting him from the school and widely disseminating the false allegation. Mr. Wolfe provided an explanation that the forcible ejection language was intended to reflect that "we did not have a choice to remain." While this statement accurately reflects that Dr. Davis did not give Respondent the option to continue to remain in the office, the video clearly reflects that there was no basis for Respondent to accuse the District of forcible ejection within the literal meaning of the term which strongly implied to the District

and the outside world that the District used some form of a physical act that forced Respondent's removal.

In my evaluation of the record and the above findings, I have considered the video, the testimony, the exhibits, the case citations and the arguments advanced by the parties. This record must be viewed as a whole. After doing so, it supports the District's conclusions that disciplinary action of a corrective nature was warranted for Respondent's conduct while in Dr. Davis' office. His statements were not reasonable connected to the grievance issue and contributed to the erosion of order in Dr. Davis' office. Dr. Davis had a right to end the meeting and this was clearly not initially accepted by Respondent. However, I also find that that the District's request for Respondent to serve an unpaid suspension to be beyond the level of the conduct that it has proven.

Respondent has broad protection as a Union President and a right to utilize the grievance procedure to air and settle disputes without employer interference. Yet, he did not initially accept and repeatedly challenged the direction from Dr. Davis to end the impromptu meeting after being unable to contact Principal Medley. At the time she was in a business meeting with Ms. DelRosso who did not plan to be in a location that would evolve into a grievance meeting with "very heated" discussion. Respondent was engaged in protected activity up until the point that Dr. Davis decided to end the impromptu meeting. The District's obligations to continue dialogue with Respondent remained but it was not obligated to convert the meeting into a grievance meeting under the

conditions present after Dr. Davis said “we’re done” and asked Respondent to leave the office. Respondent’s comments, while not insubordinate, reflected dissatisfaction with not being able to pursue the issue immediately and undermined the authority of a Vice Principal in the presence of a subordinate. Respondent’s statements to Dr. Davis were mostly acknowledged by him but in a context far milder than described by Dr. Davis and Ms. DelRosso. I credit their testimony concerning Respondent’s demeanor but do not find that his conduct rose to the level of threats designed to have Dr. Davis fear for her safety. Because Respondent’s challenging statements continued beyond the point in time that were allowable under the circumstances, the District has established a just cause basis for a written warning but not an unpaid suspension. Such action is to be viewed as corrective and progressive in nature and to provide positive direction to Respondent that while he has a right to engage in the vigorous pursuit of complaints and/or grievances his lawful activities must be conducted without disruption or challenge to the ongoing order of school business.

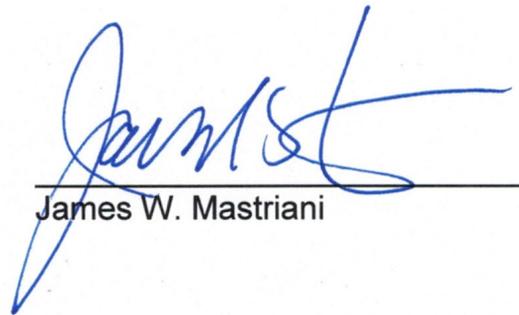
There are activities that followed the incident that are said by both Respondent and the District to support their respective positions. These include wide dissemination of written statements to the District by both Respondent and Dr. Davis, the Respondent’s use of social media, Dr. Davis’ incident report to police, the narrative written by the police officer, Dr. Davis’ request for security escort and Respondent’s communication with the Hoboken School District. The record with respect to these events has been fully considered when fashioning the terms of the Award that I have rendered.

Accordingly, and based upon all of the above, I respectfully enter the following award.

**AWARD**

The District has established other just cause to issue a written warning to John McEntee, Jr. The District's request to issue an unpaid suspension pursuant to N.J.S.A. 18A:6-10 is dismissed. I will retain jurisdiction for the sole purpose of resolving any dispute that may arise in the implementation of this Award.

Dated: December 26, 2017  
Sea Girt, New Jersey

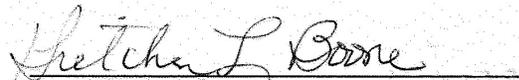


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James W. Mastriani

State of New Jersey     }  
County of Monmouth    }ss:

On this 26<sup>th</sup> day of December, 2017, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



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Gretchen L Boone  
Notary Public  
New Jersey  
My Commission Expires 8-24-2022  
No. 50066778