

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

In the Matter of the Tenure Hearing:

FREEHLD BORO REGIONAL SCHOOL
DISTRICT BOARD OF EDUCATION
PETITIONER
AND
BRETT D. HOLEMAN
RESPONDENT

Arbitrator's
Opinion
and
Award

Agency Docket No. 249 – 9/16

Before: Stephen J. Rosen, Arbitrator

APPEARANCES:

For the Petitioner:

Comegno Law Group, P.C.

By: Jeffrey R. Caccese, Esq.

By: Mark G. Toscano, Esq.

For the Respondent:

Zazzali, Fagella, Nowak, Kleinbaum & Friedman

By: James R. Zazzali, Jr., Esq.

By: Aileen O'Driscoll, Esq.

By: Kaitlyn Dunphy, Esq.

This matter arises out of tenure charges filed with the Commissioner of Education by the Freehold Regional High School District against the Respondent, Brett D. Holeman, dated September 15, 2016. After determination that the charges warranted further action, the Bureau of Controversies and Disputes forwarded the applicable documents to me on or about October 11, 2016. Shortly thereafter, the parties were officially notified of my selection.

The first hearing via a conference call occurred on October 22, 2016. A second conference call with attorneys Aileen O'Driscoll, Jeffrey Caccese and James Zazzali took place

12, 2016. In addition to the attorneys of record, the meeting also included Superintendent Charles Sampson , Director of Human Resources, Dr. Jennifer Sharp and Dr. Brett Holeman. The meeting failed to bring about a settlement.

In response to the tenure charges, Attorney O'Driscoll contended that the Petitioner was unable to show just cause. Ms. O'Driscoll argued that the Petitioner had failed to comply with N.J.S.A. 18A: 6-17. Namely, the Petitioner's submission of evidence and a complete list of witnesses with a complete summary of their testimony was deficient. In addition, the parties had disagreed over the Petitioner's intent to issue subpoenas. The Respondent argued that the Board had not adhered to the timelines prescribed under the Statute and asked that the charges be dismissed. Based upon the positions of the parties, I concluded the matter should proceed. Attached is my decision concerning the dismissal of the Tenure Charges and the Petitioner's attempt through subpoena to obtain information from Respondent's previous employer.

Hearings were held on January 12, 2017, January 19, 2017, January 24, 2017, January 30, 2017, February 6, 2017, February 17, 2017, February 22, 2017, February 27, 2017, March 1, 2017, March 2, 2017, March 11, 2017 and March 16, 2017. A transcript was prepared for each hearing. Both parties elected to submit post-hearing briefs after receipt of the transcripts.

BACKGROUND

The Respondent, Brett D. Holeman, began his employment as a school psychologist with the Freehold Regional High School District in 2004. He holds a Doctorate in Psychology (Psy D) from New York University. In his capacity as a school psychologist, Dr. Holeman provided counseling, cognitive testing and individual educational plans as a case manager. A

school psychologist also serves as a member of child study teams and interacts with administrators, parents and colleagues.

In the Spring 2016, the administration was made aware of allegations concerning Dr. Holeman's behavior. The issues brought to the attention of Respondent's superiors were cited in an April 25, 2016 memorandum sent to Dr. Holeman by Director of Personnel Sharp. The memorandum was in reference to an April 26, 2016 investigatory conference which listed six (6) allegations made against Dr. Holeman. Dr. Sharp listed the following:

- Engaged in inappropriate behavior (inappropriate comments, language and expressions), including the use of profanity, reference to sexual activity in front of students; as well as the use of extreme volume with students and parents within a confidential counseling environment;
- Made repeated derogatory and demeaning remarks about and to colleagues and supervisors;
- Engaged in erratic and concerning behaviors that intruded into and unnecessarily disrupted the workplace of colleagues;
- Jeopardized the State mandated testing environment to which he was assigned;
- Demonstrated an overall lack of respect for authority; and
- Disregarded the District's organizational plan and failed to observe or use proper chain of command when raising issues or concerns.

A summary of the April 26, 2016 conference was drafted by Dr. Sharp (Board Exhibit 8) and submitted to Superintendent Sampson. In her summary, the Director of Personnel questioned Dr. Holeman regarding the District's concerns. Also in attendance were the Freehold Education Association President (FREA), the FREA Vice President and Mrs. Linda Jewell, Principal, Freehold Boro High School.

The April 26th meeting dealt with the allegations made against the Respondent. Dr. Holeman responded to several of the allegations and emphasized that he had received very

positive evaluations during his thirteen (13) years with the District. He refuted the validity of the allegations and commented he was “very passionate about his work.”

Dr. Sharp informed Dr. Holeman that “given his erratic and concerning behaviors” he was advised to get a full psychiatric and medical evaluation that included appropriate blood tests to ascertain the presence of any mood altering drugs or metabolic steroids. The directive concerning medical and psychiatric examination reflected suspicion that Dr. Holeman may have used metabolic steroids, an inference denied by the Respondent. Director Sharp thought it best that Dr. Holeman initiate testing immediately. Although it was noted that a final decision regarding his status had not been made, the Respondent was placed on administrative leave. A similar directive was contained in a letter from Superintendent Sampson dated April 26, 2016. Dr. Holeman was informed his employment status would be discussed at the May 16, 2016 meeting of the Freehold Regional High School District Board of Education.

On August 12, 2016, Sworn Tenure Charges and a Written Statement of Evidence for conduct unbecoming an employee....were filed by the Board Secretary pursuant to N.J.S.A 18A: 6-11 et seq. One month later, on September 12, 2016, the Board reviewed and considered the evidence in support of the Sworn Tenure Charges against Dr. Holeman and determined there was sufficient evidence, “if true in fact, to warrant dismissal or reduction in salary.”

In both email and regular mail dated September 12, 2016, Counsel for Dr. Holeman urged the Board to abstain, if considering the Notice of Tenure Charges, from voting on the charges. As an alternative, a request to approve a transfer to a different position within the District was made in behalf of Dr. Holeman.

The Board referred to a number of incidents which it alleged warranted suspension and further investigation into his conduct. In particular, the District characterized Dr. Holeman’s

behavior prior to his suspension as troubling. It was alleged that Dr. Holeman had raised his voice during a counseling session prompting a supervisor to interrupt the session “to ensure the student’s safety.” Dr. Holeman, it was alleged, repeated this behavior with another student and parent. The Petitioner also referred to a due-process petition initiated by a parent against the Board in reaction to Dr. Holeman’s management of a case and his interaction with the parent.

Dr. Holeman is also alleged to have spoken inappropriately to a student distraught over his break up with a girlfriend. The Board contended Dr. Holeman told the student the girlfriend was a “slut” and that he would soon leave for college and could “fuck 40 girls.” The student had also allegedly conveyed to a staff member that Dr. Holeman had recommended a book titled, “F*ck Feelings,” which is described as a “profanity-filled self-help book” that argues one should “value your actions over your emotions.” It should be noted that Dr. Holeman denied these allegations.

Another accusation concerned Dr. Holeman’s actions and demeanor during the administering of the state mandated PARCC test. The Petitioner described the Respondent’s manner during the test session as disruptive. He allegedly was “cursing, talking loudly” to the extent he made his colleagues “uncomfortable.” He supposedly expressed dissatisfaction with the “administration” and showed considerable annoyance when the test was delayed because computers for the students were not in the test room. The Petitioner contended that Dr. Holeman’s behavior had a potential negative impact while the students were taking the PARCC test.

Apart from behavioral matters, the Board had also expressed dissatisfaction with Dr. Holeman’s alleged failure to complete IEP’s (Individual Education Plan) in a timely manner. It was charged that a number of reports were delinquent at the time Dr. Holeman was placed on suspension.

The Petitioner's investigation included a review of Dr. Holeman's email account. An examination of the Respondent's email account, the Board charged, revealed that Dr. Holeman had spent "a substantial amount of time nurturing his private counseling practice." It was also alleged that Dr. Holeman accepted pay for time counseling current and former students. It was noted Board policy prohibits accepting payment from a current student for services due to a teacher's employment in the District

In regard to Dr. Holeman's private practice, the Petitioner contended that Freehold Boro High School had been used as his official and registered business address. It was alleged that Dr. Holeman created a separate email address for his emails to private clients that were sent through the District system.

An additional charge proffered by the Petitioner concerned the allegation Dr. Holeman "solicited" students for private counseling from internal and administration confidential lists that identified students withdrawing from school. It was alleged that Dr. Holeman directly solicited these students for private counseling. Although some of these actions took place in 2013, if the Administration had known of this at the time, they would have initiated tenure charges. The Petitioner indicated it did not have knowledge if this solicitation has continued.

The Board identified emails that it charged violated confidential student information. One email cited was sent to Dr. Holeman's wife. The Petitioner alluded to the nature of this email as a violation of Board policy as well as disrespectful of the student and his family.

Additional allegation raised by the Board was the nature of emails sent to students which were interpreted as "overly familiar, even intimate." While there was no evidence of improper behavior, the Petitioner believed Dr. Holeman had failed to maintain an appropriate boundary with past and present students.

Petitioner also made reference to an incident concerning a student who was suspected of drug dealing. It was alleged that Dr. Holeman advised the student when confronted not to answer any questions concerning the matter. The Administration believed the advice not to cooperate was interference of the investigation. This 2013 incident was considered an example of previous “insubordinate and inappropriate conduct toward District Administration....”

The Board’s submission to the Department of Education included a charge that Dr. Holeman had failed to disclose his previous employment with the West Morris Regional High School District as an interim School Psychologist and his abrupt termination from this position effective April 10, 2004. Freehold Regional High School’s Professional Employment Application required a list of prior teaching and administrative experience. Dr. Holeman’s failure to list his employment in the West Morris Regional High School District negated the opportunity to investigate the circumstances that resulted in his termination.

The Administration had taken into consideration the concerns expressed by Dr. Holeman’s colleagues. Staff members stated that Dr. Holeman was “unprofessional and uncomfortable to be around.” Dr. Sharp’s Summary of the Investigatory Conference included comments submitted by colleagues that he “seemed erratic lately, speaking loudly in the office.... I feel like I have been walking on eggshells around him.... I feel very uneasy around him.”

Among the charges were that Dr. Holeman had made derogatory and demeaning remarks about both colleagues and supervisors. According to the Administration, he ignored and disregarded the chain of command and the District’s organizational plan. He was described as an individual who did not respect authority.

The District’s submission to the Department of Education stated that Dr. Holeman was not truthful when asked about yelling incidents while counseling a student. The District’s

submission contended that when the student was asked by the Guidance Supervisor if he was OK he did not respond, as claimed by Dr. Holeman, "Of course, I am OK. Why would you think I am not OK?" Furthermore, the Petitioner did not accept Dr. Holeman's assertion that the student commented that he "loved Dr. Holeman."

The Respondent denied that he demonstrated the behavior described by the Petitioner. Dr. Holeman, through his legal counsel, essentially contended the charges were not accurate and, in some instances, a misinterpretation of his counseling tactics. In certain situations, Dr. Holeman explained, it is necessary and appropriate to raise your voice.

Dr. Holeman contended his conference with Dr. Sharp on April 26, 2016, did not provide a "true opportunity to respond" to the allegations. He also denied he fabricated his responses to any questions put forth by Dr. Sharp.

In response to the reference to steroid use, the Respondent disputed the allegation that he told a colleague "that his wife asked him if he was using steroids again." Dr. Holeman's lab tests did not reveal any trace of steroids.

Dr. Holeman denied that he had admitted recommending the book the administration considered inappropriate. He also did not agree with the Petitioner's rendition of the distraught and suicidal student's counseling experience with Dr. Holeman.

The PARCC testing outcome was never in jeopardy as suggested by the Petitioner. The reference to a colleague being uncomfortable around him was something Dr. Holeman was unable to address.

Dr. Holeman disputed that he used school time or facilities in his private practice. He also denied privately counseling current District students for a fee and acknowledged he was familiar with Board Policy. Dr. Holeman indicated that he understood he was not able to offer private

counseling for pay until after a student had graduated. Furthermore, he denied directly soliciting students for professional services.

Dr. Holeman admitted temporarily registering 2 Robertsville Road, Freehold, NJ (District address) with the State Board of Examiners for his private business. However, this was only for a brief period of time while relocating his private practice. He always provided a private work phone number with the Board of Examiners as his official business contact number and never provided the school address for purposes of private counseling.

In one instance, the Petitioner charged, Dr. Holeman utilized the Board issued email account to contact a non-school related recipient. Board policy stipulates that its email system is restricted to messages that are school related. Dr. Holeman did not agree with the charge.

Dr. Holeman acknowledged being employed as an interim School Psychologist at the West Morris Regional High School District. In Dr. Holeman's submission to the Department of Education, Controversies & Disputes, he denied being terminated abruptly from this interim position. The Respondent also denied that he intentionally withheld employment information on his application to the Freehold Regional High School District. A newspaper article (Observer-Tribune) that stated he was asked to leave the West Morris Regional High School District was described as opinion or conjecture by the Respondent.

In many of the charges put forth by the Petitioner, the Respondent's legal counsel responded they were legal questions their client was unable to answer. A number of the charges, it was argued, were described as redundant.

POSITION OF THE PETITIONER

After the administration became aware of Dr. Holeman's inappropriate, insubordinate, erratic and volatile behavior in the Spring of 2016, it was determined that a thorough investigation of both his behavior and performance was warranted. The investigation in the Spring of 2016 revealed "a trail of lies, willful deceit, manipulation and frightening conduct...."

In spite of the statements submitted and testimony of co-workers and administrators, Dr. Holeman "steadfastly refused to acknowledge that his conduct either occurred or was inappropriate." Dr. Holeman, the District argued, has shown an inability to work collaboratively with colleagues.

In formulating the Tenure Charges, the Board considered a number of incidents and occurrences that supported removal from the District. Dr. Holeman was deemed to have violated several Board policies including the "Code of Ethics of the Education Profession along with elements of the New Jersey Administrative Code." Given these violations, the District can no longer trust him or his judgment.

Among the allegations was the charge Dr. Holeman after school hours, in late February/early March, sent text messages to Supervisor Rosalia Minervini. Ms. Minervini reported her concerns about the texts to Principal Linda Jewell. Ms. Minervini found Dr. Holeman's texts inappropriate. "For example, he would refer to colleagues as 'mentally ill' and 'not stable to work with children.' He called them evil and sick. He once labeled staff members 'fucking bitches.' "

In an IEP team meeting with a parent around March 23, 2016, Dr. Holeman became 'noticeably volatile.' Marla Reich, the District's Speech Language Pathologist testified that Dr.

Holeman inappropriately raised his voice during the meeting. Dr. Sharp testified Dr. Holeman advised the parents on “working around” the administration. Superintendent Sampson testified Dr. Holeman’s conduct in the March 23rd meeting escalated an already uneasy situation with the parents and ultimately led to litigation.

District Guidance Counselor Holly Fabian testified that a student informed her Dr. Holeman told him that he would go to college and fuck many girls. Dr. Holeman also told the student his ex-girlfriend was a slut banging other guys. Ms. Fabian testified that Dr. Holeman’s comments were “extremely inappropriate” and she would no longer refer students to Dr. Holeman.

The Petitioner’s concerns included Dr. Holeman’s volatile behavior directed toward students. “On April 18, 2016, Student QH reported to Principal Jewell that Dr. Holeman yelled at her.” Dr. Holeman did admit he “raised” or elevated his voice when he spoke to QH on the telephone. While Dr. Holeman explained he had served as the student’s counselor for a long period of time and believed it was necessary to be firm. Although Dr. Holeman suggested QH call him back, she never called back and complained about Dr. Holeman’s behavior to Principal Jewell.

District Supervisor Suzanne Gallo testified that on the same day as the QH incident she found it necessary to instruct Dr. Holeman to lower his voice because students and parents outside his office were able to hear him. After leaving his office, Dr. Holeman resumed speaking in a loud voice that prompted Ms. Gallo to report the matter to Ms. Jewell.

Principal Jewell testified that she spoke to the student who had been in Dr. Holeman’s office at the time Ms. Gallo had asked that the Respondent to lower his voice. The student told

Ms. Jewell that “he deserved to be yelled at,” a comment that Principal Jewell found disturbing. In her opinion, Ms. Jewell felt “she was sitting across from a battered woman.”

When Principal Jewell addressed the matter with Dr. Holeman, he admitted he spoke in a raised voice but not loud enough for others to discern what he said. Dr. Holeman testified that it was sometimes necessary to speak in a loud voice to inspire students and to convey his passion. However, Dr. Holeman’s own witness and mentor Samuel Grove, a retired Freehold Boro psychologist, testified that raising one’s voice was not something he would recommend.

The District had regarded Dr. Holeman’s behavior during the PARCC test and his interaction with colleagues as inappropriate and disruptive. Talking in an elevated and loud voice while complaining about the administration was not conducive to a test environment.

The Board also gave weight to the tone and substance of emails sent by Dr. Holeman. In particular, the Respondent’s criticism of the administration and colleagues was unprofessional. Dr. Holeman had accused Ms. Minervini of “caving” in to a parent and used profanity in his email to her. Dr. Holeman had expressed to Ms. Jewell that he was disappointed in her. The Petitioner characterized the emails as “insubordinate, inappropriate, and disparaging of other professionals.”

When Supervisor Minervini had addressed in a meeting Dr. Holeman’s loud voice with a student, she described Dr. Holeman’s reaction as uncooperative. He told Ms. Minervini that the administration did not have “a clue as to what effective counseling is.” Ms. Minervini testified that Dr. Holeman was very “disrespectful, inappropriate and volatile toward her and, as such, she had to end the meeting.”

The District had stressed the importance of completing IEP reports on a timely basis. Dr. Holeman shifted responsibility and blame for the backlog in submission of the ILP’s to others

and took no responsibility for not having his IEP's completed. When questioned about the submission of IEP's, Dr. Holeman told Ms. Minervini he was up to date. Despite the fact he was informed in a 2013 performance review that he was not in compliance with IEP timeliness, he expressed surprise the issue (Exhibit 12) was raised by the Petitioner.

In a meeting with Ms. Jewell and Freehold Regional Education Association President Deborah Gates-Kane, on or about April 22, 2016, Dr. Holeman was informed there were concerns about his behavior. Told that he would be placed on administrative leave, he became very upset. Ms. Gates-Kane testified in a telephone conference call that at one point Dr. Holeman stood up and was alarmed there was going to be a physical confrontation with Ms. Jewell. Ms. Gates-Kane confirmed that Dr. Holeman also "threatened" Principal Jewell stating, "You better sleep with one eye open."

Dr. Sampson testified that he would have sought tenure charges in 2013, if he had known at the time Dr. Holeman had accepted a counseling fee of \$130 from the parents of a student enrolled in the District. Although the student was on home instruction, Dr. Holeman failed to ask a supervisor or administrator if accepting a fee was permissible. The student's parents had informed Dr. Holeman that they were waiting to meet with Superintendent Sampson. The Respondent did not admit that he was in violation of a policy that prohibited accepting a fee for counseling a student on home instruction.

The charges also listed the use of the District's resources to advance his private counseling business. Dr. Holeman admitted he used the District email for his private business. He acknowledged that he signed the District email using his company's name, "Psyched Up," rather than creating a separate business email address.

In correspondence to the New Jersey State Board of Examiners, Dr. Holeman used the address of Freehold Borough High School. Dr. Holeman explained that he did not want to use his home address for privacy reasons, yet was willing to provide an address where students are located.

Staff member Lindsay Pantaleo testified she was “uncomfortable” when she learned Dr. Holeman had placed her name and school email address on a pregnancy website without her consent.

In the course of the investigation, the District discovered inappropriate emails sent to parents of students and current and former students. Dr. Holeman revealed confidential information in an email to his wife. Dr. Holeman had referred to a former student as “my little girl.” In another email exchange with a former student, he discussed a then current student. Superintendent Sampson alluded to student privacy as a “sacred trust” that had been violated by Dr. Holeman.

The District made reference to Dr. Holeman’s interference with a prior investigation involving a student discipline matter. In the course of the investigation for alleged drug involvement, Dr. Holeman advised the student not to answer any questions. The accusation was confirmed by credible witnesses who observed the incident.

Superintendent Sampson stated that Dr. Holeman does not respect authority. In addition, he does not take responsibility for his behavior, blames others and “exhibits narcissism in the extreme.” The Superintendent testified that he did consider Dr. Holeman’s employment history, but concluded the Respondent’s “other behaviors were too extreme,” to be overlooked. The District cannot trust Dr. Holeman as a professional, cannot expect he will keep student confidentiality, or maintain “appropriate ways with staff members, with school community

members and follow rules and procedures.” Superintendent Sampson concluded that there is no way that Dr. Holeman will be fit to return to either the Freehold Regional High School or any position in the District.

POSITION OF THE RESPONDENT

The Respondent argued that the charges were flawed on several levels. These included a failure to interview individuals who were identified and quoted by the Petitioner. Director of Personnel, Dr. Jennifer Sharp, failed to provide Dr. Holeman with the opportunity to adequately respond to the allegations and speak directly with colleagues and administrators who were regarded as central to the decision reached by the Board. Furthermore, Dr. Holeman’s many years of exemplary service and excellent evaluations were ignored.

Doubt concerning Dr. Sharp’s expertise to conduct the investigation was called into question by the Respondent’s legal representative. “Other than learning ‘general interviewing,’ and ‘affirmative action investigation’... her training was limited to classes taken in 2004 for her Principal’s certificate.” Neither Dr. Sharp or Principal Linda Jewell interviewed staff members or students connected to the allegations. Instead, they relied upon written statements requested by Ms. Jewell. Dr. Sharp never “truly attempted to find additional witnesses” or corroborate statements.

Dr. Sharp testified that the first time she was alerted to a concern regarding Dr. Holeman was on or after April 18, 2016. Those concerns were brought to her attention by Principal Jewell who had questions about Dr. Holeman’s conduct in the guidance suite. Ms. Jewell specifically stated that colleagues informed her Dr. Holeman was erratic and loud with students. Shortly thereafter, Dr. Sharp put Dr. Holeman on suspension.

At this point Dr. Sharp reported her concerns to Superintendent Charles Sampson who authorized her to look into Dr. Holeman's emails. Ms. Jewell was instructed to collect statements from staff prior to a meeting on April 21, 2016 between the Principal, Union Vice-President Debbie Gates Kane and Dr. Holeman. A second meeting was convened on April 26th that included Dr. Sharp and Union President James Huebner. It was from the April 26th meeting that Dr. Sharp wrote her Investigation Summary (Exhibit 8).

In answer to the charge Dr. Holeman had failed to complete IEP's in a timely fashion, the Respondent noted the heavy caseload he was assigned. He also argued that the IEP's identified could not be completed since he had been placed on Administrative Leave. In addition, the completion of IEP's were dependent on the input and collaboration of other staff members in addition to Dr. Holeman. The Respondent explained that as the School Psychologist there were occasions when he had to deal with emergencies and crises.

One such crisis was the death of a Freehold Boro High School student. In response to the tragedy, Dr. Holeman visited classrooms and spoke to staff members. The time spent in grief counseling diverted him from preparation of reports. His efforts in providing support to the school community were recognized by Principal Jewell as well as others.

Supervisor Rosalia Minervini commended Dr. Holeman for the emotional support he provided. Ms. Minervini wrote that Dr. Holeman's classroom visits were well received. "She wrote that she was personally settled and calmed by Dr. Holeman's approach."

Dr. Holeman contended when employed at the District, Secretary Fran Ellner was the only person authorized to submit IEP's. Ms. Ellner was responsible for the "final step" for over 400 students in two high schools. Apart from Ms. Ellner's clerical burdens, delays could occur due to rescheduling meetings with parents or conflicts with staff members.

Ms. Minervini never discussed non-compliance of IEP reports with Dr. Holeman nor did she issue him any warning that he was delinquent in the completion of reports. Ms. Minervini testified that it was her practice, if a problem persists, to issue a written memo and, if necessary, prepare a corrective action plan.

Dr. Holeman did bring the extended lunchtime taken by guidance counselors to the attention of Principal Jewell. The extended lunchtime counselors had taken was addressed by the administration.

The inappropriate behavior charge was without merit. The characterization of ‘overly familiar, even intimate’ emails was misinterpreted. A number of the emails were from former students who had reached out to Dr. Holeman. These former students used their private email addresses and sent messages to Dr. Holeman’s Freehold Boro High School address, the only address they possessed. Any purported policy violations were under a policy that was enacted after those identified by the Petitioner. Principal Jewel conceded that the content of certain emails, in her opinion, did not violate District policy.

The allegation concerning a lunch invitation to a student at the on-campus, Five Star student culinary restaurant was with his two daughters. Dr. Holeman wanted to recognize the “very quiet” student who had won a “Senior of the Month” award. When accompanied by a faculty member, students are permitted to have lunch at the Five Star restaurant.

One email identified by the Petitioner was sent after Dr. Holeman was suspended. Dr. Holeman had counseled the student for a few years and he thought she should understand why he could no longer work with her. The Petitioner contended that Dr. Holeman was instructed not to have contact with students. Dr. Holeman believed the student would have regarded his

disengagement as another rejection in her difficult life and wanted her to be aware of the reason he no longer could offer counseling.

Dr. Sharp testified that Dr. Holeman had identified his FRHS email account as “Psyched Up LLC Company” in an effort to acquire a “Labrada” shirt. “This was the sole email or evidence produced by the District to reflect Dr. Holeman spending a ‘substantial’ amount of time during his school day regarding his private practice.” Dr. Sharp was unable to ascertain if this email was written on school time or during the Respondent’s lunch period. Dr. Holeman testified that the shirt he requested from a nutrition/health company was a possible motivational influence for athletic teams he worked with at Freehold.

The emails in Exhibit 25 purported to have been sent during the workday in 2014 and 2015 were mostly transmitted during the summer or during non-work hours. Dr. Sharp acknowledged the emails were not likely violations of Board Policy. In fact, several emails were parent initiated and dealt with student related issues.

Both Superintendent Sampson and Principal Jewell acknowledged staff often worked during the time they were not scheduled to be on duty. Dr. Holeman testified he often worked during his lunch period and break time in addition to evenings and weekends. It was not uncommon for Dr. Holeman to work beyond his contractual hours.

Dr. Holeman explained that the one private patient (although without pay) he counseled on school grounds was Ms. Jewell’s niece. Dr. Holeman was asked to counsel Principal Jewell’s niece at her request and the session was held at the school due to a transportation problem. The niece was not a student at Freehold Boro Regional High School. However, Dr. Holeman saw the niece pro bono at the school after his scheduled workday until she was able to meet him in his Springfield office. As a private patient in Springfield, the Respondent received payment for his

services. Ms. Jewell's request to him was a reflection of her confidence in Dr. Holeman's professional competence. Furthermore, Superintendent Sampson stated there was no Board policy that prohibited counseling students who did not attend Freehold Boro Regional High School.

The charge Dr. Holeman accepted a counseling fee in regard to a student on suspension and home instruction, identified as A.V., was not improper. The student was suspended for allegedly putting visine into a staff member's drink. Mr. Sampson stated he did not know if A.V. returned to the District. Ms. Jewell claimed not to have any recollection of the student. Dr. Holeman stated that previous school administration had informed him that he was not prohibited from seeing a student who was on home instruction or designated as an out-of-district placement. Only, if a current student was on campus was he prohibited from counseling a student in his private practice.

Dr. Holeman testified that A.V. was awaiting a pending expulsion hearing, a situation known to both Dr. Sharp and Superintendent Sampson. It was understood that A.V. would not return to the school. Furthermore, A.V.'s parents were in accord with Dr. Holeman's private counseling role.

The hearing record confirmed that Dr. Holeman did not violate the prohibition against accepting compensation for services provided in behalf of students enrolled at Freehold Regional. Exhibit 22 shows that Dr. Holeman informed a parent that he could not accept a fee until after the student graduates. As an alternative, he offered the parents a referral to another therapist. The offer to provide the name of other therapists was made to parents who requested private counseling when there was a question of violating Board Policy.

Three witnesses with knowledge of Dr. Holeman as a therapist testified that he never suggested private counseling. One witness was not even aware Dr. Holeman had a private practice until after her son graduated.

The charge that Dr. Holeman had used his position as a School Psychologist to promote or profit in his private practice was unsubstantiated. The suggestion Dr. Holeman had access to confidential lists that he used for personal gain was neither documented nor supported by any evidence. In addition, the Petitioner did not establish such a list even existed.

The Respondent addressed the allegation that he had omitted a previous position on his application to the District in 2004. Dr. Sharp testified that the Respondent's application that a prior employment section had been whited out. The application was 14 years old and described by Respondent's legal counsel as stale. Dr. Holeman denied he had been terminated from a previous, short-term position. The Board witnesses had acknowledged that applications submitted by current employees were never examined.

The reference to the Due Process Complaint filed by a parent was prompted by the legitimate decision to declassify her child. The decision to declassify the student was based upon valid reasons and supported by Dr. Holeman's colleagues. Contrary to Dr. Sharp's incorrect assertion, a formal Due Process complaint had not been filed against the District by the parent.

An additional erroneous charge was the accusation Dr. Holeman was yelling at the meeting with the parent. Ms Minervini admitted declassification meetings are often difficult. Furthermore, the Due Process complaint letter to the State was "type written, unsigned, undated and no author or parent was ever produced to authenticate or verify" the conclusions reached by Dr. Sharp.

The Respondent disputed the insubordination charge. It was not uncommon for staff members to express their frustrations and criticisms of administrators to each other. However, at no time did Dr. Holeman refuse to perform his duties. Ms. Jewell did not file a complaint or report alleging that Dr. Holeman was insubordinate. He testified that he had a good relationship with Ms. Jewell who “welcomed open discussion.” On occasions Ms. Jewell and others would come into Dr. Holeman’s office to discuss personal issues. Yet this positive relationship changed just prior to Dr. Holeman’s suspension.

Dr. Holeman denied that he had made a “threatening gesture” toward Ms. Jewell in a meeting attended by former Union President Gates-Kane. The Respondent denied he threatened Ms. Jewell and testified that as a psychologist and father of two daughters he would never threaten a woman.

Legal counsel for the Respondent identified and submitted numerous positive evaluations that he received throughout his “unblemished 13 year career in the District.” His evaluations refer to professionalism, cooperation, dedication and enthusiasm. Despite the absence of any negative evaluations, Dr. Holeman was not afforded the benefit of progressive discipline.

In its Legal argument, the Respondent’s representative alluded to the Tenure Act, N.J.S.A., 18A: 28-1 through 18. A tenured teacher may be dismissed or reduced in compensation only for “inefficiency, incapacity, unbecoming conduct, or other just cause.” The District failed to meet its burden of proof by a preponderance of credible evidence that these stipulations applied to Dr. Holeman.

The Respondent further argued that the credibility of the witnesses was questionable. Dr. Sharp failed to properly interview witnesses and present their statements and allegations to Dr. Holeman. Dr. Sharp was inconsistent in her testimony and showed a lack of understanding of

Dr. Holeman's duties. The Administration did not take into account the possibility Guidance staff colleagues may have been disturbed when Dr. Holeman reported their extended lunch period to Ms. Jewell.

Principal Jewell was unable to remember facts, dates and reference to certain students. Ms. Jewell's reliance on "uncorroborated, non-supported, hearsay by unproduced witnesses" discredited her testimony.

Although Superintendent Sampson signed the tenure charges, he demonstrated a lack of familiarity of the facts. Mr. Sampson acknowledged he was not personally familiar with Dr. Holeman or the events that constituted his removal.

The charges and allegations were considered minor by Respondent's counsel. Except for the use of an elevated voice, none of the charges amounted to just cause.

Upon instructions from the District, Dr. Holeman submitted to both a psychological exam and a blood test. The laboratory report found no evidence of steroids. A Psychiatric Consultant, Daniel Gollin, M.D. concluded that Dr. Holeman was fit to resume his duties as a School Psychologist. After requiring an employee to undergo a fitness for duty examination, the Board cannot "arbitrarily reject both the physician's conclusion" and the result of the blood test.

"The District investigation was never about determining the truth of a matter or ascertaining both sides of a story. Rather, the investigation was about tailoring its process, its collection of selective 'facts' and framing its results for one simple objective: "remove Dr. Holeman from the District."

DISCUSSION AND FINDINGS

The matter addressed in this award differs from many of the tenure decisions arbitrated under the TEACHNJ Act. The intent of the Statute is to “raise student achievement by improving instruction through the adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions:”

The Statute addresses the development of a corrective action plan “to correct deficiencies and improve a teacher’s effectiveness” in the classroom. Under the Act the employee receives an annual summative evaluation rating of “ineffective, partially effective or effective.” Since Dr. Holeman is not a classroom teacher, the provisions regarding classroom effectiveness are not applicable. However, one might argue that a counselor has an impact on student achievement.

The responsibilities of a School Psychologist include providing counseling services, obtaining appropriate services for student mental problems, diagnostic assessment of pupils with educational disabilities, individual and group therapy, preparation and submission of required reports and interaction with school personnel and community mental health and social welfare agencies.

Under the District’s job description, the School Psychologist reports to his or her Appropriate Supervisor, Principal and, or Central Administrator as designated by the Superintendent. The duties of the School Psychologist specify that he or she “upholds and enforces school rules, administrative regulations, and Board policies.” The requirements of the School Psychologist include “makes an effort to establish and maintain cooperative working relationships with students, parents, peers, employees and community.”

The Petitioner charged that Dr. Holeman's behavior was in violation of several requirements for that of a School Psychologist and that of a District staff member.

Charge 1. Dr. Holeman engaged in inappropriate behavior as a school counselor and a professional, habitually made disparaging and demeaning remarks about colleagues, staff members, and administration, and failing to meet his professional obligations to special education students.

The hearing record supports the charge. While the Respondent contended that it was not uncommon for the staff to criticize administrators it does not negate the fact that he made disparaging comments about his superiors and colleagues. Principal Jewell and Supervisor Minervini cited comments that were inappropriate and considered disrespectful by both administrators.

Although Ms. Jewell believed AV reminded her of a "battered woman," the student's state of mind cannot be confirmed. However, Psychologist Samuel Grove, a counselor with considerable experience, testified he would not recommend yelling when counseling a student. Thus, I have determined this charge had been sustained.

Charge 2. Dr. Holeman engaged in inappropriate and unethical conduct by soliciting former and current students for his private practice.

The evidence did establish that Dr. Holeman accepted a counseling fee from the parents of a then current student in 2013.

Dr. Holeman's explanation he was told that receiving a fee for counseling a student on home instruction was acceptable is not credible. At a later date he informed a parent he could not accept a fee if a student was currently enrolled at Freehold Boro Regional High School. There was no evidence, except for the 2013 fee, that established Dr. Holeman received a fee for

counseling a current District student. Furthermore, There is no policy prohibiting the acceptance of a counseling fee for services rendered in behalf of a former student.

Charge 3. Dr. Holeman spent a substantial amount of time during the school day working at his private counseling practice, and even utilized his school office for his private practice; all of which resulted in a severe dereliction and failure to complete his assigned responsibilities and obligations to the students he was assigned to evaluate and/or case manage.

The District was unable to prove that Dr. Holeman spent a substantial amount of time conducting private business on school time. The Respondent testified that he often sent emails before his workday began or on lunch break or during non-assigned periods. While the allegation may have merit, the District did not establish Dr. Holeman utilized “substantial” work time when conducting non-school activities.

The Respondent did use the school mailing address in his correspondence with the New Jersey State Board of Examiners. Dr. Holeman admitted he did use his Freehold Borough High School email address on occasion to set up or manage appointments for his private counseling practice. It is understandable why for numerous reasons, including liability, the District would prohibit the use of its email system for non-school activities. Dr. Holeman’s use of the District’s email system both during and after school hours in the conduct of his private counseling practice was ill advised.

The District had also charged that Dr. Holeman had been delinquent in the completion and submission of IEP’s. Ms. Minervini testified that she was led to understand that the Respondent’s IEP’s were compliant with State requirements. This ceased to be correct after January 2016.

Dr. Holeman stated that he was not the only staff member responsible for completion of IEP's. He testified that other members of the Child Study Team had time restraints and that the final button was "pushed" by the guidance department secretary. This reference to the secretary was not accurate in that he actually "pushed" the button. Although it was correct that the student load had increased over time, the secretary was not responsible for the delay. Dr. Holeman had an obligation to apprise Ms. Minervini of any delay in submission of IEP's.

Charge 4. Dr. Holeman inappropriately and unethically shared confidential student information outside the District.

Dr. Holeman did share information concerning a student with his wife. His wife is a social worker employed in a neighboring school system. There is no evidence the email was read by any other individuals. While it is a violation of confidentiality and according to confidentiality requirements should not have been shared. If sensitive information is shared with a spouse, it is more prudent not to email this information.

Charge 5. Dr. Holeman interacted with students in an inappropriate and unethical manner.

While there is no evidence that Dr. Holeman had an inappropriate relationship with any student the content of emails could have been more carefully thought out. One might conclude that Dr. Holeman did not always exercise good judgment, especially in regard to comments concerning colleagues and administrators.

Although the Petitioner signaled out emails exchanged with former students, contact with former students is not addressed by District Policy.

Charge 6. Dr. Holeman failed to disclose a former employer on his application, ostensibly because he was terminated from his position.

The charge that Dr. Holeman omitted his brief employment with the West Morris Regional High School on his application is correct. On examination of the application, it appears that a section listing previous experience may have been covered with white out liquid. It is difficult to ascertain why the Freehold District did not explore the question of any omissions at the time Dr. Holeman submitted his application.

Dr. Holeman testified he was not terminated by the West Morris District. The evidence obtained through a local newspaper and West Morris District Board of Education minutes confirm that he was abruptly dismissed from the District. Given the failure on the part of the Freehold District to question Dr. Holeman when he submitted his application in June of 2004, and the number of years that he had been employed by the District, I believe the application matter is "stale."

An additional concern dealt with suspicion Dr. Holeman had taken steroids. Staff member Lindsay Pantaleo stated that Dr. Holeman had told her that his wife had expressed concern about his use of steroids. Ms. Pantaleo repeated Dr. Holdman's comment to Susan Guercio. The result of a blood test required by the Petitioner revealed no evidence of substance abuse.

The District requested that Dr. Holeman also undergo a psychiatric exam. The psychiatrist concluded that Dr. Holeman could return to his position as a School Psychologist.

However, of particular concern are the repercussions generated by Dr. Holeman's behavior. The statements and testimony contained in the hearing record show a breakdown in Dr. Holeman's relationship with colleagues and administrators.

As previously noted, several individuals testified that in his interaction with students and parents Dr. Holeman was excessively loud to the extent he was asked to lower his voice.

Supervisor Gallo testified that although she asked Dr. Holeman to lower his voice he continued to be heard outside his office by both parents and students.

Ms. Pantaleo alleged that during the PARCC exam Dr. Holeman talked negatively about administrators in a voice she believed could be heard by students. She noted in her written statement that she found Dr. Holeman visibly agitated and erratic. Ms. Pantaleo commented that she also found Dr. Holeman's language inappropriate.

It is important that the guidance department, teaching staff and administration maintain a cooperative relationship. The hearing record reveals the relationship between Dr. Holeman and others had been damaged.

Dr. Holeman sent an email containing profanity to Supervisor Minervini stating that she "caved." He also "inappropriately and insubordinately" told Ms. Minervini in an email to tell a co-worker, Lisette Salguero, not to refer him any cases. Para professional Susan Guercio alleged that Dr. Holeman had mistreated and talked down to her. Supervisor Minervini stated she found it necessary to abruptly end a meeting with Dr. Holeman due to his "disrespectful, inappropriate and volatile[behavior] told her...."

Dr. Holeman testified that he had a very good relationship with Principal Jewell. After Ms. Jewell was informed that Dr. Holeman's behavior had become erratic, their relationship changed. It became especially tenuous in a meeting attended by Freehold Boro Regional High School Union President Debbie Gates-Kane and Principal Jewell. Ms. Gates-Kane stated that she found it necessary to move in between Ms. Jewell and Dr. Holeman for concern of a physical confrontation. Ms. Gates-Kane testified she was "called in" because his colleagues "were afraid of him...." She also stated that Dr. Holeman said to Ms. Jewell that she should "sleep with one eye open." Rarely does an Association representative provide potentially negative testimony. It

is also unusual for colleagues to criticize a fellow staff member in writing and through testimony.

There is reason to conclude that it would be inadvisable to reinstate Dr. Holeman. The record indicates irrevocable differences between the administration, staff members and Dr. Holeman. In order to effectively serve the needs of students it is important the school Guidance Department function free of conflict.

AWARD:

For the reasons described above, the Tenure Charges submitted by the Freehold Boro Regional School District against Dr. Brett Holeman are sustained.

5/12/17
Date

Stephen J. Rosen
Stephen J. Rosen

State of New Jersey }
County of Essex }

On this 12th day of May 2017 before me personally came and appeared Stephen J. Rosen, to me known to be the individual described in foregoing instrument, and he acknowledged to me he executed the same.

Susan G. Rosen
SUSAN G. ROSEN
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/4/2018

ADDENDUM

In the Matter of the Tenure Hearing
Brett D. Holeman
and
Freehold Boro Regional High School District
Agency Docket No. 249 – 9/16

Ruling on Respondent's Motion to Dismiss

For the Respondent: Zazzali, Fagella, Nowak, Kleinbaum & Friedman
By: Aileen O'Driscall, Esq.

For the Petitioner: Comegno Law Group, P.C.
By: Jeffrey R. Caccese, Esq.

Stephen J. Rosen, Arbitrator

Background:

The matter concerns the dismissal of Brett D. Holeman, Psy.D., a tenured psychologist employed by the Freehold Regional School District and assigned to the system's high school.

At its September 12, 2016 meeting, the Board of Education considered allegations made against Dr. Holeman and voted to support the Sworn Tenure Charges submitted by Superintendent of Schools, Charles B. Sampson. The Board decided that Dr. Holeman's behavior warranted removal and revocation of his tenure status.

As required under New Jersey law, the allegations were forwarded to the Commissioner of Education. After review of the allegations, the Commissioner of Education determined that the matter should be referred to arbitration.

Specifically, the Board identified a number of allegations that were contained in its submission to the Commissioner. The Board characterized Dr. Holeman as unprofessional, unethical and engaging in illegal activities. The contentions prepared by Superintendent Charles B. Sampson included the following accusations:

- a) Dr. Holeman engaged in inappropriate behavior as a school counselor, and a professional, habitually made disparaging and demeaning remarks about colleagues, staff members, and the Administration, and failing to meet his professional obligations to special education students.
- b) Dr. Holeman engaged in inappropriate and unethical conduct by soliciting former and current students as patients for his private counseling practice.
- c) Dr. Holeman spent a substantial amount of time during the school day working at his private counseling practice, and even utilized his school office for his private counseling practice; all of which resulted in a severe dereliction and failure to complete his assigned responsibilities and obligations to the students he was assigned to evaluate and/or case manage.
- d) Dr. Holeman inappropriately and unethically shared confidential student information outside of the District.
- e) Dr. Holeman interacted with students in an inappropriate and unethical manner.
- f) Dr. Holeman intentionally failed to disclose a former employer on his application, ostensibly because he was terminated from his position.
- g) Dr. Holeman does not suffer from any psychological defect or condition that explains or justifies his conduct.
- h) Dr. Holeman does not have a substance abuse problem that contributed to his conduct.

The submission filed by the Board contained very specific allegations that it argued justified Respondent's removal from his tenured position.

Through his attorneys, Respondent answered each of the Tenure Charges filed by the Board. Dr. Holeman denied the accusations made against him by the Board through his legal counsel Aileen O'Driscoll, Esq. In response to the Tenure Charges, Attorney O'Driscoll contended that the Petitioner had failed to sufficiently show just cause. Ms. O'Driscoll argued that based upon deficiencies in the Board's case the charges be dismissed.

In addition to the failure to establish just cause, the Respondent charged the Petitioner had failed to comply with the provision of N.J.S.A. 18A: 6-17. The language cited by the Petitioner is that the District:

“shall provide all evidence including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee’s representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses.”

Attorney O’Driscoll argued in the instant matter the District “produced a wholly deficient witness list which includes a large number of individuals, and unacceptable summaries of the testimony each person will offer.” The intent of the statute, Ms. O’Driscoll stated, requires that pertinent documents held by the Petitioner are to be forwarded as soon as the case is referred to the arbitrator. The Legislature intended that tenure charges be decided expeditiously.

Also noted in Respondent’s argument for dismissal was a reference to IMO Ebert and State Operated School District of New Jersey, Agency DKT. No. 49 – 3/15. The citation emphasized the necessity of full disclosure of witnesses and a summary of their testimony. Respondent’s attorney considered this not only a requirement of the Statute but also an entitlement given that the “teacher is in a reactive posture.”

The list was described by Respondent’s counsel as “wholly deficient.” The list identified more than twenty-five (25) names with vague summaries of their testimony. Respondent also argued the list had been delayed and not produced until requested by counsel. Ms. O’Driscoll contended that this delay alone warranted dismissal of the charges.

An additional matter contested by the Respondent concerned Petitioner’s issuance of subpoenas. In preparation of the charges, the Petitioner sought to obtain, through subpoenas, the personnel records of two other school districts. The districts, West Morris Regional School

District and Marlboro Regional Township, were considered pertinent by the Petitioner for purposes of credibility and ethics. West Morris Regional School District was identified as Dr. Holeman's previous employer. The Marlboro Township School District Administration had been contacted by the Petitioner in regard to a recent application for employment submitted by Dr. Holeman after the tenure charge process commenced. The Petitioner speculated that the Marlboro application might contain false information.

Respondent's attorney argued the issuance of subpoenas was improper. Ms. O'Driscoll contended the subpoenas were untimely since they were not issued until October 28, 2016, two days after the parties' conference call on October 26, 2016. Ms. O'Driscoll also argued that the issuance of subpoenas rests solely with the arbitrator. Neither N.J.S.A. 18A: 16-17 and AAA rules allude to the issuance of subpoenas by an attorney. Omission of subpoena authority, Respondent's attorney argued, reflects her position regarding the issuance of subpoenas.

In my opinion, an attorney of record in New Jersey can issue a subpoena. This view is based on interpretation of the following:

A subpoena may be issued by either: „ The clerk of the court. „ An attorney. „ A party in the name of the clerk. (N.J. Ct. R. 1:9-1). Practitioners most commonly issue subpoenas by signing the subpoena in the name of the clerk. In certain specialized proceedings, the following may also issue subpoenas: „ Judicial officers and sometimes law enforcement officers in municipal proceedings (N.J. Ct. R. 7:7-8). „ Judges and non-lawyer representatives in administrative proceedings (N.J. Admin. Code § 1:1-11.1). „ Arbitrators in arbitration proceedings (N.J. Stat. Ann. § 2A: 23B-17).

Under its Labor Arbitration Rules of the American Arbitration Association:

27. Evidence and Filing of Documents

The parties may offer such evidence as is relevant and material to the dispute, and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses and documents may do so independently or upon request of any party....

Discussion of Motion to Dismiss

As indicated, it is my opinion that the State of New Jersey allows an attorney to issue subpoenas. However, the weight to be given to the information sought by the Petitioner is questionable. The Marlboro Regional School District subpoena is not relevant to the tenure charges since it represents a post termination document. Furthermore, the Petitioner does not know with certainty that its suspicions are valid.

The West Morris Regional School District subpoena has limited weight given that the Respondent has been in the employ of the Freehold District for approximately thirteen (13) years. During the years of Dr. Holeman's employment, the Freehold Regional District did not investigate or question his previous experience.

The release of personnel records is resisted by employers. Thus, the Petitioner's efforts to obtain personnel records have limited chance of success without a directive from the Court.

The witness list was acknowledged by Petitioner to be longer than the actual number of individuals who would likely be called to testify. The summary of witness statements is vague. While the relationship of possible witnesses can be culled from the tenure charge filed with the Commissioner of Education, I have instructed Petitioner to forward a more accurate list of witnesses and a more precise synopsis of their anticipated testimony.

The Respondent had taken issue with the failure on the part of Petitioner to adhere to the timelines prescribed under N.J.S.A. 18A: 6-17.1. As described below:

(3) Upon referral of the case for arbitration, the employing board of education shall provide all evidence including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. At least 10 days prior to the hearing, the employee shall provide

all evidence upon which he will rely including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employing board of education or its representative. The employee shall be precluded from presenting any additional evidence at the hearing except for purposes of impeachment of witnesses.

I have taken into consideration the above and other issues raised by Respondent's attorney and do not believe they warrant dismissal of the Tenure Charges.

The Bureau of Controversies and Disputes forwarded the applicable file to me on or about October 11, 2016. The parties were informed of my selection a few days later and preferred to delay selection of hearing dates until they were officially notified of my appointment. This has resulted in delay of the process. The first hearing date was convened with the attorneys and arbitrator via a conference call on October 26, 2016. A second conference call was initiated on November 22, 2016. Hearing dates have been selected and various issues and concerns were expressed by both attorneys on November 22, 2016. A meeting to discuss a possible settlement is scheduled for December 12, 2016.

Selection of hearing dates has been complicated by the prior commitments of both representatives. Strict adherence to N.J.S.A. 18A: 6-17.1 timelines has been unavoidable. Neither party has deliberately delayed selection of hearing dates.

Given the above conclusions, I have determined that Dismissal of the Tenure Charge should not be granted.

12/3/16
Date

Stephen J. Rosen
Stephen J. Rosen, Ed.D.
Arbitrator