

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

In the Matter of the Tenure Arbitration Hearing of:

Thomas Hornes, School District of the Township of Rochelle Park

Before: Thomas D. Hartigan, Arbitrator

Agency Docket No. 248 – 10/17

Appearances:

For the District: Stephen R. Fogarty, Esq., Of Counsel and on the Brief
Amy E. Canning, Esq., on the Brief
Fogarty & Hara

For Respondent: Ty Hyderally, Esq., Of Counsel and on the Brief
Lia Fioll-Matta, Esq. on the Brief
Hyderally & Associates, P.C.

On October 25, 2017 the Bureau of Controversies and Disputes acknowledged receipt of Tenure Charges filed by the District on October 24, 2017 involving the above captioned matter. The Rochelle Park School District filed four (4) charges in this matter:

1. That, Thomas Hornes, a tenured teaching staff member in the employ of the Rochelle Park Board of Education, engaged in Conduct Unbecoming a Teacher when he tampered with PARCC Security Agreements required to be signed by all school personnel, directed school personnel to violate the security procedures related to these Security Agreements, harassed staff members who submitted their Agreements, and improperly solicited the District's students for personal gain, and such actions justifies dismissal from his teaching position.

2. That, Thomas Hornes, a tenured teaching staff member in the employ of the Rochelle Park Board of Education, engaged in Conduct Unbecoming a Teacher when he created an Unhealthy Working Environment for those nontenured staff members who chose to sign the PARCC Security Agreements and comply with their professional responsibilities, and such action justifies dismissal from his teaching position.
3. That, Thomas Hornes, a tenured teaching staff member in the employ of the Rochelle Park Board of Education, engaged in Conduct Unbecoming a Teacher when he obstructed the Security Agreement Investigation, attempted to cover up his actions, and unequivocally lied about his tampering with and destruction of the official security documents, which demonstrates disrespect for his role as a teacher and disrespect for the school district, and calls into question his capacity to be a role model for students, and such dishonesty justifies dismissal from his teaching position.
4. That, Thomas Hornes, a tenured teaching staff member in the employ of the Rochelle Park Board of Education, engaged in Conduct Unbecoming a Teacher when he tampered with PARCC Security Agreements required to be signed by all school personnel, directed school personnel to violate the security procedures relating to these Security Agreements, created an Unhealthy Working Environment for those staff members who chose to sign the PARCC Security Agreements and comply with their professional responsibilities, and improperly solicited the District's students for personal gain, in direct violation of Board Policy and the professional standards for teachers, which violation action justifies dismissal from his teaching position.

On November 2, 2017, the Respondent filed an Answer to Tenure Charges with the Bureau of Controversies and Disputes Bureau of Controversies and Disputes. The Respondent denied the allegations made in all four of the charges.

The undersigned was designated as Arbitrator in this matter on November 13, 2017. On December 12, 2017, the Arbitrator met with the parties' attorneys to discuss settlement possibilities, secure hearing dates if necessary, and review any other procedural issues. As a settlement of the matter could not be achieved, hearing dates were set for February 8, 9, 14 and 23, 2018. Subsequently, additional dates were needed and added on February 26 and March 5, 2018. At the conclusion of the last hearing date on March 5, 2018, it was agreed that briefs would be submitted within forty-five (45) after receipt of the last brief. The Board presented the testimony of nine (9) witnesses: Allison Sherry, Denise McCormick, Jessica Calderone, Maria Leccese, Allison Hilla, Nicoletta Sacco, Brian Cannici, Robert Stack and Geoffrey Zoeller. The Board also provided sixty-

nine (69) exhibits. The Respondent presented the testimony of four (4) witnesses: Thomas Hornes, Priscilla Orlando, Elaine Rainone and Laura Giglio. The Respondent provided thirty-two (32) exhibits. Both parties filed Briefs via email attachment on May 4, 2018.

POSITION OF THE BOARD

The Board has established through a preponderance of the evidence that Thomas Hornes tampered with Partnership for Assessment of Readiness for College and Careers (PARCC) Security Agreements (agreements), directed school personnel to violate security procedures related to such agreements, harassed nontenured teachers and created an unhealthy working environment for all staff. Additionally, he improperly solicited students for personal gain while attempting to cover up his actions by refusing to acknowledge his wrongdoing, deflecting blame on others and lying under oath. The theft and destruction of documents, harassing of other staff members, and improper solicitation of students for his personal gain clearly represent conduct unbecoming a staff member of the District.

The Board presented the testimony of nine (9) witnesses in this matter. Allison Sherry, a nontenured staff member, testified that she had previously worked in the District but had not been renewed when the District had financial problems but was later rehired. She stated that she had signed and handed in her original PARCC Security Agreement on Monday, May 8, 2017, as she had contacted Mr. Hornes on Friday, May 5th, and he had informed her that it was fine for her to sign the document. However, on May 9, 2017 she had another conversation with Mr. Hornes in which he told her that other unions had informed him that he shouldn't let any member hand in the form so "he went into Melanie's office and he took the paper, or the security agreement." (1T37:11-20) She noted that he also stated, "Don't worry. If the school asks for it, I will hand it in for you." (1T:38). She stated that she understood this to mean that he had taken her agreement and assumed that he had also taken Ms. Sacco's as she was the other nontenured teacher to turn her agreement in to Ms. Ferla.

Concerned that this official document had been removed, Ms. Sherry turned to Ms. Calderone and advised her of what had transpired. Ms. Sherry then spoke to Ms. Hilla, another nontenured teacher. Ms. Hilla told her that she hadn't handed in her agreement, so Ms. Sherry told her "don't bother because I handed mine in and it was taken." (1T39) Concerned that her job could again be in jeopardy, she spoke to Ms. McCormick, a tenured colleague, who told her she wasn't sure what

should be done. Ultimately it was Ms. McCormick who informed Principal Cannici of the matter.

Ms. Sherry testified that she was upset by the situation. She noted that in the prior year Mr. Hornes and Ms. Giglio, Association President, had directed staff not to attend a DARE program graduation. She had wanted to attend but Mr. Hornes told her that other staff would be mad at her if she did and this was in her mind at the time of the security agreement and caused her stress.

On Wednesday, May 10, 2017, Ms. Ferla sent an email on the PARCC exams which contained a reminder to hand in the Security Agreement. Ms. Sherry spoke to Ms. Ferla about the Security Agreement and stated that Ms. Ferla told her, "besides if you handed it in, you're fine anyway. I have it. And I said, well, I did but Tommy told me he took it. And she said, oh-her response was kind of like, oh, okay, and that was it. And she said don't worry about it." (1T44:14-23) On Thursday, May 11th, she stated that she received a call from Mr. Hornes who asked her to meet him which she did and "he told me that the school was asking for them and he had a blank security agreement, and he said sign this and I will hand it in. And so I signed it and I didn't know what date to put. And I said should I put today's date? He said, no just date it a few days back." (1T:45:2-6)

Ms. Sherry testified that at the conclusion of her year-end review, Mr. Cannici questioned her about Hornes' actions and his removal of her security agreement. She explained what had transpired with Mr. Hornes and that the agreement in Ms. Ferla's possession was not the original that she had signed as that had an area where she had whited-out something and the new agreement didn't contain this whited-out portion.

On Friday, May 12, 2017, she spoke with Mr. Hornes who asked if she were the one who reported the incident to Mr. Cannici which she denied. She also spoke with Ms. Giglio that day who told her, "if they do call you in, don't say anything about Tommy taking your paper." (1T58:4-8)

Denise McCormick testified that she is a fifteen (15) year teacher in the District. She noted that an issue had arisen in the District over the PARCC testing which involved a Middle School teacher, Mr. Stephen Van Hassel. This led to the elementary teachers being advised not to sign the Security Agreement if they felt that they had not been properly trained. Ms. Sherry contacted her for advise on whether to sign the agreement noting the "Tommy had taken her paper". (1T95:8) She stated that Ms. Sherry was very upset and emotional. Ms. McCormick

consulted her husband, an administrator in another district, who advised her to inform the administration in her District.

Ms. McCormick stated that upon conclusion of her summative evaluation, she informed Mr. Cannici of what Ms. Sherry had told her. Mr. Cannici was immediately aware of the discord this could create among the staff and informed Ms. McCormick to leave his office before anyone saw her and he also agreed to protect her by not disclosing her identity to anyone. Her identity in the process became known when tenure charges were filed.

Jessica Calderone is a seventeen (17) year staff member in the District. She testified that on the advice of union representatives she did not sign her security agreement. This was as a result of the incident with Mr. Van Hassel. She stated that Ms. Sherry had confided in her that Mr. Hornes had told her that he took her security agreement. She then confronted Mr. Hornes and "I asked him if it was true that he took her PARCC paper. Q: What did he say? A. He said that he did. ...He said that he wanted to protect her because of what had happened to Stephen Van Hassel." (1T29:8-11, 16-17) She did not reveal the discussion with Mr. Hornes at the time as she didn't know that the Security Agreement was a secure document and that Mr. Hornes would refuse to acknowledge his actions. She confirmed that the statement given to Mr. Cannici (B-6) was accurate although she didn't sign it on advice of the union. On December 6, 2017 she met with Mr. Cannici and Ms. Rainone and signed a statement confirming the earlier discussion with Mr. Hornes. This supports Ms. Sherry's statement that Mr. Hornes had asked if she or Ms. Calderone had reported him as they were the two individuals to whom he admitted that he had taken the agreement.

Maria Leccese, a six (6) year tenured teacher, testified that she and Mr. Hornes reviewed the PARCC manual together about a week prior to testing. Mr. Hornes later testified that he didn't receive the manual until the morning of training. Ms. Leccese stated that Mr. Hornes informed her that NJEA representative, Joe Tondi, had informed him that it was acceptable for the teachers not to sign the Security Agreement. She had a second conversation with Mr. Hornes in which he told her that he had gotten Mr. Robert Stack's agreement and returned it to Mr. Stack. She spoke with Mr. Cannici and confirmed that the statement in B-8 was accurate although she did not sign it on the advice of union leadership. In cross-examination as to whether Mr. Hornes had stated that he "had" Mr. Stack's agreement or that he "got" his agreement, Ms. Leccese stated, "I want to say he said he got it" and this was followed by Mr. Hornes stating that "we're fine". (2T207)

Allison Hilla is a nontenured teacher whose first year of teaching was the 2016/17 school year. As a nontenured teacher she was concerned about signing the agreement as "Tommy had told us that we didn't have to sign it". (2T219:8-9) She noted that while providing in-class support to Ms. Leccese, Mr. Hornes peeked in and said not to sign the security agreement. She spoke to Ms. Sherry, as another nontenured teacher, to see what she was doing and stated, "I told her that I still had my paper, that I hadn't handed it in yet, and she told me not to bother because Tommy had taken her paper." (2T224:15-17) Subsequently, Mr. Cannici called her into his office and asked questions concerning the Security Agreements which he then placed into a statement (B-10) which she signed. She corrected the written statement that said that the union leadership had advised not to sign the agreements and noted that "Tommy Hornes" said not to sign the agreements.

In Mr. Hornes' testimony he stated that on Thursday, May 11, 2017, he provided Ms. Sherry with another Security Agreement to sign as she was the only nontenured not to have handed in her agreement. However, Ms. Hilla's testimony shows that she hadn't turned her agreement in at that time, meaning Mr. Hornes lied about this.

Nicoletta Socco testified that she was interviewed by Mr. Cannici and informed him that Association members had been advised not to sign the security agreements until issues were clarified about staff training. She stated that she had signed and returned her agreement but was advised that she "needed to see Tommy Hornes", B-12, although this meeting never happened.

Robert Stack, a thirty-one (31) year teacher in the District testified that he had signed his Security Agreement and placed on the desk of Ms. Ferla, the test coordinator. When asked when he next saw the agreement, he stated, "when Tommy Hornes walked into my classroom and handed it to me." (2T438:17-18) He confirmed that the statement presented by Mr. Cannici (B-15) was accurate. He testified that he didn't return the agreement after getting it from Mr. Hornes as "nobody ever asked me for it." (2T:443)

Brian Cannici is the Principal of Midland School No. 1 which is the sole building in the District. He stated that he has been in the District for approximately twenty (20) years, first as a teacher and then in 2014 as Principal. He noted that he had served as Association Vice-President and then President in the past.

Mr. Cannici explained that during the PARCC testing by the middle school teachers an incident arose with Mr. Van Hassel who was suspended over the

incident. He recalled only one meeting with Mr. Hornes as Association representative involving this incident.

Mr. Cannici stated that Ms. McCormick had informed him of another problem with the PARCC Security Agreements. She informed him that “Tommy took documents.” (2T279:2-3) “He took them from the guidance office.” (Ibid, 4-5) “She said the security documents that we have to sign for the PARCC, he took them.” (Ibid, 6-8) “She said, somebody told me that he took their documents from the guidance office, and she revealed it had been Allison Sherry.” (Ibid, 9-11) Mr. Cannici was concerned about Ms. Sherry and about the idea of official documents being taken out of the guidance office. He reported this to the Superintendent, Dr. Zoeller, and began an investigation.

He first interviewed Ms. Sherry who confirmed that Mr. Hornes had taken her agreement. She stated that she had signed the agreement and turned it into Ms. Ferla but later found out from Mr. Hornes that he had taken the agreement. Subsequently, Mr. Hornes asked Ms. Sherry to meet him at which time she signed a second agreement which Mr. Hornes said he return to Ms. Ferla. He noted that Ms. Sherry was very anxious and upset.

Mr. Cannici next interviewed Ms. Hilla who stated that the Association leadership had informed staff members not to sign the agreements and that Mr. Hornes had personally told them not to sign. (2T293) She also stated that Ms. Sherry had told her that Mr. Hornes had taken her Security Agreement.

Mr. Cannici next met with Ms. Calderone as Ms. Sherry had informed him that she had spoken to Ms. Calderone and told her about her Security Agreement being taken. Ms. Calderone confided that Ms. Sherry had told her that Mr. Hornes had taken her agreement. He testified, “Mr. Hornes had admitted to taking the agreement from Allison Sherry”. (2T296:21-23) He further stated, “I believe that she had actually confronted him about it in a conversation and that he admitted to her that he had, in fact, taken it.” (2T297:3-5)

It was revealed to him by Ms. Leccese that Mr. Stack’s Security Agreement had also been taken. This was later confirmed by Mr. Stack in his interview. In his interview with Ms. Sacco, she told him that after handing in her agreement, an Association member informed her that she had to see Mr. Hornes. She would not reveal the name of the member and Mr. Cannici respected this request.

Ms. Ferla was interviewed and Mr. Cannici found her to continuously attempt to obfuscate the truth. When asked about Ms. Sherry's missing agreement, Ms. Ferla stated that she didn't know what happened to it. Mr. Cannici then questioned her about Mr. Stack's agreement and he testified that "you could see she was starting to get a little anxious, and then she kind of broke down and said it might have been Tommy". (2T305:14-16) Ms. Ferla informed him that she had been told to let the Association know when security agreements came in and that she believed it was Mr. Hornes who told her this. Mr. Cannici noted, "when she originally told me that it was her who took the agreements, when I already had testimony that it wasn't her, it was Mr. Hornes, it seemed like she was covering for him. And it also seemed to me based on the fact she told me that she was instructed to let the union know when agreements came in that there was some sort of arrangement going on." (2T307:1-8) Mr. Cannici later asked Ms. Ferla for the Security Agreements and when she didn't return quickly he checked her office where he found her and Ms. Giglio scrambling around. Ms. Ferla returned with the agreements of the middle school teachers and a minute later returned with the agreements of the three (3) nontenured teachers.

In his interview with Mr. Hornes, the respondent stated that he was unaware of what had happened to Ms. Sherry's agreement. Mr. Cannici testified that he did not find this credible as two (2) people had provided him knowledge that her agreement had been returned. In reference to Mr. Stack, Mr. Hornes stated that he had taken Mr. Stack's agreement by accident when he picked up some other papers off Ms. Ferla's desk but Mr. Cannici did not find this credible as Ms. Ferla had stated that the agreements were in a folder in her office.

Mr. Cannici determined that Mr. Hornes was not being truthful and that an arrangement had been made with Ms. Ferla to let the Association know "when an agreement came in, and if it was signed, to let him know, Mr. Hornes, and he removed it." (2T315:12-14) He also determined that Mr. Hornes' actions were in violation of Board Policy 3351, Healthy Workplace Environment.

Dr. Geoffrey Zoeller became Superintendent of the District in December 2014. While he had no direct supervision of the PARCC examinations, he did suspend and ultimately recommend the non-renewal of Mr. Van Hassel as a result of the investigation of the incident. He had a meeting with Mr. Hornes and Ms. Giglio over this matter and the lack of training for the PARCC testing. He was not involved with the investigation of Mr. Hornes but reviewed Mr. Cannici's findings and believed that the Association had directed staff members not to sign the agreements in an attempt to protect Mr. Van Hassel. He noted that "it appeared to

[Cannici] that Mr. Hornes had been responsible for taking some of those agreements out of the office.” (3T478:12-25) He learned of Allison Sherry’s agreement being taken from the office as well as Mr. Stack’s and “that subsequently we found out that she [Ms. Caldernone] had herself confronted Mr. Hornes about taking Miss Sherry’s agreement and in the course of that conversation he had admitted to her that he had taken it.” (4T486:6-15) Mr. Cannici had come to his office after speaking with Ms. Ferla and indicated that she was evasive but had indicated that Mr. Hornes had instructed her to inform him when agreements were submitted. (3T492) Mr. Cannici also reported to him after his interview with Mr. Hornes in which Mr. Cannici indicated that Mr. Hornes was not admitting to what other staff members had said that he had done.

Dr. Zoeller testified that after the investigation was completed he sat down with Mr. Cannici to review his recommendations and in consultation with Board Counsel and the Board President he suspended Mr. Hornes. Mr. Hornes was informed by letter (B-25) that his suspension was due to tampering with official documents, theft of official documents, creating an unhealthy work environment as well as violating the District’s Code of Ethics. Mr. Hornes sent an email to the Board explaining his actions and while Dr. Zoeller found this more conciliatory he noted that Mr. Hornes did admit to lying about taking and destroying Ms. Sherry’s agreement or to intentionally taking Mr. Stack’s agreement.

With Mr. Hornes on suspension, the administration re-initiated its investigation into his soliciting students for his summer camp which Mr. Hornes ran with his sister. Board Policy 3230 prohibits staff from devoting school time to outside activities and prohibits the solicitation for outside businesses. In 2015, Mr. Hornes was granted permission to include flyers in the District’s electronic ‘Thursday folder’ but prohibited from directly handing out flyers to students. In May 2015 Dr. Zoeller learned that the respondent was using the class ‘Dojo’, an electronic system parents elect to join to facilitate communications about school and classroom information, to solicit students and seek other ideas on how to promote his summer program. Mr. Hornes was told to stop use of the ‘Dojl’ system for this purpose.

Approximately a week before the Van Hassel incident, Dr. Zoeller was confronted by some Board members about mailing that they had received soliciting students for Mr. Hornes’ summer camp. It appeared to administration that the school’s database must have been used to mail the solicitation. Additionally, the flyer contained a ‘discount coupon’ which indicated that payment could be made to the students’ homeroom teacher. Dr. Zoeller testified that he met with Mr. Hornes in

April 2017 about these concerns and that Mr. Hornes denied violating Board policy and that the direct mailing was not Dr. Zoeller's concern.

At the August 24, 2017 Board meeting Mr. Hornes was granted the opportunity to challenge his increment withholding. At this meeting he conveniently produced an 'invoice' for a mailing list purchased from the newspaper owned by his parents but did not produce the mailing list. The Board did not accept this explanation and voted to withhold his increment. Dr. Zoeller explained that the mailing list which was subsequently provided did not identify the children residing at the addresses noted and he concluded that only use of the school's database would provide this information.

Dr. Zoeller then determined that given the extent of the issues with Mr. Hornes that tenure charges needed to be filed. While the respondent attempted to argue that the tenure charges were a result of his filing litigation against Dr. Zoeller and the Board, the sixty (60) pages of charges were filed on September 28, 2017, two (2) days after receipt of the litigation. It is beyond belief that the sixty (60) pages of charges were produced so quickly.

The respondent's attempts to cast doubt on the motives of Dr. Zoeller failed as well. Ms. Giglio received a letter of reprimand for her inappropriate comments when disciplining students and had nothing to do with her filing a sexual harassment charge against Dr. Zoeller. Additionally, he noted that Ms. Mallon never filed a complaint against him and in fact articulated at a meeting with Ms. Rainone that she did not support filing any complaint.

While Dr. Zoeller approved flyers with the language on bringing checks to the students' homeroom teacher, he did not realize this language was included and never gave express authorization as required by policy.

When Mr. Hornes' increment withholding was approved by the Board, Dr. Zoeller did not provide an improvement plan as it was then that he determined that tenure charges would be filed. After the August 24, 2017 Board meeting when Mr. Hornes did own his violations of Board policy and provided the 'invoice' for zero dollars to obfuscate the issue, he determined that tenure charges would have to be filed.

Mr. Hornes testified that Ms. Ferla informed him that Ms. Sherry's agreement had not been turned in so he met with Ms. Sherry to see if she wished to sign and hand in an agreement. However, Ms. Hilla testified that she had not handed in her

agreement at that time, raising the question as to why Mr. Hornes did not contact Ms. Hilla to see if she wished to sign and hand in her agreement. In an attempt to refute Ms. Calderone's testimony, he stated that he told her that he didn't know what had happened to Ms. Sherry's agreement that he might have taken it by mistake like Mr. Stack's.

Mr. Hornes' tendency to deny any wrongdoing can be seen when he was confronted by a series of emails dealing with his summer program which occurred during the school day. His use of the District server for personal business is not likely sufficient to produce tenure charges but his continued failure to accept responsibility for any of his misdeeds renders him dishonest and not fit to teach impressionable students. When confronted with emails from his wife about the affects of heavy smoking and THC, he simply denied that the emails involved his use of illegal drugs. In reference to his use of the 'Dojo' system and his reference to having brochures to pass out, he inexplicably claimed that he intended to hand them out on the sidewalk off school grounds.

While other staff members indicated that concerns about signing the agreements came after the incident with Mr. Van Hassel, Mr. Hornes denied that it had anything to do with Mr. Van Hassel. The respondent denied telling staff not to sign the agreement despite Ms. Hilla's clear testimony that he had told Ms. Leccese in her presence not to sign. Additionally, Ms. Hilla clarified her written statement to indicate that Mr. Hornes had told her not to sign the agreement.

Mr. Hornes refused to confirm that he intentionally took Mr. Stack's agreement and claimed that Ms. Sherry either forgot to hand in her agreement or it was lost by the office and got nervous when questioned about it and blamed him for taking it. He had testified that Ms. Ferla told him that Ms. Sherry's agreement was not in but on cross-examination did not remember stating this.

While Mr. Hornes claimed to have vendor lists which aided in identifying students, he never produced the lists. He stated that the lists had been destroyed by his sister but also stated that there were computer lists which weren't provided. The mailing lists which he claimed came from his father's newspaper covered all of the kindergarten through fifth grade students. His claim that he knew the students in third and fourth grade and used prior vending lists is belied by the fact that it contained every student in these grades. It is inconceivable that this list could come from his memory and the vendor lists. The only reasonable explanation is that he used the District's database to augment his lists.

Priscilla Orlando is employed by Bergen Technical Schools but serves as the computer specialist for Rochelle Park. She testified that when Dr. Zoeller became Superintendent he required that he approved all flyers to go in the 'Thursday Folder'. She noted that an April 27, 2017 email from Mr. Hornes requesting that his camp flyer be placed first in the folder would have been posted first before Dr. Zoeller changed the policies.

Elaine Rainone, a forty (40) year teacher in the District and past Association President, testified that she took over the Association Presidency after Ms. Giglio. Ms. Sherry came to her and told her that Mr. Hornes had taken her agreement. Ms. Rainone expressed how upset she was about testifying. She also acknowledged that in December 2017 she met with Mr. Cannici and Ms. Calderone and that Ms. Calderone stated that Mr. Hornes had told her that he took Ms. Sherry's agreement.

Laura Giglio a thirteen (13) year teacher in the District and former Association President, testified regarding her sexual harassment allegations about Dr. Zoeller which were amicably resolved. While she attempted to infer that her reprimands from Mr. Cannici were due to her involvement with Mr. Hornes, it was shown that in each instance she had violated school policies. Also, while attempting to infer that numerous female staff members had complained of Dr. Zoeller's conduct, she acknowledged that only Christina Esposito had filed a formal complaint. She stated that she had not spoken to Ms. Sherry but Ms. Sherry had credibly testified that Ms. Giglio had told her not to reveal that Mr. Hornes had taken her agreement.

The Board has established by the preponderance of the credible evidence that Hornes tampered with the PARCC security agreements, directed others to violate procedures related to the security agreements, created an unhealthy work environment, improperly solicited students for his summer camp, and his denial of any wrongdoing was dishonest.

Administrative Law Judge Edward J. Delaney, Jr., In the Matter of the Certificates of Cheryl Sloan, OAL Dkt. No. EDE 5595-11, 2012 WL 252037 (June 15, 2012) defined 'credibility' as "the value that a fact finder gives to a witness' testimony. The word contemplates an overall assessment of a witness's story in light of its rationality, internal consistency, and manner in which it 'hangs together' with other evidence. ...In assessing credibility, the interests, motives or bias of a witness are relevant, and a fact finder is expected to base decisions of credibility on his or her common sense, intuition or experience."

In this matter significant weight must be given to the testimony of the Board's witnesses as it was consistent among all of the witnesses and because these individuals had no motive or incentive to lie.

Allison Sherry's testimony was clear and direct. She had no reason to fabricate a story as suggested by Mr. Hornes. She informed a few colleagues of what had transpired but did not directly report the incident of her missing security agreement to the administration. When informed that administration had learned of this, she simply told the truth.

Maria Leccese was visibly upset when testifying about Mr. Hornes as she clearly considered him a friend. His remark about Mr. Stack's agreement being returned and thus everything was fine is in line with her concern that one of her "team" members had turned in an agreement while she wanted the team to be on the same page.

Jessica Calderone's testimony, that Mr. Hornes had stated to her question as to Ms. Sherry's missing agreement that he had taken it, is credible in light of Ms. Sherry's statement that Mr. Hornes thought that she and Ms. Calderone were the ones who had reported the incident as they were the two to whom he had revealed his action. Ms. Calderone's reluctance to reveal that Mr. Hornes had stated his action was clearly an effort to safeguard him as she believed that he had done it to protect Ms. Sherry. Only after it became clear that Mr. Hornes had lied about his action, calling into question Ms. Sherry's statement, did she come forward. Ms. Rainone was present in December 2017 when Ms. Calderone revealed what Mr. Hornes had told her.

In his conversation with Ms. Ferla, Mr. Cannici learned that she had been instructed to inform Mr. Hornes when any staff member turned in their agreement. Thus Mr. Hornes learned that Ms. Sherry and Mr. Stack (and possibly Ms. Sacco) had returned their agreements. Mr. Hornes then intentionally removed the two agreements.

Mr. Hornes' allegation that he was the victim of retaliation by the Superintendent is without merit. He alleged that the first retaliation came after he represented Ms. Giglio in her sexual harassment charge. However, this occurred five (5) months after the December 2014 meeting and clearly involved Mr. Hornes' improper use of the 'Dojo' system. Additionally, this did not result in any form of discipline. Mr. Horne' alleged retaliation for his representation of Ms. Esposito in her sexual harassment complaint but he was present at only one meeting as Ms. Giglio

handled the rest of the matter. Also, the alleged retaliation in April 2017 came about from complaints by Board members as to Mr. Hornes' flyers for his summer camp. The timing of his increment withholding and his retention of counsel belie the claim of retaliation due to his lawsuits.

In re Harriman, 2014 WL 940943 (App. Div. March 12, 2014), quoting *Karins v. City of Atlantic City*, 152 N.J. 532, 554 (1998), the Commissioner noted that what constitutes unbecoming conduct is an "elastic phrase" which may include "any conduct which adversely affects the morale or efficiency...." Such conduct need not "be predicated upon the violation of any particular rule or regulation, but may be based merely upon the violation of implicit standard of good behavior...." In re Tenure Hearing of Madhumita Chaki, EDU 1529-11 (Oct. 24, 2011), quoting *Hartmann v. Police Dep't of Ridgewood*, 258 N.J. Super. 32, 40 (App. Div. 1992) While tenure charges are often based on a pattern of conduct, "unfitness to remain a teacher may be demonstrated by a single incident if sufficiently flagrant." In re Fulcomer, 93 N.J. Super. 404, 421 (App. Div. 1967)

The facts in this matter establish that Mr. Hornes is so unwilling to take responsibility for any wrongdoing that he lied to the Board, the administration and in his testimony in the hearing. This failure to be truthful at any stage negates the need for progressive discipline as no amount of corrective action could possibly teach someone to be ethical. In re Revocation of the Certificates of McMeekan, Dkt. No. 1314-188 (March 22, 2016)

In re Parezo, EDU 13216-10, aff'd Comm'r (Oct. 12, 2011), Ms. Parezo was found to have engaged in conduct unbecoming a staff member. She had been seen placing tape over the mouth of a student by another staff member as well as several students. Ms. Parezo denied the allegation claiming that she merely placed a piece of tape on his chin. The Administrative Law Judge (ALJ) found her unwillingness to take responsibility for her actions or to apologize warranted dismissal. Similarly, Mr. Hornes has continued to take responsibility for removal of the security agreements. He also refused to acknowledge using the school database for his summer camp, continuing to argue that his father's address list was used. He continued to argue that the long list of email exchanges all happened on his lunch or prep time rather than the clear indication that at least some of these exchanges were during school time.

In re Tenure Hearing of Tighe, No. EDU 6704-98 (1999), a tenured custodian was dismissed when he removed \$20 from a student activities fund and then lied about it before police proved his dishonesty. It is not the amount of the theft but the

repeated dishonesty that escalates the severity of the matter. Whether the security agreements were secure documents required to be maintained by the District or simply administrative paperwork is irrelevant as it is the fact of theft and failure to own up to it that requires dismissal.

In confirming an ALJ's decision to dismiss three teachers, *In re Tenure Hearing of Janette Duran, et al*, EDU 6754-06, *aff'd Comm'r*, 2007 WL 2505612, *3(July 5, 2007), the Commissioner stated "that persistently and knowingly responding in an untruthful, evasive manner to district administrators...cannot be viewed as anything other than insubordinate." Mr. Hornes has consistently been untruthful and evasive as shown by the District.

Arbitrator Laskin sustained the charges *In re Tenure Hearing of Mendez-Azzollini*, Agency Dkt. No. 219-8/16 (May 27, 2016) finding that the guidance counselor defense was "lacking genuine candor". Arbitrator Pecklers, *In re Tenure Hearing of Loretta Young*, Hamilton Township Board of Education, Agency Dkt. No. 8-1/14 (May 9, 2-14), found the respondent's explanation "inconceivable, illogical and unreliable". He stated, "...the abject lack of candor, elevate this event to that of cardinal violation for which progressive discipline is not appropriate." (Ibid at 78-79)

In *Long*, supra EDU 01998-06, an ALJ found that although denied by the staff member the circumstantial evidence overwhelmingly suggested that the member had removed the teachers' daily sign-in book. While the ALJ recommended an increment withholding and suspension, the Commissioner upheld the dismissal stating, "The district has proven multiple charges of unbecoming conduct...[and has established] that respondent, on more than one occasion, engaged in an act of theft. It is by now well-recognized in school law that even one act of theft...is sufficiently flagrant...to require a school district employee's removal from his or her tenured position.

The Board has established that Mr. Hornes encouraged some staff members not to sign their agreements and directly told others not to do so. Ms. Sacco testified that she was told by a union member to speak to Mr. Hornes after she turned in her agreement and Mr. Stack testified that Mr. Hornes and his counsel had him sign a statement saying he did not resubmit his agreement as he didn't feel properly trained but stated on cross-examination that he didn't resubmit it because no one asked for it. Ms. Hilla stated that Mr. Hornes directed her not to sign. As noted In the Matter of the Tenure Hearing of Valladores, Belleville School District, OAL

Dkt. No. 02455-1 (June 19, 2012, “Insubordination can occur even where no specific order or direction has been given to the allegedly insubordinate person.”

Ms. Sherry testified that the removal of her agreement caused her to be a “nervous wreck”; Ms. McCormick stated to Mr. Cannici that Sherry was “very stressed”, and Ms. Rainone confirmed that Ms. Sherry remained stressed throughout the 2017/18 school year. This unhealthy work environment was caused by Mr. Hornes’ actions and denials. Even assuming that Ms. Hornes took Ms. Sherry’s agreement to protect her in some misguided way, his failure to admit his actions had the opposite effect. Returning him to the District would only continue this unhealthy environment.

Mr. Hornes’ use of District databases and offer to have parents remit funds to pay for his summer program on school grounds are violations of Board Policy and represent conduct unbecoming. Additionally, his extensive use of personal correspondence for his outside activities while on duty show that he must have used instructional time for this purpose taking said time from his duties as a teacher.

While Mr. Hornes’ has performed well as a teacher in the District which his evaluations show, his actions render this record superfluous. Arbitrators Laskin and Pecklers in the matters noted earlier as well as Arbitrator Klein in Hunterdon Central, supra, 191-7/16 agree that good evaluations and a good discipline record aren’t sufficient to overcome a serious violation warranting termination. Progressive discipline is not required where a single act is so egregious as to outweigh the staff members past record and where the bond of mutual trust has been shattered.

POSITION OF THE RESPONDENT

This case exists for only one reason: retaliation. As the old adage goes: when you go against the CEO, bad things happen. Mr. Thomas Hornes chose to perform his functions as a union representative in presenting the complaints of sexual harassment and other complaints against the Superintendent and the Board. For this he is presented with what is akin to a death sentence for someone in education. However, the Board has failed to meet its burden of proving by a preponderance of the evidence in any of the charges presented.

Even assuming, arguendo, that the charges made against Mr. Hornes were true, they do not rise to the level of “conduct unbecoming.” *Bound Brook Bd. of Educ. V. Ciriponpa*, 2017 LEXIS 22aa7 at *20 (Feb. 21, 2017), stated, “unbecoming conduct requires evidence of inappropriate conduct by teaching professionals. It focuses on the morale, efficiency, and public perception of an entity, and how those concerns are harmed by allowing teachers to behave inappropriately while holding public employment.” While the Respondent denies the charges, the charges fall far short of the standard required to sustain them. Tenure charges and charges of conduct unbecoming are only sustained for the most egregious violations and generally where there has been a history of disciplinary problems, poor observations and evaluations. None of these standards exist in the current matter.

While the District has filed four (4) charges against Mr. Hornes, Charge No. 4 is so repetitious of the first three (3) that it should be dismissed. Charge No. 4 does not contain any separate or distinct allegations but simply repeats the prior allegations. Additionally, the Board produced emails sent by Mr. Hornes in past years which is beyond the scope of the charges noted. Mr. Hornes was never disciplined in reference to these emails and testified that they were done on his lunch hour or preparation time or during assessments when the students are working independently. (Tr. 818:11-20; 825:1-4; 835:1-14)

Mr. Hornes is charged with tampering with, stealing, destroying or intentionally mishandling the PARCC Security Agreements. Mr. Cannici believed that Mr. Hornes stole and destroyed Ms. Sherry’s agreement because he could not think of another explanation as to why she claimed she had signed an agreement and was then asked to sign a second. He stated, “The fact that a brand-new document was presented to her tells me that the first document was not only removed, it was destroyed.” (Tr. 422:9-11) Mr. Cannici failed to consider that Ms. Sherry’s agreement may have unintentionally been misplaced. The Board produced a revised statement from Ms. Ferla, B-17, but failed to produce the original statement or to call Ms. Ferla to testify as to the two statements. This second statement should be dismissed as hearsay and because it is inconsistent with her statement at the May 12, 2017 investigative meeting at which she stated that her office was open during testing.

Mr. Cannici admitted to having no personal knowledge of Mr. Hornes removing Ms. Sherry’s agreement from the guidance office; he acknowledged that he had no personal knowledge that Ms. Sherry’s agreement was destroyed; he admitted to having no personal knowledge of where in her office Ms. Ferla kept the

agreements and no knowledge of whether she kept the agreements in a secure folder. He also made no attempt to go to Ms. Ferla's office to search for Ms. Sherry's agreement. He testified that he was aware that Ms. Ferla did not keep her office locked at all times and that staff members were often in her office. (Tr. 429:17-25)

While the Board referred to the agreements as secure documents, (see Calderone's testimony that Mr. Cannici told her the agreements were secure documents, Tr. 145:2-17), the Test Administrators Manual (Exb. Calderone 2) explains that a secure document is "a test item, reading passage, or test that has not been made available to the public...test items, student responses...test booklets, answer documents..." The security agreements do not fit the PARCC definition of secure document which needed to be locked and protected.

Mr. Hornes testified credibly that he wasn't aware of what had happened to the agreement that Ms. Sherry's claimed to have turned in. (Tr. 794:12-17) He denied telling Ms. Calderone that he had taken Ms. Sherry's agreement but stated, "I could have taken it y accident when I took Bob's. Anything could have happened to her paper. I new saw it but anything could have happened to it." (Tr. 795:16-19) He stated that he looked in the pile of papers he had grabbed from the guidance office but her agreement wasn't there. (Tr. 795:22-26, 796:1) Ms. Sherry testified that she did not see Mr. Hornes take her agreement and admitted having no personal knowledge whether he took the agreement or that he destroyed the agreement.

Mr. Stack testified that he left his agreement on Ms. Ferla's desk but did not see her at the time. (Tr. 437:7-22) While this is further proof that Ms. Ferla did not keep the agreements in a secure place at all times, it also comports with Mr. Hornes' description of grabbing a pile of papers off Ms. Ferla's desk which unintentionally included Mr. Stack's agreement. (Tr. 756:12-21) Mr. Hornes explained that upon realizing that he had Mr. Stack's agreement, he promptly returned it to Mr. Stack whose classroom was only two (2) doors down. (Tr. 757:1-25; 758:1)

Once again Mr. Cannici conjectured that Mr. Hornes had intentionally taken Mr. Stack's agreement from Ms. Ferla's office. He stated, "It didn't make sense to me because the security agreements...are supposed to be kept in a secure folder. So, for it to be lying on the desk randomly didn't make sense to me." (Tr. 417:24-25, 418:1-11) Mr. Cannici admitted that he did not see the agreements in Ms. Ferla's office and didn't know where or how they were maintained in her office. Ms.

Giglio testified that she saw agreements in Ms. Ferla's office "on her desk". (Tr. 1017:22-25, 1018:1) Mr. Cannici also acknowledged that he had no personal knowledge of Mr. Hornes intentionally removing Mr. Stack's agreement from the guidance office.

In the charges, the Board claimed that the agreements were "required to be signed by all school personnel." (B-1) However, the District allowed test administrators to give the test without signing the agreements and without disciplining those who didn't sign the agreement. Mr. Hornes testified that eight (8) teachers including himself did not sign the agreement but administered the test. (Tr. 755:21-25, 756:1-11) Additionally, Ms. Giglio testified that she didn't sign but did administer the test. (Giglio Exb. 2) Mr. Cannici also stated that several teachers administered the test in 2017 without signing the agreement without discipline. (Tr. 359:24-25, 360:1-21, 363:15-22) This contradicted his earlier testimony that "they can't administer the tests unless the agreements are handed in." (Tr. 294:11-12)

The Board clearly violated the PARCC procedures in allowing staff to administer the test without signing the agreement and by stating that signing them was a requirement. However, it did not prove that Mr. Hornes tampered with, stole, destroyed or intentionally mishandled the agreements.

Allison Hilla is the Board's only witness to state that Mr. Hornes instructed her not to sign the agreement. At the time she claims to have heard this, she was in Ms. Leccese's classroom working with students when he "peeked his head" into the classroom to make this statement. However, Ms. Leccese in her testimony never made this claim. Mr. Hornes testified that he had a short conversation from the doorway of Ms. Leccese's classroom telling her that he had spoken to Joe Tondi, NJEA Representative, who said that they did not have to sign the agreement if they didn't feel properly trained. (Tr. 798:12-25, 799:1-6) Mr. Hornes never spoke directly with Ms. Hilla. Interestingly, Ms. Sherry testified that Mr. Hornes "said that they weren't telling people they shouldn't sign it. And he said, if you want to sign it, then that's fine, you can sign it." (Tr. 35:17-21) As well as Ms. Sherry, Ms. McCormick, Ms. Calderone, Ms. Sacco and Ms. Giglio all stated that Mr. Hornes did not tell them not to sign or pressure them not to sign. Eight (8) other staff members gave statements to the effect that Mr. Hornes did not pressure or harass them to not sign their agreements. (Cannici Exb. 2)

The Petitioner has charged that Mr. Hornes harassed the teachers who did sign their agreements. However, not one of those who signed testified that they were harassed over choosing to sign. The Board's witnesses, Ms. Sherry, Ms. Hilla,

Ms. Sacco and Ms. McCormick, all testified that they were not harassed, intimidated or pressured by the respondent. Additionally, five (5) other teachers who had signed likewise provided statements that they were not harassed by Mr. Hornes. (Hornes, exb. 10 & 11)

Three (3) non-tenured teachers testified and none stated that Mr. Hornes had created an unhealthy workplace for them. Ms. Sherry, who on cross-examination described herself as a “fairly nervous person about certain things”, (Tr. 66:20-15, 67:1), did testify that she was nervous about signing a second agreement and “a nervous wreck” about having to speak to Mr. Cannici about it, “my main concern was I thought that people were upset and that it was going to look like I went in and I told and people were going to hate me, and I was just very upset about everything.” (Tr.53:19-24) Ms. Sherry is very sensitive as evidenced by Ms. Giglio’s testimony that she began crying when told that fifth grade teachers shouldn’t go to a specific evening event. (Tr. 63:10-25, 64:1) Having lost her job in the District under a reduction in force, she was especially sensitive to anything that might jeopardize it again.

The situation in the District around the time of the PARCC exam was tumultuous. Staff members were upset and concerned over seeing Mr. Van Hassle removed from the building. Numerous teachers were concerned about the lack of training from the District for the PARCC exam and so did not sign their agreements. The prior sexual harassment issues involving the Superintendent were also a concern to staff. Mr. Cannici’s interviewing staff members added to the discontent within the District, yet he focused all of this discontent and concern on Mr. Hornes alone. Ms. Giglio, who as Association president was aware of the climate in the District and the concerns of her members, testified, “People were scared. It was a fear environment. Nobody really wanted to step up and come forward.” (Tr. 1004:13-15, see also 1005:6-11) She also noted that non-tenured teachers were afraid to make sexual harassment complaints. She stated, “They were scared to. Not being tenured they were scared to lose their job. They were scared their maternity leave would be affected for some of them.” (Tr. 1061:8-17)

The Board has charged that Mr. Hornes “obstructed the security agreement investigation, attempted to cover up his actions, and unequivocally lied about his theft and destruction of official security documents.” However, the Board has proved none of these charges. No witness testified to Mr. Hornes obstructing them during the investigation. Mr. Cannici conducted his investigation without interference. No witness testified as to how Mr. Hornes had attempted to cover up

his actions. No witness testified that they had personal knowledge that Mr. Hornes stole and destroyed Ms. Sherry's agreement.

While Mr. Cannici testified that he had no personal knowledge of Mr. Hornes stealing or destroying Ms. Sherry's agreement, he did admit to destroying documents related to his investigation; namely, his original investigation notes of the interviews. (Tr. 432:17-22) Mr. Cannici also discarded the original version of Ms. Calderone's statement. (Tr. 381:21-25, 382:1) Dr. Zoeller testified that he never saw Ms. Calderone's original statement nor did he ask to see it or have knowledge as to what happened to it. (Tr. 570:4-20) He was also unaware that Mr. Cannici had handwritten interview notes or that they had been discarded. (Tr. 567:18-25, 568:1-2)

Mr. Cannici conducted an interview with Ms. Ferla who had asked that Ms. Giglio be present. Mr. Cannici had his secretary, Ms. Kobylarz take notes of the meeting. Ms. Giglio testified that she had requested a postponement of the interview as Ms. Ferla had experienced a tragic event only a few days prior. However, Mr. Cannici refused the request. At the interview, Ms. Ferla was almost incapable of answering questions. Ms. Giglio stated, "We went into the meeting and she was automatically crying. She was hysterically crying. She was getting nauseous. Mr. Cannici gave her a garbage can in fear she was going to throw up in the middle of the meeting. She asked for the meeting to stop. I asked for the meeting to stop. Mr. Cannici threatened both of us with insubordination if we didn't continue with the meeting." The meeting ended when Ms. Ferla ran out of the room." (Tr. 1014:19-25, 1015:1-25, 1016:1-21) However, none of this appears in Ms. Kobylarz's notes (B-16).

As part of his investigation, Mr. Cannici interviewed Ms. Cherello, Ms. Raskowski, and Mr. Calabro. However, their statements were not presented at the hearing. While Dr. Zoeller stated that he saw the statements "somewhere along the way" (Tr. 490:3-7), he couldn't recall what had happened to the statements. (Tr. 567:13-17)

A negative inference should be drawn from the failure of the Petitioner to produce these statements. The Board cannot be allowed to choose which statements from the interview process it wishes to produce and which it discards. "The spoliation inference permits [a factfinder] to infer that the evidence destroyed or concealed would not have been favorable to the spoliator" and "serves the purpose of evening the playing field where evidence has been hidden or destroyed." (Jerista v. Murray, 185 N.J. 175, 201 (2005))

The Board was fully aware of Mr. Hornes' Junior Explorers' summer camp and he was never disciplined over this issue. (B-29) Dr. Zoeller expressed to Mr. Hornes and Ms. Giglio that the camp flyer issue was not a disciplinary matter. (Tr. 701:5-19, 727:25, 728:1-23, see also 1011:22-25, 1012:1-25, 1013:1-13) Mr. Hornes was not restricted from posting his camp information on the Class Dojo. (Tr. 710:24-25, 711:1-8) Mr. Hornes never handed out hard copies of his flyer to students. (Tr. 710:18-23) While the Board produced a memorandum from Dr. Zoeller from two (2) years prior to the charges, (B-29), the memorandum was never provided to Mr. Hornes who had no knowledge of its existence. It only came to light when the District filed the tenure charges. (Tr. 692:10-23, 525:24-25, 526:1-2)

Mr. Hornes was able to advertise his summer camp on the school website for two (2) years with the approval of Dr. Zoeller. It was only after Mr. Hornes involvement with the sexual harassment claims against Dr. Zoeller that Mr. Hornes' camp became an issue. The District argues that Mr. Hornes violated the Board's policy on "outside activities" when he solicited his business "without the express permission of the Superintendent." (B-21) However, Dr. Zoeller testified that Mr. Hornes "was permitted to submit the flyers that promoted his business and then have them distributed to the school district community." (Tr. 518:16-18) Dr. Zoeller approved the content and the posting of at least four (4) camp flyers on the school's website on May 7, 2015, April 28, 2016, May 5, 2016 and March 30, 2017. (Tr. 576-579; also Zoeller exb. 1&2) Each of the flyers contained language allowing parents to send payment to school: "Cost: \$35 per child or \$30 per sibling. Return application and form of payment to your child's homeroom teacher". (3/30/17 flyer) The 2015 and both 2016 flyers contained the following: "Mail check or cash and application to Junior Explorers LLC...or send to school in envelope labeled Jr. Explorers" with different tuition rates. (Ibid.)

In addition to the flyers noted above, others were approved by administration for posting on the school's website as noted in emails dated January 26, 2016, March 17, 2016 and January 11, 2017 which contained the phrase, "Return registration to school in envelope labeled Attn: Junior Explorers". (Orlando, exb.2) Flyers were also approved for posting on March 17, 2016, March 24, 2016, May 12, 2016, and May 19, 2016, all containing the return registration information. Despite this record, Mr. Cannici cited the discount coupon, "Paying by check? Hand this coupon into your homeroom teacher and apply discount", as objectionable and worthy of tenure charges. On at least seven (7) occasions administration approved Mr. Hornes' flyers with language similar to that which was later found to violate policy. While Mr. Cannici stated, "by handing this in to the homeroom teacher,

you are now taking this venture and bringing it into the school.” However, both Mr. Cannici and Dr. Zoeller admitted that they were unaware of any parent sending payment to the school nor of Mr. Hornes ever receiving payment at the school.

In relation to the charge that Mr. Hornes used the school database to access student information for his camp, Mr. Cannici again conjectured a problem. He stated, “Well, it seems to me to get the names of the children and the addresses, the exact addresses of the children, it had to be taken from one of our databases.” Both Mr. Cannici and Dr. Zoeller testified that they had no knowledge of Mr. Hornes using a school database, nor did they have any evidence showing his use of a database. (Tr. 385:3-5, 582:10-18) No one testified that Mr. Hornes used a school database, simply that they think he must have used one. Mr. Cannici stated that only administrators and the school secretary have access to the school database and there is no proof that either provided this information to Mr. Hornes. (Tr. 385:17-25, 386:1-15)

Mr. Hornes testified that he received a mailing list from his father who owns the town’s newspaper and has access to all of the mailing addresses in town. He stated that having taught the 3rd and 4th graders he was aware of their names, especially as this is a small school. (Tr. 704:1-16) Additionally, he had knowledge from prior camp listings and sign-in sheets by parents. He explained that two (2) flyers were sent to parents of two (2) eligible children to make it easier for parents to enroll both. (Tr. 706:14-25, 707:1-8)

While the Board argued that Mr. Hornes received emails related to his camp during school hours, these allegations are beyond the scope of the tenure charges as there is no charge related to a violation of email policies. Additionally, Mr. Hornes explained that the emails were conducted during his lunch or preparation period and did not interfere with his teaching responsibilities.

The Appellate Division In re Tenure Hearing of Fulcomer, 93 N.J. Super. 404 (App. Div. 1967), established six (6) factors to be considered when determining if a teacher’s actions reflect ‘conduct unbecoming’. The factors are: (1) the nature and gravity of the offense under all circumstances involved, (2) any evidence as to provocation, extenuation or aggravation, (3) any harm or injurious effect which the teacher’s conduct may have had on the maintenance of discipline and the proper administration of the school, (4) the teaching record and ability of the teacher, (5) the teacher’s disciplinary record, (6) the impact of the penalty [on the teachers’s] teaching career.

In this matter, the Petitioner has failed to provide anything beyond hearsay, conjecture and unsubstantiated opinions of a few teachers and administrators. The only verifiable action of Mr. Hornes was his inadvertent taking of Mr. Stack's agreement which he immediately returned to Mr. Stack and which he has stated from the beginning. The Respondent has shown that there are extenuating circumstances involved in this matter as Mr. Hornes' actions as a union representative placed him in opposition to Dr. Zoeller in relation to the sexual harassment claims, the District's PARCC violations, the incident involving Mr. Van Hassle, and his placing the District on notice of his filing a Conscientious Employee Protection Act complaint. The Respondent has shown that after each action taken by Mr. Hornes, a discipline followed.

At a January 2015 meeting over Ms. Giglio's sexual harassment claim, Mr. Hornes informed Dr. Zoeller that his actions would have to stop in a "heated confrontation". (Tr. 690:18-25, 691:1-24, 1000:1-20) In a memorandum, dated May 26, 2015, Dr. Zoeller accused Mr. Hornes of using the Class Dojo to promote his summer camp. (B-29) In March 2017, Mr. Hornes represented Ms. Esposito in her harassment complaint against Dr. Zoeller. In an April 29, 2017 meeting, Dr. Zoeller accused Mr. Hornes of using student address lists to mail flyers about his camp. While Dr. Zoeller assured Ms. Giglio that no discipline would come from the meeting and Mr. Hornes explained his father's list of town addresses, this became part of the tenure charges. On May 3 and 4, 2017 Mr. Hornes presented grievances to Mr. Cannici and Dr. Zoeller respectively. On May 16, 2017, Mr. Hornes was suspended with pay.

On July 25, 2017, Mr. Hornes received an evaluative memorandum from Dr. Zoeller which he concluded, "I will not hesitate to recommend further action to the Board if there is any further failure by you to fulfill your professional responsibilities. (Cannici, exb.1) Both Dr. Zoeller and Mr. Cannici admitted on cross-examination that Mr. Hornes engaged in no disciplinary issues after July 25, 2017 (Tr. 405:19-25, 406:1-2 and 610:21-24); however, on August 3, 2017, Mr. Cannici sent a letter advising Mr. Hornes that he was recommending an increment withholding.

Mr. Hornes is a twelve (12) year teacher in the District with no prior discipline before the administration began its retaliatory actions. His evaluations have consistently been positive. In 2015/16 he was rated 'Highly Effective' in Professionalism and in 2016/17 rated 'Effective' in Professionalism with the description "The teacher maintains a commitment to professional ethics...." (Hornes, exb.1) Additionally, when the Regional Achievement Committee came

to the school, Mr. Hornes' classes were presented as he was felt to be a powerful math teacher. (Tr. 680:20-25, 681:1-5, 682:5-20) The Respondent produced numerous testimonials to Mr. Hornes' teaching abilities.

There is no proof that Mr. Hornes affected the administration's duties or harmed anyone. Assuming, arguendo, that his conduct may have been casually connected to Ms. Sherry's emotional state, nothing has been presented that this harmed her or anyone else's teaching or disrupted education in the District.

Tenure cases in New Jersey follow progressive discipline principles. In re Tenure Hearing of Leonard Yarborough, DOE Dkt. No. 259-9/15-12/14 at 15 (May 24, 2016) noted, "Unfitness to remain a teacher can be demonstrated by a single incident if it is serious enough, while less serious matters should be subject to progressive discipline." While the arbitrator dismissed the charges in In re Tenure Hearing of John Vingara of theft of food and use of students to cook for a private concern, the arbitrator noted that the teacher's long career and exemplary service would mitigate against any penalty. In re Tenure Hearing of William Carr, DOE Dkt. No. 142-6/15 (Feb. 1, 2016) a teacher faced charges of "angry, aggressive, and unprofessional behavior towards two students in two separate incidents" as well as a charge of falsifying signatures on payment vouchers. The arbitrator sustained some of the charges, reinstated the teacher with a 120 day suspension, and noted "[h]ad the District imposed an appropriate sequence of progressively severe discipline...before preferring tenure charges, a more stringent penalty might have been sustained."

In May 2017 Mr. Cannici completed his investigation into the PARCC agreements and decided that suspension was the appropriate discipline. In July 2017 Dr. Zoeller concluded his investigation into the summer camp solicitation issue and decided the appropriate discipline would be "a comprehensive, year-long corrective action plan which will be provided to you upon your return from your current suspension." After receiving notice of potential legal action from Mr. Hornes, his discipline was raised to an increment withholding. After Mr. Hornes filed a claim in Superior Court, the discipline became tenure charges. The tenure charges are clearly retaliation against Mr. Hornes for filing his claim.

Even if the charge of conduct unbecoming were sustained, dismissal is not the appropriate penalty. In In re Tenure Hearing of Eisenhower, 2014 N.J. Super, Unpub. LEXIS 1446, *7, 2014 WL 2742414 (App. Div. June 18, 2014), citing In re Stallworth, 208 N.J.182, 192 (2011), the Appellate Division stated "discipline imposed on a public employee for an offense must be generally fair and

proportional to the discipline imposed or similar offense by other public employees.” New Jersey case law is replete with teachers who engaged in far more serious behavior than involved herein have had tenure charges sustained and yet dismissal was not deemed appropriate. In IMO Tenure Hearing of Edith Craft, Comm. Of Ed. Dkt. No. 362-06 (2006) a teacher who slapped a handicapped student across the face received a 120 day suspension plus four (4) additional months and the loss of an increment for a year. In IMO Tenure Hearing of Joseph Prinzo, Comm. Of Ed. Dec. No. 259-01 (2001) a teacher who failed to supervise a class resulting in the students watching sexually explicit videotape received a thirty (30) day suspension. An arbitrator who found that a teacher had engaged in serious misconduct violating the several district policies including sexual harassment, its affirmative action, ethics, inappropriate staff conduct and healthy workplace issued a penalty of 120 day suspension plus a one year salary increment withholding in light of the teacher’s record as a whole. (In re Tenure Hearing of Maryellen Lechelt, DOE Dkt. No. 360-12/14, June 30, 2015)

In a recent finding, a teacher who had fled from police after a traffic stop involving suspicion of drug possession and in which the teacher could not produce a vehicle registration received a two (2) month suspension. The arbitrator found that the District speculated on motives for which it had no basis and failed to consider the teacher’s lack of prior discipline. (In re Tenure Hearing of Brenda Bruni, DOE Dkt. No. 207-9/17, Feb. 9, 2018) In another recent matter, a teacher was found to have intentionally disconnected speakers in his classroom, putting students at risk. The arbitrator also found that the teacher tried to cover up his actions and not truthful during the investigation but given his good disciplinary record reinstated him. (In re Tenure Hearing of Christopher Masullo, DOE Dkt. No. 1/1/17, April 18, 2017)

DISCUSSION AND ANALYSIS

Mr. Hornes has been charged with Conduct Unbecoming in relation to his actions involving the PARCC Security Agreements, directing school personnel to violate the security procedures related to these Security Agreements, harassing staff members who submitted their Agreements, and improperly soliciting the District’s students for personal gain. It is alleged by the Petitioner that he obstructed the Security Agreement Investigation, attempted to cover up his actions, and unequivocally lied about his tampering with and destruction of the official security documents. The Board also alleges that his conduct in these matters created an Unhealthy Working Environment as well.

The most serious of the charges revolve around the issue of the PARCC Security Agreements (Agreements). The majority of the testimony involved this issue and all of the witnesses, save Ms. Orlando, were questioned about the issue. Students are tested each year under the PARCC procedures. As part of the procedures, each individual involved in the testing, “must sign this security agreement and agree to the statements below.” (Board Exhibit 1) For “Test Administrators and Proctors”, there are seven (7) bullet points listing required duties concluding with, “I will follow all security policies and test administration protocols described in the TAM.” (B-1) The TAM is the Test Administrator Manual. (B-1) The TAM states in Section 3.1, “This section describes activities the Test Administrator (TA) must complete before the first day of testing.” (Calderone 2) One such activity is to “Review the Security Agreement. Sign and submit it to the School Test Coordinator according to your state policy.”

In 2017 as stated by Mr. Cannici, “We had our middle school students tested first.” (Tr. 271:24-25) Dr. Zoeller stated, “we administer it to a band of three grades in one session and a band of three other grades in the second session.” (Tr.469:18-20) He further noted, “The band, the first band, which was the end of April, was the upper grades of sixth, seventh and eighth. And then there was a week of for makeups and for the laptops to be reconfigured and then there was a second band, which was grades three, four and five.” (Tr.469:13-25, 470:1-3) The Middle School teachers signed their Agreements as noted by Mr. Cannici, “she [Ms. Ferla] eventually came in with the folder. Which agreements were there? The middle school ones.” (Tr. 309:22-24)

Administration learned that there was an issue with one of the Middle School teachers involving the testing. Mr. Cannici stated, “The concern originally came from several students that Mr. Van Hassel during the testing was looking over their shoulders and writing things on a clipboard. ...They later claimed that some of the problems that were written on the clipboard he was reviewing with them afterwards.” (Tr. 275:4-11) Dr. Zoeller testified, “The preponderance of evidence from nearly 25 students as well as direct testimony from another adult, the instructional aide who was in the room for part of the time, as well as the secondary evidence from other adults who had obtained information was that he had violated the PARCC protocols per the security agreement....” (Tr. 464:3-10) Mr. Van Hassel was “immediately suspended”. (Tr. 276:4) Dr. Zoeller stated, “Mr. Van Hassel’s contract with the board of education was ended on June 30th and – June 30th of 2017. He was paid for the remainder of his contract because he was suspended with pay, but thereafter his contract expired. ...So he’s not terminated. He was nonrenewed.” (Tr. 467:17-25, 468:1)

Ms. McCormick testified that she was aware of the incident with Mr. Van Hassel, "he was fired". (Tr. 101:18) Ms. Calderone stated, "All I really knew was that he was escorted out due to some security issue with PARCC testing." (Tr. 127:1-2) Ms. Leccese noted, "So the issue was that right before the third through fifth grade teachers were set to begin testing, we were hearing wind of an issue that had happened with one of our middle school teachers. ... There was a lot of rumors flying, but nothing really was told to us specifically." (Tr. 171:10-17) Ms. Giglio noted, "I wasn't testing during that time. It was Elaine [Rainone]. So then in between that, that's when Steve Van Hassel was walked out." (Tr. 1054:23-25, 1055:1)

Following the incident in which Mr. Van Hassel was "escorted out", the Association held a meeting. Ms. Calderone was asked on cross-examination, "So this union meeting that occurred was after the PARCC test, after you administered the PARCC test, right?" She replied, "No, it was before." (Tr. 143:18-21) Ms. Calderone was a third grade teacher and administered the PARCC test after the middle school teachers. In her revised statement of "5-17-17" (B-6) she noted, "at the last RPEA meeting, the leadership informed the members...that the RPEA members shouldn't sign either. Allegedly, this was said by Tommy Hornes." In her testimony she was asked,

"Q. It says allegedly this was said by Tommy Hornes.

A. I believe I wasn't completely sure who actually said it. That's why I said that.

Q. But do you believe when you said leadership informed, it was Miss Giglio who made those comments?

A. It was one of them."

After the incident with Mr. Van Hassel, there was confusion among the teachers in the District as to whether they should sign their Agreements. Ms. Sherry stated, "My coworker, Lauren Cherello, called my room I believe on that Friday before, and she said she was told by Laura Giglio to tell me and the other fifth grade teacher that we should not sign it." (Tr. 32:1-4) Ms. Sherry noted that she spoke to Mr. Hornes that day who said, "you know, if you want to sign it, then that's fine, you can sign it." (Tr. 35:20-21)

Ms. McCormick testified that Ms. Sherry "reached out due to an issue that occurred, she was concerned whether or not she should sign the agreement." (Tr. 92:19-21) "Well, due to the incident that occurred, it was advised to the next grade level that they were testing to not sign the document if they didn't feel that they were not trained. So she had signed it, from what I remember, she had signed it and she just, wanted to make sure that she was doing the right thing by

signing it.” (Tr. 93:18-24) In speaking about the Agreements, Ms. Calderone stated, “we were advised that if we didn’t feel that our training was what it should have been, that we shouldn’t sign it.” (Tr. 124:20-22) She responded to a question on cross,

“Q. That was after the issue with Mr. Van Hassel. The union was still saying go ahead and sign the security agreement if you feel you were properly trained?

A. Yes.”

In discussing the time after Mr. Van Hassel had left the District, Ms. Leccese stated, “So it was very confusing at that time because no one really knew what was going on. We were never really getting any official word about if that was going to impact the teachers who were about to test at all. So we just really didn’t know anything at that point.” (Tr. 171:25, 172:1-5) Asked about not signing her agreement, she stated, “I mean initially it was for fear over what had happened with Stephen Van Hassel.” (Tr. 192:23-25) She noted further, “And after everything happened with Steve, I mean you have to understand we were all scared.” (Tr. 196:24-25, 197:1) Mr. Cannici stated, “I knew there was a lot of fear in the building based on what had happened to Steve Van Hassel.” (Tr. 289:5-7)

Ms. McCormick testified that Ms. Sherry approached her at a different time, “after our faculty meeting. She approached me outside in the parking lot and she said that Tommy had taken her paper.” (Tr. 95:6-8) She then identified “Tommy” as Mr. Hornes. Ms. Sherry identified the date as “May 9th”. (Tr. 41:19) Ms. McCormick noted that Ms. Sherry “was very panicked because she was let go once before.” (Tr. 95:20-21) Due to a budget problem, Ms. Sherry had been RIF’ed (Reduction in Force) a couple of year earlier. Ms. McCormick spoke to her husband, a principal in another district, who advised her to tell administration “to protect myself that I needed to report it because if she was that upset and it was involved with PARCC.” (Tr. 97:11-13) She then informed Mr. Cannici, “I said Allison came to me and she said that Tommy took her paper.” (Tr. 99:6-7) Mr. Cannici agreed to keep her identity secret until after the investigation. (Tr. 100)

Ms. Sherry testified that on “Tuesday, May 9th”(Tr. 36:17), she went to Mr. Hornes’ classroom where he stated, “he had been meaning to tell me that Melanie Ferla told him that me and Nicoletta Sacco were the only teachers that handed in security forms, and that he was being told by all the other unions that they shouldn’t let any union member hand it in. So that he went into Melanie’s office and he took the paper or the security agreement.” (Tr. 37:13-20) She stated that

he then said, "Don't worry. If the school asks for it, I will hand it in for you." (Tr. 38:4-5) She noted, "he did say that Nicoletta and I were the only ones that handed it in. He said I took it. I don't know if he said it or them but I assumed it was both our ours." (Tr. 38:8-11) On "Thursday, May 11th" (Tr. 45:13), she met with Mr. Hornes again and "He told me that the school was asking for them and he had a blank security agreement, and he said sign it and I will hand it in. ...just date it a few days back." (Tr. 46:6-11)

After speaking with Ms. McCormick, Mr. Cannici informed Dr. Zoeller of her statement and was told to investigate the matter. Mr. Cannici first interviewed Ms. Sherry, then Ms. Hilla, Ms. Calderone, Ms. Leccese, Mr. Stack, Ms. Cheryl Roskowinski, and Ms. Sacco. Mr. Cannici testified, "I took notes based on the questions that I asked and the answers that I was given. And when I was finished with an interview, I typed it all up and added the statement on the bottom. I read the above statements and agree they are accurately represented based on the interview that was conducted with me. And I gave each person I interviewed the opportunity to sign the document to verify that what I had recorded was accurate." (Tr. 285:9-17) "Each person that I interviewed I gave an opportunity to come back and review the statement as a whole. And if there was any changes or anything that they were concerned about, I gave them the opportunity to revise or change or to stand by exactly what was there." (Tr. 286:9-14)

Mr. Cannici met with Ms. Sherry "on May 11th" (Tr. 49:6) and she noted, "I had my end-of-year evaluation meeting with our principal, Brian Cannici." (Tr.49:7-8) She testified that Mr. Cannici began the meeting by stating, "that there was an issue with my paper and that it was taken, and he wanted me to tell him about it." (Tr. 49:23-25) In reference to his meeting with Ms. Sherry, Mr. Cannici stated, "...basically I called her in and made her aware of what had been shared with me by Mrs. McCormick." (Tr. 281:19-22)

Ms. Sherry signed the statement prepared by Mr. Cannici. (B-4) She testified, "That was the statement that I signed. It pretty much summed up the conversation that I had with Mr. Cannici." (Tr. 51:17-19) As noted above the interview was conducted on May 11, 2017, although no date is mentioned in the statement, and the statement is dated May 16, 2017 and marked as "Revised". The statement says, "I asked her if she was aware of any irregularities regarding the signing of the security agreements for the PARCC test." However, both Ms. Sherry and Mr. Cannici's testimony was that he began the meeting by informing her as to Ms. McCormick's report that Ms. Sherry's agreement had been taken.

Mr. Cannici next met with Ms. Hilla. Her statement shows a meeting date of “Friday, May 12th”. (B-10) The statement, revised on May 17, 2017, notes, “Ms. Hilla was asked if she was aware of any irregularities regarding the signing of the security agreements.” Ms. Hilla testified that when she met with Mr. Cannici, “he was just asking me questions about whether I signed my paper, whether somebody, anybody approached me, and whether I knew anything about the paperwork being pulled from the guidance office.” As with Ms. Sherry the statement indicates that Mr. Cannici inquired about “any irregularities” but the testimony was that he asked direct questions including “whether I knew anything about the paperwork being pulled” from guidance.

In her statement, Ms. Hilla crossed out the RPEA and added “Tommy” as the one who “instructed members not to sign them.” It notes that “Miss Sherry shared with Ms. Hilla that Tommy Hornes had pulled her agreement from the guidance office. Ms. Hilla did sign hers, but did not hand it in right away. Melanie asked for it on Wednesday, May 10th.” Ms. Hilla was asked on redirect when she turned her agreement in to Ms. Ferla and responded, “Here it states May 10th but – so I guess that’s accurate.” (Tr. 238:;15-16) Mr. Cannici testified that Ms. Hilla told him, “that she had been instructed by RPEA leadership not to sign the security agreements.” (Tr. 291:7-9) He further noted, “It was that they had been instructed at a meeting not to sign the documents, and Mr. Hornes had approached people personally telling them not to sign the documents.” (Tr. 293:1-4) Ms. Hilla testified that she spoke to Ms. Sherry as “the other nontenured teacher” (Tr. 219:15-16) about signing the agreement, “Because there was questioning as to whether we were going to sign it, and Tommy had told us that we didn’t have to sign it.” (Tr. 219:22-23) Asked, “And your testimony is that he told you that you didn’t have to sign or did he tell you not to sign it?” (Tr. 220:2-4) She responded, “He told us not to sign it.” (Tr. 220:5) Questioned as to when this occurred, she stated that she was in Ms. Lecesses’s classroom and Mr. Hornes “kind of peeked his head in and he said...not to sign the security agreement.” (Tr. 220:20-22) In reference to her discussion with Ms. Sherry, she noted, “originally she had told me that Tommy said it was okay that we could sign the papers...I told her that I still had my paper...and she told me not to bother because Tommy had taken her paper.” (Tr. 224:11-17) On cross-examination, Ms. Hilla was asked, “Do you recall Mr. Hornes saying that members don’t have to sign...if they felt they weren’t properly trained?” (Tr. 237:13-15) She responded, “Yes. Not in those exact words but yes.” (Tr. 237:16)

The District entered the statement of Ms. Lecesses as B-8. The statement was prepared by Mr. Cannici as noted earlier. It is unsigned and dated as, “Revised

5/17/17". I note that several of the statements were not signed as the Union had advised against signing them. Ms. Leccesse testified that she acknowledged to Mr. Cannici that the document was accurate. (Tr. 188:1-3) The statement provides, "Maria Leccesse informed me that Mr. Hornes told her not to sign the security agreement (in passing)." It also states in reference to Mr. Stack's agreement that "Mr. Hornes had obtained the agreement back from Mrs. Ferla and returned it to him." In her testimony, Ms. Leccesse stated that she had two conversations with Mr. Hornes about signing the agreement. The first was a conversation in Mr. Hornes' classroom where they reviewed the PARCC Manual and "we were just going very quickly through what we weren't comfortable with." (Tr. 173:23-24) She noted, "pretty much on my way out the door... Tommy told me that he called our NJEA rep, Joe Tondi, and asked him if it was okay that the third through fifth grade teachers don't sign, and he told me that Joe Tondi told him it was totally fine, that we didn't have to. And after I heard that, I felt more comfortable." (Tr. 174:8-14) The second conversation took place in the hallway and Mr. Hornes said, "he had gotten Mr. Bob Stack's agreement back from Melanie...." (Tr. 175:25, 176:1-2) On cross-examination, she stated, Mr. Hornes "told me that this is what we were doing, and I had to decide for myself whether or not I was going to do that." (Tr. 205:15-17) Asked if it were her decision alone not to sign the agreement she responded, "Yes. As soon as he told me that he spoke to Joe Tondi and Joe Tondi told him it was okay that staff members do not have to sign the PARCC agreement. ...So when he told me that...I felt comfortable." (Tr. 205:25, 206:1-2)

Ms. Leccesse stated that Mr. Hornes told her, "he had gotten Mr. Bob Stack's agreement back from Melanie and it was back in Bob's possession." (Tr.175:25, 176:1-2) Asked on cross-examination if Mr. Hornes went "into details of how he got Mr. Stack's agreement", she responded, "No, not with me, no." (Tr. 198:13-15) Asked if she knew whether "Mr. Hornes inadvertently took Mr. Stack's agreement while he was in Melanie Ferla's office", she responded, "I have no idea. I have absolutely no idea." (Tr. 198:17-19) She was asked, "He just said he had Mr. Stack's agreement?", to which she replied, "I have to be honest, I don't remember the exact words he used. I don't know. I can't remember if he said had or got. I want to say he said he got it." (Tr. 198:23-25, 199:1-3)

Ms. Sacco testified that she met twice with Mr. Cannici and that her statement (B-12) reflected their conversation. The statement is marked "Revised 5/19/17" and notes that "at the last RPEA meeting...it was suggested that members not sign the security agreements until issues were clarified with staff training." Her testimony was that no one spoke to her about signing or not signing her agreement. She

noted that it was stated “at a meeting with the union representation.” (Tr.251:9-10) On cross-examination she stated that Mr. Hornes did not put any pressure on her to not sign the agreement. Asked on redirect about the part of her statement that “she was approached by an association member who told her that she needed to see Tommy Hornes”, she stated, “That’s what I stated to Mr. Cannici. I don’t actually recall that specifically, but I know the meeting didn’t happen.” (Tr. 261:24-25, 262:1) Mr. Cannici testified on this portion of the statement that Ms. Sacco “did not reveal the identity of the association member.” (Tr. 302:19-20) He noted, “She wanted to keep the member’s name confidential.” (Tr. 302: 22-23)

On each of the statements from Mr. Cannici’s interviews, there is a concluding sentence attesting to the accuracy of the statement followed by a signature line. Asked on direct about the signatures or lack thereof, Mr. Cannici replied, “The tenured teachers I believe as a union activity decided not to sign them. You will notice the nontenured teachers did sign them.” (Tr. 300:14-16) Mr. Cannici identified the nontenured teachers as “Allison Sherry, Allison Hilla and Nicoletta Sacco.” (Tr. 310:8-9) In his Affidavit of September 27, 2017 (B-22), Mr. Cannici in point seventeen (17) states, “It should be noted that all three nontenured staff members signed the testimonial summaries I had written without hesitation or concern.” I note that Ms. Sacco’s statement (B-12) was unsigned. Her statement does contain her initials. She was asked on cross-examination if this was her way of signing and replied, “I guess Mr. Cannici asked me to initial the changes.” (Tr. 259:21-22)

As part of his investigation, Mr. Cannici also interviewed Ms. Calderone and completed a statement (B-6) with a notation of “Revised: 5-17-17” which is unsigned. She testified that “He called me in and told me that Allison Sherry had already told him that I was aware of the situation.” (Tr. 130:24-25, 131:1) The statement makes a reference to an RPEA meeting and “that the RPEA members shouldn’t sign.... Allegedly, this was said by Tommy Hornes.” In her testimony she stated, “Because we were advised that if we didn’t feel that our training was what it should have been that we shouldn’t sign it.” (Tr.124:20-22) Asked on cross-examination about the sentence beginning “Allegedly”, she stated, “I believe I wasn’t completely sure who actually said it.” (Tr. 140:18-19) Then asked if she had “any recollection of Mr. Hornes specifically saying don’t sign the agreement unless you have been properly trained?” (Tr.140:25, 141:1-2) She responded, “No, not completely, no.” (Tr. 141:3)

Ms. Calderone testified that she spoke to Ms. Sherry in “The week in between testing periods.” (Tr:128:4) Ms. Calderone stated that Ms. Sherry “told me that Mr. Hornes had told her that he took her security agreement in her protection.” (Tr. 128:7-9) She noted that she then spoke to Mr. Hornes, “same day. Possibly the next day” (Tr.128:24-25) and that she asked him if he took Ms. Sherry’s paper and “He said that he did.” (Tr. 129:11) Asked if she revealed this to anyone she responded, “I don’t believe so, no.” (Tr. 129:25) Asked if she felt an obligation to Mr. Cannici to reveal this, she responded, “I didn’t because...I didn’t think it was that big a deal.” (Tr. 130:3-5) “I didn’t know that that was a secure document.” (Tr.130:9-10) While Ms. Calderone testified that the statement accurately reflected what she told Mr. Cannici, she agreed on cross-examination that “in this statement there is nothing about Mr. Hornes coming up to you or having a discussion with you and saying I told – I took Allison’s agreement....” (Tr. 141:8-11) Also, asked on cross-examination who told her that the agreement was a secured document, she stated, “I believe Mr. Cannici.” (Tr. 145:9) Asked when she was informed of this, she responded, “When we had the original conversation about the paper.” (Tr. 145:12-13) Ms. Calderone was then directed to the PARCC Manual’s (Calderone 2) definition of secure as “a test item, reading passage or test that has not been made available to the public” (Tr. 146:12-14) and asked if the agreements were available to the public to which she replied, “I believe it is.” (Tr. 146:21)

In his testimony about his interview with Ms. Calderone, Mr. Cannici stated that “She also had confided in me that Mr. Hornes had taken the agreements, or excuse me, that Mr. Hornes had admitted to taking the agreement from Allison Sherry.” (Tr. 296:19-23) Asked, “Does B-6 in evidence accurately reflect the statement that Jessica Calderone gave you during the course of your investigation?” (Tr. 297:9-12), he replied, “It is.” (Tr. 297:13) However, nothing in B-6 reflects Ms. Calderone indicating that Mr. Hornes admitted to her that he took Ms. Sherry’s agreement. As noted above, Ms. Calderone testified that she didn’t reveal this to anyone as she didn’t think it was a big deal. Ms. Rainone testified that she became President of the RPEA in “October of 2017”. (Tr. 947:22) She stated that she met with Ms. Calderone and Mr. Cannici, and identified a statement from Ms. Calderone (B-63) dated, “December 6, 2017”. She testified that Ms. Calderone “told him that Tom had told her that he had gotten a security agreement.” (Tr. 970:24-25) Asked if Ms. Calderone informed Mr. Cannici that “Mr. Hornes told her he took Allison Sherry’s security agreement?”, she replied, “Yes.” (Tr. 971:2-3) Asked about Ms. Calderone’s initial discussion with Mr. Cannici, Dr. Zoeller testified “that subsequently we

found out that she had herself confronted Mr. Hornes about taking Miss Sherry's agreement...." (Tr. 486:11-13)

Ms. Sherry testified that when Mr. Hornes told her that he took her agreement from Ms. Ferla's office, she looked surprised and he then stated, "Don't worry. If the school asked for it, I will hand it in for you." (Tr. 38:4-5) Ms. Calderone's statement (B-6) makes a similar statement but precedes it saying that Mr. Hornes told Ms. Sherry this "when her agreement was returned to her".

Having been informed by Ms. Leccesse that Mr. "Stack's agreement had been taken and returned to him" (Tr. 298:19-20), Mr. Cannici interviewed Mr. Stack. He created a statement about the interview (B-15) noted as "Revised 7/15/17" which was unsigned. The statement reflects that Mr. Stack signed an agreement and that it was returned to him by Mr. Hornes. Mr. Stack testified that he submitted an agreement and that he "deposited it on her desk". (Tr. 438:5) Asked when he next saw the agreement that he "deposited on Melanie Ferla's desk", he responded, "When Tommy Hornes walked into my classroom and handed it to me." (Tr. 438:13-18)

Having found out from Ms. McCormick on or about May 9, 2017 that Mr. Hornes had told Ms. Sherry that he had taken her agreement, Mr. Cannici began his investigation. His investigation raises some serious concerns. He started the interviews by often stating the issue rather than seeking a general response first. Ms. Sherry testified that Mr. Cannici began the meeting by stating, "that there was an issue with my paper and that it was taken...." Ms. Hilla stated, "he was just asking me questions about whether I signed my paper, whether somebody, anybody approached me, and whether I knew anything about the paperwork being pulled from the guidance office." Ms. Calderon testified, "He called me and told me that Allison Sherry had already told him that I was aware of the situation." (Tr. 130:24-25, 131:1)

Mr. Cannici did not ask those interviewed to write their recollections down but rather took his own notes. When questioned on cross-examination as to the whereabouts of the original notes, he responded, "At this point they are probably discarded." (Tr. 354:18) Of the statements introduced only Allison Hilla and Melanie Ferla's contain the date on which the interview was conducted. All but Ms. Ferla's statement contain a date marked "Revised". This date reflects when the individual was called back to review the statement which Mr. Cannici had typed from his notes and each was offered a chance to review the statement and make corrections. Ms. Hilla and Ms. Sacco made corrections. Ms. Hilla to

clarify that Mr. Hornes, not “the RPEA leadership”, had instructed members not to sign the agreements and Ms. Sacco to say that the RPEA had “only suggested...not required” members not to sign.

As noted earlier, Ms. Sherry and Ms. Hilla’s statements indicate that they were asked if aware of “any irregularities regarding the signing of the security agreements”; however, Ms. Sherry stated, “when I came in, he said that he needed to ask me a question...that there was an issue with my paper and that it was taken....” (Tr. 49:21-24) Mr. Cannici stated, “I called her in and made her aware of what had been shared with me by Mrs. McCormick.” Ms. Hilla noted that Mr. Cannici “was just asking me questions about whether I signed my paper, whether somebody, anybody approached me, and whether I knew anything about the paperwork being pulled from the guidance office.”

The statements of Ms. Sherry, Ms. Leccesse, Ms. Hilla and Mr. Stack contain sections that are underlined. There is nothing in the record to explain why these sections were underlined but as Mr. Cannici typed the statements from his notes he must have chosen to emphasize these. None of the witnesses who attested to the statements made mention of the underlined sections.

Asked on cross-examination if he provided his “notes” to Dr. Zoeller, Mr. Cannici replied, “I did.” (Tr. 380:14-16) Dr. Zoeller testified that Mr. Cannici also interviewed “Lauren Cherello, Cheryl Roskowinski”. (Tr. 490:4-5) Ms. Cherello is mentioned in Mr. Cannici’s report (B-13) but not in his Affidavit. On cross-examination Dr. Zoeller noted that “Santo Calabro was interviewed by Mr. Cannici”.(Tr. 567:3-4) Asked if he had seen the statements from the three individuals, he responded, “Somewhere along the way I have seen them, yes.” (Tr. 567:11-12) Asked if there were a statement “provided in this matter” (Tr. 566:9) from the three interviewees, Dr. Zoeller indicated that there wasn’t. While the responses from these individuals may not have been insightful in the investigation, the lack of any indication of what was discussed either in the testimony or in a statement makes the interview process presented incomplete. Mr. Cannici’s Affidavit (B-22) makes no mention of interviewing these three individuals.

Mr. Cannici also met with Ms. Ferla. As she was accompanied by Ms. Giglio, he had Board secretary, Ms. Kobylarz, sit in the meeting and take notes. In the statement (B-16) Ms. Ferla is asked if she was aware that “agreements and staff reported they were signed and returned to them.” She responded that “one was not signed but printed. So she handed it back. She indicated that it was Mr.

Stack.” Asked who returned the agreement, “Mrs. Ferla replied she did.” The statement notes, “Mr. Cannici proceeded to state that he was told Mr. Hornes returned the document.” Ms. Ferla replied, “she doesn’t know, could have been Tommy, doesn’t know.” Asked about the agreements being in her office, she stated “her office was open during testing; they were on the clipboard in her office.” The statement also indicates, “Mrs. Ferla stated she was told to let the union know when she got security agreements. ‘She was told by Tommy to hand it back’”. She then noted, “He (TH) said to give them to him.” She also stated, “Sherry may have been another one.”

I note that Ms. Ferla did not testify. The District initially indicated that she would be called (see Tr. 305) but later noted that she was not to be called unless needed in rebuttal. (Tr. 377) The Respondent indicated that they would call her but did not. Additionally, Ms. Kobylarz was not presented as a witness.

Mr. Cannici interviewed Mr. Hornes on May 15, 2017 and had Ms. Kobylarz take notes. Mr. Hornes was asked about Mr. Stack’s agreement and he “Admitted he took it by accident. He was talking to Melanie, when he was leaving he picked up his papers along with Bob Stack’s agreement that was in Melanie’s office.” (B-18) Mr. Hornes indicated that he then “brought the paper to Bob.”

As noted, Ms. Ferla indicated that “her office was open during testing” which was done the week of May 8-12, 2017. Mr. Stack testified that he “deposited it on her desk”. Ms. Giglio testified that she saw the agreements in Ms. Ferla’s office and asked, “Where were they?” responded, “Her desk, back table.” (Tr. 1017:25, 1018:1) Mr. Cannici on redirect was asked if Ms. Ferla kept “her office locked at all time?” He responded, “At all times, no, she did not.” (Tr.429:17-19) He was then asked if “she ever had other teachers in her office?” He responded, “Yes”. (Tr. 429:20-22) Mr. Hornes’ indication that he picked up Mr. Stack’s agreement along with other papers is plausible, especially given Mr. Stack’s testimony of placing the agreement on Ms. Ferla’s desk. Ms. Leccesse’s testimony that Mr. Hornes told her “that he had gotten Mr. Bob Stack’s agreement back from Melanie and it was in Bob’s possession” is not definitive that Mr. Hornes intentionally took the agreement. As noted earlier, she testified, “I can’t remember if he said had or got.”

Mr. Cannici testified Mr. Hornes said that he picked up Mr. Stack’s agreement from Ms. Ferla’s office “but Mrs. Ferla is saying there is no way anybody could have access to any of those agreements.” (Tr.314:1-3) Mr. Cannici concludes “that there is an arrangement between Mrs. Ferla and Mr. Hornes to communicate

with one another when an agreement came in, and if it was signed, to let him know, Mr. Hornes, and he removed it.” (Tr.315:10-14) First, Ms. Ferla initially told Mr. Cannici that she took Mr. Stack’s agreement and then amended her statement to “she doesn’t know, could have been Tommy, doesn’t know.” She then stated that she was told to let the Union know when she got agreements and “was told by Tommy to hand it back.” She next added that “she was present but didn’t see him physically give them back. He (TH) said to give them to him.” Ms. Ferla then indicated that it was only Mr. Stack’s agreement which she amended to “Sherry may have been another.” As noted, Ms. Ferla was not called to testify. While Mr. Cannici concluded that Mr. Hornes took the agreements, it is plausible that Ms. Ferla took the agreements and gave them to Mr. Hornes. As noted above, it is also plausible, given Ms. Ferla’s and Mr. Stack’s interviews, that his agreement was picked up from Ms. Ferla’s desk by Mr. Hornes with the other documents that he had. Secondly, if an agreement was in place between Ms. Ferla and Mr. Hornes to provide any agreements brought to the guidance office, why wasn’t Ms. Sacco’s agreement provided to Mr. Hornes. Additionally, Ms. Hilla stated that she handed her agreement to “Melanie Ferla” (Tr. 225:14) and there is no allegation that it was taken by Mr. Hornes or given to him by Ms. Ferla.

After her interview, Ms. Ferla wrote a response to Mr. Cannici on May 17, 2017 in which she stated, “There was no way anybody could have gained access to the PARCC Security Agreements in my office.” (B-17) Asked if he knew where she kept the agreements, Mr. Cannici answered, “I do not.” (Tr. 374:25) Asked on re-direct if he accepted Mr. Hornes explanation that he accidentally took Mr. Stack’s agreement, Mr. Cannici responded “No.” (Tr. 418:4) “It didn’t make sense to me.” (Tr. 418:6-7) “It didn’t make sense to me because the security documents, number one, are supposed to be kept in a secure folder. So for it to be lying on the desk randomly didn’t make sense to me. Number two, Mrs. Ferla herself added on to her own statement there was no way anybody could have had access to those security agreements. So I have to interpret that as leaving a paper on a desk as accessible.” (Tr. 418:8-16) However, Ms. Ferla’s statement indicates that the agreements were “on the clipboard in her office” which is quite different from a secure folder. She also noted that her office was “open during testing”. Additionally, Mr. Stack testified that he left his agreement on her desk. Mr. Cannici testified, “Well, it’s very curious because the first one says there is no way anybody could have gained access to the PARCC security agreements in my office. If that was true, then how did Mr. Stack’s security agreement leave her office.” (Tr.308:10-14) While Mr. Cannici initially questioned how Mr. Stack’s agreement could have left the office, he concludes that Mr. Hornes took

the agreement because Ms. Ferla's later statement says no one could have gained access to them, "Once again when Mr. Hornes made the claim he accidentally took the document off of Mrs. Ferla's desk, this makes this an impossibility". (Tr.420:12-15) Yet, her own statement, the only information that we have from Ms. Ferla, clearly shows that they were accessible. Dr. Zoeller testified that Mr. Cannici "Immediately after interviewing Mrs. Ferla, he came up to my office.... That she was saying things that he knew to be untrue. ...her story kept on changing." (Tr. 492:10-18) Despite her untruthfulness and changing story, Mr. Cannici accepted her statement (B-17) that no one could have gained access to the agreements.

As noted above, Mr. Hornes admitted from his initial interview through his testimony at the hearing that he took Mr. Stack's agreement from the guidance office. He stated that this was done accidentally. The evidence through the testimony of the witnesses involved shows that this was certainly a possibility. No one saw Mr. Hornes take Mr. Stack's agreement. Mr. Stack testified that he was given the agreement by Mr. Hornes with no discussion involved. Ms. Leccesse's statement notes that Mr. Hornes had obtained the agreement back from Mrs. Ferla but does not indicate how he obtained the agreement. Her testimony on cross-examination that she was unaware how Mr. Hornes obtained Mr. Stack's agreement belies her statement on direct that he got the agreement from Ms. Ferla. Ms. Ferla's statement is unreliable. Her statement notes that she gave Mr. Stack's agreement back to him, then informed by Mr. Cannici that he was told that Mr. Hornes returned the agreement she states that "she did not give it back to him (BS) but she doesn't know, could have been Tommy". Asked by Mr. Cannici how this was possible, she noted that the office was open and the documents on a clipboard. Asked if any other agreements were given back, she "stated only Bob Stack." When told by Mr. Cannici that he was aware of others, she stated "Sherry may have been another one". As noted by Mr. Cannici, "That she was saying things that he knew to be untrue. ...her story kept on changing." However, when five (5) days later, Ms. Ferla writes, "There was no way anybody could have gained access to the PARCC Security Agreements in my office", Mr. Cannici accepts this statement which contradicts her testimony in his interview. As noted, Ms. Ferla was not called to testify and I find her statements to be unreliable and Mr. Hornes explanation of accidentally taking Mr. Stack's agreement to be plausible.

In his Affidavit, Mr. Cannici states that he found Ms. Ferla's statement credible because "testing coordinators have an affirmative obligation to keep testing materials secure." However, in her statement she stated that "she was not the test

coordinator". In point thirty (30) he states, "It is illogical to assume that this document would be placed casually on a desk in Ferla's office where it could be inadvertently misplaced or lost." In light of Ms. Ferla's changing position in her interview, Ms. Giglio's testimony that she saw the agreements on Ms. Ferla's "desk, back table", Mr. Stack's statement that he placed his agreement on Ms. Ferla's desk and Mr. Hornes statement that he picked the agreement up off of Ms. Ferla's desk, I cannot place the same confidence in Ms. Ferla's amended statement. Additionally, I note that in point thirty-two (32), Mr. Cannici explains that he requested the signed agreements and Ms. Ferla provided the agreements of the middle school teachers. He notes that Ms. Ferla then returned with the agreements of the three nontenured teachers and states, "Ferla provided no explanation as to where they had come from, or why they had not been in the folder." He further stated, "I stopped back over in the hallway to look into the guidance office, and I saw Mrs. Ferla was in there with Mrs. Giglio, and they were kind of scrambling around." (Tr.309:15-18) Despite his questioning where the nontenured teacher agreements were held, he does not amend his conclusion that they must have been held in a secure location because that is what the regulation states.

Dr. Zoeller in his Affidavit notes in point fifteen (15) speaking to Ms. Ferla's revised statement (B-17) as to access to her office, "I found this revision to be credible in light of the fact that testing coordinators have an affirmative obligation to keep testing materials secure." As noted, in light of Ms. Giglio and Mr. Stack's testimony as well as Mr. Cannici's testimony about the guidance office and Ms. Giglio assisting Ms. Ferla when he asked for the agreements, I cannot credit Dr. Zoeller's conclusion. Additionally, he states, "I agree with the opinion of the Principal that Ferla made her initial, inaccurate statement in a misguided attempt to 'protect' Hornes, without thinking through its ramifications for her own employment." It is certainly as plausible that Ms. Ferla's revised statement in B-17 was an attempt to protect herself after thinking through the ramifications for her employment.

In his Affidavit, Mr. Cannici in point twenty-four (24) notes, "Based on the facts of this matter, it was my opinion that Hornes had likely directed Stack not to resubmit the agreement." He reached this conclusion despite noting that Mr. Stack stated "Hornes handed him the document without saying anything". He references Board Exhibit 24 in which Mr. Stack states, "No conversation took place beyond him saying, 'Here'." I find nothing in the record to support his conclusion that Mr. Hornes directed Mr. Stack not to resubmit the agreement.

As to Ms. Sherry's agreement, I first note that no one testified to having seen Mr. Hornes remove her agreement from Ms. Ferla's office. Additionally, no one testified to having seen her agreement in Mr. Hornes' possession and no one testified that he was observed destroying her agreement. What has been shown is that Ms. Sherry stated that Mr. Hornes told her "that he went into Melanie's office and he took the paper or the security agreement." Ms. McCormick and Ms. Hilla stated that Ms. Sherry told them that Mr. Hornes had taken her agreement.

Ms. Calderone in her initial statement also said that Ms. Sherry told her that Mr. Hornes had "pulled her security agreement". Mr. Cannici testified that Ms. Calderone "also had confided in me that Mr. Hornes had...admitted to taking the agreement from Allison Sherry." (Tr. 296:19-23) He noted that her statement (B-6) of the May 2017 meeting was accurate but it makes no mention of Ms. Calderone stating that Mr. Hornes admitted this to her. While Ms. Calderone testified that she confronted Mr. Hornes on the same day after Ms. Sherry informed her that he had taken her agreement and that Mr. Hornes "said that he did", she did not relay this information to the Mr. Cannici or the District until December 6, 2017, approximately six (6) months after her initial interview and two (2) months after tenure charges were filed. (B-63) Ms. Calderone did not testify to this document; Ms. Rainone testified to it as she was present at the December meeting. While the statement provides another person stating that Mr. Hornes told them that he took Ms. Sherry's agreement, I cannot place great weight on it as it came two months after tenure charges were filed and it was information that Ms. Calderone chose not to reveal at the two interviews with Mr. Cannici in May 2017. As noted, Ms. Calderone was not questioned as to this document.

It is clear that Ms. Sherry's original agreement went missing. She stated that she handed in her agreement to Ms. Ferla, "I wanted to speak to Mr. Hornes first and then I signed it and then I handed it in Monday morning." (Tr. 35:21-23) She explained that the agreement in the District's possession (B-2) was not the original as "my original had Wite-out on it." (Tr. 47:10-11) It is undisputed that Mr. Hornes met with Ms. Sherry and had her sign a new agreement. Ms. Sherry testified, "Mr. Hornes found me and had me sign a new one." (Tr. 42:18) Mr. Hornes testified that he "told her that it was told to me that her paper was not present. ...I gave her the copy she signed it." (Tr. 793:11-17)

Ms. Sherry testified that Mr. Hornes told her to "date it a few days back." (Tr.46:11) Mr. Hornes stated, "She asked me if she should backdate it. I told her it was up to her." (Tr. 793:17-18) What is clear is that the agreement carries a

date of “5/5/17” and the meeting to sign the second agreement was on “May 11th.” (Tr. 48:22)

As noted above, I have raised concerns with Ms. Ferla’s statement in which she altered her position throughout the document, especially in light of the fact that she did not testify. However, Mr. Hornes testified that he “was told by Melanie Ferla that her [Ms. Sherry] agreement was not in”. (Tr. 792:19-20) On cross-examination Mr. Hornes stated, “Miss Ferla is the one that has the security agreements. So she would know who is the one who handed them in.” (Tr. 869:;12-15) Asked if he requested that Ms. Ferla inform him about the agreements, he replied, “I said if anybody handed in security agreements, let me know so I can tell them whether or not they were at that meeting so they understand their rights.” (Tr. 873:1-4) Mr. Hornes’ statements confirm an arrangement between he and Ms. Ferla as to the security agreements.

Having established that Ms. Sherry’s original agreement was not in the group of signed agreements, that Mr. Hornes was provided information as to whose agreement had been handed in to Ms. Ferla and that Mr. Hornes met with Ms. Sherry to sign a second agreement, along with Ms. Sherry’s testimony that Mr. Hornes told her that he took the agreement, it was certainly plausible for Mr. Cannici to conclude that Mr. Hornes took the agreement from the guidance office. However, in point thirty-one (31) of his Affidavit, Mr. Cannici in dismissing Mr. Hornes’ explanation notes, “the Reporting Teacher, Sherry, Hilla, and Calderone each confirmed that Hornes had taken Sherry’s agreement and told her that he had done so.” The Reporting Teacher (Ms. McCormick), Ms. Hilla and Ms. Calderone, at this time, had not individually confirmed that Mr. Hornes had taken Ms. Sherry’s agreement and told her he had done it. Rather, they confirmed that Ms. Sherry told them that Mr. Hornes had taken her agreement. Additionally, while Ms. Sherry testified that Ms. Giglio stated to her, “don’t say anything about Tommy taking your paper” (Tr. 58:7-8), Ms. Giglio was not questioned about the statement so I do not place great weight on this statement as it could have been further investigated in Ms. Giglio’s testimony.

At the time of the tenure charges, Ms. Sherry’s statement that Mr. Hornes told her that he had taken her agreement stand alone. As noted, Ms. McCormick, Ms. Hilla and Ms. Calderone, all confirmed that Ms. Sherry told them that Mr. Hornes had said this but only confirmed that Ms. Sherry told them this. No reason or rationale had been presented as to why Ms. Sherry might make up the statements that she attributes to Mr. Hornes. As noted, it is reasonable for Mr. Cannici to conclude that her statements were true and that Mr. Hornes did tell her that he

took her agreement. While I don't place great weight on Ms. Giglio's statement to Ms. Sherry, it was reasonable for Mr. Cannici to consider this in his determination.

In his Affidavit, Mr. Cannici relies upon the information that he received in his investigation. He speaks to his interviews with the teachers noted herein. As detailed above, his interview process was flawed in several ways. While he took notes of each interview, he then discarded the notes. He created a statement for each interviewee to review, approximately a week later. While the statements contain a "Revised" date, only two contain the date of the interview. Sections of many of the statements are underlined but no explanation was given for why Mr. Cannici chose to emphasize these sections. Three (3) other teachers were interviewed but no statements were provided and no mention is made of their being interviewed in Mr. Cannici's Affidavit.

In point eighteen (18) of his Affidavit, Mr. Cannici provides a "summary of my conversation with Calderone" in which he emphasized that "Mrs. Calderone said that Allison Sherry specifically told her that Tommy Hornes pulled her security agreement from the guidance office and that it was given to him by Melanie Ferla." His summary (B-6) makes no mention of Ms. Ferla giving Ms. Sherry's agreement to Mr. Hornes. In point twenty (20), Mr. Cannici notes that he received a statement from Ms. Calderone attesting that Mr. Hornes had not solicited her about signing the agreement. Mr. Cannici dismisses this as a "self-serving statement" which he claims "contradicted Calderone's prior testimony, where she summarized Sherry's recount of Hornes' interference." However, Ms. Calderone's statement was that Mr. Hornes didn't solicit anything "from me." She made no reference to her statement about Ms. Sherry. Earlier, I noted my concern with Mr. Cannici's determination in point twenty-four (24) that Mr. Hornes "had directed Stack not to resubmit his agreement."

In point twenty-seven (27), Mr. Cannici dismisses Ms. Ferla's statement that the agreements were "on the clipboard in her office". He bases this on her revised statement (B-17) indicating that no one could have gained access to the agreements which he determined was credible simply because the regulations require it. In point thirty (30) he found it "illogical" that the agreements could have been placed on Ms. Ferla's desk but testimony at the hearing by Ms. Giglio and Mr. Stack belie this determination. In point thirty-one (31), Mr. Cannici relies on the "fact that the Reporting Teacher, Sherry, Hilla and Calderone each confirmed that Hornes had taken Sherry's agreement" but Ms. McCormick, Ms. Hilla and Ms. Calderone at this time all confirmed only that Ms. Sherry told them

that Mr. Hornes took her agreement, not that he told each of them that he had taken the agreement.

Mr. Hornes is also charged with harassing staff members who submitted their agreements and creating an Unhealthy Working Environment for nontenured staff members who signed their agreement. In her statement (B-10), Ms. Hilla crossed out the term "RPEA" and added "Tommy" as the person who told her not to sign the agreement. She testified that "it wasn't both Tommy and Laura, who was also part of the leadership. It wasn't Laura also." (Tr. 229:9-10) As noted earlier, Ms. Hilla testified that she was in Ms. Leccesse's class when Mr. Hornes peeked in and said not to sign the agreements.

Ms. Leccesse's statement (B-8) notes that she went to Mr. Hornes asking "if they were going to sign the agreements. His response was, 'no'." She stated that she acknowledged to Mr. Cannici that the statement was accurate. (Tr.188) As noted earlier, Ms. Leccesse testified that in speaking with Mr. Hornes about the testing and reviewing the manual, Mr. Hornes had contacted their NJEA representative, Joe Tondi, who said that they didn't have to sign and she "felt more comfortable." On cross-examination she stated, "Tommy never harassed me." (Tr.204:15) She stated, "He did not coerce me. He told me that this is what we were doing, and I had to decide for myself whether or not I was going to do that." (Tr. 205:14-17) Ms. Leccesse subsequently provided a statement (Leccesse 1), dated "6/2/2017" which stated "Thomas Hornes did not in any way harass or coerce me into signing the document in any way."

Ms. Sherry testified that she spoke to her coworker, Lauren Cherello, on "that Friday before, and she said she was told by Laura Giglio to tell me and the other fifth grade teacher that we should not sign it". (Tr. 32:2-4) She noted that she went to speak with Mr. Hornes "on May 5th" (Tr. 35:11) "And he said that they weren't telling people they shouldn't sign it..." (Tr. 35:17-18) Ms. Sacco was asked on direct if anybody spoke to her about signing the agreement or not and she responded, "Not me personally. An announcement was made." (Tr. 251:5-6) She noted, "It was at a meeting with the union representation." (Tr. 251:9-10) Asked on cross-examination "if union leadership said that people don't have to sign the security agreements if they feel they weren't properly trained?" (Tr.255:2-5) She answered, "That's correct." (Tr. 255:6) Ms. Sacco amended her statement (B-12) in reference to not signing the agreements to clarify that it was "only suggested, not voted on, not required". As noted earlier, Ms. Calderone provided a statement (Calderone 1), dated "6/7/17" in which she stated, "Tommy Hornes did not solicit anything from me. This was done on the

advisement of NJEA.” She testified on cross-examination that Mr. Hornes did not harass or intimidate her to not sign her agreement. (Tr. 138)

Ms. Leccesse’s statement indicates that Mr. Hornes told her not to sign the agreement but testified that he told her that she had to decide for herself. Her testimony was also that he did not coerce or harass her. Ms. Sherry stated that when she went to see Mr. Hornes he told her that she could sign the agreement and that Ms. Cherello had told her that Ms. Giglio had said that they shouldn’t sign. Ms. Sacco stated that no one personally spoke to her about not signing the agreement. She amended her statement to emphasize that the union leadership “suggested”, not “required” this. Ms. Calderone testified that Mr. Hornes did not coerce or harass her. In addition to Ms. Leccesse and Ms. Calderone both provided statements to the effect that they were not coerced or harassed.

Before reviewing the charge that Mr. Hornes created an unhealthy workplace for staff members, I must note that the District was in a state of disarray at the time of the PARCC testing for elementary students. In March 2017 an incident involving the Superintendent and a nontenured teacher, Christina Esposito, led to an outside investigator being hired by the District. The investigator held interviews with staff members culminating in a final report. Ms. Giglio testified that Dr. Zoeller was “found guilty of that but there was no punishment towards him. So again every woman in the building seen this. ...So there is that fear. There is definite fear of reporting things.” (Tr. 1005:2-10) Asked on cross-examination, “Would you agree that employees would be nervous to make allegations against a superintendent?” Dr. Zoeller answered, “Sure.” He was then asked, “And that might contribute to a unhealthy workplace?” and answered, “Sure.” (Tr. 589:2-8)

As noted earlier, in April 2017 a Middle School teacher, Mr. Van Hassle, had been removed from the building due to improprieties in the testing. Ms. McCormick testified that Mr. Van Hassle had been “fired”. Ms. Calderone stated that he had been “escorted out” and Ms. Leccesse said that there were “rumors flying” in the District. She also noted, “after everything happened with Steve, I mean you have to understand we were all scared.” Mr. Cannici stated, “there was a lot of fear in the building based on what had happened to Steve Van Hassel.”

Mr. Cannici testified that in relation to Ms. Sherry an unhealthy workplace environment was created when Mr. Hornes took her agreement. He stated that she “was a nontenured teacher who willingly handed in a security agreement....”(Tr.413:7-8) He noted, that she “was very, very worried that the removal of her documents would result in possible consequences to her and her

job.” (Tr.15-18) He also stated, “when you involve the rest of the teachers, who I interviewed, they were very, very uncomfortable with being involved in this process.” (Tr. 413:23-25)

Ms. Sherry was concerned for her job, having been previously RIF’ed from the District. She stated that she handed her agreement in to Ms. Ferla on May 8, 2107. Her concern can be seen in her reaching out to Ms. Calderone and Ms. Hilla and then Ms. McCormick. Ms. McCormick testified on cross-examination that Ms. Sherry “was concerned that the document being taken from her was going to affect her employment.” (Tr. 113:10-12) She also noted, “She panicked”. (Tr.113:18) Ms. Sherry noted, “I didn’t know if I would have asked for it back, if he would be mad, if it was something I really should ask for it back.” (Tr.42:3-5) She stated that Ms. Ferla had sent an e-mail “reminder all teachers need to sign and hand in the security agreement...” (Tr. 43:17-18) At this point she “got worried because it was kind of a reminder that we needed to hand it in. And so I just started to get worried again.” (Tr.43:25, 44:1-2) Asked about the two week period between May 5 and 16, she stated, “I was like a nervous wreck.” (Tr. 53:19)

Mr. Hornes’ actions and involvement with Ms. Sherry’s agreement caused her real concern and worry. The anxiety and concerns that she expressed were unhealthy and placed her in a compromised position as seen by her struggle whether to confront Mr. Hornes. Mr. Cannici’s comments that the rest of the staff was uncomfortable with being interviewed doesn’t rise to the level of creating an unhealthy workplace. These employees may have been bothered that they were interviewed but they did not express concerns for their individual employment. Neither Ms. Hilla nor Ms. Sacco, the other nontenured teachers, expressed concern for their employment.

The Board’s “Healthy Workplace Environment” policy (B-23) calls for “employees [to] interact with each other with dignity and respect”. Mr. Hornes’ interference with Ms. Sherry’s desire to return her agreement to Ms. Ferla and follow what she believed to be the proper action was disrespectful and as such prevented her from enjoying a healthy workplace environment during this period. I note that the Policy defines conduct such as the “infliction of verbal abuse...verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating” but also states that the conduct “is not limited to” these types of actions. Under a broad interpretation of the Policy, Mr. Hornes’ actions did create an unhealthy situation for Ms. Sherry.

Mr. Hornes is also charged with “improperly solicited the District’s students for personal gain.” This involves a Summer Camp that he runs with his sister and his efforts to secure attendance at the camp from students in the District. Dr. Zoeller testified that the “issue dates back to 2015 where there was some issues regarding how Mr. Hornes promoted that camp program within the Rochelle Park School District.” (516:5-8) Board Policy 3230 Outside Activities (B-21) states, “1. Teaching staff members shall not devote time during their work day to an outside private enterprise.... They shall not solicit or accept customers for a private enterprise...on school grounds during their work day without the express permission of the Superintendent;”.

Dr. Zoeller testified that in 2015 Mr. Hornes requested permission to promote his Junior Explorer’s summer camp within the district. Dr. Zoeller stated, “I gave him permission to do under certain conditions.” (Tr.518:1-2) He noted, “there were no permissions granted other than permission to have the folder – the flyer appear on the Thursday folder.” (Tr. 519:3-5) He also stated that Mr. Hornes “originally asked whether he could make hardcopies and distribute it to the students directly, and he was not permitted to do that....” (Tr.518:20-23)

Dr. Zoeller explained that teachers each had an electronic messaging portal called ‘Dojo’ in which they could communicate with parents who chose to opt-in to the system. In a May 26, 2015 Memorandum to Mr. Hornes (B-29), Dr. Zoeller expressed that he was aware that Mr. Hornes had used the Dojo system to promote his camp. He noted that this was a violation of “Board Policy 8830 – Pupil Records.” Mr. Hornes was directed to “cease solicitation activities for your business immediately.” In reference to the Memorandum, Dr. Zoeller testified, “It’s a memo. It’s not even copied to his personnel file.” (Tr. 526:1-2) On cross-examination he noted, “It was not a disciplinary action.” (Tr. 633:10) Asked on cross-examination, “And after May 26, 2015, Mr. Hornes never used the Class Dojo to promote his business, correct?”, Dr. Zoeller replied, “Not to my knowledge.” (Tr.661:1-4)

In April 2017, “approximately a week before the Steve Van Hassel incident” (Tr. 527:22-23) at a DARE graduation, “several board of education members...were walking into that graduation with envelopes...concerned that someone had sent mailings directly to their home soliciting them for Mr. Hornes’ camp program.” (Tr. 528: 3-9) “...we were extremely concerned right from the outset that somehow our databases had been used to identify what families and students were getting these because the mailings corresponded...to the families of the grade levels serviced by Mr. Hornes’ camp.” (Tr 529:2-8) Dr. Zoeller noted that the

flyer also had a coupon which stated, "Paying by check, hand this coupon in to your homeroom teacher."; (Tr.531:9-10) He stated that this would be a violation of Board Policy 3230, "Because it is inviting people to bring money and check into the school district and involving my district staff as essentially brokers for Mr. Hornes' business." Dr. Zoeller stated that he met with Mr. Hornes in April 2017 to discuss the matter and Mr. Hornes stated that the coupon "was a typographical error made by his sister." (Tr. 532:25, 533:1) Mr. Hornes also indicated that he "used a local mailing list maintained by his family's newspaper." (Tr. 537:9-10)

In reference to the direct mailing sent by Mr. Hornes, Dr. Zoeller noted in his Affidavit, "Hornes did not contact me to request permission for students to hand in money on school grounds, nor did he ask his colleagues if they would be willing to assume responsibility for such payments." Dr. Zoeller faults Mr. Hornes for "encouraging students to remit payment at school...without Superintendent approval. Considering that Hornes and I met in May, 2015 to discuss at length Hornes' improper efforts to solicit students...." However, on March 30, 2017 Dr. Zoeller approved a flyer for the Thursday Folder which stated, "Return application and form of payment to your child's homeroom teacher...." (Zoeller 1) Dr. Zoeller testified that this "had gotten away from me in terms of the review of the documents that were on the website". (Tr. 637:20-22) As noted this flyer was approved on March 30, 2017. In April 2017, less than a month's time after the flyer, Mr. Hornes' direct mailing was received and yet Dr. Zoeller cites Mr. Hornes' for not adhering to their May 2015 meeting.

Dr. Zoeller's Affidavit in point forty-six (46) states, "...even though I had never given express permission as required by Policy 3230, it was possible that an invitation to remit payment at school may have been overlooked in one of the 2015 'Thursday Folder' brochures. I subsequently reviewed.... In doing so I confirmed that the statement was included in at least one of the approved brochures." However, as noted, the statement appears in the March 30, 2017 flyer. Additionally, Junior Explorer flyers were added to the "Thursday Handouts" on "3/24/2016", "4/28/2016", "05/05/2016" and "5/12/2016" and contain the statement "Mail Check or Cash and application to" with an address and then states "or Send to school in envelope labeled Jr. Explorers".

In point thirty-four (34) of his Affidavit, Dr. Zoeller states, "Even more concerning, by directing students to give checks to their homeroom teachers, you inexplicably, and without permission or event the consent of your fellow teachers, involved other teaching staff members in your private enterprise." Asked on

redirect-examination, “There is not one statement provided by any staff member saying I was somehow involved in Mr. Hornes’ business but I didn’t know about it or something to that effect, correct?” (Tr.663:22-25) He responded, “No.” (Tr. 664:1) Then asked, “No one ever told you that?”; he responded, “No.” (Tr. 664:2-3)

In reference to the direct mailing by Mr. Hornes to students in the District, Dr. Zoeller noted in his July 25, 2017 memorandum to Mr. Hornes, “you have presented no information to suggest nor is it reasonable to assume that your family’s newspaper includes in their mailing list information regarding the school attendance status of the residents.” However, when presented with an invoice from the newspaper (Hornes 4), refers to it in point thirty-eight (38) of his affidavit as “a self-serving ‘invoice’ allegedly submitted from Our Town Newspaper to the Junior Explorer’s...” The invoice is dated “1/12/2017” and noted as from “Our Town Newspaper” and directed to “Junior Explorers”. Mr. Hornes testified that he asked his father for any information that he had relevant to this and “He said he had an invoice he kept for himself that he produced.” (Tr. 720:19-20)

Point forty-four (44) of Dr. Zoeller’s Affidavit states, “It was, in the Board’s opinion, extremely unlikely that the owners of Our Town Newspaper agreed to ‘sell’ this information to Hornes for ‘\$0.00’.” Mr. Hornes testified, “Met Flyers is a company he [James Hornes] does business with and in order – they give him, every January they give him a brand new list for free. So if he didn’t pay for it, he’s not going to charge his son.” (Tr. 721:5-9)

Mr. Cannici was asked on cross-examination, “And you testified that the addresses had to be taken from the school database, correct?” He replied, “Yup.” Asked, “You are not aware of Mr. Hornes using a school database to send out these coupons?” He answered, “My personal experience, no.” (Tr. 384:25, 385:1-5) Mr. Cannici further noted that the database has a mailing list which is kept in the main office and only administration and the school secretary have access. (Tr.385) Asked to identify administration, he stated, “The superintendent, Dr. Zoeller; myself, as principle; and Cara Hurd as curriculum director.” (Tr. 386:1-2) Asked if he was aware of any of these individuals providing Mr. Hornes with the school’s mailing list, he stated that he wasn’t aware of anyone providing the mailing list to Mr. Hornes. (Tr. 386)

In Charges one and four, Mr. Hornes is charged with “improperly solicited the District’s students for personal gain”. I find no support for this allegation. While

the Superintendent stated that a flyer “had gotten away from me in terms of the review of the documents that were on the website”, the record shows that he approved flyers on five (5) dates involving the school district and receipt of registration for the Junior Explorers camp. One flyer was approved as late as March 30, 2017 “which stated, “Return application and form of payment to your child’s homeroom teacher....” Additionally, while Mr. Cannici states that Mr. Hornes must have gotten the school’s mailing list, he testified to being unaware of anyone in administration proving the list and that they were the only ones with access.

AWARD

As noted above in the Discussion and Analysis section, I find the allegation that Mr. Hornes tampered with or interfered with Allison Sherry’s PARCC Security Agreement credible. While there is no direct evidence linking Mr. Hornes with the loss of Ms. Sherry’s first signed agreement, there is nothing that indicates that Ms. Sherry lied when she stated that Mr. Hornes told her that he took the agreement. As Mr. Hornes denied any involvement in the disappearance of Ms. Sherry’s agreement, it follows that he was not honest on this issue. I have also found that this created an Unhealthy Work Environment for Ms. Sherry. I find that Mr. Hornes’ explanation of how he acquired Mr. Stack’s security agreement to be plausible given the testimony noted. I do not find that Mr. Hornes harassed or created an unhealthy work environment for other nontenured or tenured staff. Also, I do not find for the allegation that Mr. Hornes improperly solicited the District’s students.

I note that Mr. Hornes is a thirteen (13) year teacher in the district who had no disciplinary record prior to this incident and was considered an excellent even exemplary math teacher. While Mr. Cannici stated he believed the interference with the security agreements deserved the tenure action, he also stated that he did not consider Mr. Hornes’ lack of discipline in his consideration of first suspending him, then recommending withholding his increment or the tenure charges. I note that Mr. Cannici did not state that he considered the lack of discipline but overrode the consideration due the grievous nature of his actions, but that he never considered his prior record.


The District argues that this matter is most akin to the ‘In re Parezo’ as the teacher involved in that matter did not take responsibility for her actions and Mr. Hornes has not taken responsibility herein. I note that ‘In re Parezo’ the

classroom teacher observed the other teacher removing the tape from the student's mouth (Michael). Michael stated that Parezo placed the tape on his mouth and another student confirmed this. Ms. Parezo stated that another student placed the tape on Michael's mouth as she had only placed it on his cheek. In the current matter, Ms. Sherry testified that Mr. Hornes told her that he took her agreement, only Ms. Calderone testified that Mr. Hornes confirmed this with her but her statement was made seven months after the investigation in which she failed to report this to Mr. Cannici and failed to note it in her statement which she verified was accurate. Other teachers testified that Ms. Sherry told them that Mr. Hornes took her agreement but none independently verified her statement.

The Respondent presented the matter of 'Orleans Sarmiento and School District of the Township of Saddle Brook, DOE Dkt. No. 79-4/17, August 31, 2017'. The arbitrator noted, "Respondent failed since May of 2016 to demonstrate any authentic remorse for her conduct..." Despite the Arbitrator's subpoena to submit her cell phone, the Respondent sold the phone. The Arbitrator stated that the statements of two students who were interviewed in the matter were not presented to the Board. She stated, "The Superintendent had a responsibility to give the Board a complete picture of the investigation..." She further stated, "One of the key elements...was a fair and full investigation into the facts before a decision is made." In the current matter, three (3) teachers were interviewed whose statements were not presented. The Superintendent testified that he was aware of the interviews. Additionally, the Principle took notes at all of the interviews but then destroyed the notes. A week after the interviews he had the interviewees read the statement that he prepared and allowed them to make corrections to his recollection of the interview taken from his notes.

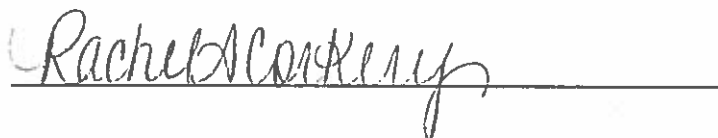
In his decision *In re John Vingara*, the Arbitrator noted "the District presented no direct evidence that Vingara had engaged in theft..." He further notes, "the District has offered circumstantial evidence of the Respondent's alleged misconduct and theft." In the instant matter, as noted earlier no one saw Mr. Hornes take Ms. Sherry's agreement, no one saw Mr. Hornes in possession of Ms. Sherry's agreement and no one saw Mr. Hornes destroy her agreement. What has been shown is that Ms. Sherry's original agreement was missing, presumed destroyed, and that Ms. Sherry stated that Mr. Hornes told her that he took the agreement. While Ms. Sherry's agreement was missing, those of the other two nontenured teachers were not. Also, Mr. Hornes admitted to taking Mr. Stack's agreement from Ms. Ferla's office. While the Board chose not to accept that this was done accidentally, I have found based on the testimony provided this was a plausible explanation.

Mr. Hornes involvement with Ms. Sherry's agreement was a serious violation and caused her anxiety and concern for her position. Yet, this was amplified due to the conditions of fear already present in the District due to the recent claim against the Superintendent and the dismissal of Mr. Van Hassle. **Based upon all of the above, I find removal of Mr. Hornes from the District too severe a punishment. Mr. Hornes will be returned to his position with the District. However, he shall suffer the loss of the one hundred and twenty (120) days while on suspension and a one-year loss of his increment for the 2017-2018 school year.**


Thomas D. Hartigan
Arbitrator

Dated: August 28, 2018
Boothwyn, PA

On this 28th day of August 2018, before me personally came and appeared Thomas D. Hartigan who executed the foregoing instrument and who acknowledged to me that he executed same.



COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Rachel A. Corkery, Notary Public
West Bradford Twp., Chester County
My Commission Expires March 10, 2020
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES