

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION – COMMISSION OF EDUCATION

In the Matter of the Tenure Charges Against:

THOMAS ROLSTON,	X
	X
RESPONDENT,	X
	X
-By-	X
	X
OCEAN COUNTY VOCATIONAL	X
TECHNICAL SCHOOL DISTRICT BOARD	X
OF EDUCATION,	X
	X
CLAIMANT.	X
	X
Agency Docket No.: 87-4/20	X
	X

OPINION AND DECISION

Before: Patrick R. Westerkamp, Arbitrator

Appearances: Thomas A. Ralston Edward A. Cridge, Esq.,
Mellk O’Neill

The Ocean County Vocational School
District Board of Education Robert C. Shea, Esq.,
R. C. Shea & Associates

Dates of Hearings: June 25, 2020; June 26, 2020; July 17, 2020;
July 23, 2017; August 17, 2020; August 25, 2020; September 21, 2020, & October 2, 2020

Statement of Decision: Based upon the evidence presented herein, I find that the School District has substantiated the charge against Respondent Thomas A. Rolston that he engaged in a pattern of conduct unbecoming a staff member, and there is just cause to terminate his employment on this basis. Charge I is **sustained**. Charge II is **sustained**. Charge III asserting Respondent lacks the capacity to perform his duties as a teacher is **denied** in its entirety as unfounded in the record.

I. INTRODUCTION

This matter was brought to arbitration before the undersigned pursuant to P.L. 2012 Chapter 26 of Title 18A *N.J.S.A.* It involves three separate charges filed on April 2, 2020 against the Respondent, Thomas A. Rolston, by the Ocean County Vocational Technical School District Board of Education (“Petitioner” or “OCVTS”). The charges seek to remove Mr. Rolston from his position as a teacher for the School District. A document entitled Statement of Evidence (including supporting Certification of Frank J. Frazee) (“March 11th statement”) was served on Respondent’s attorney on March 11, 2020. It was designated by Petitioner as its compliance with N.J.S.A. 18A:6-17.1(b)(3), which mandates providing Respondent with “all evidence including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee’s representative.” Respondent consistently has rejected Petitioner’s assertion that the March 11th statement met Petitioner’s obligation to serve him with a separate Statement of Evidence, hereinafter referred to as a “17.1 (b)(3) Statement.”

Respondent propounded his Statement of Evidence on June 15, 2020. On this same day, Petitioner submitted its witness list to Respondent’s attorney.

Before the hearings started, joint discussions were held with the advocates parsing their respective positions about whether each party’s pre-hearing submissions complied with N.J.S.A. 18A:6-17.1(b)(3). Neither side was in full compliance with the statute. The Arbitrator, however, did not conclude either was deprived of procedural due process, or the ability to fully and fairly present its case.

Procedure

Eight hearings were held over an interval of three months. The parties and their legal counsel appeared and participated on June 25, 2020; June 26, 2020; July 17, 2020; July 23, 2020; August 17, 2020; August 25, 2020; September 21, 2020; and October 2, 2020. This three month interval is attributable to: convening a hotly contested matter during the COVID-19 Pandemic; conflicting legal and personal obligations of counsel; limited availability of two experts witnesses; varied procedural and evidentiary objections; and counsels' zealous advocacy. Multiple challenges were put forward to bar witnesses and/or documentary evidence under 17.1(b)(3).

Toward the close of the October 2, 2020 hearing Petitioner's attorney suggested:

whatever ultimately the decision of the Arbitrator may be, that would be formulated based upon those --in some part, upon those decisions that were made. So it really should be formally part of this hearing process, and again, I would agree that it would probably make sense if we have one joint exhibit, J-1 right now, we just make all of that, the motion practice and the opinions relative to that as J-2.

(T. 10-2-20, page 78.) Respondent's attorney accepted this suggestion. The Arbitrator noted, "I'll consider it to be part of my duties to make certain that you captured everything, and if for some reason there's a piece of paper missing, I'll let you folks know and that can easily be incorporated." *Id.* at 79. Neither counsel submitted the tentative exhibit (i.e., J-2) for the Arbitrator's review, and approval for entry into the record.

Petitioner called as witnesses: Lillian Zavattieri, Principal of the District's Toms River Center; Irene Malifitano, Tenured Teacher, and Medical Assistant Instructor; Nicholas Szymanski, part-time CPR Instructor; Thomas Pernal, Electrical Trades Tenured Instructor; Christy Shenloogian, Service Occupation Instructor; Dr. Michael Maschi, Assistant Superintendent; Patrolman William Resetar (#428) Toms River Police; and as an expert witness Dr. Brett Prince of Neurobehavioral Rehabilitation Associates, L.L.C.

Respondent called as witnesses: Avram Mack, M.D. , Children’s Hospital of Philadelphia and Linda Bogan. Mr. Rolston also testified on his own behalf. Dr. Mack testified as an expert.

Petitioner called Tierney Meeker as a rebuttal witness.
Subsequently, each party timely filed a post-hearing brief.

II. CONDUCT OF THE HEARINGS

New Jersey’s tenure resolution procedure minimizes discovery, and can reduce procedural wrangling among counsel. Such was not the case herein. Procedural and evidentiary rulings were occasionally met with cautions from the non-prevailing attorney that the ruling was sufficiently erroneous that any eventual award might be headed toward vacation. When counsel thus preserved their right to appeal, the Arbitrator moved forward gathering admissible evidence to render an award based on the facts and the law. A strongly contested evidentiary question touching the admissibility of evidence of alleged student abuse, and whether it was properly addressed by the OCTVS administration some years before the tenure charge is later referenced herein.

The record in this matter shows Respondent engaged in conduct unbecoming through untoward comments—some of which were in the presence of students—to faculty and administrators. The comments worried his fellow teachers, disrupted the workplace, and had a tendency to destroy public respect for the school system. This same behavior was contrary to Policy Nos. 3281 and 3251.

III. FACTUAL INFORMATION COMMON TO ALL CHARGES

Paragraphs 1 through 133 below list facts garnered from the hearing record. E.g., from exhibits, credible testimony, and the reconciliation of conflicting testimony. As with any series of hearings, some witnesses were more credible than others. Credibility determinations touching three witnesses are touched *infra*. The facts cited below have

been established from careful purusal of the records. They should not be expansively construed.

III A.1 Words of Caution

This caution especially applies to references to a District Teacher, hereinafter referred to as “DT.” Some speculated he courted a female student as far back as 2015. While agnostic to these conjectures, Respondent Thomas A. Ralston, in 2019, voiced concern to teaching colleagues that he was professionally obligated to alert officials after receiving an unsoliciated communication from a parent. The report was passed on to him via telephone on April 2, 2019. The parent asked him to investigate the possibility of inappropriate conduct in the form of student abuse.

Weeks later, after being temporarily suspended, Mr. Rolston reported the parent’s concerns to the State of New Jersey, Department of Children and Families, Institutional Abuse Investigation Unit (“IAIU” or the “Unit”). Subsequently, the IAIU opened a case and interviewed him. Fourteen months later, on the eve of the within tenure hearing, Respondent sought the Unit’s records. He urged they would “corroborate and lend credence to his version of one, or more, of the conversations which are the subject of these tenure charges.”

IAIU records being confidential, Respondent requested an arbitral order permitting the Unit to release parts of its DT files for the Arbitrator’s *in camera* review. Petitioner opposed that motion, which was denied on June 19, 2020. Counsel were notified that the request for such information,

appears at the periphery of the Tenure Charge. Directing the IAIU to produce portions of its investigative file goes beyond what is needed to understand context and strays in the direction of probing the [matter’s] whole history.

Occasionally, throughout the hearings, questions and/or arguments verred in the direction of what transpired in the years from 2015 to 2019 as to the parental notice of a student/teacher relationship. Counsel were not permitted to probe this irrelevant area, except for exploring how Mr. Rolston's *belief* that he had a "mandatory reporting" obligation intertwined with his behaviors between April 10, 2019 and April 12, 2019. The Arbitrator declined to have a "trial within a trial" about what may have occurred, or not between the student and her teacher. This is not within his jurisdiction.

III B. Facts About the Three Critical Days, as Determined by The Arbitrator After a Careful Perusal of the Record

Below are the Arbitrator's findings-of-fact following a complete review of the hearing record. The Arbitrator also studied the parties' post-hearing briefs. Each brief emphasizes different points, and varies in its factual descriptions. Paragraphs 1 through 133 list facts determined by the Arbitrator, beyond peradventure, to have been proven. Factual assertions in those briefs, not encompassed in these paragraphs, are not accepted as part of the record.

III B.1 Introduction

1. The OCTVS provides full and shared time programs for students in Ocean County and is comprised of schools located in Toms River, Brick Township, Lakehurst, Ocean County College Campus, Stafford Township, Waretown, and Jackson Township.
2. Respondent Thomas A. Rolston holds an Associate's Degree in Creative Writing, and a Bachelor's Degree in Literature from SUNY Purchase.
3. Following graduation, he was a proof reader/technical writer/editor in private industry for several years.
4. Thomas Rolston has been an OCTVS employee since September 1, 2000.
5. He received a full teachers' certification in 2005, and gained tenure at OCTVS.

6. At all relevant times Respondent worked as a tenured English Teacher for the Shared Time Program at the Toms River Center (the “Center”) on Old Freehold Road, Toms River.
7. In 2017, a medical examination revealed a “black spot” on his stomach.
8. When asked “Should I do anything?” a physician advised waiting.
9. In March 2018, Mr. Rolston had tumor removal surgery for stomach cancer, which was followed by 9-months of treatment with Gleevec.
10. He testified to experiencing unpleasant, physiological and psychological side effects from this pharmaceutical.
11. Around January 2019 he stopped taking Gleevec.
12. A few months later, Respondent re-experienced vomiting and feared his stomach cancer was returning.
13. Around this time, Mr. Rolston told colleagues he “felt like a dead man walking.”
14. A medical consultation about a possible relapse was scheduled for Wednesday, April 17, 2019.
15. Approximately two weeks before this consultation, Mr. Rolson received an unsolicited telephone call from Linda Bogan.
16. Several years prior, Respondent tutored one of her two daughters.
17. She testified to learning from them of a social media posting alleging DT was engaged to marry a former student.
18. Ms. Bogan sent Respondent a “screen shot” of a single page from the post.
19. Respondent Rolston testified to being stunned and “taken aback” by the posting.
20. When Ms. Bogan asked him to investigate, Respondent replied affirmatively.
21. He never personally explored the issue.
22. Mr. Rolston, however, started expressing concern about *his* obligation to report possible student abuse, and what he conjectured could have been a “coverup” by school administrators.

23. The record is clear that Karen Homiek was one of the administrators he had in mind.
24. He testified, “If I brought this forward, I was afraid of what would become of me”
25. Within a few days, Mr. Rolston broached the matter with Union President Christine Smith who--he hoped—might potentially shield him from reprisal.
26. They again discussed his concerns on April 11, 2019.

III. B.2 The School Week That Started on April 8, 2019

27. Throughout the week of April 8, 2019 Rolston was assigned to his normal teaching schedule at the Toms River Center.
28. The relevant work days during this week were Wednesday-April 10, 2019, Thursday-April 11, 2019, and Friday-April 12, 2019

III B.3 Wednesday - April 10, 2019

29. Respondent characterized his emotional state on April 10th, as follows

I now had the weight of the world, these concerns [a cancer relapse & , information from Ms. Bogan] hanging over me. I have to report them, [i.e., potential student abuse] like I said, because like Mr. Maschi testified, we are mandatory reporters...I’m waiting on April 17th, I have seven more days to wait until I found out is my cancer back, or do I have to start taking these [Gleevec] pills.

30. He reported for work at the Toms River Center, which was administered by Principal Lillian Zavattieri.
31. She holds a NJ State teaching certificate, a master’s degree in education, and a Doctorate in Medicine.
32. On arriving around 7:15am, Mr. Rolston opened a conversation with Electrical Trades Instructor Thomas Pernal, whom he characterized as a “friend,” and “elder statesman.”

33. He showed Mr. Pernal text messages on his phone “indicative of improper relationships between students/staff at PAA, i.e., Performing Arts Academy.”
34. Mr. Rolston asked for Mr. Pernal’s input in the context of using the information to “bring down” a school administrator.
35. Mr. Pernal demurred, understanding that Respondent was referring to Karen Homiek, who then was Acting Superintendent.
36. Later that morning, Respondent Rolston entered Irene Malifitano’s classroom.
37. He routinely visited her room when he was scheduled--the following day--to teach these students English.
38. These regular visits were with Ms. Malifitano’s approval, and designed to remind the students of outstanding homework that he previously had given them.
39. Ms. Malifitano is a full-time medical assistant instructor.
40. 24-students were in the classroom, and were participating in hands-on CPR training.
41. Part-time CPR instructors Eve Adams and Nicholas Szymanski (mother and son) were the training leaders.
42. Mr. Szymanski also is full-time Lieutenant with the Marlboro Township Police Department.
43. Ms. Malifitano, although present, was not directly supervising either instructor.
44. She was aware when Respondent Rolston--who she characterized as a colleague and friend--entered the classroom as the lesson was proceeding.
45. Over the next several minutes Ms. Malifitano, having a clear line of sight, occasionally saw Thomas Rolston engaging with her students.
46. She was on her computer operating an overhead projector, and heard little of what was said.
47. Lt. Szymanski was doing the actual training, while his mother took notes at the rear of the classroom.

48. Ms. Malifitano said Mr. Rolston's tone was "joking," and got an impression that he and the instructors were friendly.
49. Mr. Rolston, who is of Hispanic heritage and bi-lingual, talked with two groups of Hispanic students. He knew the students in one group from the prior year, and conversed with them in Spanish.
50. *Inter alia*, they discussed "what I was going to make for dinner that weekend, I believe."
51. 13-days later, at the administration's request, Lt. Szymanski submitted an E-mail. It stated Respondent "made numerous comments about the food they were eating and what they should be smelling while performing cpr."
52. At one point, indeed, Mr. Rolston referenced the impact of eating garlic on CPR training.
53. Mr. Rolston additionally told one student she was pressing too hard on a CPR manikin; and he also placed a tissue over another manikin's head.
54. Hearing Respondent speak with female students in Spanish about Hispanic food made the Lieutenant uncomfortable, as did Respondent's comments about their implementation of the CPR training protocol.
55. The Lieutenant did not intervene, even though his uncorroberated testimony alluded to some purported "off-color" comments by Mr. Rolston.
56. Neither part-time instructor talked to him, nor did Respondent initiate a conversation with them.
57. Respondent exited the classroom after approximately 20-minutes.
58. Mrs. Adams later asked Irene Malfitano, "Who was that man?" She stated he had been inappropriate.
59. Ms. Malfitano identified Thomas Rolston by name.
60. Sometime after Noon, Mrs. Adams approached Principal Zavattieri who was in a hallway.
61. She complained about "a Tom Rolston," having been loud and disruptive during the CPR class.
62. Ms. Zavattieri promised to "look into" the situation.

63. Toward 12:50pm she walked to Mr. Rolston's office, and knocked.
64. The resulting exchange was "heated," and they had different recollections about what transpired.
65. Principal Zavattieri testified Respondent was aggressive, loud, confrontational, screamed she was not listening, and announced an intention to immediately speak with the two instructors.
66. Mr. Rolston, in turn, testified Principal Zavattieri initially named Ms. Malfitano as accusing him of inappropriate language, but later identified Mr. Syzmanski and Mrs. Adams as the complainers.
67. They concur he called Mrs. Adams "the old bag," and referenced Nicholas Szymanski as the "fat fuck."
68. Principal Zavattieri admonished Mr. Rolston not to use such language, and forbade him from approaching either instructor until after students had departed the Toms River Center for the day.
69. Asserting he would say what he wants, Mr. Rolston again used FF, and "Old Bag."
70. After that meeting ended, Mr. Rolston returned to Irene Malfitano's classroom around 1:15pm.
71. He found his colleague preparing for a previously scheduled postobservation conference with Principal Zavaterra.
72. Leaning over her desk, he asked what she had told the Principal.
73. Ms. Malfitano had not spoken with her, and told him so.
74. Mr. Rolston did not accept this denial, and then pressed the question.
75. Ms. Malfitano testified Respondent was angry, and continued leaning over her desk.
76. She also testified that he divulged knowing of "a teacher or teachers" having affairs with students.
77. And, Respondent stated he was going to "the Board office with this information ...and burn the place down, or torch the place down."

78. He forewarned he could disclose a “lot of information” concerning the District, commenting “I won’t go down like Stan.”
79. Stan was a district teacher who has passed from cancer.
80. These exchanges did not initially register with Ms. Malfitano. She explained, “I just took it as words of conversation that we had...I didn't even process at that time because I was pressed to go somewhere [i.e., the post evaluation interview] and I had other things that I was working on at the time.”
81. Later that evening, however, she informed her fiancé of the encounter.
82. Around 1:20pm, after visiting with Irene Malfitano, Respondent had another “heated” discussion with Principal Zavaterri.
83. They talked in her office, with the door closed, for no more than 10minutes.
84. Clerical staff member Barbara Frischman was in the adjourning Main Office. Ms. Zavaterri was apprehensive she could hear the commotion.
85. Having just departed from Ms. Malfitano, Mr. Rolston challenged the Principal’s statement about who initially reported CPR training disruptions, and yelled “Why can’t you get your facts straight?”
86. Ms. Zavaterri affirmed that she had not earlier spoken with Irene Malfitano.
87. Declaring “This meeting is over,” Mr. Rolston left the Principal’s office.
88. Immediately afterward, Ms. Malfitano reported to the Principal for their scheduled conference.
89. Mr. Zavaterri apologized for having forgotten about the conference, and steered the discussion to the CPR class.
90. As the two women talked, Ms. Malfitano shared Mrs. Adams’ earlier criticism of Mr. Rolston.
91. She acknowledged his behavior, as reported by Mrs. Adams, could have been disruptive.
92. Ms. Malfitano, 48-hours later, again met with the Principal. See paragraph 112.

III B.4 Thursday - April 11, 2019

93. On Thursday April 11, 2019 Mr. Rolston was scheduled to teach english-- between 8:05 & 8:40am--to one of Mr. Pernal's classes.
94. Sometime after Respondent entered the classroom--and apropos of Wednesday's request for advice--Mr. Pernal volunteered, "I'm ill-equipped to give you any guidance."
95. Within "ear shot" of the students, Respondent shared his version of events during, and following Wednesday's CPR class.
96. For 3 or 4 minutes he paced back & forth in front of the students talking in a loud voice.
97. At one point, he admitted having given Principal Zavaterri "a piece of my mind."
98. Mr. Rolston expressed his present intent as "bringing down" the administrator, and reference was made to "shooting the head off that fucking snake."
99. After Respondent exited the room Mr. Pernal said to the class that Mr. Rolston was "having a bad day."
100. Mr. Pernal later told others that Respondent had "flipped his lid."
101. In an E-Mail to Irene Malfitano, he opined, "I think his cancer is winning and has caused him to become unhinged."
102. Around 10:15am on Thursday, Mr. Rolston entered a room where Christy Shenloogian, a Service Occupation Instructor, was on lunch break.
103. Respondent's objective was to speak with Union President Smith who also was in the room.
104. Ms. Shenloogian testified Thomas Rolston "seemed angry," as he recounted the prior day's exchanges with Principal Zavaterri.
105. Further, he made reference to taking this place down, and burning it to the ground.
106. Although not interpreting "buring it" down literally, Ms. Shenloogian cautioned him, "You shouldn't say things like that in a school building."

107. Thomas Rolston replied, "I'm not going out like Stan I don't care."
108. Mr. Rolston expressed his view that Karen Homiek, then Acting Superintendent, may have "covered-up" the DT matter; which Mrs. Bogan asked him to investigate.
109. He asked Christine Smith how this might be broached without his being subject to retaliation.
110. On hearing her response, he replied "So you're not going to support me." Ms. Smith was not called as a witness.
111. In her adjoining classroom, Ms. Malfitano overheard snippets of the Rolston-Smith-Shenloogian conversation.
112. Thinking about it later, she decided to speak with Principal Zavatteri the next day. In fact she did so; among other things expressing concern for her personal safety.
113. After Mr. Rolston left Ms. Shenloogian's room, she and Ms. Smith had a brief conversation.
114. Ms. Shenloogian testified, "we weren't comfortable with what just happened."

III B.5 Friday - April 12, 2019

115. On Friday morning--prior to the start of classes--Thomas Pernal approached Ms. Shenloogian about Respondent's statements.
116. Mr. Pernal shared discomfort with her about what had occurred with Mr. Rolston.
117. Irene Malfitano joined the discussion saying she had heard similar statements from Mr. Rolston.
118. A school administrator, the three teachers concurred, must be notified.
119. Christy Shenloogian summarized their collective mindset. She testified,

the puzzle pieces were put together, when the three of us spoke, it became clear that this might be something more than just being angry and making off the cuff statements. When two other colleagues are saying the same thing you heard, it did make me feel even more uncomfortable being in space so close to Mr. Rolston.

120. Between 9:10am and 12:30pm, various OCVTS administrators held several separate meetings about Mr. Rolston's actions over the prior 48-hours.
121. In addition to Principal Lillian Zavatteri, Assistant Principal Michael Tash and Assistant Superintendent Michael Maschi participated.
122. Union representative Christine Smith attended two of the meetings.
123. Just before 12:50pm, Dr. Maschi telephoned the Toms River Police Department.
124. He testified calling the police "to fulfill my mandatory reporting obligation, but also, to rule out that there was a potential threat to the school district."
125. Next, he telephoned Christine Smith to advise he would be requiring Thomas Rolston to attend a 1:30 p.m. meeting.
126. Patrolman William Resetar, accompanied by two other Toms River Police Officers, arrived at the Center and talked with Dr. Maschi.
127. The 1:30pm conference was convened on schedule by Dr. Maschi.
128. Mr. Rolston, Union President Smith, Superintendent Homiek, and the three Toms River officers were in attendance.
129. The Superintendent read a suspension letter aloud.
130. Among other things, it stated Mr. Rolston had been placed on paid, administrative leave, and was to have no contact with OCTVS personnel.
131. Thomas Rolston invoked his right to counsel, and was not arrested.
132. Patrolman Resetar notified the Psychiatric Emergency Screening Services Unit ("PESS") to contact Respondent at home.
133. PESS visited his residence on April 12, 2019, and then transported Mr. Rolston to Southern Ocean Medical Center for a psychiatric evaluation. He was thereafter transferred to a Saint Barnabas facility.

IV. FACTUAL INFORMATION ABOUT REBUTTAL WITNESS, AND EXPERT WITNESSES

This section summarizes information garnered in connection with the testimony of two psychological experts, and of one rebuttal witness. Each of these witnesses testified to events transpiring *after* Respondent Rolston's suspension.

A. Rebuttal Witness Tierney Meeker

IV A. 1 Events Preceding Testimony by Rebuttal Witness Tierney Meeker

Toward the end of the September 21, 2020 hearing, during Thomas Rolston's recross examination, Petitioner's attorneys raised an evidentiary challenge. The District announced it wished to open a line-of-questioning about whether Respondent Rolston violated Superintendent Homiek's directive--issued at the time of his suspension--restricting him from having contact with OCVTS staff members. See paragraph 130, *supra*. Mr. Rolston's attorney objected. Following a colloquy, the objection was sustained. After the Arbitrator's ruling, Petitioner's counsel again pursued this inquiry. Its attorney asked, "Subsequent to the tenure charges being filed against you, Mr. Rolston, did you have any communication with [OCTVS staff member] Ms. Tierney Meeker?" Respondent answered "No," and his attorney reiterated the previous objection. Counsel for the Board pressed pursuing the question. He argued had become an allowable foray into credibility since Mr.

Rolston had just falsely denied under oath speaking with Ms. Meeker.

Respondent's attorney scoffed at this analysis. He urged, "There was no testimony of Mr. Rolston which would be impeached by that testimony [from Ms. Meeker if she was called] because my objection to that line of questioning was sustained. So where the inquiry to Mr. Rolston was not permitted, there can be nothing to impeach Mr. Rolston from that witness.

Briefs were filed over whether Ms. Meeker would be called as a witness.

They were read and reviewed. The Arbitrator then notified the parties' lawyers:

Petitioner's case rises, or falls on which April 2019 events it proves. There is no logical, or legal reason to add the alleged Meeker/Ralson encounter for this purpose to the historical mix of proofs.

However, earlier in Respondent's September 21st testimony, several questions and answers shed light on the ultimate issue of why the Arbitrator should, or should not permit Mr. Rolston to return to work as a tenured teacher. The record shows,

Q. Mr. Rolston, you have been here through the entirety of this multi day hearing, correct?

A. Yes, sir.

Q. You have heard the concerns that members of district staff have brought up about you, correct? A. Yes, I have.

Q. You have heard the arguments that have been made regarding the district's concerns, correct? A. I have.

Q. Okay. Why should the Arbitrator permit you to stay in your position from of

A. I have never been a threat to any child or fellow teacher ever. This was a moment of high stress, high tension, that it -- some aspects of it got away me, and that -- that's not me. It's not a true reflection or an accurate reflection me. My career has been nothing but helping kids. As Ms. *sic* Vogan testified, her daughter wasn't the only one that I helped home school. So it was a bad moment. It was just a culmination of perfect storms.

Q. Mr. Rolston, during the period from April the 10th through April the 12th of 2019, were you contemplating hurting anyone?

A. Never once.

Q. Were you contemplating doing any kind of damage to the premises of the school district?

A. Never once.

Q. Did you want anyone to think that's what you wanted to do?

A. Never once.

Q. Were you trying to scare people into thinking that you were some kind of threat?

A. Never once.

Tierney Meeker's allegations, if true, rebut Mr. Rolston's assertions that his in-school actions between April 10 and April 12, 2020 are not true, or accurate reflections of him.

and Under these circumstance, the District may issue a *subpoena duces tecum*, call Ms. Meeker as a witness about the events on August 17, 2020.

IV A. 2 Rebuttal Witness Meeker's Testimony

Tierney Meeker is the non-tenured Vice Principal of the Performing Arts Academy ("PAA"). She testified at Hearing No. 8 about an interaction--on August 17th--soon after the adjournment of Tenure Hearing No. 5. The encounter occurred

on her arrival at the PAA to cover nighttime supervisory duties. While driving into Parking Lot No. 2, she saw Respondent Rolston enter a vehicle. After exiting her car, a voice behind her said “Hey.” She turned, and saw Respondent. Greeting one another, Ms. Meeker immediately asked about his health. He replied,

“Tierney, we're not friends. He said you're going to lose your job just like everyone else here. He said you were a mandatory reporter with the whole [DT] thing, and now you're all going down. “

On hearing this, Ms. Meeker said she felt her employment was being threatened, and telephoned Superintendent Homiek. Sur-rebuttal testimony was not offered.

IV B. Expert Witnesses Brett J. Prince, Ph.D & Avram H. Mack, M.D. Brett J.

Prince, Ph.D, and Avram H. Mack, M.D. were respectively retained as experts by Petitioner and Respondent. Each prepared a professional opinion--as to Thomas A. Rolston--relying on findings from their independent examinations. This said, each doctor was retained to answer a different question.

Following Respondent’s April 12th suspension, Dr. Prince was contracted by Petitioner to conduct a fitness-for-duty evaluation. The doctor was to determine if Respondent had the capacity to perform the essential functions of teaching English at the Toms River Center. He was not apprised of these essential functions either generally, or as an English Teacher in a Shared Time Program.

Such inquiries require a “health care provider” to examine an employee's physical, or mental condition within the scope of his essential duties. Dr. Prince determined that Respondent lacked the capacity to perform as a teacher. This determination was adopted by Petitioner, and became one of the three prongs for its conclusion that Respondent merited dismissal from his tenured position.

Dr. Mack, in contrast, was retained after the within charges were filed. His task was

“to perform an independent medical examination on the subject of these tenure charges...as to the degree, if any, that he [Thomas Rolston] suffers from any psychiatric disorder that would pertain to any incapacity as a teacher.”

The below paragraphs summarize each expert’s qualifications, procedures, and professional opinion.

IV B. 1 Brett J. Prince, Ph.D.

Petitioner retained Dr. Prince to conduct a psychological evaluation of Respondent Rolston’s fitness to return to work for the District. Dr. Prince was trained--and practices--as a neuropsychologist. He is licensed in New Jersey, and reports seeing approximately 2,500 patients annually.

On August 20, 2019 Dr. Prince clinically interviewed Thomas A. Ralston. Prior to the interview he reviewed several documents furnished by Petitioner. They included: a job description, two police reports, and several statement of OCTVS personnel.

As a result of the interview the doctor initially ruled out that Respondent had a Pre-Existing Anxiety Disorder, or an Adjustment Disorder with Mixed Emotional Features. He then concluded an Objective Psychological Examination was indicated to develop a “patient profile for predicting medical/surgical/prescriptive success, and compliance issues.” Such testing Dr. Prince explained is the sole objective means for “Determining the need for guiding and structing mental health treatment (Psychiatric medication and/or Psychotherapy); Evaluating work capacity, Return to School/Work, or MMI [i.e., Meaning-Making intervention] issues.”

The same day, i.e., August 20th Dr. Prince conducted an “objective psychological examination” (“OBE”) of Mr. Rolston. The OBE primarily consisted of administering several “paper and pencil” psychological tests. They were the: 1) Trauma Symptom Inventory (TSI). 2) Millon Behavioral Medicine Diagnostic (MBMD); 3) Personality Assessment Inventory (PAI); 4) Symptom Checklist-90 (SCL-90R); and 5) Fear Survey Schedule III (FSS-III). Additionally, Dr. Prince conducted a medical records review. At the time, Respondent still was taking Lexapro first prescribed for anxiety after his stomach cancer diagnosis.

Although Dr. Prince observed that Mr. Rolston “demonstrated a motivated and concerted effort throughout” he concluded “one of the measures evidenced test distortion.” This was the PAI. Its results showed a “Pathologically extreme level of ‘Positive Impression Management’, indicating a consistent and deliberate attempt to distort test results by portraying oneself in a clinically invalid manner.” Dr. Prince summarized Mr. Rolston’s overall test results as demonstrating a choice to answer questions in an “inconsistent, invalid, and misleading manner.” Also, Dr. Prince testified Respondent personally misled him about prior mental health treatment, and his use of medical marijuana. Someone of such unpredictable behavior, Dr. Prince concluded, “ is not fit to work with children as the role of a teacher is integral to the well-being and safety of the students.”

At hearing, the doctor testified Mr. Rolston’s inconsistent replies also made a true diagnosis “only a guess on my part.” On balance, he guessed that Respondent has a “Pre-Existing Personality Disorder features (Narcissistic),” and could not return to work. Dr. Prince explained this, as follows:

When an individual chooses to repeatedly, consistently mislead and deceive, when he was clearly instructed not to.....And most people are honest or fairly honest. It is a well known in forensic circles and clinically that people who consistently, deliberately mislead and deceive, and that profile is not someone who should be around innocent children, should be teaching. He never should have.

(Emphasis added.)

IV B. 2 Avram H. Mack, M.D.

Avram H. Mack, M.D. was asked to determine if Respondent had a psychiatric disorder impacting his capacity as a teacher. Dr. Mack conducted a video interview, and examination of Respondent on May 15, 2020. A transcript of the interview was made by Condiotti & Associates Court Reporting Services. An 18-page IME Report dated June 15, 2020 was prepared by Dr. Mack, and entered into evidence.

The Report lists as information sources: 1. The May 15th Zoom interview and examination of Respondent Ralston; 2. Statement of Evidence included in the tenure charges; 3. Memorandum from Ed Cridge, Esq.; 4. Interview with Judy DeFrancesco; and 5. Medical Records from Monmouth Medical Center¹. Dr. Mack challenged Dr. Prince's earlier report as containing "methodological and reasoning defects." (R. 25, page 12.) Dr. Prince objected to this conclusion as defamatory and slanderous.

Dr. Mack's overall psychiatric opinion in the context of the tenure charges was:

day Mr. Rolston exhibited unwanted behaviors in the school setting in a 3
by period in April 2019. Mr. Rolston's mental health has been examined
my me and by others in connection with this matter. *Generally, speaking*
 opinion is that Mr. Rolston is healthy in terms of his psychiatric status.
 And,

¹ In excess of 1,000 pages, marked as R. 45 in evidence.

my opinion is that the report by Dr. Prince in this matter should not be relied upon for the topics that arise in this matter.

(Emphasis added.)

Additionally, he concluded “Mr. Rolston was neither suicidal nor did he intend to harm anyone at the school.” At the time of writing these conclusions, Dr. Mack was unaware that Respondent had been diagnosed in April 2019 with a depressive disorder.

Placing his report in context, Dr. Mack also wrote:

This is not to say that it was appropriate for a teacher to display any disruptive, sarcastic, angry, intrusive behavior or state violent content in front of students or in interactions with peer teachers. But here there is not psychiatric evidence that portrays any disruptive, or disobedient behavior outside of these circumscribed events occurring over 1-3 days (depending on one’s definition of objectional behavior). Furthermore, this is not to condone any violence or threat thereof in the school setting. *They may have demonstrated temporary unwarranted behaviors but do not represent a serious mental illness and they do not represent personality disorder that would affect Mr. Rolston’s abilities and mental health and his capacity to serve as a teacher.*

(Emphasis added.)

Dr. Prince’s report is of considerable relevance to the analysis of Charge III (Incapacity). Dr. Mack, however, warned about relying on the report. He cautioned, “One should not credit Dr. Prince’s report due to several methodological and reasoning defects. In defense of its expert, Petitioner Post-Hearing Brief urged that Dr. Mack’s report should be deemed inadmissible, or in the alternative disregarded as an irrelevant a net opinion.

V. DISCUSSION

The tenure charges for the Arbitrator’s consideration are:

V A. Specification Of Charges

Charge I – Conduct Unbecoming

Thomas Rolston engaged in unbecoming conduct by making several comments to other faculty members and in front of students that he intended to "burn the building," and "go down in a blaze of glory." Further, Mr. Rolston explicitly threatened then Acting Superintendent Karen Homiek by stating he was going to "cut the head off the...snake," thus insinuating he was planning on attacking the school system at its highest level.

Charge II – Other Just Cause

"Other just cause" exists as the result of separate violations by Thomas Rolston violation of OCVTS' Teacher Code of Ethics. The Code specifically states that an "educator accepts the responsibility to adhere to the highest ethical standards." Respondent failed to adhere ethical standards in that he:

Violated Policy # 3281 by engaging in inappropriate language, or expression in the presence of students;

Violated Policy # 3351 by failing to interact with other staff with dignity and respect;

Violated Policy # 3211 by purposefully and knowingly make malicious statements concerning a colleague, specifically, then Acting Superintendent Karen Homiek, in stating that he was "going to shoot the head off the snake...what do I have to lose".

Charge III – Incapacity

Mr. Rolston lacks the capacity to perform his duties as a teacher based on the August 20, 2019 report of Dr. Brett J. Prince.

V B. The Parties' Position

Petitioner OCTVS submitted a post-hearing brief of 100-pages, while Respondent's post-hearing brief was 65-pages in length. Numerous factual assertions and arguments were advanced by each party's attorneys. All of them will not be analyzed, or even referenced. In part, this flows from overlaps among the

three tenure charges, and clear evidence of Mr. Rolston's actions between April 10 and April 12, 2019. Each party's principal contentions appear below in the words of their respective attorneys.

V B. 1 The District's Position

Petitioner Ocean County Vocational Technical School summarized its position in the concluding pages of its post-hearing brief. Its attorneys wrote:

Through the Respondent's actions and conduct, the **Respondent has violated no less than (3) OCVTS Policies:** The Code of Ethics – Policy 3211; Inappropriate Staff Conduct – Policy 3281; and Healthy Workplace Environment – Policy 3351. The Respondent's conduct over the course of April 10, 11, & 12, 2019 have also been determined to be unbecoming.

The Respondent's actions over the course of April 10, 11, & 12, 2019 consisted of significant loss of self-control and irrational behavior, resulting in multiple confrontations with fellow employees and the OCVTS administration. During these confrontations, the Respondent consistently threatened, screamed, yelled, and promised retaliation against Malfitano, Zavattieri, Pernal, Shenloogian, Smith, Adams, Szymanski, Homiek, Meeker, and the OCVTS administration itself. The Respondent's threats were so severe that a reasonable person would only consider them malicious and egregious in nature. The Respondent's demeanor was so erratic and illogical that Shenloogian, Pernal, Smith, Zavattieri, and Malfitano believed that the Respondent was capable of following through on his threats to the OCVTS staff and students. Based upon **the totality of the Respondent's conduct, the relevant competent evidence, and all corroborating evidence, the balancing test, as set forth in Cowan , weighs in favor of revoking the Respondent's Tenure.**

Further, Prince has established that the Respondent's mental state should be ruled incapacitated. Prince's Expert Report utilized (5) separate objective test, that all confirmed that the Respondent suffers from multiple forms of psychosis and mental health conditions, including but not limited to: Manic Grandiosity; poor control over anger; Narcissism; and Positive Impression Management. These conditions make the Respondent pathologically untruthful, habitually defensive, and very quick to assume a victim role, by blaming others for real or imagined shortcomings. Based upon these diagnosis, Prince determined that the Respondent was unfit to return to work and teach children. **As in McCoy , the Respondent has been found to suffer from severe misperceptions and misconceptions about reality, therefore causing him to engage in bizarre and incoherent behaviors, and must be ruled incapacitated.**

Lastly, the **Respondent's Medical Report must be deemed inadmissible as evidence, and/or determined to be a Net Opinion.** The Respondent's Medical Report simply consists of bare conclusions and speculation, and is unsupported by factual evidence. Mack has failed to review the medical documents/notes/history of no less than (10) licensed medical professionals that treat the Respondent for various ailments.

Respondent's Medical Report failed to review the Respondent's family medical history. Respondent's Medical Report failed to review the Respondent's history of violence and aggression. Respondent's Medical Report failed to review the Respondent's involuntary commitment medical documentation regarding violent and suicidal ideation. Mack failed to perform any due diligence regarding the Respondent's graphic nightmares. Mack failed to perform any due diligence regarding the Respondent's work history of bullying and harassment. And Mack failed to perform any objective based testing, but instead relied upon a Video Conference whereby minimal physical observations were possible.

For the aforementioned reasons as listed above, the Respondent's Tenure should be revoked.

(Emphasis added.)

V B. 2 Respondent's Position

Mr. Rolston's attorneys prepared an introduction to, and summary of their brief.

They argue, as follows:

Mr. Rolston is a tenured English teacher, with a long and commendable record of service to the Board, and the students who attend its schools. **The events which precipitated these tenure charges took place on the Board's premises during a 3-day period of time: April 10-12, 2019.**

During that period of time, **Mr. Rolston was experiencing three significant, personal stressors.** First, **Mr. Rolston, a cancer survivor, was deeply concerned about the potential reoccurrence of his stomach cancer.** He was awaiting further information from his doctors regarding the status of his disease, and faced the possibility of undergoing additional, very difficult treatment. Second, **Mr. Rolston had recently been notified by a parent, Linda Bogan of a deeply concerning allegation** involving the Board's Superintendent, Karen Homiek. The allegation was **that a teacher...had been involved in an inappropriate relationship with a student at the**

Board's Performing Arts Academy ("PAA") when Superintendent Homiek was the Principal, and that she had failed to properly address the issue at that time. Finally, **Mr. Rolston had a somewhat contentious interaction with his Principal, Lillian Zavattieri: he thought that he was unfairly accused of misbehaving in another teacher's classroom,** and that the Principal had assumed that he was in the wrong.

Mr. Rolston was worried about what would happen when he reported the PAA Concern, and **discussed the issue with several of his co-workers,** including his union president, Christine Smith. **He used figurative language during those conversations.** (Emphasis added.)

The Board alleges that he used the phrases "burn down," "blow up," and "shoot the head off the fucking snake." Based upon that alleged language, **the Board argues that Mr. Rolston made "terroristic threats," and "verbal assaults," that he frightened people, and that he is somehow a danger** to the Ocean County Vocational Technical School District. This is the gravamen of the Board's charge of unbecoming conduct against Mr.

Rolston.

As all of the evidence, reviewed, *infra*, demonstrates, **the extrapolations that the Board asks the Arbitrator to draw from Mr. Rolston's words on April 10-12, 2019, are overwrought, hysterical, and simply untrue.** This is the case for several reasons. **First**, Mr. Rolston caused no actual harm to anything. He did not burn anything down, blow anything up, or shoot anything. **Second**, it is manifestly clear that Mr. Rolston never intended to embark upon any such course of action. He does not own any firearms or bomb-making materials. He was investigated by, and cooperated fully with, law enforcement. He was never charged with any criminal offense in connection with his words or actions. In the 18 months that have passed since his suspension from his position, Mr. Rolston has not perpetrated any of the actions that the Board wants the Arbitrator to think might be "right around the corner." **Third**, it is manifestly clear that Mr. Rolston never intended whatever he said to be taken or perceived as a threat. Rather, all of his co-workers, who were called as witnesses by the Board, testified that they understood that Mr. Rolston's florid, metaphorical language was referencing, not some violent plot, but rather the potential fallout that would occur if he reported the PAA Concern to the authorities. **Fourth**, Mr. Rolston's words did not have impact of making his co-workers feel threatened. Rather, as Tom Pernal testified, *infra*, they reported his words to District administration not out of fear, but rather out of concern for Mr. Rolston's own well-being.

Mr. Rolston's speech to his co-workers addressed an issue of substantial public concern: the reporting of child abuse allegations in the public school setting. As such, **the imposition of any punishment upon Mr. Rolston based upon the subject matter of those conversations would infringe Mr. Rolston's First Amendment Rights.**

Mr. Rolston's behavior from April 10-12, 2019 might be characterized as agitated, or dramatic. It **cannot sincerely be characterized as insubordinate or threatening.** For this, and all the reasons set forth, *infra*, it cannot form the basis for his termination from his tenured teaching position.

Besides its allegations of unbecoming conduct, the Board also charges Mr. Rolston with incapacity; i.e., it alleges that he is medically unable to discharge the duties and functions of a teacher. The basis of this charge was the testimony of neuropsychologist Brett Prince.

As further set forth, *infra*, **Dr. Prince's testimony and opinion were completely unreliable, and did not establish that Mr. Rolston is "incapacitated" for purposes of N.J.S.A. 18A:6-10:** the Board has failed to prove its incapacity charge, and it should consequently be Dismissed.

(Emphasis Added.)

V C.1 Charges I & II

The three tenure charges may be viewed in seriatim, or as a collective whole. To best consider what happened throughout three consecutive days, Charges I

& II will be simultaneously examined. Charge III requires a separate analysis.

Charge I addresses New Jersey's the question of unbecoming conduct, while

Charge II references overlapping OCTVS Policies that give context to the first charge.

These policies within Petitioner's school district help demonstrate what is encompassed within the common law unbecoming conduct ban against behavior having "a tendency to destroy public respect for [school] employees and competence in the operation of services." Karins v. City of Atlantic City, 152 N. J. 152, N.J. 532, 554 (1988). See IMO Ernest Tordo, School District of Jackson Twp. 1974 S.L.D. 97, 98-99 (teachers hold the public's trust to inform and mold the habits and opinions of their students. Violations will result in dismissal, or other sever penalty.) Fulsomely, Policy No. 3351 notifies and cautions OCTVS staff that:

A significant characteristic of a healthy workplace environment is that employees interact with each other with dignity and respect regardless of an employee's work assignment or position in the school district. Repeated malicious conduct of an employee or group of employees directed toward another employee or group of employees in the workplace that a reasonable person would find hostile or offensive is unacceptable and is not conducive to establishing or maintaining a healthy workplace environment. This unacceptable conduct may include, but is not limited to, repeated infliction of verbal abuse such as the use of derogatory remarks; insults; verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating; or the gratuitous sabotage or undermining of a person's work performance. A single act of such conduct shall not constitute the unacceptable conduct prohibited by this policy unless it is especially severe and egregious.

And, Policy # 3281 unequivocally bans inappropriate language, or expression in the presence of students.

Under these interrelated principles, the Arbitrator has determined that

Respondent's behavior was continuously inappropriate over three days. His actions,

- had a tendency to weaken public respect for OCTVS;
- modeled immature behavior to students;
- caused anxiety in peers;
- risked parents losing trust in the school system;

- demeaned and deprecated Mrs. Adams;
- insultingly and profanely described a law enforcement officer;
- disrespected Principal Zavaterra during two meetings;
- challenged an express order to delay speaking with the CPR Instructors;
- included entering Irene Malfitano's classroom unbidden;
- raised his voice to Ms. Malfitano, and yelled at Principal Zavaterra;
- intimidatingly leaned over Ms. Malfitano's desk;
- disregarded her requests to leave;
- divulged alleged student/teacher affairs to persons without need to know;
- warned this information would burn the Board office down;
- sought guidance from Thomas Pernal about "bringing down" a school administrator;
- used profane language in front of Mr. Pernal's students;
- paced up & down before those students complaining of Principal Zavaterra;
- talked of "shooting the head off that fucking snake";
- told Union President Smith without corroboration that Karen Homiek may have "covered-up" the DT matter.

Such behaviors are generally unbecoming for any worker, and most certainly unbecoming of a public employee who has substantial obligations to students and their parents. Mr. Rolston's years of competent and cooperative teaching, in this case, do not mitigate his actions between April 10, 11, and 12, 2019. How may parents knowing of Respondent's litany of behavior would be comfortable entrusting their children to his tutelage?

Witnesses and documents combine to demonstrate a uniform picture of the critical events. Testimony covering the April 2019 dates is generally consistent

with minor discrepancies as to non-critical facts. Documentary evidence supports witness recollections of past events.

The roots of the case stretch back 2018, when Mr. Rolston entered a “bad patch.” With the onset of stomach cancer (followed by surgery, and powerful medication) he came under profound physical and psychological stress. He developed a morbid fear of a painful death as happened to Stan, his deceased colleague. Then, Linda Bogan reentered his world. She telephoned Respondent to share triple-hearsay accusing a District Teacher (“DT”) of past student abuse. Mr. Rolston allowed himself to be drawn in, and agreed to help investigate. He came to view the issue through a “mandatory reporter” lens. Although he had received training covering this duty, it was not apparent to the Arbitrator that he understood the mechanics of the process. The more Mr. Rolston thought and stewed, the more confusing the issue appeared to him. No doubt, this was exacerbated by the angst of having to wait until April 17th to learn if the cancer had reoccured. In his words,

I now had the weight of the world, these concerns hanging over me. I have to report them...because like Mr. Maschi testified, we are mandatory reporters...I’m waiting on April 17th, I have seven more days to wait until I found out is my cancer back, or do I have to start taking these [Gleevec] pills.

On the morning of April 10, 2019. Entering Irene Malfitano’s classroom, Respondent was pre-occupied with Mrs. Bogan’s tattle, and fearful his stomach cancer might be returning. CPR instructors (Adams & Syzmanski) were in the room. They had not been given advance notice of this probable visit to remind the students of their English homework. Mr. Rolston conversed with two groups of female students. He spoke to one group in Spanish. These informal

conversations were in the midst of Lt. Syzmanski's CPR instructions, and without his consent. Mr. Rolston's "playfulness" was disruptive, but not sufficiently so that either the Lieutenant, or Mrs. Adams intervened. Mr. Rolston exited the room after 20-minutes; apparently unaware of the resentment in his wake.

Having remained silent until that point, Mrs. Adams sought out Principal Zavatteri to share a few words of dissatisfaction. In short order, the Principal visited

Mr. Rolston's office for his input. However, he came to believe Ms. Zavatteri was unfairly accusing him of misbehaving in Irene Malfitano's classroom. His words and tone became unprofessional when reacting to the Principal's perceived acceptance of Mrs. Adams' allegation. This was the first of several outbursts of unreasonable anger i.e., tirades, over the next 48-hours.

These outbursts reached their zenith on Thursday, April 11, 2019. The prior day Respondent had sought Thomas Pernal's guidance about potentially "bringing down" a highly placed administrator over a possible "inappropriate relationship between a faculty member and/or students." Mr. Pernal realized that the faculty member was DT, and the administrator was then Acting Superintendent, Karen Homiek. He demurred replying to Respondent's request for help. On Thursday morning, before class was to start, Respondent again broached this request. Mr. Pernal replied he was "ill-equipped" to give such counsel.

Respondent then entered the classroom. With students present, he raised the CPR training incident, and his subsequent confrontations with Principal Zavattieri. Although initially speaking in a normal tone, some students were in earshot. Mr. Rolston's voice and actions ramped-up to a higher level. He paced back and forth in

front of the students. While so doing, Mr. Pernal testified that his colleague averred “he was going to shoot the head off the snake, and was making hand gestures as though he were holding a gun.” After Respondent finally exited the classroom, Mr. Pernal observed to his class that Mr. Rolton was “having a bad day.”

Since Mr. Pernal had declined to guide him, Respondent made his way to Christy Shenloogian’s room in search of Union President Christine Smith. The two women were having lunch. Mr. Rolston remained with them sharing his frustrations about the recent happenings. At one point, reacting to his rhetoric, Ms. Shehloogian cautioned “You shouldn’t say things like that in a school building.” These “things” included sharing “stuff” he had on Karen Homiek and on Ms. Zaverri in a manner that would “take this whole place down,” and “burn it to the ground.” *Inter alia* he voiced an intent to report what he suspected was Ms. Homiek’s “cover-up” of the DT matter. His tone was aggressive. Irene Malifitano was in an adjoining room, and heard small parts of their conversation.

Mr. Rolston asked Ms. Smith for her support bringing forward the “mandatory reporting” question. Ms. Smith declined. After he left the room Smith and Shenloogian concurred they “weren’t comfortable with what just happened.” Discomfort also was brewing among others in the academic community as rumors about Mr. Rolston spread.

Petitioner has proven Respondent engaged in conduct unbecoming, and violated Policy Nos. 3281 and 3351. However, there is no evidence that he intended to burn, blow-up, cut, or shoot anything or anyone. Mr. Rolston talked too much, with little

or no thought about how his words might be interpreted. His angry and impassioned statements caused some to be worried about his mental health, others to be anxious, and those charged with safeguarding student welfare to consider how best to deal with the unraveling situation.

The onus always was on Respondent to stop acting out. A visit to EAP may have defused the situation, and returned him to his regular behavioral pattern.

V C.2 Ruling on Charges I & II

Over the 3-days in April 2019 the record shows that *feeling extreme pressure Mr. Rolston behaved atypically*. Before then, he had been a competent, respected teacher for 16-years. Several witnesses labeled him as “friend,” and expressed surprise as his behavior went into a steep and sustained tailspin. One thought he had “flipped-out,” while another speculated the battle against cancer was impacting him. None of them testified that his words/actions appeared pre-mediated, or intentionally malevolent. His driving motivation flowed from Mrs. Bogan’s communication, which triggered a perceived duty to mandatorily report what he concluded had been student abuse. Mr. Rolston wrestled ineffectively with how to implement this self-imposed task. Throughout the process he disturbed the workplace, its staff, and endangered the public’s perception of OCTVS.

Figurative Language

During three school days, Mr. Rolston told others what he could do in pursuit of this duty. He defended these discussions by explaining his words were figurative, not literal. This excuse is particularly unpersuasive when voiced by a certified English Teacher.

Metaphors are forms of figurative language framing a situation as something else to “punch home” the speaker’s message. Groucho Marx’s metaphor that a “hospital bed is a

parked taxi with the meter running” might be particularly telling. In this age of COVID-19, however, it also could be interpreted as an insensitive rebuke of institutions and the health care workers who are doing much to help America. So too, Mr. Rolston’s colorful “shooting the head off the snake” and “blowing it up” metaphors might have (but did not) punch home his point. Instead, they made people anxious, and caused some administrators to reason that anyone making such *threats* should not work with us. Neither group can be faulted for its reaction. Someone with a degree in creative writing might readily anticipate that his colorful words might have a bommerang effect.

Respondent, of course, possesses a creative writing degree, has worked as an editor, and taught English for years. It ill behooves him to defend using figurative language by saying, “But, I didn’t mean for anyone to take my words literally.” Maybe so. However, his words evoked emotional reactions. They caused Ms. Malfitano to speak with her fiancé, and resulted in Ms. Shenloogian cautioning against saying those things in school. Mr. Pernal thought Mr. Rolston might be “unhinged,” not that he was being a clever wordsmith. Union President Smith became “uncomfortable” after his lunch hour visit. Dr. Maschi summoned the police “to rule out a potential threat.”

The record does not support a conclusion that Thomas Rolston meant to harm person, or property. This is reflected in his expressions of remorse. These are not devalued by Tierney Meeker’s testimony. She testified about a 60-second encounter with him on August 17, 2020. Clearly, Ms. Meeker found his comment displeasing. Her shifting characterizations of the encounter give pause about how much, if any, weight this testimony merits.

Initially, Tierney Meeker professed feeling fright because Mr. Rolston acted

“crazy,” and was unpredictable. At another moment she asserted believing her employment was in jeopardy, and later again that her good reputation might be damaged. These conflicting accounts prevent Ms. Meeker from being a particularly credible witness on the relevant question of whether she had been threatened.

While subjectively she felt insecure, Respondent’s statement does not easily lend itself to classification as a threat, or an attack.

The Arbitrator does not accept Petitioner’s argument that Mr. Ralston’s “demeanor [on August 17th] is a clear example of the Respondent’s extreme irrational behavior.” Rather, it was Ms. Meeker who melodramatically telephoned the Superintendent after a non-emergent event.

Difficult Circumstances

Everyone has difficult choices to make. Everyone goes through life’s ups and downs. Frustrations and hardships result from divorce, hurricanes, false accusations, and distracted bank tellers. Society asks us not to redirect our negative emotions to others, when coping with life. OCTVS Policy No. 3351, applying to healthy workplaces, affirms this principle. It bars abuse, derogatory remarks, or insults that reasonable people would find intimidating, or humiliating. These bad behaviors can fall within conduct unbecoming, and may result in discipline, or discharge. Even a single act, if especially severe and egregious, may lead to discharge. Thomas Rolston’s confrontations with Principal Zavatteri were serious acts, as was his meltdown in Mr. Pernal’s classroom. Also, he made lesser, but still unacceptable, comments on other occasions. Petitioner was within its rights not to accept the totality of this behavior.

Charges I and II are sustained.

V C.3 Ruling on Charge III

Petitioner in Charge III asserts that Thomas A. Rolston lacks the capacity to perform teaching duties based on the August 20, 2019 report of Dr. Brett J. Prince.

On balance, the Arbitrator cannot credit Dr. Prince's conclusion about Mr. Rolston's incapacity to return to teaching. The Doctor opined that Respondent's inconsistent, invalid, and misleading manner severely hindered his arriving at an accurate diagnosis. Similarly, Dr. Prince offered that at least one objective tests revealed a consistent and deliberate attempt to distort the results by inaccurate self-portrayal. The Arbitrator interprets these findings as standing for the proposition that Mr. Rolston is a trickster who should not be permitted to teach "innocent children."

This conclusion might have been easier to accept if the record included data about validity scales in any of the objective tests. Such scales help detect those who want to be seen in the best possible light, as well as persons (such as malingers) who are interested in presenting themselves as feeling worse than actually is the case. Arbitrators depend on expert witnesses to be educated about such matters beyond their ken. While Dr. Prince feverently supported his diagnosis, the Arbitrator would have benefitted from an enhanced explanation for the net opinion that Respondent had been highly deceptive during interviewing and testing.

Absent such information, Dr. Mack's internally consistent conclusion jibes with the facts presented by others. Based on the fulnessness, and documentation of his report, the Arbitrator accepts Dr. Mack's conclusion that Mr. Rolstons unwarranted behavior was not the result of serious mental illness, or of a personality disorder.

Charge III is dismissed.

For these reasons the Arbitrator must conclude that the evidence of record establishes unbecoming conduct under Charges I and II that warrants dismissal from employment.

December 4, 2020

/s/ Patrick R. Westerkamp