

STATE OF NEW JERSEY
COMMISSIONER OF EDUCATION

**IN THE MATTER OF THE ARBITRATION
OF THE TENURE CHARGES**

between

BELVIDERE BOARD OF EDUCATION,

Petitioner

-and-

**DOE DOCKET NOS. 52-3/19;
56-3/19**

DANIEL DEMPSEY and ANDREW POYER,

Respondents

BEFORE: SUSAN WOOD OSBORN, ARBITRATOR

DATES OF HEARING: November 19, 20, and 21, 2019

DATE OF AWARD: January 13, 2020

APPEARANCES:

For the Petitioner:

Weiner Lesniak, Attorneys
(Stephen Edelstein, of counsel)

For the Respondent:

Oxfeld Cohen, Attorneys
(Sanford Oxfeld, of counsel)

Witnesses:

Christopher Carrubba, Belvidere Supt. Of Schools
Brian Staples, Belvidere former Athletic Director
Chris Karabinus, Belvidere former Athletic Director
Sara Schiavone, Belvidere teacher
Patty Toth, Chair, Belvidere soccer booster club
Patti Grafer, Treasurer, Belvidere soccer booster club
Daniel Dempsey, Respondent
Andrew Poyer, Respondent

BACKGROUND OF THE CASE

On February 22, 2019 the Belvidere Board of Education (“Board” or “District”) served High School Teachers Daniel Dempsey and Andrew Poyer (“Respondents”) with tenure charges and advising each of them of their rights to file responses with the Board. At a Board meeting held on March 13, after consideration of the tenure charges, sworn written statement of the District Superintendent and the Respondent’s responses, the Board voted to file the tenure charges with the Commissioner of Education. The charges against both teachers were in fact filed with the Commissioner on March 18, 2019. The Board charges that both employees engaged in unbecoming conduct, insubordination and/ other conduct amounting to just cause for dismissal or reduction in salary by (a) operating a fundraiser in which donations were solicited under false pretenses; (b) the two employees/coaches conspired together to raise money specifically for compensation for Poyer’s coaching services; and (c) requisitioned and obtained a check for Poyer drawn on that associated student associated

account which was then cashed by Poyer all without permission of the Board or the district administration. Additionally, Dempsey and Poyer were charged with attempting to hinder the District's investigation of the matter by being "less than truthful" during their interviews with the Superintendent.¹

On June 25, 2019, Respondents filed a Motion to Dismiss all charges with me. Respondents argued that Plaintiff's failure to timely submit discovery materials had prejudiced Respondents' ability to adequately prepare their defense prior to the start of the arbitration hearing. Further Respondents argued that because Plaintiff had not produced summaries of each witnesses' testimony, such evidence would not be produced at hearing and therefore the charges should be dismissed. By decision of August 1, 2019, I denied Respondents' motion but gave them an opportunity to move the start date of the hearing back to permit additional preparation time. I noted that even if I had dismissed the Board's tenure charges, it would be without prejudice to its ability to refile the charges and further delay would result.

An arbitration hearing was conducted on November 19, 20, and 21, 2019, at which time eight witnesses testified under oath. By agreement of the parties,

¹ An additional charge included against Poyer concerned an allegation that he had an inappropriate exchange with student N.A. during the 2017-2018 school year. That charge was withdrawn at hearing.

witnesses were sequestered during the hearing. The parties also presented documentary evidence. The parties filed post-hearing briefs by December 5. N.J.A.C. 6A:11-6.3 provides that the decision in this matter shall be issued within 45 days of the beginning of the hearing, and that the decision shall be final and binding. On November 12, I requested an extension of time to submit my award. The Department of Education granted my extension request to January 13, 2020.

ISSUE IN DISPUTE

The parties stipulated that the issue in dispute in this matter can be framed as follows:

Did the Board of Education prove that tenure charges brought against Daniel Dempsey and Andrew Poyer amounted to sufficient cause for termination?

STATUTORY AND REGULATORY CONSIDERATIONS

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

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

(b) If he is or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution

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

* * *

N.J.S.A. 18A:6-16 Proceedings before commissioner; written response;

determination

* * *

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

18A:6-17.1 Panel of arbitrators

* * *

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

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

* * *

c. The arbitrator shall determine the case under the American Arbitration Association labor arbitration rules. In the event of a conflict between the American Arbitration Association labor arbitration rules and the procedures established pursuant to this section, the procedures established pursuant to this section shall govern.

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

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

RELEVANT BOARD POLICIES

Superintendent Chris Carrubba is responsible for the general oversight of the Belvidere School District and its employees. He has been the Belvidere superintendent for the past seven years. He explained that the Board has a policy committee and that its adopted policies are available on its district website, as well as hardcopy in every building. Carrubba maintained that he expects all the teachers to be familiar with the Board-adopted policies. The Board introduced the following policies as relevant to the tenure charges in this matter.

Board Policy 1314, "Fundraising by Outside Organizations", (B-6) provides in relative part, as follows:

No person or organization may solicit funds on school property without prior permission from the Superintendent.

* * *

Funds solicited by organizations, not sponsored by the district, are not to be deposited in any regular or special accounts of the district. The Board disclaims all responsibility for the protection of or accounting for such funds.

Permission to solicit funds will be granted only to those organizations or individuals whose purposes are consistent with the goals of this district and the interests of the community. The Superintendent shall specify when and how solicitation may take place. He/she shall ensure this does not interfere with the orderly operations of the educational program.

Board Policy 3453, "School Activity Funds", concerns the use of funds

derived from the pupils' activities. The policy provides in relative part, as follows:

(B-5)

School activity funds shall be audited annually along with other district funds and shall be administered, expended, and accounted for according to the rules of the state board of education.

The pupil activity funds for each school shall be kept in separate accounts, supervised by the building principal.² Separate and complete records shall be maintained for each pupil organization. All receipts, from pupil-fundraising projects, athletic events, and other events for which admission is charged will be deposited promptly. Bank deposits shall agree with the receipts in the case receipt book and shall be traceable to definite receipts or groups of receipts.

Disbursements must be made by check signed by the building principal and supported by a claim, bill or written order to persons

² Possible cross-references to this policy can be found in the following Board policies: 3280 Gifts, grants and bequests; 3400 Accounts; 3450 Money in school buildings; 3571.4 Audit; and 5136 Fund-raising activities. All of the above policies to include 3453, "School Activity Funds", are included in the Critical Policy Reference Manual.

supervising the fund. Checks shall bear two or more authorized signatures. All disbursements shall be recorded chronologically showing the date, vendor, check number, purpose and amount.

Borrowing from the pupil activity accounts is prohibited.

Board Policy 4112.3, "Code of Ethics" provides in relevant part, as follows:

The Board of Education endorses the code of ethics for professional educators published by the National Education Association:

1. Commitment to the Student

We measure success by the progress of each student toward achievement of his or her maximum potential. We therefore work to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. We recognize the importance of cooperative relationships with other community institutions, especially the home.

In fulfilling our obligations to the student, we –

1. Deal justly and considerably with each student.

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6. Refrain from commenting unprofessionally about a student or his or her home.

7. Avoid exploiting our professional relationship with any student.

Board's Policy 4117.50, "Discipline", provides as follows:

The Board of Education directs all teaching staff members to observe statutes of the State of New Jersey, rules of the State Board of Education, policies of this Board, and duly promulgated administrative rules and regulations governing staff conduct.

Violations of these statutes, rules, and policies will be subject to discipline.

The superintendent shall prepare disciplinary rules for violations, discipline measures will include verbal and written warnings as appropriate and will provide, wherever possible, for progressive penalties for repeated violations. Penalties may include suspension, withholding one or more increments, and dismissal.

In the event disciplinary action is contemplated, notice will be given to the teaching staff member in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based; the text of the statute, policy, or rule that the member is alleged to have violated; a date when the member may be heard and the administrator who will hear the matter; and the penalty that may be imposed.

Board's Policy 4119.22, "Conduct and Dress", provides as follows,

The board of education expects staff conduct to be that of appropriate role models for pupils.

... Unbecoming Conduct

When an employee, either within the schools or outside normal duties, creates conditions under which the proper operation of the schools is affected, the board upon recommendation of the chief school administrator and in accordance with statute shall determine whether such acts or lack of actions constitute conduct unbecoming a school employee, and if so, will proceed against the employee in accordance with law.

Unbecoming conduct sufficient to warrant a board review may result from a single flagrant incident or from a series of incidents.

Board policy #4119.25, "Liability of Staff for Student Welfare", which sets forth in part,

... that teaching staff members are required to maintain a standard of care for supervision control and protection of students commensurate with assigned duties and responsibilities.

Board policy #5131.4, “Harassment, Intimidation, and Bullying” (HIB)

provides as follows:

The board of education believes that a safe and civil environment in school is necessary for students to learn and achieve high academic standards. Students learn by example, school administrators, faculty, staff, and volunteers are required to demonstrate appropriate behavior, treating others with dignity and respect, and refusing to tolerate harassment, intimidation or bullying.

Harassment, intimidation or bullying, like other disruptive or violent behaviors, is conduct that disrupts both a student’s ability to learn and a school’s ability to educate its students in a safe environment. Therefore, the school district will not tolerate acts of harassment, intimidation or bullying.

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The board prohibits acts of harassment, intimidation or bullying against any student. School responses to harassment shall be aligned with the board-approved code of student conduct which establishes standards, policies and procedures for positive student development and student behavioral expectations on school grounds, including on a school bus or at school-sponsored functions. ...

Consequences and Remedial Measures for Acts of Harassment, Intimidation or Bullying

...Staff

Consequences and appropriate remedial actions for any staff member who commits an act of harassment, intimidation or bullying may range from positive behavior interventions up to disciplinary charges which could result in suspension or termination. ...

Board policy #5142, “Pupil Safety” provides in part,

The board of education recognizes the safety of its pupils as a consideration of utmost importance. The chief school administrator shall consult law enforcement agencies and social service providers, emergency management planners and other school and community resources in the development of the plans, procedures and mechanisms for school safety. The chief school administrator shall oversee development of a districtwide safety program with emphasis on accident prevention.

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Staff Education and Training

All teachers shall be familiar with the provisions of this program that particularly concern them.

The chief school administrator shall inform all newly-employed staff of school safety rules and regulations within 60 days of the effective date of their employment. All district employees will receive the appropriate in-service training to recognize and respond appropriately to safety concerns including emergencies and crisis, in accordance with the district safety plans, procedures and mechanisms. The district safety plan will be updated annually and all employees will be notified of updates and changes to the safety plan in writing. . . .

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School Violence Awareness Week Tolerance...

The school shall observe "School Violence Awareness Week". This week will include discussions, presentations, and training for both school. Law enforcement personnel will be invited to join school teaching staff presenting age-appropriate opportunities for students to discuss issues including, but not limited to conflict resolution, student diversity and tolerance.

POSITIONS OF THE PARTIES

The Board maintains that it had just cause to terminate Dempsey and Poyer for their conduct in conspiring to provide Poyer with monetary compensation for his volunteer coaching position, and for their pattern of breaking multiple policies, rules, and regulations of the Belvidere Board and the State Board of Education.

The Union urges that the Board has not met its burden of proving just cause for any discipline of Dempsey or Poyer, and that each charge against each of them must be dismissed. In addition, the Union maintains that Dempsey and Poyer should be restored to their classroom and coaching duties, provided with back pay, and in the case of Dempsey, the coaching stipend to which he was entitled for the duration of his suspension.

FINDINGS OF FACT

Daniel Dempsey has been an elementary school physical education teacher in the Belvidere School District since 1999. He has served as a head coach for the boys' soccer team and the girls' softball team for 19 years. He is also the ski club's advisor.

Andrew Poyer has been employed by the district as a physical education teacher for the last twelve years. He has been coaching sports' teams since 2007

and has worked with Dempsey as an assistant coach for the past four or five years, both with the boys' soccer team and the girls' softball team.

Chris Karabinus has held the position of principal of the Belvidere Elementary School for approximately four years. Karabinus served as the athletic director from July of 2014 through November of 2018 (2T48). Karabinus testified for the Employer.

Brian Staples served as assistant athletic director under Karabinus for two years and four months and was then promoted in 2018 to athletic director. He is no longer employed in the district but testified for the Employer.

School's Sports' Booster Club

Some, but not all, Belvidere school sports have booster clubs, run by the parents. The booster clubs function mainly as a means for raising extra funds for the programs that go above and beyond what the district has allocated in its budget. The booster clubs are not tied to any of the district's accounts and the clubs operate independently of the school district.

The boys' soccer team has had a booster club for several years. In 2018, the booster club consisted of three parents: Patty Toth, Patti Grafer and Tracy Linder. Toth functioned as the club president, Grafer as the treasurer and Linder as the vice president. Toth was often the spokesperson for the club.

Associated Student Account

Those sports that do not have a booster club have an “associated student account” which is held and maintained by the Board of Education. This account is the repository and payment account for funds raised and student fees, including summer sports camps. According to Carrubba, the Board oversees where the money is placed in its general operating budget for specific clubs. The associated student account is an audited account of the District; and is not a payroll account (1T-46).

Sarah Schiavone is the advisor or custodian of associated student accounts; she receives a stipend for this duty. She testified for the Respondents. Schiavone succeeded Sylvia McInerney as the custodian of student accounts in July 2017. She testified that she has never been made aware of district policy #1314, “Fundraising by Outside Organizations” and she testified that the first time she saw the policy was during this proceeding.

As Custodian of Accounts, Schiavone is responsible for maintaining the student accounts for accuracy, accepting deposits, and writing and signing checks. Schiavone described the following procedures for depositing and withdrawing funds to or from the associated student account. According to Schiavone, upon her receipt of a check for deposit, she stamps it, takes it to the bank for deposit, and writes the transaction in the appropriate account ledger. Schiavone testified

that the deposited money goes into a group of accounts such as the soccer account, the student government's account, or the future educators' account, *et cetera*. She stated that the deposit process occurs two to three times a week and is a common and transparent process. For withdrawing money from the account, the coach, adviser or other requester fills in a request form on the school's website, identifying the requester's name, date, team or activity name, payee, and the dollar amount. (2T15-16) The requester then prints the form and takes it to Schiavone. Schiavone signs the check and has High School Principal Ed Lazzara or another administrator sign it. She indicated that a second signature is always required for the simultaneous co-signing of the request (B14) and the check (B16). The co-signature must be by one of the following four positions: (3T14; 28-29)

- Business Administrator
- Superintendent of Schools
- Vice Principal of Belvidere HS
- Principal of Belvidere HS

Moreover, Schiavone testified that she is audited yearly and the Board reviews her paperwork monthly. (3T20, 22, 24, 25) The custodian stated that it is not her job to analyze whether a check drawn on one of the student accounts is appropriate or inappropriate. She maintained that her job is to be the administrator of the account. (3T27)

Schiavone stated that she is familiar with other teams/organizations that had a check drafted and payable to either a coach or a program administrator within the district. She explained that in her first year as swimming team coach in 2011, a pay-to-play sport, parents were required to pay a hundred dollars which was deposited into the associated student account – Schiavone testified that her stipend was paid from this account. (3T-23)

The associated student accounts are not payroll accounts and there are no payroll deductions made from any of the checks that are issued from the accounts that she oversees. Athletic Director Brian Staples acknowledged that he was aware of the Board's directive that proceeds from fundraisers should not be placed in the associated student accounts wherever a booster club exists. However, there were several teams that had both a booster club account and an associated student account. Staples agreed that the boys' soccer associated student account existed before the Snap fundraiser. (2T29-30; 39) To his knowledge none of the Board's funds were used to compensate Poyer.

History of District Fundraising

The Belvidere High School's athletic teams and/or booster clubs had sponsored several fundraisers in the past. Poyer testified that the first SnapRaise fundraiser was held for the softball team, followed by fundraisers for baseball, boys' and girls' soccer, and the cheerleading squad. He maintained that all of the

fundraisers were conducted by Snap. All fundraised monies were either deposited into the teams' booster club account or its student activities account; the latter, if the team was not supported by a booster club. (3T101, 102, 105)

The Events of 2018

In 2018, Poyer applied for a paid position as an assistant coach with the girls' soccer team.³ Superintendent Carrubba stated that he and Athletic Director Chris Karabinus considered Poyer for the position but did not recommend his appointment because the then current assistant coach had been serving in that position for five years and was better suited to be in the position. Poyer filed a grievance (2T50) over his non-appointment.

While Poyer's grievance was pending, on August 13, Carrubba observed Poyer coaching a boys' soccer scrimmage and asked Karabinus if Poyer had been approved by the Board for the volunteer coaching position. Karabinus responded in the negative. On August 29, 2018, a meeting was held with Karabinus, head boys' soccer coach Dempsey, BEA President Judy Black and Poyer. The same day, after the meeting, Carrubba sent Poyer an interoffice memorandum with the Subject: Unapproved Coach – Soccer (B3). The memo states in part,

³ Poyer testified that he applied for the position of Head Coach of the girls' soccer team when the head coach resigned. (3T-99) However, Carrubba testified that he applied for the position of assistant head coach, a paid position. I credit Carrubba.

This will confirm our meeting on Wednesday August 29, 2018. Also present at that meeting were Chris Karabinus, Athletic Director, Dan Dempsey, Head Boys' Soccer Coach, and Judy Black, BEA President.

... At that time, I spoke with you about your volunteering as a soccer coach, actively coaching during a practice/game, when you had not received approval from the Board of Education to do so.

Coaching and volunteer coaches need to be approved by the Board of Education.

The same day, the superintendent sent head boys' soccer coach Dempsey a memo (B4) repeating the message in Poyer's memo and adding that,

... At that meeting, we discussed a volunteer soccer coach who was not approved by the Board of Education but was coaching on the soccer field during a practice/game.

... As I stated, better judgment will need to be used. Coaching and volunteer coaches need to be approved by the Board of Education.

The superintendent stated that during a Board meeting of September 12, 2018, to discuss Poyer's grievance, Poyer expressed an interest in being the boys' assistant soccer coach. The Board approved Poyer as a volunteer assistant coach for the 2018-2019 school year for the boys' soccer team. In exchange for this appointment, Poyer withdrew his grievance concerning his non-appointment as the girls' soccer team assistant coach. The Board stated that Poyer's "request" for this assignment was disingenuous as he was already serving as a "volunteer" since at least August 13, 2018, when Superintendent Carrubba witnessed Poyer on the field coaching. (J1, p.5).

Dempsey and Poyer first learned about the SnapRaise fundraising program from Coach Feldman, who then coached the baseball team. Feldman also introduced Poyer to Snap Representative Tim Shonis (3T103) who had managed the baseball fundraiser. Shonis explained to Poyer that Snap fundraising is an email-based program similar to a GoFundMe fundraiser. The superintendent described the online fundraising as a system where parents, grandparents, or anyone is asked to donate funds specifically for this cause. He explained that the idea of Snap is to raise as much money as possible in a very quick time frame. Carrubba testified that the District had conducted a Snap fundraiser by one of its sports teams the previous season – and, to the objection of a few of its Board members because those members did not like the way funds were solicited.

The participating student athletes each supply 20 email addresses to Snap and then Snap does a solicitation via email. Shonis arranged with Poyer to meet with the members of the soccer team on Monday, August 20 after practice. There is no record evidence that either Dempsey or Poyer asked for permission for this meeting from any member of the district administration.

Review R-7 and R-8

Board Exhibit B-7 is an email sent to Poyer from Snap Raise to be passed along to the team members. The cover page email states,

Attached is the SnapRaise email form. You need to print out this form if you were not at practice today. This is a fundraiser that is very easy and lucrative. All you need to do is collect 20 emails before practice on Monday. . .

Attached to this email was a form to be completed by the soccer player with email addresses. The prefatory language states, "Participants Expectation": "I expect you all to show your effort and support by participating!" Poyer emailed the cover note and attachment to each of the players. Poyer testified that he did not compose the language on the form; it was prepared by SnapRaise! The Superintendent believed that the statement on B-7 stating the coach "expected team members to participate" exploited the "teacher-to-student" relationship -- referring to item #7 of the Board's Code of Ethics policy. Carrubba testified that he would have liked Poyer to delete that sentence (1T-126). But there is nothing in the record that suggests there was an opportunity for Poyer to insist that the sentence be modified or deleted.

A second email, B-8 was distributed to the players (and donors) sometime later. According to B-8, a goal had been set between Poyer and SnapRaise to raise \$4,000 for the boys' soccer team in 2018. However, as B8 notes, the actual gross amount raised by the fundraiser was \$6,560. The cover page thanks contributors for their support and states that donations "will go towards the end of the year team banquet, awards, and player trophies. Donations are vital for

the success of our program.” Under the section, “Personal message”, the email states,

Belvidere Soccer family, friends and fans. Thank you each for taking the time to view our fundraiser page. Your support will help us offer a higher quality experience for all our athletes. Your donation is greatly appreciated and you will be getting a receipt for your gift. If you could please spread the word about our fundraiser by sharing it with your friends on Facebook and Twitter we would greatly appreciate it. Our young men here have been working hard to properly represent this great school and Belvidere Soccer. Any support is greatly appreciated. Go County Seaters. Coach Poyer

The second page makes suggestions about how specific given amounts might be used. The suggested benefits include team awards, team spirit-wear, team snacks, etc. Both Poyer and Dempsey denied that Poyer composed the personal messages in B7 or B8 or typed his name on it. Both maintain these were generic statements written by Snap and were also used in the baseball team’s fundraiser. The superintendent believed the Snap form was prepared by Snap but then edited by Poyer (1T114; B7). Again, there is no evidence in the record to support this claim.

Carrubba believed that Poyer actually solicited the student athletes and encouraged them to give money to the Snap Fundraiser (1T115). However, there is no evidence in the record to support this theory. Dempsey testified that neither he nor Poyer asked any members of the team for money. Additionally, Carrubba’s theory was that Dempsey and Poyer “cooked up” the fundraising

scheme specifically so that Dempsey could obtain compensation for Poyer's unpaid coaching assignment. However, according to Dempsey, Poyer never asked him to arrange for compensation for his efforts as the assistant soccer coach. Poyer, for his part, denied any beforehand knowledge that he would receive money until he actually received the check. (2T106-108) He testified that he was surprised and "taken aback" by the booster club's gesture. Poyer and Dempsey impressed me as honest and straightforward witnesses. I credit Dempsey and Poyer. While I do not discredit Carrubba's genuinely held beliefs, the Employer has presented no proofs any that either conspiracy theory is accurate.

SnapRaise raised \$6,560 in contributions. However, because the total amount raised is decreased by the percentage that Snap takes for administering the fundraising program, the net given to the team was \$4797. In actuality, 26.8% of the proceeds went to Snap ($\$6,560 - \$4,797 = 1763/6560 = 26.8\%$). Dempsey stated that Snap's administrative percentage of the proceeds was posted on the website (3T116-117).

In August of 2018, the Athletic Director was Chris Karabinus. Carrubba testified that the fundraiser conducted in August of 2018 was not submitted in advance to Karabinus for approval and subsequent approval by the superintendent and ultimately, the Board. However, during direct examination,

Karabinus testified that Dempsey told him about the Snap Raise fundraiser on August 16, 2018 (2T56).

Both Patty Toth and Patti Grafer testified that the booster club unanimously supported using SnapRaise to raise funds for the soccer team. The record is unclear about when or how Toth and Grafer first learned about the plan to raise money through SnapRaise or the extent of their involvement in the planning with SnapRaise.

Poyer took the lead in coordinating between the Belvidere soccer team and SnapRaise. Upon completion of its fundraising efforts on behalf of the Belvidere soccer team, SnapRaise contacted Poyer to find out who the check should be made payable to and a tax identification number. Poyer consulted with Dempsey. Dempsey testified that since they did not have the booster club's tax identification information available to them at that time, it would be okay to use the school's identification number. Dempsey explained that that information was readily available because SnapRaise had made the funds check payable to the school for prior fundraisers and there had been no problems. Dempsey told Poyer to tell SnapRaise to make the check payable to Belvidere High School and to use its tax identification number.

Upon receipt of the check from SnapRaise, Dempsey took the check to Schiavone and completed paperwork for its deposit. Schiavone deposited the check into the soccer team's student activities account.

Dempsey told Toth that he had just received the Snap fundraiser check for \$4,797.70 – made out to the Belvidere High School. Dempsey informed her that he deposited the check into the boys' soccer associated student account. Toth testified that she contacted Grafer and asked her if she was aware that the money from the Snap fundraiser had been deposited into the school's associated student account. According to Toth, Grafer responded, "Absolutely not, that cannot happen, it's our fundraiser, it needs to go into our account as the booster club account." (3T47).

Toth testified that some parents were accusing Dempsey and Poyer of trying to hide booster funds from the booster club by depositing them in the school activities fund (3T50). Toth maintained that the booster club knew this was untrue as it knew that the money was mistakenly deposited into the student account rather than the booster club.

On or about October 16, 2018, Toth received an email from a parent of a soccer player asking how much money was raised by the fundraiser and what the booster club planned to do with the funds (R5). That same day, Toth sent Dempsey an email regarding dates for the season banquet. Toth also relayed to

Dempsey that parents had begun asking how much the club raised by the SnapRaise and what the club's plans were on allocating the monies. Dempsey suggested the following ideas for the Snap fundraising money: (R5)

Coach Poyer has volunteered his time to continue being a full-time assistant coach with the boys' soccer team. He is a valuable asset to the boys' soccer program. I think it would be nice to reimburse Coach Poyer for his time.

Maybe new warmups or team shirts for next season. ...

Toth responded to Dempsey:

Of course to Coach Poyer. How much would that be? And is that something you will take care of? . . .

Toth and Grafer both testified that the booster club unanimously agreed to provide money to Poyer. Staples testified that he had spoken with Tracy Linder and that she said the booster club had not agreed to give Poyer money. Linder's written statement was not submitted into evidence in this matter and Linder did not testify. Therefore, Staples claim about what Linder told him is merely hearsay. I credit Toth and Grafer that the booster club had agreed to provide a sum of money to Poyer. Toth testified that the club was willing to go to a maximum of \$3,000. However, Dempsey informed Toth that he would speak with the athletic director and other coaches before he would recommend a specific amount for Poyer. Dempsey told Toth that there were sufficient funds in

the student activities account to cover it and that he would let Toth and the school administrator know of the recommended amount for their approval. (R5)

Dempsey originally thought that \$2,500 was an appropriate amount to pay Poyer. However, Dempsey learned from Coach Feldman that the volunteer assistant baseball coach had been paid \$3,000 and, after his conversation with Toth, Dempsey decided that somewhere in the middle would be a fair amount -- \$2,750. (2T109; 154) Dempsey got back to Toth with that suggested amount and explained his rationale. Toth confirmed the booster club's approval for payment to Poyer in the amount of \$2,750.

Toth testified that she considered Poyer's money as a gift from the booster club and not compensation. She stated that she assumed that if it was pay, it would have to be from the school district's payroll account (3T66-67). Toth maintained that none of the remainder of the SnapRaise money was used for other booster club purposes because the remained funds were in the Board's associated student account and the club could not get access to it (3T77).⁴ She indicated that if the money had been deposited initially into the booster club account, the booster club would have written Poyer the check for \$2,750. (3T78).

⁴ Dempsey and Poyer of course could also not get access to the Associated Student Account money after their suspension as they were prohibited from being on school property.

Dempsey testified that, in addition to Assistant Coach Poyer, the boys' soccer team had a second assistant coach who volunteered for the team. Assistant Coach Fred Bartow was not otherwise affiliated with the Belvidere School District and volunteered on a part-time basis. The booster club gave Bartow a gift of \$25 at the end of the season. Dempsey explained the disparity between the amount Poyer received (\$2,750) and the amount that Bartow received. He maintained that Poyer coached on a full-time basis. Every practice, Poyer worked with his goal-keepers and he also traveled with the team to both their home and away games. Dempsey stated that Bartow, who was not otherwise a district employee, only worked on a part-time basis and was not at every practice and was not at every game. (2T109-110) Dempsey also explained that Bartow had received free ski passes to travel with the ski club, which Dempsey also coaches.

After the booster club approved the money for Poyer, Dempsey filled out the associated student account request form and submitted it, along with an invoice, stating that the purpose of the money was to reimburse Poyer for his time and efforts as the boys' soccer assistant coach. Schiavone printed the system-generated request form which Dempsey signed. Schiavone signed the request form and the check.

Schiavone stated that on a Monday she had had received four checks and companion requests for disbursement forms which required an administrator's signature. One of the four checks was Poyer's check in the amount of \$2,750. Schiavone explained that she met Lazzara in front of the basketball court where he was watching a field hockey game. Sitting with Lazzara was Carrubba, Business Administrator Rochelle Tjalma, current and former athletic directors Staples and Karabinus, and Vice-Principal Jesse McKenny. When Carrubba saw her, he laughed and stated, "We know what you're after; you're after signatures." According to Schiavone, she asked all of them, "Who wants to sign?" Carrubba responded, "It's Ed's [Lazzara's] job, he can do it." She handed Lazzara the stack of the four checks and paperwork for his review and signature – the principal signed everything within a couple of minutes. (3T30)

The custodian then delivered Poyer's check to Dempsey. At the end of the soccer season, possibly at the awards banquet, Poyer was presented with the check.⁵ (B14; B16; R3; 2T111-112; 2T114-116).

Toth asked Grafer to speak to Tjalma to have the fundraising monies transferred to the right account. Grafer called Tjalma and left a voicemail for her requesting that she write the booster club a check for full amount deposited from

⁵ Poyer could not recall exactly when he was handed the check, but he recalled that he was surprised by it.

the fundraiser; and, in turn, the club would send the Board a check to cover the cost of what the club gave to Poyer (3T48). Grafer eventually spoke to Tjalma by phone. Grafer explained the whole situation regarding the SnapRaise funds being incorrectly deposited into the Board's associated student account. Grafer told Tjalma,

If this is an issue, please cut the check that was given to you; I will, in turn, cut you a check for what was given to Coach Poyer, which we agreed to do as an organization.

Grafer said that Tjalma replied, "I'll get back to you."

That was the last time Grafer heard from the Board Secretary (3T88).

Toth testified that the Snap fundraising monies were not transferred back to the club. The club then asked for the remainder of the funds to be returned; that did not happen either.

Schiavone confirmed that of the "\$4,000-something" that was put into the soccer account from the Snap fundraiser, the remainder of the money has never been withdrawn or given back to the soccer booster club. The money still remains in the boys' soccer association student account.⁶ Expenses for the end-of-season banquet and awards were paid for from the booster club's funds.⁷

⁶ Schiavone maintained that she would not categorize the student-associated accounts as district funds since the district has not paid into the accounts.

⁷ The booster club account is a rollover account in which the end-of-year balance is carried over to the following year.

Dempsey explained that the check to Poyer in 2018 was not the first occasion that a Belvidere sports team offered payment to one of its volunteer coaches. In 2015, when Poyer was a volunteer assistant softball coach, funds were raised and deposited into the student activities account. Lazzara and McInerney were the two signatories on the check for Poyer, the latter being the former custodian of the associated student account. Neither one ever expressed any concerns to Dempsey that it was inappropriate to have dedicated funds to compensate a volunteer assistant coach. Dempsey received the signed check from McInerney and turned it over to Poyer. In 2017, the baseball team raised money and \$3,000 was given to the assistant coach. (2T59)

Grafer testified that previously the booster clubs had gifted both the volunteer assistant baseball coach and volunteer pitching coach for the season. She testified that the pitching coach was brought in from another school (3T90).

Sometime in the fall of 2018, there was a conversation among administrators in the hallway of the high school. The conversation included Carrubba, Lazzara, Staples, and Karabinus. Karabinus was asked, "Did Andy Poyer get paid?" Karabinus replied, "I do not know if Andy Poyer got paid. Let me go ask Dan (Dempsey)". The former athletic director went to the gym and asked Dempsey. Dempsey confirmed that Poyer had been paid. (2T49)

Carrubba testified that he became aware of a fundraiser for the boys' soccer team in the fall of 2018 when he received a phone call from newly-appointed Athletic Director Brian Staples. Staples reported to Carrubba that he had received a phone call from a concerned parent who had attended the end-of-season banquet for the soccer team. The parent told Staples that she was upset because the banquet was a potluck and there was no formal place to hold the banquet. The parent relayed to Staples that she understood the proceeds from the fundraiser were going to be used to cover part of the expense of the banquet. The parent asked Staples if the school could take a look at the fundraiser.

Staples testified that the parent also wanted to know why a certain coach received a certain amount of money and questioned how the funds were being distributed (2T7). Staples testified that he spoke to outgoing Athletic Director Karabinus along with the superintendent about the phone call.⁸

The superintendent asked Staples to conduct an investigation into the matter. Staples went to Dempsey and asked him about Poyer receiving money from the fundraiser. Dempsey informed Staples that this type of payment had been done in the past. Staples testified that at first Dempsey made no mention of

⁸ Brian Staples replaced Athletic Director Chris Karabinus.

paying the money back; however, sometime later, he told Staples that they would pay the money back if that would help all of this to go away (2T41).

Staples called the members of the boys' soccer booster club – Patty Toth, Patti Grafer and Tracy Linder -- to ask them what they knew about the decision to pay Poyer. He asked the members to email him detailed recollections of what had transpired. Staples stated that he received emails from the boys' soccer booster club⁹ and forwarded Toth's, Grafer's and Linder's emails to Carrubba. Staples mentioned that he did not remember speaking with Toth after he received her email. However, on cross-examination, Staples testified that he had spoken to both Toth and Grafer after receipt of their emails (2T21). Staples maintained that he believed the emails to be accurate. (2T14; B25, 26). Staples also collected booster club by-laws and testified that he gave all the information to Superintendent Carrubba.

Booster Club Treasurer Grafer sent an email to Staples on December 17, 2018 regarding the situation with Dempsey and Poyer. Grafer maintained that when she did not receive the 2018 Snap fundraiser proceeds in the form of a check to deposit into the booster club account, she was quite upset and questioned how that had happened. Grafer said that she was informed by Toth

⁹ Linder's email was not submitted into evidence.

that Dempsey had deposited the funds into the associated student activities account. Grafer believed that when the SnapRaise account was set up, Poyer mistakenly gave Snap the school's tax ID instead of the booster club's tax ID. She said that the check was made payable to the Belvidere High School when the rightful payee should have been the BHS Soccer Booster Club. Grafer maintained that the funds were raised by the families and belonged to the booster club to use at its discretion – without need for approval from any member of the school administration or school board. Grafer's email (B26) to Staples read in part:

My name is Patti Grafer and I am the current treasurer for the BHS Soccer Booster Club. I am writing you in regards to the current situation with Coach Dempsey and Coach Poyer.

We decided to try the Snap raise fundraiser like other sports teams have done. Plain and simple. Absolutely nothing wrong or dishonest about that. When I did not receive the proceeds in the form of a check to deposit into the booster club account, I inquired where the check was. I was informed by Patti Toth that Coach Dempsey stated the funds were deposited into the student activities account. I was quite upset and questioned how that happened. Apparently when the snap raise account was set up, mistakenly the tax I.D. from the school was used and not the soccer booster club tax I.D. As to which the coaches have now learned to be an absolute mistake. The check was made payable to the school and not the rightful payee the BHS Soccer Booster club. Those funds were raised by the families and belonged to the booster club to be used at our discretion. Without need for approval by any member of the school or school board. When I discussed this situation, I was told not to worry and that the money was earmarked for soccer and checks would be written out at and per our request. I should have fought them to have our funds returned to us at that time and we would not be here now.

We, AS A BOARD, decided unanimously to purchase senior gifts and decorate for senior night, have a banquet free for all players and families/friends, give gifts to all coaches at the banquet, earmark money for new warm ups and t-shirts for next year and pay Coach Poyer for all his time and dedication. There was no fraud committed and no hidden agenda. We are by no means the first club to pay an assistant coach for all their hard work, time and dedication. I can provide proof of that if needed or requested. ...

When I heard of the wrongful accusations made against Coach Dempsey and Coach Poyer on December 14, I reached out to School business Administrator/Board Secretary Rochelle Tjalma to discuss the financial aspect of this problem. I suggested a very simple resolve. Reimburse the booster club our funds from the Snap fundraiser and I, in turn, would write a check to BHS High School for the monies paid to Coach Poyer.

There is NO wrongdoing or ill intent on the part of the coaches. They did what they believed to be the correct process. I further would like to know how all the people involved with the approval process of paying Coach Poyer are not suspended and being held accountable as well. If this was not permissible how was it approved? ...

In closing, I again would like to emphasize the monies were wrongfully deposited into the student-activities account and belong to the booster club. These funds should be used at OUR discretion, not the schools. There was no misuse of these funds by the coaches – just misplacement of the funds. The soccer booster club will gladly refund the school \$2,750 as soon as our monies (\$4,797.70) are returned to us.

Patti

On December 18, 2018, Staples spoke to Grafer and thanked her for her email. He told Grafer that the information would hopefully resolve the issue quickly. The athletic director asked Grafer if she could provide the booster club

minutes which addressed the approval of Poyer's pay and payments for gifts, payments, et cetera. Grafer had no further communication from Staples or any member of the District's administration.

Toth's emailed responses to Staples' questions are as follows:

At no point did Coach Poyer or Coach Dempsey "assume" or "proceed to request money" for Coach Poyer without going through the proper channels to do so. As one of the chairs of our Boys Soccer Club, I was pointedly asked by Coach Dempsey if it were acceptable for him to provide money to Coach Poyer for his assistance as Coach during our season. My reply, without hesitation, was OF COURSE!! ... In addition, the Senior Night events/gifts were purchased for the boys. The banquet for our boys was also paid for in full for both families and players.

Most of the info (on the Snap Raise form) is prepopulated.

On a personal note, I must say, I am appalled at the domino effect that has transpired over the course of several days. The reputation and integrity of the Head Coach and teacher in your district for over 25 years, is now, in question. He asked us, the Booster Club representatives, he did not assume nor decide on his own to pay Coach Poyer! He went through the proper channels, and got the administration to sign off as well, that was required.

In addition, I am equally appalled that a coach, who VOLUNTEERS his time cannot be recognized by a booster club that has raised their funds for the betterment of their own organization, in this case our boys' soccer team. ... Coach Poyer showed up every day! Every practice! Every game! Every meeting! Every Screening. Coaching, Advising. Helping. Even in the absence of Coach Dempsey a few times. This is having a direct impact on our team!!! I don't care about soccer balls and beautiful warm ups suits, I care about our players getting the best of the best. ... We may not have the best of seasons, but these coaches brought out the best in their players. A man of few words, my son said it best

during his Captain speech at the banquet ... he thanked ALL his coaches for always being there for him and believing in him since he began playing on the varsity team his freshman year - for helping him become not only a better player, but a better person - not just on the field, but off the field as well. For teaching him the meaning of respect as a player, as a Captain - giving it and receiving it.

You can't put a price tag on that. ... It should be noted here as well that Coach Dempsey had earmarked some of the money raised this year for attire for next year as well. Coaches make a difference. Doesn't matter if they are paid or volunteer. Belvidere needs to get their heads out of the sand. ...

... But, if the need is take good men down – like Coach Dempsey and Coach Poyer - AND then go so far as to question the paying of a volunteer coach, then it will not be just boys soccer! Our sports program(s) APPRECIATE the dedication of all their coaches. ...

... Families are the ones raising the monies, not the school. ... What they don't understand is the monies raised are carried over year to year. As a committee AND with the input of our coaches, we stand by the money we spent: Coach Poyer, Senior Night, Banquet and the knowledge of ear marked funds for next year based upon request from Coach Dempsey for either new warm ups and/or team shirts. (B25)

Sincerely,
Patty Toth

On March 6, 2019, Grafer forwarded the email that she sent to Staples to Board President Shawn McInerney. She told McInerney that she had sent the email to Staples on December 17 and was not convinced that her email was ever received or if McInerney had time to review her comments. Grafter informed

McInerney that her email did not include the fact that the soccer booster club had documentation regarding its approval to pay Coach Poyer. In addition, she stressed the importance of McInerney and the board members reaching out to both her and Toth to access the documentation. (B26)

By email of March 6, 2019, Toth also forwarded her email sent to Staples in December to Board President McInerney. Toth's email to McInerney provides in relative part, as follows: (B25)

The below is the letter I sent to Staples back in December. After much thought and consideration, I am not fully convinced one or all of you have seen this letter. ... I do believe you should reach out to Patti Grafer and Tracy Linder for their letters as well. In addition, we also have emails throughout the season with exchanges regarding how monies collected would be spent, and where, and lastly and most importantly, the email exchange of Coach Dempsey asking us permission for approving pay for Coach Poyer's time spent with the players during the season. I would also like to note here that the total monies collected from that one email fundraiser – you will see by clicking the below link, the total monies raised NOT the money amount we received after the company took its cut. A PORTION of the final money received actually went to Coach Poyer and the remaining funds from that fundraiser is STILL IN THE SCHOOL ACTIVITIES FUND when it should have been put into the boys' booster club fund. I do know that Patti Grafer reached out to Shelly Taljma to have that money put back into our correct account, but I will leave that for Patti to discuss.

I respectfully withheld reading it at a public forum based on advisement and basically being shut down by the board attorney. ... But in order to understand what fully transpired, I felt sending this out was the route to take.

Patti Toth

Staples initially could not understand why, if the booster club raised the money, it had not deposited the funds into its own account and written checks to distribute the money itself. According to Staples, after he read exhibits B7 and B8, he came to believe that the coaching staff had raised the money.¹⁰ Moreover, Staples asked other coaches if they had a similar practice of giving gifts to volunteer coaches to which they responded, “yes”. The director acknowledged that Dempsey had told him that the volunteer assistant baseball coach had received a \$3,000 payment in the past (2T23).

According to Staples, during his conversation with Linder about her email in response to his questions, she told him, (2T45)

We had no idea that it was going to be used to compensate Poyer. We were made aware of it, but didn't have an opinion on it. If it had gone in our booster club account, I can assure you the amount would have been reflective of what the other coaches received.

Staples testified that Dempsey informed him about his decision to pay Poyer \$2,750 -- which was in line with what the baseball coach give his assistant coach the year before. He stated that the baseball team has a booster club and that other teams had used SnapRaise to raise funds. Staples maintained that Poyer knew when he accepted the volunteer coaching position that he would not

¹⁰ Staples testified that he never received the top email in exhibit B26 which is comments from Grafer sent to Board President McInerney.

be compensated by the Board of Education; however, Staples believed that Poyer already knew by this point that he would receive compensation at the end of the season from the fundraiser. (2T26) However, there is no direct evidence in the record which supports this claim.

Staples was aware that Carrubba was concerned with the disparity in the amount of money that Dempsey recommended the booster club approve to pay Poyer, as opposed to Assistant Coach Bartow. (2T76)

Staples turned over exhibit B7 and B8 to Carrubba, B7 is a copy of Poyer's email to the soccer team members regarding the Snap fundraiser. The second page contained the sentence concerning Poyer's expectations that all of the players would show effort and their support by participating in the fundraiser. Carrubba testified that he was troubled by this as it appeared to exploit the relationship between coach and student. B8 is the email to student athletes and Snap fundraiser contributors detailing some of the things the funds might provide and thanking people for their support. It contains a personal note which ends with "Coach Poyer, 8/18/18." Carrubba felt that this document deceived donors about where the funds would be going. The superintendent observed that he did not see any reference in either email that referred to the booster club.

As part of the superintendent's examination into the associated student accounts, Carrubba learned that a similar check for the amount of \$2,500 was

issued to Poyer in May of 2015 from the girls' softball account. Carrubba maintained that in 2015, Poyer was a volunteer girls' softball coach. Exhibit B20 is an associated student account check request dated May 22, 2015 from Dempsey to the Belvidere High School and payable to Poyer in the amount of \$2,500.¹¹ The request form is annotated as: "Softball Coach Instructor's Fee." Carrubba maintained that Poyer was not entitled to an instructor's fee since he was a volunteer coach. The superintendent stated that he examined the three-year ledger and the money was disbursed as a check to Poyer (B21).

Staples and Carrubba examined associated student accounts soccer account ledger to determine what had happened to the money. They followed the trail of the requisition for a check and then the check itself through the accounts (B14; 1T66). The request was for a check in the amount of \$2,750 from the boys' soccer club associated student account and made payable to Poyer. It was learned that both Dempsey and High School Principal Lazzara signed the request (B14). Carrubba testified that once the form is completed, it is submitted to Associated Student Account Custodian Sarah Schiavone. According to Carrubba, the custodian then prints out the form and Lazzara signs it. Carrubba acknowledged that Dempsey and Lazzara signed off on the form both openly and

¹¹ Dempsey was the girls' head softball coach in 2015.

publicly. Once the form is complete Schiavone writes a check to be signed by Principal Lazzara and herself. (B16) This was done and check #4053 dated November 2 was written as payable to Poyer and signed by Lazzara and Schiavone (B16).

Carrubba agreed that at the time of the check being drafted, that Dempsey had, to the best of Carrubba's knowledge, followed the procedure set forth in the district's policies and did so openly.

Carrubba maintained that neither Dempsey nor Poyer requested permission from him or anyone else in the district's chain of command, to raise the money, deposit the money, and withdraw the money for the purpose that it was used. Carrubba testified that he did not have any reason to believe that Poyer asked Dempsey for the money. Carrubba believed that Dempsey did want to give Poyer some money. The Superintendent stated that he never identified whether any other coaches had paid or given money to volunteer assistant coaches in the past; nor did Carrubba ask the custodian of the associated student account, if she was aware of any other instances within the district where these type of payments occurred. Carrubba testified that he did not take disciplinary action against anyone else who paid a coach or gave money to a coach out of a student funds account.

In 2015, the check for \$2,500 to Poyer was signed by Principal Lazzara¹²; in 2018, Lazzara and Schiavone both signed the check for \$2,750. Carrubba acknowledged that Lazzara had a letter of reprimand placed in his file – however, no tenure charges were filed and no suspension was mandated. (1T96). Carrubba testified that he had no evidence that Poyer played any role in Dempsey’s decision-making process (1T98). The superintendent believed that Dempsey sought approval from specific members of the booster club, but not the entire club.

In the course of Carrubba’s investigation, he stated that he had received documents from Toth and Grafer. The superintendent said that the emails he received from Toth and Grafer defended the \$2,750 payment to Poyer. Both Toth and Grafer characterized the payment as “pay”. Carrubba again stated that Belvidere volunteers do not receive pay; the Board did not authorize the payment to Poyer; and, Poyer never applied for a position with the boys’ soccer team for which he would have been paid.

Carrubba testified that the Dempsey and Poyer matter was referred to the Warren County Prosecutor’s Office for an investigation. Ultimately, the County determined not to pursue criminal charges.

¹² The second signature was illegible.

The Interviews

Carrubba stated that he interviewed both Poyer and Dempsey and made notes contemporaneously with the meetings (B12-13). On December 17, 2018, Carrubba met with Poyer. Other attendees were Principal Lazzara, Athletic Director Brian Staples, and BEA President Judy Black.

Carrubba stated that when he interviewed Dempsey and Poyer, that neither one of them mentioned that Poyer had previously received a check in 2015. In fact, Carrubba maintained that he asked Dempsey if the practice of compensating other coaching volunteers from a student account had occurred in the past – and testified that his question was asked in general, unspecific terms and was not pinned to any one staff employee.

Carrubba initially testified on direct examination that Dempsey had told him that he had never done it. Upon the cross-examination, however, Carrubba, acknowledged that he had asked Dempsey if the policy of giving or paying an assistant coach had happened in the past - - to which Dempsey replied, “Never in soccer, *but did in softball.*” (B12)

The superintendent testified that he asked Dempsey why he thought a contribution should be made to Poyer as compared with the money given to Bartow. Carrubba stated that Dempsey told him that Bartow, one assistant that Carrubba specifically questioned, did not work nearly as much time as Poyer. (1T-

84-85) Dempsey told Carrubba that Poyer went to every practice, every game, and every away game; however, the superintendent does not know that to be fact since Poyer was suspended for three weeks and could not attend every game and every practice. Dempsey told the superintendent that once Poyer had served his suspension and was approved as a volunteer coach, he attended all the home and away games and practices.

Carrubba testified that during the interview, Poyer had indicated that a similar baseball team fundraiser had been conducted in the spring of 2018. (B13) Carrubba maintained that Poyer had told him that the Snap fundraising activity was all Dempsey's idea (1T118). Although Carrubba was convinced that Poyer initiated the \$2,750 payment to himself and asked for Dempsey's cooperation, he had no factual proof that Poyer had asked Dempsey to write a check from the account and make it payable to Poyer (1T119).

On January 8, 2019, Carrubba met with Dempsey. In attendance was an attorney from the Weiner Law Group and a New Jersey Education Association attorney. Coach Dempsey told Carrubba that he first heard about SnapRaise in the spring during baseball and softball. Dempsey stated that they used the raised softball funds to purchase a new batting cage, new pants for the team and bats. Dempsey maintained that none of the money went to pay coaches. He said that he had paid a softball volunteer prior to the 2017-18 season; but never paid

soccer coaches. Dempsey noted that there was no booster club for softball.

(B12)

When asked by Carrubba as to why he paid Poyer \$2,750, Dempsey replied that originally, he was looking at \$2,500; however, since \$3,000 was paid to a baseball volunteer this past spring, Dempsey just split the difference and paid him \$2,750. Dempsey stated that he had discussed this with Patty Toth, a parent of a school soccer player and a member of the soccer booster club. Dempsey said that Poyer was the only one paid because he was the only full-time volunteer. He mentioned that he did not pay Brad Bartow or other volunteer assistants because Bartow was not a full-time volunteer and did not travel to any away games, as Poyer did. Dempsey mentioned that Bartow also receives ski passes when he goes up to Camelback with the Ski Club. (B12)

Carrubba said that Dempsey informed him that the only parents he communicated with prior to the fundraiser was Toth via email, phone calls and verbal conversations, all done in October of 2018. Dempsey told Carrubba that it was Toth's and his decision to gift Poyer the money during the middle of the season. Dempsey stated that the check was requested at the end of the season and the job description was attached to the back to make sure that everything was "clean". Carrubba maintained that Poyer knew nothing of the money until he was given the check. Dempsey told Carrubba that the SnapRaise check was

delivered to the Belvidere school and then was deposited into the associated student account.

Superintendent's Policy Expectations

The superintendent acknowledged that no one from the District administration reviews the District's policies with the faculty unless one of its major policies is updated. Carrubba mentioned the Harassment, Intimidation and Bullying (HIB) policy and that they spent time reviewing the policy with the staff.

Carrubba's stated,

My expectations is certainly when they [the staff] first come into the position that they should at least make themselves aware of the pertinent policies; and second, as we update the policies, which are on our Board agendas every time we do that, that they will make themselves familiar with that.

Carrubba stated that whenever Board policies are updated, they are listed in the Board's meeting agenda. It was Carrubba's expectation that every teaching member and coach should read every Board agenda. Carrubba testified that although his expectation for the staff and coaches was not put in writing, he relayed his expectation to some of the staff through casual conversation.

(1T114). The superintendent acknowledged that when the Board updates or changes a policy, that he sends an email to alert the staff and coaches of the change(s).

Carrubba testified that, to his knowledge, Board Policy 1314, “Fundraising by Outside Activities”, was never discussed with the teaching staff or coaches as long as he has been superintendent in the District or for seven years. The Board adopted this policy on September 24, 2014, a little over five years ago. (1T113) Carrubba agreed that both Poyer and Dempsey had been employed in the district for some time and that these policies would not have been published when both men were first employed.

Carrubba believed that there were approximately 5,000 plus District-approved policies on the online portal.¹³ The superintendent expects the District staff to be familiar with the Board policies that pertain to the employee’s position. Carrubba stated that the teachers should know which policies pertain to them since they are marked specifically as “teacher actions” and “student actions”. Carrubba acknowledged that he never sent a memo to any teaching staff instructing them to become familiar with the Board’s policies, at least as they apply to teaching staff. The superintendent said that its policies reflect, in part, rules of conduct established by the school district.

Carrubba admitted that he never sits down with his staff or has anyone else sit with his staff to review Board policies and/or the Department of Education’s

¹³ Carrubba was not surprised when counsel told him that there are 412 Board-approved policies in the District.

regulations which the superintendent believes are applicable to the teaching staff. Carrubba stated that he believes there are notebooks in every school building that contain the Board-approved policies (1T93).

Poyer stated that he became aware of the policy 1314, “Fundraising by Outside Activities” only through the superintendent’s investigation (B6; 3T106). He maintained that during his time as a coach, no one from the administration – including, the athletic director, the building principal or the superintendent ever went over any Board policies with him (3T107).

Dempsey’s and Poyer’s Employment Contracts

Each of the teachers and staff in the District have annual employment contracts. Exhibit B18 is a copy of Poyer’s employment contract for the 2017-2018 school year (September 1, 2017 through June 30, 2018); Exhibit B19 is a copy of Dempsey’s employment contract for the same time period. The text of the two contracts are identical except for the employee’s name, salary, and any unique features to each person and/or position. The second paragraph of each contract stipulates to the following:

The Employee hereby accepts the employment aforesaid and agrees to faithfully do and perform duties under the employment aforesaid, and to observe and enforce the rules prescribed for the government of the school by the Board of Education.

Carrubba stated that the staff is required to enforce and uphold all Board-approved policies. He acknowledged that except for new policies or policies of unusual significance, the Board-approved policies are not discussed at its faculty meetings (1T72). Carrubba stated that the Board's policies could be discussed at professional development days but not specifically.

Dempsey stated that he was not aware that the superintendent anticipates the coaches and staff to be familiar with every Board policy by reviewing the policies online. Dempsey said that no superintendent at the District discussed any District policies or even recommended that staff go onto the website to see the policies. (2T122)

Job Descriptions

Carrubba acknowledged that Dempsey's job description (B1) identifies a requirement for a teacher to "Know and carry out the policies, rules, programs and curriculum of his/her school and the district as it may apply to his/her class".

Dempsey acknowledged that he had never seen his job description (B1). And, there is no record evidence that Poyer was ever provided with his job description.

Alleged Previous Discipline

On February 15, 2017, Carrubba informed Poyer via letter that due to an incident between Poyer and a student on or about February 7, 2017, Poyer was

instructed to attend an anger management course no later than September 1, 2017. Poyer was warned that his failure to attend the course would result in a loss of increment for the 2017-18 school year. The superintendent stated that it would pay for the anger management course. (B24)

Carrubba also called Poyer in for a discussion about Poyer's future handling of volatile student situations. Carrubba advised Poyer that he must use better judgment and he must report such incidents to the school administrators.

However, on February 23, 2017 via letter (B24), Poyer was notified of the Board's executive session findings regarding the incident. The Board made the following decision:

- The HIB incident has been overturned by the Board of Education and will be termed a Code of Conduct incident;
- The two day suspension that was served will become an unpaid suspension;
- You will send a written letter of apology to the student;
- You will attend an anger management program in person, selected by the Administration and paid by you. At the conclusion of the program, you will provide written confirmation of your completion, and;
- You are being placed on a one-year co-curricular probation for any coaching positions that you are holding.

Carrubba testified that in fact, the Board had increased Poyer's penalty.¹⁴ The BEA filed a grievance referring to Poyer's additional discipline as "double jeopardy". Following a Board resolution on May 24, the Board issued Poyer a letter rescinding the discipline in its entirety (B24).

Carrubba acknowledged that Poyer had attended the anger management course in a timely fashion; Poyer had served the two-day "unpaid" suspension – which was ultimately paid by the district; and, the district never moved to withhold Poyer's increment. Poyer also complied with the Board's decision and wrote an apologetic letter to the student concerned in the incident. (B24; 1T119-123) Carrubba agreed that Poyer was never insubordinate and followed the directions of the Board of Education at that time.

Suspension with Intent to Terminate

On September 9, 2018, the superintendent served both Dempsey and Poyer with RICE notices (B9; 1T59-60). In exhibit B9, Poyer was advised that on September 12, the Board would be considering an agenda item that concerned his employment and/or the terms and conditions of his employment. Dempsey's RICE notice was not submitted into evidence.

¹⁴ No evidence was provided substantiating the Board's rationale for increasing Poyer's discipline.

The superintendent stated that he recommended on or about December 14, 2018, that both Dempsey and Poyer be terminated. Carrubba testified that he informed Dempsey and Poyer that they were suspended on December 14, 2018, pending the outcome of its investigation by the Board and the administration, regarding boys' athletics. As a result of their suspension, both employees were denied access to school property. (B17) Carrubba maintained that he suspended both employees for 120 days without pay due to their violations of District's policies.

Tenure Charges

On March 18, 2019, tenure charges of unbecoming conduct, insubordination and/or other just cause warranting dismissal and/or reduction in salary, pursuant to N.J.S.A. 18A:28-5 and N.J.S.A. 18A:6-10 et seq were filed against Andrew Poyer and Daniel Dempsey (J1; J2). The tenure charges can be summarized as follows:

The Dempsey Charges:

Charge 1. (Unbecoming Conduct, Insubordination, and/or Other Just Cause): Dempsey conspired with Poyer so that Poyer could profit from his alleged "volunteer" service.

Charge 2. (Unbecoming Conduct, Insubordination, and/or Other Just Cause): Dempsey failed to obtain approval for payments to be issued to Poyer for his alleged "volunteer" service.

Charge 3. (Unbecoming Conduct, Insubordination, and/or Other Just Cause): Dempsey, in a possible attempt to conceal wrongdoing, tried to hinder the District's investigation and/or failed to be truthful during the course of the investigation.

Charge 4. (Cumulative): Dempsey's conduct, when viewed in the aggregate, establishes his unfitness to continue to serve as a teaching staff member because he has exhibited a pattern of wrongful behavior, which includes (at a minimum) conspiring with Poyer for Poyer's personal benefit.

The Poyer's Charges

Charge 1. (Unbecoming Conduct, Insubordination, and/or Other Just Cause): Poyer conspired with Dempsey to profit from his alleged "volunteer" service.

Charge 2. (Unbecoming Conduct, Insubordination, and/or Other Just Cause): Poyer failed to obtain approval for payments related to his alleged "volunteer" service.

Charge 3. (Unbecoming Conduct, Insubordination, and/or Other Just Cause): Poyer, in a possible attempt to conceal wrongdoing, tried to hinder the District's investigation and/or failed to be truthful during the course of the investigation.

Charge 4. (Unbecoming Conduct, Insubordination, and/or Other Just Cause): Poyer conducted himself improperly toward student N.A.

Charge 5. (Cumulative): Poyer's conduct, when viewed in the aggregate, establishes his unfitness to continue to serve as a teaching staff member because he has exhibited a pattern of wrongful behavior, which includes (at a minimum) conspiring with Dempsey for his personal benefit and being deceptive with the District during its investigation.

Charge 22 of Superintendent Carrubba's sworn statement of charges against Dempsey, states,

As part of said investigation, superintendent met with and questioned the Respondent. During said meeting, Respondent was less than truthful, and attempted to hinder the meeting and overall investigation. In fact, Respondent failed to disclose that he previously provided a similar payment to Mr. Poyer, as set forth in paragraph 19 above, for alleged volunteer services during the 2015 softball program.

Dempsey denied that he was less than candid with the superintendent; did not try to hinder his investigation; and did not conspire with Poyer so that he could profit from his alleged volunteer service. He maintained that he did not, at any time, do anything that was not open and pursuant to Board policy as Dempsey understood the Board policy.

The determination to certify the sworn tenure charges to the Commissioner of Education was authorized by a majority vote of the full membership of the Board of Education. (J1; J2) Each Respondent denied many of the Board's allegations. Poyer and Dempsey were both notified that they had the right to submit written statements of position and evidence, under oath, within 15 days. On March 13, the Board of Education convened a closed executive session meeting and voted to file tenure charges against both Dempsey and Poyer.

ANALYSIS

The relevant events which led to the filing of tenure charges against Dempsey and Poyer began in 2018, when Poyer applied for paid position as an assistant coach with the Belvidere girls' soccer team. When he was not appointed to that coaching position, Poyer filed a grievance. On August 13, 2018, while that grievance was pending, Carrubba observed Poyer coaching a boys' soccer scrimmage. After making inquiries, Carrubba learned that Poyer had not obtained approval from the Board to serve as a volunteer coach prior to assuming that role. Carrubba met with both Poyer and Dempsey, accompanied by their respective representatives, to discuss the issue.

Carrubba memorialized the substance of the meetings in separate memos to each of them (B-3; B-4). The memorandum to Dempsey noted that "better judgment will need to be used" (B-4). Subsequently, on September 12, 2018 the Board approved Poyer's request for appointment as a volunteer assistant coach for the boys' soccer team for the 2018-2019 year and, in exchange, Poyer withdrew his grievance. The Board noted that the request for approval was belated as Poyer had already been coaching at least since August 13, 2018 when Carrubba observed him.

Sometime over the summer of 2018, Dempsey and Poyer learned about a fundraising program called SnapRaise from the coach of the Belvidere baseball

team. Like several other sports teams, the boys' soccer team has a Booster Club which functions primarily as a means to raise additional funds for the team. The booster clubs operate independently from the district. The booster club approved the use of SnapRaise to raise money for the soccer team.

Poyer assumed day-to-day responsibility for the SnapRaise fundraiser, and served as primary contact with SnapRaise personnel. Without seeking permission from the school administration, Dempsey and Poyer arranged for a SnapRaise employee to meet with the members of the boys' soccer team after practice on August 20, 2018. Poyer forwarded material about the fundraiser from SnapRaise to the members of the team, including a statement that there was an expectation that every team member would participate (B-7). A second email, which included a "personal message" with "Coach Poyer" at the end was also forwarded; this email stated that donations would be used for "the end of year team banquet, awards, and player trophies" (B-8). The second page of the email made specific suggestions about how specific amounts raised might be used, including team awards, spirit-wear and team snacks.

At the conclusion of the fundraiser, after consultation with Dempsey and Poyer, SnapRaise sent the proceeds by check payable to the Belvidere High School with the district's tax identification number. Dempsey gave the check to

Schiavone, who deposited the check in the student associated account for the boys' soccer team.

Dempsey then contacted Toth, the president of the booster club to discuss what to do with the monies which had been raised. As a result of that discussion, Dempsey followed the District's administrative process to have a check for \$2,750 issued and made payable to Poyer. Poyer cashed the check.

As the result of a parent's phone call to Athletic Director Staples Carrubba learned that Poyer may have been compensated for his role as volunteer coach. He directed Staples to investigate the claim. Staples presented Carrubba with the information he had gathered, including statements from the Booster Club. Carrubba also interviewed Poyer and Dempsey.

* * *

The Parties' Arguments

The Board argues that Dempsey and Poyer conspired to provide Poyer with compensation for his "volunteer" coaching activities. In furtherance of their plan, the Board maintains, they set up a fundraiser with SnapRaise, without the involvement of the soccer Booster Club, and positioned Poyer as the intermediary between the fundraising firm and the team. Poyer facilitated a solicitation for the fundraiser which the Board maintains was coercive, and violative of the district's Code of Ethics. In addition, the Board argues, additional communications to the

team families and supporters fraudulently stated the purposes for which the monies raised were to be used.

The Board argues that Poyer and Dempsey wrongly deposited the proceeds from the fundraiser into an associated student account, then caused a check to be issued to Poyer from the account, creating potential audit and legal problems for the district. If the monies constituted pay, the Board maintains, then the Board was obligated to withhold taxes and pay employment taxes; and if it was a gift, public funds were used in an inappropriate fashion.

The Board also argues that both men hindered the district's investigation into their activities by failing to be truthful and attempting to conceal their actions. The Board urges that Dempsey and Poyer violated multiple Board policies, which they were obliged to know and follow by the virtue of their job descriptions and employment contracts. The Board maintains that it had just cause, based on the course of conduct of both employees, as well as their lack of remorse for their actions, to dismiss both Dempsey and Poyer from employment. In addition, the Board contends that due to a prior discipline resulting from an incident with a student, Poyer's penalty should be considered in the context of progressive discipline.

The Union maintains that the Board has failed to meet its burden of proving just cause for the dismissal of Dempsey and Poyer. The Union argues that neither

Dempsey nor Poyer has any prior discipline in their record. The Union further urges that the Superintendent's credibility is impaired by his action in leaving out critical material relating to the Board's rescission of any disciplinary sanction against Poyer when transmitting the charges to the Commissioner of Education, casting doubt on his motivation for pursuing the charges, as well as his testimony in this proceeding. Additionally, the Union maintains that Dempsey and Poyer did not hinder the investigation, but rather answered the questions which they were asked in a forthright and truthful manner. The Union urges that the District failed to conduct a proper and impartial investigation, and did not consider the statements of Toth and Grafer, which were provided to Staples and eventually to Carrubba and the Board.

The Union notes that the proceeds from the SnapRaise fundraiser were deposited in an associated student account, and although that was a mistake, it was a harmless one. Both Dempsey and Poyer were unaware that the monies should not have been placed in the district's account, but Dempsey's actions in requesting the check and providing it to Poyer were above board, and consistent with what he had done in the past. The Union urges that Dempsey consulted with and obtained approval from the Booster Club President before he requested the issuance of the check, and made a rational decision about how much to give

Poyer based on the relative time and efforts of Poyer and other volunteer coaches, as well as gifts made to other assistant coaches.

The Union argues that there was no collusion between Dempsey and Poyer to provide money for Poyer's activities as a volunteer coach, and there was no theft of funds, or fraud committed by either employee. The Union maintains that no discipline is warranted, the charges should be dismissed, and both Dempsey and Poyer should be returned to their teaching and coaching positions. Finally, the Union argues that Dempsey should also be provided with the stipend he would have earned as a coach during the period of his suspension; Poyer, as an assistant coach was not entitled to a stipend from the district, as fully explained above.

DISCUSSION

Charge I

Both Dempsey and Poyer were charged with multiple counts of Unbecoming Conduct, Insubordination, and/or Other Just Cause (J-1 and J-2). Count 1 of Charge I against Poyer specifies that Poyer was aware that he would not be paid for his services as a volunteer coach, that he organized a fundraiser and misrepresented the use to which the funds raised would be applied, and then accepted money for his coaching activities.

Count 2 alleges that Poyer also accepted money for his 2015 service as a volunteer coach for the girls' softball team from the associated student account. At that time, Dempsey was the coach of the girls' softball team (J1).

Charge I against Dempsey is supported by two counts which are identical to Counts 1 and 2 in the Poyer charges, and need not be repeated here (J2).

At the heart of the Board's charges is the allegation that Dempsey and Poyer conceived a plan to provide payment to Poyer for his service as a volunteer coach for the boys' soccer team (J1, Count 1; J2, Count 1). In the Board's view of events, the purpose of the Respondents' actions in conducting a fundraiser was to raise money for Poyer to be paid. The record does not support this assertion, and I decline to infer such a motivation in the absence of any evidence in the record, either direct or circumstantial, of such an objective based on the analysis provided below. Green v. Trenton Psychiatric Hosp., 2006 N.J. AGEN LEXIS 733 (N.J. Adm. 2006).

The record reflects that booster clubs raise funds for athletic teams in order to provide things which are not within the district's budget. Dempsey testified that he learned about SnapRaise from Belvidere baseball coach Feldman, and the record reflects that SnapRaise had previously conducted fundraisers for other teams, including baseball and girls' softball, prior to their activities with the boys' soccer team. It is undisputed that on August 16 2018, Dempsey informed then

Athletic Director Karabinus that a fundraiser was being conducted through SnapRaise. I find that this constitutes notice to the administration, since in his capacity as coach, Dempsey would be responsible to report to the athletic director (2T56). The record is unclear about when the booster club knew about the fundraiser, but since Toth and Grafer had sons on the team, they were on notice at least from the time that they received the email fundraiser solicitations which were sent to team members. Both Toth and Grafer maintained that they were aware of and approved of the fundraiser (B25 and 26).

The record also reflects that Poyer took primary responsibility for organizing and facilitating the fundraiser. He signed the contract with SnapRaise, served as the point of contact for them, allowed an email message about participation in the fundraiser with "Coach Poyer" at the signature line to be disseminated, and arranged for a SnapRaise representative to address the team. Poyer's actions, however, are consistent with the goal of the booster club to raise funds to support the team, and are not inconsistent with his role as volunteer coach.

Count 1 of Charge I recites that the solicitation for the fundraiser stated that the donations would be used "towards...[the team's] end of the year... banquet, awards, and player trophies." Count 1 further recites that the solicitation stated that donations would "be used to cover the cost necessary to

run a high school program, ...[and] ensure that...[the] athletes get the proper equipment to perform.” The allegation is that donations were solicited under false pretenses, because the only money actually distributed from the fundraiser went to Poyer. Carrubba believed the fundraising solicitation was fraudulent in that it specified the things which would be supported by the funds raised, which did not include the payments to volunteer coaches.

Poyer testified that he did not read the solicitations from SnapRaise, including that portion of the email describing what purposes the proceeds would be used for and which ended with a personal message from “Coach Poyer, 8/18/18.” (B-8). Additionally, Carrubba felt that the sentence in the solicitation stating Poyer’s expectation that “all players would show effort and support by participating in the fundraiser” exploited the relationship between teacher and student, in violation of Board Policy 4112.3 (Code of Ethics).

The pertinent portion of Board Policy 4112.3 provides that:

In fulfilling our obligations to the student, we ...

7. Avoid exploiting our professional relationship with any student.

It was a lapse of judgment for Poyer to allow solicitations from SnapRaise to be sent out with a message which purported to be from him without reviewing the content. However, the unrebutted testimony is that the majority of the information on the solicitation was boilerplate supplied by SnapRaise, and it is

unclear that Poyer had an opportunity to make changes in the emails but certainly he could have insisted on such a review. I do not find the statement about expected participation and the need for effort and support by the team to be unduly coercive. Carrubba's concern about the potential conflicts with a teacher's official duties and his/her role as a coach will always be present when one individual occupies both roles. There is nothing in the language of the solicitations, or in the record, that Poyer took any actions which would indicate to the team members that the level of their participation in the fundraiser would be tied in any way to any academic or other assessment which Poyer might make about any individual member.

I do not find that Poyer's failure to review the fundraising documents constitutes conduct which would warrant any disciplinary sanction pursuant to Board Policy 4112.3 (Code of Ethics).

The Board's assertion that the solicitations were fraudulent because the only monies distributed from the fundraiser went to Poyer ignores a significant fact -- after the funds were deposited in the associated student account, the booster club had no access to them. Once they were suspended and barred from school property, neither did Dempsey or Poyer. The fundraising materials stated that the funds would be used for an end of year banquet, awards and player trophies. The record reflects that booster club monies were used for those

purposes; however the funds came from those already available to the booster club from their rollover account, since the Board had assumed control of the monies raised in 2018, despite having been advised by Grafer that the Board was holding funds which belonged to the booster club. I also note that Dempsey had raised with Toth in the same conversation about the monies for Poyer's efforts the possibility of purchasing either new warmups or team shirts (B25).

The Board's position also ignores the fact that the boys on the soccer team got the benefit of Poyer's time, efforts and support. The booster club appreciated Poyer's contributions to the team, as Toth indicated, and determined to express their gratitude in the form of a monetary gift. Had they had access to the funds they raised, they might well have also purchased the warmups and/or team shirts that Dempsey alluded to in his conversation with Toth.

The district's action in preventing the booster club from utilizing the proceeds of the fundraiser clearly made it impossible for the club to use those funds in accordance with any of the stated purposes for which they were raised. Although it is true that monetary gifts for members of the coaching staff is not included in the enumerated potential uses for the monies raised in the solicitations, the language that donations would "be used to cover the cost necessary to run a high school program" appears broad enough to include gifts to

the coaches (B8). I do not find that the funds raised were the result of a fraudulent solicitation.

The Board also argues that Dempsey and Poyer violated Board Policy 1314 (Fundraising By Outside Organizations) when they permitted a SnapRaise representative to make a presentation to the boys' soccer team without first obtaining the permission of the Superintendent, and further when they deposited the proceeds of the fundraiser in the associated student account.

The pertinent parts of Board Policy 1314 provide as follows:

No person or organization may solicit funds on school property without prior permission from the Superintendent.

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Funds solicited by organizations, not sponsored by the district, are not to be deposited in any regular or special accounts of the district. The Board disclaims all responsibility for the protection of or accounting for such funds. (B6)

Carrubba testified that Dempsey and Poyer were expected to be aware of and required to follow Board policies by virtue of their job descriptions and employment contracts. Dempsey's and Poyer's employment contracts require that they:

faithfully do and perform all duties under the employment aforesaid, and to observe and enforce the rules prescribed for the government of the school by the Board of Education (B18).

Neither Dempsey nor Poyer could recall having seen their job

descriptions (B1; B2).

The question of whether Dempsey and Poyer could reasonably be expected to be familiar with all Board policies, and specifically with Board Policy 1314, must be considered in view of the number and scope of the Board's policies. Carrubba testified that the administration does not review policies with the faculty unless a major policy is updated. Carrubba also testified that there were approximately 5,000 District policies on the online portal, and stated that to his knowledge Policy 1314 was never discussed with teaching staff or coaches during his seven-year tenure as Superintendent. In fact, as Carrubba conceded, Board Policy 1314 was adopted on September 2, 2014, well after Dempsey and Poyer were hired.

Board Policy 1314 does not pertain directly to teaching. However, the requirement contained in the Policy that permission from the administration be obtained when a person or organization solicits on school grounds is a matter of common sense. Whenever a non-employee comes to a school, whether it is a SnapRaise representative speaking to a sports team, or Neil DeGrasse Tyson meeting with the Science Club, security concerns apply. Dempsey and Poyer should have known, as experienced teachers, of the need for such permission regardless of Board Policy 1314. Such permission was not obtained. Although Poyer had assumed the primary responsibility for administration of the SnapRaise

fundraiser, I infer that Dempsey would have been aware of the scheduled presence of a SnapRaise representative to address the team after a practice. Dempsey and Poyer thus violated Board Policy 1314 when they permitted a SnapRaise representative to address the boys' soccer team without providing notice to the administration.

There is no evidence, however, that either Dempsey or Poyer knew, or should reasonably be expected to have known, of that provision of Board Policy 1314 which provides that funds "[solicited] by or organizations, not sponsored by the district, are not to be deposited in any regular or special accounts of the district." This prohibition is not one that is a matter of common knowledge. Indeed, based on the fact that Schiavone testified that she was unaware of the Policy, it is evident that even those whose duties involved the payment of funds from school accounts were not aware of its existence. I infer that High School Principal Lazzara was apparently also unaware of this policy or was ignoring it when he signed requests and checks to be drawn on the associated student account for the boys' soccer team. The failure of the district to establish that the policy was ever highlighted or disseminated to faculty or coaching staff, or that either Dempsey or Poyer had received the policy, is clearly a mitigating factor. I do not find that either Dempsey or Poyer violated Board Policy 3453 (School

Activity Funds) in conducting the fundraiser or by depositing the proceeds of the fundraiser in the ASA account.

The allegation that Dempsey and Poyer committed fraud because the stated purposes for which the funds were raised are at odds with the purposes for which they were used is problematic. The fundraiser proceeds were solicited by SnapRaise for the Booster Club for their use and disbursement. The record amply reflects that the clubs exist to raise additional funding for sports teams which they support. If there were questions about or objections to how the monies raised were spent, the Booster Club, not Poyer and Dempsey were responsible to respond. While Poyer may have effectively managed and supervised the fundraiser, he did so on behalf of the Club.

However, in taking on that responsibility, Poyer should have sought review and approval of the fundraising materials from the club, rather than simply assuming that they were correct and acceptable to the club. To the extent that he failed to do so, he exercised faulty judgment. There is simply no evidence that he committed or was a party to fraudulent fundraising efforts. Poyer did not convert the proceeds of the fundraiser to his own use by having SnapRaise direct the check to him, nor did he solicit monies from either Dempsey or the booster club.

Dempsey appears to have had no direct involvement in the administration of the fundraising drive. While he, like Poyer, should have exercised better judgment by referring the content of the solicitations to the club, his failure to do so is mitigated to a significant degree by his knowledge that SnapRaise had conducted multiple fundraisers for other sports at Belvidere without any reported problems. He did not conceal the fundraiser from the administration, and, in fact, informed the athletic director at or near the inception of fundraising efforts. Although Carrubba testified that some Board members had concerns with prior SnapRaise solicitations, there is nothing in the record that indicates that those concerns were shared with coaches or with the then athletic director.

The proceeds of the fundraiser were sent via check made out to the school district, at the direction of Poyer and with the approval of Dempsey; the check was then mistakenly deposited by Dempsey into a district-controlled student activity account. Dempsey then followed standard Board procedures to request a check for Poyer, after getting approval from Toth to do so.

If, as the Board posits, Dempsey and Poyer devised a scheme to raise funds to compensate Poyer, they could have effectuated that plan by providing the funds to the booster club, as they should have, and having the club provide the check to Poyer. Dempsey's actions in handling the proceeds of the fundraiser were transparent in every respect. Dempsey credibly testified that Poyer never

asked him for money for his coaching assistance. Poyer credibly testified that he was surprised to get the check. Even if Poyer had entertained a hope that he might receive some sort of monetary gratuity for his efforts, the fact is that he had no entitlement to such an honorarium, and he could not know that it would be forthcoming.

Count 2 of Charge 1, which is essentially identical in both complaints, specifies that Dempsey and Poyer conspired during the spring of 2015 to provide Poyer with payment in the amount of \$2,500 for his services as volunteer coach of the girls' softball team. Dempsey was the coach of the girls' softball team at that time.

The facts surrounding the 2015 payment to Poyer are minimal. The record reflects that on May 22, 2015 Dempsey submitted a check request to the high school administration in the amount of \$2,500, payable to Poyer with the annotation "Softball Coach Instructor's Fee" (B20). The check to Poyer was signed by Principal Lazzara and countersigned by another individual whose signature is illegible, but I infer that it may have been the then custodian of accounts, Sylvia McInerney.¹⁵

¹⁵ It is noted that Ms. McInerney and Board President Shawn McInerney share the same last name and may be related in some way.

Poyer was apparently not the only assistant coach who was compensated. In 2018, Coach Feldman arranged for compensation for his volunteer assistant baseball coach in the amount of \$3,000. The record does not indicate whether that payment was from a booster club account or from a student associated account. Grafer testified, and stated in an email that booster clubs had provided gifts to both the volunteer baseball coach and the volunteer pitching coach in the past (3T-90). Staples testified that he asked other coaches if they had a practice of providing gifts to volunteer coaches, and was advised that they had done so.

There is no evidence that Dempsey and Poyer conspired to provide this payment to Poyer in 2015. Dempsey utilized the administrative process in place to request a check, made a correct annotation on the check reflecting the purpose of the check, and sent it through the rest of the process. The appropriate signatures were obtained, including that of Lazzara. There is nothing in the record which indicates that any action was taken with respect to the 2018 payment to Feldman's assistant coach.

The handbook Just Cause: The Seven Tests, Adolph Koven and Susan Smith, BNA (2006) outlines and discusses the seven commonly used tests to determine whether discipline was for just cause. The tests are: notice or rule; reasonable rules and orders; investigation; fairness of investigation; proof; equal treatment; and penalty.

For the purposes of evaluating this allegation, test six, “Equal Treatment” is instructive. The test questions whether the employer applied its rules, order and penalties even-handedly and without discrimination to all employees. In this context, the test refers to work rules, and the need for enforcement in a consistent manner unless a reasonable or valid basis exists for a variation in treatment. There is evidence in the record that Belvidere volunteer assistant coaches have been provided in the past with monetary and other gifts in recognition of their contributions to the teams they have coached. In view of what is apparently a sustained practice of such monetary recognition for volunteer coaching of sports teams, the Board has not established that it has a uniform practice of prohibiting such remuneration. In fact, the record reflects that Lazzara’s multiple approvals of such payments constitutes de facto permission by the district to issue such payments. An employer cannot approve conduct and then seek to punish an employee for engaging in the same conduct it has ratified. It does not appear that either Dempsey or Poyer could have known that the Board would object to such gifts, especially in light of the administration’s prior acquiescence to the same practice. It also appears that the Board’s objection to Poyer’s receipt of both the 2015 and 2018 checks is inconsistent with the treatment of other volunteer coaches who received monetary gifts. Further, the Board waited almost four years after the 2015

payment to Poyer before it decided to include this event in the tenure charges. This is clearly a mitigating factor against finding wrongdoing on Dempsey's or Poyer's part concerning the 2015 payment.

The Board has sustained its burden of proving that Dempsey and Poyer engaged in Unbecoming Conduct, Insubordination and/or Other Just Cause by violating Board Policy 1314 when they permitted a SnapRaise representative to address the team without obtaining permission from the district administration to do so. The Board has not sustained its burden of proving any other element of Charge I of J1 and Charge I of J2, so all other allegations of the charges are dismissed.

Charge II

Dempsey is alleged in Charge II to have engaged in Unbecoming Conduct, Insubordination and/or Other Just Cause by failing to obtain the approval of the Board or the Administration to issue monetary payment to Poyer for his services as a volunteer coach. Count 1 refers to the 2018-2019 school year, and Count 2 refers to the 2015 school year. Poyer's Charge II, Counts 1 and 2, parallel those against Dempsey, but are based on Poyer's alleged failure to obtain permission to accept the checks.

The money used to provide the 2018 check to Poyer did not come from public funds; they were funds raised on behalf of the boys' soccer booster club.

Teams which have booster clubs are not supposed to have student associated accounts. However, there was a student associated account for boys' soccer.

There is nothing in this record which explains this anomaly. At the point when the booster club fundraiser proceeds were deposited in the student associated account by Dempsey and Poyer, there was a bilateral mistake -- the coaches deposited funds which did not belong to the school district, and the district accepted funds which did not belong to it and placed them in an account which should not have existed.

When Booster Club President Toth became aware that the club's fundraiser money had been mistakenly deposited in a school account, she asked Club Treasurer Patty Grafer to contact Board Secretary Rachelle Tjalma to ask that the money be returned to the club. Grafer testified that she contacted Tjalma and asked that the money be given back to the club, which would in turn reimburse the school account for the \$2,750 check given to Poyer (3T-48). Schiavone confirmed that as of the date of her testimony, the proceeds from the SnapRaise fundraiser have still not been given to the booster club and remain in the associated student account.

The significance of these facts is that there is no dispute that the monies which were used to fund the 2018 check to Poyer belong to the booster club, and should not have been placed in the district account. The booster club is

independent from, and outside the control of the district. The club had the right to disburse the funds it raised, and is accountable to the donors, not to the district, for what is done with those funds. Dempsey suggested to Toth that some funds be given to Poyer for his work, and that either new warmups and/or team shirts should also be considered (B25). He got approval from the booster club to use the money they raised. He had no obligation or reason to ask permission from the district to request funds from them, because he knew that the money was not the district's to disburse. I note that due to the district's retention of the funds, and Dempsey's suspension, he was prevented from taking any steps to effectuate his request for new warmups and/or team shirts.

However, Dempsey clearly did not appreciate the significance of the mistake which occurred when the wrong taxpayer ID and payee was provided to SnapRaise, and compounded the error in depositing the monies in a district account. He proceeded to follow the administrative procedures he had utilized in the past; filling out the district form to request a check, giving it to Schiavone, who then provided the check for signature to the high school principal -- an authorized signatory -- ironically, in the presence of Carrubba. In a sense, Dempsey did ask for approval to issue the check from the administration when Lazzara signed the check, and he received it.

The charge that Poyer failed to seek approval to accept the 2018 check is misguided. The unrebutted testimony is that Poyer was surprised by the check, and did not anticipate it. For the reasons explained fully with respect to Charge I against Dempsey and Poyer, I do not credit the assertion that they colluded to provide compensation for Poyer from the outset. Moreover, the monies were not funds which belonged to the district, so it is simply illogical to think that Poyer had an obligation to seek permission from the Board or the administration to accept a gift from the booster club. For the reasons articulated above in the discussion of Charge I with respect to the 2015 check to Poyer, I do not find that he had a responsibility to seek approval to accept those funds from the district.

The Board has failed to meet its burden of proving that Dempsey and Poyer engaged in Unbecoming Conduct, Insubordination, and/or Other Just Cause) with regard to Charge II. Charge II against Dempsey and against Poyer are dismissed (J1 and J2, Charge II).

Charge III

Dempsey is charged with Unbecoming Conduct, Insubordination and/or Other Just Cause by attempting to hinder the district's investigation and/or failing to be truthful with during the course of an investigation in a possible attempt to conceal wrongdoing. Count 1 specifies that when Dempsey met with Carrubba during the investigation, Dempsey concealed the fact that he had previously

issued a \$2,500 check to Poyer for his volunteer services during the 2015 softball season (J2).

Poyer is also charged with Unbecoming Conduct, Insubordination and/or Other Just Cause by attempting to hinder the investigation, and/or failing to be truthful during the course of an investigation in a possible attempt to conceal wrongdoing. Count 1 specifies that when questioned by Carrubba during the investigation, Poyer concealed the fact that he had received a check for \$2,500 as a volunteer coach during the 2015 softball season, when Dempsey served as the head coach (J1).

Carrubba testified that during the course of the investigation of the 2018 check to Poyer, he met with both Poyer and Dempsey separately, and took contemporaneous notes at each meeting (B12-13). Carrubba testified that during his interviews with Poyer and Dempsey, neither mentioned the 2015 check to Poyer.

Carrubba also testified initially that Dempsey told him that he had never compensated coaches in the past -- however, he later modified his answer in response to cross-examination when he stated that he had asked Dempsey if the practice of giving or paying an assistant coach had happened in the past that Dempsey replied that it had not occurred in soccer, but it did in softball. I cannot account for the variance between Carrubba's initial testimony and his

contemporaneous notes (B12). His acknowledgment under cross examination that Dempsey had indeed responded that payments to assistant softball coaches had occurred in the past, but not to assistant soccer coaches appears to negate the charge that Dempsey failed to be truthful during his investigatory meeting with Carrubba.

Dempsey was asked by Carrubba about the rationale for the amount of the payment to Poyer, as compared to the gift given to another volunteer assistant, and Dempsey explained that Poyer had been present at practices and both home and away games, while other assistants had not. Dempsey also explained how he arrived at the amount of the check given to Poyer, and noted that a baseball volunteer coach received \$3,000 in the spring. There is nothing in the record which supports the allegation that Dempsey either hindered the investigation or was less than truthful when questioned by Carrubba.

Poyer met with Carrubba on December 17, 2018. Carrubba's contemporaneous notes of that meeting do not reflect that he asked Poyer about any previous payments he received as an assistant coach, or specifically if he had ever received such payments (B13). His testimony at the arbitration also shows that he denied asking Poyer about prior payments. I cannot account for the difference between Carrubba's testimony and his contemporaneous notes, however I believe that the notes are accurate since they were, by Carrubba's own

account, made at a time when his recollection of the meeting was clear. Poyer was participating in an interview about the circumstances surrounding the 2018 payment, and that issue is naturally the one on which Poyer would be expected to focus. In the absence of a direct question about any prior payments as an assistant coach, and an untruthful answer from Poyer, there is no evidence that he hindered the investigation or was untruthful in response to Carrubba's questions.

I note that the investigation itself does not appear to have been conducted in an objective fashion. In Just Cause: The Seven Tests, supra, test four, Fairness of Investigation, is focused on whether the employer conducted the investigation fairly and objectively. Staples began the investigation at Carrubba's direction. He questioned Dempsey, who confirmed the 2018 check for Poyer, and told Staples that the same type of payment had been made in the past. Staples called Toth, Grafer and Linder to ask about their knowledge of the decision to provide Poyer with monies for his coaching, and asked each of them to send him emails with their detailed recollections of what had transpired; he testified that he believed the emails to be accurate (2T14; B-25 and 26). Staples forwarded the emails and the booster club bylaws to Carrubba. He also provided Carrubba with the email solicitations from the fundraiser (B7 and 8). Staples and Carrubba also examined the associated student accounts, and learned that Poyer had received a check in

2015, and traced the process by which the 2018 check had been requested and issued. As described above, Carrubba also conducted investigatory interviews with Poyer and Dempsey.

It does not appear that the emails from Toth and Grafer were taken into consideration by either Carrubba or the Board, or that there was any recognition by the administration of the district's own shortcomings with respect to the creation and maintenance of appropriate accounts for teams with and without booster clubs, or of its failure to return the funds raised by the booster club to that organization.

The Board has failed to meet its burden of proving that Dempsey or Poyer engaged in Unbecoming Conduct, Insubordination and/or Other Just Cause by hindering the district's investigation, or by failing to be truthful when questioned during the course of the investigation in a possible attempt to conceal wrongdoing. Charge III against Dempsey and Poyer is dismissed (J1 and J2).

Charge IV (Dempsey)

Dempsey is charged with engaging in a pattern of misconduct based upon the charges against him discussed above, which establish his unfitness to continue as a member of the teaching staff. In view of the disposition of the preceding charges, no discussion of this count is necessary. The Board has failed to meet its burden of proving that Dempsey has engaged in a pattern of misconduct which

renders him unfit to continue as a member of the teaching staff. Charge IV is dismissed.

Charge V (Poyer)

As noted previously, Charge IV against Poyer was withdrawn by the Board. Poyer is charged with engaging in a pattern of misconduct based upon the charges against him discussed above, which would establish his unfitness to continue as a member of the teaching staff. In view of the disposition of these preceding charges, no discussion of this count is necessary. The Board has failed to meet its burden of proving that Poyer has engaged in a pattern or misconduct which renders him unfit to continue as a member of the teaching staff, Charge V is dismissed.

The Board maintains that despite its withdrawal of Charge IV of the tenure charges against Poyer that the actions which were set forth therein may be considered for the purposes of progressive discipline. The Union disputes that discipline consistent with West New York v. Bock, 38 N.J. 500, 523 (1962) occurred. The question is resolved by the Board's action on May 24, 2017, memorialized in the minutes of the Executive Session, rescinding the Board's sanctions against Poyer (B4). Having rescinded the discipline, the Board cannot invoke it for the purposes of arguing that it be considered for any purpose, including progressive discipline.

The Board has produced no evidence that Dempsey violated Board Policy 4112.3, Code of Ethics, or Policy 4119.22, Conduct and Dress, as enumerated in paragraph 4 of the Facts Common to All Charges of the tenure charges against him (J2).

The Board has produced no evidence that Poyer violated Board Policy 4119,22, Conduct and Dress, Policy 4119.24, Corporal Punishment, Policy 4119.25, Liability of Staff for Student Welfare, Policy 5131.4, Harassment, Intimidation and Bullying, or Policy 5142, Pupil Safety, as enumerated in paragraph 4 of the Facts Common to all Charges of the tenure charges against him (J1).

CONCLUSION

I conclude that the Board has failed to meet its burden of proving that the tenure charges brought against Daniel Dempsey and Andrew Poyer amounted to sufficient cause for termination. Dempsey and Poyer shall be issued written reprimands for their violations of Board Policy 1314 in permitting an outside fundraiser to address the boys' soccer team without first obtaining permission. Here, both employees shall be reinstated to their teaching positions with full back pay. Dempsey shall be reinstated to his position as the boys' soccer coach.

AWARD

Belvidere School District is directed to return Daniel Dempsey and Andrew Poyer to their tenured teaching positions, with full back pay for the period of their unpaid suspensions, less any mitigation based upon earnings during the period of their suspension. The Board is also directed to return Dempsey to his stipended position as the boys' soccer coach for the 2020-2021 school year.¹⁶ The Board is directed to also make Dempsey whole for the loss of any coaching stipends to which he would have been entitled during the period of his suspension. I retain jurisdiction as to remedy.

¹⁶ I decline to return Poyer to his position as assistant soccer coach because this position is not contractually entitled to a stipend; it is a volunteer position and subject to the Board's annual approval of volunteers.

I further direct that the Board issue written reprimands to Dempsey and Poyer for their violation of Board Policy 1314 (Fundraising by Outside Organizations).

Susan Wood Osborn
Arbitrator

DATED: January 13, 2020
Trenton, New Jersey

State of New Jersey }
County of Mercer }

On this 13th day of January 13, 2020 before me personally came and appeared Susan Wood Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.