
**IN THE MATTER OF THE TENURE
HEARING OF BLANCA GODINEZ,
SCHOOL DISTRICT OF THE
CITY OF PATERSON, PASSAIC COUNTY,**

**BEFORE THE COMMISSIONER
OF EDUCATION**

**STATE OF NEW JERSEY
Agency Docket No.
239-9/19**

OPINION AND AWARD

(Issued: March 9, 2020)

ARBITRATOR

Joseph Licata, Esq.

HEARING DATES

December 3, 12, and 13, 2019

HEARING LOCATION

Paterson School District
Board of Education Offices
90 Delaware Avenue, Paterson, New Jersey

FOR THE SCHOOL DISTRICT

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FOR BLANCA GODINEZ

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INTRODUCTION

The Petitioner, Paterson Board of Education (“Board” or “District”) brought tenure charges against Respondent, Blanca Godinez, an elementary physical education teacher, for unbecoming conduct, incompetency, failure to perform duties, and other just cause within the meaning of N.J.S.A. 18A:6-10 et seq. In accordance with Public Law 2012, Ch. 26, known as “Teacher Effectiveness and Accountability for the Children of New Jersey Act” (“TEACHNJ”), once the Tenure Charges have been certified, the Commissioner of Education then determines if the Charges are sufficient to warrant dismissal or reduction in salary of the person charged and, if so, refers the case to an Arbitrator for further proceedings. N.J.S.A. 18A:6-16. Pursuant to such a referral in this case, the undersigned was designated as arbitrator to hear and decide this dispute.

THE SWORN TENURE CHARGES

1. Blanca C. Godinez (“Godinez” or “Respondent”), is employed by the Paterson Board of Education (“District” or “Petitioner”) as a teacher holding tenure in that position.
2. During the 2018-19 school year, Godinez was assigned to work as a physical education teacher at two elementary schools, School Number 28 and Edward W. Kilpatrick School. Both schools house kindergarten through eighth (8th) grade students.
3. As a Teacher in the District, Godinez’s job functions and responsibilities include, but are not limited to: (1) “[d]isplay[ing] the highest ethical and professional behavior and standards when working with students . . . associated with the school[;]” (2) “[a]ssum[ing] responsibility for all students within the school, beyond those specifically assigned, [and] supervising in a fair and constructive manner to ensure the safety and well-being of all students[;]” (3) “[e]nsuring the safety and health of all students, notifying the administration of any unsafe conditions, following established procedures[;]” (4) “[s]erv[ing] as a role model for students[;]” and (5) “[a]dher[ing] to New Jersey school law, State Board of Education rules and regulations, Board of Education policies and regulations, school regulations and procedures, and contractual obligations.”

SPECIFICATION OF CHARGES

CHARGE I

UNBECOMING CONDUCT AND/OR OTHER JUST CAUSE, INCLUDING WITHOUT LIMITATION INAPPROPRIATE USE OF PHYSICAL FORCE AND PHYSICAL CONTACT WITH A STUDENT, IMPROPER CORPORAL PUNISHMENT, INAPPROPRIATE LANGUAGE, PUTTING STUDENTS AT RISK OF HARM, AND VIOLATION OF RELATED STATE LAW AND BOARD POLICIES/REGULATIONS INCLUDING, BUT NOT LIMITED TO, N.J.S.A. 18A:6-1 AND BOARD POLICIES/REGULATIONS 3150, 3217, 3280, AND 3281.

4. All of the foregoing facts and allegations are incorporated by reference as if fully set forth herein.
5. On or about Wednesday, February 20, 2019, Godinez was teaching a third-grade physical education class at School No. 28 during 7th period. A substitute teacher and an aide were also in the gym during this class. When the class was ending and students were lining up to leave, at approximately 12:20 p.m., Respondent got into an altercation with J.W., a male special education student in the class. The altercation occurred in the presence of the remaining students in the class, all of whom witnessed the incident.
6. The video of the incident shows Godinez lying down on top of the student with her back facing the floor and the student on his stomach. Godinez had her arms on the child's legs and head area. The video further shows Godinez rolling on the floor to stay on top of the young man. Godinez was on top of the student for approximately one to two minutes.
7. The student was crying and yelling "you hurt me." In response, Godinez yelled "I did not touch you." She then asked the student to show her a red mark or a scratch.
8. The student continued to cry while on line and until he got to his next class.
9. Godinez had previously told the substitute teacher that when students are fighting or misbehaving, she tells them that if they do not stop, she will lay on them or tackle them. If the students continue, she lays on them.

WHEREFORE, the foregoing unbecoming conduct and other just cause warrant

Respondent's dismissal in accordance with N.J.S.A. 18A:6-10.

CHARGE II

INCOMPETENCY, FAILURE TO PERFORM DUTIES, UNBECOMING CONDUCT AND OTHER JUST CAUSE INCLUDING, WITHOUT LIMITATION, FAILING TO INTERVENE IN A STUDENT FIGHT, THUS PUTTING STUDENTS AT RISK OF HARM AND VIOLATION OF RELATED STATE LAW AND BOARD POLICIES/REGULATIONS INCLUDING, BUT NOT LIMITED TO, N.J.S.A. 18A:6-1 AND BOARD POLICIES/REGULATIONS 3150, 3217, 3280, AND 3281.

10. All of the foregoing facts and allegations are incorporated by reference as if fully set forth herein.
11. On or about Monday, February 25, 2019, a fight among two (2) male third-grade students occurred in the gym locker room at the Edward W. Kilpatrick School in Godinez's presence.
12. Reports were filed and the students were suspended.
13. Godinez failed and refused to intercede and/or attempt to break up the fight.
14. When Godinez was spoken to by Derrick Hoff, the principal of the Edward W. Kilpatrick School, she asserted that she was approximately five (5) feet from the altercation and that she was yelling at the students. She further stated that she did not attempt to intervene due to spinal issues that prevent her from breaking up a fight.
15. Godinez further asserted her belief that breaking up fights is not a teacher's responsibility.

WHEREFORE, the foregoing unbecoming conduct and other just cause warrant Respondent's dismissal in accordance with N.J.S.A. 18A:6-10.

THE ARBITRATION HEARING

A hearing was held at the Paterson Board of Education's Office on December 3, 2019, December 12, 2019, and December 13, 2019. The following witnesses appeared and gave testimony:

Board Witnesses

Nicholas Vanderlofske

Mr. Vanderlofske is employed as an elementary physical education teacher at Paterson School No. 28. This is his second year at School No. 28 and only his second year as a teacher. As of February 20, 2019, he had only been employed at School No. 28 for a few weeks. Mr. Vanderlofske testified to the February 20, 2019 incident (Tenure Charge I).

Nancy Castro

Principal Castro is the principal of School No. 28, a pre-K to 8th grade school. This is her eighth year as a principal, all at School No. 28. Principal Castro is tenured in the position. Since 1992, she has been employed by the Paterson School District in various capacities, including principal, vice principal and substance awareness coordinator. Principal Castro testified as to her involvement in the February 20, 2019 incident (Tenure Charge I).

Joaquin Perez

Mr. Perez is employed as a District Security Supervisor. He has been employed in Paterson for twenty-four (24) years and he has been in the role of supervisor for three years. Mr. Perez testified that he is in charge of the surveillance for the District. In that role, he is responsible for all of the video cameras throughout the district, including those in the gym at School No. 28. Mr. Perez produced a video recording capturing most of the February 20, 2019 incident (Tenure Charge I).

Anita Fulmore

Ms. Fulmore has been teaching in Paterson for twenty (20) years. She is a special education resource teacher at Edward W. Kilpatrick (“EWK”) School. She services students from kindergarten through third grade through both in-class support and pullout support. She is also the HIB (“harassment, intimidation and bullying”) specialist for the building. Ms. Fulmore testified as to the February 25, 2019 incident (Tenure Charge II).

Derrick Hoff

Principal Hoff is the principal of EWK Elementary School. He has served as principal of EWK since 2009/2010. He is tenured as a principal. He was first hired by the District in 2011. Principal Hoff testified regarding the February 25, 2019 incident (Tenure Charge II).

Luis Rojas

Mr. Rojas is the Assistant Superintendent for Human Resources, Labor Relations and Affirmative Action for the Paterson School District. Assistant Superintendent Rojas has been employed in Paterson since 2005. He has been in his current role as Assistant Superintendent since the fall of 2017. Assistant Superintendent Rojas testified to his investigation and other input regarding both the February 20 and 25, 2019 incidents (Tenure Charges I and II).

Respondent Witness

Blanca Godinez

Ms. Godinez is the Respondent in this matter. She is a physical education teacher in the Paterson School District. She has been employed in Paterson since 1999. She was assigned to teach fifty percent (50%) of her time at School No. 28 and fifty percent (50%) of her time at EWK School. She worked every other day at each school. Ms. Godinez testified as to both incidents and her overall employment record.

EXHIBITS

<u>Exhibit No.</u>	<u>Date/Description of Document</u>
JOINT EXHIBITS	
J1	Tenure Charges
J2	Answer
J3	Appt. Letter 10/3/19
J4	Stipulation Regarding Vide Evidence (B1)
BOARD EXHIBITS	
B1	DVD of 2/20/19 altercation at School No. 28
B2	Policy 3217 – Corporal Punishment
B3	Policy 3280 – Liability for Pupil Welfare
B4	Policy 3281 – Inappropriate Staff Conduct
B5	Regulation R 3281 – Inappropriate Staff Conduct
B6	Policy 5561 – Physical Restraint
B7	Regulation R 5561 – Physical Restraint
B8	Policy 3150 – Discipline
B9	Policy 3144 – Tenure Charges
B10	Regulation R 3144 – Tenure Charges
B11	2/21/19 email from Nick to Castro
B12	Handwritten Statement of Nick Vanderlofske
B13	Statements of J.W. and JL
B14	B. Thomas 1 st Statement
B15	B. Thomas 2 nd Statement
B16	School Incident Report

B17	Regulation R 3280 – Liability for Pupil Welfare
B18	Handwritten notes of Principal Derrick Hoff
B19	Behavior Detail Report regarding 2/25/19 incident at EWK
B20	2/27/19 email from Principal Hoff to Luis Rojas re: EWK incident
B21	Job Description 2001 – Elementary Teacher
B22	6/30/05 Increment Withholding
B23	6/25/10 Increment Withholding
B24	2/28/19 Email to Luis Rojas with Statement of Blanca Godinez.
BLANCA GODINEZ’S EXHIBITS	
R1	Job Description 3009 – Health and Physical Teacher
R2	2000/2001 observation and evaluations
R3	2003/2004 observations and evaluations
R4	2006/2007 observations and evaluations
R5	2008/2009 observations and evaluations
R6	2011/2012 observations and evaluations
R7	2012/2013 observations and evaluations
R8	2013/2014 observations and evaluations
R9	2014/2015 observations and evaluations
R10	2015/2016 observations and evaluations
R11	2016/2017 observations and evaluations
R12	2017/2018 observations and evaluations

The parties’ representatives each submitted a post-hearing brief and a reply brief. Both parties were expertly represented by skilled legal counsel. The instant Opinion and Award is timely filed based on the March 10, 2020 extended deadline established by the Director of the Bureau of Controversies and Disputes.

STATEMENT OF THE ISSUES IN DISPUTE

Has the Paterson Board of Education established, by a preponderance of the credible evidence, that it has reason to terminate Blanca Godinez’s employment pursuant to N.J.S.A. 18A:6-10? If not, what, if anything, shall be the remedy?

SUMMARY OF THE PARTIES’ POSITIONS

The Position of the Board

The Paterson School District has proven that they have good reason and/or “just cause” to terminate Blanca Godinez’s employment in the District. As the Arbitrator knows, a “just cause analysis” for purposes of determining whether an employee should be terminated from his/her employment has two components: is the employee “guilty as charged” of the charges instituted against the employee by the employer, and, if so, is

termination the appropriate remedy for the employee's actions? In this case, the answer to both questions is a resounding yes, and the Arbitrator must terminate Blanca Godinez's employment in the Paterson School District.

Tenure Charge I. The February 20, 2019 Incident Involving Student J.W.

In terms of whether Ms. Godinez is guilty as charged with regard to the February 20, 2019 incident in the gym at School No. 28, the video evidence is more than persuasive. Regardless of the excuses and finger pointing offered by Ms. Godinez, the fact remains that she was rolling around on the floor on top of a slightly built second grade special education boy for approximately two minutes. She continued to restrain and stay on top of the boy despite the young boy struggling to get out from under her and despite the young boy repeatedly saying she was hurting him. She can be seen at one point laying back side down on top of the boy, who was in a prone position, with her legs crossed as if she was relaxing on the beach. Her full weight appears to be on the young boy at that point, as well as at other points during the incident. Given her size, which is admittedly at least three times that of the young boy, she is lucky she did not seriously injure him. The video evidence is indisputable.

Quite frankly, absent any additional evidence or testimony, there can be no question that Ms. Godinez is guilty as charged with regard to Count I of the Tenure Charges. There is no universe where her conduct could possibly be deemed appropriate. As an experienced educator, Principal Castro testified that she has never seen anything like this during her lengthy career. She testified "honestly, I've dealt with every disability for special ed. including behavior disability and I've never witnessed an incident like this before. Assistant Superintendent Rojas also testified that in his years of experience, he has never seen a teacher engaging in such egregious conduct. Thus, two seasoned and experienced educators with over thirty years of experience both found this conduct beyond egregious and something they had never before seen.

On cross-examination, counsel for Ms. Godinez attempted to place blame on Mr. Vanderlofske and/or Ms. Thomas for failing to intercede. However, regardless of the actions or inaction of Mr. Vanderlofske and Ms. Thomas, the fact remains that Ms. Godinez was rolling round on the floor on top of the young, slightly built special education boy for approximately two minutes. There is no justification for her launching herself on top of the boy in the first place and there is certainly no reason why she remained on top of him for such a lengthy period. Similarly, Ms. Godinez's attempts to justify her actions by alleging that J.W. was swinging his backpack, that he threw his backpack and/or that he threw something else are unpersuasive. As both Assistant Superintendent Rojas and Principal Castro testified, there are no circumstances that would justify Ms. Godinez's actions as depicted in the video.

Ms. Godinez also faulted the District for not providing adequate training. Again, regardless of training, Ms. Godinez's actions were egregious and inappropriate. No training should be necessary to know that it is inappropriate for a teacher to throw herself on top of young slightly built special education second grader.

Finally, while it is the District’s position that the video evidence, alone, is sufficient to find Ms. Godinez guilty of conduct unbecoming a public employee, her conduct clearly violated several State statutes, District job descriptions, policies and regulations and her removal is consistent with existing case law (citations omitted). Accordingly, the District asks the Arbitrator to sustain the allegations of Tenure Charge I.

Tenure Charge II. The February 25, 2019 Incident at EWK

It is the District’s contention that they have proven that Ms. Godinez failed and refused to intervene in a fight in the gym at EWK School on February 25, 2019, less than a week after she is seen on a video rolling around on top of a young student at School No. 28. A preponderance of the credible evidence demonstrates that Ms. Godinez failed to intervene in a fight between two third-grade boys on February 25, 2019. Despite her assertion that she was yelling at the students to stop and that she was not seated in a chair when teachers Dana LeGarde and Anita Fulmore entered the gym, it is respectfully submitted that her testimony is wholly lacking in credibility. The fact that Ms. Fulmore and Ms. LeGarde had to enter the gym to break up the fight in the first place discredits Ms. Godinez’s testimony that the fight lasted only a couple of seconds. While common sense would dictate that a teacher is responsible to intercede when students are engaged in a fight, multiple district policies, regulations and job descriptions explicitly require a teacher to intervene to stop or break up a fight among students.

As Assistant Superintendent testified, the following policies/regulations were violated by Ms. Godinez when she failed to intercede in the fight at EWK: Policy and Regulation 3280, B-3 and B-17 in evidence; Policy and Regulation 3281, B-4 and B-5 in evidence; and, Policy 3217, B-2 in evidence. District Policy 3217, Corporal Punishment, B-2 in evidence, provides in pertinent part as follows:

A teaching staff member who:

-
- Permits pupils to harm one another by fighting . . .

Will be subject to discipline by this Board and may be dismissed. (Emphasis provided).

Similarly, District Regulation R3280, Liability for Pupil Welfare, B-17 in evidence, provides in pertinent part that “Teaching staff members are responsible for preventing and stopping pupil fights and assaults, whatever the cause or intent; if necessary, responsible assistance must be quickly summoned.” (Emphasis provided).

Aside from the documentary evidence, both Principal Derrick Hoff and Assistant Superintendent Luis Rojas testified that it is a teacher’s responsibility to break up or intercede in student altercations. When asked if based on his education and 20 years of experience, a teacher is responsible to intercede if students are fighting, Principal Hoff responded “absolutely.” He testified that:

There are a number of things that they can do. They can call for security. They can physically intervene and try to restrain the students. They also can summon another teacher who's in the gym to help them break up a fight.

He went on to note that he was concerned with Ms. Godinez's failure to intercede,

Well, when you're talking about children fighting and you're talking about children's welfare, when you have an altercation, something – I mean building protocol calls for, you know, either intervene, call security, somehow some way – what we didn't want was a situation where based on what the kids described and the staff member described that the kids were in a circle observing this fight. Someone could have got very seriously hurt.

Similarly, Assistant Superintendent Rojas testified that he was absolutely concerned about the incident at EWK School on February 25, 2019:

Because it's the responsibility of all adults no matter who you are, whether it's me all the way down to the cafeteria, if I'm in a building and see two students or I see a group of students fighting, it is my duty and my responsibility as an adult in district, as an employee of the Paterson Public School District to intervene and break up the fight to the best of my abilities.

The fact that this incident occurred less than a week after the altercation at School No. 28 makes it all the more troubling. On February 20, 2019, Ms. Godinez had no difficulty launching herself on top of a young special education second grader and rolling around on the floor on top of him for two minutes, purportedly because he posed a threat. Five days later, she asserts that it is not her responsibility and she is not capable of interceding to break up a fight between two third-grade boys. The incongruity of these two situations raises serious concerns about Ms. Godinez's ability to deal with difficult situations, not to mention her judgment.

For all of the foregoing reasons, the District maintains that it has proven that Ms. Godinez is guilty of the allegations set forth under Tenure Charge II.

The Appropriateness of the Removal Penalty

The District notes that whether or not termination is appropriate must be decided on the facts and circumstances of each case. Factors to be taken into account in making a penalty determination include the nature and circumstances of the incidents or charges, the teacher's prior record, the effect of such conduct on the maintenance of discipline among students and staff and the likelihood of such behavior recurring. Arbitrators widely apply the following standard of review when asked to judge the appropriateness of a disciplinary penalty: If a preponderance of the evidence supports the disciplinary

allegations, an employer must also show that the penalty imposed is just in light of factors, such as: [1] the gravity of the offense; [2] the employee's overall record and length of service; [3] the provision of proper notice of rules and penalties; [4] an employer's adherence to progressive discipline, if applicable; [5] whether there has been lax enforcement of rules; and [6] whether the employer's actions or failure to act contributed to the disciplinary offense(s). Elkouri and Elkouri, *How Arbitration Works*, 5th Edition, pages 930, et. seq.

Applying the criteria to the current case must result in Ms. Godinez's termination. The first criteria, the gravity of the offense, is particularly relevant here. The egregious nature of Ms. Godinez's conduct on February 20, 2019 cannot be understated. It is difficult to comprehend any teaching professional acting in such a manner. In fact, two experienced and seasoned educators, Principal Castro and Assistant Superintendent Rojas, both testified that they were beyond appalled by her actions and that they had never encountered anything at all like this over the course of their lengthy careers. Ms. Godinez's failure to take responsibility for her actions, instead trying to place the blame on her colleagues, as well as her lack of remorse for her actions, only serves to underscore the fact that she is not fit to continue teaching. The discrepancies in her testimony were frequent and significant, casting serious doubt on her overall credibility.

Compounding matters, Ms. Godinez's failure to take any action to quell a fight between two of her students on February 25, 2019 was also an egregious act of misconduct. Similar to the February 20, 2019 incident, Ms. Godinez, this time through inaction, created a similar risk of harm to her students.

With regard to the remaining factors, the District does not dispute that Ms. Godinez's overall record of observations is good; however, it should be pointed out that she did have three prior increment withholdings based on attendance.

Applying factor 3, even absent any policies or regulations, common sense should dictate that the type of conduct exhibited by Ms. Godinez on February 20 and 25, 2019 here is inappropriate and unprofessional. Nonetheless, in this case, there are relevant and applicable policies and regulations, as well as State law which Ms. Godinez violated. Similarly, there is no question that Ms. Godinez was aware of the District's policies and regulations. In fact, she acknowledged on both direct and cross-examination that it was and is her responsibility to be familiar with and to abide any such policies and regulations.

Applying factor 4, it is the District's contention that given the egregious nature of Ms. Godinez's collective actions and inactions, progressive discipline is not necessary. Board Policy 3217, Use of Corporal Punishment, B-2 in evidence, explicitly provides that a teacher who "uses force or fear to discipline a pupil" and/or "touches a pupil in an offensive way even though no physical harm is intended" "may be dismissed." B-2. The policy clearly contemplates dismissal without regard to progressive discipline in a case involving corporal punishment. Regulation 3280 prohibits a teaching staff member from allowing students to fight without interceding. Ms. Godinez violated these important

policies on both February 20 and 25, 2019 thereby justifying the District's removal action.

As to factors 5 and 6, there has been no lax enforcement of the rules. Despite Ms. Godinez's belated attempt to attribute her actions to a lack of training, the District's actions in no way contributed to the conduct at issue. One should not need training to know that it is inappropriate and gross misconduct to launch oneself on top of a second-grade boy with special needs or to sit idly by while two students are fighting.

Ms. Godinez's February 20, 2019 conduct at School No. 28 was harmful not only to J.W., the student she launched herself on top of, but to the remaining students in that class, all of whom had to witness the altercation. These are young special needs students. As such, they are particularly vulnerable. No student should have to be subjected to such conduct by a teacher and no student should have to witness his or her friends being subject to such conduct. It would be difficult for any of those students to have any respect for Ms. Godinez after witnessing that altercation. In fact, they would likely be afraid of her. A similar concern exists with respect to the February 25, 2019 incident whereby Ms. Godinez inexplicably allowed two of her students to fight.

Finally, Ms. Godinez's actions in both instances were harmful to the reputation of the Paterson School District as well as to the morale of the remaining staff.

The District concludes: "Given the seriousness of the behavior, however, and the very real risk of injury to a student, as well as the risk of ridicule and embarrassment for the Paterson School District and its employees, there is simply no other sanction that can be imposed in this matter other than termination."

The Position of Blanca Godinez

Tenure Charge I. The February 20, 2019 Incident Involving Student J.W.

A teacher may not inflict corporal punishment on a student. N.J.S.A. 18A:6-1. However, a teacher may use such force as is reasonably necessary (1) to quell a disturbance, threatening physical injury to others; (2) to obtain possession of weapons or other dangerous objects upon the person or within control of a pupil; (3) for the purpose of self-defense; and (4) for the protection of persons or property. Similarly, Policy 3217, Use of Corporal Punishment, states that a teacher who uses force in violation of the policy will be subject to discipline and may be dismissed, "**except as such force or fear may be necessary to quell a disturbance threatening physical injury to others . . .**" [emphasis supplied].

In this case, Ms. Godinez is a long-term, 23-year employee with years of positive evaluations and discipline only for attendance. She testified that on February 20, 2019, she observed J.W.'s erratic behavior. He was screaming and yelling and proceeded to flip up a ride-on tiny tyke car and throw it at a group of toddlers. She told him no, and he

screamed and yelled and ran out of the doors. Upon exiting the locker room/storage area, Ms. Godinez saw a boy up against the bleachers screaming as J.W. was pushing and beating him with the backpack.

In the seconds that it took Ms. Godinez to approach, J.W. saw her, turned, screamed and flung the book bag at the bleachers, right past the face of the classroom aide seated and in the direction of other children. At that point, Ms. Godinez was afraid that one of the children was going to be knocked in between the benches and snap their necks, so when J.W. flung the book bag, she took him by the wrist. He took two big steps away from her, flung himself on the ground and took her down to the ground with him.

Despite the emphasis on cross-examination on the skip of the tape prior to Ms. Godinez on the ground with J.W., Ms. Godinez stated that it was a matter of seconds. She intimated that a lot had occurred, not in the sense of time – but rather a lot happened that she witnessed in those seconds.

On the ground, Ms. Godinez did not want him to get up and throw anything else and his behavior was escalating, so she turned and took hold of his lower body and his upper body on the ground. She reacted immediately to prevent any other danger to the students. When challenged about how she got to the floor, Ms. Godinez clarified that J.W. pulled me down with him. She further explained that what the report says about being on floor with back toward him described her position, not the act of getting to the floor. She reiterated that she “fell and then sat with her back towards him.” Not one witness could identify any evidence to contradict Ms. Godinez’s account of how she ended up on the floor.

These facts demonstrate that Ms. Godinez’s behavior does not constitute corporal punishment. She acted in a manner necessary to quell a disturbance threatening physical injury to others in accordance with the policies. Corroborating the intention of Ms. Godinez’s conduct is Ms. Thomas’s statement. She observed Ms. Godinez “trying to restrain J.W. to hopefully calm him down” because “Ms. Godinez noticed how J.W. was acting and quickly tried to restrain him to avoid any other student to be potentially hurt.” It was admitted by Principal Castro that she has no information to contradict Ms. Thomas’ statement. Arguably the length of time Ms. Godinez restrained J.W. was too long, however, had the other teachers in the room intervened, it would not have been.

While on the ground, Ms. Godinez tried to hold her body in a way so that her weight was not resting on him. She did admit that there were times her weight may have been on him, but she did not intentionally or purposely rest her weight on him and made efforts to move around to redistribute her weight as he was moving on the ground.

When Principal Castro was asked what Ms. Godinez could have done differently, she stated that Ms. Godinez should have reached out to another adult or got security, or got an administrator. Ms. Godinez reacted immediately to an escalating dangerous situation. Was it the fault of Ms. Godinez that the two other adults kept their head down

and did not come to her aid? Rather, Mr. Vanderlofske stared at his watch for the entirety of the incident, never actually moving from his spot against the wall. His and Ms. Thomas' inaction allowed the incident to continue.

Moreover, when shown Policy 3217 during her testimony, Principal Castro stated that physical restraint is appropriate only in an "emergency," but that she did not qualify the February 20 event as an emergency. The language of the policy, however, does not use the word emergency. Rather, force is appropriate in a threat of physical injury to others. With respect to Principal Castro's testimony, generally, she was often evasive and unresponsive. In response to the question of "so your opinion is that if a teacher sees a fight and they yell stop or don't do that, that's appropriate, correct?" Principal Castro did not respond. Rather, she claimed that this was not a fight, that a child swinging a throwing a backpack at a group of students was not a fight. However, she finally admitted that a child could be injured being hit with a backpack, that it is not okay for kids to throw backpacks at each other, and that if a child was hit with a backpack and fell through the bleachers they could be injured. Nonetheless, her evasiveness, failure to concede that the policy does actually provide for instances where restraint or force is appropriate, and her overall failures relative to the investigation including not speaking with Ms. Godinez or Ms. Thomas demonstrate her lack of credibility.

The testimony of all witnesses is clear that Ms. Godinez never intended to inflict any harm on J.W. Ms. Godinez testified multiple times that she had absolutely no intent to injure J.W. In answering the question as to whether the conduct rises to the level of corporal punishment or what is the appropriate penalty, corporal punishment cases look to the intent of the teacher. And, unlike many of the cases which involve unjustified physical responses from teachers, here, the evidence shows that a response to the situation with J.W. was required and justified. At worst, this is a case of a "mistaken and misguided notion that restraint was called for." There is no evidence presented that the actions of Ms. Godinez constitute unbecoming conduct.

Rather, the actions of Ms. Godinez demonstrate a lack of training. Ms. Godinez has no prior instances of improper contact with a child in approximately twenty years. Ms. Godinez had returned to her teaching position for several days prior to being suspended, so there does not exist any issue with her being in the classroom or around children. Thus, neither Ms. Godinez's actions nor her reinstatement has any tendency to destroy public respect for government employees' confidence in the operation of public services. Accordingly, Ms. Godinez should be returned to her position of employment and provided with necessary training.

Tenure Charge II. The February 25, 2019 Incident at EWK

Principal Hoff admitted that Ms. Godinez said she did intervene in the fight – she yelled, which constitutes a verbal intervention. He agreed that one of the appropriate methods to stop a fight would be to yell. Surprisingly, when asked whether the policy requires that a teacher has to get "physically involved," Principal Hoff could not even recall what the policy said, though he apparently expects his teachers to know. He then

said he believed that a physical response was implied. It was asked, “so your position is that teachers are required to physically intervene in fights, not call security, not tell them to stop fighting; is that correct” – to which he answered “when children are at risk, teachers have a responsibility to intervene.” However, he admitted that he was not aware whether the fight was serious or whether there were injuries. In fact, he stated he was not aware of the details of the fight at all. Therefore, it is obvious that Principal Hoff does not believe that teachers have to physically intervene in every student altercation. And he clearly did not have enough information to know one way or the other if physical intervention in this particular fight was required on February 25, 2019.

Principal Hoff further acknowledged that nowhere in the job description of a physical education teacher does it say that you have to have the strength to break up a fight. He admitted that Ms. Godinez told him that she did intervene by yelling. He admitted that Ms. Godinez did not say, nor imply, that she did not have a responsibility to intervene, but rather was referring to physically intervening a fight; and that getting physically involved was not in her job description, which he conceded the job description does not state. In fact, Principal Hoff conceded on numerous occasions that even though he wrote that she refused to intervene in fights between students, he meant that it was that Ms. Godinez may not physically intervene. The testimony concedes that she did intervene in some fashion on February 25.

Ms. Fulmore’s testimony about maybe seeing Ms. Godinez sitting or that she was not able to recall if Ms. Godinez was standing (whichever may be the truth) does not contradict Ms. Godinez’s account that she verbally intervened. As the record demonstrates, Ms. Godinez did intervene. Ms. Godinez observed the boys in a “scuffle.” She was seated about five feet away from the boys when the fight started and Ms. Grundman was about ten to twelve feet away from the boys, both about the take attendance. Ms. Godinez got up, went to where the boys were, stood there and yelled at them to stop. In a matter of seconds, two other teachers, Ms. Fulmore and Ms. LeGarde came in from outside of the gym, and the boys stopped without physical intervention.

Ms. Godinez credibly explained that she did not feel that a physical intervention was warranted. She explained that in her opinion, it warranted no more than a verbal intervention as the fight had not escalated to a point where there was a danger in that room for any child. Moreover, the entirety of the fight lasted only a few seconds before it was easily ended by the presence of multiple teachers. With regard to the actions of the boys, Ms. Godinez did not observe the boys make real contact, they swung at each other but there was no punch. Ms. Godinez acknowledges, however, that she did tell Principal Hoff that she did not think *she* should take punches as “that situation didn’t merit it.”

Ms. Fulmore testified that she walked into the gym, said “what are you guys doing” and they all separated. Ms. Fulmore believes that when the boys saw her coming, they stopped fighting as she serves as a disciplinarian in the building. She said that no physical intervention was required to stop the fight, they easily separated. But she did recall that she put her hand on one of the boys fighting and Ms. LeGarde put her hand on the other and walked them to the office. To emphasize, it was not a physical intervention

that was required to, or that did, end the fight. With three adults standing around the two boys, they stopped. Ms. Fulmore and Ms. LeGarde and Ms. Godinez screamed at the students to stop. Right away, they stopped. No physical intervention ever occurred to break up the fight. Furthermore, nothing from Ms. Fulmore's testimony indicates that Ms. Godinez did not yell at the boys to stop. Verbal responses are considered interventions and the report prepared on the incident does not contradict that. The Report prepared indicates that "the fight broke up only when three teachers intervened, A.F., D.L. and B.G.

Whether the report submitted was in fact authored by her or not is not significant. Ms. Godinez agreed with the report's description of the incident. She does not recall submitting the report. Moreover, Ms. Grundman had told her that she could access Ms. Godinez's login to the system. Ms. Godinez believes that Ms. Grundman filled out the report. However, no one ever spoke to Ms. Grundman. In fact, the administrators did not even know that Ms. Grundman was in the room. That fact should so emphasize the inadequacy of the investigation – and thus, inadequacy of the tenure charges. And despite no mention of Ms. Grundman in the report, no witness testimony that Ms. Grundman did anything to intervene at all, when it was learned that she was in the room, *she* was never disciplined for failing to intervene.

For these reasons, Ms. Godinez submits that Tenure Charge II should be dismissed.

The Board's Decision-Making Process is Internally Inconsistent

The Board's position is inconsistent and they are singling out Ms. Godinez yet failing to discipline others involved in these matters. The Board's positions do not make sense and are inconsistent with the very policies it claims apply to this case. It is:

1. Admitted that physical intervention is appropriate if a child is beating another with a backpack and then throws a backpack at a group of children on the bleachers, but that Ms. Godinez's restraint to calm J.W. constitutes corporal punishment even though she was not disciplining him, had no intent to injure him, and he was not injured.
2. Claimed that Ms. Godinez's presence on the ground for one to two minutes with J.W. was too long, however, had Mr. Vanderlofske or Ms. Thomas not failed to intervene, it would not have been.
3. Admitted that Ms. Godinez intervened in the February 25 incident, but her level of physical response was too little and she should have physically broken the boys apart from each other – even though that ended up not being necessary.
4. Claimed that Ms. Godinez said she outright refuses to physically get involved in a situation between students due to her back problem, when she had

restrained J.W. a few days prior to prevent serious injury because that situation, not the February 25 incident, warranted.

5. Implied that Mr. Vanderlofske and Ms. Thomas were excused in not intervening or assisting Ms. Godinez and J.W. since Ms. Godinez did not ask call out for help – though they have no proof that she didn't.
6. Asserted that it is justified that Mr. Vanderlofske was not disciplined because he had no training – but it is not justified that Ms. Godinez had no training.
7. Argued that the other teacher in the room on February 25 did not fail to intervene because “she was taking attendance.”

None of these positions make sense. The conduct attributed to Ms. Godinez does not rise to the level of unbecoming conduct, corporal punishment or any violation of policy. Moreover, the lack of uniformity in how the Board has determined culpability of Ms. Godinez as compared to her peers that were also involved in these two incidents undermines the validity of the tenure charges. Thus, the charges should be dismissed.

The Board's Failure to Train Employees in the Use of Physical Restraints Must be Considered

Not one administrator could identify any training that was given to its employees on the policies it claims were violated by Ms. Godinez. Specifically, Principal Hoff could not identify any specific training provided to Ms. Godinez and stated that he was not aware if she was ever trained with regard to how to break up a fight. Assistant Superintendent Rojas testified that there are absolutely no records of any training – that the department of professional development was dismantled due to budget cuts. Therefore, there is no documentation of any training given to Ms. Godinez in her twenty years of teaching.

Moreover, Ms. Godinez testified that she was not given training relevant to these incidents: “I don't have the training I see now that would have helped with this situation with that child.” Ms. Godinez testified that she had never received any training from the Board of Education with regard to proper way to restrain a student, had never received training from the principals, nor was she ever sent to any instructional training on restraining a student. Most shocking is the fact that Mr. Vanderlofske testified that he has not ever received any training by the district before or following the February 20, 2019 incident. The very reason stated by the administrators as to why Mr. Vanderlofske was not disciplined in this case is because he may not have known what to do. He apparently still does not. But we do know that had he intervened, this event would not have gone on so long.

Because the Board cannot prove that Ms. Godinez had the proper training on the Policies alleged to have been violated, the tenure charges must be dismissed.

The District Violated the Same Policies Alleged to Have Been Violated By Ms. Godinez

Policy 3281 was admittedly violated by the School District. The violation by the District to do a proper investigation as required by the law not only presents itself as a clear violation of the law, but also affects Ms. Godinez's rights. Policy 3281 requires a full and impartial investigation. It is evident that the investigation in this matter was cursory, partial and incomplete. Assistant Superintendent Rojas admits that security was not involved in any investigations. And though he claims to have been designated to conduct an investigation per this Policy, he admits to not interviewing all witnesses, not preparing an independent report, never speaking to witnesses who could – or actually do – provide corroboration of Ms. Godinez's account of what happened, and did not even know that there was another teacher in the room on February 25 who witnessed the entirety of the event along with Ms. Godinez. Moreover, Mr. Vanderlofske was not disciplined for failing to intervene, Ms. Thomas was not disciplined for failing to intervene and Ms. Grundman was not disciplined for failing to intervene.

Policy R-3281, Exhibit B-5, states “the Director of Security will begin a prompt and thorough investigation of every report.” Assistant Superintendent Rojas testified that security was not involved in the investigation and that no witness statements were taken by security. On page six of the policy, it says that “the Director of Security or designee will begin a prompt thorough and impartial investigation.” Page 8 of the Policy continues that “the Director of Security or designee finding that an inappropriate staff conflict may have occurred after the preliminary investigation, requires a full investigation,” “A full investigation will include, but not limited to interviews with the staff members.”

Assistant Superintendent Rojas acknowledged the requirements of these policies in his testimony. However, he denied that he had a responsibility to conduct interviews but instead just gathered the others' information. Assistant Superintendent Rojas failed to conduct interviews in accordance with the policy.

The Policy further states on page six that “upon the conclusion of the interviews and review of information, testimony, evidence, the Director of Security or designee will prepare a written report to the Superintendent of Schools. The following is his testimony.

Q. Did you write a written report about your investigation of both incidents to the Superintendent of Schools.

A. No...”

Q. All right, so this would be a violation of the policy, correct?

A. I don't know that it's a violation. I think its *de minimus*, but okay.

The very person appointed to ensure that an adequate and impartial investigation was conducted, and who failed to conduct that investigation, justified his admitted violation and failure by stating that it was *de minimus*. The District's violation of this policy is not *de minimus*. Its' violation led to tenure charges which seek the removal of Ms. Godinez's employment and impacts Ms. Godinez future.

The District's violation has tainted the investigation and the process through which the instant tenure charges have issued. For that reason, the tenure charges must be dismissed.

In the Alternative, the Penalty Should Be Reduced Substantially

Whether an incident is sufficient to warrant removal requires application of the following factors: whether the teacher's acts were premeditated, cruel or vicious, or done with intent to punish or to inflict corporal punishment, the nature and gravity of the offenses under all of the circumstances involved, any evidence as to provocation, extenuation or aggravation, the teaching record and ability, the disciplinary record, and any harm or injurious effect which the teacher's conduct may have had on the maintenance of discipline and the proper administration of the school system (citations omitted).

The evidence in this case shows that there was no premeditation or prior animus between Ms. Godinez and J.W. While the allegation is that Ms. Godinez's actions may have gone too far, there is no charge that she acted in a cruel or vicious manner. Further, as set forth above, the testimony was consistent that Ms. Godinez did not act with the intent to punish or to inflict corporal punishment.

There has been no proffer that the return of Ms. Godinez to her teaching position would have any negative impact on the maintenance of discipline or proper administration of the school. In fact, Ms. Godinez had returned to work after the February 20, 2019 incident and taught her classes for several days without issue.

Further mitigating circumstances are evident in Ms. Godinez's disciplinary history. In her many years of teaching, the only discipline consists of increment withholdings which solely resulted from attendance issues related to her recovery for injuries she suffered at work. Those injuries resulted in contested workers compensation cases which were ultimately resolved by way of monetary settlement to Ms. Godinez.

Ms. Godinez's teaching evaluations are nothing but positive with absolutely no reports that Ms. Godinez had ever acted in an inappropriate, improper or in a harsh manner to students in her twenty years of teaching.

In light of the foregoing, Ms. Godinez submits that the Board has failed to prove the tenure charges and, therefore, the tenure charges must be dismissed. In the alternative, should there be a finding against Ms. Godinez, she respectfully requests that only a minimal penalty be imposed.

SYNOPSIS OF FACTS

1. During the 2018/2019 school year, Blanca Godinez was employed as an elementary physical education teacher assigned to work fifty percent (50%) of her time at School No. 28 and fifty percent (50%) at EWK.

2. In February 2019, Nicholas Vanderlofske was a permanent physical education substitute assigned to School No. 28. He was hired in late January 2019.

3. School No. 28 serves approximately 450-500 students divided by a gifted and talented program (grades 2-8); a pre-K to K program for local residents; and a special education program for grades K-2.

4. On or about February 20, 2019, it is alleged that Mr. Vanderlofske and Ms. Godinez were teaching two groups of K-2 special education students in the gym at School No. 28. Combined, the two groups totaled anywhere from 25-30 students. Ms. Godinez was responsible for her class of Kindergarten students who started gym class before Mr. Vanderlofske arrived with his first and second graders. Mr. Vanderlofske testified that he and Beverly Thomas (paraprofessional) were responsible for his students, including J.W. February 20, 2019 was a half day in Paterson. The class at issue was the last period of the day prior to dismissal, so the children had their coats and backpacks with them.

5. The incident in question began with Ms. Godinez's concern about J.W.'s alleged aggression toward other students. First, it appears that J.W. pushed a Little Tykes car into the equipment/locker room where other students were potentially in harm's way. Ms. Godinez allegedly admonished him inside the room. Second, after almost one minute of no acting out by J.W., a different student swings his backpack at J.W., hitting him in the back and causing him to fall down on top of a bleacher bench. Ms. Godinez does not see this happen. Instead, Ms. Godinez only observes J.W. tossing his backpack at the student who is trying to run away up the bleachers. The backpack does not come close to hitting any other student or staff member.

6. In response to observing J.W.'s second act of misbehavior, Ms. Godinez, employing a technique she previously shared with Mr. Vanderlofske, physically restrains J.W. for about two minutes by laying on top of him with her back facing his back, her knees bent and, at times, holding his leg with one hand and his shoulder/arm area with the other as he was laid out on the gym floor. The incident also extends to Ms. Godinez verbally addressing J.W. in animated fashion for almost one minute after the physical restraint had ended. The incident also involves several students who approached Ms. Godinez and J.W., one or two of them trying to help him and two ostensibly attempting to calm him afterward. Most of the incident, with one important gap (i.e., how Ms. Godinez ended up on the floor with J.W.) is captured by video surveillance, a DVD of which was played at the hearing and introduced in evidence as Exhibit B1.

7. Mr. Vanderlofske spent most of his time during the incident looking at his apple watch - trying to pair it with a speaker for the first time. He was not actively supervising or co-supervising the combined class immediately before or during the incident. Prior to the incident, he was not supervising his students as they gathered in the bleachers ahead of student dismissal. And, he did not intervene at all in the incident between Ms. Godinez and J.W. However, Mr. Vanderlofske did hear J.W. say his stomach hurt and observed J.W. crying.

8. Ms. Thomas did not testify at the arbitration hearing. She is observed on the video recording exercising control over her students who were seated in the bleachers awaiting student dismissal; however, she did not intervene in the incident between Ms. Godinez and J.W.

9. After the class ended, Mr. Vanderlofske spoke to his mentor, physical education teacher, Brian Olsen, regarding the incident he had witnessed. Mr. Olsen advised Mr. Vanderlofske that he should report what he observed to Principal Castro. Mr. Olsen and Ms. Godinez were not on good terms with one another at that time.

10. On February 21, 2019, Mr. Vanderlofske reported two incidents to Principal Castro: (1) that Ms. Godinez had emailed him a video clip of his performance (for reasons unclear) and (2) the February 20, 2019 incident involving Ms. Godinez and J.W. On the same date, Vanderlofske submitted to Principal Castro, by email, a brief description of his observations (Ex. B11).

11. Shortly after February 21, 2019, Vanderlofske met with Assistant Superintendent/HR Luis Rojas regarding the incident. Pursuant to Rojas' request, Vanderlofske submitted a handwritten incident report to him (Ex. B12). In both reports, Vanderlofske states that J.W. was crying and saying "you hurt me" to Ms. Godinez after Godinez got off of him. No one took J.W. to the nurse on February 20, 2019. Ms. Godinez did not report the February 20, 2019 incident involving J.W. to anyone.

12. In both Vanderlofske's report to Rojas and in his testimony, Vanderlofske states that Ms. Godinez – prior to February 20, 2019 – informed him that she will threaten to lay on students if they do not stop acting out and if they don't stop, she will lay on them. On cross-examination, Vanderlofske acknowledged that he never witnessed Ms. Godinez take any such action prior to February 20, 2019.

13. After meeting with Vanderlofske and hearing his depiction of the incident, Principal Castro requested the video from the gym during the time at issue. She was "mortified" by what she saw. Immediately after viewing the video, Castro took J.W. to the nurse; reported the incident to her supervisor, Assistant Superintendent Cicely Warren; called J.W.'s aunt, who is his guardian because his mother passed away; and, called Child Protective Services. No action was taken by the Institutional Abuse Unit of Child Protective Services.

14. Principal Castro had her assistant principal interview J.W. and another student, J.L., who is seen on the video trying to assist J.W. get out from under Ms. Godinez. Both statements were entered into evidence as Exhibit B13.

15. Pursuant to Principal Castro's request, Security Supervisor Joaquin Perez downloaded the February 20, 2019 video of the gym at School No. 28. He did not alter the video in any manner. The jumps in the video are attributed to a bandwidth issue at School No. 28. A critical frame is missed due to a fifteen-second skip, i.e.; the video does not capture how Ms. Godinez and J.W. ended up on the gym floor.

16. On February 25, 2019, at EWK School, Ms. Godinez was supervising her gym class and sharing the gym with Katherine Grundman, who was supervising her class. The EWK gym in question was described as the "small gym"; i.e., about the size of a dance studio. Both classes involved general education third-grade students.

17. Two staff members in the hallway heard a commotion inside the gym. Anita Fulmore also heard the commotion as she was standing by a nearby elevator. Ms. Fulmore and teacher Dana LeGarde, who also heard the commotion, entered the gym and found two young students engaged in an awkward fight (pushing or wrestling and throwing errant punches). Many students were gathered around watching.

18. Ms. Grundman, who was supervising her class and sitting further away from the incident than Ms. Godinez, did nothing verbally or physically to quell the conflict. It is alleged that Ms. Godinez, who was sitting closer to the two students did nothing either. Ms. Fulmore testified that to no avail, she twice asked Ms. Godinez to get up and write an incident report. For a third time Ms. Godinez was requested to do so – this time by Ms. LeGarde. Ms. LeGarde allegedly informed Ms. Fulmore that Ms. Godinez replied to her that she "does not have a computer". It is alleged that the remaining students were chanting and yelling that Ms. Godinez did not do anything. One of the participating students being escorted to the main office by Ms. Fulmore informed her that Ms. Godinez "just let us fight".

19. Ms. Fulmore and Ms. LeGarde broke up the fight by way of verbal commands and slight physical contact, i.e., holding an arm of each student.

20. Ms. Godinez claims that she got up from her chair while taking attendance and verbally commanded them to stop. She further claims that due to an exacerbation of an injured back (stemming from the February 20, 2019 incident) she could not physically intervene. Ms. Godinez further testified that she worked with both teachers to quell the fight.

21. EWK Principal Derrick Hoff subsequently met with the parents of the students involved in connection with the School's student discipline procedures. The parent of that student complained, based on information from her son, that Ms. Godinez just sat there and watched them fight.

22. There is a phone in the gym at EWK. The phone is located in the gym office which was adjacent to the area where the students were fighting. Security was not called to the gym on February 25, 2019.

23. On February 27, 2019, Principal Hoff met with Ms. Godinez regarding this incident. At that time, Ms. Godinez asserted that she was five feet away from the fight and that she was yelling at the students to stop.

24. Ms. Godinez also told Principal Hoff that she did not physically break up the fight due to her ADA accommodations and her back issues. She told him that she did not believe that breaking up fights was part of her responsibility as a teacher. Principal Hoff took this to mean that Ms. Godinez did not believe she was responsible at all to take any action. Ms. Godinez insists that she was referring to taking physical action to break up fights. Principal Hoff testified as to his concerns over Ms. Godinez's alleged failure to intervene in the fight.

25. Board Policies, Board Regulations as well as the Job Descriptions for an elementary teacher and a physical education teacher all require adult staff to intervene in student altercations.

26. Principal Hoff was not aware of the February 20, 2019 incident when he reported the February 25, 2019 incident at his school to Assistant Superintendent Rojas.

27. After conducting his meetings, Principal Hoff prepared an email to Rojas "requesting guidance in creating a safety plan indicated for a teacher that would not break up an altercation" due to physical restrictions, i.e., he was asking for guidance on a corrective action plan.

28. Rojas investigated both the February 20, 2019 incident at School No. 28 and the February 25, 2019 incident at EWK School.

29. Rojas interviewed Ms. Godinez with regard to both incidents. When asked why she did not intervene in the fight at EWK School on February 25, 2019, she related that she did not want to get hurt, that she had an ADA accommodation and that she did not believe it was her responsibility to intervene. Ms. Godinez was then shown the video of February 20, 2019 for the first time to refute Ms. Godinez's claim of physical incapacity to break up a fight.

30. In explaining why she was on top of J.W. for so long, Ms. Godinez faults J.W. and the inactions of Mr. Vanderlofske and Ms. Thomas – both of whom were in charge of J.W. that day. Ms. Godinez's statement relates that J.W. threw himself on the ground and was flailing around, at which point she sat down with her back facing him and began to restrain him. Ms. Godinez further explained that J.W.'s continuing aggression toward her, kicking, hitting, etc. led her to believe that he would be a danger to other students if she had let him go sooner than she did. Once J.W. released tension,

Ms. Godinez explained, she let him up. Ms. Godinez added that she was aware of a technique whereby a teacher can calm a student by way of a reverse bear hug.

31. Both Principal Castro and Assistant Superintendent Rojas testified as to their jointly held belief that nothing justified Ms. Godinez's conduct toward J.W. on February 20, 2019.

32. Based on both the February 20 and 25, 2019 incidents, Assistant Superintendent Rojas made a recommendation that the Board certify tenure charges against Ms. Godinez. Rojas testified that 95% of his decision was based on the video of the February 20, 2019 incident.

33. Ms. Godinez has had three prior increment withholdings related to absenteeism.

34. Ms. Godinez has received satisfactory evaluations from 2001 through 2018 (Ex. R2-R12). The Board provided no evidence to suggest that Ms. Godinez committed any misconduct toward students in the past.

FINDINGS AND DISCUSSION

PART I

Tenure Charge I

The February 20, 2019 Incident Involving Student J.W.

The Board Has Demonstrated
That Ms. Godinez Engaged In
Conduct Unbecoming in Violation of
N.J.S.A. 18A:6-10 and Corresponding Board Policies.

In this case, the best evidence of what actually transpired between Ms. Godinez and J.W. on February 20, 2019 is captured by the video evidence and by the testimony and statements of witnesses deemed consistent with the video evidence. To begin with, divided into frames for ease of reference, the following findings of fact are set forth in the form of a summary of the relevant video evidence:

EXHIBIT B1

VIDEO

11:50 – 12:07¹

<u>Frame No./Time</u>	<u>Depiction</u>
1. 11:57:53	Prior to this timeframe, Ms. G. is observed supervising her own class of students believed to be of kindergarten age. ² There are approximately nine such students riding tricycles and one student playing basketball. There are two other adults in the gymnasium. ----- There is no sign of student conflict.
2. 11:57:54	A second class consisting of older students including J.W. enters the gymnasium. This is Mr. V's class.
3. 11:59:12	Ms. G.'s kindergarten class continues to ride tricycles. One student is observed riding in a "Little Tikes" Car. Mr. V's class are viewed sitting down peacefully on the side of the gym in front of the bleachers. Three adults (not Ms. G.) are observed supervising the larger students who are sitting on the sidelines. J.W. is dressed in dark clothing wearing dark/black sneakers. He is observed as a comparatively slight or small student within this grouping.
4. 11:59:24 – 11:59:57	J.W. gets up from being seated with the rest of his class and walks toward the teachers' table. One of the adults, believed to be a classroom teacher who ushered the larger class of students in, directs J.W. to be seated with the rest of his group and he complies.
5. 12:00:11	The classroom teacher walks into the gym equipment/locker room and Ms. G heads toward the teachers' table. The classroom teacher is no longer captured by the video. It is presumed she left the gym.
6. 12:01:15	Ms. G is observed sitting in a fold up chair next to the bleachers with the two other adults seated next to her on a bleacher bench. Ms. G. continues observing her class of younger students as they ride around on tricycles, one on a scooter, and another in a Little Tikes car. The student on a scooter is observed stopped and saying something to J.W. from approximately five feet away.
7. 12:01:55	Mr. V. and the classroom teacher enter the gymnasium. In addition, three other adults, including Ms. G. are seated at the sidelines. ----- It appears a total of at least five adults are in the gymnasium at this point. Mr. V.'s class continues to sit on the sidelines in front of the bleachers and Ms. G.'s class continues riding tricycles.

¹ It may be necessary to look back and/or ahead by a few seconds in order to view the depiction in full.

² Mr. Vanderlofske is referred to as "Mr. V.", Ms. Godinez is referred to as "Ms. G." and Ms. Thomas is referred to as "Ms. T.".

8. 12:02:31	Mr. V. is instructing his class. Ms. G.'s student who is riding the scooter is once again observed saying something to J.W. and another student.
9. 12:02:17	Ms. G.'s students continue to ride around the gymnasium on tricycles, one student on a scooter and one in a Little Tikes car. Mr. V's class continues to sit on the sidelines of the gym supervised by two adults. Ms. G. is observed still seated next to the two adults while talking to a larger-sized student wearing a yellow shirt.
10. 12:03:15	Mr. V. begins walking toward the opposite end of the gym and his students get up from sitting on the sidelines.
11. 12:03:29 – 12:03:36	J.W. is observed running across the gymnasium by himself toward the direction of Mr. V. J.W. is viewed walking behind Mr. V on the opposite side of the gym from left to right until both are out of video range. Ms. G and two other adults are still seated.
12. 12:04:40	Mr. V.'s students are out of the video frame, presumably playing on the other side of the basketball court. Ms. G.'s students are observed continuing to ride the tricycles, one student riding a scooter and another student in a Little Tikes car. Ms. G. and the two other adults are still seated observing the class. Mr. V. is observed walking into what is believed to be an office and he is not supervising students.
13. 12:06	Mr. V. is observed sitting down on the court near the bleachers speaking to one student who is not participating in any of the activities. Ms. G. and the two adults continue to be seated by the bleachers observing the combined class. J.W. has not yet reappeared in view of the surveillance camera.
14. 12:06:55	Mr. V. is observed still talking to the student who is not participating in the activities. J.W. appears in the frame chasing a stray basketball from the other side of the court.
15. 12:07:17	Mr. V. appears to have convinced the student to begin to get up to participate in gym activities. END OF FIRST VIDEO CLIP.
VIDEO CLIP TWO 12:07 – 12:23	
16. 12:08:24	Mr. V. is viewed at the teachers' table attempting to do something. His back is toward the student activities. Ms. G. and two other adults are still seated by the bleachers conversing with one another. The students are interacting without incident. J.W. is not captured by this camera. Presumably, he continues to play basketball with the other students on the opposite side of the gym.
17. 12:09:15	Ms. G. changes her positioning from sitting in a chair squared up with her back supported to a 45° angle, legs straight and feet crossed (a more relaxed position with no lumbar support). Mr. V. continues standing at the teachers' table with his back facing the student activities. The two other adults continue to be seated next to Ms. G. as the three continue to talk with one another.

<p>18. 12:10:06</p>	<p>Mr. V. has now turned his body toward the class while still standing at the teachers' table. Ms. G. and the two other adults remain in the same position. Ms. G. is still seated in a slanted position in the chair with her legs straight, feet crossed.</p>
<p>19. 12:11:01</p>	<p>One of the adults seated at the bleachers is witnessed taking another student out of the gymnasium. Ms. G. stands up and begins to walk around the basketball court. Mr. V. is still standing at the teachers' table with his back now facing the student activities. J.W. is not depicted by this camera.</p>
<p>20. 12:11:10</p>	<p>Mr. V. is now facing the student activities. Ms. G. has been walking around stretching. Another adult walks toward the opposite end of the gym and then returns to the teachers' table where Mr. V and Ms. G are conversing with one another. J.W. is still not depicted in this video.</p>
<p>21. 12:13:12</p>	<p>Mr. V. is standing in front of the teachers' table looking at his watch and facing the class. Ms. G. and two other adults coordinate the lineup of her students sitting on tricycles by the equipment/locker room. J.W. does not appear in this video frame.</p>
<p>22. 12:14:18</p>	<p>Ms. G. is still in the equipment/locker room. Students are bringing their tricycles into that room. Another adult is viewed standing outside of that room. Mr. V. is viewed slightly before the half-court line pointing his finger toward the equipment/locker room.</p>
<p>23. 12:14:30- 12:14:39</p>	<p>Ms. T. enters the gymnasium and sits in the bleacher row immediately next to Ms. G's chair.</p>
<p>24. 12:14:41</p>	<p>After several seconds of Mr. V. directing students from the opposite end of the basketball court to head toward the locker room, J.W. is viewed running behind the Little Tikes car and jumping on top of it.</p>
<p>25. 12:14:43</p>	<p>J.W. is viewed with both feet on the Little Tikes car frame and gliding along the basketball court.</p>
<p>26. 12:14:46 – 12:14:57</p>	<p>J.W. is riding in the direction of a girl wearing white pants with an off-white shirt. She jumps out of the way from J.W.'s path in order to avoid a potential collision. J.W. circles back and starts quickly pushing the Little Tikes car toward the equipment/locker. He jumps on the back of it and heads toward the equipment/locker room at a fast clip. He almost hits a girl who is taking a drink from the water fountain. Ms. G. is still inside the same equipment/locker room.</p>
<p>27. 12:15:35</p>	<p>A student wearing a reflective yellow/green and grey shirt is witnessed knocking another student over as he runs out of the equipment/locker room and onto the basketball court. Ms. G. and J.W. are still inside the equipment/locker room with other students as well.</p>

28. 12:15:49 – 12:16:12	A skip in the video.
29. 12:16:12- 12:16:15	J.W. is observed walking toward the bleachers and talking to other students. He is not running toward the bleachers. It appears that J.W. was inside the equipment/locker room from 12:14:57 to 12:16:05 or thereabout. Ms. G is still inside the equipment/locker room.
30. 12:16:15- 12:16:22	Ms. G. comes out the equipment/locker room. J.W. is beginning to sit on the bleachers. Mr. V. is facing the bleachers talking to one of the teachers in the direct vicinity of J.W.
31. 12:16:23- 12:16:32	Ms. G. walks out of the equipment/locker room and begins to look around the basketball court. Mr. V. is still facing the bleachers by the students. J.W. has just climbed up to the top of the bleachers. Other students begin lining up for dismissal. The student with the yellow shirt is observed putting his jacket on.
32. 12:16:33	Ms. G. is now standing next to the students who are lined up for dismissal (by the teachers' table). Mr. V. continues to talk to a student facing the bleachers. J.W. is out of sight. ----- Ms. G. is clearly not looking for J.W. at this time.
33. 12:16:44	Ms. G. walks up to the teachers' table with her back facing the students and picks up a cup. Other students are getting ready to leave for dismissal. Mr. V. is standing on the basketball court talking to the student in the yellow shirt who is putting on his coat. Ms. T. remains in the view of the camera. J.W. is not captured by this camera.
34. 12:16:47	Ms. G. is observed putting on the coat which she picked up from the teachers' table. J.W. is now seated on the third bleacher row next to a student wearing a light-blue hooded jacket or sweatshirt. He is not causing any trouble. Mr. V. is facing Ms. G., Ms. T. is seated in the bleachers and students continue to prepare for dismissal.
35. 12:16:54	J.W. has just walked to the end of the bleacher row and stepped down toward the line for student dismissal. Ms. G. is observed talking to Ms. T. Mr. V. is observed walking away from the bleachers toward the office.
36. 12:17:03	J.W. comes back into the picture and is standing several feet in front of the teachers' table facing the students who are still sitting in the bleachers. Ms. G. is standing with her back facing J.W. speaking to Ms. T. Mr. V. is off by the equipment/locker room looking at his watch.
37. 12:17:17- 12:17:23 and 12:17:23.05 to 12:17:38	A larger student wearing a light-blue sweatshirt (described before) is viewed hitting J.W. with his backpack. J.W. falls on top of the bleachers as a result of the impact. It does not appear that Ms. T. or Ms. G. witnessed J.W. being hit. J.W. stands up with a grey backpack in his left hand. The student begins to scramble up the bleachers as

<p>12:17:23- 12:17:39</p>	<p>J.W. stares at him (12:17:23:014).</p> <p>Ms. G’s testimony that J.W. threw the backpack (most likely at this student) is supported by frame 12:18:21 which shows a female student wearing a green winter cap and green backpack picking up J.W.’s backpack in between the third and fourth rows of the bleachers. Notably, this is precisely where the boy who hit J.W. with his backpack is viewed sitting at the time Ms. G is first observed on top of J.W. (12:17:39).</p> <p>At the time J.W. likely threw his backpack at the student in the area described, there did not appear to be any other student sitting above the second row of the bleachers (12:17:23). Also, Ms. T. was standing in front of the bleachers at the time that J.W. likely threw his backpack. As to the weight of the backpack, at 12:19:44:15 and 12:21:14:09, a good view of J.W.’s backpack shows it is relatively empty after he removes a denim jacket and a lightweight jacket.</p> <p>There is a skip in video surveillance from the point where Ms. G. is first observed walking toward the site of the interaction between J.W. and the student who hit him with the backpack to the point where Ms. G is witnessed on top of J.W. The video does not show how Ms. G. or J.W. wound up on the floor together.</p>
<p>38. 12:17:39- 12:17:41</p>	<p>Ms. G. is depicted in a kneeling/leaning forward position covering J.W.’s entire body and holding onto him. J.W. appears to be initially lying on his stomach or side. J.W.’s backpack is not in the frame. (Note: It does not appear until after a break in footage at 12:18:43:15). Ms. T. is standing approximately seven feet away speaking to the class and paying no attention to Ms. G. and J.W. Mr. V. continues to look at his watch and is standing by the teachers’ table facing the bleachers with his head down. J.W. has nothing in his hand or any object close to him for that matter while Ms. G. is laying on him.</p>
<p>39. 12:17:42- 12:17:44</p>	<p>Ms. G. is now covering J.W.’s bottom half as he attempts to squirm out on his stomach. Mr. V. is standing at the teachers’ table with his head down looking at his watch. Ms. T. is speaking to the students who are seated in the bleachers. It appears that a couple of students are now glancing at the activity between Ms. G and J.W.</p>
<p>40. 12:17:45</p>	<p>In response to J.W. squirming out from under Ms. G., Ms. G. rolls over onto her back and pins J.W. face down so that she is now fully covering him back to back. While her left hand is holding J.W.’s leg, her right arm is still up in the air and the full weight of Ms. G.’s upper body is likely on top of the middle of J.W.’s back. J.W. has nothing in his hand while Ms. G. is laying on him.</p>
<p>41. 12:17:46-</p>	<p>Ms. G. is laying back on top of J.W. J.W. is still face down, but he’s trying to push up with his arms. Ms. G. now has her legs straight and</p>

12:17:54	feet crossed. Her left hand appears to be holding J.W.'s leg. Her right, upper arm appears to be holding down J.W.'s shoulder and her right hand is on the gym floor, palms facing downward. Ms. T. is not paying attention to Ms. G and J.W. She is addressing other students with her back facing Ms. G. and J.W. Mr. V is viewed looking up from the teachers' table and toward the area of Ms. G and J.W. Mr. V. is still holding his watch. One student, a young female, is captured viewing the incident from the nearby bleachers. J.W. has nothing in his hand or any object nearby while Ms. G. continues to lay on him.
42. 12:17:55- 12:18:02	Ms. G. appears to be momentarily bracing herself up by her elbows so as not to put her full weight on J.W. Ms. T. is standing inattentive by the student dismissal area. Mr. V. remains by the teachers' table while still holding his watch. All of the students who were still seated in the bleachers are now looking at the interaction between Ms. G. and J.W. J.W. appears to be more on his side than his stomach at this point.
43. 12:18:03	Ms. G. is still in the same position on top of J.W. She does appear to be bracing her weight with her elbows. J.W. is still on his side. A young female student now walks over to Ms. G. and J.W. She is looking directly at them as if trying to decipher what is going on. Other students in the bleachers are observing the same thing. Ms. T. appears to be caught up with student dismissal and is standing next to Mr. V at the teachers' table. Mr. V. is not focused on Ms. G. Instead, he is looking down at his watch.
44. 12:18:10- 12:18:11	J.W. weakly swats at Ms. G. with his right hand as Ms. G is observed in a more upright position while still bracing J.W. with some of her body weight. Two male students walk toward the bleachers and observe Ms. G and J.W. The aforementioned female student is still seated in the bleachers and still looking on. Ms. T. is at the opposite end of the bleachers near the teachers' table. It is not certain whether she is looking at the incident. Mr. V. has his head down and is looking at his watch.
45. 12:18:12-12:18- 20	J.W. appears to almost make a brief escape by crawling out from under Ms. G. on his stomach. However, Ms. G. responds by rolling over J.W.'s lower half with her back to keep him pinned down. J.W.'s face is toward the bleachers. Two students are still observing the interaction of Ms. G. and J.W. Mr. V. is still at the teachers' table looking down at his watch and another device. Ms. T. is by the student dismissal line. She now appears to be directly observing the incident. There is no sign that Ms. G. asked for help or that help was offered.
46. 12:18:21- 12:18:24	Ms. G., on her side, manages to slide up more on top of J.W. so as not to allow him to escape. At this time, three students, including the female student and the other student who have been observing the incident for quite some time are standing close to Ms. G. and J.W.

	Ms. T. is looking at Mr. V. Mr. V. has his head down by the teachers' table and is looking at his watch.
47. 12:18:24- 12:18:36	At 12:18:24, a girl wearing a green winter hat and green backpack is observed bringing J.W.'s backpack to him. The student who was wearing the yellow shirt is now wearing a blue jacket with a backpack. He walks over and sits down in the chair that Ms. G. was sitting in earlier. Ms. G. is partially off and partially on J.W. J.W. is reaching his hand out towards the student wearing the blue jacket. Approximately six students in total are now standing in proximity to the interaction of Ms. G. and J.W. and observing them. Other students are observing from afar. Mr. V. is still standing by the teachers' table looking at his wristwatch while occasionally glancing at the incident. Ms. T. is observed standing by the teachers' table and dismissal line without showing much interest in the incident.
48. 12:18:36-12:18: 46	For the first time since the incident began, after a six second skip from 12:18:36-12:18:42, J.W.'s backpack appears next to him. Approximately six students are observing Ms. G. and J.W. directly. J.W. almost squirms out from under Ms. G. who, in turn, rolls more to her right so as to pin down J.W.'s legs. At this point, Mr. V. looks up while still holding his wristwatch. Ms. T. is not looking at the scene of the incident. Just about all of the remaining students are observing the incident.
49. 12:18:52	Ms. G. is now sitting adjacent to J.W. while holding him down with her left arm. Ms. G.'s left leg is extended out straight. Her right leg is bent underneath her weight. It cannot be determined for certain whether Ms. G.'s body weight is still on J.W. Approximately five students continue to watch this incident. Ms. T. is still far removed from the incident by the teachers' table. She is not looking at the incident. Mr. V., although not looking down holding his watch, is looking away from the incident while still standing at the teachers' table.
50. 12:18:54	Ms. G. is observed moving into a full kneeling position while holding J.W.'s leg with her right hand and his upper torso with her left hand. J.W. is in a side position while Ms. G. holds him to the floor. She's observed admonishing/yelling at J.W. while he is still on the floor. Ms. T. is by the teachers' table no longer observing the incident. Mr. V. is looking away from the incident and doing nothing. The same students, give or take, are still standing in proximity to Ms. G. and J.W. while continuing to observe the incident.
51. 12:18:57 – 12:19:13	Skip in the video surveillance.
52. 12:19:13- 12:19:19	Ms. G. is observed now in a standing position crouching over J.W. The student with the yellow shirt and backpack is still standing directly by J.W. and Ms. G. J.W. is looking up at the student.

53. 12:19:20 – 12:19:29	Skip in the video surveillance.
54. 12:19:29- 12:19:52	Ms. G. is observed walking away from J.W. with her back facing him. She does not confiscate, let alone show any concern over J.W.’s backpack which is now next to him. In fact, J.W. is holding his backpack in the immediate presence of three students. Ms. G. walks closer to the teachers’ table and speaks briefly with Ms. T. Mr. V. is still looking down at the table. However, back by the scene of the incident, the student with the yellow shirt appears to be holding/consoling J.W. or keeping him from doing something else. Another student with a light blue sweatshirt and flannel shirt tied around his head is speaking with J.W. and the other student. After the student with the yellow shirt finishes speaking to J.W., J.W. leaves his backpack on the basketball court, puts on his coat and walks toward the student dismissal line. Ms. G. is at the head of the student dismissal line facing toward Ms. T. and Mr. V (who continues to look at his watch).
55. 12:19:52 – 12:20:04	Lapse in the video surveillance.
56. 12:20:05- 12:20:13	Ms. G. is observed demonstratively speaking to J.W. with her arms stretched outward. J.W. is viewed speaking back to her in an overt manner and the student with the yellow shirt is standing somewhat in between J.W. and closer to Ms. G. Mr. V. is now facing Ms. G. and J.W. while leaning against the teachers’ table. Students who are in line for dismissal and Ms. T. are all looking at Ms. G as she verbally confronts J.W.
57. 12:20:13	Ms. G. now takes two or three steps toward J.W. and appears to still be yelling at him. At this point J.W. turns his head toward the teachers’ table as if to shy away. Mr. V. and Ms. T. are both looking at J.W. at this point. All of the students are still looking at Ms. G. and J.W. at this point.
58. 12:20:14	J.W. is observed wiping his eyes and/or nose with the sleeve of his sweatshirt.
59. 12:20:18	J.W. takes a step back away from Ms. G. Ms. G. takes a step back away from J.W. but continues to yell at him.
60. 12:20:22- 12:20:49	As J.W. sits down on a bleacher seat, Ms. G. aggressively approaches him. Both of her hands are on the back of her hips and she’s leaning in closely toward him and speaking to him in an animated fashion. J.W. is viewed putting his head down as Ms. G. continues to address him with her hands on her hips. It appears that J.W., still seated in the bleachers, is simply trying to put a shirt or jacket on as Ms. G continues to address him in an aggressive manner.
61.	J.W. gets out of the bleachers and walks away from Ms. G. towards

12:20:49- 12:21:02	the opposite end of the basketball court. Ms. G. starts to walk toward the student dismissal line and appears to be saying something to Ms. T. Mr. V is still standing by the teachers' table facing the student dismissal line. The students are still in line for dismissal. J.W. is still putting on his shirt or jacket. The student with the light blue sweatshirt and flannel wrapped around his head is still talking to J.W.
62. 12:21:02- 12:21:13	J.W. is viewed with his back toward the surveillance camera rubbing his eyes with his hands as Ms. G. approaches him once again. The student that was standing next to J.W. is now several feet away toward the foul line of the basketball court. As J.W. continues to rub his eyes with his fists, Ms. G. approaches him and makes a sweeping motion with her arms toward the student dismissal line.
63. 12:21:13- 12:21:16	After an exchange of words between Ms. G. and J.W., J.W. picks up his jacket and backpack and begins walking toward the student dismissal line.
64. 12:21:17	J.W. is observed walking out of the frame with the students. ³

In my opinion, as will be discussed in greater detail below, the aforementioned summary of the video evidence, even with the fifteen second skip, is more reliable than any countervailing witness testimony. By the same token, testimony and documents which are consistent with the video evidence are deserving of significant weight. The totality of the evidence does support conclusions that Ms. Godinez's engaged in conduct unbecoming a public school teacher by unnecessarily restraining and verbally lashing out at J.W. in response to an incident which clearly did not warrant her responses. Common sense would dictate that the more prudent course would have been for Ms. Godinez to have either let the unarmed J.W. flail on the floor until he tired out and/or enlist the help of Mr. Vanderlofske and/or Ms. Thomas. As a result of the choice(s) made by Ms. Godinez, I find, J.W. unnecessarily suffered pain in his stomach as well as evident emotional harm, albeit temporarily, and, other students potentially could have been

³ Although the video surveillance recording continues for a few more minutes, nothing of relevance to this matter is observed.

emotionally harmed. As will be discussed in more detail, I will sustain Tenure Charge I, to the extent Ms. Godinez exhibited Conduct Unbecoming a public school teacher in violation of N.J.S.A. 18A:6-10 and related Board Policies. Tenure Charge I will be dismissed in all other respects.

Ms. Godinez, as she acknowledges, works under Job Description 3001, Elementary Teacher (Ex. B21), which requires a teacher to, among other things:

2. Display the highest ethical and professional behavior and standards when working with students. . .

13. Establish a professional rapport with students that earns their respect.

15. Assess and diagnose the learning, social and emotional needs and styles of students . . . Plan and adjust the learning experiences accordingly . . .

18. Assume responsibility for all student within the school, beyond those specifically assigned, supervising in a fair and constructive manner to ensure the safety and well-being of all students.

21. Ensure the safety and health of all students . . .

23. Complete in a timely fashion all records and reports as required by law and regulation or requested by the Principal . . .

26. Maintain positive, cooperative and mutually supportive relationships with . . students . . .

35. Adhere to New Jersey school law, State Board of Education rules and regulations, Board of Education policies and regulations, school regulations and procedures, and contractual obligations.”

She also acknowledged that she is required to adhere to all related Board Policies and Regulations and state laws pertaining to her supervision of students in her care.

In explaining how her actions depicted in the video are not inconsistent with her job description and Board policies, Ms. Godinez’s testimony and February 28, 2019 statement (Ex. B24) – authored prior to seeing the video evidence - starts off with some

credibility, even if it is somewhat exaggerated. Ms. Godinez writes in her statement to Assistant Superintendent Rojas: “I heard/saw a student pick up a tiny tike car and throw it at the other students. I told him “Stop! You cannot do that. He screamed “no” and then ran out of the locker room toward the gym” (Ex. B24, first paragraph). The video evidence of J.W. riding the Little Tykes in the moments before he entered the equipment/locker room, and as he entered that room, shows that J.W. was acting somewhat reckless, and that his actions did present a risk of harm to students (Frames 24-26). Here, I credit at least the gist of Ms. Godinez’s testimony that J.W. presented a risk or harm to other students inside the equipment/locker room in connection with the Little Tykes car.

However, from that point forward, I observe, Ms. Godinez’s testimony and statement begin to precipitously lose credibility in relation to the video evidence and the credible testimony of others. In her statement, for example, Ms. Godinez writes that, after J.W. exited the equipment/locker room, she followed him into the gym “where I observed him pick up a backpack and fling it towards a group of students sitting in the bleachers” (Ex. B24, second paragraph). Contrary to Ms. Godinez’s statement, however, the video evidence does not depict her following J.W., as if she was still concerned with whatever happened inside the equipment/locker room. Rather, the video evidence clearly shows J.W. appropriately interacting with his classmates for over one minute by, and in, the bleachers. In fact, during that time, Ms. Godinez is observed engaged in a number of activities by the bleachers none of which even remotely involved observing J.W. (Frame 29 [12:16:12] to Frame 37 [12:17:17]). To me, this means that Ms. Godinez could not

have been genuinely concerned that J.W. posed an immediate risk of harm to himself or to others as he left the equipment/locker room.

Having said this, I do not completely discount Ms. Godinez's prior concern over J.W.'s behavior inside the equipment/locker room. In fact, it is entirely possible and reasonable that Ms. Godinez may have become extra concerned after she eventually witnessed J.W.'s second act of misbehavior, i.e., tossing his backpack a few rows into the bleachers. To that point, I find, segments of the video combined corroborate, in part Ms. Godinez's testimony that J.W. did toss his backpack into the third or fourth row of the bleachers (Frame 37, second paragraph). Indeed, even J.W. admits that he threw his backpack at the other student after the other student had hit him with a backpack (Ex. B13; BATES 000055).⁴ Having said this, however, it does appear that Ms. Godinez felt a need to exaggerate certain facts related to J.W.'s behaviors which, in my opinion, only served to detract from her credibility as a witness.

For example, Ms. Godinez, in complaining about the fifteen second gap in video, filled in that gap on cross-examination:

I heard a child screaming. I walked over by the bench. There were two boys scuffling. I went over to see. One of the boys ran away. The other boy has a bookbag, took it, flung it. It went past the aide's head, who was sitting on the bench into a group of children. At that point in time I was afraid that one of the children was going to be knocked in between the benches and actually snap their neck. So when he flung the bookbag, I took him by the wrist. You don't see any of that (Tr. 3, 464:8-18; 465:13-18).

However, the video evidence contradicts Ms. Godinez's testimony and written statement that two boys were scuffling. In fact, at one point in her testimony, Ms.

⁴ It is evident that Ms. Godinez did not see the first student hit J.W. with his backpack prior to J.W. tossing his backpack at that student.

Godinez claimed she observed J.W. “beating” on another boy with his backpack (Tr. 3, 454:24-25). In stark contrast, the video evidence clearly shows no such activity on the part of J.W. Nor does the video show that J.W. flung his backpack at “a group of students seated in the bleachers” or that the backpack passed nearby the aide’s head. Rather, it appears from the video evidence, as corroborated by J.W.’s input to Principal Castro on February 22, 2019, that J.W. tossed his backpack at the one student who hit him first, as that student was attempting to escape by running up the bleachers (Frame 37; Ex. B13, BATES 000053). In the same video segment, no other student and/or staff member is viewed in harm’s way (Frame 37, third paragraph).⁵ Thus, I observe, Ms. Godinez clearly exaggerated the magnitude of J.W.’s bleacher behavior.

In addition, Ms. Godinez’s claim that she was concerned about J.W. throwing another object is belied by the video evidence. In fact, during most of the physical restraint, J.W. had no other object nearby to throw, even if he was so inclined. Indeed, only after Ms. Godinez finally got off of J.W. is it apparent that J.W.’s backpack is present. (Noting that it was brought to him by a female student wearing a green hat while J.W. was restrained; see, Frame 47). Completely contrary to Ms. Godinez’s claim that she was concerned that J.W. may throw another object, Ms. Godinez is observed walking away from J.W. while actually leaving him with the only object that he could have thrown, i.e., the same backpack which he tossed in the first place (Frame 54). Thus, in my opinion, Ms. Godinez’s claimed concern over J.W. throwing additional objects is contradicted by the video evidence.

⁵ The video evidence would later reveal that J.W.’s backpack contained two jackets, one denim and one a light weight winter jacket (Frame 37, third paragraph, third sentence).

Next, I find, Ms. Godinez’s physical description of the incident in relation to her alleged physical limitations are not borne out by the video evidence. Ms. Godinez testified that she grabbed J.W. by the arm; he escaped her grasp; and he pulled her down to the floor with him where he began flailing about. Of course, if J.W. had physically pulled Ms. Godinez to the floor, this may have legitimized Ms. Godinez’s initial decision to try and physically restrain J.W. As such, the importance of such an occurrence cannot be understated. In fact, in my view, it was perhaps the most important fact that Ms. Godinez could have conveyed to those who subsequently questioned her actions. This notwithstanding, Ms. Godinez did not assert this alleged fact until answering the Board’s demand for interrogatories. Importantly, she made no such commentary to Assistant Superintendent Rojas when he interviewed her, or in her written statement (Tr. 2, 297:13-14; 298:15-299:1-4; Ex. B24). Notably, but for the somewhat fortuitous gap in the video, Ms. Godinez would not have even had an opportunity to raise such a *post hoc* justification.⁶

In Ms. Godinez’s contemporaneous written statement to Rojas, she writes: “He removed his arm from my hand and immediately flung himself on the floor and flailing about . . . Because of my back condition, I sat down on the floor with my back towards him” (Ex. B24). Notably, Ms. Godinez, by way of her written statement, attests to five distinct actions in sequence: (1) Ms. Godinez grabbing J.W. by the hand; (2) J.W. breaking free of Ms. Godinez’s grasp; (3) J.W. flinging himself on the floor; (4) J.W.

⁶ It is also observed that no allegation that J.W. attempted to injure Ms. Godinez is contained in her Answer to the Tenure Charges (Ex. J2). In paragraph 5, however, Ms. Godinez does fault the Board’s Tenure Charge for failing to “indicate that J.W. had attempted to injure his fellow classmates on two occasions moments before Godinez interceded for the safety of J.W. and other students.”

flailing about; and, (5) Ms. Godinez sitting down on the floor with her back towards J.W. Conversely, Ms. Godinez makes no mention whatsoever of J.W. pulling her to the ground. Thus, the belated assertion by Ms. Godinez of this important fact leads me to discredit her testimony in this regard.⁷

I further find and conclude that the initial and follow-up written statements of Beverly Thomas do not credibly add justification for Ms. Godinez's actions. While Ms. Thomas' written statements allege that J.W. was laying on the floor, disruptively kicking and screaming (Ex. B14-B15), the video evidence does not depict this as occurring; Ms. Thomas is viewed in the video, for the most part, barely paying attention to the incident; and Ms. Thomas curiously includes a fact which is not even seconded by Ms. Godinez, i.e., that J.W. was acting out "because Ms. Godinez did not ask him to help clean up" (Ex. B15). Lastly, due to her substantial inattentiveness to the confrontation, while I find Ms. Thomas' written statements are not entitled to much weight, it is noteworthy that even she did not assert that J.W. pulled Ms. Godinez to the floor. For all these reasons, I do not credit Ms. Godinez's assertion that J.W. pulled her down to the floor with him which may have given her justification to initially restrain him.

Additionally, I do not find credible Ms. Godinez's assertions in her statement and related testimony that her back condition influenced her response to J.W. On the contrary, Ms. Godinez is observed in the video lying in a chair on a 45-degree angle, with legs straight, feet crossed and no lumbar support (Frames 17-18). Moreover, for over two minutes (and not 30 seconds, as asserted by Ms. Godinez in her statement), Ms. Godinez is observed down on all fours, leaning forward while covering J.W., rolling over and

⁷ Parenthetically, I note, given the size differentiated between the two, it is even hard to image that J.W. was physically able to pull Ms. Godinez to the ground.

around J.W., holding him down with her hands while leaning forward on her knees with her lumbar extended, and crouching over him in a standing position. In short, contrary to someone suffering from back pain, regardless of an underlying injury, Ms. Godinez is essentially observed engaged in a two-minute wrestling match with an undersized second grade student without once asking for assistance from two nearby co-workers (Frames 37-53). She is also observed getting off J.W., walking toward the teachers' table, verbally confronting J.W. for over one minute, and then completing her duties for the remainder of the class without any sign of physical discomfort (Frames 54-64). Thus, I do not credit Ms. Godinez's testimony that her physical actions toward J.W. were influenced in any way by a manifestation of a previously injured back.

In addition, even assuming, for the sake of discussion, that Ms. Godinez had reason to restrain J.W., which I do not find, nonetheless, the choice that she made to employ this particular physical restraint technique is baffling even in the absence of training. This is so because teachers stand in *loco parentis*. Put simply, I cannot fathom any parent doing this to his/her child in response to a tantrum. Compounding matters, I find, this record reveals that Ms. Godinez did not even spontaneously decide to use this over-the-top technique. According to the testimony of Mr. Vanderlofske, and more contemporaneous written statement to Assistant Superintendent Rojas, both of which I credit, Vanderlofske spoke with Ms. Godinez prior to February 20, 2019 about how to control difficult students who were acting out: "Ms. Godinez told me that she uses – or threatens the students with sitting on them or laying on them as a method of classroom management and it makes them stop doing whatever they're going to do or are doing"

(Tr. 1, 38:1-12; 71:17-25 to 72:1-9; Ex. B12).⁸ In the end, I find that the Board has demonstrated that Ms. Godinez unjustifiably decided to physically restrain J.W. in the first instance, and then she unjustifiably tried out a risky restraint technique that she had previously contemplated.

As to the riskiness of Ms. Godinez' restraint technique, I find, the greater weight of the credible evidence shows that Ms. Godinez caused both temporary physical and emotional harm to J.W. and she created the potential for undue emotional harm to other students, especially those with special needs. Mr. Vanderlofske credibly testified to the physical and emotional harm caused by Ms. Godinez to J.W. According to Vanderlofske, once Ms. Godinez got off of J.W., he "was hysterically crying and pretty upset and he was saying that she hurt him" (Tr. 1, 29:16-19; 30:6-8; 36:20-24). Consistent with Vanderlofske's testimony and statements, J.W. told Principal Castro on February 22, 2019 that Ms. Godinez hurt his stomach and that as a result he cried "all the way to class" (Ex. B13; BATES 000055-000056). Conversely, I do not credit Ms. Godinez's testimony that she did not significantly put her weight on J.W. while he was lying face down. Consistent with certain segments of the video evidence (Frames 40, 41, 45, 46 and 48), Vanderlofske's testimony, and J.W.'s contemporaneous and subsequent articulation of pain to his stomach while he was crying, I find that Ms. Godinez did rest her weight on

⁸ Mr. Vanderlofske admitted that he never witnessed Ms. Godinez employ such a technique prior to February 20, 2019. However, I found Vanderlofske to be a credible witness. The video does show Vanderlofske attentive to J.W. and Ms. G. as the two were speaking to one another (Frame 56). Vanderlofske admitted to having new teacher paralysis, i.e., freezing during the incident and not doing anything to help J.W. He spontaneously reported the incident to Mr. Olsen and then gave statements to Principal Castro and Assistant Superintendent Rojas (Ex. B11 and B12). Here, I find it highly unlikely that Vanderlofske, a new teacher with no axe to grind, would submit falsified reports to such higher level school officials. Accordingly, for all these reasons, I credit Vanderlofske's testimony.

the back portions of J.W.'s body. Therefore, for all these reasons, I conclude that Ms. Godinez did temporarily hurt J.W. both physically and emotionally.

Compounding matters, in my opinion, the reason why J.W. was not sent to the nurse has much to do with the ensuing improper actions of Ms. Godinez. Specifically, the video evidence shows that Ms. Godinez's inappropriate conduct toward J.W. did not end with the undue physical conflict. Rather, it continued for over one minute in the form of verbal hostility. In fact, the video evidence shows that Ms. Godinez verbally jabbed at J.W. four separate times (Frames 56-63). Ms. Godinez is viewed, at times, with her hands on her hips, leaning forward and yelling at J.W. and, at other times, standing over and admonishing him while he is seated in a bleacher row (Frames 58 and 62). I further credit Mr. Vanderlofske's contemporaneous written statements and related testimony which collectively confirm that Ms. Godinez angrily addressed J.W., while he was crying, and after he had been physically restrained for two minutes.

More specifically, Mr. Vanderlofske testified that, after Ms. Godinez got off J.W., she asked him if he had any scratches or red marks and "if he wanted to go to the nurse in a more like threatening manner towards him." (Tr. 1, 29:15-16). In his email to Principal Castro of February 21, 2019, Vanderlofske similarly writes: ". . . the student cried and was yelling 'you hurt me.' Ms. Godinez then said 'show me a red mark or a scratch' to the student as well as 'you want to go to the nurse? The student was upset and got in line" (Ex. B11). Similarly, in his contemporaneous handwritten statement, Vanderlofske states: "the student was crying and yelling 'she hurt me.' Ms. Godinez then came up to the student and yelled, 'I did not touch you, show me a scratch or red mark'. Ms. Godinez then yelled at the student, 'let's go to the nurse then.' The student said 'no' and

left crying” (Ex. B12). Frankly, I am not surprised that J.W. did not want to go to the nurse with Ms. Godinez, especially after she physically and emotionally hurt him and then, in essence, challenged his claim that he was even hurt.⁹

In light of the foregoing credible evidence, I do not credit Ms. Godinez’s countervailing version of what she said to J.W.: “[I] speaking to him, asking him to show where he was hurt and telling him that we don’t hurt our friends. . . . “I put my hands behind my back because I don’t want him to feel any kind of threat from, especially because of what just happened and I make sure that I just talk with him. I want to make sure he is okay. I want to make sure he calms down. I don’t want him to look at me as a person who is a threat to him. I want him to see me as what I was – believed to be doing, which was helping him” (Tr. 3, 485:9-17; 522:23-25). Simply stated, whereas Ms. Godinez’s testimony is clearly not supported by the video evidence or any other corroborating evidence, Mr. Vanderlofske’s testimony and written statements are supported by the video evidence and J.W.’s interview responses. In the end, I find, Ms. Godinez’s unnecessary physical restraint of J.W., followed by undue verbal hostility toward him, when a calming demeanor was most needed, caused J.W. to suffer both temporary physical and emotional harm.

I next find that Ms. Godinez, by way of her actions, also created an appreciable risk of potential emotional harm to the numerous young special education students who observed the incident. These students include a girl who walked over to Ms. Godinez and J.W. and quizzically stared at them (Frame 43); two male students doing the same

⁹ I do not credit Ms. Godinez’ testimony that she told Ms. Thomas to take J.W. to the nurse. Not only did Ms. Godinez fail to report this incident but, Ms. Thomas, in her statements, acknowledges no such direction from Ms. Godinez. Since Ms. Thomas did not testify, I find that Ms. Godinez failed to provide any corroboration to her attempt to ameliorate her own actions. Therefore, I do not credit her testimony.

(Frame 44, second sentence); a female student who joins the two male students (Frame 46, second sentence); a girl wearing a green hat, who brings J.W. his backpack (Frame 47, first sentence); a male student who walks over and sits down in Ms. Godinez's chair, hovering above J.W. as he lays on his stomach reaching out for help (Frame 47, first through fourth sentences)¹⁰; approximately six students who are observed standing nearby in a semi-circle watching what was happening to J.W. (Frame 47, fifth sentence to Frame 50, sixth sentence); and, the same student who sat down in the chair is observed trying to calm and console J.W. while a second student is also talking to him (Frame 54, fifth and sixth sentences). Unfortunately, all of these students witnessed Ms. Godinez's misconduct and the resulting impact on J.W., especially his crying both inside of, and on his way out of, the gym. Consequently, I find, Ms. Godinez's reckless behavior also created an appreciable risk of harm to numerous other students.

Also, I observe, that Ms. Godinez failed to report the incident to the administration is not challenged. Nor is there any genuine dispute that reporting this type of an incident is required by Board Policy 3280 (Ex. B3). While it is true that Ms. Godinez is not charged with such a violation, it does go to her credibility in that it gives the appearance that she did not wish to draw attention to the incident. The same may be said about her manner of "asking" J.W. if he wanted to go to the nurse, as discussed previously. Also, in PART II of this Opinion, a discussion of the February 25, 2019 incident at EWK notes that Ms. Godinez twice failed to even respond to Anita Fulmore's requests that she write up an incident report and, only after the third time, did she try to

¹⁰ In his statement to Principal Castro, J.W. described the same interaction: "And then Jimmy came and sit on a chair by her and she said, 'Go away' and Jimmy said, 'Never.' And then he was trying to help me. He was holding my hand. I wanted him to help me so he could pull me out." (Ex. B13; BATES 000055).

extricate herself from the request by claiming that she did not have a computer. Collectively, I find, the above evidence and inferences to be drawn therefrom suggest that even Ms. Godinez realized that her actions were improper and, for that reason, she did not wish to draw attention to her conduct by submitting standard or requested reports.

Lastly, I do not consider the inactions of Mr. Vanderlofske and Ms. Thomas to have a significant bearing as to Ms. Godinez' fault. I agree that the two, or at least one of them should have intervened at some point for J.W.'s sake. However, although Ms. Godinez would testify that she was not responsible for supervising Mr. Vanderlofske's class, which encompassed J.W., she elected to handle J.W. herself when he tossed his backpack at his fellow student. Ms. Godinez did not ask or motion for assistance at any time during the two minutes when she was physically restraining J.W. Mr. Vanderlofske was a new teacher who admittedly froze in response to what was occurring and continued to attempt to pair his apple watch with a speaker. Ms. Thomas' state of mind cannot be ascertained because neither party called her as a witness. Accordingly, while I do not find that Mr. Vanderlofske's and/or Ms. Thomas' inattentiveness to the incident excuses Ms. Godinez's misconduct, in my opinion, further discussion is set forth under PART III of this Opinion, pertaining to penalty.

In light of the foregoing, I find that the Board has sufficiently demonstrated that Ms. Godinez's actions constitute Conduct Unbecoming a public school teacher within the meaning of N.J.S.A. 18A:6-10. See, e.g., In re Young, 202 N.J. 50, 66 (2010) (Unbecoming conduct involves a different standard than the Title 9 abuse-or-neglect standard and has been defined as conduct "which has a tendency to destroy public respect for [government] employees and confidence in the operation of [public] services");

Karins v. City of Atl. City, 152 N.J. 532, 554 (1998) (Unbecoming conduct may include “any conduct which adversely affects the morale or efficiency of the [department.]; In re Grossman, 127 N.J. Super. 13, 29 (App.Div.1974) (“Such misconduct need not necessarily ‘be predicated upon the violation of any particular rule or regulation, but may be based merely upon violation of the implicit standard of good behavior which devolves upon one who stands in the public eye as an upholder of that which is morally and legally correct.’ [Citation omitted]); In the Matter of the Tenure Hearing of Courtney Watson, School District of Franklin Township, 2014 WL 2480173 *5 (App. Div. 2014)(“tenure charges may be sustained based on a pattern of unprofessional conduct or even a single incident that is found to be ‘sufficiently flagrant); In re Tenure Hearing of Fulcomer, 93 N.J. Super 404, 421 (App. Div. 1967)(while [Fulcomer] was teaching an eighth grade arithmetic class, a girl’s pocketbook was passed among several pupils until it came to rest beside the desk of Donald Yowell. The teacher, becoming aware of inattention and discovering its source, dropped his textbook on the first pupil’s desk, went to Donald and laid hands upon him. When released, the boy went to the front of the room, was directed to resume his seat by the teacher, made as though to do so, but instead ran toward the door in the rear to leave the classroom. The teacher pursued the boy, again laid hands upon him, and both of them fell to the floor); and, In the Matter of the Tenure Hearing of Edith Craft, 2012 WL 2579497 (App. Div. 2012)(found guilty of conduct unbecoming when she slapped a special education student after the student slapped her). Accordingly, I sustain Tenure Charge I with respect to the Conduct Unbecoming a public school teacher.

Also, in light of the foregoing findings related to Conduct Unbecoming, I am satisfied that the Board appropriately relies upon item #4 of Board Regulation 3280, "Liability for Pupil Welfare" (created in 2009), which addresses a teacher's right to physically restrain a student or students as part of a teacher's responsibility to prevent and stop pupil fights and assaults (Ex. B17). Board Regulation 3280 permits a teacher to restrain a pupil only with the reasonable amount of force necessary to a. Quell a disturbance; b. Obtain possession of weapons or dangerous objects; c. offer self-defense; or d. protect persons or property. In my opinion, Ms. Godinez's non-compliance with Regulation 3280 on February 20, 2019 is demonstrated because J.W.'s observed conduct did not present any justification for Ms. Godinez to restrain him in the first instance.

Conversely, I do not find that the Board has sufficiently demonstrated that Ms. Godinez's conduct amounted to a violation of state law prohibiting corporal punishment, N.J.S.A. 18A:6-1 and corresponding Board Policy 3217 (Ex. B2), at least not as the standard has been interpreted to require an intent to punish or inflict bodily harm, cruel or vicious behavior, etc. See, e.g., In the Matter of the Tenure Hearing of Edith Craft, 2012 WL 2579497 (App. Div. 2012) and cases cited therein. Rather, I have previously determined that Ms. Godinez's actions were ill conceived from the beginning and even reckless, in my opinion. However, the Board has failed to demonstrate that Ms. Godinez was motivated by an intent to inflict corporal punishment on J.W. Accordingly, while I will fully address the seriousness of Ms. Godinez's actions, and the harm caused thereby, under a determination of penalty, I dismiss Tenure Charge I insofar as Ms. Godinez is accused of inflicting corporal punishment on J.W. in violation of state statute.

In addition, I do not find that the Board has demonstrated the applicability of N.J.S.A. 18A:46-13.5 and related Board Policy 5561/Regulation 5561 (Ex. B6 and B7, respectively). Specifically, N.J.S.A. 18A:46-13.4 states, that “Physical restraint’ means the use of a personal restriction that immobilizes or reduces the ability of a student to move all or a portion of his or her body.” N.J.S.A. 18A:46-13.5 (1) states, physical restraint is used only in an emergency in which the student is exhibiting behavior that places the student or others in immediate physical danger; (2) a student is not restrained in the prone position, unless the student's primary care physician authorizes, in writing, the use of this restraint technique. As the Board concedes in its initial brief, District Policy 5561, Use of Physical Restraint and Seclusion Techniques for Students with Disabilities (Ex. B6); and District Regulation R5561, Use of Physical Restraint and Seclusion Techniques for Students with Disabilities (Ex. B7) mirror N.J.S.A. 18A:46-13.5. In my opinion, the authorities cited above are not applicable to the facts of this matter.

N.J.S.A. 18A:46-13.5, in pertinent part states:

staff members who are involved in the restraint of a student receive training in safe techniques for physical restraint from an entity determined by the board of education to be qualified to provide such training, and that the training is updated at least annually. N.J.S.A. 18A:46-13.5

Further, District Regulation R5561, Use of Physical Restraint and Seclusion Techniques for Students with Disabilities (Ex. B7) requires:

C. Physical Restraint Training Requirements The training requirements on the use of physical restraint shall be as follows: 1. Building level administrators and school staff members designated

by the Principal likely to be confronted with the need to use physical restraint shall be trained on the use of physical restraint. a. If, in the event of an emergency, a person(s) who has not received training uses physical restraint, training for the person(s) that used such restraint shall occur within thirty days of the incident.

Notably, both the statutory and Board policy versions recited above address the use or misuse of learned techniques to restrain and/or place in seclusion a special education student with a disability in the event of “an emergency in which the student is exhibiting behavior that places the student or others in immediate physical danger.” In order for the statute and policies to be applicable, in my opinion, a teacher must apply learned techniques to a situation where he or she believes physical restraints and/or seclusion are justified. In this case, I note, Ms. Godinez clearly was not misapplying or misusing any learned physical restraint technique. On the contrary, she was never taught any technique contemplated by the statute and/or by related Board policies. Having possessed no learned technique of restraint or seclusion prior to February 20, 2019, I find, the Board cannot seek to impose discipline on Ms. Godinez for her untrained actions on that date.¹¹ Due to the Board’s failures in this regard, I must dismiss Tenure Charge I, insofar as Ms. Godinez is accused of violating N.J.S.A. 18A:46-13.5 and related Board policies.

Additionally, while I acknowledge that the Board accuses Ms. Godinez of violating several other policies, I find that such policies either do not unambiguously

¹¹ In fact, I do not deem it coincidence that the Board offers no case law supporting the application of N.J.S.A. 18A:46-13.5 to the facts of this matter.

address the subject matter of Ms. Godinez' February 20, 2019 conduct, or they add little to the undersigned's previous finding of Conduct Unbecoming a school teacher.¹²

Based on the foregoing, I find and conclude that the Board has sufficiently demonstrated Ms. Godinez's Conduct Unbecoming a public school teacher on February 20, 2019 in violation of N.J.S.A. 18A:6-10 and Board Policy 3280. Tenure Charge I is sustained, to that extent and is dismissed in all other respects.

PART II

Tenure Charge II

The February 25, 2019 Incident at EWK

The Board Has Demonstrated
That Ms. Godinez, Through Inaction
Engaged In Conduct Unbecoming a Teacher
And Failure to Perform Duties in Violation of
N.J.S.A. 18A:6-10 and Corresponding Board Policies.

Initially, I am satisfied that a teaching staff member who allows two or more students to fight by failing to intervene is liable under a Conduct Unbecoming and Failure to Perform Duties analysis within the meaning of N.J.S.A. 18A:6-10. This is so because a teacher is responsible for his or her actions or inactions that unnecessarily bring about harm or create the potential for harm to students entrusted to his/her care. To that point, I observe, Board Regulation 3280, "Liability for Pupil Welfare" (discussed previously) provides, in pertinent part, "A. A teaching staff member must maintain a standard of care for supervision, control and protection of pupils commensurate with the member's

¹² Board Policies 3280 (2002) and 3281 (Ex. B3-B4) address the general responsibilities of a teaching staff member to supervise and protect students and to maintain appropriate boundaries. Regulation 3281 (Ex. B5) clearly pertains to inappropriate touching of a sexual nature and corresponding reporting requirements and procedures. Lastly, I observe, Board Policy 3150, "Discipline" (Ex. B8) is of general applicability only.

assigned duties and responsibilities”. Under item A.4., the regulation specifically states “Pupils shall not be allowed to inflict bodily harm on one another. Teaching staff members are responsible for preventing and stopping pupil fights and assaults, whatever the cause or intent; if necessary, responsible assistance must be quickly summoned. Teaching staff members may restrain a pupil only with the reasonable amount of force necessary to a. Quell a disturbance; b. Obtain possession of weapons or dangerous objects; c. offer self-defense; or d. protect persons or property”, e.g., stopping two students from fighting with one another.

For the reasons which follow, I am satisfied that the Board has demonstrated, by the greater weight of the credible evidence, that Ms. Godinez did not take any affirmative action on February 25, 2019 to quell a fight between two juveniles at EWK; and that, by failing to so act, she placed two of her own students at risk of harm. I am also persuaded that the inaction of Katherine Grundman, who was supervising her own class in the same gym, and seated further away from the site of the altercation, does not serve as a mitigating factor.

Initially, EWK is primarily a general education, pre-K to grade 3 school with a predominantly Hispanic population (Tr. 2, 190:10-15). Anita Fulmore is a special education resource teacher at EWK School (Tr. 2, 156:3-6). She teaches students from kindergarten through third grade providing both in-class support and pullout support (Tr. 2, 158:20-25). She is also the HIB (“harassment, intimidation and bullying”) specialist for the building (Tr. 2, 156:5-7). Ms. Fulmore has taught in the Paterson school district for twenty (20) years (Tr. 2, 156:8-10). She has been at EWK for six (6) years (Tr. 2, 156:11-13; 158:10-15). Ms. Fulmore has known and worked with Ms. Godinez for

approximately three (3) years (Tr. 2, 159:3-10). Consistent with a finding of lack of bias, I observe, Ms. Fulmore did not have any prior conflict, issue, or incident with Ms. Godinez or any other reason to bear false testimony against her (Tr. 2, 159:17-20).

In addition to being an unbiased witness, I found Ms. Fulmore's testimony to be consistent with both her contemporaneous statements to Principal Derrick Hoff and with a contemporaneous and unprompted statement made by one of the students involved in the February 25, 2019 incident. As to the incident, Ms. Fulmore testified:

I recall approaching the gym door, which I was actually waiting to catch the elevator to my floor where my class is located. Upon approaching the gym, I heard a commotion. As I reached the gym, the elevator door, two other teachers approached, came out of their classroom and stated to me there's a commotion going on inside the gymnasium. When I walked into the gymnasium, I saw like a crescent of students crowding around an incident and I walked directly to the students that were involved and I basically did not even have to apply any pressure to break the fight up. I actually said what are you guys doing. They all separated on their own and when the students separated, that's when I observed Ms. Godinez sitting seated in a chair (Tr. 2, 160:2-16).

Ms. Fulmore identified the two preschool teachers whom alerted her to the commotion as Natalie Cruz and Erica Mann. Their classroom is adjacent to, and shares a wall with, the gym (Tr. 2, 160:22-161:4). Ms. Fulmore testified that Dana LeGarde, a building technology teacher, entered the gym with her (Tr. 2, 161:8-13). She also testified that approximately 18 students were standing around the altercation and the two participants were situated approximately ten (10) feet from the gym/hallway door (Tr. 2, 162:8-162:16; 171:8-10). She described the two students involved in the fight as third-grade boys, about four feet tall (Tr. 2, 161:15-23). Later she added that the two were general education students (Tr. 2, 174:4-7).

Ms. Fulmore testified that she and Ms. LeGarde were able to quell the dispute by saying, in a calm but assertive manner, “what are you guys doing” and “cut it out” (Tr. 2, 170:24-25 and 171:1-3). When asked if she had to physically grab the students in order to break up the fight, Ms. Fulmore responded that she recalled “touching one of the student’s arms and then Ms. LeGarde touched the other student and they easily separated” (Tr. 2, 163:3-5). Ms. Fulmore further testified that from the time she entered the gym until she turned around and saw Ms. Godinez sitting 20 feet away (or ten feet away from the altercation), she did not hear Ms. Godinez say anything to the boys engaged in the fight (Tr. 2, 164:7-8 165:1-6).

On cross-examination, Ms. Fulmore was asked to describe the commotion that prompted her to enter the gym. She replied, “yelling, screaming, chanting, cheering, bubbling, bumping” (Tr. 2, 180:21-24). When asked if it could have been a teacher screaming at the students to stop, Ms. Fulmore responded, “The elevator door is at least maybe arm’s length away from the gym. So, I heard children” (Tr. 2, 181:4-5). When pressed as to whether she heard a teacher screaming to stop, Ms. Fulmore responded that she did not (Tr. 2, 181:6-8).

Also, Ms. Fulmore did not “recall seeing Ms. Godinez get up. I know as I entered I was – I approached one student. I had his arm, Ms. LeGarde had the other student’s arm and I remember turning around and stating you need to get up and write this up” (Tr. 2, 164:18-22). In fact, Ms. Fulmore told Ms. Godinez twice to get up and write this up. “The third time I told Ms. LeGarde to tell Godinez she needs to write this up” (Tr. 2, 165:25-166:1). Ms. Fulmore, apparently relying upon what Ms. LeGarde told her,

testified that Ms. Godinez replied after the third time she was asked to write up an incident report that she did not have a computer (Tr. 2, 167:6-167:12).

Ms. Fulmore acknowledged the presence of another physical education teacher, Katie Grundman. However, she observed Ms. Grundman on the other side of the gym at the time. When asked what Ms. Grundman was doing during the fight, Ms. Fulmore responded:

I basically was focused in on the two students that were involved in the fight and basically when we separated them, focusing on the teacher that was responsible for their supervision. I don't recall her [referring to Ms. Grundman] saying anything but her body – her body language was almost like she was trying to restrain her students or basically encourage them not to get involved or run over there (Tr. 2, 172:15-22).

Ms. Fulmore was certain that Ms. Grundman was watching her own class on the “other side of the gym” at all material times.

Ms. Fulmore further testified that, as she and Ms. LeGarde were leaving the gym with the two boys, Ms. Fulmore's student said, “she just let us fight, I'm telling my mother” (Tr. 2, 170:8-12). Ms. Fulmore said that she did not ask the students if it was true that Ms. Godinez did not do anything; she did not respond at all - she just listened as she was walking him to the office¹³ (Tr. 2, 170:15-20).

¹³ At the hearing, Counsel for Ms. Godinez objected to the admissibility of what students were saying. The concern raised was that it was not part of the proffer. The Board replied that such testimony was consistent with the proffer provided by the Board: The following is the summary of expected testimony by Ms. Fulmore and/or Ms. LeGarde provided to Mr. Ricci: “the facts/circumstances that led them to enter the gym; their observations of the scene and the student altercation; their observations of Ms. Godinez including any action or inaction by her; their actions to break up the student altercation; any communications they had with Ms. Godinez regarding the February 25, 2019 incident; **any communications they had with the students** regarding the February 25, 2019 incident; and, any communications they had with Edward W. Kilpatrick school administration regarding the incident. Here, I am satisfied that admitting the hearsay testimony of what Ms. Fulmore's student said to her on the way to the principal's office is consistent with the highlighted parameters of the Board's disclosure. However, I am not convinced that the commentary made by the remaining students to one another was properly disclosed. Thus, I will not consider same.

Lastly, Ms. Fulmore testified that she subsequently spoke with Principal Hoff about the incident. In essence, according to Ms. Fulmore, she relayed her observations of the altercation to Principal Hoff “somewhat” mirroring her arbitration hearing testimony (Tr. 2, 176:18-22).

Principal Hoff has worked with Ms. Godinez at EWK since 2013. This record contains no credible evidence that Hoff had an axe to grind with Ms. Godinez or that he ever sought disciplinary action against her based on her conduct. In addition to a lack of bias, I find, Hoff’s testimony adds consistency to Ms. Fulmore’s overall testimony. As to shoring up Ms. Fulmore’s overall testimony, Hoff relied upon his notes of meeting with the student (“HC”) on February 27, 2019 (Ex. B18, page 1); and his notes of meeting with Ms. Fulmore and Ms. LeGarde on February 28, 2019 (Ex. B18, page 3). Hoff confirmed the grade and age of the two students and that they were Ms. Godinez’s students (Tr. 2, 194:5-13).

Immediately after the altercation had ended, as Hoff testified, Ms. Fulmore and Ms. LeGarde generally informed him that “there was a fight, the teacher did not intervene and they had told the teacher – they had told the teacher to put it in Infinite Campus, which is our student information system” (Tr. 2, 193:25-194:4). On February 28, 2019, after dealing with the parents and the disciplinary issues, Hoff testified that he had a more in-depth conversation with Ms. Fulmore and Ms. LeGarde (Tr. 2, 195:9-18; 196:4-7). Hoff asked Ms. Fulmore to tell him what happened in the gym on February 25, 2019. Hoff described Ms. Fulmore’s response, which I find to be consistent with her testimony, as follows:

She said that she was standing by the elevator, her and Ms. LeGarde. They heard a loud noise coming from the gym. They immediately entered into the

gymnasium and they observed, as they called – as Anita told me, the students had formulated a circle and that the two students who were fighting were in the middle of the circle fighting, and I said to them, where was Ms. Godinez, and they said Ms. Godinez was in the corner sitting in a chair by the window. . . Ms. Fulmore followed up with telling me that when she intervened and she broke it up, her and Ms. LeGarde, that they told Ms. Godinez two or three times to please put that information in Infinite Campus, and then they proceeded to take the kids out of the gym to my office (Tr. 2, 196:9-25).

Principal Hoff further stated that he asked Ms. Fulmore about how far away Ms. Godinez was from the fight, to which Ms. Fulmore responded approximately 20 feet (Tr. 2, 197:3-8). He also added that there was a phone inside the gym office that, as Ms. Fulmore explained, Ms. Godinez was not using to call security (Tr. 2, 197:3-11).

Later, on cross-examination, Hoff would testify that, based on his discussion with Ms. Fulmore, it was his impression that the fight had just begun at the time she and Ms. LeGarde interceded (Tr. 2, 227:10-21). This testimony, I note, must be construed in harmony with the indisputable fact that the fight lasted at least as long as it took staff members in the hallway to hear and react to a commotion, and for Ms. Fulmore and Ms. LeGarde to thereafter enter the gym and separate the two students.

Principal Hoff's testimony also lends credibility to the hearsay statement of the student who informed Ms. Fulmore on the way to the main office that Ms. Godinez let them fight. Hoff related, "during the disciplinary hearing the parent of one of the students indicated to me that she understood her child was wrong for fighting in the gym, but her son told her that evening that the teacher just sat there and watched them fight and did not intervene" (Tr. 2, 194:20-25; 198:21-25). Hoff's notes of his contemporaneous meeting with HC confirm that HC informed him that Ms. Fulmore and Ms. LeGarde "broke it up" and that the "teacher was sitting down and did nothing" (Ex. B18, page 1). This hearsay statement is consistent with what was contemporaneously told to Ms.

Fulmore by one of the students, likely the same student, as she was escorting him to the main office.¹⁴ Thus, the testimony of Ms. Fulmore and Principal Hoff and the contemporaneous and unprompted hearsay statement from one of the participants in the fight collectively support a finding that Ms. Godinez did not at all intervene in the altercation.¹⁵

Also, referring to his notes, Principal Hoff testified as to his interview with Ms. Godinez:

Q. And can you give us -- and refer to your notes if you need to, but can you give us a description of that meeting.

A. Yeah. I called her in because I want to get her side of the story because I'm hearing different sides about what happened in that fight, and so I make a note that Ms. Godinez shared with me that she was five feet, she was only five feet from the fight. She was yelling. This is her testimony. She was yelling for the students to stop and I may --I asked her a question when she told me she was yelling. I said, well, did you break up the fight, and she said no, and I said why, and she said, well, it's due to my ADA accommodation and she talked about her spine issues, prevented her from breaking up fights. She also added to me that she believed, in this meeting, that breaking up fights was not -- not a part of her duties as a teacher and that she physically just can't do it, and these were things that she had shared with me when I interviewed her as to what happened in the incident and why did she not intervene (Tr. 2, 202:20-25 and 203:1-17).

Principal Hoff testified that prior to his meeting with Ms. Godinez she never informed him that she was physically unable to break up a fight (Tr. 2, 222:16-23). And, in any

¹⁴ Principal Hoff explained the disciplinary process, noting that whenever there is a fight, he reaches out to both parents, they have a disciplinary hearing and then there is a penalty imposed since fighting is a violation of the Student Code of Conduct (Tr. 2, 195:21-196:3).

¹⁵ To the extent there are discrepancies between Ms. Fulmore's and Principal Hoff's testimony as to Ms. Fulmore's observations, it is, at the very least understandable that what got lost in the translation was (1) whether the students gathered around the fight formed the shape of a crescent or circle and (2) whether Ms. Godinez was seated 20 feet away from the door or 20 feet away from the fight. In my opinion, neither discrepancy warrants discrediting the overall, unbiased testimony of Ms. Fulmore describing the involvement of both she and Ms. LeGarde in quelling a fight between two of Ms. Godinez's students, while Godinez passively observed seated in a chair 10-20 feet away.

event, nothing prohibited Ms. Godinez from yelling at the students and/or from calling security (Tr. 223:2-20).¹⁶

Principal Hoff was asked based on his education, experience and position within the school district for some 20 years whether teachers are responsible to intercede if students are engaged in a fight? He replied: “Absolutely”. . . . They can call for security. They can physically intervene and try to restrain the students. They also can summon another teacher who's in the gym to help them break up a fight.” He concluded his remarks to this line of questioning by noting that no other witness supported Ms. Godinez’s testimony that she intervened and helped quell the confrontation. Rather, Ms. Fulmore, Ms. LeGarde and the student informed him that Ms. Godinez took no action (Tr. 2, 219:13-24).

Principal Hoff was asked to review a “Behavioral Detail Report” of the incident (“Incident Report”) which he believed was completed and submitted by Ms. Godinez, consistent with what Ms. Fulmore and Ms. LeGarde thrice asked her to do at the end of the February 25, 2019 incident (Ex. B19). Ms. Godinez would ultimately testify that Ms. Grundman prepared and submitted the Incident Report because she did not have a computer. In a *voire dire* exchange with Ms. Godinez’s attorney, Principal Hoff denied that Ms. Godinez lacked access to a computer. On the contrary, he testified that the gym office computer was for all teachers to use (Tr. 2, 216:11-16). Counsel for the Board then elicited the following testimony from Principal Hoff:

Q. Are you aware of Ms. Godinez ever reporting that someone had filed

¹⁶ Principal Hoff testified that he was previously made aware of Ms. Godinez’s requests to him for a parking accommodation due to her back condition and he was aware that she could not climb stairs (Tr. 2, 229:3-21).

something by using her pass code?

A. No.

Q. Are employees and staff supposed to keep their pass code confidential and to themselves?

A. Yes.

Q. Now, who did she indicate in this report broke up the fight?

A. "The fight broke up only when three teachers intervened, A.F., D.L. and B.G."

Q. And who did you understand A.F., D.L. and B.G. to be?

A. A.F. is Anita Fulmore, D.L. is Dana LeGarde, and B.G. is Blanca Godinez.

Q. And was that consistent or inconsistent with what Ms. Fulmore told you?

A. That was inconsistent.

Q. Was that consistent or inconsistent with what Ms. LeGarde told you?

A. Inconsistent.

Q. Was it consistent or inconsistent with what Ms. Godinez told you?

A. Inconsistent.

Q. Was it consistent or inconsistent with what the students told you?

A. Inconsistent.

(Tr. 2, 218:20-25 to 219:1-6).¹⁷

¹⁷ After he concluded his interviews of Ms. Fulmore, Ms. LeGarde and Ms. Godinez, Principal Hoff testified that he prepared an email to Assistant Superintendent Rojas because he "needed some guidance in terms of I had this incident that was confirmed by the witnesses, as to what should be my next steps, and the reason why I wanted to know next steps is because assuming that the ADA accommodations are real, then I need to know what I can put in place to be able to protect kids if another altercation occurs in the gym" (Tr. 2, 220:3-11). Hoff confirmed that B20 in evidence was the email he sent to Assistant Superintendent Rojas requesting guidance to create a safety plan (Tr. 2, 220:12-22).

Ms. Godinez testified that she was getting ready to take attendance as the class was coming in. There was a boy standing and “barking” and another boy came into the class late and made a comment to the boy who was barking. The boy barking swung at the boy who commented and they both then starting swatting at each other (Tr. 3, 425:18-428:14). Ms. Godinez claims she was seated about five feet away from the boys when the fight started and Ms. Grundman was about ten to twelve feet away (Tr. 3, 434:7-11). The two teachers were seated because they were about to take attendance (Tr. 3, 527:3-8). According to Ms. Godinez, when the scuffle began, her back was bothering her from the incident on February 20, 2019, so she looked to Ms. Grundman, who was not called as a witness by either side, to react. However, Ms. Grundman allegedly did not respond to the fight (Tr. 3, 528:2-11). Because Ms. Grundman did not respond, as Ms. Godinez testified, she got up, went to where the boys were, stood there and yelled at them to stop. In a matter of seconds, notes Ms. Godinez, two other teachers, Ms. Fulmore and Ms. LeGarde arrived. Contrary to Ms. Fulmore’s testimony, the spontaneous statement of the student participant to Ms. Fulmore, and what the parent of a student participant conveyed to Principal Hoff, Ms. Godinez testified that all three of them collectively quelled the fight by yelling at the students. According to Ms. Godinez, Ms. Fulmore and Ms. LeGarde walked out with the students because she had a class waiting.

In contrasting the February 20 and 25, 2019 incidents, Ms. Godinez believed that the February 20th incident could have resulted in a very bad injury, even the death of a child. This is so despite, as noted previously, that J.W. had no object nearby to throw after he tossed his lightweight backpack at the student who had just hit him with his backpack, and that Ms. Godinez walked away from J.W. leaving him with the same

backpack after she decided he had had enough. Meanwhile, in my opinion, Ms. Godinez disingenuously downplayed the risk of harm created by two third-grade boys wrestling and throwing punches at each other without adult intervention.

According to Ms. Godinez, although she acknowledged that a fight can be dangerous, she did not think that particular incident warranted more than a verbal intervention because the fight had not yet escalated to a point where there was a danger in that room for any child (Tr. 3, 435:4-12). However, I observe, the duration of the fight belies Ms. Godinez's attempt to downplay the risk. Clearly, significant time passed from the point other staff members heard and reacted to a commotion inside the gym to the time that Ms. Fulmore and Ms. LeGarde entered the gym and convinced the two students to cease and desist (Tr. 3, 527:25-528:1). In fact, but for the relatively timely intervention of Ms. Fulmore and Ms. LeGarde, it appears obvious that the fight could have escalated to the point that Ms. Godinez herself feared.

Ms. Godinez also attempted to add support to her version of events by claiming that Ms. Grundman authored the Incident Report requested by Ms. Fulmore. That report identifies "A.F., D.L., and B.G." as breaking up the fight (Ex. B19). Obviously, this testimony serves Ms. Godinez's interests. Ultimately, in my opinion, the burden to clarify such an unusual development concerning the writing of the Incident Report properly rests with Ms. Godinez. Ms. Godinez did not call Ms. Grundman as a witness or even attempt to produce a corroborating statement from her. Standing alone, for the following reasons, I do not find Ms. Godinez's testimony to be credible.

To begin with, the two students involved belonged to Ms. Godinez. Additionally, Ms. Godinez's name is listed as the person submitting the report. Also, it was established

that each teacher has their own passcode to access the computer. Contrary to Ms. Godinez's testimony, I do not find any reason why only Ms. Grundman would be permitted to use the gym office computer at EWK. Rather, as Principal Hoff testified, both gym teachers have access to that computer. Lastly, it is noted that Ms. Godinez remained silent after Ms. Fulmore twice asked her to write up an incident report. Only after the third such request (interjected by Ms. LeGarde) did Ms. Godinez claim that she did not have a computer. Collectively, I find, Ms. Godinez, more likely than not, had access to a computer, she was responsible for the report submitted in her name and concerning her students and she submitted a report which inaccurately included herself as one of the three staff members who intervened and stopped the fight.

Nonetheless, Ms. Godinez insisted that Ms. Grundman told her that she would write the report and that she [Grundman] could access Ms. Godinez's login to the system. But, here, I must ask the 64,000 question, that is, why would Ms. Grundman volunteer to do the report? Ms. Fulmore and Ms. LeGarde thrice asked Ms. Godinez to complete and submit the report? No one asked Ms. Grundman to submit a report. Also, as this record bears out, not only did the students belong to Ms. Godinez, but Ms. Godinez was closer to the altercation. In fact, Ms. Fulmore observed Ms. Grundman significantly further away from the altercation and trying to keep an eye on her own students. Why Ms. Grundman would volunteer to write a report thrice requested of Ms. Godinez, concerning Ms. Godinez's students, and when Ms. Godinez was clearly the better eyewitness, makes little to no sense to me.

Having said this, however, even if I believe that, for whatever reasons, Ms. Grundman typed the report for Ms. Godinez, I cannot conclude that Ms. Grundman

would take responsibility for the content of the report while submitting the report under Ms. Godinez's name. Rather, the much more likely explanation, even if I believed that Ms. Grundman typed the report, is that Ms. Godinez provided the substantive input for Ms. Grundman to type. Therefore, for all these reasons, I cannot credit Ms. Godinez's assertion that Ms. Grundman independently generated the content of the report concerning Ms. Godinez's students and then submitted the report under Ms. Godinez's name.

In sum, I find that a preponderance of the credible evidence demonstrates that the Board has sufficiently proven that Ms. Godinez knowingly failed to intervene in a fight between two third-grade boys on February 25, 2019. The Board has also adequately shown that by knowingly failing to intervene, she placed both students at risk of physical injury. But for the fortuitous intervention of Ms. Fulmore and Ms. LeGarde, that risk could have been much higher. Also, I observe, the fact that Ms. Fulmore and Ms. LeGarde were able to quell the dispute primarily by way of verbal commands with only minimal physical effort relegates Ms. Godinez's physical incapability defense to the sidelines in this matter. Accordingly, I sustain Tenure Charge II with respect to the charges of Conduct Unbecoming and corresponding Board Regulation 3280. Tenure Charge II is dismissed in all other respects.

PART III

The Appropriateness of the Removal Penalty

N.J.S.A. 18A:6-10 provides that a tenured teacher may not be dismissed "except for inefficiency, incapacity, unbecoming conduct, or other just cause." A school district bears the burden of proving by a preponderance of the credible evidence its charges

seeking removal of a tenured employee. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962); In re Tenure Hearing of Ziznewski, A-0083-10T1, 2012 WL 1231874 (N.J. Super. Ct. App. Div. Apr. 13, 2012) (unreported). In addressing the appropriateness of the penalty in cases involving tenure charges, relevant factors “include the nature and circumstances of the incidents or charges, any evidence as to provocation, the teacher’s prior record and present attitude, the effect of such conduct in the maintenance of discipline among the students and staff, and the likelihood of such behavior recurring.” In the Matter of the Tenure Hearing of Erroll Goodwater, School District of the City of Camden, Agency Docket Nos. 185-7/11 and 187-7/11 (April 27, 2012). The Commissioner has previously stated that “unfitness to remain a teacher is best demonstrated by a series of incidents but might be shown by a single incident if sufficiently flagrant”. In the Matter of Norma Pollard, 96 N.J.A.R. 2d (EDU) 170 at 190.

For the reasons which follow, I find that the Board has demonstrated that, notwithstanding Ms. Godinez’s long-term employment, removal is an appropriate penalty based upon the severity of Ms. Godinez’s collective misconduct on February 20 and 25, 2019.

Initially, I acknowledge that both parties have flooded this record with a plethora of administrative and arbitral decisions addressing the propriety of removing a long-term teacher for actions allegedly analogous to Ms. Godinez’s conduct in this case. Although I have carefully studied each and every one of them, as a caveat, I note, this case rests on its own unique and troubling facts. It involves two alarming incidents within a short period of time that reflect polar opposite, egregious actions on the part of Ms. Godinez. Specifically, on February 20, 2019, Ms. Godinez recklessly, but not intentionally

overreacted and unduly restrained a special education student causing him temporary physical and emotional harm, and potentially harming other students. Then, just five days later, Ms. Godinez knowingly took no action as two of her third-grade students engaged in a physical altercation which, but for the intervention of two other staff members, could have resulted in significant physical harm.

Although the severity of Ms. Godinez's February 20 and 25, 2019 misconduct combined has been determined *de novo* by the undersigned, I have considered as part of that determination the reactions and opinions of Principals Castro and Hoff and Assistant Superintendent Rojas. Regarding the February 20, 2019 incident involving J.W., after viewing the video, Principal Castro opined: "I was mortified. I was mortified. I'm a parent and the only thing I could think was what if it was my child" (Tr. 1, 86:21-23). When asked if she had ever been aware of that type of action by a teacher, Principal Castro responded, "Absolutely not. Not during my tenure in Paterson" (Tr. 1, 87:1-2). Watching the video during the hearing, Principal Castro had a similar reaction. She testified "it's like reliving it after - - it's mortifying. It's like my initial thought was what if that's my child and I am responsible for five -- approximately 500 children and my reaction was my duty is to these children and I immediately thought of my son" (Tr. 1, 88:13-18).

Assistant Superintendent Rojas, who was influential in the decision below, described the severity of Ms. Godinez's misconduct as follows:

I saw Ms. Godinez, the way I can describe it, is manhandling a -- you know, a small -- a small student. At that time, I didn't know he was special ed. but clearly a student that was maybe one-third her size, putting all her weight on him, really, you know, and a manner that was just totally inappropriate (Tr. 2, 260:1-8).

When asked if he was bothered by what he saw, Assistant Superintendent Rojas responded “100 percent” (Tr. 2, 260:16-18). Rojas went on to testify:

I thought it was disgraceful that you have an adult – – and I put myself in the situation that if that was my child, I would be irate having a teacher with the audacity to roll and put her weight on my child and then especially that he was – and knowing that he was a special ed student, I was infuriated. I mean that student regardless of what had occurred that precipitated, for her to be on top of him, her keeping her weight on top of him, rolling around on the ground while I watched and the more times I watched it, it was just infuriating (Tr. 2, 260:20-261:5).

There’s absolutely nothing that she could have justified rolling on the ground with a special ed. student who was one-third her size who at the end of the day wasn’t hurting anyone in the video, wasn’t hurting her. If he was such a threat, he would have been – his hands were free. He could have punched her. He could have slapped her. He could have pulled her hair. I mean and he would have probably rightfully so been justified in trying to get this woman off of him and he did nothing of the sort (Tr. 2, 291:19-292:4).

When asked if it concerned him that the entire class was watching this, Assistant Superintendent Rojas responded:

Absolutely. It was – – you know, it had to have been – – again, put myself in the situation of one of those kids, it would have been shocking to see, you know, one of my students, one of my co--fellow students, you know being manhandled by a teacher on the ground and watching her just be, to my opinion, very comfortable doing what she was doing, which was really just disheartening, but the other students and putting those individuals and those students, you know, into that situation where they had to observe, you know, one of their students or one of their co-students or friends, you know, being thrown and manipulated on the ground that way was just uncalled for (Tr. 2, 261:13-262:1).

.....

Well, I mean it’s in front of the whole class and not only did--after watching the video not only did you, you know, watch the young man, you know, have to have Ms. Godinez on top of him for two minutes and if that wasn’t shocking enough, after he gets up and tries to collect his, you know wit’s [sic] about him, you know, she’s in his face yelling. At one point she’s bent over, you know, yelling in his face. You can see those gestures and that body language where she’s screaming at him, you know, and she

could care less that he's wiping tears, you know, away from his eyes, you know. It was heartless. To me it was cold hearted" (Tr. 2, 266:24-267:11).

With respect to the February 25, 2019 incident at EWK, Principal Hoff testified that he was concerned with Ms. Godinez's response:

Well, when you're talking about children fighting and you're talking about children's welfare, when you have an altercation, something – I mean building protocol calls for, you know, either intervene, call security, somehow some way – what we didn't want was a situation where based on what the kids described and the staff member described that the kids were in a circle observing this fight. Someone could have got very seriously hurt (Tr. 2, 204:13-21).

Assistant Superintendent Rojas added:

"because it's the responsibility of all adults no matter who you are, whether it's me all the way down to the cafeteria, if I'm in a building and see two students or I see a group of students fighting, it is my duty and my responsibility as an adult in district, as an employee of the Paterson Public School District to intervene and break up the fight to the best of my abilities" (Tr. 2, 280:25-281:7).

Frankly, after a *de novo* review of the record, I find that, more or less, the reactions and concerns expressed by the two administrators and Assistant Superintendent Rojas above coincide with my own.

In addition to considering Ms. Godinez's long-term employment, I did fully consider other defenses raised by Ms. Godinez including, but not limited to a lack of intent to punish regarding the February 20, 2019 incident, the inactions of Ms. Godinez' co-workers, her lack of training on the use of physical restraints, and the alleged lack of a full and fair investigation by the administrators and Assistant Superintendent Rojas, etc. Ultimately, for the reasons which follow, I did not find these additional defenses persuasive or persuasive enough to override the severity of Ms. Godinez' dual offenses.

Initially, I generally agree with the cases submitted by Counsel for Ms. Godinez which distinguish the severity of corporal punishment type offenses based on the intent of the teacher. Here, it is true that Ms. Godinez did not intend to inflict punishment on J.W. Rather, she acted with a misguided mindset to restrain J.W. in the first instance and then employed a risky and bizarre form of physical restraint which she had previously contemplated. While I agree that Ms. Godinez cannot be fairly found guilty of intentionally harming J.W., i.e., statutory corporal punishment, I do find that she acted recklessly and did temporarily harm J.W. both physically and emotionally, and she also created an appreciable risk of emotionally harming the other students who closely witnessed the incident. Here, even adopting and applying one of the more pertinent cases offered by Ms. Godinez, In the Matter of the Tenure Hearing of Edith Craft, 2012 WL 2579497 (App. Div. 2012) and applying the Fulcomer test, I still find and conclude that Ms. Godinez' reckless conduct of February 20, 2019 leaves her at the edge of removal; and that her February 25, 2019 misconduct pushes her over that ledge.

In this case, unlike Craft, Ms. Godinez's misconduct did not involve a reflexive slap or isolated grab of J.W. Rather, on February 20, 2019, Ms. Godinez clearly had time to choose a course of action and she chose to unjustifiably subject J.W. to two minutes of physical and emotional stress and an additional one minute of hostile verbal treatment when calm and consolation were most needed. Also, unlike Craft, Ms. Godinez's February 25, 2019 inaction was not reflexive. On the contrary, in the absence of any evidence suggesting Ms. Godinez was not lucidly observing her class, I must conclude that her inactions were deliberate.

Also, in Craft, referring to other cases, the ALJ held that respondent's interaction with D.S. represented a single, isolated incident in a teaching career otherwise unmarked by wrongdoing. Here, however, the Board has sufficiently demonstrated Ms. Godinez's commission of comparatively more egregious misconduct on two separate occasions within just five days of one another.

The ALJ in Craft also observed that the Board presented no evidence showing that respondent's conduct had an injurious effect on the maintenance of discipline and the proper administration of the school system. Here, conversely, the Board is understandably concerned that Ms. Godinez cannot properly maintain discipline or earn the respect of students as exhibited by way of a confluence of two separate, but extremely close in time incidents whereby she plainly gave students and administrators ample reasons not to trust her in the classroom. Such lack of trust over important matters of student safety is reinforced by Ms. Godinez' failures to report the J.W. incident and to take J.W. to the school nurse and by her attempts to twice avoid responding to Ms. Fulmore's requests that she submit a report concerning the EWK incident. Accordingly, for these additional reasons, this matter is distinguishable from Craft.

Also, the ALJ in Craft, referring to two other cases, noted that the incident did not appear to have any immediate impact on D.S. According to Duffy, after respondent slapped D.S., D.S. simply returned to his seat. Duffy stated that D.S. did not appear agitated or injured, and he did not cry. Instead, according to Duffy, D.S. went back to his seat and he sat there and sucked his thumb as he normally did on any other day. Clearly, here, the facts are opposite. J.W. spontaneously complained of stomach pain and cried from the time Ms. Godinez got off of him and past the time he left the gym. The

potential harm Ms. Godinez's actions caused to the two students on February 25, 2019 only compounds matters.

The ALJ in Craft noted evidence of provocation. That factor does not even exist in this case.

Finally, the ALJ in Craft noted that the teacher was truly remorseful for her actions. Here, I find, Ms. Godinez was not genuinely remorseful. Instead, she faulted others and disingenuously exaggerated J.W.'s conduct and conversely downplayed the risk of harm to the students who were fighting at EWK.

In light of the foregoing, I agree with Counsel for Ms. Godinez that she did not intentionally inflict corporal punishment on J.W. However, as demonstrated above, whether it is determined that Ms. Godinez acted intentionally or recklessly, the negative impact caused by her actions on February 20, 2019 is the same. Also, I have previously found that Ms. Godinez knowingly allowed two students to fight in her presence without intervention. It is the combination of her misconduct and the collective severity of same that, in my opinion, brings her over the edge.

I also agree, in part that the Board should have implemented some form of discipline or corrective action against Mr. Vanderlofske and Ms. Thomas. However, I disagree that the failure of the Board to do so requires a modification of the removal penalty herein. Put simply, the comparison is not apples to apples. It is true that the same obligations imposed on Ms. Godinez to have intervened in the February 25, 2019 incident generally applied to Mr. Vanderlofske and Ms. Thomas on February 20, 2019 when they witnessed their student, J.W. unnecessarily being restrained by Ms. Godinez. Having said this, however, Ms. Godinez was the antagonist on both February 20 and 25,

2019 and, unlike Ms. Godinez' conduct on February 25, 2019, Mr. Vanderlofske and Ms. Thomas did not sit by and watch two students fight. Rather, Vanderlofske, a new teacher and Ms. Thomas, his aide, did not witness the incident until it was significantly underway and, from what can be gleaned from this record, they deferred out of fear and/or bewilderment of the actions being taken by a much more experienced teacher for the remaining one minute or so until she stood up. For these reasons, while I believe the Board should have taken some form of corrective action against Mr. Vanderlofske and Ms. Thomas, I do not believe that its failure to do so warrants a reduction in the removal penalty.

As to the February 25, 2019 incident at EWK, I do not find that the inaction of Ms. Grundman is relevant to either Ms. Godinez's liability or the propriety of the removal penalty. Ms. Grundman was situated further away from the scene of the students fighting on February 25, 2019 than Ms. Godinez; the two students belonged to Ms. Godinez; and Ms. Grundman was watching her own students for the brief period of time it took Ms. Fulmore and Ms. LeGarde to respond. Thus, I do not find that Ms. Godinez' misconduct is in any way explainable by an examination of Ms. Grundman's conduct.

Next, I will briefly address Ms. Godinez' lack of training defense. I have previously dismissed Tenure Charge I, to the extent that the Board incorrectly, in my opinion, relied upon N.J.S.A. 18A:46-13.5, and related Board Policies. However, I observe, a lack of training was not at issue when Ms. Godinez elected to respond in the manner which she did to a diminutive second grade student who no longer presented any realistic threat of harm. Common sense, regardless of training, should have told her not to do what she did due to the obvious prospect of causing physical injury to J.W. Finally,

a lack of training had nothing to do with Ms. Godinez knowingly allowing two of her students to fight on February 25, 2019. In fact, during the EWK incident, it is obvious that Ms. Godinez, if she chose to, could have forcefully verbally directed an end to the fight. This is so because, as noted previously, Ms. Godinez had no difficulty forcefully admonishing J.W. on February 20, 2019. Thus, for these reasons, I do not credit a lack of training as a factor as to liability and/or penalty mitigation.

Ms. Godinez also claims that the investigations into the incidents did not comply with Board Policy, e.g., Principal Castro did not interview certain witnesses, Principal Hoff did not interview Ms. Grundman, the Director of Security, instead of Assistant Superintendent Rojas, should have investigated both matters, etc. In my opinion, regardless of the adequacy of the investigation(s) below, I have been provided with no reason to believe that the outcome of this proceeding would be any different had the investigation been conducted precisely as Ms. Godinez' claims it should have been.

In this *de novo* proceeding, both parties, represented by skilled attorneys, had essentially two opportunities – one before the Board of Education and the second this proceeding - to develop and present their respective cases, e.g., to engage in discovery, to interview any and all relevant witness, to call any and all relevant and available witness, to introduce any and all documentary evidence, etc. In short, nothing in this record convinces me that either party benefitted or was prejudiced by the nature of the Board's investigation which led to the initial certification of tenure charges against Ms. Godinez.

Lastly, Ms. Godinez has referred to no authority requiring the dismissal of tenure charges or the exclusion of any evidence based upon the conduct of the administration's investigation which led to the initial filing of tenure charges. Accordingly, I do not credit

the adequacy, or lack thereof of the investigation below as a reason to alter any finding of fact or conclusion of law in this *de novo* proceeding.


Based on the foregoing, pursuant to N.J.S.A. 18A:6-10, I find and conclude that the Board had just cause to remove Ms. Godinez from her position of employment as a public school teacher in the City of Paterson School District for committing two serious Conduct Unbecoming offenses pertaining to student safety.¹⁸

¹⁸ Nothing herein should be construed as addressing whether or not Ms. Godinez is fit to continue teaching in another school district. That determination is left to the State Board of Examiners.

AWARD

For the reasons more fully set forth herein, pursuant to N.J.S.A. 18A:6-10, I find and conclude that the School District of the City of Paterson, Passaic County had just cause to remove Blanca Godinez from her position of employment as a teacher for committing two serious Conduct Unbecoming offenses pertaining to student safety on February 20 and 25, 2019, respectively.

Respectfully submitted,

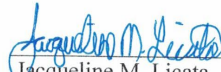


Joseph Licata

Dated: March 9, 2020

State of New Jersey)
):SS
County of Bergen)

On this 9th day of March 2020, before me personally came and appeared Joseph Licata, to me known and known to me to be the person described herein who executed the foregoing instrument and he acknowledged to me that he executed the same.



Jacqueline M. Licata

JACQUELINE M. LICATA
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 11/9/2020

