

263-20

STATE OF NEW JERSEY  
COMMISSIONER OF EDUCATION

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In the Matter of the Tenure Hearing of

SCHOOL DISTRICT OF THE TOWNSHIP OF LAWRENCE,  
MERCER COUNTY and  
JILL MARIA, RESPONDENT

Agency Docket Number 123-5/20

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AWARD OF ARBITRATOR

The undersigned Arbitrator, having been duly designated by the Commissioner of Education from the Panel of Arbitrators in accordance with the TeachNJ statute, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted, the Lawrence Township Board of Education properly revoked the tenure and terminated the employment of Respondent Jill Maria. Respondent's grievance is hereby denied.

November 16, 2020

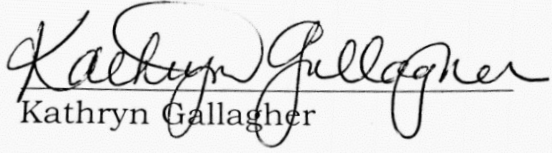


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Daniel F. Brent, Arbitrator

State of New Jersey  
County of Mercer

On this day 16<sup>th</sup> day of November 2020 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.



Kathryn Gallagher

**KATHRYN GALLAGHER**  
**NOTARY PUBLIC OF NEW JERSEY**  
My Commission Expires 2/18/2021

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The undersigned was appointed by the Commissioner of Education as Arbitrator in the matter of the tenure proceedings against Jill Maria. Hearings were held in the above-entitled matter on September 17, 2020 and September 22, 2020 at Lawrence High School in Lawrence Township, New Jersey. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceeding. Both parties submitted post-hearing briefs, and the record was declared closed on November 5, 2020.

APPEARANCES

For the Employer

Jeffrey R. Caccese, Esq., of the Comegno Law Group, Esqs.

Dr. Ross Casum, Superintendent of Schools

Sean Fry, Director of Personnel

For the Respondent:

Edward A. Cridge, Esq., of Mellk O'Neill, Esqs.

Jill Maria, Respondent

ISSUE SUBMITTED

What shall be the disposition of the tenure charges brought by the Lawrence Township Board of Education against Jill Maria?

NATURE OF THE CASE

The Respondent was employed as a Special Education Teacher at the Lawrence Intermediate School on September 1, 2005. The School District of the Township of Lawrence granted her tenure as a teacher in September 2008. Tenure charges were first brought against the Respondent in or about December 2018, when the Respondent was charged with failing to report to the District her arrest on criminal charges in Pennsylvania in January 2017 and positive drug tests arising thereafter. These tenure charges (hereafter, the First Set of Tenure Charges) were upheld in part and denied in part by Arbitrator Ralph Colflesh, who reduced Respondent's termination of employment and loss of tenure in the District to a 120-day suspension without pay and withholding of an annual salary increment based on the Respondent's failure to report her arrest and a subsequent positive drug test to the District. He predicated his decision and remedy on the limited scope of the initial set of tenure charges, which were based solely on Respondent's failure to report her arrest rather than the underlying conduct leading to the arrest. Arbitrator Colflesh held that the District could impose additional charges based on the conduct underlying the arrest and the possession or use of a controlled substance.

The District filed a second set of Tenure Charges against Respondent in February 2020, alleging that the conduct that she failed to report constituted additional grounds to revoke her tenure.

Respondent disputed the propriety of the Second Tenure Charges.

Arbitrator Andrée McKissick was appointed to decide the Second Tenure Charges. Applying the Entire Controversy Doctrine, Arbitrator McKissick dismissed the Second Set of Tenure Charges on April 18, 2020, holding that the District should have incorporated all actions of the Respondent of which it was aware, or reasonably should have been aware, into its original tenure charges. Arbitrator McKissick held that Respondent's underlying conduct, as well as her failure to report her arrest for a domestic dispute and for possession of controlled substances were known, or should have been known, by the District when the First Set of Tenure Charges were filed and thus should have been included in the initial tenure charges.

The District brought the Third Tenure Charges, the instant matter, on April 30, 2020 alleging that Respondent Maria engaged in additional misconduct after the Colflesh Award was issued, and that her actions constituted new instances of dishonesty and conduct unbecoming a teacher employed by the Lawrence Township Board of Education. The District cited Respondent's intentional failure to reveal to the

District during an interview with the District Director of Personnel before returning to work in September 2019, pursuant to Arbitrator Colflesh's award, that she had recently failed multiple additional drug tests and lied to District administrators about her recent drug use and failed drug tests. The District also alleged that Respondent intentionally failed to disclose other information relevant to her employment as a teacher that she was obligated to disclose regarding her bankruptcy proceedings, court cost repayment probation, and child custody status.

Respondent filed a Motion to Dismiss the Third Tenure Charges, contending that the McKissick Award precluded revisiting conduct that occurred before Arbitrator Colflesh issued his award on July 22, 2019 and should not have been referred to in the Third Tenure Charges. The undersigned issued an Interim Award on July 27, 2020 that denied Respondent's Motion to Dismiss as to those events addressed in the Third Tenure Charges that occurred after the date that Arbitrator Colflesh issued his Award. The Interim Award held that reciting the procedural history of the prior two tenure charges did not revive charges addressing conduct before July 22, 2019, but ordered that conduct occurring after the First Tenure Charge proceedings before Arbitrator Colflesh, culminating in his award on July 22, 2019, created a valid basis for imposing discipline, up to and including revocation of tenure. The matter proceeded to hearings on the merits of these aspects of the

Third Tenure Charges.

On September 9, 2020, shortly before the first arbitration hearing regarding the instant case scheduled for September 17, 2020, Respondent filed a Motion in Limine. An oral teleconference hearing was held on September 10, 2020 at which Counsel for both parties presented arguments regarding the Motion in Limine. These arguments were duly considered by the Arbitrator. On September 13, 2020, the Arbitrator issued an Interim Award regarding Respondent's Motion in Limine that denied Respondent's Motion in part and sustained it in part. The ruling permitted the Superintendent of Schools to testify as part of the District's case in chief and deferred the testimony of the Director of Personnel until the District's rebuttal case after Respondent had testified. The two previously scheduled arbitration hearings proceeded as scheduled to address the merits of the current Third Tenure Charges.

### DISCUSSION AND ANALYSIS

Analysis of the facts and circumstances underlying the instant case should commence with an explicit declaration of what this case is not about. First, this case is not about any misconduct for which Respondent Jill Maria was held culpable in the First Set of Tenure



Charges adjudicated by Arbitrator Ralph Colflesh in his arbitration award issued on July 22, 2019. Nor, pursuant to the arbitration decision issued by Arbitrator Andrée McKissick dismissing the Second Tenure Charges, is this proceeding about any other misconduct alleged to have occurred before the date of Arbitrator Colflesh's award. The Third Set of Tenure Charges comprising the instant case is limited to allegations regarding misconduct that occurred after the Colflesh award was issued and the District and Respondent became aware of Arbitrator Colflesh's decision. The two previous tenure proceedings are relevant only to demonstrate that the Respondent knew, or reasonably should have known, of her obligation to advise the District of pertinent circumstances regarding her employment, including arrests, failed drug tests, and changes in her probation status or in her health that affected her fitness for duty or her ability to resume her teaching duties.

The instant matter also does not involve the Respondent's status as a recovering abuser of alcohol and drugs. Credible testimony during the tenure arbitration hearings established that, if Respondent had been immediately forthcoming and candid about her substance abuse problems, the District would have granted her a leave of absence to seek treatment and would have assisted her in obtaining medical and psychological treatment. There is no evidence in the evidentiary record

that the District retaliated or discriminated against Respondent because she had abused drugs and alcohol in the past, because of her status as a recovering substance abuser, or because she relapsed after she completed an in-patient treatment program. The instant tenure charges were predicated on her failure to disclose at least two positive drug tests and on her dishonesty in providing false answers to direct inquiries by one or more District administrators regarding her recent drug use.

This case is also not about the Respondent's personal financial situation, her bankruptcy court proceedings, or the topics discussed in meetings with her Probation Officer or her Probation Officer's supervisor, provided that the meetings did not result in a change in her probation status. The allegations regarding her failure to report the content of meetings with her Probation Officer, her delinquency in tendering periodic payments of court costs and fees, her personal bankruptcy court proceedings, or her child custody issues cited by the District were deemed to be irrelevant or immaterial and thus did not materially affect the outcome of the instant case.

The decision regarding the current set of tenure charges against Respondent Jill Maria is predicated solely on her failure to advise the

District that she failed drug tests on September 12, 2019 and on October 4, 2019 and on her false answer when she was asked if she was no longer using illegal drugs by the District Director of Personnel Sean Fry during Return to Work interviews on September 9, 2019, and on October 1, 2019. She lied about her use of drugs as recently as September 24, 2019, concealed her recent positive test, and only admitted her falsehoods for the first time in her testimony under oath during the arbitration hearings.

Respondent testified candidly that she lied to the District Director Fry in a meeting on October 1, 2019. She explained her dishonest answer as a by-product of her shame and mortification because she had relapsed after completing her thirty-day in-patient treatment program. Although the Arbitrator understands the Respondent's embarrassment and anger at herself arising from her relapse, and is sympathetic to her painful plight as she struggled with the challenges in remaining sober, her heartfelt explanation does not insulate her from the consequences of her repeated proven dishonesty toward her employer.

Respondent argued persuasively that she should not be punished for failing to disclose to the District the twists and turns of her ongoing personal bankruptcy case, as her personal financial situation was

beyond the purview of the District's legitimate concern. The District asserted that it was entitled to know if Respondent was delinquent in her obligation to make periodic payments of court costs that had been assessed in connection with her criminal proceedings. The nexus between Respondent's fitness to teach and her ongoing fulfillment of her obligation to remain current in her court-ordered repayment plan has not been persuasively established by the District.

Accepting Respondent's argument that she did not fail to fulfill a valid obligation to disclose all aspects of her bankruptcy, as she had made appropriate arrangements with her Probation Officer to continue her periodic payment of court costs, mandates a conclusion that Respondent was not culpable for failing to alert the District regarding the results of a December 2019 meeting with her Probation Officer and her Probation Officer's supervisor because there was no change in her probation status. Nevertheless, Respondent Maria remains culpable for lying to District management about her two failed drug tests and recent drug use.

After July 22, 2019, Respondent was unequivocally on notice of her obligation to disclose all failed drug tests. Not only had she been

disciplined following the first set of Tenure Charges for failing to disclose her arrest for assault and possession of drugs and drug paraphernalia, but the testimony revealed that Respondent had also been explicitly admonished by the District before, during, and after those proceedings regarding the District's unambiguous and reasonable requirement that she must disclose any future failed drug test.

The evidentiary record in the instant matter established by clear and convincing evidence that Respondent failed to learn the lesson of her earlier legal travails and personal challenges. Had she been forthright initially, she might have averted the first set of Tenure Charges, which resulted in the imposition of a 120-day suspension without pay and forfeiture of her annual increment. This penalty is relevant to the extent that the instant case may properly be viewed as one in which the District imposed progressively severe discipline based on the penalty previously imposed by Arbitrator Colflesh. Applying the concept of progressively severe discipline, the increase from the penultimate penalty of a 120-day unpaid suspension and loss of increment to revocation of tenure and termination for repeated dishonest conduct and use of a controlled substance was neither arbitrary nor capricious.

Even if the penalty imposed in the instant matter were construed to be a summary discharge not predicated on previous discipline for similar misconduct, the Respondent's admitted intentional prevarication in response to a direct unequivocal inquiry by a District administrator when she did not disclose the drug test she recently failed and her recent drug use constituted just and proper cause under applicable statutory criteria to revoke her tenure and to uphold her dismissal for conduct unbecoming a teacher.

All employees have a duty of honesty to, and fair dealing with, their employers. Employees in safety sensitive and "caring" professions, including teachers, have a particular obligation to apprise their employers of circumstances in their personal lives that may raise questions about their fitness for duty. This degree of trust is heightened when the safety of young children is entrusted to a public school teacher such as in Respondent's sixth grade teaching position at Lawrence Middle School.

As a professional educator, Respondent is entrusted by parents, the elected Board of Education, and District administrators with the responsible care of children, in her case children with special needs.

District administrators, parents, and professional colleagues must be able to rely on her integrity, pedagogical competence, and adherence to professional standards of conduct. After Respondent's participation in two prior tenure charge proceedings involving similar misconduct, Respondent Maria was unequivocally aware of her duty to disclose the two positive drug tests that precipitated the tenure charges at issue in the instant case and to conduct herself honestly in dealing with her employer. She has failed to meet this standard.

Whether or not parents in the community would rightfully be upset if Respondent Maria were to return to classroom teaching is immaterial, as the applicable statute, NJSA 18A:6 et seq., establishes the pertinent criteria for adjudicating tenure charges of conduct unbecoming a teacher. NJSA 18A:6-10 provides, in relevant part:

No person shall be dismissed or reduced in compensation,

- (a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state, or except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this sub-article, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this sub-article provided.

The District has established conduct unbecoming a teacher by clear and convincing evidence, including Respondent's sworn testimony admitting her dishonesty, regarding two additional failed drug tests after the date that the Colflesh award was issued.

Respondent Maria has argued that the severity of the penalty of loss of her tenure and employment by the District is excessive, and invoked the criteria established in In re Fulcomer, 93 NJ Super. 404 (1967). This decision requires that an arbitrator evaluate four factors: (1) the nature and gravity of the offense, (2) the impact on the teacher's career, (3) extenuating and aggravating circumstances, and (4) the harm or injurious effect of the teacher's conduct on the proper administration of the school system.

In the instant matter, Respondent's repeated intentional disregard for her basic duty of honesty and good faith in dealing with her employer strikes at the core of the reemployment relationship. Teaching is a profession in which practitioners perform their duties in their classrooms independently and largely unobserved by supervision. Thus, integrity and trustworthiness are legitimate criteria for evaluating successful job performance. Respondent's off-duty misconduct was compounded by her lying to District administrators in response to direct, unequivocal



questions at her return to work interview. This dissembling was not an isolated incident or a unique mistake in a moment of panic.

Respondent's conduct was consistent with her continuing inability or refusal to apprise her employer regarding adverse circumstances of material relevance to her duties; *i.e.*, her arrest, possession of controlled substances, and drug paraphernalia, and two citations for driving on a suspended license.

Respondent admittedly understood her obligation voluntarily to disclose, and to be truthful when asked about, such deleterious conduct, yet she could not overcome her anxiety in order to act in a professional manner in crucial moments. The nature and gravity of this persistent shortcoming is self-evident. Her dishonesty in lying to District administrators on September 9, 2019, and on October 1, 2019 was compounded by her poor judgment in not disclosing her substance abuse issues and seeking help in a timely manner. These admitted errors predictably had a devastating impact on her career as a teacher not only because she was fired, but also because the District could not reasonably overlook them in fulfilling the District's duty to its school community of students, teachers, administrators, parents, and taxpayers.

Had Respondent disclosed her substance abuse problems candidly to her employer and sought the professional help she needed without hiding her issues, her honest efforts to control her substance abuse issues might have created extenuating circumstances mitigating her punishment. Her repeated intentional prevarication in circumstances when the only viable course of action was an honest response aggravated her predicament by irrevocably tainting her work environment. This was most evident when she told the District Director of Personnel and other District administrators during the October 1, 2019 meeting that she had not used drugs for an extended interval when she knew she had last used an illegal controlled substance only seven days earlier. She continued to cover up failed drug tests, exacerbating her misconduct up to the arbitration hearings, and thus severely restricting the ability of the Arbitrator to find, at least as to these two categories of dishonesty, that the District had overreached or overreacted arbitrarily and capriciously.

Respondent's repeated dishonest conduct so eroded the requisite bond of professional trust in the employee-employer relationship that the District reasonably concluded that Respondent's return to her teaching position posed an unacceptable risk of potential harm and injury to proper administration of the Lawrence Township School District. Even if

Respondent refrained from future incidents of similar misconduct, the District could no longer trust her integrity and truthfulness, which are crucial job-related characteristics. Moreover, Respondent Maria did not have an unblemished disciplinary record, as did some of the teachers in cases cited by Respondent. Her prior misconduct of hiding her arrest and drug possession from the District, upheld by Arbitrator Colflesh, was specifically related to the gravamen of the tenure charges in the instant case—lying about her drug use and hiding the results of positive drug tests. The District’s penalty was a measured and proportionate escalation of the 120-day suspension and loss of increment imposed by Arbitrator Colflesh.

This is not, as Respondent argued, a fitness for duty case to be addressed by an evaluation of fitness, or a matter of conduct for which additional steps of progressively severe discipline is warranted. Respondent was placed unequivocally on notice that repetition of lying about drug use or concealing positive drug test results was gross misconduct that would jeopardize her employment and tenure.

That the drug tests were administered in Pennsylvania or while Respondent’s status as a Lawrence Township Board of Education

employee was suspended is irrelevant and immaterial. Her violation of drug laws and driving license laws are not wholly unrelated to her readiness to resume her employment pursuant to the Colflesh award. Nor were the District's inquiries about her drug use and negative testing status unreasonably intrusive in the context of an employee seeking to demonstrate her fitness for immediate reinstatement to her teaching position.

If, as Respondent asserted, the District were obligated to adopt a rehabilitative approach versus what Respondent characterized as a punitive posture, the minimum consideration for implementing a collaborative rehabilitative approach would be honesty and candor by Respondent. As Respondent finally admitted, she failed to keep her part of such a putative bargain.

Respondent testified credibly that she deeply regrets having lied again to the District. However, Respondent's prevarication in response to direct questions about failed drug tests and recency of drug use on October 1, 2019 fatally eroded the degree of trust that every employer must have in its employees. Her actions irrevocably broke a fundamental bond of the employee-employer relationship. By not

controlling her understandable fear of the potentially adverse consequences of revealing the positive drug tests and being candid with the District, Respondent forfeited her last opportunity to seek a leave of absence in order to continue treatment for her substance abuse problems. Her actions created a reasonable basis to justify revoking her tenure and terminating her employment by the District.

Respondent's right to remain a tenured teacher employed by the Lawrence Township School District was predicated on her not violating the statutory standard of conduct unbecoming. The District proved by clear and convincing evidence, and Respondent subsequently admitted, that she violated this standard at least twice since the Colflesh award imposed a 120-day unpaid suspension and loss of her annual increment on July 22, 2019. This gross misconduct occurred after her suspension ended, after the 2019-2020 school year commenced, and while she was awaiting imminent reinstatement.

Therefore, based on the evidence submitted, the Lawrence Township Board of Education properly revoked the tenure and terminated the employment of Respondent Jill Maria. The instant grievance is hereby denied.

November 16, 2020

Daniel F. Brent, Arbitrator