

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges

**PINELANDS REGIONAL SCHOOL  
DISTRICT BOARD OF EDUCATION,  
OCEAN COUNTY, NEW JERSEY**

Petitioner,

-and-

**SHARI SAKS,**

Respondent.

AGENCY DOCKET  
NO.: 294-10/23

**OPINION AND AWARD**

**BEFORE: RUTH MOSCOVITCH, Arbitrator**

**Appearances:**

**For the Petitioner:**

Kasi Marie Gifford  
William Donio  
Cooper Levenson, PA  
1125 Atlantic Avenue, Third Floor  
Atlantic City, NJ 08401

**For the Respondent:**

Edward A. Cridge, Esq.  
Mellk Cridge, LLC  
211 Blackwell Road  
Pennington, New Jersey 08534

This matter comes before me on tenure charges brought under N.J.S.A. 18A:28-5 and N.J.S.A. 18A:6-10, et seq., by Petitioner Pinelands Regional School District Board of Education (the “District”) against Respondent Shari Saks. The tenure charges at issue here were certified to the Bureau of Controversies and Disputes by the District on or about October 16, 2023. I was appointed the arbitrator to adjudicate this matter on December 20, 2023.

In this proceeding, I heard testimony from ten witnesses over 5 days. On April 8, 10, May 10, and 14, 2024, I conducted in person hearings at the offices of Cooper

Levenson, PA in Atlantic City, New Jersey. On May 23, 2024 I heard testimony via a Zoom platform. Both sides were represented by counsel and were afforded the opportunity to call witnesses, present evidence, and to cross-examine witnesses offered by the opposing party. The District presented the testimony of Superintendent Melissa McCooley, Principal Troy Henderson, Janel Gonzalez, Director of school-based youth services at the District, one current student and one former student in its case-in-chief. Respondent testified in her own behalf. The District then present the testimony of two additional current students in rebuttal, and Respondent presented the testimony of two additional witnesses in surrebuttal. All witnesses were sworn. The District placed 27 exhibits into evidence, and Respondent placed 25 exhibits into evidence. A court reporter produced a transcript of the proceedings that was made available to the parties and to me. The parties submitted post-hearing briefs prior to July 1, 2024.

## **TENURE CHARGES**

### **PETITIONER’S STATEMENT OF CHARGES AND SPECIFICATIONS REGARDING THE EMPLOYMENT OF SHARI SAKS, A TENURED FACULTY MEMBER WITHIN THE EMPLOY OF THE PINELANDS REGIONAL SCHOOL DISTRICT BOARD OF EDUCATION**

The Pinelands Regional School District Board of Education (the “Board” or the “District”) is a body politic and corporate in the State of New Jersey, legally designated as a local educational agency, and charged with the responsibility of operating a Junior High School for grades 7-8 and a High School for grades 9-12 serving the communities of Bass River, Eagleswood, Little Egg Harbor, and Tuckerton, and providing a thorough and efficient education for students from these communities. The Board, in discharging its obligations, and pursuant to Title 18A of the New Jersey Statutes, is authorized and required by New Jersey law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations to oversee and supervise Staff and Students of the Board’s Schools. Pursuant to such authority, the Board brings forth and files the within Tenure Charges with the Commissioner of Education (the “Commissioner”) against Respondent, **Shari Saks** as follows:

#### **CHARGE 1:**

SHARI SAKS, is a tenured teaching staff member originally employed by the

Pinelands Regional School District Board on September 2, 2004 as a Temporary Leave Replacement English Language Arts Teacher. She was hired as a full time English Language Arts Teacher in September of 2005. Ms. Saks has engaged in unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations, and Board Policy, Rules, and Regulations, as follows:

**SPECIFICATION 1:** On January 18, 2022 a "student concern" was presented to Principal Troy Henderson by Janel Gonzalez, Director of SBYS (district youth services). This email contained a statement from an MSW student intern (Brittany White) who wrote in relevant part that: *"[Student K.] reports that Ms. Saks showed her naked pictures of a significant other that Ms. Saks is 'talking to' between classes at school in her classroom ...To my knowledge there were no other students present at the time [student] was shown these pictures and the incident only lasted a few minutes since it was between classes. [Student] also reported that Ms. Saks showed [student] 'inappropriate conversations' between Ms. Saks and an individual she is intimate with and explained to [student] she [Ms. Saks] is pansexual so there were [sic.] conversations between her [Ms. Saks] and men and women."* Student K. was a ninth grader at the time of this incident. **(See attached January 18, 2022 email from Director Gonzalez to Principal Henderson.)**

**SPECIFICATION 2:** On January 19, 2022 the student (K.), a ninth grader, and her mother were recorded by Principal Troy Henderson **(see attached)** as part of a phone call investigating these allegations. The student's mother confirmed she was aware of the incident involving Ms. Saks and the inappropriate pictures and conversations. She stated her daughter thought it was "inappropriate" and that it *"made her [daughter] feel uncomfortable."* This student advised her mother she was "provided a couple of inappropriate photos of a young female that [Ms. Saks] knows outside of school." She also indicated that Ms. Saks had referred to other female students as "sluts" and "whores" for the way they dressed while at school. She stated: *"A line was crossed and it was inappropriate."* Student K. confirmed she was shown nude photos by Ms. Saks as well as inappropriate text messages of a sexual nature. She stated this occurred while at the school, and that other students were present when this occurred as well. She stated the nudity was full body of a young women/co-worker at a banquet catering. The student indicated the text messages were also inappropriate as they were the *"conversation after the photos were sent...the way [Ms. Saks] was responding to the photos"* She advised that certain older students would often be present in Ms. Saks's classroom who should not be there, some of whom were present when this occurred. Notably, at one point during this discussion, the student referred to Ms. Saks as "Shari," [Ms. Saks's first name] while describing the incidents, which also occurred in the presence of another 9<sup>th</sup> grade student, G. **(See attached audio/audio transcript of January 19, 2022 telephone conference.)**

**SPECIFICATION 3:** On January 19, 2022, during a telephone conference between Principal Henderson and another 9<sup>th</sup> grade student (G., along with her mother), that student also confirmed that she was present when these incidents occurred and that she too was shown inappropriate photos of the naked girl by Ms. Saks. **(See Principal Troy Henderson's Notes/attached audio/audio transcript of January 19, 2022 telephone conference.)**

**SPECIFICATION 4:** Both of these students indicated they would cooperate with the school or any authorities, but would prefer to limit involvement if necessary given fear of its impacting their reputation at school or in the greater community.

**SPECIFICATION 5:** On January 19, 2022 Ms. Saks was notified via letter from Superintendent McCooley that she was suspended with pay, effective immediately *"due to allegations of inappropriate conduct."* **(See attached January 19, 2022 Letter from Superintendent McCooley to Ms. Saks.)**

**SPECIFICATION 6:** On January 19, 2022 the school contacted the Ocean County Prosecutor's office regarding this incident, as well as the Division of Institutional Abuse to self-report. The Ocean County Prosecutor's Office indicated it would begin an investigation into this matter.

**SPECIFICATION 7:** On June 21, 2022 Ms. Saks was provided with a due process hearing regarding the allegation of the showing of inappropriate photos and texts to ninth graders and following additional investigation. Those present at this meeting included Association President Reid, Superintendent McCooley, Assistant Superintendent Frasca, and Ms. Saks. When asked how the students knew she was or had been in a romantic relationship with a junior high teacher, Ms. Saks responded: *"We are told to make connections with kids..."* She admitted to having many non-students come to her class, arguing it was necessary and appropriate as a *"safe space,"* and that many students study better while in her classroom than in others. Ms. Saks declined to address the specific allegations of her showing nude photos to certain 9<sup>th</sup> grade students aside from saying: *"I have no idea what you're talking about."* **(See attached audio/audio transcript of June 21, 2022 Meeting.)**

**SPECIFICATION 8:** During further investigation into this matter by the school, one of the students (K.) stated that Ms. Saks *"Showed us a picture of a woman in a bikini showing her pierced nipples,"* and another student (G. G.) stated that the photos were of *"A naked wom[an] with her legs apart revealing her breast and vagina."* **(See attached.)**

**SPECIFICATION 9:** On October 5, 2022 Ms. Saks was provided with notice that she had been placed on income withholding consistent with N.J.S.A. 18A:29-14 **(See attached October 5, 2022 Letter of Income Withholding.)**

**SPECIFICATION 10:** The District took immediate steps to remove Ms. Saks from her position, and she has been placed on administrative leave with pay since that time. **(See attached Letter re Administrative Leave.)**

**SPECIFICATION 11:** For the 2022-2023 school year assignments, it was determined that **Ms.** Saks must remain on leave/suspended as the Board believed she *had “lost public trust,”* and that she could not even be placed in an area where she would not work directly with any students **(See attached communication.)** As the 2023-2024 school year commences, she remains on such leave.

**SPECIFICATION 12:** N.J.S.A. 9:6-8.11 requires that the Department of Children and Families, Institutional Abuse Investigation Unit (IAIU) investigate allegations of child abuse and neglect occurring in various out-of-home settings.

**SPECIFICATION 13:** N.J.A.C. 6A: 16-11.1 Applies to this charge. (See Charge 1 where this section of the Code is set forth at length).

**SPECIFICATION 14:** The *IAIU* findings noted that *the “sexual abuse/sexual abuse-sexual exploitation” allegations were “not established” but that “some information indicates that the child was harmed or placed at risk of harm.”* **(See attached February 21, 2023 Report.)**

**SPECIFICATION 15:** This matter was determined by the IAIU before the new allegations of ‘grooming,’ outlined in Charge 1 were brought to the District’s attention, giving rise both collectively and individually to the necessity of these tenure charges.

**SPECIFICATION 16:** District Policy #3159 (“Teaching Staff Member/School District Reporting Responsibilities”) applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3159).**

**SPECIFICATION 17:** District Policy #3281 (“Inappropriate Staff Conduct”) applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3281).**

**SPECIFICATION 18:** District Policy #3144 (“Certification of Tenure Charges”) applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3144).**

**SPECIFICATION 19:** District Policy #5751 (“Sexual Harassment”) applies to this charge. This policy provides, in relevant part:

The Board of Education will not tolerate sexual harassment of pupils by school employees, other pupils, or third parties. Sexual harassment of pupils is a form of prohibited sex discrimination. School district staff will investigate and resolve allegations of sexual harassment of pupils

engaged in by school employees, other pupils (peers), or third parties...  
(See attached Policy #5751.)

**SPECIFICATION 20:** The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for having inappropriate communications with multiple minor students including engaging in sexual conversations, inquiring about the students' sexual relationships, and sharing nude photos with minor children K. and G.

### **CHARGE 2:**

Shari Saks, a tenured teaching staff member employed by the Board has acted in a manner unbecoming pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

**SPECIFICATION 1:** The above specifications and recitals of law, code, and district policy for Charge 1 are incorporated herein as if set forth in their entirety.

**SPECIFICATION 2:** It has recently come to the District's Attention that SHARI SAKS, a tenured teaching staff member, engaged in what may reasonably be considered inappropriate 'grooming' behavior with a former Pinelands Regional School District student (Isabelle Boyer) who stated she had known Ms. Saks dating back to 7th grade. Although this relationship apparently only culminated in a physical relationship once the student reached eighteen years of age and was a first-year student in college, in an interview with school Superintendent Dr. Melissa McCooley, this former student advised that looking back on her relationship with Shari Saks, she realized it was inappropriate commencing from the time she was in junior high school and at all times thereafter. This former student stated specifically that: *"She would, like, take me places, and do things...She like, took me to New York and took me to a show..."* She confirmed this occurred while she was still a minor in high school and that others had mentioned to her the term *"grooming"* regarding this relationship and a lack of appropriate boundaries by an adult/school staff member. She stated that though she thought Ms. Saks *"had bad boundaries,"* she [Ms. Saks] *"didn't try anything"* until she was 18 and when she had recently graduated from high school. She also stated that before her physical encounter with Ms. Saks, her former teacher had pulled up a bunch *"nude photos"* of herself and her ex-wife and showed them to her. She stated she was eighteen or nineteen years old at the time of this physical encounter. She indicated they had both been drinking alcohol that evening, though she had not consumed alcohol at Ms. Saks's house, only beforehand. She stated: *"I don't think it's right what she did with me [as a student] at all...I probably never would have put Shari in a bad position until I started to hear that other students were saying stuff..."* She also stated she would speak to the authorities or sign a witness statement about her experiences with Ms. Saks. **(See April 3, 2023 Audio/Audio Transcript Interview with former student, See attached Certification of Mr. Hand.)**

**SPECIFICATION 3:** Some of the activities the student now deems as 'grooming,' and

which all occurred prior to her turning eighteen years of age or graduating from high school include: frequent telephonic, text, and email communications, spending time with Ms. Saks outside of normal school hours while at the school, and spending time with Ms. Saks outside of normal school hours outside of the school setting, including Ms. Saks taking this then minor student on a personal trip to New York City while the student, all of which is against district policy. **(See April 3, 2023 Audio/Audio Transcript Interview with former student, School Policy #3281),**

**SPECIFICATION 4:** This matter has been turned over to the Ocean County Prosecutor's Office, which is continuing to investigate, and should also be turned over, along with the other misconduct allegations contained herein to the State Board of Examiners regarding suspension or termination of Ms. Saks's educational certifications. Regardless of the ultimate criminal disposition of this matter, the below policies and laws demonstrate that Ms. Saks engaged in these and other inappropriate grooming-type behaviors with this then student and acted inappropriately in a similar manner with other current students, which is all the more concerning regarding the nude photos she allegedly showed ninth grade students (K. and G.), as specifically outlined in Charge 1.

**SPECIFICATION 5:** This matter came to the school's attention after Ms. Saks had already been placed on administrative leave for alleged inappropriate behavior toward students/minor children, and Ms. Saks has remained on paid administrative leave pending an investigation since January 19, 2022. **(See January 19, 2022 Letter of Notice re Administrative Leave.)**

**SPECIFICATION 6:** Board Policy #3159 ("Teaching Staff Member/School District Reporting Responsibilities") provides in relevant part that:

The Board of Education and all certificate holders shall adhere to the reporting requirements outlined in N.J.A.C. 6A:9B-4.3 and N.J.S.A. 18A:16-1.3...The Superintendent shall notify the New Jersey State Board of Examiners when: 1. Tenured teaching staff members who are accused of criminal offenses or unbecoming conduct resign or retire from their positions; 2. Nontenured teaching staff member, including substitute teachers, who are accused of criminal offenses or unbecoming conduct resign, retire, or are removed from their positions. 3. A certificate holder fails to maintain any license, certificate, or authorization that is mandated pursuant to N.J.A.C. 6A:9B for the holder to serve in a position. 4. The Superintendent becomes aware that a certificate holder has been convicted of a crime or criminal offense while in the district's employ; or 5. The Superintendent has received a report from the Department of Children and Families substantiating allegations of abuse or neglect, or establishing "concerns" regarding a certificated teaching staff member...In accordance with N.J.S.A. 9:6-8.14, any person failing to report an act of child abuse, having reasonable cause to believe that an act of child abuse has been committed, may be deemed a disorderly person. **(See attached Policy #3159.)**

**SPECIFICATION 7:** Board Policy #3281 (“Inappropriate Staff Conduct”) provides in relevant part that:

The Board of Education recognizes its responsibility to protect the health, safety, and welfare of all pupils within this school district. Furthermore, the Board recognizes there exists a professional responsibility for all school staff to protect a pupil’s health, safety, and welfare. The Board strongly believes that school staff members have the public’s trust and confidence to protect the well-being of all pupils attending the school district. In support of this Board’s strong commitment to the public trust and confidence of school staff, the Board of Education holds all school staff to the highest level of professional responsibility in their conduct with all pupils. Inappropriate conduct and conduct unbecoming a school staff member will not be tolerated in this school district. The Board recognizes and appreciates the staff-pupil relationship that exists in a school district’s educational environment. This Policy has been developed and adopted by the Board to provide guidance and direction to avoid actual and/or the appearance of inappropriate staff conduct and conduct unbecoming a school staff member toward pupils.

School staff’s conduct in completing their professional responsibilities shall be appropriate at all times. School staff shall not make inappropriate comments to pupils or about pupils and shall not engage in inappropriate language or expression in the presence of pupils. School staff shall not engage in inappropriate conduct toward or with pupils. School staff shall not engage or seek to be in the presence of a pupil beyond the staff member’s professional responsibilities. School staff shall not provide transportation to a pupil in their private vehicle or permit a pupil into their private vehicle unless there is an emergency or a special circumstance that has been approved in advance by the Building Principal/immediate supervisor and the parent/legal guardian.

Inappropriate conduct by a school staff member outside their professional responsibilities may be considered conduct unbecoming a staff member. Therefore, school staff members are advised to be concerned with such conduct which may include, but is not limited to, communications and/or publications using e-mails, text-messaging, social networking sites, or any other medium that is directed and/or available to pupils or for public display.

A school staff member is always expected to maintain a professional relationship with pupils and school staff members shall protect the health, safety and welfare of school pupils. A staff member’s conduct will be held to the professional standards established by the New Jersey State Board of Education and the New Jersey Commissioner of Education. Inappropriate conduct or conduct unbecoming a staff member may also



include conduct not specifically listed in this Policy, but conduct determined by the New Jersey State Board of Education, the New Jersey Commissioner of Education, an arbitration process, and/or appropriate courts to be inappropriate or conduct unbecoming a school staff member... **(See attached #3281.)**

**SPECIFICATION 8:** N.J.A.C. 6A: 16-11.1 provides, in relevant part that:

- (a) The district board of education shall develop and adopt policies and procedures for school district employees, volunteers, or interns to provide for the early detection of missing, abused, or neglected children through notification of, reporting to, and cooperation with appropriate law enforcement and child welfare authorities pursuant to *N.J.S.A. 18A: 36-25* and *25.2*, *N.J.S.A. 9:6-8.10*, and *6A:22-4.1(d)*...

**SPECIFICATION 9:** The decision to seek these tenure charges is based upon the District's concern about its students' health, safety, and welfare. After being RICED on many occasions, Ms. Saks's inappropriate behavior as a teaching staff member has been discussed at numerous Board of Education executive session meetings. Although the Board did not want to continue paying Ms. Saks, they were extremely uncomfortable allowing her to work with our students. The Board continues to be adamant about keeping Ms. Saks out of the classrooms and the school, as they are charged with providing students with a healthy and safe learning environment. As noted in the additional charges herein, such concerns are not limited to only one student or one isolated incident, although each of the charges herein should be sufficient in and of themselves to successfully proceed with tenure charges for unbecoming conduct.

**SPECIFICATION 10:** Board Policy No. 3144 ("Certification of Tenure Charges") provides in relevant part that:

Tenure charges may be instituted against a tenured staff member of the district in accordance with the provisions of N.J.A.C. 6A:3-5.1 et seq. In all instances of the filing and certification of tenure charges, except charges filed against a teacher, Principal, Assistant Principal, or Vice Principal for reasons of inefficiency pursuant to N.J.S.A. 18A:6-17.3, the procedures and timelines outlined in N.J.A.C. 6A:3-5.1(b) shall be observed. In the event the tenure charges are charges of inefficiency pursuant to N.J.S.A. 18A:6-17.3, except in the case of Principals, Assistant Principals, and Vice Principals in school districts under full State intervention, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the procedures and timelines outlined in N.J.A.C. 6A:3-5.1(c) shall be observed...

An individual against whom tenure charges are certified shall file a written response to the charges in accordance with the provisions of N.J.A.C. 6A:3-5.3 et seq. The Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary in accordance with the provisions of N.J.A.C. 6A:3-5.5. Any

withdrawal, settlement, or mooted of tenure charges shall be in accordance with the provisions of N.J.A.C. 6A:3-5.6. **(See attached Policy #3144.)**

**SPECIFICATION 11:** The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for engaging in inappropriate communications with a student and for ‘grooming’ that student while a minor prior to culminating a physical relationship with them upon their reaching the age of eighteen and graduating from high school, a relationship with origins the student herself now deems both inappropriate and abusive.

### **CHARGE 3:**

SHARI SAKS, a tenured teaching staff member employed by the Board engaged in additional unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

**SPECIFICATION 1:** The above specifications and recitals of law, code, and district policy for Charges 1 and 2 are incorporated herein as if set forth in their entirety.

**SPECIFICATION 2:** In another, unrelated incident, Ms. Saks was investigated and found responsible for a confirmed HIB (Harassment, Intimidation, and Bullying) act against current students. Specifically, during the height of the COVID-19 pandemic, and specifically in February of 2021, pictures of minor students being unmasked at lunch were sent to Ms. Saks by a colleague, and those photographs later ended up on a disparaging social media page meant to embarrass people not wearing masks in public places. Ms. Saks admitted to forwarding these pictures of students to individual(s) outside the school, though denied she was responsible for uploading them to the *Maskholes: Make Them Infamous*<sup>1</sup> (“Maskholes”) Facebook page, of which she was a member. **(See attached photos; ‘Maskholes’ Facebook Page, and HIB investigation/determination.)**

**SPECIFICATION 3:** Screenshots of the Maskholes Facebook page show that parents were upset about photos being used of minors while at school, and one poster even called out Ms. Saks specifically. **(See attached ‘Maskholes Facebook Page Comments.’)**

**SPECIFICATION 4:** This incident caused negative implications for students, parents, and the district as a whole, including the Violation of policies #3211 (“Code of Ethics”), #3281 (“Inappropriate Staff Conduct”), #5512 (“Harassment, Intimidation, and Bullying”), and #9120 (“Public Information Program”). **(See attached Policies #3211, #3281, #5512, and #9120.)**

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<sup>1</sup> The Maskholes: Make them Infamous Facebook Page was created on January 31, 2021 and its "about" section states in relevant part: *"Post pics and vids of maskholes. Time to stick together and stop these people from not wearing masks so we can beat Covid."*

**SPECIFICATION 5:** Accordingly, and consistent with the above policies, Ms. Saks did not follow the chain of command regarding students at lunch without masks during the Covid-19 pandemic. Instead, Ms. Saks shared the pictures with third parties outside the school, thus violating four separate district policies, as outlined below, Ms. Saks thus failed to follow proper protocols or to inform the administration of any valid concerns she might have had. **(See attached Policies #3211, #3281, #5512, and #9120.)**

**SPECIFICATION 6:** The parents of the students disseminated on the “Maskholes” Facebook page were uniformly upset, particularly as the photos were taken during the school day, were taken of at least five separate minors, and were taken at a time the students were eating lunch (on February 9, 2021) and thus were not required to wear masks consistent with then in place State healthcare Directives; though clearly a photo should not have been taken of minor students while at school, disseminated to non-school employees, and posted on the internet without permission even if such directives were not being followed. **(See attached photos; ‘Maskholes Page’ Policies #3211, #3281, #5512, #9120; Communications from Families and their Attorney(s).)**

**SPECIFICATION 7:** At least one of the parents of the involved students hired a law firm who sued or threatened to sue the District over this matter. Specifically, on February 17, 2021 an allegation of cyberbullying was sent to Superintendent McCooley on behalf of one of the minors in the posted photo. **(See Attached February 17, 2021 Allegation of Cyberbullying.)**

**SPECIFICATION 8:** On May 6, 2021 an attorney for one of the families filed a Tort Claim notice with the school concerning this matter (see attached). The tort Claim sought damages for negligent infliction of emotional distress, intentional infliction of emotional distress, false light, libel/slander, defamation, improper publication of private facts, tortious invasion of privacy, negligence, and negligent supervision and cited to a “*very negative impact*” on the student’s education. **(See Attached May 6, 2021 Tort Claim Notice.)**

**SPECIFICATION 9:** At least one of the parents of the parents of the involved students contacted local law enforcement over this matter. **(See attached Emails.)**

**SPECIFICATION 10:** Several of the parents of the minor students involved in this matter called or emailed administration to complain. **(See attached Emails.)**

**SPECIFICATION 11:** The minor children involved in this matter indicated, throughout the HIB investigation, that they were concerned and upset by what occurred. As one student stated **(See Student Interview #13624756, HIB Presentation)** “*At first I was very like upset and kind of mad about it because*

*like I am under age, I'm only 15 and I was just eating lunch, like a simple normal thing everyday and my photos in the group chat and school is supposed to be like a safe space for kids and you know at first I thought like maybe it was a student ...it kind of like makes me feel like unsafe..."*

**SPECIFICATION 12:** Also in February 2021, a photograph of the district's Educational Facilities manager was also uploaded to the "Maskholes" Facebook page, which was apparently created to shame those who were not wearing masks during the pandemic. The individual who took that photograph (Ms. Dorothy Gleason) admitted to sharing it with colleagues but denied sharing it with the administrator of the Maskholes Facebook group. It is unclear how this occurred.

**SPECIFICATION 13:** The individual who admitted to taking the photos (Mrs. Patricia Fraley, high school teacher) stated she only disseminated the photos to two "union rep employees," one of whom was Shari Saks and the other was Mrs. Allison Laurence. Mrs. Laurence admitted to receiving the photo but denied sharing it with anyone else. Ms. Saks admitted to forwarding the matter to others, but stated she could not remember whom. Ms. Saks also stated she regularly deleted her texts and therefore could not confirm which individual or individuals she disseminated these photos to. Ms. Saks stated she had "no idea" how the photos got onto the Maskholes Facebook page. She also specifically stated: *"The only thing I wrote [on that page] that was inappropriate was calling (a colleague) a fucking idiot."* She again stated she did share the photos with others, but she did not remember with whom, though it was not the individual who actually posted them onto the Maskholes Facebook page. Ms. Saks was requested to provide a written statement of the incident but failed to do so. **(See the February 12, 2021 attached audio/audio transcript detailing the investigation. Pinelands Regional Educational Association representation was present for Ms. Saks and the other school employees being investigated at that time. See also the attached HIB documents, investigation records, and notes.)**

**SPECIFICATION 14:** As a result of the investigation, the District found evidence that Ms. Saks and another colleague (Fraley) *"committed an act. of harassment, intimidation, or bullying,"* consistent with N.J.S.A. 18A:37-14. Ms. Saks was required to follow up with the Superintendent, to attend voluntary confidential counseling, and to receive additional training on school policies 3211 ("Code of Ethics,"), 3281 ("Inappropriate Staff Conduct,"), 5512 ("Harassment, Intimidation, Bullying," and 9120 ("Public Information Program"). **(See attached letter of March 18, 2021 to Ms. Saks from Superintendent McCooley. See also March 30, 2021 official reprimand letter re conduct unbecoming of a teaching staff member.)**

**SPECIFICATION 15:** On March 17, 2021 Ms. Saks was provided with Due Process and provided with steps to be taken after being found responsible for a

HIB violation. During that meeting, Ms. Saks stated she did not wish to say anything and was provided a letter for the HIB. **(See attached audio/audio transcript; Pinelands Regional Educational Association representation was present for this meeting.)**

**SPECIFICATION 16:** Three of the involved students expressed emotional harm from the incident, and one student did not return to school after the photo was posted on February 9, 2021 and has not returned since. **(See attached.)**

**SPECIFICATION 17:** Ms. Saks engaged in a separate social media page displaying a picture of other Pinelands' school employees meeting and, during the school day commented on that page: *"fucking idiots ...Yet the teachers get blamed for the school closing. I'm so over all of this,"* thus violating the "Shall not knowingly make false or malicious statements about a colleague," section of policy #3211, "Code of Ethics." **(See attached "Maskholes" Page Comments by Ms. Saks.)**

**SPECIFICATION 18:** District Policy #3144 ("Certification of Tenure Charges") applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3144).**

**SPECIFICATION 19:** The standards have thus been met to proceed with tenure charges for causing a disruption to the education of the students involved and to the educational environment as a whole and to failing to protect the confidentiality of the minor children involved by taking their photos and disseminating them to third parties who placed them on the internet on a Facebook page dedicated to shaming those who do not wear masks.

**SPECIFICATION 20:** District Policy #3211 ("Code of Ethics") provides, in relevant part:

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

Preamble

The educator, believing in the worth and dignity of each human being, recognizes the supreme importance of the pursuit of truth, devotion to excellence, and the nature of democratic principles. Essential to these goals is the protection of freedom to learn and to teach and the guarantee of equal educational opportunity for all. The educator accepts the responsibility to adhere to the highest ethical standards.

The educator recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parent(s) or legal guardian(s), and of the members of the community provides the incentive to attain and maintain

the highest possible degree of ethical conduct. The Code of Ethics of the Education Profession indicates the aspiration of all educators and provides standards by which to judge conduct...

In fulfillment of the obligation to the student, the educator-

- 1) Shall not unreasonably restrain the student from independent action in the pursuit of learning.
- 2) Shall not unreasonably deny the student access to varying points of view.
- 3) Shall not deliberately suppress or distort subject matter relevant to the student's progress.
- 4) **Shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety.**
- 5) **Shall not intentionally expose the student to embarrassment or disparagement.**
- 6) Shall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation, unfairly—
  - a. Exclude any student from participation in any program
  - b. Deny benefits to any student
  - c. Grant any advantage to any student
7. Shall not use professional relationships with students for private advantage.
8. Shall not disclose information about students obtained in the course of professional service, unless disclosure serves a compelling professional purpose or is required by law...

**(See attached Policy #3211.)**

**SPECIFICATION 21:** District Policy #3281 (“Inappropriate Staff Conduct”) applies to this charge. **(See Charge 2 where this policy is set forth at length, and attached Policy #3281).**

**SPECIFICATION 22:** District Policy #5512 (“Harassment, Intimidation, and Bullying”) provides, in relevant part:

The Board of Education prohibits acts of harassment, intimidation, or bullying of a student. A safe and civil environment in school is necessary for students to learn and achieve high academic standards. Harassment, intimidation, or bullying, like other disruptive or violent behaviors, is conduct that disrupts both a student’s ability to learn and a school’s ability to educate its students in a safe and disciplined environment. Harassment, intimidation, or bullying is unwanted, aggressive behavior that may involve a real or perceived power imbalance. Since students learn by example, school administrators, faculty, staff and volunteers should be commended for demonstrating appropriate behavior, treating others with civility and respect, and refusing to tolerate harassment, intimidation, or bullying...

**(See attached Policy #5512.)**

**SPECIFICATION 23:** Board Policy #9120 (“Public Relations Program”) provides, in relevant part:

The Board of Education believes all reasonable means should be employed to keep the community served by the school district informed on matters of importance regarding district programs, finances, personnel, policies, and operations.

The Board will determine which of its official actions have sufficient community impact and interest to warrant special release; the Board alone will release to the news media information about those matters of importance. The Board President may release information regarding Board actions of lesser importance as they have been recorded in the minutes of the Board meetings and upon the request of media representatives. The release of all other publications, photographs, and documents depicting the accomplishments of the pupils and staff of the district shall be approved by the Superintendent of Schools or designee.

The school district will not release or publish photographs or release other personal identifying information of an individual district pupil without the prior written permission of the parent(s) or legal guardian(s) or from the adult pupil. Written permission slips for such release from each parent(s) or legal guardian(s) or adult pupil will be obtained by the Principal or designee for the pupils in their school building or by the Program Administrator for pupils in programs where a Principal is not assigned. These written permission forms shall be maintained by the Principal or Program Administrator. Group photographs may be released by the district without permission, but in no event will an individual pupil in a group photograph be identified by name and/or by other personal identifier without written permission from the parent(s) or legal

guardian(s) or adult pupil...  
(See attached 9210.)

**SPECIFICATION 24:** The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for engaging or assisting in the dissemination of minors to third-party websites absent their permission, potentially defaming such students and/or invading their privacy.

**CHARGE 4:**

SHARI SAKS, a tenured teaching staff member employed by the Board engaged in additional unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

**SPECIFICATION 1:** The above specifications and recitals of law, code, and district policy for Charges 1, 2, and 3 are incorporated herein as if set forth in their entirety.

**SPECIFICATION 2:** Ms. Saks also invited the Ocean County Prosecutor's office staff into the high school on May II, 2021 without first notifying the school Principal, as required per policy #9150 ("School Visitors"). **(See attached May 11, 2021 Email of Principal Henderson and Response; Policy #9150.)**

**SPECIFICATION 3:** On May 11, 2021, High School Principal Troy Henderson wrote an email to Ms. Saks (attached) stating, in relevant part: *"Did you coordinate to have the Ocean County Prosecutor's Office come to the school today? Can you please let me know the purpose of their visit and what is happening with our students? None of the administrators were aware. Who approved this?"* Notably, this occurred shortly after the Maskholes issue and the pending HIB violation were filed against Ms. Saks by the District. That same day, Ms. Saks responded in relevant part via email (see attached) *"Michael Colwell and Paul Whitehead from the Ocean County Prosecutor's Office wound up coming to the high school on extremely short notice to help three students technologically prep for a discussion panel that they will be participating in on Thursday evening at 5pm with Congressman Andy Kimm..."* **(See attached May 11, 2021 email from Principal Henderson to Ms. Saks.)**

**SPECIFICATION 4:** On May 11, 2023 Principal Henderson advised Ms. Saks via email (see attached) that *"inviting outside visitors without prior approval is a violation of [District] Policy 9150. Any future plans to invite anyone in the school or to speak with our students virtually must have prior approval."* **(See attached May 11, 2021 email from Principal Henderson to Ms. Saks.)**

**SPECIFICATION 5:** District Policy #9150 ("School Visitors") provides:

The Board of Education welcomes and encourages visits to school by parent(s) or legal guardian(s), other adult residents of the community, and interested educators. In order for the educational program to



continue undisturbed when visitors are present and to prevent the intrusion of disruptive persons into the schools, the Board directs the enforcement of rules governing school visits.

The Superintendent and Building Principal each possess the authority to prohibit the entry of any person into a school of this district or to expel any person from the school when there is reason to believe the presence of such person would be inimical to the good order of the school. If such a person refuses to leave the school grounds or creates a disturbance, the Principal is authorized to request from the local law enforcement agency whatever assistance is required to remove the individual.

Visitors shall be required to register their presence in the school. No staff member shall transact business with or permit the continuing presence in the school of a visitor who has not been duly registered.

No visitor may confer with a pupil in school without the approval of the Principal; any such conference may take place only in the presence of a teaching staff member and/or administrator

The Superintendent shall develop regulations that will protect pupils and employees of the district from disruption to the educational program and the efficient conduct of their assigned tasks. **(See attached Policy #9150.)**

**SPECIFICATION 6:** The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for violating District Policy by inviting third parties onto school grounds absent permission or prior notice.

#### **CHARGE 5:**

SHARI SAKS, a tenured teaching staff member employed by the Board engaged in additional unbecoming conduct pursuant to New Jersey Law, New Jersey Department of Education rules and regulations and Board Policy, Rules, and Regulations, as follows:

**SPECIFICATION 1:** The above specifications and recitals of law, code, and district policy for Charges 1, 2, 3, and 4 are incorporated herein as if set forth in their entirety.

**SPECIFICATION 2:** Ms. Saks failed to attend a mandatory faculty meeting on June 15, 2021. Ms. Saks responded on June 16, 2021 that she was upset the "Cat Eye" position was taken from her in the District and that she was *"extremely distraught and had an extremely difficult time remaining composed throughout the remainder of the school day."* She stated that: *"I spent the rest of the school day fighting back tears. I then contacted my therapist and my doctor to make appointments for [that day] after school. I tried to mentally prepare myself to attend the faculty meeting but knowing that I would be in the presence of people that do not believe in me. do not support me,*

*and are taking away the responsibilities that I hold the most dear to me upset me so much that I came home and continued to struggle to be okay,” (See June 16, 2021 email of Ms. Saks to Principal Henderson.)* Thereafter, Mr. Henderson responded via email (***see attached***) stating that her explanation was unacceptable and that if she was unable to fulfill her job responsibilities she should have asked to take a personal day or otherwise informed her supervisor. Ms. Saks was directed to make up the time but failed to follow up in a timely fashion (***see attached emails of July 12, 2021***).

**SPECIFICATION 3:** As demonstrated by the **attached December 21, 2021 email** from Principal Henderson, it then came to the administration’s attention that Ms. Saks was *“telling students [she] was not in school Monday and Tuesday because another teacher reported [her] as suicidal.”*

**SPECIFICATION 4:** Ms. Saks obtained a letter from a behavioral health center stating she had been screened and was cleared to return to work.

**SPECIFICATION 5:** On January 5, 2022 Principal Henderson documented by way of letter to Ms. Saks (***see attached January 5, 2022 Letter***) the incident of December 21, 2021 and describing a meeting of December 22, 2021 with Ms. Saks, Principal Henderson, Director Erin Lichtenwalner, and Association President Reid. It was memorialized that during this meeting Ms. Saks stated: *“I had some parents contact me that I am friends with and I told them the truth, which was I was kicked out of school for three days because I made an offhand comment that people usually say that was totally misinterpreted.”* The letter further confirmed that *“several students were interviewed and confirmed that [Ms. Saks] told them [Ms. Saks] was not in school for two days because [Ms. Saks] reported [as] suicidal “*Principal Henderson’s letter references District Policy #3281 and concludes: *“It is inappropriate to discuss personal matters of this nature with your students or their parents ...Please refer to [District] Policy 3281, in which you are in direct violation of and refrain from engaging students or parents in conversations beyond your professional responsibilities.”* (***Attached to this letter was [District] Policy 3281, Inappropriate Staff Conduct, attached***)

**SPECIFICATION 6:** On February 10, 2022 Ms. Saks wrote a note during a work meeting, that she later classified as being humorous, which merely stated: *“I’m trying not to take a bunch of pills right now.”* (***See attached February 10, 2022 note of Ms. Saks. See attached Certification of Mr. Hand.***)

**SPECIFICATION 7:** The standards have thus been met to proceed with tenure charges for unbecoming conduct against teacher Shari Saks for engaging in inappropriate and alarming communications with students, parents, and fellow staff.

## **ISSUE PRESENTED**

Whether the Board has demonstrated by a preponderance of the credible evidence that the Respondent has engaged in conduct unbecoming a teaching staff member. If so, what shall be the penalty?

## **PROCEDURAL BACKGROUND**

Prior to the hearing in this matter, I reviewed and ruled on several significant motions. Of particular note, Respondent raised three issues:

1. Production of IAIU File. Respondent asked me to issue an Order compelling production of the investigative file prepared by the new Jersey Department of Children and Families, Institutional Abuse Investigation Unit (IAIU) regarding the allegations in Charge I. I issued that Order on January 26, 2024 and received the file on March 5, 2024. Thereafter, I shared the file with counsel for both parties subject to my protective order that respects and safeguards the identity of minor, student witnesses. During the hearing, I limited the use of interviews found in those files to those related to the testimony of witnesses who appeared before me.

2. Barring testimony of undisclosed witnesses. Respondent filed with me on March 8, 2024 a Motion In Limine to bar the testimony of witnesses who were not timely disclosed. The parties briefed this matter, and I issued my ruling on March 22, 2024. I denied the motion in part: I permitted all witnesses who had been identified and named by the District in its various filings; any other witnesses the District wished to call would be allowed to testify only for impeachment purposes.

3. Barring testimony regarding Charge 3 – “Maskholes.” Charge 3 concerns allegations that Respondent violated District policies by disclosing photos of students without their knowledge or consent on a Facebook page about compliance with Covid 19 masking protocols. The parties made me aware that these charges had already resulted

in discipline against Respondent in the form of denial of wage increments and is currently the subject of extensive litigation in various forums. Accordingly, I barred any testimony regarding this Charge, and I informed the parties that I will not make any findings regarding the sufficiency of proofs on Charge 3. However, I did not strike the Charge, since it might be relevant to the issue of penalty if other charges are sustained.

The hearing in this matter, then, was limited to proofs regarding four charges against Respondent; this decision will likewise be limited to those charges:

Charge 1 – that Respondent showed naked pictures and inappropriate text messages of a sexual nature to a minor student, and had inappropriate conversations regarding her own sexuality and private life; and that she referred to female students as “sluts” and “whores” for the way they dressed;

Charge 2 – that Respondent had an inappropriate relationship with a minor student that culminated in a physical relationship once the student reached the age of eighteen;

Charge 4 – that Respondent invited third parties onto school grounds without prior permission; and

Charge 5 – that Respondent failed to attend a mandatory faculty meeting, and that she discussed with students that she had suicidal thoughts and was considering self-harm.

## **FACTUAL BACKGROUND**

**The School District.** These tenure charges were brought against Respondent, a tenured high school English teacher, employed by Pinelands Regional School District Board of Education, Ocean County (the District). Relevant to this proceeding, the

District operates a Junior High or Middle School and a High School, both located in Little Egg Harbor Township, New Jersey.

**Respondent.** Respondent grew up in the community serviced by the District. She attended the District's middle and high schools before attending Stockton College where she earned a bachelor's degree in literature. (Tr. 3 at 4-5)<sup>2</sup> Ultimately, she became a teacher with a certificate to teach English for grades 7 through 12. (Tr. 3 at 6) Respondent began her teaching career as a substitute teacher in 2004, became full-time in the District in 2004, and was certified in 2005. She has been continuously employed by the District since 2005. She taught 7<sup>th</sup> grade English at the middle school from 2005 until 2019 and then moved to the High School, where she taught 3 levels of English classes: Honors, college prep, and skills (a lower level) as well as the Gifted and Talented program (GATE). (Tr. 3 at 8)

In addition to her teaching responsibilities, Respondent was active in the school in a number of ways. She developed a program called "Bridging the Gap" to help students transition from the middle grades to high school. She also served as an advisor and coach to cross-curriculum and extra-curricular activities, including the High School's P.R.I.D.E. day, where students participated in community service and fundraising. She was an advisor to the English club, created and advised a dance club, and was advisor to the Gay Straight Alliance student group. (Tr. 3 at 9, 96) She also coached cheerleading and girls' volleyball, and both of those teams under her leadership went to state. And she worked on the high school's career day. (Tr. 3 at 9) Respondent received positive evaluations each year from 2005 through 2021 and was repeatedly

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<sup>2</sup> I refer to the transcripts for the five days of testimony as Tr. 1, Tr. 2, etc.

commended for her energy, creativity and dedication to the student community. (R. Ex. 1-15)

In addition to living in the District as a member of the community, Respondent has a son who attended the District middle school and high school and was friends with a number of Respondent's students.

All three current student witnesses<sup>3</sup> acknowledged that they like Respondent and think she was a good teacher. (G. Tr. 1 at 101, ; S. Tr. 4 at 23; J. Tr. 4 at 87)

### **Sharing nude photo with students.**

Student G., currently in her junior year in high school, testified that during her freshman year, she had Respondent for English honors. (Tr. 1 at 62) She and some of her friends would "hang out" in Respondent's classroom during another period: when Respondent did not have a class; she would allow students, both freshmen and upperclassmen to stay in her room, where they would do homework, eat lunch or talk with friends. G. said she would, at times, ask for a pass from her geometry teacher, Mr. Reid, particularly if she had already finished her math homework. She would then go down to Respondent's classroom and hang out with her friends. (Tr. 1 at 62-3) G. testified that during those periods, Respondent would usually sit at her desk looking at her phone or talking to the students. (Tr. 1 at 68)

On one particular day in the middle of the 2021-22 school year – before spring break or Christmas break – G. and her friend K. were in Respondent's classroom. She testified to the following:

[Respondent] was talking about her female coworker and in the past she had talked about how her female coworker had made passes at her and flirted with

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<sup>3</sup> I refer to each of the students by using initials – one if there is no duplicate – and two where there is a duplication.

her, and she would tell [K] and I about that. And then one day she said that her female coworker sent her nude photos, and I only saw one photo. It was a photo of the woman's breasts and her nipples were pierced and she was laying in bed.

(Tr. 1 at 66, 149, 155) Respondent said this coworker didn't care that Respondent was already in a relationship, she still wanted to "hook up" with her. (Tr. 1 at 149)

G. testified that she and K. had been seated in front of Respondent's desk. For some reason, which G. does not recall, they walked up to Respondent's desk. Respondent told them that she was going to show them something. G. "thought it was messages from the coworker," but then Respondent asked if they wanted to see a photo. G. did not reply, but K. said, "yes."

And then she flipped her phone for us to see it, and we saw a nude photograph of her coworker, and you could see it was her breasts and her nipples were pierced.

(Tr. 1 at 69)

G. said that Respondent was laughing while she showed the girls the photo. (Tr. 1 at 150) G. didn't know how to react. She said something like, "That was f-ing nasty" or "f-ing disgusting" and walked out of the room. (Tr. 1 at 70, 150) She did not report the incident to anyone at the time, although she did tell another friend, and she discussed the incident with K. (Tr. 1 at 125-6)

K. did not testify in this proceeding. However, there was evidence that she reported the matter in January 2022 to a social work intern named Brittany White, whom she was seeing as part of the school-based youth services program. Immediately after K. had spoken to her, the intern brought the matter to her supervisor, Janel Gonzales, Director of the school-based youth services program. Ms. Gonzalez is a licensed social worker with a master's degree in school counseling. She did testify in this proceeding.

Ms. Gonzalez testified that she and Ms. White notified Troy Henderson, the High School principal and the school's guidance counselor that same day. (Tr. 1 at 29) Mr. Henderson in turn reported the matter to District superintendent, Dr. Melissa McCooley. (Tr. 2 at 54)

Mr. Henderson testified that he called G. the following day; G. was not at school, so he called her home and spoke first to her and then to her mother. (Tr. 2 at 63) He recorded the conversation, and the recording was played during the hearing. A professional transcription of the recording was prepared after the hearing by the court reporter. (P. Ex. 24) G. told Mr. Henderson what she testified to in this proceeding:

[Respondent] was talking about how this girl has been -- from her work has been like bugging her recently, and won't leave her alone, and she was saying that she sent, like explicit photos of herself and she showed them to myself and another classmate."

(Tr. 2 at 78, P. Ex. 24 at 3) G. told Mr. Henderson that Respondent shared just one photo along with text messages; G. did not read the texts. (P. 24 T 4-5) Principal Henderson spoke to G.'s mother and ascertained that the mother had overheard her daughter's conversation with him. (Tr. 2 at 78, P. 24 at 8-9)

Student J. testified. She is currently a Senior in the High School. She had Respondent as her English teacher in 9<sup>th</sup> grade. (Tr. 4 at 57) She was in the habit during the 2021-22 school year of going to Respondent's classroom to eat lunch, along with some of her friends. Often, G. and K. would be there as well. (Tr. 4 at 58) She recalled Respondent talking about a female co-worker who Respondent was physically attracted to, because she was "hot," but that Respondent would never be sexually involved with her because of her young age. (Tr. 4 at 65)



J. also recalled that Respondent asked some of the students who were gathered in her classroom about how to take a screen shot to save nude photos that someone sent her over Snapchat without the sender knowing she had taken the screen shot. (Tr. 4 at 65-6, 93) J. testified that she remembers G. getting up to look at something on Respondent's phone. (Tr. 4 at 67)

Respondent testified. She acknowledged that students would come into her room, sometimes to do their homework, "because they were able to concentrate better in my room," and sometimes to eat their lunch or to engage in peer tutoring. (Tr. 3 at 15-6) As long as students asked and had a pass from the teachers in their other classes, she would allow them to be in her room:

I did what I could to make m[y classroom] feel safe for the students that were in there and that wanted to come in there when they felt they needed to go in there. (Tr. 4 at 14) She testified that G. and K. were two of the students who asked and who she allowed to come to her classroom. (Tr. 4 at 18-20)

She testified unequivocally that the incident testified to by G. did not occur. (Tr. 3 at 42-3) She could not recall any time that she showed a picture on her phone to any student. (Tr. 3 at 43)

### **Commenting on personal relationships.**

In addition to the conversations between Respondent and students described above, there was testimony about times when Respondent discussed with students aspects of her own intimate and relationship life and those of the students.

G. testified that she heard Respondent tell K. that her relationship with another student she was dating would not work out and they would break up in a month or so. (Tr. 1 at 73). She also testified that Respondent told her she should date her son. (Tr. 1 at 73)

J. testified that once when she was hanging out in Respondent's classroom, Respondent commented that she should "have gotten together" with S., one of her female friends. S. responded, that would be like getting with her own sister. At the time J. was getting ready to date one of her male classmates, who was present and heard these comments. (Tr. 4 at 60, 90). S. likewise testified that Respondent suggested, in front of other students, that she and J. should start dating. (Tr. 4 at 12-3)

J. testified additionally that one time Respondent talked with the students about how she was involved with a fellow teacher in an "open relationship." (Tr. 4 at 69, 71) Respondent explained that an open relationship was one in which each of the parties could bring other people in and it wouldn't be cheating, as long as the other partner agreed. All of the students knew that Respondent was in a relationship with another teacher, Mr. Steelman – and maybe once, Respondent showed the students photos a something they had done together. (Tr. 4 at 72) S. confirmed that she heard Respondent talk with students in her room about her "open relationship" and what that meant. (Tr. 4 at 14)

Respondent was asked in this hearing about whether she discussed her personal or dating life with students. She replied,

I didn't just randomly start speaking about my dating life or anything like that. If a kid said, "I saw you out with Mr. Steelman," who is a teacher that I'm in a relationship with, "Are you guys dating," I would say, "Yeah, sure, let's go back to what we're doing...It wasn't like a focused topic of conversation, no."

(Tr. 3 at 90)

Respondent further testified that she never openly spoke about her own sexuality, but when students asked her questions – which usually was during meetings of the Gay Straight Alliance Club, which she advised – she would do her best to respond: "I would

try to clarify that people can choose whatever they want to be, as long as they're not hurting anybody else and they're happy with what they choose to be or who they are...."

(Tr. 3 at 99) In her due process interview with Superintendent McCooley, Respondent was asked how students would know about her personal life. She responded:

We're told to make connections with kids, so students find things out and talk to us. Plus, again, you guys know I have a ninth grader [E.], so these kids are friends with my kid. So they're in and out of my house; E. is in and out of their houses. Kids talk. It's not necessarily specifically relayed from me."

(P. Ex. 27, p. 4) Respondent repeated this in her testimony:

Again, we were told to make connections with students. The kids would ask us questions. We would share—I would tell them minor, little things every once in a while. They knew I had more than one job. I mean most teachers do.

(Tr. 3 at 123)

Respondent was also asked if she ever talked to students about their dating lives. She responded that if students were to ask her an appropriate question, "I would do my best to answer them or lead them, like, in the correct area that they should go in...." (Tr. 3 at 92)

#### **Commenting on female students' attire.<sup>4</sup>**

G. testified to two times Respondent commented about the way G. was dressed that made her uncomfortable. The first was when G. was wearing red leggings. She testified that Respondent commented they were too tight and "accentuate my body," and "hug it, like tightly" and, "how would I know if I had 'camel toe'<sup>5</sup>?" (Tr. 1 at 75, 151) G. said that at least two other girls, J., K., and one boy, I., were in the vicinity and heard

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<sup>4</sup> There was some testimony and argument regarding comments Respondent allegedly made about a male student's socio-economic status. Because those comments are not part of the tenure charges, I do not address them in the Facts or Discussion sections of this Decision.

<sup>5</sup> G. explained in the hearing that this expression refers to clothing that slides up and shows the outline of someone's vagina. (Tr. 2 at 77)

Respondent's comment. Students J. and I. told Respondent that they were just pants and there was no issue with what G. was wearing. (Tr. 1 at 153)

The other comment was when G. was wearing a sweater and jeans, with the sweater, "tucked in a little so you could see a little bit of my stomach." According to G. Respondent told her, it made her "come off, like, whorish." (Tr. 1 at 77) She recalls that her friend, I., was present; he told Respondent that "it's just an outfit. It didn't give off any whorish vibes." G. said that Respondent's reaction was she "just laughed." (Tr. 1 at 132)

Principal Henderson testified that during his conversation with G. and her mother, G's mother told him that Respondent had "belittled" her daughter because she wore tights to school, "and she just made her feel really bad." The mother characterized the comment as "something really nasty, something that is inappropriate for a teacher, and she said it in front of all the kids...the entire class." (Tr. 2 at 65-6, P. 24 at 9-10)

J. testified that one time toward the end of her freshman year, when it was hot outside, she had biked to school in shorts and a tank top and walked into class late. J. commented that it was cold in the classroom, and Respondent said, "Well, you're half naked." The whole class looked at J. and she felt uncomfortable. (Tr. 4 at 73) S. also remembered this incident and testified to it. (Tr. 3 at 47)

J. also remembered and testified to being present when Respondent made a comment about how G. was dressed. G. was wearing a low-cut shirt, and she was more developed than some of the other girl students. A male student, I., was also there. Respondent asked him, "Do you see a problem with G.'s outfit?" I. said, no and G. "kind of just, you know ... shrugged," and Respondent said, "Of course you don't, you're a boy." (Tr. 4 at 75)

Respondent denied that she had used the term “whorish.” (Tr. 3 at 380 She went on to emphasize:

I am very staunch in my beliefs that women should be building up other women and girls and females. We don’t need to call each other names like whore or whorish or anything along those lines. I don’t use words like that So I would never say that she looked whorish or anything like that. So, no, I did not make that comment.”

(Id.) Respondent also strongly denied ever using the term “camel toe;” she would never use such a term because it’s “disgusting.” (Tr. 4 at 39-40)

Respondent testified that she never commented on a female’s clothing. She did not feel comfortable doing that. (Tr. 3 at 100) She would, however, occasionally comment on how male students were dressed: “If their pants were low, I would tell them to pull their pants up, yes.” (If.)

### **“Grooming” a student for future sexual interactions.**

Former student, I.B. testified to her interactions with Respondent, both while a student and after she graduated. She has known Respondent since she was in 7<sup>th</sup> grade. Although she was never assigned to Respondent’s class, she audited for a while because her English teacher thought she would benefit from being exposed to more advanced classes. (Tr. 1 at 172) I.B. also knew Respondent because her mother was good friends with a number of teachers at the school. Her family would gather for social events with Respondent’s family, and I.B. would go for trips to the beach or to Six Flags with Respondent. (Tr. 1 at 172-3, 176) Her parents were aware of these outings and were okay with them. (Tr. 1 at 218) I.B. also babysat for Respondent’s son. (Tr. 1 at 173)

When I.B. was a high school student, she was active in the Gay Straight Alliance student group, where Respondent was an advisor. That was the height of I.B.’s interactions with Respondent in the school building. (Tr. 1 at 175)

During her sophomore year, I.B. entered a contest and won two free tickets to a Broadway show. The tickets had to be used that day. At the time her parents were away on vacation, so I.B. texted Respondent and told her the exciting news. Respondent offered to take her to the show. I.B. did not recall whether Respondent brought her son and her then wife to the city with them. (Tr. 1 at 179) I.B.'s parents gave permission for her to go to the city with Respondent. (Tr. 1 at 219)

I.B. went into the military after she finished high school and, at some point, returned to her home community. She grew close to Respondent and confided to her that she was sexually attracted to women. Respondent was "the only queer adult I knew." (Tr. 1 at 189) In approximately December of 2020, I.B. was at Respondent's house and expressed to her that she wanted to be with a woman, but that had never happened. I.B. testified that Respondent opened her computer and showed her pornography and photos of her and her ex-wife and ex-girlfriend. A few days later, I.B. went over to Respondent's house to bring her a birthday present. I.B. had been drinking a little bit before; Respondent did not serve her alcohol. They ended up having a sexual encounter. (Tr. 1 at 194, P. Ex. 26, at p. 7-8)

A month or so later, I.B. was struggling emotionally and reached out to a family friend, Christina Calello, a social worker in the military, to seek advice. I.B. came out to Ms. Calello about her sexuality and told her about the encounter with Respondent. Ms. Calello reported the incident to the District; Dr. McCoolley followed up and reached out and spoke to I.B. Dr. McCoolley testified about their conversation, which she had recorded; a professional transcription of that interview was introduced into evidence as P. Ex. 26.

Respondent was asked about her interactions with I.B. after I.B. graduated from high school. Respondent testified that she never showed I.B. pictures of her ex-wife, or ex-girlfriend or any nude photos. (Tr. 3 at 120) The intimate sexual encounter testified to by I.B. did not occur. (Tr. 3 at 121) It never happened. (Tr. 3 at 129) Respondent does recall that I.B. wished her a happy birthday in 2022 and one year gave her as a birthday gift a book of quotations. (Tr. 3 at 121) Respondent testified that she was the first person I.B. came out to. (Id.)

**Inviting outsiders into the high school without notice or approval.**

Principal Henderson testified that he learned on May 11, 2021 that Respondent invited guest speakers to the school. Specifically, Respondent invited members of the Ocean County Prosecutor's Office to come into the school to meet with students, without notifying the administration or obtaining prior approval. (Tr. 2 at 21-24, P. Ex. 12)

Respondent acknowledged that she had arranged for the members of the Prosecutor's office to come to the high school to help students prepare for a presentation. Respondent had planned this event with another staff person, Sue Raylman, who had been the one to set her up with the Prosecutor's office; Respondent assumed that Ms. Raylman had informed the administration. (Tr. 3 at 87, P. Ex. 12) Ms. Raylman did not testify in this proceeding.

**Failing to attend a mandatory faculty meeting.**

Principal Henderson testified that Respondent failed to attend a mandatory faculty meeting on June 15, 2021. Principal Henderson sent an email to Respondent and others who had missed the meeting. (Tr. 2 at 27, P. Ex. 12) Respondent wrote back, explaining that she was upset because the administration took away her position

assisting students with “The Cat Eye,” a school Facebook page. (Tr. 2 at 30-31)

Respondent received a stipend for this work and enjoyed it very much. (Tr. 3 at 74)

In this hearing, Respondent confirmed that she had missed the meeting. She testified that as a coach she had missed meetings before, but never had to let the principal know. “I thought if I found out what happened, I’d be okay which I did...I didn’t leave the building, I stayed in my classroom.” (Tr. 3 at 74-5)

### **Telling students about threats of suicide.**

In December 2021, Respondent was in her classroom, at around 6:45 a.m. She had bought a new lamp for her room:

I was setting it up and plugging it in, and I blew the power in my classroom, and I started to freak out because I was scared to get in trouble, because I was already dealing with every else... I started to run around and try to find a maintenance person...As I was running out of my classroom, I passed a colleague, Jen Suralik, and she asked me if I was okay, and I said, just literally offhand, never was suicidal, ‘I could just swallow a bottle of pills right now,’ just like running, because I was stressed. Never wanted to hurt myself or anything.”

(Tr. 3 at 47-8) Evidently Ms. Suralik reported the comment, because the administration called Respondent in for a meeting at the end of the day and required her to get a mental health evaluation, which she did within a few days. Respondent testified that she never made any statement referencing self-harm or suicide in front of students. (Tr. 3 at 48-9)

Principal Henderson testified that a parent called him to say that Respondent had told the students she was out of school for two days because a teacher had reported her as being suicidal. (Tr. 2 at 43) Principal Henderson testified that he also spoke to more than one student, one at a time, and, although he made no notes of his conversations with the students, he followed up by calling Respondent in for a meeting. (Tr. 2 at 45-6) Present was another administrator and the Union president. Principal



Henderson memorialized that meeting in a letter to Respondent dated January 5, 2022.

He wrote:

During the meeting you stated ‘I had some parents contact me that I am friends with and I told them the truth which was I was kicked out of school for three days because I made an off-hand comment that people usually say that was totally misinterpreted.’ You also stated during the meeting ‘I spoke to friends of mine that are parents within the community.’

(P. Ex. 17)

Student witness J. testified that when she was in Respondent’s first period English class, Respondent told the class that she had attempted or thought about suicide in the past. (Tr. 4 at 78-79, 105)

### **POSITIONS OF THE PARTIES**

**The District argues** that it has met its burden to prove the tenure charges by a preponderance of the credible evidence in that:

1. The District has proven the specifications of Charge 1: three current students, who were competent witnesses, testified truthfully and provided evidence of significant inappropriate conduct including making comments regarding topics such as sex, sexuality, nude photographs, students’ dating relationships, students’ personal appearances and suicide; the comments caused the students to feel uncomfortable and embarrassed and violated District policies; Respondent denied all of these charges, but her blanket denial is not credible, and she offered no evidence to prove bias or a motivation to lie on the part of the student witnesses;

2. One former student, testified credibly and truthfully about her relationship with Respondent, which began when she met Respondent in the school setting and culminated in a sexual relationship after that student had graduated and was an adult;

the evidence showed that Respondent blurred the lines with the students in her classroom, and that Respondent was ultimately looking for a sexual relationship with this student and likely with others;

3. It is Respondent's word against the word of four intelligent mature, smart, brave and genuine students who voluntarily put themselves through the stress of testifying; Respondent herself conceded that she knows of no reason for any of the four to lie; the students testified that some of them were better friends with one another at different times or simply knew one another – there is absolutely no evidence that these students joined forces to conspire against Respondent;

4. The District has proven that Respondent does not maintain the boundaries necessary when teaching young adults and does not take accountability for her actions; the District has demonstrated a pattern of blurring the lines, which created and will continue to open the door for more egregious conduct in the future if Respondent is not removed from her teaching position;

5. There can be no question that Respondent's proven actions constitute conduct unbecoming including: showing nude photos to students in a classroom setting; discussing Respondent's personal and sexual relationships; embarrassing and making students uncomfortable by demeaning their personal appearance; and discussing students' personal dating relationships in front of others; further, the fact that Respondent's conduct led to her having sex with a former student elevates the concerns about her conduct to ones that absolutely warrant dismissal;

6. The District has proven the specifications of Charge 2 regarding former student I.B.; the evidence establishes that Respondent used her position as a teacher in the District to draw I.B. close to her when she was still a student, and used that

closeness to have a sexual relationship after I.B. had graduated and reached legal maturity; Respondent denied the sexual relationship, but admitted her closeness to I.B.; I.B. was a credible witness, with no reason to lie; the proven allegations are consistent with Respondent's lack of boundaries with students and constitute conduct unbecoming, warranting discharge;

7. The District has proven the specifications of Charge 4, that Respondent invited outsiders into the high school without reporting their visit or obtaining approval; indeed, Respondent admits that this occurred, excusing herself only by stating that she believed another teacher who participated in the planning of the event, had notified school authorities; while in itself, not a serious matter and not grounds for discharge, it is proven and fits within a pattern of Respondent's cavalier attitude toward District policies and procedures;

8. The District has proven the specifications of Charge 5, particularly the specifications that Respondent spoke about her own ideas of suicide loosely and with other individuals, and that students learned of this, all of which is conduct unbecoming; indeed, Respondent admits that she made joking remarks to a fellow teacher about self-harm, and that she told friends who were associated with the school that was the reason she was prevented from appearing at school for a few days; the testimony of Student J., while not about the particular incident charged, corroborates that in the past Respondent did talk loosely with students about her own ideas of suicide; this is all conduct unbecoming.

For all these reasons, the tenure charges should be sustained. Discharge is appropriate in this case in that Respondent has demonstrated a serious and repeated lack of respect for the boundaries that should exist between the private lives of teachers

and their students; this has caused harm to students and will continue to expose them to harm if Respondent is allowed to return to the classroom. Further, the reputation of the District if it allows Respondent to return to the classroom will be jeopardized.

**On the other hand, Respondent argues** that the District has not proven the charges against Respondent by a preponderance of the credible evidence; further, facts established on this record do not warrant Respondent's termination from her tenured teaching position:

1. The present charges were brought by the District in transparent retaliation against Respondent for her involvement in the "Maskholes" controversy in February 2021, which was included in the present action as Charge 3; was the basis of an increment withholding; and is the subject of 7 pending challenges in various forums; while the Arbitrator did not allow the parties to relitigate the matter in this proceeding, this incident should also be excluded from any consideration at the penalty phase, if there is one;

2. With respect to Charge One, the District has failed to prove the charge by a preponderance of competent, credible evidence:

- a. The District's investigation, undertaken only by Principal Henderson, was grossly deficient; the District needlessly waited for months to interview any further witnesses after the initial report, including waiting six months to interview Respondent; the delay in its investigation cannot be excused by a claim that it was waiting for law enforcement to charge Respondent, since, among other things, it knew by early February 2022 that she would not be facing criminal charges; it failed to interview other students or check the school's attendance logs or security

cameras to confirm or refute the testimony of the two principal accusers or to preserve critical evidence;

b. To the extent the charges were premised on the IAIU investigation, they are legally insufficient, since the terms of that investigation explicitly state that the Respondent has not been afforded the opportunity to challenge the results of the report and the report cannot be an independent basis for taking action against the person identified therein; this limitation is required not only by the terms of the IAIU report, but by federal judicial holdings;

c. The Board's witnesses and evidence were inconsistent and incredible:

i. With respect to the "nude photograph incident," the student witnesses testified at various times that it took place: when only one student was present and when many students were present; during 1st period, 7<sup>th</sup> period and 5<sup>th</sup> periods; that only G and K saw the photos and that K did not but another student did; that only one photo was shown or more than one; class schedules of the student witnesses confirm that the tale told by the students was not credible;

ii. With respect to the "nasty comments," again the student witnesses testified at various times that no such comments were made; that different students were present who could not have been, based on their class schedules; and that they occurred during different periods;

d. By contrast, Respondent's denial was consistent, candid, and credible:

i. Her testimony was supported by the fact that students would not have come into her room when she was teaching and by the logistical improbabilities offered by the students' differing class schedules;

- ii. Respondent was candid that she was forthcoming with students about benign aspects of her personal life, including who she was dating, that she had a second job, and that she was a queer female; it is not conduct unbecoming for a teacher to be open about their sexual identity;
  - iii. Respondent was forthcoming also in her acknowledgement that she knew of no reason why the students would be antagonistic toward her;
  - iv. Respondent's current partner testified credibly that they do not have an 'open' relationship, thus corroborating her testimony;
- e. The rebuttal testimony of two additional students must be disregarded:
  - i. They introduced new allegations that are beyond the scope of the allegations in the Tenure Charges and consequently cannot be the basis for imposing discipline;
  - ii. Their testimony is not credible because they omitted these very allegations during their IAIU interviews, and their explanations for having done so and only coming up with their stories now strain credulity; their denial that they talked to one another about their testimony is contradicted by the coincidence that they testified to identical incidents; the only explanation for their testimony is that they were influenced by District leaders, including the principal and superintendent, with whom they met prior to testifying; they colluded with the District leadership and one another;
- 3. With respect to Charge 2, the District failed to prove that Respondent engaged in conduct unbecoming with IB:

- a. All of the testimony about the interactions between IB and Respondent while IB was a student show there was no “grooming:”
  - i. IB’s family was friendly with Respondent and the two families socialized together; IB babysat for Respondent’s son;
  - ii. IB’s family was aware and approved of IB’s trips with Respondent, including the time Respondent took IB to the city so that she could see the show for which she had won tickets;
  - iii. There are no allegations, let alone proof, of any inappropriate sexual or other relationship during IB’s school years;
- b. The alleged sexual interaction between IB and Respondent occurred after IB had graduated, gone into the army and was an adult; it cannot be the basis for a charge of conduct unbecoming;
4. With respect to Charge 3, the “Maskholes” charge, as noted above, the Arbitrator has excluded this charge from consideration, and it should not be considered at all, including with regard to penalty;
5. With respect to Charge 4, there is no dispute that Respondent, along with another teacher, invited members of the Ocean County Prosecutor’s Office Staff to the High School to meet with students in order to prepare them for a panel discussion; while this conduct may have violated the letter of the school’s policy about getting permission before bringing visitors into the school, this incident does not constitute conduct unbecoming; in fact Respondent was recognized by the Prosecutor’s office for her efforts on behalf of the students; Superintendent McCooley testified that no other staff has ever been disciplined for violating this policy;
6. With respect to Charge 5,

a. Respondent admits that she missed a faculty meeting; at the time, she explained to her principal the circumstances behind her absence, and she followed through, as he directed, to make up that meeting; this conduct does not rise to the level of conduct becoming a tenured teacher;

b. Respondent explained the circumstances leading to her saying, jokingly, to another teacher that she could “just swallow a bottle of pills right now:”

- i. there was no evidence that any student heard that remark; no students were present; indeed, the District failed to put forth a residuum of competent, non-hearsay evidence in connection with the allegations in this Charge; there was only hearsay reported by Principal Henderson;
- ii. the testimony of Student J. regarding Respondent’s alleged discussion of suicide in a class must be disregarding because it is vague and unspecific; further, it relates to an alleged incident that may have occurred years ago, at an entirely different time and place than the incident included in the charges and does not prove those charges;
- iii. further, Respondent complied with the District’s directive and obtained clearance from her therapist, to return to work;
- iv. Respondent’s therapist testified on sur-rebuttal and verified that she has never heard Respondent say or report anything about self-harm or suicide, thus contradicting the one student witness who claimed that Respondent did talk with students about multiple suicide attempts.

7. Respondent has an excellent record of twenty years as a teacher for the District; she has received outstanding evaluations and observations; she has been active



and a positive force in the school by sponsoring student events and initiating programs and clubs that support students; her students all testified that she was a good teacher;

8. Termination would almost certainly be a death knell for Respondent's career as a teacher; teachers who engaged in much more egregious conduct have been allowed to continue teaching, in some cases after undergoing significant professional development; Respondent did not engage in grave or irredeemable misconduct and clearly does not fall into the category of one for whom termination is appropriate;

For all these reasons, the Board's tenure charges should be dismissed.

### **DISCUSSION**

Both parties were ably represented by counsel in this proceeding and had full opportunity to present evidence and make arguments in support of their respective positions. In the preparation of this Opinion and Award, I have carefully considered the testimonial and documentary evidence, the legal authorities cited, and the positions and arguments set forth by the parties, whether referenced or not. For the reasons set forth below, I find the District has proven the conduct alleged in Charge I. That conduct was egregious, unprofessional and constituted conduct unbecoming a tenured teacher. For that proven charge alone, removal from her position and loss of tenure is the appropriate penalty.

With regard to Charge 2, the District has proven some of its allegations, though not all. This charge involves alleged misconduct over a period of years, culminating in conduct that occurred after the student involved had graduated and become an adult. I discuss this charge and its ramifications for Respondent below.

As to Charges 4 and 5, while many of the events alleged occurred, I find the District has failed to prove misconduct; certainly, those events do not constitute grounds for terminating Respondent's employment.

Finally, as noted above, I decline to consider Charge 3, since Respondent has already been punished for this alleged misconduct, and the matter is the subject of ongoing litigation. I also decline to consider Charge 3 with regard to the issue of penalty.

### **Charge 1**

I find that the weight of credible evidence supports a finding that Respondent did, in fact, show one or more students at least one photo on her phone of a woman's bare breasts, while the students were in her classroom, although not during formal lesson time. Further, I find Respondent told students that the woman involved was pursuing a romantic or sexual relationship with her. Such conduct is completely inappropriate for a teacher: it violates the District's rules as well as the behavioral norms expected of our teaching faculty.

Respondent insists that this event never took place. But I find student G. was more credible than Respondent. Not only was she a credible witness, but also the student's testimony was supported by a considerable body of evidence, including (1) the testimony of Principal Henderson and the transcription of his interview with her over the telephone, while her mother was with her; (2) the conversations student K. had with Brittany White and Principal Henderson; and (3) the testimony of another student who heard Respondent asking students how she might download a naked photo sent to her without letting the sender know about it. Respondent herself testified that she is unaware of any animosity the student witnesses might bear toward her, or any other

motivation for student G. to fabricate such a story. Even without the testimony of the student K. who originally reported Respondent's conduct, this is sufficient to sustain the allegations of Charge 1.

It is clear that Respondent tried hard to relate to her students; to make them feel comfortable as they navigated the often-fraught experiences of adolescence and high school. Respondent told her superintendent, "We're told to make connections with kids." And in many ways, Respondent was very successful in making connections. The four students who testified all said they felt comfortable in her presence; three of the four liked to hang out in Respondent's classroom with their friends. But it is one thing to make connections with students and quite another to share details about one's private, sexual and dating life. That is not appropriate. Nor is it appropriate to share one's interest in learning how to download nude photos. And less appropriate still is sharing nude photos one has received. Respondent crossed the line with her students when she engaged in such activity.

I also find that Respondent made degrading remarks to female students about their appearance in front of other students. Both G. and J. testified to being the subject of such comments and they also witnessed belittling comments to other students. Again, Respondent denied ever making degrading comments about female students, insisting that she is opposed to any conduct that belittles or embarrasses young women. However, the students' testimony was credible and corroborated by their interviews with school authorities. I credit the students' testimony.

Respondent urges me to discount the students' testimony -- particularly that of J. and S. -- because there are inconsistencies between what they told the IAIU investigators and what they testified to in the hearing. However, it is not uncommon for

witnesses – even adults -- to have inconsistencies in what they tell authority figures at different times. In this case, the students were at different stages of their high school experience when they were questioned and I do not find the inconsistencies surprising or troublesome. In any case, there were other factors that supported the veracity of their testimony before me. Both J. and S. were candid when they did not remember particular details, and J. explained her thinking when she was younger of wanting to spare Respondent from more trouble. I found both J. and S. to be competent witnesses, and their testimony was appropriate as part of the District’s rebuttal case. There is no evidence that they colluded with one another or with District officials to invent negative testimony against Respondent, and I reject that supposition.

Respondent also urges me to consider student classroom schedules as impeaching the credibility of the student witnesses: they could not have been with Respondent at the times and places and with the other students identified. But it is clear to me that these students and their friends were in and out of Respondent’s classroom at different times of the day. I find it entirely credible that they would remember witnessing or being themselves the target of particular negative comments without remembering exactly when that happened or who else was present. Their testimony taken as a whole painted a picture of Respondent’s classroom as a space where students came to hang out; there Respondent interacted with them in ways that were both appropriate and supportive and inappropriate and negative.

The remarks attributed to Respondent, including saying one female student looked “whorish” and another looked “naked,” were inappropriate, particularly when said in front of other students. Equally inappropriate was Respondent’s use of the term “camel toe” to a female student in front of other students. By embarrassing and

disparaging students in front of their peers, Respondent engaged in conduct unbecoming.

Respondent also urges me to find Charge 1 not sustained because of the duration and inadequacy of the District's investigation and because the District improperly relied on the IAIU's investigation. But I find the District acted within the scope of its discretion to bring this matter first to law enforcement and to state investigators before proceeding on its own. In good faith, the District, through Principal Henderson and Superintendent McCooley, interviewed key students and spoke with state administrative and law enforcement personnel. While the administrators were aware that the IAIU conducted interviews, it did not rely upon those interviews, and the District moved ahead on its own to bring these charges when official efforts were unresponsive. The proofs presented to me in this hearing, particularly the in-person testimony of student witnesses, were sufficient in themselves to sustain the charges.

## **Charge 2**

Student I.B. testified credibly about the relationship she had with Respondent. It developed initially because her parents were good friends with I.B. and the two families socialized with one another, participating in such activities as going to the beach and to Six Flags. I find nothing inappropriate about the relationship as it developed over the years. One of the allegations against Respondent is that she took I.B. to the city to see a show. But, as I.B. testified, this was not an act of "grooming" and was in no way inappropriate: I.B. won show tickets in a lottery; her parents were away; and so Respondent took her to the city to see the show. I.B.'s parents were aware of this trip and approved it. This, too, was not an act of "grooming."

I credit I.B.'s testimony that she felt comfortable discussing her feelings about her own sexual identity with Respondent, largely stemming from their bond when Respondent was the faculty advisor and I.B. was a member of the Gay Straight Alliance. And I credit I.B.'s testimony that she turned to Respondent after she had reached maturity and had questions and wanted to explore her sexuality; Respondent was a gay adult whom I.B. knew and trusted. Respondent denies that she ever shared pornography with I.B. or had any sexual encounter with her. However, I.B. was the more credible of the two of them, and her testimony was corroborated by Superintendent McCooley's recorded interview of her.

While the evidence does not establish that Respondent "groomed" I.B. or otherwise acted inappropriately when I.B. was a student and a minor, yet it is also clear that Respondent's role as faculty advisor to the GSA gave her a unique position of trust with I.B. This trust I believe she violated by engaging with I.B. sexually when the former student was over 18. To that extent, I believe Respondent violated District rules and engaged in conduct unbecoming a teacher.

Respondent urged me in her Motion for Partial Dismissal of charges to dismiss Charge 2 because there was no evidence of any inappropriate interactions between Respondent and I.B. while I.B. was a student: the alleged sexual interactions took place between two consenting adults and thus could not be conduct unbecoming. As I discuss above, I agree that the relationship between Respondent and I.B. did not grow solely out of their teacher/student roles: I.B.'s family promoted a friendship with Respondent and her family. And I agree that Respondent did not engage in any impropriety with I.B. while she was a student. Nevertheless, I.B. turned to Respondent with questions about her own sexuality because she knew I.B. to be a "queer adult" and came to trust her

through their roles as sponsor and participant in the Gay Straight Alliance. But for that history, I find it hard to believe that I.B. would have confided in Respondent as she did. Respondent took advantage of the trust she had earned as teacher/sponsor with a younger, more impressionable student when she subsequently engaged in sexual activity; that activity I find to be conduct unbecoming.

#### **Charge 4**

While there is no dispute that Respondent, along with another teacher, invited members of the Ocean County Prosecutor's Office Staff to the High School to meet with students in order to prepare them for a panel discussion, there is nothing in this behavior that remotely amounts to conduct unbecoming. Yes, it was a technical violation of school policy, but there are at least three reasons why I find against the District as to these charges.

First, Respondent testified credibly that she planned the event that brought outside prosecutors into the school with another teacher. The District did not rebut that testimony; evidently it made no effort to talk to the other teacher. Second, the Respondent testified credibly, and, again, without contradiction, that the event was very successful and highly beneficial to District students. Respondent received accolades from the public prosecutor's office for this event. Consideration should be given to Respondent for facilitating this positive type of event. Third, there is no evidence that any other staff member has been penalized for violating this rule. Indeed, there is no evidence that the other teacher who participated with Respondent in planning and carrying out the event was ever talked to, much less penalized. I find the District has failed to prove this charge.

### **Charge 5**

Charge 5 consists of two unrelated sets of allegations. The first has to do with Respondent missing a mandatory faculty meeting. As with the allegations in Charge 4, there is no dispute that Respondent did, in fact, miss a mandatory faculty meeting. However, I find the District has failed to prove that this instance amounted to conduct unbecoming. Respondent testified, credibly and without contradiction, that she has missed faculty meetings before when, for example, she was coaching a school team, without any ramifications. She also testified, credibly and without contradiction, that she obeyed the dictates of her principal and “made up” the meeting by conferring with the appropriate person in the administration. This had been sufficient previously and the District presented no evidence as to why it was insufficient in this instance. Finally, the District’s witnesses admitted that no other staff person has ever been brought up on tenure charges – or otherwise penalized -- for missing a faculty meeting. Thus, I must rule against the District on this set of allegations.

The second set of allegations has to do with Respondent allegedly telling students that she had been prevented from returning to school because of a suicide threat. I find the District has failed to prove these allegations as well. First, while Respondent admitted that she made an offhand comment to a colleague about “swallowing a whole bottle of pills,” her testimony was both credible and uncontradicted, that this was not done in front of students. In fact, Respondent did not admit to any discussion of suicide or suicidal thoughts with students. The only evidence the District produced in support of this set of allegations was based on hearsay, and as Respondent points out in her Motion for Partial Dismissal of Charges, under the residuum rule, this evidence is insufficient since the District produced no evidence that was not hearsay in support of



its charges. Nor are these allegations rescued by the vague testimony of Student J. that at some point, years ago, she thinks Respondent mentioned suicide in her English class. That testimony was unspecific, and, in any case, completely unrelated to the allegations in Charge 5. The District must prove the allegations as written.

### **Penalty**

Respondent urges me to consider a penalty less than termination in this case. Termination will almost certainly end Respondent's career as a teacher, a career that she loves and has done with distinction, energy and creativity for almost 20 years. Respondent argues that other teachers, found guilty of more egregious misconduct than is alleged here, have been allowed to continue in their profession, sometimes with guidance from professional development.

While I am mindful of the many accolades for her teaching from both the administration and her students, I must concur with the District. The allegations as proven by the District show a troubling lack of appreciation for the boundaries that high school teachers must respect for the well-being of their students. It is one thing to make students comfortable and to create an atmosphere where they can relax and feel safe. It is quite another to bring up and share with students one's own dating and sexual relationships. And, it should go without saying that sharing nude photos of a potential partner with students is beyond the pale. Likewise, talking to students about their personal appearance and potential dating partners, particularly in front of other students, can obviously cause embarrassment at the least and possibly pain to those students. High school students are at a stage in their development where all of these topics are fraught – teachers are expected and, indeed, required to treat their students

with dignity and delicacy to help them come through these years with healthy self-esteem.

Three current students testified before me about a variety of incidents over more than one school year, where Respondent failed to honor those boundaries. Their testimony was supported by the report given by student K., who did not testify but whose conversations with District administrators brought these matters to their attention. From these sources, it is clear that Respondent not only discussed her own personal dating life with students, but also shared with them her interest in nude photos. And she talked to students about their personal appearance and social relationships in ways that embarrassed or humiliated them. The testimony of former student I.B. adds a further dimension to this picture: I.B. grew to trust and confide in Respondent in large measure because Respondent advised the Gay Straight Alliance. Respondent subsequently abused that trust and confidence by engaging in a sexual relationship which confused and troubled I.B.

These are serious allegations. I find discharge to be the appropriate penalty for the conduct charged and proven by the District.

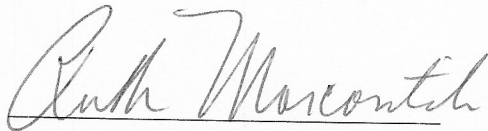
### **AWARD**

For the foregoing reasons, I find with respect to the tenure charges:

Charges One and Two. I find that Respondent violated District policies and engaged in conduct unbecoming as alleged in Charge One and Two. Those charges are sustained.

Charges Four and Five. I find that Respondent did not violate District policies or engage in conduct unbecoming as alleged in Charges Four and Five. Those charges are not sustained.

I sustain the District's decision to discharge Respondent.



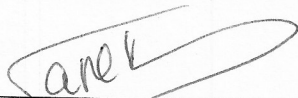
Ruth Moscovitch, Arbitrator

Date: July <sup>25</sup>, 2024

#### ACKNOWLEDGMENT

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF NEW YORK )

On July <sup>25</sup>, 2024, RUTH MOSCOVITCH, whom I know, came before me and acknowledged that she executed the foregoing as and for her Opinion and Award in the above-captioned matter.



Notary Public  
My Commission expires

**TAREK M ELBARKATAWY**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**No. 01EL6413650**  
**Qualified in New York County**  
**My Commission Expires 02-01-2025**