

REGINA DZWONAR

and

THE SCHOOL DISTRICT OF THE CITY OF ATLANTIC CITY, ATLANTIC
COUNTY

Agency Docket No. 246-10/13

AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted, the tenure charges filed against Regina Dzwonar by the Atlantic City School District shall not be upheld. Respondent Dwoznar shall be reinstated forthwith to her former position as a Teacher employed by the Atlantic City Board of Education, and shall be eligible to resume her duties as of September 1, 2014 if Respondent has satisfied several conditions precedent. Respondent shall submit to a comprehensive examination by a psychologist selected by the District to determine her fitness to return to duty. Respondent shall also provide proof that she has continued or resumed therapy with a licensed psychologist of her choice, commencing not later than thirty days after

this Award, and shall also provide documentation that she has been participating she has been participating since the issuance of this Award in an appropriate program to address her personal issues as defined in conjunction with the District's examining therapist and the District's EAP provider.

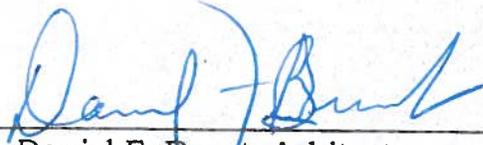
Respondent may apply for reinstatement to a teaching position commencing not sooner than the beginning of the 2014-2015 school year. She shall not receive any salary increment for the 2013-14 or 2014-15 school years. The interval between the date of her suspension in October 2012 and her potential reinstatement in September 2014 shall be considered a disciplinary suspension.

The 2014-15 school year shall be considered a period during which a final warning is operative, such that proven repetition of serious misconduct similar to the misconduct toward students or colleagues underlying the instant case shall constitute grounds for terminating her employment. Should such misconduct be alleged by the District, tenure charges may be filed with the New Jersey Department of Education. This Award and Discussion may be submitted as evidence in such proceedings. In the alternative, given the Arbitrator's familiarity with this dispute, the parties may mutually agree to submit a dispute regarding such subsequent discharge to this Arbitrator for adjudication if

permitted by applicable statute or regulation of the New Jersey
Department of Education.

The Arbitrator hereby retains jurisdiction for the purpose of
resolving any other dispute that may arise regarding the implementation
of the remedy ordered pursuant to this Award.

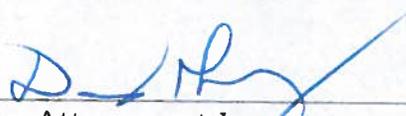
February 20, 2014



Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 20th day of February, 2014 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.



An Attorney at Law
Of the State of New Jersey

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

In the Matter of the Tenure Hearing of

REGINA DZWONAR

and

THE SCHOOL DISTRICT OF THE CITY OF ATLANTIC CITY, ATLANTIC
COUNTY

Agency Docket No. 246-10/13

Hearings were held in the above-entitled matter on January 6, 7, and 8, 2014 at the offices of Cooper, Levenson, April, Niedelman and Wagenheim, in Atlantic City, New Jersey, before Daniel F. Brent, duly designated as Impartial Arbitrator. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross examine witness and to present evidence and arguments. Both parties submitted oral summations, which they supplemented with a Table of Cases Cited and the full text of such cases. The record was declared closed on January 14, 2014. The Arbitrator was granted an extension of time within which to render his Award.

APPEARANCESFor the Atlantic City Board of Education:

Rebecca D. Winkelstein, Esq. of Cooper, Levenson, April, Niedelman and Wagenheim, Esqs.

Kim Belin, Esq., of Cooper, Levenson, April, Niedelman and Wagenheim, Esqs.

Donna L. Hay, Superintendent of Schools

For the Respondent Regina Dzwonar:

Keith Waldman, Esq., of Selikoff and Cohen, Esqs.

Marsha Genova, President, Atlantic City Education Association

Regina Dzwonar, Respondent

ISSUE SUBMITTED

Should the tenure charges filed against Regina Dzwonar by the Atlantic City School District be upheld?

If not, what shall be the remedy?

NATURE OF THE CASE

The Grievant was employed for six years by the Atlantic City School District as a teacher of English and assigned to the East Campus of the Atlantic City High School, an alternative school facility addressing the needs of students who were unable to flourish in the regular academic environment at Atlantic City High School. During the public comment portion of the May 2012 meeting of the Atlantic City Board of Education, two of the Grievant's students addressed the Board, and presented allegations about comments allegedly made by the Respondent to and about them and other students. The students described to the Board their discomfort caused by Respondent's alleged use of racially offensive language and sarcastic remarks, her stringent classroom requirements, and other conduct they felt to be arbitrary or abusive. As a result of these public complaints, the Board directed senior District Administration officials to investigate the students' allegations.

The District's administrators, assisted by outside counsel, conducted a thorough investigation during which District investigators interviewed students, parents and the Respondent. In the course of Respondent's interview, she acknowledged certain instances of conduct that were construed by the District as admissions of substantial

misconduct, whereupon formal tenure charges for conduct unbecoming a teacher were filed with the New Jersey Department of Education.

The tenure charges filed by the Atlantic City Board of Education against Respondent Regina Dzwonar consist of eleven charges, each with multiple specifications, totaling eighty specifications.

Respondent was accused of conduct unbecoming a teaching staff member by engaging in inappropriate, disparaging, derogatory, stereotypical, and/or discriminatory, discourse and/or behavior with her students during the 2011-2012 school year. She was also charged with "failing to always follow the legal requirements for reporting students suspecting of being under the influence of drugs or alcohol" and of videotaping her students in class with her personal video camera without first obtaining proper consent or releases from the students, their parents or legal guardians. In addition, Respondent was charged with conduct unbecoming a teaching staff member by contacting students outside of school hours, by conversing with them about matters unrelated to school or their education, and by driving students in her personal vehicle to non-school related functions, places or activities without parental consent or the approval of her school principal. Among the transgressions attributed to the Respondent was using tape to affix a student's graded exam or assignment to the front of the student's desk, thereby disclosing the student's failing grade.

Respondent was further charged with conduct unbecoming a teaching staff member by assigning offensive, discriminatory and/or disruptive assignments to her class. A charge that she assigned an unapproved book to her students, Charge 8, was subsequently rescinded by the District because Uncle Tom's Cabin was on the School District's approved list of literature. Respondent was also charged with assigning students to write short essays on subjects they found demeaning and insulting, such as "Which is harder, being black or poor?"

Respondent was charged with engaging in conduct unbecoming a teaching staff member by sending inappropriate and/or threatening e-mails to another teaching staff member, as well as by contacting a student on his cellular telephone in contravention of an explicit directive included in her suspension letter. These charges were summarized in Charge 11, which accused Respondent of "engaging in a course of conduct that demonstrates a failure to understand the nature of her stereotyping and inappropriate discourse and relationship with her students and/or an inability to foster a positive educational environment."

Each of these charges, which comprised multiple specifications, is set forth at length hereafter. Respondent disputed the charges as being without merit, and provided written answers to the charges. According

to the District, these answers included admissions of having engaged in misconduct sufficient to terminate her employment. Respondent was suspended from her teaching duties in October, 2012.

The parties were unable to resolve the matter, and the tenure charges were processed through the Commissioner of Education, culminating in the appointment of the undersigned from the rotating Teacher Tenure Arbitrator Panel as Impartial Arbitrator to hear and decide the instant case.

RELEVANT STATUTORY LANGUAGE

P.L. 2012, Ch. 26 (TEACHNJ) ACT

8. N.J.S.A. 18a:6-16:

* * *

If, following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator pursuant to section [23] 22 of P.L. 2012 Ch. 26 for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

* * *

[17] 16 (New Section) a. A school District shall annually submit to the Commissioner of Education, for review and approval, the evaluation rubrics that the District will use to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members. The board shall ensure that an approved rubric meets the minimum standards established by the State Board of Education.

* * *

[18] 17. (New Section) a. The Commissioner of Education shall review and approve evaluation rubrics submitted by school Districts pursuant to section [17] 16. of P.L. 2012, Ch. 26. The Board of Education shall adopt a rubric approved by the commissioner.

b. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C:52:14B-1 et seq.) to set standards for the approval of evaluation rubrics for teachers, principals, and vice-principals. The standards at a minimum shall include:
***** **

[23] 22. (New Section)

* * *

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

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

* * *

(3) Upon referral of the case for arbitration, the employing board of education shall provide all evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. At least 10 days prior to the hearing, the employee shall provide all evidence upon which he will rely, including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employing board of education or its representative. The employee shall be precluded from presenting any additional evidence at the hearing except for purposes of impeachment of witnesses.

Discovery shall not include depositions, and interrogatories shall be limited to 25 without subparts.

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

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

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

f. Timelines set forth herein shall be strictly followed; the arbitrator or any involved party shall inform the commissioner of any timeline that is not adhered to.

g. An arbitrator may not extend the timeline of holding a hearing beyond 45 days of the assignment of the arbitrator to the case without approval from the commissioner. An arbitrator may not extend the timeline for rendering a written decision within 45 days of the start of the hearing without approval of the commissioner. Extension requests shall occur before the 41st day of the respective timelines set forth herein. The commissioner shall approve or disapprove extension requests within five days of receipt.

* * *

[24] 23. (New Section) a. In the event that the matter before the arbitrator pursuant to section [23] 22 of this act is employee inefficiency pursuant to section [26] 25 of this act, in rendering a decision the arbitrator shall only consider whether or not:

(1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;

(2) there is a mistake of fact in the evaluation;

(3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law; or other conduct prohibited by State or federal law;

(4) the District's actions were arbitrary and capricious. (b) In the event that the employee is able to demonstrate that any of the provisions of paragraph (1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.

(c) The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.

(d) The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

(e) The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case. The arbitrator shall render a decision within 45 days of the start of the hearing.

[25] 24. (New Section) The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.), in accordance with an expeditious time frame, to set standards for the approval of evaluation rubrics for all teaching staff members, other than those included under the provisions of subsection b. of section [18] 17. of P.L. , c. (C.) The standards at a minimum shall

include: four defined annual rating categories: ineffective, partially effective, effective and highly effective.

[26] 25. (New Section) a. Notwithstanding the provisions of N.J.S. 18A:6-11 or any other section of the law to the contrary, in the case of a teacher, principal, assistant principal, and vice principal:

(1) The superintendent shall promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation;

(2) If the employee is rated partially effective in two consecutive annual summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective in the annual summative evaluation, the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency, except that the superintendent upon a written finding of exceptional circumstances may defer the filing of tenure charges until after the next summative evaluation. If the employee is not rated effective or highly effective on this annual summative evaluation, the superintendent shall promptly file a charge of inefficiency.

* * *

(d) The only evaluations which may be used for purposes of this section are those evaluations conducted in accordance with a rubric adopted by the board and approved by the commissioner pursuant to P.L. , c. (C.) ().

[27] 26. (New Section) The commissioner shall have the authority to extend the timelines in the tenure charge process upon a showing of exceptional circumstances.

DISCUSSION AND ANALYSIS

The charges and specifications constituting the instant case can be divided into three categories for examination and analysis. First are the allegations of misconduct involving Respondent's classroom teaching activities as they related to her students, particularly three students who complained about her attitude, inappropriate comments, and demeaning behavior. Second are the charges involving Respondent's conduct with

students outside of the regular school day. The third category involves the Respondent's unprofessional conduct toward her co-workers, particularly an e-mail sent to a Guidance Counselor.

A useful first step in conducting a thorough analysis of the eleven charges pending against Respondent, comprising eighty specifications, is to eliminate those charges and specifications for which the proofs submitted at the arbitration hearings did not provide an adequate basis for an adverse determination of culpability. Even thus organized, the task is prodigious, as the equities favoring the District or the Respondent are neither straightforward nor unambiguously clear.

The District presented substantial evidence regarding many of the charges. However, despite the best efforts of District investigators and administrators, insufficient competent proof upon which to predicate a finding of guilt or culpability by Respondent was submitted regarding multiple specifications. These unsubstantiated specifications included any accusation of overtly racist behavior; use of the N-word in class (other than perhaps a single recitation while reading The Color of Water or Uncle Tom's Cabin, both widely recognized as classic works in American literature); reading an unauthorized work of fiction, Uncle Tom's Cabin; and giving students rides in her personal vehicle without proper parental authorization.

Several students who complained to the Board of Education about Respondent testified at the arbitration hearings that, in their opinions, she was not a racist and that the conduct or negative comments by Respondent that made them uncomfortable were not racially motivated. The charges relating to use of racially charged language in class, particularly the N-word, were not substantiated.

The District did not refute Respondent's assertion that she had been a competent teacher of writing skills and of American and English literature to her students at Atlantic City High School East, many of whom faced daunting personal circumstances outside of school that influenced their conduct in the classroom. Atlantic City High School East is an alternative school created to meet the needs of students who were unable to flourish in the regular academic environment at Atlantic City High School. The evidentiary record established that Respondent was a strict disciplinarian with high standards for punctuality and preparedness in her classroom. Tardiness to class was not tolerated. Students who came to class without a pencil or pen were required to give some collateral for borrowing a pencil from Respondent.

The evidentiary record also established persuasively that Respondent frequently encountered problems maintaining her professional composure and observing appropriate teacher-student

professional boundaries. Although Respondent's dedication to her students' personal well being and academic achievement was not impugned, her interactions with her students as she attempted to motivate them to succeed and to graduate often blurred appropriate roles and transgressed acceptable modes of communication. These shortcomings created reasonable cause for concern by the Board and its administrators after the full scope of Respondent's conduct came to light during the investigation that was precipitated by the student complaints at the May 2012 Board meeting.

The charge alleging that Respondent used a personal video camera to photograph her students in violation of District policy has not been established as a violation justifying substantial discipline, as the District's proofs were almost entirely based on speculation. Respondent testified credibly that she attached a camera she owned to the District's computer in her classroom for the limited purpose of providing feedback to students who read poetry or essays aloud in class. This feedback served a legitimate pedagogical purpose. The valid District policy requiring formal consent before any photographic image of a student is created or publicly disseminated may have been technically violated, but there is no basis to conclude that Respondent ever publicly disseminated any of these images or that she video taped the oral recitations of students who were reluctant to participate.

Moreover, there is no credible evidence that Respondent used the camera for surveillance of her classroom. That she owned the camera attachment she connected to the school's computer is immaterial. If the Respondent had published the images of students outside her classroom without formal authorization from the students' parents or the administration, such use of the images that would have violated District policy. The evidentiary record does not support a conclusion that Respondent engaged in such publication or any other improper use of these images.

Respondent was charged with transporting students in her personal vehicle without written permission from the students' parents or from the District administrators. Failure to secure proper parental authorization and releases could create liability for the District. However, Respondent demonstrated persuasively that she obtained oral permission from the parents of students to whom she gave rides home or to after school activities. Such oral permission may have violated the letter of the District's valid transportation policy, but the evidentiary record did not establish that Respondent transported students in her personal vehicle without at least oral parental authorization on each occasion. Therefore, this category of charges must be discounted as a material factor justifying substantial discipline. Only corrective action is warranted for this conduct.

Respondent was also charged with posting a test paper with a failing grade in her classroom, thus publicly embarrassing a student.

Whether this event occurred as part of an effort to discourage students from leaving trash in their desks or for another reason, the record did not credibly establish the facts and circumstances surrounding this incident. Although the incident reflected poor pedagogical judgment the proofs regarding this incident were too vague to construe the event as evidence of calculated disregard for a student's feelings or that Respondent placed the test in public view to humiliate the student.

The record does not support a conclusion that Respondent addressed a student undergoing gender identification issues as a "he/she or whatever you are" in a demeaning manner. This student, a male who has apparently completed a transformation of gender identity from male to female, testified credibly at the arbitration hearings regarding the support and comfort provided by Respondent. This testimony and Respondent's credible testimony overcame any adverse evidence upon which the District had previously relied regarding this element of the charges.

The charges pertaining to calling a student "Buckwheat" have been supported only minimally. At worst, Respondent demonstrated regrettable insensitivity in using a student's appearance to explain a reference in The Color of Water based on her untested assumption that her young high school students would be unfamiliar with Buckwheat, the sole African-American character in the Our Gang series in film and on television and a caricature of a negative stereotype. There is no persuasive evidence that she addressed a student as "Buckwheat" in a pejorative sense or otherwise. Testimony adduced from several District witnesses established that a similar comment made by an African-American teacher would probably not have been viewed as controversial. Thus, this ill considered remark during a lesson involving literature should be discounted as a substantial factor in support of rescinding Respondent's tenure.

After eliminating the above charges, the actions that the Respondent admitted must be addressed to determine whether the circumstances of this conduct justified terminating her employment. If the admitted conduct in the aggregate is not sufficient to justify summarily terminating her employment, the Arbitrator must evaluate the divergent testimony and weigh the relative credibility of witnesses regarding the conduct alleged by two students and two co-workers who

accused the Respondent of wrongdoing against the testimony adduced from the Respondent and other witnesses called on her behalf.

Many of the elements of Respondent's conduct cited in the tenure charges have been proved. Respondent's professional judgment was highly questionable when, as part of a daily writing exercise, she posed several Open Ended Questions with racially sensitive topics. Respondent testified credibly that her motives in assigning provocative topics to students who were juniors and seniors in high school, poised to enter the world of work, was to stretch their minds and have them address topics that were significant or might arise in their adult lives after high school. Notwithstanding this laudable motivation, Respondent failed adequately to appreciate the potential impact of these assignments. However, because both student and administration witnesses called by the Board testified that the students who complained would probably have accepted the assignment without objection if such topics had been posed by an African-American teacher, corrective discipline, rather than dismissal, is more appropriate for this category of proven professional deficiency.

Moreover, the evidentiary record did not establish persuasively that the most controversial open-ended question assignment (hereafter, OEQ), citing a racist diatribe describing students as "orangutans" incapable of behaving and learning, was given to the complaining students by

Respondent. Credible testimony by a teacher who assumed responsibility for instructing some of Respondent's students after Respondent was suspended raised considerable doubt regarding whether Respondent had assigned this controversial OEQ, because it was this co-worker who prepared the OEQ based on her personal experience. Moreover, she testified that she assigned this OEQ to other classes without adverse consequences from her students or the administration.

Respondent did admit, however, that she had assigned an OEQ asking whether it was harder to be black or poor. Regardless of the exact wording or the intent of this assignment, Respondent should have realized that the question might be potentially offensive and thus upsetting to her students. Her insensitivity precipitated the students' ire and justified the District's use of this OEQ as evidence of Respondent's deficient professional judgment. Progressively severe corrective discipline was fully appropriate in response to this incident.

Credible testimony established that Respondent's choice of language in dealing with many of her students was too informal, sometimes to the point of falling short of the District's reasonable expectations of professionalism. For example, calling a villainous character in a book being discussed with her students a "bastard" or a "son of a bitch", conduct which Respondent acknowledged, overstepped

the bounds of proper decorum, but did not constitute routinely using profanity in class.

Similarly, asking a student who was resting his head on his desk during class or engaging in other behavior that indicated disinterest if the student was "high", while sarcastic and patently inappropriate, did not create a valid basis to conclude that Respondent failed to refer any student she actually suspected of being under the influence of a prohibited substance to the school nurse as required by District policy and regulations. Credible testimony adduced at the arbitration hearing established that Respondent was being jocular or chiding a student who was distracted or disengaged from a lesson rather than expressing her suspicion that the student was high. Given this testimony, the charges relating to failure to follow District policy mandating referral of students suspected of being under the influence of drugs to the school nurse cannot be sustained.

Testimony introduced by the District established that Respondent told one of her students that she did not like or respect him because he was an admitted seller of drugs. Respondent testified that she foolishly succumbed to she repeated entreaties by the student and his classmates to express her feelings about the student, who flashed large rolls of bills and boasted of his activities. Respondent was not cited for failure to

report this out of school activity to the administration. Nevertheless, her ill-considered statement cannot be ignored in assessing the appropriate disciplinary penalty for Respondent's professional shortcomings.

Testimony by former students, colleagues, and administrators established persuasively that Respondent clearly cared deeply not only for the subject matter she was imparting to her students, but also for the students as people. The evidentiary record established that she was motivated by a strong affinity for her students and a sincere, if overblown and misguided, sense of responsibility for their success in and out of school. However, Respondent admittedly blurred boundaries and failed to exercise self-control in fulfilling her role as educator and adult in her dealings with some of her students. These lapses include her texting students outside school hours and chiding them about completing their required assignments so as not to jeopardize their timely graduation. Therefore, Respondent is culpable for repeatedly failing to maintain appropriate professional distance from her students, as Respondent's lack of boundaries with her students led to intemperate statements and actions that some of her students found distressing.

One of these situations arose from Respondent's comments to a student about the circumstances surrounding his young children. Respondent became aware of these circumstances when she provided

home instruction to the mother of two of the student's five children. While visiting the female student's home to provide instruction, Respondent observed a paucity of clothing and food for the young children. Thereafter, Respondent consulted a Guidance Counselor at Atlantic City High School East, who testified that he enlisted Respondent's assistance in getting the male student to sign papers so that the mother and the children could receive social services. In pursuing these laudable goals, Respondent made one or more injudicious remarks that embarrassed and offended the male student. Such injudicious remarks form the leitmotif of her misconduct.

The District has asserted that several of Respondent's admitted lapses in conduct, viewed individually, would sustain the tenure charges, as each was sufficient to justify termination of employment. The evidentiary record does not support the District's position, as no single admitted or subsequently established incident satisfied the standard of misconduct necessary for summary discharge. Moreover, the testimony of the student Complainants was self-serving and conflicted with testimony offered by Respondent's co-workers and supervisor to a degree that a finding of improper conduct toward these students sufficient to terminate Respondent summarily cannot be sustained.

By all accounts, including by her supervising Principal, Respondent was a competent and caring teacher before the instant case arose. She cared for her students, but lost her perspective because of outside factors that affected her judgment and job performance. For example, Respondent's tirade in an e-mail to a co-worker, in which she threatens to "bury" her if the co-worker came into Respondent's classroom without permission, did not unambiguously convey intent to commit bodily harm, but was a breach of collegial behavior serious enough to warrant a substantial penalty. Therefore, Respondent cannot escape corrective discipline for this lapse in professional conduct. Respondent's e-mail to a co-worker justified a one semester suspension. If Respondent had physically threatened a co-worker, the tenure charges would be sustained and her employment terminated.

Respondent testified credibly and persuasively that she sent the offensive e-mail to a co-worker while intoxicated on the day her father died. This assertion does not excuse Respondent's misconduct, but demonstrated that Respondent was a troubled employee whose personal problems were adversely affecting her classroom performance and her professional judgment.

Although the District may not have fully realized or appreciated the extent of these debilitating factors when evaluating the investigative report before deciding to file tenure charges, the thrust of the credible testimony adduced during three days of arbitration hearings established persuasively that Respondent was experiencing emotional and other distractions that impaired her performance. These factors, as established during the arbitration hearings, mandate a conclusion that the District should have treated Respondent as a troubled employee rather than terminating her employment summarily.

If the District had been aware of one or more of Respondent's professional lapses before they were disclosed by the investigation commenced after the May 2012 Board meeting, and had imposed successive increments of progressively severe discipline, then subsequent infractions and repeated instances of poor professional judgment after the initial imposition of discipline would justify sustaining the tenure charges at issue in the instant case. However, in the absence of any single action, or group of actions, so egregious that summary discharge would have been warranted, escalating the penalty immediately to discharge by lumping all of the infractions together did not satisfy the prerequisite for progressively severe discipline.

The evidentiary record established clearly and convincingly that Respondent committed significantly fewer offenses than the District alleged she had committed or admitted. Many of these offenses have been explained as caused by or exacerbated by Respondent's personal problems. Some of the alleged infractions have likely been exaggerated by the student complainants. The parental testimony was insufficient to establish that Respondent is not fit to teach in the Atlantic City School District, especially if she successfully reforms her conduct and conforms to the District's policies and regulations.

When considered together, the insufficiency of proof regarding Respondent's alleged failure to report students Respondent may have suspected were under the influence of prohibited substances, the absence of proof of racist or bigoted statements and the testimony by students that Respondent is not racist, the strong possibility that the Complainants resented Respondent's strict classroom management techniques and demanding academic standards mandate that a stringent penalty short of dismissal be imposed. Given these proofs, and the absence of increments of progressively severe discipline, summary discharge is not the appropriate penalty.

Respondent admitted multiple instances of unprofessional or sub-standard conduct. She is culpable for these lapses, which justified the imposition of progressively severe discipline, short of summary discharge. Her culpability cannot be offset completely by the mitigating factors she cited, including the protracted illness and subsequent death of her father, her personal health and substance issues, exhaustion from working outside of school hours providing home instruction to District students, and her desire to alleviate the social and economic stresses faced by many of her students. Respondent is obligated to confine her professional activities to the reasonable parameters of a teacher in the employ of the Atlantic City Board of Education. Her desire to intervene in her students' personal lives must be constrained to avoid creating liability for her employer and must be effectuated within the boundaries imposed by applicable statute, regulation, and District policy.

If, as she testified during the arbitration hearings, Respondent has indeed come to understand how she must reconfigure her efforts to comply with District policy and professional standards of conduct, then her devotion to her subject matter and her students will provide a basis to rehabilitate her teaching performance. If Respondent is unsure of the appropriate standard or course of action for interacting with students or peers in any future instance, she should consult the appropriate District administrator to ascertain that her conduct will not inadvertently

jeopardize her job. Failure to adhere meticulously to these constraints and parameters in the future will jeopardize her continued employment.

Based on the evidence submitted, the tenure charges filed against Regina Dzwonar by the Atlantic City School District should not be upheld. She shall be reinstated forthwith to her former position as a Teacher employed by the Atlantic City Board of Education, and shall be eligible to resume her duties as of September 1, 2014 if Respondent has satisfied several conditions precedent set forth below.

Respondent's actions established a valid basis to examine her fitness to return to duty and to impose a threshold prerequisite that Respondent continue therapy during and after serving a lengthy suspension and that she document her continued regular attendance at AA meetings and therapy sessions before she is eligible to resume her teaching duties. Although Respondent testified that she now sincerely realizes the impact her remarks can have on her students, insufficient proof exists in the evidentiary record, including testimony from her psychotherapist, to warrant a definitive conclusion that Respondent has fully, or at least adequately, internalized the appropriate boundaries of verbal interactions with students to the extent that she has overcome the tendencies that clouded her judgment in the past. In addition, the District may require Respondent to undergo reasonable examination by a

District appointed psychologist to assess her progress in addressing the personal issues cited by Respondent in arguing mitigation before permitting Respondent to resume teaching duties.

Respondent shall also provide proof that she has continued or resumed therapy with a licensed psychologist of her choice, commencing not later than thirty days after this Award, and shall also provide documentation that she has been participating since the issuance of this Award in appropriate programs, such as regular attendance at Alcoholics Anonymous, to address her personal issues as defined in conjunction with the District's examining therapist and the District's EAP provider.

Respondent may apply for reinstatement to a teaching position commencing not sooner than the beginning of the 2014-2015 school year. She shall not receive any salary increment for the 2013-14 or 2014-15 school years. The interval between the date of her suspension in October 2012 and her potential reinstatement in September 2014 shall be considered a disciplinary suspension.

The 2014-15 school year shall be considered a period during which a final warning is operative, such that proven repetition of misconduct similar to the misconduct toward students or colleagues underlying the instant case shall constitute grounds for terminating her employment.

Should such misconduct be alleged by the District, tenure charges may be filed with the New Jersey Department of Education. This Award and Discussion may be submitted as evidence in such proceedings. In the alternative, given the undersigned Arbitrator's familiarity with this dispute, the parties may mutually agree to submit a dispute regarding such subsequent discharge to this Arbitrator for adjudication if permitted by applicable statute or regulation of the New Jersey Department of Education.

The Arbitrator hereby retains jurisdiction for the purpose of resolving any other dispute that may arise regarding the implementation of the remedy ordered pursuant to this Award.

February 20, 2014

Daniel F. Brent, Arbitrator