

OPINION AND AWARD

In the Matter of Arbitration between:

DEPARTMENT OF EDUCATION OF THE CITY
OF NEW YORK,

Complainant-Employer,

v.

SED File No. 20,660

JAMES GEIST,

Respondent-Tenured Teacher,

Pursuant to Education Law Section 2590-j(7)
and Section 3020-a.

Before: Marc A. Winters, Hearing Officer

APPEARANCES:

For the Department of Education

Mallory O. Sullivan, Esquire, Of Counsel, Office of Legal Services

For the Respondent

Jordan F. Harlow, Esquire, Of Counsel

Betsy Combier, Paralegal

HEARING DATES:

A telephonic Pre-Hearing Conference was held on January 15, 2013. At the Pre-Hearing Conference, the Respondent, was represented by Lori Smith, Esquire, of Counsel, UFT.

Evidentiary Hearings were held on June 5, 6, 20, 21, 27, 28, 2013, and August 1 & 2, 2013, at 49-51 Chambers Street, New York, New York.

INTRODUCTION

The New York City Department of Education brings about this action pursuant to Education Law Section 3020a, against James Geist, for his failures in the nature of incompetent and inefficient service, neglect of duty, insubordination, misconduct, and unwillingness and/or inability to follow procedures and carry out normal duties during the 2009-2010, 2010-2011, 2011-2012, and 2012-2013 school years. James Geist, under file #746662, Social Security # [REDACTED], is a tenured teacher, most recently assigned under a "Social Studies" license to the High School for Health Careers and Sciences, located in District 06, in Manhattan. The charge filing date was November 27, 2012.

SPECIFICATIONS

- 1) Respondent failed to properly, adequately, and/or effectively plan and/or execute separate lessons, as observed on or about the following dates:

- a) October 25, 2010;
- b) March 14, 2011;
- c) October 31, 2011;
- d) December 8, 2011;
- e) February 7, 2012; and
- f) September 21, 2012.

- 2) Respondent neglected his duties and/or failed to maintain attention to routine matters, in that Respondent failed to display an appropriate agenda during classroom instruction during the 2010- 2011 school year.
- 3) Respondent neglected his duties and/or failed to maintain attention to routine matters in that Respondent failed to display an appropriate word wall during classroom instruction in the 2011-2012.
- 4) Respondent failed to adhere to the US History curriculum, as observed on October 31, 2011.
- 5) Respondent, on or about June 10, 2010, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to appear for afternoon mandatory school-wide professional development.
- 6) Respondent demonstrated a lack of professionalism on June 10, 2010, in that he slammed a door in Assistant Principal Campeas' face.
- 7) Respondent, during the 2009-2010 school year, demonstrated conduct unbecoming a professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.
- 8) Respondent, during the 2010-2011 school year, demonstrated conduct unbecoming a professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.
- 9) Respondent, during the 2011-2012 school year, demonstrated conduct unbecoming a

professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.

10) Respondent, during the 2012-2013 school year, demonstrated conduct unbecoming a professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.

11) Respondent, on or about April 13, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to attend a social studies department meeting.

12) Respondent, on or about May 4, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to appear for a department study meeting.

13) Respondent failed to timely, properly, and/or adequately maintain and/or update his bulletin boards, during the 2010-2011 school year.

14) Respondent, on or about May 17, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to appear for a scheduled support meeting with a school coach.

15) Respondent, on or about May 18, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to attend a social studies department meeting.

16) Respondent was excessively absent during the 2010-2011 school year.

17) Respondent, on or about October 28, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to attend Parent Teacher Conferences.

18) Respondent failed to follow directives, as observed on November 16, 2011,

regarding an exam format.

- 19) Respondent failed to adequately provide for student health, safety and general welfare, in that he left students unattended on January 20, 2012. (Withdrawn by the DOE)
- 20) Respondent, during the 2011-2012 school year, failed to timely, properly and/or adequately maintain absentee lesson plans at the school. (Withdrawn by the DOE)
- 21) Respondent demonstrated a lack of professional fitness, in that he brushed his teeth and rid his saliva and toothpaste out of the window, during instructional time, during the 2012-2013 school year.
- 22) Respondent demonstrated a lack of professional fitness, in that he intentionally licked students' water bottles, during the 2012-2013 school year.
- 23) Respondent failed to effectively and/or appropriately use instructional time during the 2012-2013 school year.
- 24) Respondent failed, during the 2010-2011, 2011-2012, and 2012-2013 academic years, to fully and/or consistently implement supervisory support, directives and/or recommendations for pedagogical improvement and professional development, provided in observation conferences with administrators and/or outside observers, one-to-one meetings with school administrators, school based coaches and/or outside observers, as well as school wide professional development, with regard to:
 - a) Effective use of instructional time;
 - b) Effective handling of duties and responsibilities;
 - c) Effective classroom instruction;
 - d) Effective classroom management;
 - e) Effective delivery of lessons using proper methodology;
 - f) Effective lesson construction and planning; and
 - g) Professionalism.

THE FOREGOING CONSTITUTES:

1. Just cause for disciplinary action under Education Law §3020-a;
2. Insubordination;
3. Incompetence and/or inefficient service;
4. Conduct unbecoming Respondent's position or conduct prejudicial to the good order, efficiency, or discipline of the service;
5. Substantial cause rendering Respondent unfit to properly perform obligations to the service;
6. Misconduct;
7. Neglect of duty; and/or
8. Just cause for termination.

On January 10, 2013, Counsel for the Respondent, filed a Motion to Dismiss and a Demand for Bill of Particulars and a Request for Production of Documents. Since the short time line that was in place between the time of the assignment of this case, to this Hearing Officer, and the subsequent Pre-Hearing Conference, this Hearing Officer placed the above-Motion to Dismiss in abeyance pending the exchange of documents/discovery between the DOE and the Respondent.

The DOE provided for discovery and inspection the documents that were available, per the Respondent's request, prior to the start of the evidentiary hearings.

At some point after the Pre-Hearing conference and between the start of the Evidentiary Hearings, the Respondent, employed private counsel, Jordan F. Harlow, Esquire as provided for on the March 4, 2013, Notice of Appearance.

On or about March 26, 2013, the DOE amended the charges to those charges listed above

and provided copies to the Respondent, his Counsel and this Hearing Officer.

Evidentiary Hearings were held on June 5, 6, 20, 21, 27, 28, 2013, and August 1 & 2, 2013. All witnesses were sworn. Both parties were given full opportunity to present evidence, to cross-examine the witnesses and to argue their respective positions. A stenographic record of the Hearings were made. This Hearing Officer has full authority to resolve any arbitral challenges or procedural issues and to decide this case on its merits. Both Advocates made opening statements and gave oral closings. Each Advocate, after their respective closing argument, submitted to this Hearing Officer several cases of supporting arbitral and legal authority for guidance. Neither party objected to the fairness of this arbitration proceeding. Based on the record produced, this case is now properly before this Hearing Officer and ready for adjudication.

Respondent's Motion to Dismiss and Affirmation in Opposition to Probable Cause Determination.

On May 31, 2013, Respondent's counsel filed a preliminary Motion to Dismiss for the Respondent, James Geist, as well as Mr. Geist's Affirmation in Opposition to the Determination of Probable Cause

Based on the following, the Respondent's Motion to Dismiss, is hereby denied.

The motion argues, among other things, that the charges brought about in this Hearing do not comply with Education Law 3020a.

Three main reasons are articulated by Counsel in defense of this motion. First, there was no

vote by the employing Board on probable cause. Second, there is no employment contract with the Chancellor. Third, the Hearing Officer lacks authority.

It appears, once again, that these arguments being made by Respondent's counsel is not new. These same arguments have been made at other Hearings before this Hearing Officer as well as numerous times before other Hearing Officers adjudicating Section 3020a cases. Therefore, it is not necessary to discuss these arguments in detail, each and every time this motion is made.

The main arguments proffered in this motion have to do with the delegation Authority of the Chancellor and whether this Hearing Officer has jurisdiction over the Section 3020a matter before me.

A review of the Education Law with respects to Sections 3020a and 2590h and as determined by the courts, and in particular, *The Supreme Court of the State of New York, County of Rockland, Malcolm Menchin, Petitioner, vs. New York City Department of Education, Performance Conservatory High School, Respondent*, clearly evidences the Chancellor's authority to delegate under 2590h. Upon further review of the motion and Sections 3020a and 2590h, this Hearing Officer finds that the procedures followed in this instant case complies with the statutory requirement of the Education Law. There is no merit to the motion. It seems to this Hearing Officer that these procedural arguments presented, in the Respondent's motion, would be better suited to be addressed, in a different venue or arena, as these Section 3020a hearings are not the proper avenue to continually pursue the procedural arguments being made.

FACTUAL HISTORY:

Respondent, James Geist, a licensed-tenured teacher was employed by the District for fourteen years. Most recently, Respondent Geist, was assigned under a “Social Studies” license to the High School for Health Careers and Sciences, located in District 06, in Manhattan.

On or about November 27, 2012, the Department of Education brought charges against Respondent Geist, through Education Law Section 3020a , for his failures in the nature of incompetent and inefficient service, neglect of duty, insubordination, misconduct, and unwillingness and/or inability to follow procedures and carry out normal duties during the 2009-2010, 2010-2011, 2011-2012, and 2012-2013 school years.

SUMMARY OF THE POSITION OF THE PARTIES

DOE:

The Department of Education asserts that they have proven by a preponderance of the evidence that the Respondent, James Geist, was an underperforming, unsatisfactory pedagogue, and that the evidence shows he was unwilling or incapable of providing consistent, competent service, unwilling and incapable of accepting support for his deficiencies, and was unwilling and incapable of improving his skills as the classroom teacher and as a professional. As such, James Geist should be terminated from his employment. Mr. Geist was notified of his deficiencies pertaining to his profession inside and outside of the classroom. Through written observation reports and one-to-one post-observation conferences, Mr. Geist was told the areas he needed to improve. Further, the School District was forced to repeatedly address his insubordinate,

unprofessional, and absolutely childish, rude, and passive aggressive behavior.

At the conclusion of the Hearing, the DOE moved to withdraw specification 1F, specification 19, and specification 20 because the DOE did not feel that they met their burden as far as the one sub specification and two specifications

RESPONDENT:

Respondent is a tenured Social Studies Teacher employed by the District for fourteen years. Respondent is a highly intelligent, articulated, innovative and hard working teacher. Respondent is capable of providing a valid educational experience to the students in his classroom. He received consecutive satisfactory end of the year ratings up until the 2011-12 school year and had no issues with the Department or with his pedagogy until his vindictive, unprofessional assistant principal chose to target him because of a personal vendetta as he was then treated unfairly by the Administration. The Department has proffered 24 specifications against Mr. Geist, who has never previously been the subject of section 3020-a disciplinary charges, and are seeking to terminate his employment. The Department has not met its burden of establishing just cause to discipline Mr. Geist according to the laws governing Education Law section 3020-a disciplinary hearings. As will be shown, they have not substantiated by a preponderance of the evidence any of the specifications proffered. Even if the Hearing Officer were to decide to sustain any of the specifications in this case, which he certainly should not, based, on the facts established during the hearing, the District's request for substantial penalty must be denied.

DISCUSSION:

To make a decision in 3020a cases, usually it is necessary to first examine the Specifications and the evidence supporting those charges along with the Respondent's defenses of those charges listed in the DOE's Specifications. A Hearing Officer must determine whether the DOE is accurately portraying the conduct of the Respondent for which the DOE is asking that termination be the end result.

Here, however, for this case, it will not be necessary to go over each and every Specification, for this Hearing Officer to come to a conclusion and make a decision.

Many of the Specifications overlap in what occurred, what was charged and why the charges exist as they do. To that end, for viewing purposes, several of the Specifications will be grouped together.

- 1) Respondent failed to properly, adequately, and/or effectively plan and/or execute separate lessons, as observed on or about the following dates:
 - a) October 25, 2010;
 - b) March 14, 2011;
 - c) October 31, 2011;
 - d) December 8, 2011;
 - e) February 7, 2012; and
 - f) September 21, 2012. (Withdrawn by DOE)

2) Respondent neglected his duties and/or failed to maintain attention to routine matters, in that Respondent failed to display an appropriate agenda during classroom instruction during the 2010- 2011 school year.

3) Respondent neglected his duties and/or failed to maintain attention to routine matters in that Respondent failed to display an appropriate word wall during classroom instruction in the 2011-2012.

4) Respondent failed to adhere to the US History curriculum, as observed on October 31, 2011.

13) Respondent failed to timely, properly, and/or adequately maintain and/or update his bulletin boards, during the 2010-2011 school year.

18) Respondent failed to follow directives, as observed on November 16, 2011, regarding an exam format.

23) Respondent failed to effectively and/or appropriately use instructional time during the 2012-2013 school year.

24) Respondent failed, during the 2010-2011, 2011-2012, and 2012-2013 academic years, to fully and/or consistently implement supervisory support, directives and/or recommendations for pedagogical improvement and professional development, provided in observation conferences with administrators and/or outside observers, one-to-one meetings with school administrators, school based coaches and/or outside observers, as well as school wide professional development, with regard to:

- a) Effective use of instructional time;
- b) Effective handling of duties and responsibilities;
- c) Effective classroom instruction;
- d) Effective classroom management;
- e) Effective delivery of lessons using proper methodology;
- f) Effective lesson construction and planning; and
- g) Professionalism.

Specifications 1, 2, 3, 4, 13, 18, 23 & 24, all are concerned with the Respondent's conduct and behavior as a class room teacher.

5) Respondent, on or about June 10, 2010, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to appear for afternoon mandatory school-wide professional development.

11) Respondent, on or about April 13, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to attend a social studies department meeting.

12) Respondent, on or about May 4, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to appear for a department study meeting.

14) Respondent, on or about May 17, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to appear for a scheduled support meeting with a school coach.

15) Respondent, on or about May 18, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to attend a social studies department meeting

17) Respondent, on or about October 28, 2011, was derelict in his duties, and/or failed to fulfill his professional responsibilities, in that he failed to attend Parent Teacher Conferences.

Specifications 5, 11, 12, 14, 15 & 17, are all concerned with the Respondent's failure to fulfill

his professional responsibilities.

- 6) Respondent demonstrated a lack of professionalism on June 10, 2010, in that he slammed a door in Assistant Principal Campeas' face.
- 7) Respondent, during the 2009-2010 school year, demonstrated conduct unbecoming a professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.
- 8) Respondent, during the 2010-2011 school year, demonstrated conduct unbecoming a professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.
- 9) Respondent, during the 2011-2012 school year, demonstrated conduct unbecoming a professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.
- 10) Respondent, during the 2012-2013 school year, demonstrated conduct unbecoming a professional, and/or was insubordinate, and/or used poor judgment, in that he failed to communicate in a professional and/or respectful manner with supervisors.

Specifications 6, 7, 8, 9 & 10, are all concerned with the Respondent's lack of professionalism and insubordinate behavior.

With regards to the above three groups of Specification:

First, this Hearing Officer finds that the testimony of the Principal and the testimony of the Asst. Principal, during these Hearings, not only to be credible but competent and reliable as well.

On the other hand, the testimony of the Respondent was neither credible nor convincing. In the Respondent's eyes, he was always right, his Administration always wrong and based on those

assumptions, the Administration, the Asst. Principal, in particular, was out to get him.

In this Hearing Officer's 35 years involved in labor arbitration cases, 15 of those years as a full-time arbitrator, never have I seen an employee who was so blind to his own shortcomings that he displayed such a disrespectful, condescending and insubordinate attitude to those who were actually trying to help him improve as a teacher.

The record, in this case, has shown repeated attempts, by this Administration, especially, the Asst. Principal, going way beyond the limit of trying to help an individual who was so disrespectful and insubordinate in return.

A large part of the problem that exists is the Respondent's failure to understand that the Principal and the Asst. Principal have the right to direct the work force, which includes the teaching methods to be used, by the teachers at their school.

Just because the Respondent believes his methods are better, and maybe in some instance they may be, doesn't displace the pre-existing right of his Administration to act unilateral in deciding the methods and the direction they want the school and its employees to follow.

The law of the land within labor relations and a collective bargaining relationship, even in Education, is that the employee must obey the directions given him by his management and then if he disagrees, pursue his disagreement through the grievance procedure or any other avenue that is available to him for adjudicating his dispute,

Like any other hierarchal organization, Education requires a chain of command if they are to operate efficiently.

With respect to Specifications 1, 2, 3, 4, 18, 23 & 24:

During the entire Hearing, the DOE, convincingly demonstrated that the Respondent was notified of his deficiencies pertaining to his teaching ability and profession inside and outside of the classroom.

Through both written observation reports, one-to-one post observation reports, the Respondent was told the areas he needed to improve.

Each and every observation given to the Respondent listed numerous recommendations for the Respondent to use in order for him to either improve as a teacher or to be on the same page as with the teaching methods being used at that school.

Respondent was given repeated notices that his lessons were teacher centered, lacked guided questions, lacked having an agenda, and lacked student engagement just to mention a few of the recommendations given him to improve on.

The overwhelming amount of credible testimony was that the Respondent sometimes would try some of the recommendations once, then go back to the way he thought it should be done or in some cases, never implemented the recommendations at all.

Likewise, the Respondent failed to follow or try directives given to him, by coaches who were hired to help him improve his teaching methods while even refusing to meet with the coaches. Why, because he didn't need the help. His way, once again, was the correct way.

The record also shows, numerous accounts of where the Respondent was warned by the Principal and Asst. Principal over his deep seeded resentment of authority figures.

Specifications 1, 2, 3, 4, 18, 23 & 24 are hereby sustained.

With respect to Specifications 6, 7, 8, 9, 10 as well as Specifications 5, 11, 12, 14, 15 & 17:

The Principal, as corroborated by the Asst. Principal, described the overwhelming number of meetings held over the three charged school years to discuss with the Respondent his poor professional attitude and communications. The DOE witnesses convincingly demonstrated the insubordinate behavior they were subjected to at the hands of the Respondent. The Respondent was repeatedly advised that his behavior and attitude was unacceptable and needed to change. Respondent was also repeatedly warned about his poor attitude and communications towards the Asst. Principal.

The Respondent repeatedly failed to appear for school wide professional development; failed to attend Social Studies Department meetings; failed to attend scheduled support meetings and failed to either attend Parent Teacher Conferences or failed to give adequate notice of his absence for such meetings.

For each and every item listed above, the Respondent would have an excuse that surmounted to the Respondent's failure to attend the above, because he really believed that he didn't need to. As such gave unbelievable excuses that I am sure the Respondent would not have accepted from his own students. He forgot or he went to the wrong room or it was at a different time then what he was used to....

In addition, the record is compiled of an overwhelming amount of credible testimony where

the Respondent was so disrespectful to his Asst. Principal. In meetings with her, the Respondent would mimic her; would talk over her; would belittle her; would continually repeat her; would not speak to her; would refuse her directives and even slammed a door in her face and blamed it on the wind. At times during the Hearing, the Respondent would actually believe his disrespectful actions to be funny as he would continually laugh and smirk.

The record shows that the Respondent was relentless in his attacks towards the Asst. Principal. Respondent would send an enormous amount of passive aggressive emails to the Asst. Principal and Principal under the guise of telling them how to run the school and criticizing the Asst. Principal's directives and even her mannerisms. The same type of communications would be distributed by the Respondent in articles and other handouts created by the Respondent.

Respondent, in his defense, admitted, during the Hearings that at times his behavior was unprofessional and that he communicated, especially to the Asst. Principal, unprofessionally and in a disrespectful manner. Although, he stated he was working on that and believed his attitude towards the Asst. Principal was because she was out to get him.

Specifications 6, 7, 8, 9, 10 as well as Specifications 5, 11, 12, 14, 15 & 17 are all sustained.

With respect to Specifications 16, 19, 20, 21 & 22:

16) Respondent was excessively absent during the 2010-2011 school year.

Although, the records indicate that the Respondent was absent 13 times, there was no evidence to suggest that these absences contributed to Respondent not providing his duties, as a classroom teacher, affectively to his students. Additionally, the evidence does support that Respondent, after

being put on notice, was not absent after such notice. Likewise, Respondent did lose pay because of some of those absences. Based on the discussion and the record, there is no reason to penalize Respondent any further for the absences listed above.

Specification 16 is denied.

- 19) Respondent failed to adequately provide for student health, safety and general welfare in that he left students unattended on January 20, 2012. (Withdrawn by the DOE)
- 20) Respondent, during the 2011-2012 school year, failed to timely, properly and/or adequately maintain absentee lesson plans at the school. (Withdrawn by the DOE)

Both Specification 19 and 20 were withdrawn by the DOE at the Closings portion of the Hearing.

- 21) Respondent demonstrated a lack of professional fitness, in that he brushed his teeth and rid his saliva and toothpaste out of the window, during instructional time, during the 2012-2013 school year.
- 22) Respondent demonstrated a lack of professional fitness, in that he intentionally licked students' water bottles, during the 2012-2013 school year.

Specifications 21 & 22 are both denied and no real discussion needs to take place since these two specifications were never corroborated by witnesses with firsthand knowledge of either incident.

DECISION:

The basic principle in arbitration, when discussing discipline or discharge, is that an Employer must have just cause for imposing such a penalty. The burden of proof falls directly on

the Employer. Education Law, Section 3020a, cases are no different. What decides just cause usually varies from case to case determinant upon a specific set of facts.

In termination cases, such as this, the arbitrator/hearing officer normally is concerned with two distinct areas of proof. First, that the Respondent's guilt has been established. Second, that the proper penalty has been issued.

The degree of proof normally required, for proving wrongdoing or misconduct, must be clear and convincing evidence which would convince a reasonable person of another person's guilt.

The most important evidence in termination cases, such as this, comes in the form of testimony from witnesses. The source of such testimony whether it is first hand knowledge or merely hearsay is an important part of proving wrongdoing. This Hearing Officer relies heavily on firsthand knowledge of such witnesses since the consequences to the Respondent are so great.

In this case we have a teacher, who has taught for the DOE for fourteen years. For the charged years in question for this Hearing, the Respondent taught in the Social Studies Department at the High School for Health Careers and Sciences.

This Section 3020a Hearing concerns allegations of incompetent and inefficient service, neglect of duty, insubordination, misconduct and unwillingness and/or inability to follow procedures and carry out the normal duties required.

Based on the discussions provided, in this case, there is an overwhelming amount of credible testimony that show where, the Respondent, for the charged years was insubordinate by refusing

to follow directives; making disparaging personal remarks and being disrespectful to his Superiors.

One of the most firmly established principles in labor relations is management's right to direct the workforce. This holds true even in Education. Insubordination is usually viewed, by arbitrators/hearing officers as a cardinal offense since it violates that right of management.

The testimony here was that repeatedly the Respondent was given clear directives. Respondent understood the directives. The directives given were reasonably related to the operation of the school and the Respondent understood that his failure to follow the directives given could lead to disciplinary consequences. The Respondent responded by not only refusing the directives but being abusive and disrespectful to his Supervisors as well.

Most cases of insubordination involve an employee's failure to follow directives given him/her by a supervisor. For this case we have not only a failure to follow directives but abusive behavior in the form of an employee displaying a disrespectful attitude and making disparaging remarks towards his Administrators.

The record in this case contains and displays an overwhelming amount of insubordinate behavior by the Respondent. Just one complaint or a few complaints of such behavior, in and of itself, would not justify termination. However, the totality of the disparaging remarks, the totality of the disrespectful behavior displayed and the totality of the disobeyed directives is more than any employer should tolerate.

Respondent's behavior over just one of the charged school years in question would have been

enough to justify termination. However, Respondent's behavior over the entire charged years in question can only result in one conclusion. Termination.

The Principal gave this Respondent more than enough warnings and chances to change his behavior over a three year period. The Respondent doesn't believe he is in the wrong. For that reason, this Hearing Officer believes that the Respondent is incapable of changing his behavior in order to be an effective teacher. As such, termination is the only answer.

AWARD:

The following Specifications are hereby sustained:

- Specification No. 1.
- Specification No. 2.
- Specification No. 3.
- Specification No. 4.
- Specification No. 5.
- Specification No. 6.
- Specification No. 7.
- Specification No. 8.
- Specification No. 9.
- Specification No. 10.
- Specification No. 11.
- Specification No. 12.
- Specification No. 13.
- Specification No. 14.
- Specification No. 15.
- Specification No. 17.
- Specification No. 18.
- Specification No. 23.
- Specification No. 24.

The following Specifications are hereby denied:

Specification No. 16.

Specification No. 21.

Specification No. 22

The following Specifications were hereby withdrawn:

Specification 1(f).

Specification 19.

Specification 20.

The appropriate penalty based on the sustained charges/specifications and based on the reasoning and discussion above is termination. The Department of Education has met their burden in proving just cause.

It is hereby so ordered this 19st Day of November, 2013

A handwritten signature in cursive script that reads "Marc a Winters". The signature is written in black ink and is positioned above a horizontal line.

Marc A. Winters, Hearing Officer
Seven Fields, Pennsylvania