

H.E. NO. 2023-10

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERVILLE BOARD OF  
EDUCATION,

Respondent,

-and-

Docket No. CO-2022-022

SOMERVILLE EDUCATION  
ASSOCIATION,

Charging Party.

**SYNOPSIS**

The Hearing Examiner finds that the Somerville Board of Education (Board) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the Act), based on an unfair practice charge filed by Somerville Education Association (Association). Specifically, the Hearing Examiner finds that the Board violated sections 5.4a (1) and (3) of the Act when the Board refused to allow a non-tenured teacher, Dante Cianni (Cianni) to bring an Association representative with him to an interim conference with Board administrators that Cianni reasonably believed may lead to discipline, and when the Board later retaliated against Cianni for his request to have Association representation at the interim conference by not renewing Cianni's employment contract.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,  
Schenck Price Smith and King, attorneys  
(Marc H. Zitomer, of counsel)

For the Charging Party,  
Mellk Cridge LLC  
(Edward Cridge, of counsel)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On August 6, 2021, Somerville Education Association (Association) filed an unfair practice charge against Somerville Board of Education (Board). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),<sup>1/</sup> when the

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1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act;" "(3) Discriminating in regard to hire or tenure of employment or any term or (continued...)

Board allegedly refused to allow a non-tenured teacher, Dante Cianni (Cianni), to bring an Association representative with him to an interim conference with Board administrators. The Association further alleges that the Board later retaliated against Cianni for his request to have Association representation at the interim conference by not renewing his employment contract.

On January 7, 2022, a Complaint and Notice of Hearing was issued (C-1).<sup>2/</sup> On January 28, 2022, the Board filed an Answer denying that it violated the Act in any way as a result of its refusal to allow Cianni to bring an Association representative to the interim conference (C-2). On April 1, 2022, the parties submitted a joint stipulation of facts, including exhibits (J-1). A hearing was held in this matter on April 5 and 7, 2022.<sup>3/4/</sup> The

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1/ (...continued)  
condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act;" and "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ Commission exhibits are marked "C-", while Joint, Charging Party and Respondent exhibits are marked "J-", "CP-", and "R-", respectively.

3/ The hearing was held virtually via Zoom due to the ongoing COVID-19 pandemic.

4/ "T" represents the transcript, preceded by a "1" or "2" signifying the first or second day of hearing, followed by  
(continued...)

parties submitted post-hearing briefs by June 30, 2022.

Based upon the record and the parties' joint stipulation of facts with exhibits, I find the following facts:

**FINDINGS OF FACT**

1. The Association is a public employee organization within the meaning of N.J.S.A. 34:13A-1 et seq. It is the duly authorized representative for certificated employees, including teachers and certified non-teaching employees, as well as athletic trainers, secretarial and clerical employees, custodial and maintenance employees, instructional assistants, and bus drivers employed by the Board. (J-1, Exh. A; 1T14-11 to 1T15-1).

2. The Board is a public employer within the meaning of N.J.S.A. 34:13A-1 et seq., and the rules and regulations of the Public Employment Relations Commission promulgated in accordance therewith. (J-1; 1T14-13 to -18).

3. Dante Cianni was employed by the Board as a non-tenured English Language Arts teacher at Somerville Middle School for three school years, beginning with the 2018-2019 school year, and culminating with the 2020-2021 school year. (J-1; 1T15-18 to -21; 1T36-6 to 1T37-1).

4. Prior to his employment with the Board, Cianni graduated from Montclair State University in 2005 with a bachelor's degree

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4/ (...continued)  
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in English, and from Seton Hall Law School in 2011 with a J.D. law degree. (1T30-13 to 1T31-12).

5. Cianni was licensed to practice law in New Jersey in 2011, and also holds a teaching certificate issued by the New Jersey Department of Education for secondary English. (1T31-13 to 1T32-2). Prior to working for the Board, Cianni was employed by the Teaneck School District for three years as a middle school teacher, and his contract was not renewed at the end of his third year. (1T130-5 to 1T131-7).

6. During his employment with the Board, Cianni was a member of the Association. (J-1).

7. The Board and the Association are parties to a collective negotiations agreement (CNA) dated July 1, 2017 to June 30, 2020. (J-1, Exh. A).

8. At the conclusion of the 2019-2020 school year, Cianni received a summative performance report ("2019-2020 Summative Report"), written by middle school principal Anthony Benjamin, wherein Cianni received an overall summative rating score of 2.8999, which categorized him as "Effective (2.65-3.49)". (J-1, Exh. B).

9. In the 2019-2020 Summative Report, Cianni was rated "Effective" for five of the six performance standards, but rated "Partially Effective" for "Performance Standard 1: Professional Knowledge," which included the following comment:

Continue to familiarize yourself with the core curriculum and develop higher order thinking questions in response to your understanding of this curriculum. This will assist in creating/sustaining an environment in which students challenge their own and others thinking, and apply skills and concepts accordingly. Furthermore, continue to enhance your understanding of individual students' developmental needs. This will assist you, among other things, when pairing students to engage assignments, and overall growing students confidence and communication skills, etc.

At or before the start of the new school year, take initiative and remain consistent and insistent on seeking your administrator feedback on how to improve your ability and the expectation to enhance/deepen your knowledge base. You should anticipate a monthly meeting with administration and/or you yourself need to schedule a monthly meeting with administration to monitor your progress and develop with this specific standard/area. [J-1, Exh. B.]

10. In the 2019-2020 Summative Report, Cianni was rated "Effective" for "Performance Standard 6: Professionalism," which included the following comment:

Mr. Cianni is the consummate professional, adhering to all district policy and/or school expectations, etc. [J-1, Exh. B.]

11. Cianni was "[r]ecommended for continued employment" for the 2020-2021 school year. (J-1, Exh. B).

12. The 2019-2020 Summative Report included the following "Commendation":

Mr. Cianni is very creative and uses this creativity to inspire students and staff when we engage [in] school-wide activities, etc.

Please continue to demonstrate a level of passion and enthusiasm that our school aspires to in . . . all of our teachers, especially our new (non-tenured) teachers.  
[J-1, Exh. B.]

13. The 2019-2020 Summative Report included the following "Areas Noted for Improvement":

The areas for improvement and suggestions for such improvement are noted above in the specific Standard's section/box. We expect immediate and significant improvements in all standards at the start of the new school year, especially the standards noted above which include Professional Knowledge.

Failure to make such noted improvement will likely negatively impact future observations, the interim report, and your [2020-2021] Summative rating - thus prompting the recommendation for non-renewal for the [2021-2022] school year likely. We believe in you and know you can rise to this expectation.  
[J-1, Exh. B.]

14. From March through August, 2020, in addition to his teaching duties, Cianni was also retained by the Board, along with Nicole Pepe (Pepe), on a project to re-write the seventh grade language arts curriculum, which involved selecting new texts, short stories and books to use as "anchor texts". (1T37-7 to -14).

15. At the same time that Cianni and Pepe were rewriting the seventh grade language arts curriculum, other teachers were also re-writing the sixth and eighth grade language arts curriculum, so that all three grades in the middle school had new language arts curricula written over the summer of 2020. (1T37-

21 to -25).

16. Although Cianni had taught seventh grade language arts for two years, and had spent the summer of 2020 re-writing the seventh grade language arts curriculum, Cianni was advised approximately one week before the start of the 2020-2021 school year that he would be teaching eighth grade language arts that year. (1T36-17 to 1T37-1).

17. Cianni was concerned about this change to eighth grade language arts with one week's notice because he had not taught eighth grade language arts before, and he had spent the summer re-writing the seventh grade language arts curriculum. (1T37-2 to -14).

18. Cianni asked Melissa Stager (Stager), director of curriculum, why his assignment was changed to eighth grade language arts, and she said she did not know because she was not involved in the decision. (1T38-6 to 1T39-7).

19. During the 2020-2021 school year, the middle school principal was Anthony Benjamin (Benjamin) and the vice principal was Lani Perruso (Perruso). (1T40-5 to -12).

#### **September 16 and 17, 2020 Meetings**

20. On September 16 2020, Cianni attended an optional professional development conference with Pepe scheduled by Valentina Carleo (Carleo). However, at 9:30 p.m. that same evening, Cianni received an email from Benjamin calling Cianni in



for a meeting with Benjamin because Cianni had "missed" a meeting. Cianni was concerned because he did not understand why Benjamin was accusing him of missing a meeting that he attended, and why Benjamin was involved at all because the meeting was an optional meeting scheduled by Carleo, not by Benjamin. (1T54-15 to 1T56-20; CP-8).

21. On September 17, 2020, Cianni had a meeting with Benjamin, Perruso, Carleo, and Cianni's union representative Freddy Shaker about Benjamin's September 16, 2020 email. (1T56-22 to 1T57-3; CP-8).

22. Benjamin allowed Cianni to have a union representative at the September 17 meeting because Benjamin believed that Cianni had failed to attend a mandatory meeting, and Stager and Carleo felt that Cianni was not following a directive,<sup>5/</sup> which could amount to potential insubordination, and result in discipline. (2T117-15 to 2T118-1).

23. At the September 17, 2020 meeting, Benjamin stated that Cianni had missed a mandatory meeting on September 16, and Cianni responded that he attended the September 16 meeting, which was optional and not mandatory. Once Cianni said that, Benjamin looked down, looked back up, and said, "well, that torpedoed,"

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<sup>5/</sup> As Carleo did not testify, it is unclear why Carleo felt that Cianni had not followed a directive, when she ran the optional professional development meeting and would have known that it was not mandatory.

and then did not finish the sentence. Cianni asked, "what does that torpedo? Is there something to torpedo here?" Then Benjamin ended the meeting. (1T57-6 to 1T58-2; CP-8).

24. Less than one month into the 2020-2021 school year, based on the September 17, 2020 meeting, Cianni believed he was going to be reprimanded and possibly disciplined. Cianni believed that Carleo withheld the information from Benjamin that the September 16 meeting was optional, and Cianni believed that Benjamin was surprised to learn at the September 17 meeting from Cianni that the September 16 meeting was optional, which "torpedoed" the disciplinary action that Benjamin was about to give to Cianni on September 17. (1T58-3 to -21; 1T169-9 to 1T170-14; CP-8).

#### **November 2, 2020 Observation Report**

25. On November 2, 2020, Perruso observed Cianni's performance in class and prepared an observation report. (1T42-7 to -14; CP-1).

26. In the observation report, Perruso included the following comment under "Assessment of and for Learning Evidence": "Mr. Cianni is encouraged to circulate the room as students work independently and monitor students' progress and understanding." (CP-1, p. 065).

27. Cianni was concerned about Perruso's comment encouraging him to circulate, because due to the COVID-19

pandemic, teachers had been advised of school rules requiring teachers to maintain social distance from students. Cianni expressed his concern about Perruso's comment in his post-observation meeting with her on November 24, 2020, and he further explained that he was using the school's "Securely" software on his laptop to monitor the students' screens, because teachers had been encouraged by the district before the school year began to use "Securely" instead of getting into close physical contact with the students. Perruso thanked Cianni for that information, and Cianni believed that, based on that discussion, Perruso would modify her observation report comment that encouraged Cianni to circulate. (1T43-25 to 1T45-1).

28. However, Perruso did not modify her comment in the observation report encouraging Cianni to circulate, but instead added a comment at the end of the report that stated that "Mr. Cianni stated that he was using Securely to monitor students' screens instead of circulating the classroom," which did not address the issue of the school rules regarding social distancing and encouragement to use Securely. (1T45-2 to -16; CP-1, p. 067).

29. Also in the November 2, 2020 observation report, Perruso included the following comment under "Professionalism Evidence":

Mr. Cianni is reminded to contact school administration or the appropriate staff member directly (i.e. the school nurse) regarding concerns/questions about individual

students as to maintain confidentiality and professionalism. [CP-1, p. 066.]

30. During the November 24, 2020 post-observation meeting with Perruso, Cianni asked Perruso what that line meant, and asked if he had done something wrong. Perruso responded to Cianni that he had not, but that because of the pandemic, "this was just boiler plate language" that she was "putting in everyone's observation as a precaution" so that nobody "violate[s] any HIPAA laws."<sup>6/</sup> (1T49-21 to 1T50-7; CP-1; CP-8).

31. Cianni was concerned about Perruso's inclusion of this "boiler plate language" regarding revealing student information about student illnesses because of a prior incident at a faculty meeting with Benjamin. At that earlier faculty meeting, Cianni asked a question, and Benjamin answered, but during his answer, Benjamin began to state student names and reveal student information. Cianni asked Benjamin to stop because Cianni was not asking about individual students but had a question about students as a whole. In the November 24, 2020 post-observation meeting, Cianni asked Perruso if the inclusion of this "boiler plate language" about revealing student information had anything to do with the earlier faculty meeting, and Cianni's exchange

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<sup>6/</sup> The Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320 et seq. (HIPAA), required the creation of national standards to protect sensitive patient health information from being disclosed without the patient's consent or knowledge.

with Benjamin, but Perruso said it did not. (1T50-13 to 1T51-4).

32. Prior to the November 2020 observation report prepared by Perruso, Cianni had never seen comments included in an observation report about incidents that did not actually occur either during the classroom observation, or during a pre-observation conference with the observer, but Benjamin stated that observation reports are not limited to the actual observation itself, and may include comments regarding professionalism outside the classroom. (1T127-8 to 1T128-18; 2T20-13 to -25).

### **January 28, 2021 Observation Report**

33. Stager observed Cianni's performance in class on January 22, 2021. On December 9, 2020, Stager and Cianni had a pre-observation meeting, and they also had a post-observation meeting to discuss Stager's observation report dated January 28, 2021. (1T59-20 to 1T60-9; CP-2).

34. Cianni was concerned at the post-observation meeting because of some of Stager's comments in the observation report, including the following comment under "Professionalism Evidence":

Mr. Cianni worked hard on the curriculum this summer and was reflective about the lesson plan in the pre-conference. This is the type of professionalism that moves a district forward. However, this school year there have been instances where he failed to maintain professionalism and has engaged in unproductive dialog. For example, early in the year, he was asked to have his temperature scanned by an electronic database

and facial scanner as a COVID safety precaution. Mr. Cianni objected to the practice, but rather than have a professional conversation on the side, he responded with a raised voice and visible agitation. Although faculty meetings are an open forum, there were times Mr. Cianni brought forth personal issues in a confrontational tone. There was not a problem with voicing the concern, but the manner in which it was done. During a [professional development] session, Mr. Cianni again questioned the presenter in a confrontational tone. Mr. Cianni responded to an email from the principal with a reply all which publicly questioned the intent of the email. Even in a meeting with the observer, Mr. Cianni seemed to assume negative intent before asking for clarification. Once he was given clarification, his tone became more professional.

We all get frustrated at times but as a professional, we need to seek to solve things in a productive manner and separate the emotions from our work interactions. Raising concerns is valid, however, how those concerns are raised needs to be done with a respectful tone and through proper channels. Many of these concerns would have been addressed if he had sought to speak to the parties involved in a private manner. Having a quiet conversation on the side or responding to an email individually allows the concerns to be raised and addressed while maintaining mutual respect. [1T61-1 to -4; CP-2, p. 072 (emphasis added).]

35. With regard to the facial scanner comment, at the beginning of the school year, before students returned but on the first day that teachers returned, Cianni was asked to submit to a facial scanner. Cianni was concerned about the district's use of a facial scanner due to privacy concerns, as well as racial bias

concerns with facial scanners, especially as the district was launching a bias program. (1T64-18 to 1T65-24; CP-8).

36. Cianni expressed his concerns regarding the facial scanners on that same first day back for teachers to four administrators: two IT employees, Chris Mulligan (Mulligan) and Melissa McEntee (McEntee). Mulligan was not interested in speaking with Cianni about this issue, so then Cianni asked if he needed to ask for union representation, at which time McEntee brought Cianni to the side and they had a "nice conversation" about Cianni's concerns. (1T66-2 to 1T67-2). Stager was not part of this conversation. (1T67-11 to -12).

37. After their conversation, McEntee went to the nurse's office and got a digital thermometer to take Cianni's temperature without use of the facial scanner. (1T67-2 to -5).

38. At the end of the school day, Benjamin stated at a faculty meeting that the school was going to develop procedures for anyone who did not feel comfortable with facial recognition software and facial scanners. (1T67-5 to -10).

39. Prior to the comment in Stager's January observation report, no one had ever told Cianni that he had "responded with a raised voice and visible agitation" or any lack of professionalism to McEntee regarding the facial recognition scanner. (1T67-14 to -21).

40. To the contrary, Cianni had a meeting with Benjamin and

McEntee to discuss the procedures that were developed to allow Cianni to not participate in the facial recognition software, which included entering a separate door in the morning and having his temperature taken, and neither Benjamin nor McEntee ever told Cianni that he had been unprofessional in any way. (1T67-21 to 1T68-16).

41. Although Cianni had objected to the facial scanner at the beginning of the school year, Cianni learned for the first time that his actions during that incident were being characterized as unprofessional through Stager's January observation report, although Stager had not participated in any of his conversations or meetings about facial scanners. (1T69-1 to -15).

42. Cianni was concerned about this characterization of the facial scanner incident as unprofessional for numerous reasons: because he believed it was a mischaracterization of the incident that portrayed him in a negative light; because he did not know what was being said between administrators about him, as no one had notified him earlier of this characterization; because he learned of this through a January classroom observation report when this incident was not part of that classroom observation, and had occurred four months earlier; because Stager was not part of his conversation with McEntee about facial scanners, yet she included it in his January observation report; and because he was



not objecting to COVID safety precautions generally, but only to facial recognition software specifically. (1T69-19 to 1T70-18).

43. Due to Cianni's concerns about the facial scanner incident being characterized as an example of unprofessionalism, during the post-observation meeting with Stager, Cianni asked Stager if they could set up a meeting with Mulligan, McEntee, Stager and Cianni to discuss this issue, but Stager refused. (1T71-2 to -13).

44. With regard to Stager's comment in the January observation report about Cianni bringing "forth personal issues in a confrontational tone" at faculty meetings, Cianni discussed this comment with Stager at the post-observation meeting. (1T71-17 to 1T72-11).

45. Cianni had been concerned at one faculty meeting in October 2020 about district practices for students switching from in-person teaching to virtual teaching, as the district had implemented a rule that once a student had chosen in-person or virtual, that student could not switch to the other until the beginning of a new marking period. Cianni was concerned that he observed white students being allowed to switch more frequently, and students of color not being allowed to switch, and so Cianni stated at a faculty meeting that he believed the practice was being applied inequitably amongst students based on race. (1T72-12 to 1T73-14).

46. Benjamin became very upset at Cianni's statement, and asked Cianni which students he was referring to, and whether it was a particular student, and Benjamin stated student names. At this point, Cianni stated that he was not talking about a particular student, but about multiple students, and he asked Benjamin to not mention student names. (1T73-14 to -23).

47. Stager was not at this October 2020 meeting, but included it in the January 2021 observation report, despite the fact that Cianni was never previously notified that his statements at the October meeting were viewed as unprofessional or that he used a "confrontational tone". (1T73-24 to 1T74-11).

48. Cianni asked Stager about her comment, stated that he had not revealed personal issues at a faculty meeting, and told Stager that she could ask other teachers about what Cianni had said at the faculty meeting, but Stager did not want to discuss the issue or do any investigation. (1T74-16 to 1T75-1).

49. With regard to Stager's comment about Cianni asking questions in a confrontational tone during a professional development session, Cianni asked Stager during the post-observation meeting about this comment, but Stager said she was not present at the professional development session, so she had no details other than what was told to her, but she did not identify who mentioned it to her. (1T79-25 to 1T80-14).

50. Cianni was not aware of any allegation regarding his

use of a confrontational tone at a professional development session before the January observation report. (1T81-2 to -5).

51. With regard to Stager's comment in the January observation report that Cianni "seemed to assume negative intent before asking for clarification," Cianni discussed this comment with Stager during the post-observation meeting. The comment related to a training session hosted by Stager where she was demonstrating how to navigate a website, and Cianni asked her a question about that. During the post-observation meeting, Cianni asked Stager to explain that comment, and how he could have asked a question about how to navigate a website negatively because he did not understand what he had done wrong, but Stager did not explain. Prior to the January observation report, Cianni had never heard anything from Stager or any other administrator about a negative tone or lack of professionalism. (1T83-3 to 1T85-7).

52. With regard to Stager's comment that Cianni needs to raise concerns "through proper channels," during the post-observation meeting, Stager did not cite any examples of Cianni failing to raise his concerns through the proper channels, and no administrator had ever told him prior to the January observation report meeting that he had failed to raise concerns through proper channels. (1T87-8 to 1T88-25).

53. With regard to Stager's comments that Cianni should have "sought to speak to the parties involved in a private

manner," had "a quiet conversation on the side," or failing to maintain mutual respect, the only related issue discussed in the January post-observation meeting was the issue regarding the facial recognition software and Cianni's conversation with McEntee about that issue. (1T89-7 to 1T90-5).

54. With regard to Stager's comment that Cianni should have responded to an email individually, Cianni replied to all on an email sent by Benjamin, but does not recall what the email was about. (1T78-18 to 1T79-1).

55. In the "Summary Comments" section of the January observation report, Stager included the following:

Mr. Cianni is growing in his teaching practice. He had a clear lesson and used the gradual release model well. Mr. Cianni needs to give more ownership of the learning to the students and needs to push for more student accountability through questioning and expectations of work completion. The lesson was well planned and met the stated objective. What has held Mr. Cianni back this year is sometimes less than professional responses to issues or concerns he may have faced. [CP-2, p. 072 (emphasis added).]

56. Cianni included the following comments under "Teacher Comment(s)":

Thank you for acknowledging my understanding of curriculum, my use of state standards and the gradual release model, and the thoughtfulness in how I use my classroom to create a safe and positive learning environment. And thank you for the feedback for how I can continue to grow into my practice.

With respect to the comments in the domain of Professionalism, Ms. Stager's remarks were: not related to the observation or data collected from it, untrue and meant to attack my character, and/or not personally witnessed by Ms. Stager.

There were a number of moral and ethical issues - such as privacy issues, racially motivated decisions, and violations of Individualized Education Programs - that came to light during the COVID pandemic, and Ms. Stager admits that it was legitimate to voice these concerns. Sometimes organizations and its leaders must face accountability for its decisions, and those conversations may be uncomfortable. But true productivity can be made when we set our feelings aside and do the work. My passion for equity and doing right by the students has been mischaracterized into personal attacks about tone, and the fact is that I have not been approached by any administrator at the time any alleged incident took place or any other time prior to Ms. Stager's observation report. It is disappointing that Ms. Stager chose not to have any direct conversation with me throughout the school year, and waited until what is supposed to be an objective assessment to make allegations that I cannot confront or defend beyond this response. The last two years of observations speak to my professionalism, my willingness to work with others, and my motivation to work in the best interest of the students we serve. [CP-2, p. 072 (emphasis added).]

### **March 2021 Interim Performance Report**

57. Cianni received an interim performance report, which is required by the Stronge Teacher Effectiveness Performance Evaluation System ("Stronge") adopted by the Board, for the 2020-2021 school year in or around March, 2021 ("2020-2021 Interim Report"), which was completed by Perruso. (J-1, Exh. C; R-1).

58. The Board uses Stronge interim evaluations as an opportunity to reflect on a teacher's practice, as Stronge characterizes interim evaluations as an opportunity to "provide systemic feedback prior to the summative review," which relies upon a preponderance of the evidence to evaluate performance based upon all observations collectively, and includes feedback on professionalism both inside and outside the classroom. (2T14-14 to 2T15-18; 2T50-5 to 2T51-15; R-1, p. 228-229).

59. In the 2020-2021 Interim Report, Cianni was rated "Effective" for four of the six performance standards, but rated "Partially Effective" for two performance standards: "Performance Standard 3: Professional Knowledge," and "Performance Standard 6: Professionalism". (J-1, Exh. C).

60. In the 2020-2021 Interim Report, after the "Partially Effective" rating for "Performance Standard 3: Professional Knowledge," the report includes the following comment:

As stated in his first observation, "Although students responded accurately for the majority of the questions, it is recommended that Mr. Cianni challenge the students and encourage them to elaborate on their responses."

As stated in his second observation, "He should consider in the future ways he can give students more opportunity to uncover the learning through deeper questioning and things like a planned thing-pair-share. By adding a turn and talk you would have a better idea if all students had the same understanding. This was a quick review in the beginning. You could consider asking

students to elaborate or having other students answer before moving forward as well. Both of those techniques would still give your formative assessment data but would allow for a broader sample of gauging student understanding." [J-1, Exh. C (emphasis added).]

61. In the 2020-2021 Interim Report, after the "Partially Effective" rating for "Performance Standard 6: Professionalism," the report includes the following comment:

As stated in Mr. Cianni's first observation, "Mr. Cianni is reminded to contact school administration or the appropriate staff member directly (i.e. the school nurse) regarding concerns/questions about individual students as to maintain confidentiality and professionalism."

As stated in Mr. Cianni's second observation, "This school year there have been instances where he failed to maintain professionalism and has engaged in unproductive dialog [sic]. For example, early in the year, he was asked to have his temperature scanned by an electronic database and facial scanner as a COVID safety precaution. Mr. Cianni objected to the practice, but rather than have a professional conversation on the side, he responded with a raised voice and visible agitation. Although faculty meetings are an open forum, there were times Mr. Cianni brought forth personal issues in a confrontational tone. There was not a problem with voicing the concern, but the manner in which it was done. During a PD session, Mr. Cianni again questioned the presenter in a confrontational tone. Mr. Cianni responded to an email from the principal with a reply all which publicly questioned the intent of the email. Even in a meeting with the observer, Mr. Cianni seemed to assume negative intent before asking for clarification. Once he was given clarification, his tone became more

professional." [J-1, Exh. C.]

62. The 2020-2021 Interim Report contained the following "Commendation":

Mr. Cianni:

- Created a learning environment in which students remain engaged and actively participate.
  - Reinforces the learning concepts by displaying and referencing a word wall as well as anchor charts.
  - Is observed collaborating with colleagues on a consistent basis.
- [J-1, Exh. C.]

63. The 2020-2021 Interim Report stated the following under the "Area Notes for Improvement": "See above comments in areas notes as 'partially effective.'" This was a reference to comments left under the "Performance Standard 3: Instructional Delivery" and "Performance Standard 6: Professionalism" standards. Both comments ended with the following statement:

Please be sure to resolve these concerns and incorporate the suggestions/recommendations prior to your third observation. Please be aware that because of your performance with this standard (& other standards) over the course of two observations puts you at risk of a poor Summative evaluation and/or risk of non-renewal for the [2021-2022] school year.  
[J-1, Exh. C.]

64. With regard to the inclusion of the language "remind[ing] [Cianni] to contact school administration" or the school nurse "regarding concerns/questions about individual students as to maintain confidentiality and professionalism" that Perruso had assured Cianni was "boiler plate" in both Cianni's



November observation and March interim report, Cianni asked other teachers if they also received this "boiler plate" HIPAA language in their observations or interim reports, and none had. (1T94-7 to 1T95-2).

65. Cianni was concerned when he saw this language in the March interim report because he believed that Perruso was not being forthright with him about the "boiler plate" HIPAA language being included in everyone's observations, and was using this language to damage Cianni's character or discipline him. (1T95-12 to 1T96-7).

66. With regard to the inclusion of Stager's comments from the January observation report in the interim report, Cianni was concerned because his response was not included. (1T96-6 to 1T97-14).

67. After receiving this interim report, Cianni was concerned that he would not be rehired because he was unable to resolve his concerns after Stager's January observation, and then the negative comments from that January observation were "lifted and pasted" into the March interim report. (1T97-20 to 1T99-19).

**March 2021 Interim Conference/Request for Union Representation**

68. On March 8, 2021, Perruso e-mailed Cianni a Google Meet invitation for the "Mr. Cianni Interim Conference" to take place the following day, March 9, 2021, at 2:30 p.m. Benjamin was also listed as an invitee on the invitation. (J-1, Exh. D).

69. Cianni responded via email at 8:46 a.m. on the following day, March 9, 2021, as follows:

Good morning Lani and Anthony,

I am requesting a union rep be present for our meeting at 2:30 today.

Thank you,  
Dante  
[J-1, Exh. D.]

70. Perruso advised Cianni via email shortly thereafter that an Association representative was not required for the meeting, as Benjamin did not consider the interim report or the interim conference to be disciplinary in any way:

Hi Dante,

There is no need to have a Union representative as this is not a meeting for determination of renewal/non-renewal or change of employment, nor is this a punitive meeting. The meeting is an opportunity to reflect and grow on your practice.

Thanks,  
Lani  
[J-1, Exh. D (emphasis added); 2T21-18 to 2T22-8; 2T29-2 to -5.]

71. Cianni replied via email shortly thereafter, insisting that an Association representative attend the meeting:

Hi Lani and Anthony,

This meeting and the results of this meeting could affect my job status as you clearly state in the report, and this falls under my Weingarten rights. Additionally, the interim report contains serious misrepresentations of what has been said in prior meetings, and in one prior meeting Anthony stated that I was

being "torpedoed." As such, I feel I cannot effectively participate in this meeting without a union representative taking notes of the meeting.

Thank you.

Dante

[J-1, Exh. D (emphasis added).]

72. Benjamin responded via email approximately twenty (20) minutes later that Association representation was not needed or permitted during the meeting:

Good morning Dante,

Union representation is not needed, permitted, or being allowed at this meeting. You are invited to come or can choose not to come to the meeting, as we cannot force you to do so. We have submitted your Interim Report to you in writing. As with all of our non-tenured teachers who receive an Interim Report, our meeting goal is to provide you clarification and support as you grow and improve in your professional capacity.

Anthony

[J-1, Exh. D (emphasis added).]

73. Cianni then emailed Perruso and Benjamin the following:

Lani,

In my first observation, I asked you about the line you included about contacting staff directly (i.e. the school nurse), and your response was that all staff was receiving that language in their observations as a reminder to adhere to HIPAA laws during the health pandemic. I asked you specifically if I had done anything, and you reaffirmed that this was boilerplate language just as a reminder to all staff. Now this quote has been lifted without any context and is being misrepresented as an attack on my professionalism.

Anthony,

You have never explained your prior comment that you are going to "torpedo" me, which was witnessed by Lani [Perruso], Val [Carleo], and my union representative.

According to Weingarten, "If an employee has a reasonable belief that discipline or discharge may result from what s/he says, the employee has the right to request Union representation."

Evidenced by the incidents I mentioned above, there is a reasonable belief that anything I say will be used to discipline or discharge me. I would enjoy having a constructive conversation to discuss how I can grow within my practice, but I cannot do so without a union representative present. Please let me know when we can have a discussion.  
[CP-7, p. 094 (emphasis added).]

74. Perruso then responded via email as follows:

Hi Dante. All staff have been reminded about communicating directly to the appropriate staff member (nurse, administrator, etc.). My reminder to you was in regards to the student you were speaking about during the faculty meeting. A faculty meeting is not an appropriate forum to speak about individual students. [CP-7, p. 094.]

75. Cianni then emailed Perruso and Benjamin again as follows:

With all due respect, I did not intend for this to go back and forth. But these misrepresentations are why I feel it is important to have a union representative present during our discussion.

Anthony, I immediately asked you what you meant by "torpedo" at that meeting, and you were silent. You never answered my question,

and abruptly ended the meeting. It seemed to me that this meeting was punitive, and that my revelation of Val's email torpedoed whatever discipline was planned. It is now 6 months later that you provide any clarification. I will have to take you at your word that that's what you meant. But by your own statement, you also reveal that Val made some misrepresentation about me that was torpedoed.

Lani, that is not what happened at our meeting. I asked you specifically about that line, and you told me that line was solely a reminder that teachers keep student information confidential with regard to COVID. You told me it was because we shouldn't discuss why some students are going virtual for two weeks at a time, and that all staff were receiving the same verb[i]age as just a reminder. In the same meeting, I mentioned the faculty call that you are now referencing. On that faculty call, I raised an issue about equity and race with regard to policies toward the whole student body. In our observation meeting, you agreed that it was Anthony that revealed a student's personal information, not me. This can also be confirmed by the over 40 staff members that were on that faculty call.

There are other misrepresentations included in the interim report. I'm happy to discuss those with you as well.

Dante  
CP-7, p. 094 (emphasis added).]

76. Cianni did not attend the Interim Conference scheduled for March 9, 2021 because he did not believe Perruso and Benjamin's assurances that it was not disciplinary, and because he believed that "the whole meeting was premised on documents that contained misrepresentations." (J-1; 1T180-18 to 1T181-15).

77. Benjamin did not allow Cianni to bring a union representative to the meeting because

that would set a precedent that I wasn't familiar with that the district had been engaging in the past and there are a myriad of reasons. It also . . . doesn't allow for us to have the opportunity to have honest dialogue and feedback about professional practice, whereas it now becomes a thing of, we are focusing on something disciplinary, when it actually isn't disciplinary. It actually puts a wrinkle in the ability to effectively engage in . . . interim conferences with others, because the time constraint . . . we have to coordinate time constraints. We would have to coordinate the schedules with everyone else to ensure that everyone is able to attend union representation and the like and that would actually impede our ability to actually get the teacher feedback, so they could go back and you know make any corrections or adjustments to their practice, so as to improve it. This has nothing to do with discipline. [2T35-10 to 2T36-6 (emphasis added).]<sup>2/</sup>

78. Benjamin had not previously allowed other non-tenured employees to bring a union representative to any other interim conference (2T42-13 to -17), but if Cianni had attended the interim meeting, Benjamin would have allowed Cianni to request a union representative mid-meeting if the meeting "started to take a disciplinary turn" (2T43-6 to -11). Cianni also understood

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<sup>2/</sup> Later in the hearing, when asked who would not be able to be honest if a union representative was present at the interim conference, Benjamin testified that he previously misspoke, and that "[t]he most important part of it is to ensure that we are solely focused on professional performance and not anything else." [2T101-13 to 2T102-14.]

that if he had chosen to attend the interim conference without a union representative based upon Perruso and Benjamin's assurances that it was not disciplinary, he could have requested a union representative during the course of the meeting if he felt that the meeting started taking a disciplinary turn. (1T180-12 to -23).

79. Benjamin was scheduled to conduct Cianni's next classroom observation, but he asked Krystyna Domagala (Domagala), a newly hired district supervisor, to conduct the observation instead because

I wanted to ensure that Dante - I want the appearance that he knows that he is getting a fair shot and because he has already . . . made the statement that he feels I'm targeting him or I am torpedoing him, it wouldn't have actually - our goal is to still, regardless of however someone feels, is to support their growth and professional development. [2T40-12 to -20.]

80. The following day, March 10, 2021, Benjamin emailed Board Superintendent Dr. Timothy Teehan (Teehan) as follows:

Hey Tim,

I wanted to give you a heads up on something. Because Dante Cianni seemingly is creating a narrative that makes it appear as if he is being targeted by me, Lani and/or Val, I reached out to Krystyna [Domagala] to see if she would be willing to switch/trade observations with me as I have Dante this (March) month. . . . We are doing what Melissa asked of us which is to directly communicate and continue enhancing our relationship with her staff. If Krystyna is unable to do this for some reason then we'll reach out to Alex next. I know other

administrators have done it and you said that's not a problem . . . but I just wanted to give you a heads up.

Anthony  
[CP-7, p. 095-096 (emphasis added).]

81. Teehan responded to Benjamin's email as follows:

Yup that is fine. Did Dante show up to your meeting yesterday? If so, how did it go?  
[CP-7, p. 096.]

82. Benjamin responded to Teehan as follows:

He did not show and will not come in without union representation. He went back and forth trying to create drama and controversy over the old meeting we had that included Val, Lani and me. Really unfortunate.  
[CP-7, p. 096 (emphasis added).]

83. When Benjamin stated that Cianni was "trying to create drama," he meant that

[t]here was no reason to us to have a discussion about an old meeting that we had resolved and . . . [we should] focus on us trying to improve your professional performance. . . . [Y]ou are a new teacher to the district and the district has these standards and expectations and so . . . let's have a conversation . . . so you are meeting these standards and expectations and not to focus on something else. There was no need for us to focus on a prior meeting that had no relevance to what we were doing now. Our focus was to improve his professional practice based on the results of the . . . two observations. [2T41-7 to -23.]

84. Teehan had other employees request union representation at post-observation and interim conferences, and Teehan had not permitted it on any occasion because



[i]t definitely has a chilling effect on the conversation that goes on and . . . people are checking what they are saying, they are not going to be as open and that can happen on both sides, because sometimes an employee might receive pressure from the union to be present, because of their own perceptions, even the employee might not be open to it. The other part of that is, you really want to have a conversation about someone's growth or lack of growth. Growth is easy . . . no one minds to have anyone hear how great they are doing, but it is a different kind of conversation when somebody is telling you that you are not quite where you need to be and being honest about that and straightforward can be kind of unsettling for someone who might not have expected it. You, as the administrator, want to make sure that you are not even putting that employee into a position where their colleague and even though they are their rep, they are still their colleague, that they are listening in on this very personal conversation about their performance as a professional. [2T128-16 to 2T131-7 (emphasis added).]

85. Teehan had been in meetings where a union representative was present and believes that

it does definitely have a chilling effect. Especially in this district, the way that our union operates, it definitely has a chilling effect on any kind of conversation. . . . I have had staff members that have been present with a union rep, because a union rep wanted to be there and therefore they felt uncomfortable and they shared that afterwards. . . you also have to remember these are non-tenured employees and in a lot of these cases where the union rep would be there . . . [the employees] sometimes are intimidated as well. [2T153-2 to 2T154-4 (emphasis added).]

### **March 24, 2021 Observation Report**

86. On March 24, 2021, Cianni's classroom performance was

observed by Domagala, who issued an observation report on April 13, 2021, and Cianni and Domagala met on April 15, 2021 for a conference after that observation. (CP-4).

87. Under "Assessment of and for Learning," the report includes the following comment:

Analysis:

Assessment within the classroom setting is a cycle. Throughout the instruction, Mr. Cianni provided the whole group instruction, then transitioned to a partnered activity and then returned to whole group instruction, in which assessment was ongoing. Student participation was evident and consistent observation of the students' performance and understanding of the content was assessed.

Suggested Recommendations:

1-While questions were asked of the students to assess their understanding and prompted learning and skill application, reflect upon and take into consideration the level of which a student must respond. Continue to lead through inquiry learning, as questions drive the instruction and students construct meaning to those questions on a deeper level.[CP-4, p. 081 (emphasis added).]

88. Under "Professionalism Evidence," the report includes the following comment:

Analysis:

Throughout the course of this observation, Mr. Cianni remained in communication with the administrator. He has participated in professional growth and development opportunities which aim to enhance student learning. The instruction, classroom management, learning environment and positive relationships with the students demonstrated

the commitment to providing positive learning opportunities to middle school students.

[CP-4, p. 083 (emphasis added).]

89. Under "Summary Comments," the report reads as follows:

At the time of this unannounced observation, one student (virtual) and six students (in person) and one teacher were present. A positive and constructive learning environment in which students appeared motivated to learn and encouraged and supported by the teacher was evident. Focused efforts to initiate and maintain investment in the teaching and learning process was ongoing by both the teacher and the students. Careful planning and preparation of instruction in a well organized manner was noted, in addition to positive rapport with students and attention to student needs. [CP-4, p. 083 (emphasis added).]

#### **May 2021 Summative Performance Report**

90. Cianni received his summative performance report for the 2020-2021 school year ("2020-2021 Summative Report") in May, 2021, which was completed by Benjamin, after Benjamin had met with Teehan and Perruso. In that report, Cianni received an overall summative rating score of 2.6, which qualified as "Partially Effective (1.85-2.64)". (J-1, Exh. E; 2T54-21 to 2T55-6).

91. In the 2020-2021 Summative Report, Cianni was rated "Effective" for five of the seven performance standards, but rated "Ineffective" for two performance standards: "Performance Standard 4: Assessment of/for Learning," and "Performance Standard 6: Professionalism". (J-1, Exh. E).

92. In the 2020-2021 Summative Report, after the "Ineffective" rating for "Performance Standard 4: Assessment of/for Learning," the report includes the following comment:

Within this '20-'21 school year, of the three observations that Mr. Cianni received, the preponderance of evidence reveals that Mr. Cianni has not made significant improvement that would render an overall effective rating in this performance standard. This '20-'21 rating is a decline and/or is inconsistent with the overall performance rating of effective that Mr. Cianni received for the '19-'20 school year in this specific standard. The evidence rendering an ineffective for this year includes, but is not limited to the following analysis and/or recommendations in any of the three observations this school year:

Observation #1- "Mr. Cianni is encouraged to circulate the room as students work independently and monitor students' progress and understanding. During this time, Mr. Cianni can facilitate individual discussions with students as well as use this as an opportunity to gather data and differentiate questioning for students.

Observation #2- "By adding a turn and talk you would have a better idea if all students had the same understanding. This was a quick review in the beginning. You could consider asking students to elaborate or having other students answer before moving forward as well."

Observation #3- "While questions were asked of the students to assess their understanding and prompted learning and skill application, reflect upon and take into consideration the level of which a student must respond. Continue to lead through inquiry learning, as questions drive the instruction and students construct meaning to those questions on a deeper level." [J-1, Exh. E.]

93. Although the 2020-2021 Summative Report included a comment from Stager's Observation #2 about "adding a turn and talk," the Summative Report did not note that in Domagala's Observation #3, Cianni did a "turn and talk" to demonstrate that he had grown within his practice and improved by the end of the school year. Thus, Cianni was surprised that the "turn and talk" suggestion remained in the Summative Report as support for Cianni's "Ineffective" rating for "Performance Standard 4: Assessment of/for Learning". (1T118-9 to 1T119-2).

94. In the 2020-2021 Summative Report, after the "Ineffective" rating for "Performance Standard 6: Professionalism," the report includes the following comment:

Within this '20-'21 school year, of the three observations that Mr. Cianni received, the preponderance of evidence reveals that Mr. Cianni has not made significant improvement that would render an overall effective rating in this performance standard. This '20-'21 rating is a decline and/or is inconsistent with the overall performance rating of effective that Mr. Cianni received for the '19-'20 school year in this specific standard. The evidence rendering an ineffective for this year includes, but is not limited to the following analysis and/or recommendations in any of the three observations this school year:

Observation #1- "Mr. Cianni is reminded to contact school administration or the appropriate staff member directly (i.e. the school nurse) regarding concerns/questions about individual students as to maintain confidentiality and professionalism."

Observation #2- "We all get frustrated at

times but as a professional, we need to seek to solve things in a productive manner and separate the emotions from our work interactions. Raising concerns is valid, however, how those concerns are raised needs to be done with a respectful tone and through proper channels. Many of these concerns would have been addressed if he had sought to speak to the parties involved in a private manner. Having a quiet conversation on the side or responding to an email individually allows the concerns to be raised and addressed while maintaining mutual respect.” [J-1, Exh. E.]

95. Between the March interim report and the May summative report, Cianni’s rating for professionalism dropped from “Partially Effective” to “Ineffective,” but there was no new documented incident of unprofessional behavior between March and May, and no new incident of unprofessional behavior included in the summative report. (2T155-11 to -17).

96. Cianni’s 2020-2021 Summative Report included a recommendation for non-renewal:

**Evaluation Summary**

Recommended for Dismissal/Non-Renewal. (The teacher has failed to make progress on a Performance Improvement Plan, or the teacher consistently performs below the established standards, or in a manner that is inconsistent with the school’s mission and goals) [J-1, Exh. E.]

97. Between March 9, 2021, the scheduled date of Cianni’s interim conference that did not occur, and May 6, 2021, the date of the Summative Report, Cianni was not notified about anything that he had done that would have reduced his rating in the area

of professionalism. (1T119-20 to 1T120-10).

98. Cianni was never disciplined for any breaches of pupil confidentiality or HIPAA concerns related to violations of privacy or confidentiality. (1T144-3 to -8).

99. Cianni was never placed on a corrective action plan, nor did he ever receive any verbal reprimand for his observations, nor was he ever approached by any administrator about any instances of unprofessionalism. (1T177-25 to 1T178-16).

100. Teehan believed that Cianni needed to take the opportunities offered to him to develop his professionalism, and specifically the opportunities to have conversations about "the proper way to interact" such as the March 9 interim meeting that did not occur because Cianni had requested union representation and that request was rejected. (2T158-9 to 2T159-19). Teehan also believed that because Cianni had not participated in his interim performance review, Cianni was "in essence, rejecting an opportunity for professional growth" because he refused to have a conversation about "what is working and what is not working" and about the professional supports that would have come up in the conversation. (2T166-5 to -19).

101. On May 10, 2021, Benjamin and Perruso had a post-summative meeting with Cianni and his union representative, Sally Booth. (2T59-2 to 2T60-3; R-2).

102. Teehan allows staff members to have union representatives at summative meetings because "that can affect their terms and conditions of employment." (2T152-13 to -18).

103. On May 11, 2021 Benjamin sent Teehan an email summarizing the May 10 post-summative meeting with Cianni, which was tense, as Cianni was upset about his summative evaluation, and Cianni left the meeting early. (2T59-2 to 2T61-9; R-2).

104. Teehan believed that Cianni's abrupt ending of his summative review was also evidence of Cianni rejecting an opportunity for professional growth "because it further supported that instead of having a productive conversation, he instead was not and therefore wasn't really interested in growing as a professional." (2T166-20 to 2T167-12). Teehan also believed that Cianni's abrupt ending of his summative review "really solidified the decision that had been made by Mr. Benjamin that he was not going to recommend him for renewal. I think that actually solidified that, wow, that was the right decision." (Id.)

105. Teehan sent a letter to Cianni on May 12, 2021 to inform him that he would "not be offered a contract for the 2020-2021<sup>8/</sup> school year and that [his] employment with the District [would] end on June 30, 2021." (J-1, Exh. F).

106. Cianni did not request a statement of reasons for the

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<sup>8/</sup> Based upon the date of this letter, I am assuming that this is a typographical error, and the year should have been listed as the 2021-2022 school year.



non-renewal of his contract from Teehan. (1T132-17 to 1T133-14).

107. Cianni did not request a Donaldson hearing before the Board to attempt to convince the Board to renew his contract for the 2021-2022 school year. (1T138-2 to -11).

### **ANALYSIS**

N.J.S.A. 34:13A-5.3 guarantees to all public employees the right to engage in union activities, including the right to form or join a union, negotiate collectively and make their concerns known to their employer. Specifically, it provides that:

[a] majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership.

[N.J.S.A. 34:13A-5.3.]

Section 5.4a(3) of the Act prohibits an employer from retaliating against an employee or majority representative for exercising these rights. The legal standards set forth in In re Bridgewater Tp., 95 N.J. 235 (1984), determine whether an employer's actions violate N.J.S.A. 5.4a(3) of the Act. There, the Court determined that if the charging party proves by a preponderance of evidence on the record that protected conduct was a substantial or motivating factor in the adverse action, a violation will be found. Id. at 246. Such a violation can be proven by direct evidence or by circumstantial evidence

establishing that the employee was engaged in protected activity, the employer knew of this activity and was hostile toward the exercise of protected rights. Id.

If the employer does not present any evidence of a motive not illegal under our Act or if its explanation is rejected as pretextual, there is sufficient basis for finding a violation without further analysis. Id. at 242. Sometimes, however, the record demonstrates that both motives unlawful under our Act and other motives contributed to a personnel action. Id. In these dual motive cases, the employer will not have violated the Act if it can prove, by a preponderance of the evidence on the entire record, that the adverse action would have taken place absent the protected the conduct. Id.

In Black Horse Pike Regional Board of Education, P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), the Commission defined protected speech and conduct under the Act. There, the Commission determined that the employer violated 5.4a(1) and (3), when it placed in the personnel file of a teaching staff member two letters critical of the teacher's comments while the teacher was serving as an Association representative in a meeting with the principal about another teacher's resignation from her job. The Commission explained:

When an employee is engaged in protected activity, the employee and the employer are equals advocating respective positions, one is not the subordinate of the other. If

either acts in an inappropriate manner or advocates positions which the other finds irresponsible, criticism may be initiated to halt or remedy the other's actions. [Id. at 503.]

The Commission continued:

The Board may criticize employee representatives for their conduct. However, it cannot use its power as employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct objected to is unrelated to that individual's performance as an employee. To permit this to occur would be to condone conduct by an employer which would discourage employees from engaging in organizational activity. [Id. at 504 (emphasis added).]

**Employee Rights under 5.4a(1) and Weingarten**

The Commission has held that "an employer action that tends to interfere with a public employee's statutory rights without a legitimate and substantial business justification violates 5.4a(1)." Union Tp., P.E.R.C. No. 2008-20, 33 NJPER 255 (¶95 2007) (citing New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421 (¶4189 1978); New Jersey Sports and Exposition Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285 1979); Mt. Olive Tp. Bd. of Ed., P.E.R.C. No. 90-66, 16 NJPER 128 (¶21050 1990)).

N.J.S.A. 34:13A-5.3 provides in pertinent part:

Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or

to refrain from any such activity;

\* \* \*

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.

The Commission has held that employees have "the right . . . to communicate with each other about employment conditions." State Operated School District, City of Newark, P.E.R.C. No. 2017-14, 43 NJPER 106 (¶32 2016) (citing State of New Jersey (Dep't of Transp.), P.E.R.C. No. 90-114, 16 NJPER 387 (¶21158 1990)). "The Act confers a statutory right of communication between majority representatives and unit members, and same is considered a 'term and condition of employment.'" Id. (citing City of Newark, H.E. 2001-3, 26 NJPER 407 (¶31160 2000)).

In Union Cty. Reg. Bd. of Ed., P.E.R.C. No. 76-17, 2 NJPER 50 (1976), the Commission stated:

School Boards . . . [are] charged . . . with the authority and responsibility for the conduct of schools in their districts . . . [which includes] control over bulletin boards, mail boxes, and all the other

facilities included within the various contract provisions under discussion. The School Boards have an interest in conducting the schools, including the efficient use of these school facilities, in as stable a manner as is legally possible. Their authority is effected, however, by the Act's requirement that they negotiate in good faith with the majority representatives of their employees concerning terms and conditions of employment. One such condition of employment is the ability of employees to communicate in furtherance of the rights guaranteed by the Act. The School Boards thus have an obligation to negotiate over access to school facilities by its employees in furtherance of their legal collective activities.  
[Emphasis added.]

The Commission has also held that "[a]n employee has a right to request a union representative's assistance during an investigatory interview that the employee reasonably believes may lead to discipline"; that "[t]his principle was established in the private sector by NLRB v. Weingarten, 420 U.S. 251 (1975), and is known as a Weingarten right" and "applies in the New Jersey public sector as well." Union Cty. Voc. Tech. Bd. of Ed., P.E.R.C. No. 2022-8, 48 NJPER 135, n.1 (¶34 2021) (citing UMDNJ and CIR, 144 N.J. 511 (1996); State of New Jersey (Dep't of Treasury), P.E.R.C. No. 2001-51, 27 NJPER 167 (¶32056 2001)). In Weingarten, the Supreme Court of the United States specified the following:

The Board's construction that § 7 creates a statutory right in an employee to refuse to submit without union representation to an interview which he reasonably fears may result in his discipline was announced in its

decision and order of January 28, 1972, in Quality Mfg. Co., 195 N.L.R.B. 197, considered in Garment Workers v. Quality Mfg. Co., post, p. 276. In its opinions in that case and in Mobil Oil Corp., 196 N.L.R.B. 1052, decided May 12, 1972, three months later, the Board shaped the contours and limits of the statutory right.

First, the right inheres in § 7's guarantee of the right of employees to act in concert for mutual aid and protection. In Mobil Oil, the Board stated:

"An employee's right to union representation upon request is based on Section 7 of the Act which guarantees the right of employees to act in concert for 'mutual aid and protection.' The denial of this right has a reasonable tendency to interfere with, restrain, and coerce employees in violation of Section 8 (a)(1) of the Act. Thus, it is a serious violation of the employee's individual right to engage in concerted activity by seeking the assistance of his statutory representative if the employer denies the employee's request and compels the employee to appear unassisted at an interview which may put his job security in jeopardy. Such a dilution of the employees right to act collectively to protect his job interests is, in our view, unwarranted interference with his right to insist on concerted protection, rather than individual self-protection, against possible adverse employer action."  
Ibid.

. . .

[T]he employee's right to request representation as a condition of

participation in an interview is limited to situations where the employee reasonably believe the investigation will result in disciplinary action. Thus the Board stated in Quality:

"We would not apply the rule to such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work techniques. In such cases there cannot normally be any reasonable basis for an employee to fear that any adverse impact may result from the interview, and thus we would then see no reasonable basis for him to seek the assistance of his representative." 195 N.L.R.B., at 199.

. . .

The Board's holding is a permissible construction of "concerted activities for . . . mutual aid or protection" by the agency charged by Congress with enforcement of the Act, and should have been sustained.

The action of an employee in seeking to have the assistance of his union representative at a confrontation with his employer clearly falls within the literal wording of § 7 that "[employees] shall have the right . . . to engage in . . . concerted activities for the purpose of . . . mutual aid or protection." Mobil Oil Corp. v. NLRB, 482 F.2d 842, 847 (CA7 1973). This is true even though the employee alone may have an immediate stake in the outcome; he seeks "aid or protection" against a perceived threat to his employment security. The union representative whose participation he seeks is, however, safeguarding not only the particular employee's interest, but also the interests of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly. The

representative's presence is an assurance to other employees in the bargaining unit that they, too, can obtain his aid and protection if called upon to attend a like interview.

. . .

Requiring a lone employee to attend an investigatory interview which he reasonably believes may result in the imposition of discipline perpetuates the inequality the Act was designed to eliminate, and bars recourse to the safeguards the Act provided "to redress the perceived imbalance of economic power between labor and management." American Ship Building Co. v. NLRB, 380 U.S. 300, 316 (1965).

. . .

The Board's construction also gives recognition to the right when it is most useful to both employee and employer. A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. A knowledgeable union representative could assist the employer by eliciting favorable facts, and save the employer production time by getting to the bottom of the incident occasioning the interview. Certainly his presence need not transform the interview into an adversary contest. Respondent suggests nonetheless that union representation at this stage is unnecessary because a decision as to employee culpability or disciplinary action can be corrected after the decision to impose discipline has become final. In other words, respondent would defer representation until the filing of a formal grievance challenging the employer's determination of guilt after the employee has been discharged or otherwise disciplined. At that point, however, it becomes increasingly difficult for the employee to vindicate



himself, and the value of representation is correspondingly diminished. The employer may then be more concerned with justifying his actions than re-examining them.

The union representative . . . is safeguarding not only the particular employee's interest, but also the interests of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly.

[420 U.S. at 256-264 (emphasis added).]

Accordingly, the Commission has held that "a specific showing is required to establish a violation of an employee's Weingarten rights" including "that the meeting was investigatory; that the employee reasonably believed that discipline might result; that the employee requested representation; and that the employer denied the request and proceeded with the meeting." Sterling Reg. Bd. of Ed., D.U.P. No. 2023-12, 49 NJPER 190 (¶45 2022) (citing State of New Jersey (Division of State Police), P.E.R.C. No. 93-20, 18 NJPER 471 (¶23212 1992)). "The reasonableness of the employee's belief that discipline may result from the interview is measured by objective standards under the circumstances of each case." Id. (citing Dover Municipal Util. Auth., P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984); State of New Jersey (Div. of Taxation)/Kupersmit, D.U.P. No. 91-2, 16 NJPER 421 (¶21177 1990), aff'd NJPER Supp.2d 279 (¶226 App. Div. 1992)). "If an employee requests and is entitled to a Weingarten representative, the employer must allow

representation, discontinue the interview, or offer the employee the choice of continuing the interview unrepresented or having no interview.” Union Cty. Voc. Tech. Bd. of Ed., P.E.R.C. No. 2022-8, 48 NJPER 135, n.1 (¶34 2021) (citing Dover Municipal Util. Auth., P.E.R.C. No. 84-132, 10 NJPER 333 (¶15157 1984)). “The charging party bears the burden of proving that an employee is entitled to a Weingarten representative.” Id.

Again, the Association alleges that the Board violated section 5.4a(1), (3) and (5) of the Act when the Board refused to allow Cianni to bring an Association representative with him to the interim conference, and when the Board later retaliated against Cianni for his request to have Association representation at the interim conference by not renewing his employment contract. Thus, the first issue is whether the Board violated section 5.4a(1) of the Act when it refused to allow Cianni to bring an Association representative with him to the interim conference.

The record is replete with facts supporting the conclusion that Cianni’s belief that he could face discipline at the interim conference was reasonable. First, in September, 2020, Cianni was called for a meeting with Benjamin to reprimand him for missing a mandatory professional development meeting, when in fact, he had attended that optional meeting. Notably, he was allowed union representation at that meeting, and when Benjamin stated that

Cianni had missed a mandatory meeting, Cianni responded that he attended the optional meeting. Then Benjamin said, "well, that torpedoed," and Cianni asked, "what does that torpedo? Is there something to torpedo here?" and Benjamin ended the meeting without explanation. Thus, starting in September, Cianni was the subject of potential discipline, he needed to advocate for himself to avoid discipline, and he did not receive a response from Benjamin when he asked for additional information about the potential discipline.

Second, after the September "torpedo" incident involving potential discipline, in November, 2020, Cianni was observed by Perruso, and Perruso encouraged Cianni to circulate the room, despite the COVID-10 pandemic and school rules requiring teachers to maintaining social distance from students and use "Securely" software instead. As with the September "torpedo" incident, when Cianni expressed his concern about Perruso's comment, despite Perruso's thanks for that comment, Perruso did not modify her comment encouraging Cianni to circulate, but instead added a comment that "Mr. Cianni stated that he was using Securely to monitor students' screens instead of circulating the classroom." Then, Perruso also included a comment under "Professionalism Evidence" reminding Cianni about HIPAA, and when Cianni questioned this comment, Perruso responded that it was "boiler plate language" that was going into all staff's observations "as

a precaution." Later, Cianni learned that this "boiler plate" HIPAA comment was not going into other staff's observations, and the only previous incident involving HIPAA concerns was a faculty meeting where Benjamin - not Cianni - revealed student information, and Cianni asked Benjamin to stop.

Third, in January, 2021, Stager observed Cianni's classroom performance, and, like Perruso in November, 2020, included a comment under "Professionalism Evidence" that stemmed from an incident outside the classroom involving Cianni's objection on the basis of privacy concerns and disparate racial impact to the administration's use of a facial scanner to take staff temperatures. Stager's comment was a criticism of Cianni's alleged "raised voice and visible agitation" during that incident, despite the fact that prior to January 2021, no one had ever told Cianni that there was a concern about any lack of professionalism regarding the facial scanner, and despite the fact that Cianni had met with Benjamin about his privacy concern to discuss alternate temperature-taking procedures. Cianni was concerned about the facial scanner incident being characterized as an example of unprofessionalism, and asked Stager for a meeting to discuss, but Stager refused.

Stager also made various comments in the January observation report about Cianni's alleged lack of professionalism, including using a "confrontational tone" and "less than professional

responses". This concerned Cianni because none of the incidents were part of Stager's classroom observation of Cianni, some of the incidents related to meetings that Stager did not attend or personally observe, some had occurred months earlier, and Cianni had never been told previously about any issue, yet Stager included these comments in Cianni's classroom observation report. Faced with these comments, Cianni responded by noting that the incidents had been "mischaracterized into personal attacks about tone," and he had "not been approached by any administrator at the time any alleged incident took place or any other time prior to Ms. Stager's observation report."

Fourth, in March 2021, Cianni received his interim performance report, where he was rated "Partially Effective" for both "Professional Knowledge" and "Professionalism". And again, the alleged "boiler plate" HIPAA concern was cited as evidence of Cianni's lack of professionalism, as were Stager's comments from the classroom observation, without including Cianni's response.

Due to the contents of the interim report, it was reasonable for Cianni to be concerned that he would not be renewed because he was unable to resolve his concerns after Stager's January observation, and then the negative comments from that January observation were "lifted and pasted" into the March interim report. Again, Cianni was never disciplined for any breaches of pupil confidentiality or HIPAA concerns related to violations of

privacy or confidentiality, he was never placed on any corrective action plan, he never received any verbal reprimand for his observations, nor was he ever approached by any administrator about any instances of unprofessionalism. Furthermore, when he asked for meetings to discuss these issues, those requests were refused and no meetings were scheduled.

Cianni then asked for union representation at his interim conference, as he was concerned that "[t]his meeting and the results of this meeting could affect my job status as you clearly state in the report, and this falls under my Weingarten rights," but that request was rejected. Then, in light of that rejection, Cianni did not attend the interim conference because he reasonably did not believe Perruso and Benjamin's assurances that the conference was not disciplinary for all of the reasons described above.

Benjamin's testimony that Cianni could not bring a union representative because that "doesn't allow for us to have the opportunity to have honest dialogue and feedback about professional practice," as "it now becomes a thing of, we are focusing on something disciplinary, when it actually isn't disciplinary," and because "[i]t actually puts a wrinkle in the ability to effectively engage in . . . interim conferences with others, because the time constraint . . . we have to coordinate time constraints" exhibits anti-union animus, as does Benjamin's

email to Teehan that characterizes Cianni's "unfortunate" invocation of his Weingarten rights as "trying to create drama and controversy."

Teehan also exhibited anti-union animus when he testified that union representation "definitely has a chilling effect on the conversation" and "sometimes an employee might receive pressure from the union to be present, because of their own perceptions, even the employee might not be open to it." Also, in light of Cianni's multiple rejected requests for meetings to discuss the negative professionalism comments he received in his Perruso and Stager observations, Teehan's testimony about how "you really want to have a conversation about someone's growth or lack of growth" is particularly ironic and problematic.

Notably, despite the fact that Cianni was praised for his professionalism in his March observation report by Domagala, Cianni was rated as ineffective for professionalism as well as "Assessment of/for Learning". And again, in support of his ineffective rating for professionalism, the same comments that Cianni had previously disputed were cited, including the HIPAA "boiler plate" comment. Indeed, although between the March interim report and the May summative report, Cianni's rating for professionalism dropped from "partially effective" to ineffective, there was no new documented incident of unprofessional behavior, and no new incident of unprofessional

behavior listed in the summative report. However, Cianni was recommended for non-renewal, despite the fact that between March and May, he was not notified about anything that he had done that would have reduced his rating in the area of professionalism.

In light of these facts, I find that Cianni had a reasonable belief of discipline at the interim conference, Cianni had a Weingarten right to union representation at the interim conference because of this reasonable belief, and the Board violated section 5.4a(1) of the Act when it refused to allow Cianni to bring an Association representative with him to the interim conference that he reasonably believed may lead to discipline.

The second issue is whether the Board retaliated against Cianni for his invocation of his Weingarten rights before the interim conference that he reasonably believed may lead to discipline. It is well-settled that Cianni had the right to engage in Association activities, such as invoking his Weingarten rights and requesting union representation at a meeting that he reasonably believed may lead to discipline, without discrimination pursuant to N.J.S.A. 34:13A-5.3. Section 5.4a(3) of the Act also prohibits the Board from retaliating against Cianni for exercising these rights. Under Bridgewater, no violation of 5.4a(3) will be found unless the charging party has proven by a preponderance of the evidence on the entire record



that protected conduct was a substantial or motivating factor in an adverse action. 95 N.J. at 246; see also Passaic Cty. Prosecutor's Office, P.E.R.C. No. 2013-15, 39 NJPER 173 (¶52 2012).

Here, Cianni's contract was not renewed, which constituted an adverse personnel action. I also find that the Association did prove by a preponderance of the evidence that Cianni's invocation of his Weingarten rights before the interim conference that he reasonably believed may lead to discipline, was a substantial or motivating factor in his non-renewal. Indeed, Benjamin and Teehan both testified that they viewed Cianni's refusal to participate in the interim conference - after they had rejected his request for union representation - not as a reasonable and justified response to their violation of his Weingarten rights, but as a rejection of an "opportunity for professional growth". Then, when Cianni was upset at his summative review after it became clear that his employment may not be renewed based upon his "ineffective" rating, Benjamin and Teehan again mischaracterized this as another instance of Cianni's rejection of "professional growth" opportunities. Indeed, Teehan testified that Cianni's refusal to participate in meetings after his Weingarten rights had been violated "really solidified" Benjamin's recommendation that Cianni not be renewed, and which Teehan affirmed as the "right decision." Thus, I find

that the Board violated section 5.4a(3) of the Act.

The Association also alleges that the Board violated section 5.4a(5) of the Act, which prohibits the Board from "[r]efusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative." However, the Association did not demonstrate at the hearing that it demanded negotiations or that the Board refused to negotiate with it regarding any of these issues related to Cianni, nor did the Association file a formal or informal grievance arising out of any of these issues related to Cianni. Thus, I do not find that the Board violated section 5.4a(5) of the Act.

#### **CONCLUSIONS OF LAW**

Based upon the above findings of fact and legal analysis, I make the following conclusions of law:

The Board violated section 5.4a(1) and (3) of the Act when it refused to allow Cianni to bring an Association representative with him to an interim conference with Board administrators that he reasonably believed may lead to discipline, and when the Board later retaliated against Cianni for his request to have Association representation at the interim conference that he reasonably believed may lead to discipline by not renewing Cianni's employment contract.

**RECOMMENDED ORDER**

I recommend that the Commission order that Somerville Board of Education:

A. Cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by interfering with Dante Cianni's right to exercise the rights guaranteed to him by the Act and by refusing to allow him to bring an Association representative with him to an interim conference with Board administrators that he reasonably believed may lead to discipline, and by retaliating against Cianni for his request to have Association representation at the interim conference that he reasonably believed may lead to discipline by not renewing his employment contract.

B. Take the following affirmative action:

1. Restore the status quo ante by reinstating Dante Cianni to his position as a teacher with the Somerville Board of Education, together with back pay and interest.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are

not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within twenty (20) days of receipt of what steps the Respondent has taken to comply with this order.

/s/ Lisa Ruch  
Lisa Ruch  
Hearing Examiner

DATED: April 25, 2023  
Trenton, New Jersey

**Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).**

**Any exceptions are due by May 5, 2023.**



# NOTICE TO EMPLOYEES

## PURSUANT TO AN ORDER OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION AND IN ORDER TO EFFECTUATE THE POLICIES OF THE NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT, AS AMENDED,

**We hereby notify our employees that:**

**WE WILL** cease and desist from interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., particularly by interfering with Dante Cianni's right to exercise the rights guaranteed to him by the Act and by refusing to allow him to bring an Association representative with him to an interim conference with Board administrators, and by retaliating against Cianni for his request to have Association representation at the interim conference by not renewing his employment contract.

**WE WILL** take the following affirmative action:

1. Restore the status quo ante by reinstating Dante Cianni to his position as a teacher with the Somerville Board of Education, together with back pay and interest.
2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.
3. Notify the Chair of the Commission within twenty (20) days of receipt of what steps the Respondent has taken to comply with this order.

Docket No. CO-2022-022

Somerville Board of Education  
(Public Employer)

Date: \_\_\_\_\_

By: \_\_\_\_\_

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830