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In Re the Arbitration between:

BMS No. 09-VP-0041

Independent School District No. 279,  
Osseo Area Schools, Minnesota,

Employer,

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

and

Anthony Tate,

Grievant.

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Pursuant to **Article XV** of the Collective Bargaining Agreement between Independent School District No. 279 and Education Minnesota – Osseo Educational Support Professionals effective July 1, 2006 through June 30, 2008, the parties have submitted the above captioned matter to arbitration.

The parties hereto stipulated that the grievant has standing pursuant to the collective bargaining agreement to pursue a grievance on his own behalf through the grievance procedure established in the collective bargaining agreement.

The parties selected James A. Lundberg as their neutral Arbitrator from a list of Arbitrators provided by the Minnesota Bureau of Mediation Services.

The grievance was submitted February 29, 2008. There are no procedural issues before the Arbitrator for determination. The grievance is properly before the Arbitrator for a final and binding determination.

The hearing was conducted on December 9, 2008.

Briefs were filed simultaneously by the parties on January 6, 2009 and the record was closed.

**APPEARANCES:**

**FOR THE EMPLOYER**

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**FOR THE UNION**

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**ISSUE:**

*Whether the Employer had just cause to discharge the grievant Anthony Tate?*

*If not, what is the proper remedy?*

**FACTUAL BACKGROUND:**

The grievant, Anthony Tate, was employed by Independent School District No. 279 from October of 1999 through February 6, 2008.<sup>1</sup> Mr. Tate started working for the School District as a cashier in the lunchroom for two years. Later he obtained assignments as a paraprofessional. Mr. Tate's last assignment was to work as a paraprofessional in a self contained special education classroom under the direction of Mr. Pen Sandifer.

On January 16, 2008 Mr. Tate had a meeting with Mary Ann Pellot,<sup>2</sup> the school official who was overseeing a disciplinary referral for one of the students with whom Mr. Tate was working. The student, hereinafter S-1, had threatened to "stick" or stab Mr. Tate with an unspecified object. As a consequence of his threatening comment, the student was initially suspended from school for a period of three days. During the meeting between Mr. Tate and Ms. Pellot, Mr. Tate commented that he did not want to see S-1

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<sup>1</sup> At a meeting on February 1, 2008 Mr. Tate was told that his employment with the School District was terminated. It appears from the record that the effective date of termination was made February 6, 2008.

<sup>2</sup> Ms. Pellot was working as a Student Learning Advocate at the time. She has since been promoted to the position of Assistant Principal.

taken out of the building in an ambulance. While the context of the statement suggests that Mr. Tate was expressing his concern about the future well being of S-1, if he continued to engage others with threatening and aggressive behavior. The comment was later deemed by the school administration to be a threat by Mr. Tate toward S-1. Before she completed her testimony, the Arbitrator asked Ms. Pellot the following question:

The comment regarding leaving the room in an ambulance, are you testifying that Mr. Tate directed that toward S-1, the student, in a threatening manner or was it a comment kind of more out of concern? I'm confused as to what the nature of that comment was.

Ms. Pellot answered: I'm not sure what he meant by the comment. He was upset at the time that he was making these comments. **Transcript page 74, Lines 10-17.**

Following the decision to suspend S-1, Mr. Sandifer intervened and suggested that the suspension should be modified, if S-1 would meet some behavioral objective. Mr. Sandifer believed that the circumstances presented a teaching opportunity. Consequently, the student's discipline was modified.

Marian Boyd, the Assistant Principal at North View Junior High School, conducted a meeting related to S-1's Individual Educational Plan (IEP) on January 29, 2008. One of the topics addressed in the IEP meeting was how to help S-1 learn how to substitute appropriate problem solving behaviors for threatening language and other aggressive behavior. During the meeting S-1 said that it was not fair that he gets in trouble but Mr. Tate doesn't get in trouble and Mr. Tate does stuff that is inappropriate too. While explaining what he meant, S-1 said that they, he and Mr. Tate, wrestled in the

backroom. Ms. Boyd interviewed students from the self contained classroom the next day.

The students to be interviewed were pulled out of class and they sat together near the Assistant Principals office, while they waited to be interviewed on January 30, 2008. The School District asserts that it obtained information from the students that created a basis for questioning Mr. Tate's conduct. The School District did not offer into evidence any notes student interviews about Mr. Tate, except notes from an interview with S-1 and testimony from S-1.

On the 1<sup>st</sup> of February 2008, Mr. Barnes, the Director of Human Resources met with Mr. Tate, together with the Principal of North View Jr. High School, Ms. Vickerman, the North View Jr. High Business Manager, Mr. Trammel and the Education Minnesota field representative Ms. Kerfeld.

Mr. Barnes testified that a Tennessee Warning was given to Mr. Tate and the complaint was reviewed with him. In response to the question, what was the complaint?

Mr. Barnes Answered:

The complaint is that we had received complaints from students that Mr. Tate had physically assaulted them, and we explained the nature of the complaint and the details of those allegations with Mr. Tate. ... **Transcript Page 11, Lines 15-18.** The details were that certain students were being threatened by Mr. Tate verbally and physically, and that on occasion Mr. Tate would take certain students into a closet and engage in physical wrestling kinds of activities with them. **Transcript Page 11, Lines 21-25.**

Mr. Barnes, while explaining the procedure that was followed in the February 1, 2008 interview with Mr. Tate said:

I reviewed with Mr. Tate the complaint that we had received and the nature of our conversation that day and why we were there.

Mr. Tate immediately responded with -- before any details were given, Mr. Tate immediately responded with the statement that, "I'm guilty of that situation," and in fact had in his hands a piece of paper that he then read off a prepared scripted speech in which he acknowledged the wrongdoing and apologized for any wrong doing and, as I recall, was begging to redeem himself. Now that was how the conversation began. **Transcript Page 12, Lines 17-25, Page 13, Lines 1-3.**

Mr. Barnes' notes from the February 1, 2008 meeting indicate that Mr. Tate said, "I'm guilty of that situation" Mr. Tate had prepared an apology and read it and asked to be allowed to redeem himself. Mr. Barnes typed notes included the following terse phrases that he attributed to Mr. Tate:

- Kids threatening each other.\*
- Play fighting.\*
- Show them wrestling and karate techniques\*. One punch is not going to knock someone out.\*
- Show them wrestling holds.\*
- Didn't know I couldn't play with kids like that.\*
- Couple months ago learned I couldn't wrestle.\*
- Mr. Sandifer told the ESPs and kids "our staff won't touch you – you don't touch them." Told both he and Mr. Holte and the kids at the same time.

- Now play football/basketball.\*
- Now fight with each\*.
- Have done this just this year.
- Threatened S-1 about ambulance? – “Didn’t mean it.”\*
- Admitted putting S-1 in headlock.
- Talk about fighting/wrestling.
- Wrestled with S-1, S-2, S-3.<sup>3</sup>

It must be noted that the above bullet points were taken from Employer Exhibit-2, which Mr. Barnes testified were the typed notes from the February 1, 2008 meeting. The document marked Employer Exhibit-8 and included in the record of this hearing is a photocopy of the handwritten notes Mr. Barnes took at the February 1, 2008 meeting with Mr. Tate. The Arbitrator placed an asterisk next to items that appear in the typed notes that either do not appear in the handwritten notes or reflect a different message in the handwritten notes than in the typed notes. Significant examples of the different messages communicated in the handwritten notes and the typed notes are:

- Handwritten note saying “He said he didn’t mean to threaten S-1 w/ going out in an ambulance” versus the typed note which says, “Threatened S-1 about ambulance? – “ Didn’t mean it.”
- Handwritten note saying “I show them wrestling moves holds – haven’t thrown them around” versus the typed notes which say, “Show them wrestling holds” and “Show them wrestling and karate techniques. One punch is not going to knock someone out”

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<sup>3</sup> Student names were redacted to avoid possible violations of the Data Privacy Act.

Mr. Tate testified that he did make a comment about one punch not knocking someone out. While the comment was not part of the curriculum, Tate claims it was offered in conversation to illustrate how violent conduct is inaccurately portrayed in the media. Mr. Tate was not directing a violent comment toward the students.

At the end of the meeting on February 1, 2008 Mr. Tate was told that his employment with the School District was terminated.

Mr. Tate admitted making a statement about “wrestling holds”. To the extent that wrestling was mentioned the admission was corroborated by the other people at the meeting. However, the recollections of the other participants in the meeting and Mr. Tate diverged in several ways. Specifically, Mr. Tate denied threatening students and denied wrestling and in any way hurting students. He explained that he did demonstrate how to escape from a headlock. Mr. Tate also denied play fighting or air boxing with kids.

There is no evidence that Mr. Tate intended to hurt or actually hurt any student. No evidence was submitted that indicated that any child at the Jr. High School experienced pain as a result of Mr. Tate’s conduct.

S-1 was called as a witness and was asked if he had been interviewed on or about January 30<sup>th</sup>, 2008. S-1 said “I don’t know. I can’t remember.” He was asked if he would read the date on the notes and said “January 1<sup>st</sup>.” The notes were dated 1/30/2008. S-1 was asked, if he had had an opportunity to read the notes, and whether he found the notes to be correct and accurate. S-1 said, yes, in response to both questions. S-1 did not look at the notes when they were placed before him. There was no attempt to establish that S-1

had the ability to read the notes that were placed before him or to explain whether his disabilities include problems with reading.<sup>4</sup>

The notes of the interview with S-1 included some comments that indicated Mr. Tate engaged in some type of wrestling with S-1 and pushing in the “backroom closet place where there used to be a cot.” The student indicated that he felt threatened by Mr. Tate’s comment “I’m really not trying to make you leave here in an ambulance.”

In cross examination S-1 was asked “Did you ever think that Mr. Tate was really going to hurt you? S-1, said, no. **Transcript Page 81, Lines 17-18.** He was also asked whether Mr. Tate ever touched him in a way that was inappropriate and S-1 said no. **Transcript Page 82, Lines 16-18.** S-1 testified that he did not know “we couldn’t play in the backroom and stuff.” **Transcript Page 82 , Lines 12-13.** S-1 testified that the grievant was not hurting him with the headlock thing in the back room

No written notice of termination was submitted at hearing. However, the reasons for discharging Mr. Tate included assaulting students, threatening students and violation of the School District corporal punishment policy.

The School District corporal punishment policy says the following:

**I. Prohibition**

**In accordance with M.S. 127.45, Subd. 1, all District employees or agents are prohibited from inflicting corporal punishment or causing corporal punishment to be inflicted upon a student to reform unacceptable conduct or as a penalty for unacceptable conduct.**

**II. Permitted Restraint**

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<sup>4</sup> The Arbitrator has a Masters Degree in Special Education and worked in the field for eight years. In his past experience, students with disabilities like S-1, who were placed in self contained classroom settings often had both behavioral disabilities and reading problems.

**In accordance with M.S. 609.379, Subd. 1, reasonable force may be used upon or toward the person of a student without the student's consent when used by a District employee or agent in the exercise of lawful authority or to restrain a student from self-injury or injury to any other person or property.**

The School District provides the following definition of corporal punishment:

**I. Definiton**

**Corporal punishment is defined in M.S. 127.45, Subd. 1, as conduct involving:**

**A.Hitting or Spanking with or without an object, or**

**B.Unreasonable physical force that causes bodily harm or substantial emotional harm.**

**II. Corporal Punishment**

**A. In the event a District employee or agent strikes, hits, grabs or attempts to apply unreasonable force to a student, or in a violent, rude or angry manner touches or lays hands upon a student, the individual so acting will:**

The allegation that Mr. Tate threatened students is not supported by the context of the purported threat to have a student taken out in an ambulance nor by a reliable witness to that purported threat. Ms. Pellot, the current Assistant Principal, explained to the Arbitrator that "I'm not sure what he meant by the comment. He was upset at the time that he was making these comments." In the context of a disciplinary referral, Mr. Tate's comment about not wanting to see S-1 taken out in an ambulance appears to be a comment uttered out of concern over S-1's negative behavior. Mr. Tate's statement was

quoted many times during the arbitration hearing but no witness suggested that Mr. Tate said he intended to cause S-1 to be taken out of the building in an ambulance.

Mr. Tate admitted that he demonstrated how to escape from a headlock with S-1 and in that process he placed his hands on S-1. The teaching of an escape from a headlock can not be found in Mr. Tate's job description. However, Mr. Tate did not admit striking S-1, nor did he admit to the application of any degree of force that would be painful to S-1. Nowhere in the course of the hearing was there any testimony that Mr. Tate applied force against S-1 or any student that caused any degree of pain. No student statement or testimony was submitted that indicated Mr. Tate engaged in any conduct that caused any student to be hurt. There is no evidence that Mr. Tate hit or spanked any student. The evidence submitted at hearing reflects no incident wherein Mr. Tate struck, hit, grabbed or applied any degree of force against a student. There is no evidence that Mr. Tate engaged any student in a violent, rude or angry manner or touched or placed his hands upon any student in a violent, rude or angry manner. In fact, the January 16, 2008 meeting, wherein S-1 was initially given a three (3) day suspension, was convened as a consequence of Mr. Tate correctly determining that S-1 had made an inappropriate comment and properly calling the inappropriate behavior to the attention of a school official whose responsibility it was to address disciplinary problems.

It is clear from the testimony that the students Mr. Tate worked with talked about violent behavior. Mr. Tate listened to the comments relating to violence and Mr. Tate responded to the comments. While topics relating to violence, fighting and physical conflict are not a part of the school curriculum, the Arbitrator takes notice of the fact that young males in the Junior High age group tend to talk about fighting and violence. There

is no evidence other than some information found in the notes<sup>5</sup> of an interview with S-1 that supports an allegation that Mr. Tate was encouraging students to engage in violent conduct. There is no evidence that Mr. Tate engaged in conduct that inflicted pain on any student.

Obtaining a clear and accurate picture of what took place between Mr. Tate and S-1 and other students was impeded by the fact that only S-1 testified at the hearing and his testimony was limited. His representation that he had read and agreed with the notes that were submitted was not convincing. The Arbitrator can not make factual representations regarding allegations that may have been made by students who did not testify and on whose behalf no records or notes were released. Furthermore, the reliability of S-1 as a historian is questionable.

The investigation of Mr. Tate's conduct did not extend beyond interviews with a handful of students. With the exception of notes purportedly taken in an interview with S-1, no investigation notes were placed into evidence. The classroom teacher who was directly responsible for directing Mr. Tate's day to day activities was not interviewed. No paraprofessional, no teacher, and no administrator directly witnessed Mr. Tate assault a student or impose any form of corporal punishment upon any student.

It is unclear exactly what conduct Mr. Tate engaged in that violated School District policy and it is unclear when Mr. Tate engaged in the conduct that violated school policy.

Mr. Tate admitted at hearing that he demonstrated for S-1 how to get out of a headlock and the demonstration included his touching S-1. Mr. Tate may have made more extensive admissions on February 1, 2008 but the notes taken at the meeting do not

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<sup>5</sup> Some of the S-1 notes could be construed to mean that grievant was somehow encouraging violent conduct.

correspond with the transcription of the notes and the recollections of meeting participants are inconsistent. Unfortunately, no written complaint was prepared and delivered to Mr. Tate on February 1, 2008. Consequently, the record of the elements of the complaint presented to Mr. Tate on February 1, 2008 is a composite of the recollections of several meeting participants and two different versions of notes taken by Mr. Barnes.<sup>6</sup>

The one administrator who witnessed a purported threat by Mr. Tate, the comment about being taken out of the building in an ambulance, testified that she was not sure what he meant by the comment. Mr. Tate's comment that he did not want to see S-1 taken out of the building in an ambulance was referred to by a number of witnesses and was characterized as a threat. However, no witness testified that Mr. Tate said he intended to take any action that would result in S-1 being taken out of the building in an ambulance.

The last sentence of **Article IX, Section 8, Subd. 5** of the Collective Bargaining Agreement says, "The proceeding before the Arbitrator will be a hearing de novo."

**SUMMARY OF EMPLOYER'S POSITION:**

The Employer argues that it established that it had just cause to discharge the grievant by a preponderance of the evidence.

In an interview on January 30, 2008, which was conducted by Rodney Barnes, the Human Resources Director, and witnessed by Principal Peg Vickerman, Business Manager David Tramel, the grievant admitted the following:

1. Kids threatened each other in his presence.

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<sup>6</sup> Whether Mr. Tate was fully informed of the charges made against him raises the significant due process question of whether the disciplinary process included a Loudermill hearing.

2. There was “play fighting” with his students.
3. Tate showed his students wrestling and karate techniques.
4. Tate told students one punch is not going to knock someone out.
5. Tate showed student(s) wrestling holds.
6. Tate “play fights” with students.
7. Tate threatened a student by saying, “I’m worried that you’re going to come out of here in an ambulance,” but he said he didn’t mean it.
8. Tate admitted putting a student in a headlock.
9. Tate discussed fighting and wrestling with students.

The conduct that Mr. Tate admitted engaging in was unprofessional, inappropriate and harmful to EBD students. The kind of student that Mr. Tate worked with often is unable to distinguish between what is real and what is not real. They have difficulty with what is right and what is wrong. Mr. Tate’s conduct was outside of the curriculum and specifically violated Mr. Sandifer’s directive that students do not touch staff and staff members do not touch students.

In addition to the admissions made by Mr. Tate during his interview, S-1 testified that Tate and S-1 “played around. They put each other in headlocks which lasted about a minute.” Student 1 testified that another student told him that Tate and this other student wrestled in the back room of the classroom. Tate also told the student, “when I see you on the street, we’re going to box.”

EBD students need to develop appropriate emotional and behavioral responses to various kinds of social settings. It is vital that the staff working with EBD students present them with a positive behavioral model. Given Mr. Tate’s role in the classroom,

and the nature of the children he worked with, the conduct he admittedly engaged in and the conduct described by S-1 is sufficient to establish just cause for his discharge.

Counsel for Mr. Tate argues that the Employer did not follow any step of the grievance process, because it conducted no hearings and issued no decisions following the school boards confirmation of discharge on February 6, 2008. If the grievance was not properly processed, then pursuant to **Section 8, Subdivision 2** of the collective bargaining agreement, the Arbitrator has no authority to hear this case. In fact, the grievance went through all steps of the procedure and the Employer made no decision, which placed the burden on Mr. Tate to move his grievance through the arbitration process. Hence, the matter is properly before the Arbitrator on its merits.

If the Arbitrator considers an award of damages, Mr. Tate should be required to submit documentary evidence regarding his claim of lost wages. The Employer argues that a discharged teacher must mitigate damages and Mr. Tate should also be required to mitigate damages. Additionally, Mr. Tate's claim of lost wages he would have earned as a coach is speculative, since Mr. Tate does not hold a coach's license from the Minnesota Board of Teaching nor was he a coach for a varsity sport. Mr. Tate's job as a coach was at will employment.

The Employer established by a preponderance of the evidence that the grievant was discharged for just cause. Hence, the grievance should be denied.

**SUMMARY OF MR. TATE'S POSITION:**

Except for the alleged wrong doing that resulted in his discharge, Mr. Tate's employment history with the School District was positive. There were no prior incidents for which Mr. Tate was warned that his conduct could result in discipline, including

discharge. Mr. Tate's job performance was reviewed annually. In 2006 the performance review noted, "Excellent relationships with students and staff," "He is highly thought of by staff and students," and "the ultimate professional." Witnesses testified that Mr. Tate was friendly and personable with students and that students liked Mr. Tate. When the decision to discharge Mr. Tate was made, no consideration was given to his positive employment record. The allegations of student mistreatment made against him were not reviewed in light of the generally positive relationships he had with students.

The investigation into Mr. Tate's conduct was not thorough. The only people interviewed were students from the self contained classroom, who were gathered together to wait outside the Assistant Principal's office before they were interviewed. Notes were taken at the interviews but only the redacted notes of the interview with S-1 were entered into evidence. If the interviews with students other than S-1 contained information that suggested wrong doing on the part of Mr. Tate, the interview notes would have been produced.

The testimony of S-1 demonstrated that S-1 had little or no understanding of the contents of the interview notes. In fact, it is questionable whether S-1 could even read the notes that were offered into evidence. When asked about his relationship with Mr. Tate, S-1 testified that he liked Mr. Tate, Mr. Tate never hurt him and Mr. Tate never threatened him.

Mr. Tate's testimony that he only demonstrated for S-1 how to escape from a headlock is consistent with the testimony of S-1. If Mr. Tate would have applied pressure to S-1 and hurt him, S-1 would not have testified that Mr. Tate never hurt him.

The allegation that Mr. Tate assaulted three students and threatened students was not proven by credible evidence. The testimony of S-1 refuted the allegation that Mr. Tate assaulted him and also the allegation that Mr. Tate threatened him. The Employer's evidence about assaults upon two other students consisted of the hearsay testimony about what the notes of interviews contained. In other words, the proof offered at hearing was double hearsay based on the statements of two emotionally disturbed seventh and eighth graders. The witnesses did not appear and no notes of the interviews were produced.

The grievant's supervisor was not interviewed and no adult in the building witnessed Mr. Tate wrestling with students, play-fighting, or touching students inappropriately.

The Employer has a policy that prohibits the use of corporal punishment by staff members. The policy defines corporal punishment as "hitting or spanking" or "unreasonable physical force that causes bodily harm or substantial emotional harm". The School District presented no other policy regarding physical contact between staff members and students. Mr. Sandifer, when questioned, explained that the policy he discussed meant neither staff nor students should engage in any harmful touching.

Mr. Tate admits that he apologized on February 1, 2008. However, he explained that he was apologizing for any embarrassment he caused Mr. Sandifer. He did not admit wrestling with students or putting students in headlocks. He did admit that he demonstrated how to escape from a headlock.

Mr. Tate did not violate any standard of conduct established by the School District and uniformly applied to the building staff. He did not violate the corporal punishment policy. There is no credible evidence that he assaulted any student. Finally,

there are allegations that Mr. Tate threatened S-1 but the testimony regarding the alleged threat does not support the characterization of his statement as a threat.

The Employer did not have just cause to discharge the grievant. Hence, he should be reinstated with full back pay and benefits. In addition to lost wages in the amount of \$22,968 (44 weeks multiplied by \$522 per week wages) he should be paid \$1,500 per lost coaching assignment for four seasons of coaching. He should also receive 4% interest on back pay, which amounts to an additional \$1,071.82. The total back pay and interest award should be \$30,039.82.

**OPINION:**

The Employer did not prove by a preponderance of the evidence that Mr. Tate threatened students, assaulted students or violated the corporal punishment policy of School District No. 279, Osseo, Minnesota.

The Employer alleged that Mr. Tate threatened to cause S-1 to be taken out of the building in an ambulance. However, the testimony clearly established that Mr. Tate said he did not want to see S-1 taken out of the building in an ambulance. Not wanting something to happen to a person does not constitute a threat! No witness testified that Mr. Tate said he intended to cause S-1 to be removed from the building in ambulance. The characterization of Mr. Tate's comment is completely inconsistent with the context wherein it was uttered. Furthermore, the school administrator who witnessed the statement testified that she did not know what Mr. Tate meant by the statement.

The following allegations regarding Mr. Tate's conduct do not violate the Employer's Corporal Punishment policy nor do they support a claim that Mr. Tate assaulted any student:

- Kids threatened each other in his presence.
- Play fighting with students.
- Showing students wrestling and karate techniques.
- Telling students that one punch is not going to knock someone out.
- Showing students wrestling holds.
- Discussing fighting and wrestling with students.

Putting a student in a headlock is the only act described in the Employers final argument that could be considered an assault or a violation of the Corporal Punishment Policy. There is no credible evidence that Mr. Tate inflicted any pain on any student.

Mr. Tate made a statement during his interview. He apologized for embarrassing Mr. Sandifer. However, the specific conduct in which he admitted he engaged and the specific conduct in which witnesses said he admitted he engaged, did not include conduct that could be construed as a violation of the School District Corporal Punishment Policy. The handwritten notes of the interview taken by Mr. Barnes that Mr. Tate showed “them wrestling moves[,] holds – haven’t thrown them around”. The note is consistent with Mr. Tate’s testimony that he demonstrated how to get out of a headlock but did not apply pressure to any student and S-1’s testimony that Mr. Tate never hurt him. The evidence simply does not support an allegation of assault nor does it support a claim that Mr. Tate violated the corporal Punishment Policy of the School District.

The procedures followed by the Employer in this instance did not afford the grievant due process and were not designed to determine whether Mr. Tate actually engaged in misconduct. The investigation into Mr. Tate’s conduct was neither thorough nor was it even handed. It is not clear from the description of the procedures used by the

Employer whether it afforded the grievant the minimal protections required by **Cleveland Board of Education vs. Loudermill**, 470 U.S. 532; 105 S. Ct. 1487; 84 L. Ed. 2d 494; 1985 U.S. LEXIS 68; 53 U.S.L.W. 4306; 1 I.E.R. Cas. (BNA) 424; 118 L.R.R.M. 304.

The February 1, 2008 meeting with Mr. Tate was described as an interview. The nature of the charges against Mr. Tate were not clearly articulated at the hearing and no notes specifically identifying the charges against Mr. Tate were produced. In this case the evidence produced at the Arbitration, a hearing de novo, did not demonstrate that Mr. Tate engaged in conduct that was so egregious that immediate discharge was appropriate.

Having failed to prove by a preponderance of the credible evidence that the grievant, Mr. Tate threatened or assaulted students or violated the Corporal Punishment Policy of the School District, the grievance must be upheld. The grievant should be reinstated to his position with full seniority, back pay and benefits. Based upon the evidence adduced at hearing and the arguments presented in the briefs of the parties the Employer should pay back pay and interest to the grievant.

**AWARD:**

1. *The grievance is hereby upheld.*
2. *The grievant shall be reinstated to his former position with full back pay and benefits.*
3. *The parties shall have a period of two weeks from the date of this opinion to arrive at an agreed upon amount for back pay and interest.*
4. *4% shall be used in the interest calculation.*
  - a. *In this instance, the four coaching jobs that Mr. Tate lost as a result of the discharge shall be included in the back pay calculation.*

5. *If the parties are unable to resolve the back pay and interest issue within two weeks of the date of this award, they shall submit proposed back pay awards together with their arguments and calculations to the Arbitrator within three weeks of the date of this award.*
6. *The Arbitrator shall retain jurisdiction over the remedy.*
7. *If submissions are made regarding the back pay award, the Arbitrator will select one of the proposed awards submitted.*

**Dated: January 20, 2009**

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**James A. Lundberg, Arbitrator**