

IN THE MATTER OF ARBITRATION BETWEEN

OPINION AND AWARD

**Columbia Heights Federation of Teachers
[Daniel Honigs]**

BMS Case No. 10-PA-0577

and

**Independent School District #13
Columbia Heights, MN**

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of Columbia Heights Federation of Teachers
Rebecca H. Hamblin, Esq.
Education Minnesota
St. Paul, MN

On behalf of Independent School District #13
Karen P. Kepple
White Bear Lake, MN

JURISDICTION

In accordance with the collective bargaining agreement between Independent School District #13, Columbia Heights, Minnesota, and Columbia Heights Federation of Teachers, Local 710, for school years 2009-2011; and, under the jurisdiction of the state of Minnesota Bureau of Mediation Services, St. Paul, Minnesota, the above grievance arbitration was submitted to Joseph L. Daly, arbitrator, on May 10 and May 11, 2010, at the Columbia Heights School District. Post hearing briefs were filed by the parties on June 9, 2010. The decision was rendered by the arbitrator on July 6, 2010.

ISSUES AT IMPASSE

The Union states the issues as:

- I. Did the District lack just cause pursuant to Article IV, Section 3 of the collective bargaining agreement to discipline the grievant by giving him a Letter of Deficiency and a 4-week unpaid suspension?

- a. Shall portions of the Letter of Deficiency be stricken at the outset?
 - b. What is the grievant's correct disciplinary history?
 - c. Has the District proved its version of what happened on April 20 and May 26 [sic 22], 2009?
- II. Did the District violate Article V, Section 18 of the CBA when it relied on documents not contained in the grievant's one District personnel file as part of its case?
 - III. Does the Letter of Deficiency contain false and inaccurate statements pursuant to Minnesota Statute 122A.40, subdivision 19 and Article V, Section 18 of the CBA?
 - IV. Did the District violate its own School Board policy?
 - V. If yes to any or all of the above, what shall the remedy be? [Post-hearing Brief of Union 1-2]

Columbia Heights School District states the issue as: Is the Letter of Deficiency and Four-Week Suspension Without Pay supported by just cause and consistent with the collective bargaining agreement? [Post-hearing Brief of Columbia Heights at 1].

The potentially relevant contractual provisions and policies are:

Article IV, Section 3. Progressive Discipline: The purpose of this section is to set forth the procedures and conditions under which teachers may be disciplined. All disciplinary actions shall be for just cause and, except in the case of oral reprimand, subject to the grievance procedure.

- A. Teacher discipline shall be administered by appropriate District administrative personnel. Discipline beyond step two shall be administered solely by the Superintendent.
- B. Discipline, except in the case of termination, shall have correction and improvement as its goal.
- C. Discipline shall be generally applied progressively and shall be consistent with the accepted principles of progressive discipline. Such action shall use the following steps:
 1. Oral reprimand (no record of which will be placed in the personnel file)

2. Written reprimand
3. Suspension of pay
4. Suspension without pay (not more than two days)
5. Letter of deficiency
6. Termination (consistent with M.S. 122A.40)

If any infraction is of such a degree of severity to warrant it, disciplinary action may start at any of the above steps.

During any disciplinary actions a teacher shall have the right to Local 710 representation.

Whenever possible, the District shall discuss with the teacher any concern which may lead to disciplinary action and shall offer constructive suggestions for correction before any disciplinary action may be initiated.

- D. Notice of intent to discipline shall be sent by the appropriate administrator to the teacher with a copy to Local 710. The notice shall contain a statement of the grounds for the proposed action. Nothing in this section shall prevent a teacher from proceeding directly to arbitration if he/she desires.
- E. Teachers shall be entitled to due process of law.
- F. If the charges against the teacher are severe to the degree they necessitate a suspension of the teacher, such suspension shall be with pay during the investigation phase but could result in suspension without pay if the allegations are found to be true. The School District may suspend a teacher with pay during an investigation into a matter which may result in discipline. Suspension with pay is not considered a disciplinary action.

Article V, Section 18. Personnel Files: Only one (1) personnel file shall be maintained by the District on any teacher. No file material generated in buildings by the administrator or designee may be used in disciplinary action unless it has been discussed with the teacher within sixty (60) working days and subsequently forwarded to the personnel file within one (1) calendar year of

the issue(s) under consideration. In all cases where the potential file material is formally discussed by the teacher and administrator or designee, the administrator is obligated to inform the teacher he/she may have representation and also provide reasonable time for the teacher to obtain such representation. If the teacher is not given sufficient time to obtain representation of his/her choice, the administrator or designee must be able to demonstrate that providing the requested time would have exacerbated or been detrimental to resolution of the issue. All evaluations and other materials relating to each individual teacher and considered as official records of the District shall be available during regular school business hours to each individual teacher upon his/her written request, within a reasonable period of time, and in no event later than seventy-two hours, after the request is received by the Human Resources Office. When the request follows the issuance of a disciplinary action, the personnel file will be made available for review within twenty-four hours after the request, whenever possible. The teacher shall have the right to reproduce any of the contents of the files at the teacher's expense and to submit for inclusion in the file written information in response to any material contained herein. However, the School District may destroy such files as provided by law. Access to such files shall be limited to those individuals demonstrating a right and an educational need to know the information contained therein.

The School District shall expunge from a teacher's file any material found to be false or substantially inaccurate, and the teacher shall be authorized to use the grievance procedures, as outlined in Article XIV, in order to enforce this provision. Such grievances shall be initiated at the appropriate level and shall be subject to a time limitation of fifteen (15) days after the teacher has knowledge of the inclusion in his/her file of the material he/she seeks to have expunged.

Any time following three (3) years after placement of material in a teacher's file and annually thereafter, the teacher may request removal of this material from his/her file except: 1) when related to incidents of sexual harassment or sexual abuse, or 2) when related to a teacher's employment status, credits, date of employment, etc. Within ten (10) days of receipt of this request the Superintendent shall personally and in writing, respond.

If the response is negative, supporting reasons for this decision will be given. Nothin in the paragraph shall be subject to the grievance procedure. This provision is effective January 14, 1992 and thereafter.

Columbia Heights School Board Policy 403 Discipline, Suspension and Dismissal of School District Employees

I. PURPOSE

The purpose of this policy is to achieve the effective operation of the school district's programs through the cooperation of all employees under a system of policies and rules applied fairly and uniformly.

II. GENERAL STATEMENT OF POLICY

The disciplinary process described herein is designed to utilize progressive steps, where appropriate, to produce positive corrective action. While the school district intends that in most cases progressive discipline will be administered, the specific form of discipline chosen in a particular case and/or the decision to impose discipline in a manner otherwise, is solely within the discretion of the school district.

III. DISCIPLINE

A. Violation of School Laws and Rules

The form of discipline imposed for violations of school laws and rules may vary from an oral reprimand to termination of employment or discharge depending upon factors such as the nature of the violation, whether the violation was intentional, knowing and/or willful and whether the employee has been the subject of prior disciplinary action of the same or a different nature. School laws and rules to which this provision applies include:

1. policies of the school district;
2. directives and/or job requirements imposed by administration and/or the employee's supervisor; and
3. federal, state and local laws, rules and regulations, including, but not limited to, the rules and regulations adopted by federal and state agencies.

B. Substandard Performance.

An employee's substandard performance may result in the imposition of discipline ranging from an oral reprimand to termination of employment or discharge. In most instances, discipline imposed for the reason of substandard performance will follow a progressive format and will be accompanied by guidance, help and encouragement to improve from the employee's supervisor and reasonable time for correction of the employee's deficiency.

C. Misconduct.

Misconduct of an employee will result in the imposition of discipline consistent with the seriousness of the misconduct. Conduct which falls into this category includes, but is not limited to:

1. unprofessional conduct;
2. failure to observe rules, regulations, policies and standards of the school district and/or directives and orders of supervisors and any other act of an insubordinate nature;
3. continuing neglect of duties in spite of oral warnings, written warnings and/or other forms of discipline;
4. personal and/or immoral misconduct;
5. use of illegal drugs, alcohol and any other chemical substance on the job or any use off the job which impacts on the employee's performance;
6. deliberate and serious violation of the rights and freedoms of other employees, students, parents or other persons in the school community;
7. activities of a criminal nature relating to the fitness or effectiveness of the employee to perform the duties of the position;
8. failure to follow the canons of professional and personal ethics;
9. falsification of credentials and experience;
10. unauthorized destruction of school district property;
11. other good and sufficient grounds relating to any other act constituting inappropriate conduct;
12. neglect of duty;
13. violation of the rights of others as provided by federal and state laws related to human rights.

IV. FORMS OF DISCIPLINE

- A. The forms of discipline that may be imposed by the school district include, but are not limited to:
1. oral warning;
 2. written warning or reprimand;
 3. probation;
 4. disciplinary suspension, demotion or leave of absence with pay;
 5. disciplinary suspension, demotion or leave of absence without pay; and
 6. termination from employment.
- B. Other forms of discipline, including any combination of the forms described in paragraph A above, may be imposed if, in the judgment of the administration, another form of discipline will better accomplish the school district's objective of stopping or correcting the offending conduct and improving the employee's performance.

V. PROCEDURES FOR ADMINISTERING POLICY

- A. In an instance where any form of discipline is imposed, the employee's supervisor will:
1. Advise the employee of any inadequacy, deficiency or conduct which is the cause of the discipline, either orally or in writing. If given orally, the supervisor will document the fact that an oral warning was given to the employee specifying the date, time and nature of the oral warning.
 2. Provide directives to the employee to correct the conduct or performance.
 3. Forward copies of all writings to the administrator in charge of personnel for filing in the employee's personnel file.
 4. Allow a reasonable period of time, when appropriate, for the employee to correct or remediate the performance or conduct.
 5. Specify the expected level or performance or modification of conduct to be required from the employee.
- B. The school district retains the right to immediately discipline or terminate an employee as appropriate, subject to relevant governing law and collective bargaining agreements where applicable. [Union exhibit #3].

FINDINGS OF FACT

1. By letter dated July 28, 2009, Mr Daniel Honigs, a ten-year Mathematics teacher at Columbia Heights, received a “Letter of Deficiency and Suspension Without Pay” from Superintendent Kathy Kelly. It stated in applicable part:

This letter constitutes a Letter of Deficiency issued under Minn. Stat. § 122A.40 and Suspension Without Pay for four weeks for your continued inappropriate and unprofessional interactions with students, despite your four week suspension without pay imposed by an arbitrator on June 14, 2005 for “highly inappropriate” conduct with a student and subsequent anger management coursework. The arbitrator concluded that the School District had not shown at *that* time that your conduct was not remediable, thus preventing your discharge [emphasis in original]. And yet, here we are again addressing similar concerns. The School District has grave concerns about whether your conduct is remediable, given the recurring nature of these inappropriate and unprofessional behaviors.

Just five months after the arbitrator directed your suspension for “highly inappropriate” conduct with a student, and shortly after you completed the mandated anger management course, you yelled at your students who were being disruptive to “do the damn test.” You engaged in other behaviors with staff or in public indicating a lack of anger management on August 2005, February 2006 and June 2006, as was discussed in greater detail at the meeting with you and your union representative on June 17, 2009.

In November 2008 staff reported that on numerous occasions you told your students to “shut up” and slammed a ruler on desks to get their attention. Principal Andrew Beaton directed you to stop these behaviors immediately. There have been no further reports of your slamming a ruler on desks. However, staff members have reported that this spring they have heard you tell students to “shut up” on more than one occasion, despite the verbal directive not to do so. At the meeting on June 17th with you, principal and others, you said that you do not

recall telling students to “shut up,” although you stated that you may have used that phrase accidentally in frustration with the students.

On April 27 [sic 20], 2009 you engaged in a verbal confrontation with a student. While you were standing less than two feet from a student, the students said, “Don’t get in my face.” You responded by saying, “I’ll show you what getting in your face means,” and then you moved even closer to the student. Although you emphatically insist that you said, “This is not getting in your face” and deny being any closer than three feet to the student, the staff person who reported this incident to the high school administration is absolutely certain that his version of events is accurate. In either case, your conduct was inappropriate and unprofessional.

On May 26 [sic 22], 2009, you again engaged in a verbal confrontation with students, and this time, another physical confrontation with a student, after the students had been disruptive in your classroom. Staff reported to the high school administration that she had observed you arguing with several student who had left your classroom without permission and who were trying to regain admission to the classroom or at least retrieve a backpack left behind. You refused their reentry, placing your foot in the doorway, and having one hand on the door knob and the other hand on the door jam. When one student outside the classroom fell forward, after being pushed from behind by another student, you raised one arm and pushed the student backwards so that you could shut the door. During this incident, the student said, “Don’t push me” to which you replied, “Don’t push me, young man.”

Again, you disagree with the witnesses’ version of events, insisting that you did not put your hands on the student to push him out of the classroom. Instead, you say that you pushed back with your “belly.” The adult witness to this interaction is equally adamant and credible. Again, either way, your interactions with students continues to be inappropriate and unprofessional.

The School District finds the witnesses all the incidents described above to be credible and the behaviors you continue to engage in with students to be extremely concerning. Rather than defuse these situations, you exacerbate them, getting into the fray with the students at their level. These confrontational interactions with students continue to occur, despite an arbitration hearing contesting your proposed discharge for engaging in similar behaviors, prior discipline, an anger management course and other School District in-service, and verbal directives from your supervising principal. The School District seriously considered terminating your employment, but I have made the decision to issue this Letter of Deficiency and Suspension Without Pay to give you **one last chance** to change this behavior. Any further similar conduct will result in immediate termination of your employment.

Expectations:

You are directed to cease your confrontational interactions with students. You are directed to engage in appropriate and professional verbal exchanges and no physical interactions with students. You are directed to develop alternative means to address students who need behavior interventions. I expect you to comply with these expectations immediately. [Joint exhibit #2].

2. On April 20, 2009, teacher Daniel Honigs was teaching a Mathematics class. At the beginning of the class period, four students, including a student who was involved in a second incident on May 22, 2009, were talking and not sitting at their desks. Mr. Honigs, trying to get the students under control, gave two verbal warnings to the students. When the behavior continued, he approached the students and told them to take their seats. Two of the students did take their seats. Mr. Honigs was separated by a desk from the student who was also involved in the May 22, 2009 incident, who was standing in the next aisle. Mr. Honigs testified that his estimate of the distance between him and the student to be about three feet. A paraprofessional was in the room at that time and observed the interaction. The student told Mr. Honigs “Don’t get in my

face.” The paraprofessional testified at the arbitration hearing that Mr. Honigs responded “I’ll show you what getting in your face means,” and the paraprofessional testified Mr. Honigs moved closer to the student. The paraprofessional testified that at that point Mr. Honigs noticed that the paraprofessional was in the room and Mr. Honigs moved away from the student. Mr. Honigs testified that after the student said “Don’t get in my face”, he replied “This is not me getting in your face”, indicating the distance between the distance between them. The student took his seat.

After the incident, Mr. Honigs told the paraprofessional that the class had “gotten off to a rough start” and told the paraprofessional he was “welcome to talk to the four students who had been acting out”. Mr. Honigs testified his intent was that the paraprofessional would remove the students from the classroom, talk with them about their behavior, and they would then return, as had happened in the past. Mr. Honigs testified he did not intend for the paraprofessional to take the students to the office, as shown by the fact that he did not complete the student “referral form” for this incident for any of the students. District administrators questioned Mr. Honigs about this incident on April 27, 2009- five days after it occurred. As of May 30, 2009, when the District placed Mr. Honigs on administrative leave due to the District’s investigation of an incident that occurred on May 22, 2009, the District had not disciplined Mr. Honigs for the April 20, 2009 incident.

3. The second relevant incident to this arbitration matter occurred on May 22, 2009. This was the Friday before the three-day Memorial Weekend. The incident occurred during the fifth hour, near the end of the day and the end of the week. Mr. Honigs testified the students were “a little rowdy.” Three students, including the same student who was involved in the April 20, 2009, incident, were “acting up.” Mr. Honigs testified he was considering referring the three students to the principal’s office so he could teach the rest of his students. However, the three students, on their own and without permission, opened Mr. Honigs closed classroom door, walked out, and closed the door behind them. Mr. Honigs testified it was his intent to teach the rest of the students, so he continued with his teaching rather than writing a referral to the principal’s office for the three students at the time of the incident. Just after the three students left the room, another student asked Mr. Honigs if he could use the restroom. Mr. Honigs asked the student to

wait for a moment till the class completed the problem they were working on and then he gave the student a pass to go to the restroom.

In the meantime, the school psychologist, whose office is across the hall and diagonal to Mr. Honigs classroom observed four male students in the hallway. She stepped into the hallway to see what the noise was about. She told the students to go back into the classroom because they were being disruptive and none of them had disciplinary referrals to the principal's office.

At that point, Mr. Honigs heard a knock on his locked classroom door. He went to the door, opened it, and let the student who had gone to the restroom back into the classroom. While shutting the door behind that student, Mr. Honigs realized that the three students who had walked out had returned and were trying to get into the classroom. Mr. Honigs testified that given the disruption that these students had caused, he decided he would not let the students return so he continued to try to shut the door. The student who was involved in the April 20, 2009 incident, was the first of the three students with the other two students lined up immediately behind him. The first student said he wanted to get his backpack from the room. A student in the classroom passed the backpack to one of the students in the hallway while Mr. Honigs had his foot planted in the doorway with one hand on the doorknob and the other on the door frame.

“One of these students [in the hallway] apparently pushed another boy from behind, causing the student closest to the teacher to fall forward towards the teacher.” [Post-hearing Brief of Columbia Heights School District at 2]. All Mr. Honigs knew was that the student was pushing into his torso. Mr. Honigs reached out and, as he testified, “reflexively and defensively pushed” the student away from his stomach [Post-hearing Brief of Union at 8]. The student said “Don’t push me.” Mr. Honigs responded, “Don’t push me, young man.” Mr. Honigs then shut the door. Within an hour or so of the incident, after the students had left the building and things had quieted down, Mr. Honigs wrote up the three students’ referral forms involved in the incident and sent them to the office, which is standard school policy. Regarding the student who had physical contact with Mr. Honigs, Mr. Honigs wrote “J.W. left w/o permission. He had been disruptive during class. He was then disruptive trying to get back into my class, pushing into me at one point. I pushed him back defensively to get him out of my way.” [Union exhibit #1 and Union exhibit #2].

Mr. Honigs also went to the school psychologist's office and said "You saw him push me, didn't you?" The school psychologist responded in a noncommittal way, not wanting to discuss this with the teacher. [Post-hearing Brief of Columbia Heights School District at 2].

The school psychologist felt that by law she had to report the incident even though she did not want to get involved. She testified she thought she had no choice but report it since "he pushed the student." [Post-hearing Brief of Columbia Heights School District at 2]. She wrote everything down and the next day reported the incident to the high school principal.

The school psychologist also testified at the arbitration hearing that she often heard loud noises coming from Mr. Honigs 5th period class. She testified that she observed Mr. Honigs engaging in power struggles with the students. She testified she was so concerned about Mr. Honigs interaction with students that she started keeping personal notes about her observations until she was told by another teacher, involved with the local union, to shred these notes because it is not proper for her to be keeping notes on a fellow teacher. She did shred the notes. From then on she testified she started to call the high school office to ask for help when she heard loud arguments between the teacher and some of his students.

4. The School District brought up further incidents from previous years involving Mr. Honigs. They include:

- a) telling students to "do the damn test" in the fall 2005. [Joint exhibit #2]
- b) saying "shut-up" to students in November 2008 and Spring 2009. [Joint exhibit #2]
- c) slamming a ruler on students' desks in November 2008. [Joint exhibit #2].
- d) unprofessional physical confrontation with a student and "highly inappropriate" conduct [Joint exhibit #4], resulting in a four-week suspension without pay and in order to attend an anger management class issued by Arbitrator Sharon Imes on June 14, 2005. [Joint exhibit #4].

The Union contends that other than the previous arbitration matter none of the above incidents were prior "discipline" and none of those incidents were in Mr. Honigs' personnel file and cannot be used against him. Therefore the Union contends "any and all references to incidents occurring in 2005, 2006 should be removed from the Letter of Deficiency if it is allowed to be left in his file however the Union contends that the District did not prove its version of what happened in April and May of 2009 and therefore the Letter of Deficiency

should be removed from Mr. Honigs file and he should be promptly reimburse all salary and benefits withheld from him due to his 20-day unpaid suspension.” [Post-hearing Brief of Union at 9].

5. Essentially the Columbia Heights School District contends that it has shown just cause for the Letter of Deficiency and the Four-Week Suspension Without Pay based on the April 20, 2009 incident and the May 22, 2009 incident. The School District contends the Collective Bargaining Agreement and past practices were followed. Due process was afforded Mr. Honigs. Progressive discipline was followed. The School District contends that just cause exists not only for a Letter of Deficiency and the Four-Week Suspension Without Pay, but perhaps even termination because “the teacher in this case has demonstrated persistent problems with anger management and inappropriate verbal and physical interaction with students.” [Post-hearing Brief of Columbia Heights School District at 7]. The School District also contends that the Columbia Heights School Board Policy 403 is not applicable since policy 403, article V.B “clearly defers to any collective bargaining agreement in issuing discipline.” “Policy 403, Article IV.A provides for forms of discipline that may be imposed which are more expansive than those found in the Master Agreement between the School District and Local 710.” The School District recognizes that the Letter of Deficiency has two inaccurate dates and “the School District has no objection to correcting the misstated dates in the Letter of Deficiency. The addition of those misstated dates in no way undercuts the legitimacy of the remainder of the letter.” [Post-hearing Brief of Columbia Heights School District at 12]. Basically, the conclusion of the School District is “[t]he School Board Members of ISD No. 13 firmly believe that the teacher’s inappropriate nonprofessional verbal and physical interactions go to the heart of the mission of the school district; to provide a safe, secure and nurturing learning environment for all students. For the teacher’s repeated failure to meet the reasonable expectations for professional conduct to fulfill this mission, the discipline of [Mr. Honigs] should be upheld and the grievance denied.” [Id.].

6. The basic contentions of the Union are:

A. The heart of the matter is about the two incidents of April and May 2009. In neither case did the district prove by facts that Mr. Honigs did anything wrong. “The District has

thrown everything but the kitchen sink into this case. The Arbitrator should send a strong message that this is inappropriate and irrelevant. The District's actions show a strong bias against [Mr.] Honigs with no logical bases to support its extremely harsh discipline." [Post hearing brief of Union at 9]. The Union continues its argument by stating that "portions of the Letter of Deficiency should be stricken at the outset"; "the grievant's past discipline is far less than represented by the District in the Letter of Deficiency or at the arbitration hearing"; "the District did not prove its version of what happened in April and May of 2009"; "the District...violated Article V, Section 18 of the CBA by relying on documents not contained in the 'one' District personnel file"; "the Letter of Deficiency is based on false and inaccurate statements, in violation of Article V, Section 18 and Minnesota Statute 122A.40 subdivision 19"; "the District violated its own School Board Policies". [Post-hearing brief of Union 3-17 generally]. As a remedy, the Union requests that the arbitrator find no discipline of Mr. Honigs is warranted and that the District be directed to promptly reimburse him all salary and any other benefits withheld from him due to his 20-day unpaid suspension and that the document entitled "Letter of Deficiency and Suspension Without Pay" be removed from all District files, including but not limited to Mr. Honigs' District personnel file.

DECISION AND RATIONALE

Two caveats come to mind in dealing with this case. 1. Administration must provide a safe, nurturing environment for students. 2. A teacher must make important and immediate judgments with respect to student disruptive behavior. So here is the dilemma. Good administration requires a safe nurturing environment and good teaching involves immediate decisions on how to deal with disruptive student behavior. Both are required and both must be exercised by human beings making important and immediate decisions.

As the Union stated "the heart of the matter" is the two incidence in April and May 2009. The student J.W. was involved in both incidents. J.W., a student in Mr. Honigs Applied Geometry class, could succeed when he did the work, but struggled when he did not. The student had frequent behavior issues in Mr. Honigs and other teachers' classrooms. He used inappropriate language, he often did not stay in his seat, and he was frequently referred to the

office by Mr. Honigs and other teachers. Mr. Honigs and other staff referred J.W. to the office for additional action approximately 25 times during the 2008-2009 school year.

With respect to the April 2009 incident, there was disagreement as to the precise distances and words which were exchanged between Mr. Honigs and J.W. The paraprofessional testified he heard Mr. Honigs say "I'll show you what getting in your face means" after the student said "Don't get in my face." Mr. Honigs testified he said "[T]his is not me getting in your face", indicating that he had at least three feet distance separating them including a desk between them.

With respect to the May 22, 2009 incident, all observers seem to agree that a student or students behind J.W. pushed him into Mr. Honigs. Mr. Honigs testified he simply reacted in a defensive manner when he put his hands up to stop the student and to push him back. Mr. Honigs testified he told "Don't push me, young man."

Taking the facts as testified to at the arbitration hearing by Mr. Honigs, the school psychologist, and the paraprofessional it is held that the School District does not have just cause for the Letter of Deficiency and the four-week suspension without pay.

With respect to the other incidents discussed in the Letter of Deficiency and the one district personnel file issue; it is held that both are irrelevant to the April 20 and May 22 "heart of the matter." The issue of previous incidents and one district personnel file were not issues fully briefed or argued in this arbitration matter to this arbitrator. The decision this arbitrator is must make is whether the Letter of Deficiency and four-week suspension without pay has been supported by just cause consistent with the collective bargaining agreement. It is held that the School District did not have just cause consistent with the collective bargaining agreement to file a Letter of Deficiency and give Mr. Honigs a four-week suspension without pay based on the April 20 and May 22, 2009 incidents. I make no decision with respect to the other issues raised in this arbitration matter.

It is awarded that no discipline of Mr. Honigs was warranted under the facts presented at this arbitration hearing. The District is directed to promptly reimburse Mr. Honigs' lost salary [without interest]and other benefits withheld from him due to his 20-day unpaid suspension. The document entitled "Letter of Deficiency and Suspension Without Pay" shall be removed from all District files, including but not limited to Mr. Honigs' District personnel file. The question of a

one district file and the other issues raised by the Union are left for another day to another arbitrator.

July 6, 2010

Dated

Joseph L. Daly, Arbitrator