

#163-16

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
TRENTON, NEW JERSEY

IN THE MATTER OF THE TENURE CHARGE)
AGAINST MICHAEL LEFKOWITZ,)
Respondent)
BY THE STATE-OPERATED SCHOOL DISTRICT)
OF THE CITY OF CAMDEN,)
CAMDEN COUNTY, NEW JERSEY,)
Petitioner)
AGENCY DOCKET NO. 329-10/15)

OPINION
AND
DECISION

Before: Prof. Robert T. Simmelkjaer, Esq.
Arbitrator

APPEARANCES

FOR THE SCHOOL DISTRICT

Therese M. Taraschi, Esq., Brown & Connery, LLP
Tara L. Humma, Esq., Brown & Connery, LLP

FOR THE RESPONDENT

Cosmas P. Diamantis, Esq., Zeller & Wieliczko, LLP

STATEMENT OF THE CASE

This case arises under the Teacher Effectiveness and Accountability for the Children of New Jersey Act (“TEACHNJ Act” or the “Act”), N.J.S.A. 18A:6-117, et seq., which became effective on September 1, 2012. Pursuant to the Act, TEACHNJ establishes uniform requirements for the evaluation of teachers, including a process for filing inefficiency charges against teachers whose summative ratings for two (2) consecutive school years were “ineffective” or “partially effective.”

PROCEDURAL HISTORY

Lefkowitz is a tenured Music Education Teacher within the District. After several years of service, on May 11, 2015, Lefkowitz received a reduction-in-force notice, effective June 30, 2015. On August 31, 2015, Lefkowitz received a recall notice back to the District advising him that he must either accept or reject the position “no later than October 31, 2015.” On the same date, August 31, 2015, Lefkowitz was placed on administrative leave “due to issues including, but not limited to, evaluation scores.”

Pursuant to the Act, on September 2, 2015, the State-Operated School District of the City of Camden (hereinafter the “District”), specifically N.J.S.A. 18A:6-17.3, filed a tenure charge of inefficiency against Michael Lefkowitz (hereinafter the “Respondent” or “Lefkowitz”) alleging that he had received “partially effective” ratings for two (2) consecutive years of “2.56” and “2.36” and, as a result, these summative ratings warranted his dismissal from the District.

Thereafter, the District filed Amended Tenure Charges of Inefficiency on October 1, 2015.

The amended charges and a supporting statement of evidence which the District asserts “was caused by mathematical errors committed by Lefkowitz when he calculated his SY 14-15 Student Growth Objective (“SGO”) scores, which altered his summative score and were discovered only after the original charges were served. Based upon this correction, the District revised Lefkowitz’s summative evaluation rating” for SY 14-15 from the “2.26” that was noted in the original charges to “2.36.”

The Respondent submitted a Position Statement to those amended charges on October 9, 2015. The District certified the charges to the Commissioner of Education on October 27, 2015. Effective October 28, 2015, Lefkowitz was suspended without pay in accordance with N.J.S.A. 18A:6-14.

The Respondent filed a Motion for Summary Decision with the Commissioner of Education, David C. Hespe (“Commissioner”) on November 6, 2015. The Commissioner appointed the undersigned to arbitrate this matter on November 13, 2015. The District filed its Opposition to the Motion for Summary Decision on December 4, 2015. The Respondent submitted his Reply on December 18, 2015. The Arbitrator issued his Opinion and Decision, denying the Motion on January 9, 2016.

The parties exchanged discovery. After discovery was complete, the District filed a Motion for Summary Decision on February 1, 2016. The Respondent submitted his Opposition to the Motion for Summary Decision on

February 5, 2016. During a conference call with the parties on February 9, 2016, the Arbitrator issued a bench decision denying the District's Motion on timeliness grounds.

The arbitration hearing in the instant case was held on February 11, 2016, February 16, 2016, February 22, 2016 and February 25, 2016. The parties submitted post-hearing briefs dated March 23, 2016 and reply briefs dated March 28, 2016.

CONTENTIONS OF THE PARTIES

District Position

The District, which has the "ultimate burden of proving the tenure charges" against Lefkowitz, pursuant to N.J.S.A. 18A:6-17.3, maintains that it evaluated Lefkowitz in compliance with the evaluation requirements of TEACHNJ. With respect to the District's evaluation procedure, "the District observed Mr. Lefkowitz three (3) times during the 2013-2014 school year in accordance with the law. Based on his poor performance, he received a 'partially effective' summative evaluation rating, necessitating his placement on a corrective action plan ("CAP"). Accordingly, the District placed Mr. Lefkowitz on a CAP for the 2014-2015 school year and provided him with ample support and opportunity to improve. In accordance with the law, the District observed Mr. Lefkowitz four (4) times during the 2014-2015 school year. He received post-observation conferences following every observation and had a mid-year CAP review. Nevertheless, Mr. Lefkowitz failed to improve. He again merely received a 'partially effective' summative evaluation rating and thus, the District was

required to bring tenure charges of inefficiency against him in accordance with the law.”

According to the District, it “adhered or, at minimum, substantially adhered to the evaluation process with Mr. Lefkowitz.” Since he failed to receive an effective rating for two (2) consecutive years, the District contends that “the tenure charges must be sustained and Mr. Lefkowitz permanently dismissed from employment with the District.”

I. TEACHER PRACTICE EVALUATION INSTRUMENT – DANIELSON AND TEACHSCAPE

A. Charlotte Danielson Framework for Teaching

Pursuant to TEACHNJ, the District adopted the Charlotte Danielson Framework for Teaching (“Danielson”) – a pre-approved evaluation instrument. Under Danielson, teachers are scored on a scale of 1 to 4: 1-1.84 – ineffective; 1.85-2.64 – partially effective; 2.65-3.49 – effective; 3.5-4 – highly effective. The Teacher Practice score, which is based almost entirely upon classroom observations,¹ is one part of the two-part evaluation process under TEACHNJ. As discussed below, Student Growth Objectives (SGOs) comprise the second part of the evaluation process under TEACHNJ.

“Danielson encompasses four (4) domains: 1) Planning and Preparation; 2) Classroom Environment; 3) Instruction; and 4) Professional Responsibilities. (See Am. Tenure Charges ¶ 6; 3T 536:1-10; P-9.) Each domain contains a

¹ The evaluators/observers who testified at the hearing set forth a basic description of the Danielson Framework and the training they received individually on the Danielson Framework for Teaching.

number of 'components' or 'subdomains,'² which are scored by the observer following the observation on a scale of 1 to 4 – 1 – ineffective; 2 – partially effective; 3 – effective; and 4 – highly effective. The component/subdomain scores within a particular domain are then averaged, yielding the score for that domain for the observation. The domain scores for each observation are averaged to obtain a total domain score for the school year and then assigned their percentage/weight of the Teacher Practice score.” (See Am. Tenure Charges ¶ 6; 2T 230:22-231:22).

Teachers in the District received Danielson training prior to and during the 2013-2014 academic year and during the 2014-2015 academic year. (Dist. brief @ 5).

B. Teachscape

“The District also implemented Teachscape, a web-based software program utilized by 170 New Jersey School Districts to facilitate and implement Danielson, its evaluation rubric. Information regarding the evaluation process, included, but was not limited to, observation reports, student growth objectives ('SGOs'), and summative ratings that are recorded and stored electronically in Teachscape. Scheduling of observations, pre- and post-conferences, summative conferences, and other meetings may occur through Teachscape as

² For example, Domain 1 (Planning and Preparation) contains components 1a through 1f – 1a: Demonstrating Knowledge and Content of Pedagogy; 1b: Demonstrating Knowledge of Students; 1c: Setting Instructional Outcomes; 1d: Demonstrating Knowledge of Resources; 1e; Designing Coherent Instruction; 1f: Designing Student Assessments. (See e.g. Exhibit P-9).

well. Further, as discussed at length in Section IV, Teachscape calculates the summative ratings for the school year.” (Id.).

“Prior to and during the 2013-14 school year and during the 2014-15 school year, each District employee responsible for observing teachers received Teachscape training. Teachers also received Teachscape training and support from the District when necessary.” (Id.)

C. Classroom Observations in Teachscape

The Teacher Practice Component of the two-part evaluation process measures the teacher’s instructional skill through classroom observation. Teachscape facilitates the completion and scoring of classroom observations under the Danielson framework.

Referring to the testimony of the District’s evaluators/observers, the District notes that generally they conducted their observations using a laptop computer after logging onto Teachscape. They collected “evidence” by typing what they see and hear as the teacher provides instruction. As they “script” the lesson, the evidence is automatically time-stamped. “After the observation, the observer aligns the time-stamped evidence to the appropriate component(s)/subdomain(s) within the domain.”

“After aligning the evidence to the appropriate component(s)/subdomain(s), the observer assigns them a score between 1 and 4, as discussed above. Teachscape also affords observers the option of assigning insufficient evidence when there is no evidence to justify a score for a particular

component(s)/subdomain(s). Observers also have the option of assigning critical attributes to each component/subdomain to provide further context for their scores. Once the scores are entered, Teachscape generates an observation report containing all of the scores, evidence, and critical attributes assigned to the components/subdomains within the domains, which is available for the teacher's review prior to the post observation conference." (id.)

There was a difference of opinion among the evaluators regarding whether evidence and/or critical attributes are required before a component/subdomain score can be assigned. The District relies on the testimony of Mr. Pillsbury, Implementation Manager, in the Office of Evaluation, who indicated that neither is required to assign a score under TEACHNJ and District policy.

D. Pre and Post Observation Conferences

TEACHNJ requires a pre-observation conference be completed prior to every announced observation, and post-observation conferences are completed following every observation. Both conferences are usually scheduled through Teachscape.

"Prior to the pre-observation conference, the teacher completes and uploads a Pre-Observation Conference Form in Teachscape. This form contains a series of questions regarding the lesson to be presented at the upcoming observation. During the pre-observation conference, the teacher and the observer discuss the design and goals of the lesson within the context of the Danielson domains and their corresponding components/subdomains. It is also

an opportunity for the teacher to voice any concerns he may have regarding the lesson and/or students in the class (e.g. problematic student behavior).” (Dist. brief @7).

“After the component/subdomain scores for each domain are submitted, Teachscape generates an automatic email to the teacher advising that his scores are available for review. Once the scores become available, the teacher completes and uploads a Post-Observation Conference Form in Teachscape. (P. Ex. #55). This form contains a series of questions designed to have the teacher reflect on the successfulness of the lesson, including the strengths and weaknesses of the instruction delivered. During the post-observation conference, the teacher and the observer review this form as well as the scores and evidence assigned to the different components/subdomains on the observation report. The observer provides feedback on the areas in need of improvement and strategies to improve performance in these areas.” (See id.)

“Following the completion of the post-observation conference, during which the scores are discussed, Teachscape generates an automatic email to the teacher advising that his scores have been finalized and cannot be changed. (See P. Ex. #56). At that point, the observation is complete.” (Id.)

II. Student Growth Objectives (“SGO”)

“SGOs represent the totality of student growth from the beginning of the school year to the end of the school year. Student growth is measured by taking baseline or diagnostic data on students in the beginning of the year and then setting growth marks or goals for the students to achieve before the end of the

school year. The goals are set by the teacher with input from the administrator(s) and ultimately, finalized by the teacher and the administrator(s). At the end of the school year, the teacher is assigned two SGO scores based upon the percentage of students who meet the designated goals. Prior to and during the 2013-2014 school year and during the 2014-2015 school year, teachers received SGO training and support.” (Dist. brief @ 8).

“In addition to his teacher practice score, Mr. Lefkowitz received an SGO score of “3.45” for the 2013-2014 school year. (See id.) His SGO and Teacher Practice were assigned their respective weights/percentages (15% and 85% respectively) and added together to produce a summative rating, which corresponds to one of the four (4) rating categories.” (id.)

III. Evaluation Scoring in Teachscape

A teacher’s summative rating is the combination of his/her Teacher Practice score and, in part, his SGO score. During the 2013-14 school year, the Teacher Practice Score comprised 85% and the SGOs comprised 15% of the teacher’s summative rating. During the 2014-15 school year, the Teacher Practice score comprised 80% and the SGOs comprise 20% of each teacher’s summative ratings.

A. Calculation of Summative Score

After the observation, SGO and Domain 4 Scores are finalized. Teachscape calculates, based on a pre-loaded formula, the teacher’s overall summative rating for the school year. “Notably, this pre-loaded formula, which consists entirely of averaging at the domain level, is consistent with the language in the District evaluation overview.” The numerical component/subdomain scores within each domain are averaged to obtain the domain scores for that

particular observation. The domain scores for each observation are then averaged to obtain the total domain scores for the school year. The total domain scores are assigned their specific percentage/weight of the Teacher Practice Score and added together to obtain the Teacher Practice score for the school year.

B. Summative Evaluation

At the end of the school year, Teachscape generates a Summative Form containing the teacher's summative ratings, Teacher Practice and SGO scores. The teacher and the administrator participate in a summative conference, during which the scores on this form are reviewed. If a teacher received an ineffective or partially effective score, the teacher would be placed on a Corrective Action Plan ("CAP") for the upcoming school year, and the potential for tenure charges for inefficiency would ensue following a second consecutive ineffective or partially effective score.

C. Corrective Action Plan ("CAP")

TEACHNJ requires that a teacher who has received a partially effective or ineffective summative rating for a school year be placed on a CAP during the next school year. The CAP is drafted by the administrator with input from the teacher in terms of the specific areas in need of improvement, goals, and support services that will be provided to assist the teacher in meeting these goals.

“As required by TEACHNJ, the District ensures that teachers placed on a CAP receive a mid-year CAP review with an administrator during which the teacher’s progress is discussed.”

IV. 2013-2014 Academic Year

During the 2013-14 school year, Lefkowitz worked at Davis Elementary School as a music teacher. He received three (3) formal observations that year.

A. Observation One: 1/10/13 – Leon Mashore (Announced)

Mr. Leon Mashore (“Mashore”) has been employed by the District for twenty-four years. He has been a Vice Principal for the past nineteen (19) years. He holds a standard principal and supervisory certificate issued by the New Jersey Department of Education (“NJDOE”).

Mr. Mashore testified that he was trained on the Danielson Framework during the spring 2012-13 and Teachscape. He testified that he had to complete a Danielson/Teachscape test before September of the next school year (2013-2014). He explained that the test focused on bias avoidance and was based upon practice videos of observations. The test was scored, and if the observer was proficient in the Danielson Framework, s(he) received a certificate of proficiency. (P. Ex. #34).

Prior to conducting the Respondent’s first observation during the 2013-14 school year, a pre-observation occurred on January 13, 2014. Lefkowitz submitted his pre-observation conference form on January 14, 2014, after the pre-conference had taken place. (P. Exs. #36, #37).

The observation occurred on January 21, 2014. (P. Exs. #35, #64). Mashore testified that the announced observation would have been at least twenty (20) minutes long. He completed the observation in Teachscape that same day at 1:40 p.m. Contemporaneously, Mr. Lefkowitz received an email from Teachscape indicating that “his scores were available for review.” Mashore confirmed this observation in Teachscape on January 27, 2014 at 8:37 a.m. meaning “it is completed and the scores are finalized and cannot be changed.” (P. Ex. #66).

The post-observation conference was held on or about January 23, 2014 or January 24, 2014, but definitely prior to January 27, 2014 when he “confirmed the observation in Teachscape.” In Mashore’s recollection, he would have first discussed Lefkowitz’s areas of strength and then went into his areas in need of improvement. He recalled that Lefkowitz had some trouble in the areas of “questioning, answering and discussion and the other area was assessment.” (Tr. @ 487-488). “Mashore did not receive any rebuttal to his observation from Lefkowitz.”

Mashore further testified that teachers were provided with extensive training in the 2013-14 school year, including professional development sessions on Mondays and Thursdays focused on Danielson and the domains and components of the rubric. Teachers were also provided with the “Teach Like a Champion” book. Additionally, he testified that he did not receive any training in music and, although there had been a music curriculum, with a music supervisor whose position was eliminated in the prior year. “For music, we may have asked

them to work in conjunction with a math teacher since music had beats and rhythm and time things...” (Tr. @ 496-497).

B. Observation Two: 3/4/14 – John Ketterer (Unannounced)

Mr. John Ketterer (“Ketterer”) was employed as a teacher-trainer during the 2013-14 school year. His duties included training teachers in the Danielson Framework. He has held a standard supervisor certificate since 2001.

Ketterer observed Lefkowitz on March 4, 2014. (P. Ex. #31). He testified that the unannounced observation would have been around thirty (30) minutes long. He completed the observation in Teachscape on March 9, 2014 at 3:35 p.m. Lefkowitz concurrently received an email from Teachscape indicating that his scores were available for review. (P. Ex. #70). Ketterer confirmed his observation in Teachscape on March 21, 2014 at 10:33 a.m.

Among the concerns Ketterer had with Lefkowitz’s performance was that students were getting out of their seats, there were too many chairs in the room, and students were ripping pages out of books.

The post-observation conference was held on March 21, 2014. Ketterer testified that he did most of the talking during his post-observation conference with Lefkowitz and was not sure whether Lefkowitz was “hearing him.” Lefkowitz submitted his post-observation conference form. He neither mentioned any problems he had with his observation at the post-observation conference nor submitted a rebuttal. (P. Ex. #39).

Ketterer responded to questions about IEPs. He described how teachers may accommodate students with IEPs, with the teacher having the responsibility

of obtaining the IEPs and implementing it for particular students. Ketterer testified that knowledge of the students' IEPs would be important to a music teacher. (Tr. @ 306).

C. Observation Three: 3/13/14 – Tracey Reed Thompson (Unannounced)

Ms. Thompson has been a principal with the District for approximately five years. During the 2013-14 school year, she was the Principal of Davis Family School. She held a provisional principal certificate during the 2013-14 school year and a standard supervisor's certificate during that year. Thompson completed the Danielson proficiency test and received training in Danielson and Teachscape before and during the 2013-14 school year.

She observed Lefkowitz for approximately twenty (20) minutes on March 12, 2014. The post-observation conference occurred on March 13, 2014. As noted in his post-conference form, Lefkowitz had problems with classroom procedures and assessment of the lesson. Although teachers were made aware that they could submit rebuttals if they disagreed with any part of the evaluation process, Lefkowitz did not submit a rebuttal to his observation.

She testified that teachers at Davis before and during the 2013-14 school year received training and coaching on the Danielson rubric, Teachscape and SGOs.

With respect to IEPs, Thompson testified that they were accessible to teachers, upon request, from the teacher's homeroom teacher or from the guidance counselor. (Tr. @ 440).

Thompson further testified that occasionally observations would overlap within the three “cycles” set for a particular school year; however, these cycles were not required under the Act.

D. SGOs for 2013-14 School Year

Thompson testified that both she and Lefkowitz signed off on his SGOs on June 12, 2014. (P. Ex. #45). She explained that she calculated the scores and entered them into Teachscape based on the results in his reports. (Tr. @ 381-282). She did not have knowledge that those SGO scores were ever changed. Pillsbury testified that Thompson entered a 4 and a 2.9 at the end of the school year. Lefkowitz, to her knowledge, never submitted a rebuttal to his SGO scores.

E. Summative/Domain 4

Thompson testified that she scored the Respondent’s Domain 4 for the 2013-14 school year. She explained that teachers are able to submit artifacts for Domain 4. Lefkowitz submitted the following items in support of his Domain 4 score:

- A list of Profession Development hours
- A professional learning community agenda
- Student quick reference chart
- Faculty meeting agenda
- Professional development log
- Log of contributions made to teachers
- Student discipline log
- Parent-teacher communication log
- Log showing contributions to staff

- Log showing support provided to students
- Student work

Principal Thompson met with Lefkowitz to go over Domain 4 at the Summative Conference and entered his Domain 4 scores into Teachscape. After discussing his Teacher Practice and SGO scores, Thompson and Lefkowitz signed off on the short summative evaluation form. In addition, Lefkowitz submitted a summative conference form wherein he identified “significant areas for growth.” Thompson submitted a similar form. (P. Exs. #49, #50). She completed Lefkowitz’s summative conference for the 2013-2014 School Year on June 12, 2014. (Tr. @ 390) (P. Ex. #48).

Thompson further testified that all teachers at Davis received various training and coaching throughout the year. Coaching was done by the administration, by teacher-leaders in the building, and by outside district individuals that were supervisors. She also testified that there were walk-throughs completed and that she specifically recalled doing walk-throughs of Mr. Lefkowitz’s classes. She recalled that his issues, which she would have discussed with him, related to his classroom management and assessment throughout the lessons.

V. 2014-2015 Academic Year

During the 2014-15 academic year, Lefkowitz worked at the Riletta Twyne Cream Family School (“Cream”) as a music teacher. He received four (4) formal observations that year.

A. Corrective Action Plan (“CAP”)

During the 2014-15 school year, Ms. Natalie Goode (“Goode”) was the Lead Educator at the Cream School. The Lead Educator position was a supervisory position and she was required to hold a supervisor certificate. Unfortunately, Ms. Goode passed away during the 2014-15 school year. Ms. Goode received the requisite training and certification on Danielson and Teachscape.

Lefkowitz was placed on a CAP at the beginning of the 2014-15 school year due to his 2.36 partially effective score for the 2013-14 school year. Ms. Hye-Won Gehring (“Gehring”), Principal at the Cream School during 2014-15, assisted Goode in developing Lefkowitz’s CAP. Ms. Goode emailed Gehring a draft of the CAP prior to her meeting with Lefkowitz where it was received and executed. Gehring testified that Lefkowitz participated in the creation of the CAP and signed it, indicating that he received a copy and contributed to its contents.

B. Mid-Year CAP Review

Gehring testified that Lefkowitz received weekly coaching from Goode during the 2014-15 school year and coaching with herself from December 2014-February 2015 on Danielson and the areas specified in the CAP. Grade level meetings and weekly professional development sessions after school were also provided. With respect to the after school sessions, Gehring noted that Lefkowitz opted to stay for the contractually mandated 45 minutes rather than the full 90 minute session. He also observed an experienced teacher and received feedback from Gehring following informal observations and walk-throughs.

A mid-year CAP meeting was conducted on February 11, 2015 during which Lefkowitz's progress toward the goals specified within the CAP was discussed.

C. Observation One: 9/11/14 - Natalie Goode (Unannounced)

Goode observed Lefkowitz on September 11, 2014. (P. Exs. #22, 55, 77). Based on the time-stamped evidence, the observation was at least 17 minutes long. Pillsbury testified that "the time-stamped evidence is not a precise indicator of the exact duration of the lesson as it merely captures the exact time the first and last piece of evidence was typed, which is not synonymous with the exact time the observer entered or exited the classroom." (Tr. @ 583-584). Lefkowitz admitted that he had no reason to dispute that the observation lasted the requisite 20 minutes. (Tr. @ 901-902).

Goode completed the observation in Teachscape on September 17, 2014 at 11:41 a.m. Concurrently, Lefkowitz received an email from Teachscape indicating that the scores from his observation were available to review. The post-observation conference was held on September 17, 2014 at 1:35 p.m. Prior to the post-observation conference, Lefkowitz submitted a post-observation form. Lefkowitz did not submit a rebuttal to his observation.

D. Observation Two: 10/16/14 - Hye-Won Gehring (Unannounced)

Gehring observed Lefkowitz on October 16, 2014. It was unannounced and consumed a minimum of twenty (20) minutes. Gehring completed her observation in Teachscape, with Lefkowitz receiving an email from Teachscape on October 21, 2014 at 2:29 p.m. On October 22, 2014, Lefkowitz received an

email from Teachscape indicating that his scores were finalized and could not be changed. (P. Ex. #58).

Among the concerns identified by Gehring were “the content of the lesson was not age appropriate, numerous students were misbehaving during the lesson and Lefkowitz struggled in Domains 2 and 3 with regard to managing student behavior and engaging students in learning.” (P. Ex. #9).

Gehring testified that the post-observation conference would have been held within ten (10) days of the October 16, 2014 observation. She recalled that Lefkowitz did not submit his post-conference reflection form prior to the post-observation conference but submitted it on Sunday, October 26, 2014 after the post-observation conference had taken place. (P. Ex. #9). From his submission, Gehring was able to determine that the post-observation conference took place prior to October 26, 2014. “As a result, she assigned him a score of insufficient evidence on Domain 4a, Reflecting on Teaching.”

Gehring testified that during the post-observation conference, she discussed with Lefkowitz “engaging students in learning and managing student behavior and provided strategies for improving his performance in these areas.” (Tr. @ 61-62). The Respondent did not submit a rebuttal to the observation.

E. Observation Three: 11/21/14 – Gehring (Unannounced)

Gehring also observed Lefkowitz on November 21, 2014. It was unannounced and at least twenty (20) minutes long. Gehring completed the observation in Teachscape and Lefkowitz received an email on 11/24/14. On

December 19, 2014, Lefkowitz received an email from Teachscape indicating that his scores were finalized and could not be changed.

Among the concerns Gehring had with the lesson was its purpose. Although Lefkowitz was “teaching a Kindergarten class, he had the students complete several different tasks throughout the lesson (e.g. watching a video of Mozart, coloring a picture of Mozart, and learning the different parts of the piano),” which Gehring thought was too much for them to learn at one time. She also had “continuing concerns about his ability to manage student behavior and noted that the atmosphere in the classroom was chaotic, as an inordinate amount of time was spent passing out crayon, with the students fighting amongst themselves over some.”

While Gehring could not recall the precise date of the post-observation conference, she testified that it would have been within ten (10) days of the November 21, 2014 observation. Lefkowitz deviated from standard practice by submitting his post-conference reflection form on November 24, 2014. As a result, she assigned him insufficient evidence on Domain 4a. During the post-observation conference, Gehring addressed the areas where Respondent needed growth, including a protocol for handing out crayons. Lefkowitz did not express any concerns regarding his scores and did not submit a rebuttal.

F. Observation Four: 3/10/15 – Gehring (Announced)

Gehring observed Lefkowitz for the final time on March 10, 2015. Her observation was announced and was for a minimum of twenty (20) minutes. Lefkowitz submitted a pre-observation conference form prior to the observation

and received a score of “3” on Domain 4a, Reflecting on Teaching. (P. Exs. #11, #14). Lefkowitz received an email from Teachscape on March 16, 2015 at 9:50 a.m. indicating that his scores were available for review.

Gehring testified that this was Lefkowitz’s best observation for three reasons: “First, she ‘gave him the benefit of the doubt,’ because he was in a different building due to the flood³ and had to utilize another teacher’s classroom. Second, Ms. Blair, the teacher whose classroom Mr. Lefkowitz was utilizing, chose to remain in the room during this observation and her presence assisted with classroom management, an area in which he greatly struggled during his prior observations. In fact, Ms. Gehring testified that Ms. Blair decided to remain in her classroom because if she did not, her classroom would be destroyed and her students would get into fights. Third, Mr. Lefkowitz had begun incorporating the feedback and coaching he had received throughout the school year, which resulted in better scores. However, the lesson continued to lack any type of assessment tools to determine whether the students comprehended the lesson.”

Gehring testified that the post-observation conference would have been within ten (10) days of the March 10, 2015 observation. Lefkowitz did not submit a rebuttal.

G. Student Growth Objectives (“SGOs”)

Gehring testified that either she or Goode approved Lefkowitz’s SGOs for the 2014-15 school year. Gehring further testified that both she and Lefkowitz

³ During February 2015, there was a flood at the Cream School. For the remainder of the year, the students and teachers were relocated to different schools within the District. (See 1T 37:17-20.)

signed off on his SGOs on May 11, 2015. (P. Exs. #16, 17). Gehring entered Lefkowitz's SGO scores into Teachscape, and Teachscape factored them into his summative rating.

While Gehring did not notice any issues with Lefkowitz's SCO scores during their May 11, 2015 meeting, she later noticed that he made an error when calculating the scores. "Specifically, Mr. Lefkowitz assigned himself an 'O' for his 'high group' which is not possible, as '1' is the lowest score a teacher may receive." Ms. Gehring testified that she corrected the error in Teachscape, which resulted in Mr. Lefkowitz's SGO scores increasing from '1.85' and '2.67' to '2.19' and '3.38' respectively. (See id.) As a result, his summative rating for the 2014-2015 school year was increased from the '2.26,' initially reported to a '2.36. Despite the increase, Mr. Lefkowitz remained 'partially effective' for the 2014-2015 school." (See id.)

Mr. Lefkowitz never submitted a rebuttal to his SGO scores. (Tr. @ 107).

H. Summative/Domain 4

In scoring the Respondent's Domain 4 for the 2014-15 school year, Gehring took account of the fact that many classrooms were destroyed in the flood preventing many teachers from submitting artifacts that they otherwise would have submitted for Domain 4 scoring. "However, Mr. Lefkowitz did not submit any evidence for his Domain 4 scores beyond his professional development hours, which were contained in Teachscape."

"Ms. Gehring testified that she considered the following when assigning Mr. Lefkowitz's Domain 4 scores: multiple teachers requested not to have music

on their designated days due to his poor classroom management, resulting in student misbehavior; multiple students were injured during his class without him having any knowledge of what happened; he was observed working on his laptop rather than paying attention to the students; he repeatedly failed to timely submit post-conference reflection forms; no formal school concerts were held, and he failed to engage with the parents and community.” (See P. Exs.#19, #20, #23); (Tr. @100-103). (Dist. brief @26).

Gehring met with Lefkowitz to review his Domain 4 at the summative conference and enter his Domain 4 scores into Teachscape. This summative conference was completed on May 26, 2015. (P. Ex. #21). Gehring recalled that the conference was “very brief and a mere formality” since the Respondent’s position had been subjected to a reduction in force, and therefore, he would not be employed with the District for the 2015-16 school year.

I. Other Testimony of Ms. Gehring

Principal Gehring testified that student IEPs were available in the main office during the 2014-15 school year. According to Gehring, Lefkowitz could have retrieved the IEPs for his students at any time.

She further testified that Lefkowitz was not a “good fit” for the students in the Cream School, largely because of his poor classroom management. She described his classes as often “very chaotic, bordering on dangerous, with students throwing things.” (Tr. @ 128-130; 192-194). She personally observed the students in a 3rd grade boys class “screaming and throwing pencils,” necessitating that she intervene in order to calm them down. Moreover, several

teachers requested that Lefkowitz not come into their classes for music. “In short, student safety was an ongoing concern with Mr. Lefkowitz because students were having fist fights in his class and getting hurt.”

In terms of her formal observations, Ms. Gehring testified that Mr. Lefkowitz was either teaching content that was inappropriate for the grade level of the students or very boring.”

VI. Admissions By Mr. Lefkowitz

The District has delineated several “admissions” purportedly made by the Respondent that it submits in support of its decision to file the tenure charge as follows:

A. Admissions Regarding the Evaluation Process.

Mr. Lefkowitz admitted during his testimony that his first observation during the 2013-2014 school year was completed by Mr. Mashore. (Tr. @898-899). He admitted that he had no reason to dispute that:

- It was preceded by a pre-conference;
- It occurred on January 21, 2014;
- It was 20 minutes long; and
- He had a post-conference within 15 days of the observation.

With regard to Mr. Ketterer’s observation, Mr. Lefkowitz admitted that he had no reason to dispute that:

- It occurred on March 4, 2014;
- It was 20 minutes long; and
- He had a post-conference within 15 days of the observation.

(See 4T 899:14-900:5.) With regard to Ms. Thompson’s observation, Mr. Lefkowitz admitted that he had no reason to dispute that:

- It occurred on March 13, 2014;
- It was 20 minutes long; and
- He had a post-conference within 15 days of the observation.

(Tr. @900). Mr. Lefkowitz testified that he had no reason to dispute that he had a summative conference with Ms. Thompson on June 12, 2014. (Tr. @ 905).

Mr. Lefkowitz also testified that he had a CAP meeting on September 12, 2014. (Tr. @900-901). He admitted to signing the CAP on that date as well. He also testified that he had a mid-year CAP review meeting on February 11, 2015 and that he signed off on the CAP on that date.

With regard to the 2014-2015 school year, Mr. Lefkowitz admitted during his testimony that his first observation was completed by Ms. Natalie Goode. (Tr. @ 901-902). He admitted that he had no reason to dispute that:

- It occurred on September 11, 2014;
- It was 20 minutes long; and
- He had a post-conference within 15 days of the observation.

Mr. Lefkowitz admitted that he had a second observation with Ms. Gehring on October 16, 2014. (Tr. @902-903). He admitted that he had no reason to dispute that:

- It occurred on October 16, 2014;
- It was 20 minutes long; and
- He had a post-conference within 15 days of the observation.

Mr. Lefkowitz's third observation was with Ms. Gehring. He had no reason to dispute that:

- It occurred on November 21, 2014;
- It was 20 minutes long; and
- He had a post-conference within 15 days of the observation.

(Tr.@903) Finally, Mr. Lefkowitz had a fourth observation with Ms. Gehring. He testified that he had no reason to dispute that:

- It occurred on March 10, 2015;
- It was 20 minutes long;
- He had a post-conference within 15 days of the observation; and
- He had a pre-conference prior to the March 10, 2015 observation.

(Tr.@903-904). Finally, Mr. Lefkowitz testified that he had no reason to dispute that he had a summative conference with Ms. Gehring on May 26, 2015. (See 4T 905:11-17.) Mr. Lefkowitz also admitted that he never submitted a rebuttal to

any observations in either the 2013-2014 school year or the 2014-2015 school year. (Tr.@855).

B. Admissions Regarding Training and Supports Received

Mr. Lefkowitz admits that he “was given professional development on Danielson.” (Tr.@761). He does not dispute that he attended all of the training sessions listed in his records of professional development hours for 2013-2014 or 2014-2015. (P. Exs. #20, #46). He also admitted that he received the “Teach Like a Champion” book described by Mr. Mashore as a resource teachers could use for instruction under Danielson. (Tr. @775-776).

During the 2014-2015 school year, Mr. Lefkowitz admitted that he received coaching from Ms. Goode once per week until she passed away sometime in December or January (over holiday break.) (Tr. @ 802-804). He also admitted that she performed walk-throughs of his classroom. (See id.) Lefkowitz received additional coaching from Principal Gehring until the flood at Cream School sometime in February. (Tr.@ 810-811) Finally, Mr. Lefkowitz admitted that he was also given the opportunity to observe an effective music teacher, which he did. (Tr. @ 880).

C. Admissions Regarding Individual Education Plans (IEPs)

Mr. Lefkowitz described having concerns with the students in his class who may have had IEPs. He explained that in the 2013-2014 school year, he requested copies of the IEPs, but was unable to obtain them. However, after this initial difficulty, he never went back and tried to retrieve them. (See 4T 871:9-872:25.) He admitted that he never alerted any of the observers about these concerns, wrote about them in his post-conference forms, or submitted rebuttals of his observations due to these concerns. (Tr. @872-873, 876-877).

During the 2014-2015 school year, other than asking Ms. Goode a few times at most for the IEPs that would apply to his students, he never tried again to obtain the IEPs. (See 4T 874:3-876:10.) Rather, Mr. Lefkowitz testified that he “just got frustrated and stopped asking altogether.” (Tr. @ 869 -871).

D. Admissions Regarding 2014-2015 Domain 4 Scoring

Mr. Lefkowitz testified that after the flood at Cream during the 2014-2015 school year, he was unable to get access to his Domain 4 binder. (Tr. @ 823). He testified that Ms. Gehring said she would “take into consideration that a lot of the documents were not able to be produced, because they were at the Cream School and were in places that were inaccessible to the teachers.” (Tr. @824). He also admitted that he had four (4) months to collect Domain 4 evidence, but did not do so. (Tr. @ 860-861). In fact, only after being questioned regarding

whether he collected any evidence in those months did he allege that Principal Gehring said not to bring any Domain 4 evidence to be considered.

Mr. Lefkowitz admitted that he did not contact anyone at the District to dispute his scores or submit a rebuttal or grievance even though he knew he was partially effective during the 2013-2014 school year and was on a CAP during the 2014-2015 school year. (Tr. @864) He explained that he did not do anything because he had already been RIF'ed at the time.

E. Admissions Regarding the Timing of Observations #2 and #3 in the 2013-2014 School Year

Mr. Lefkowitz alleges that in the 2013-2014 school year, his post-observation conference with Mr. Ketterer for his second observation occurred either on the same day as or after his third observation with Principal Thompson. (Tr. @ 892-893). Mr. Lefkowitz admitted, however, that he did not mention this to Principal Thompson either during her observation or at his post-conference. He admitted that he never mentioned this to anyone else nor did he ever submit a rebuttal to either observation. (Dist. brief @ 28-31).

VII. Legal Standard

In its argument, the District reiterates that the legal standard for an arbitrator's review of an inefficiency tenure charge is set forth in N.J.S.A. 18A:6-17.2 as follows:

in rendering a decision the arbitrator shall only consider whether or not:

- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
- (2) there is a mistake of fact in the evaluation;
- (3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
- (4) the district's actions were arbitrary and capricious.

b. In the event that the employee is able to demonstrate that any of the provisions of paragraph (1) through (4) of subsection a. of

this section are applicable, the arbitrator shall determine if that fact materially impacted the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the [district] and the employee shall be dismissed. (Emphasis District).

The District maintains that it “followed, or at least substantially followed, the evaluation process, but Mr. Lefkowitz failed to achieve an effective summative rating in either the 2013-14 or 2014-15 school years.”

Referring to the “Lefkowitz admissions,” the District argues that “the required training was provided to observers during the 2013-14 school year and each was appropriately certified and working in a supervisory position.” Mr. Mashore, Mr. Ketterer and Principal Thompson testified that they were extensively trained on the Danielson Framework and thereby met the requirement of N.J.A.C. 6A:10-2.2(b). Also, Ketterer and Thompson hold standard supervisor certificates, and Mashore holds a standard principal certificate. Mashore also holds a standard principal certificate and Thompson holds a provisional principal certificate.

In accordance with N.J.A.C. 6A:10-1.2, all of the observers worked in a supervisory capacity: Mashore served as a Vice Principal, Ketterer served as a Teacher Trainer Evaluator, and Thompson was Lefkowitz’s principal and direct supervisor during 2013-14.

Pursuant to N.J.A.C. 6A:10-2.2(b), Lefkowitz, in his teaching position, was trained on the rubric. Mashore and Ketterer attested to this training in their testimony. They received Danielson training and SGO training. The District notes that “there is no statutory requirement for ‘music specific’ Danielson

training.” Ketterer testified that all teachers were given a copy of the critical attributes upon which they were to be observed. Principal Thompson testified that teachers at Davis received training and coaching during 2013-14.

The District further maintains that it observed the Respondent three (3) times in accordance with N.J.A.C. 6A:10-4.4(c) in the first year, with each observation lasting at least twenty (20) minutes. At least one observation occurred during the first half of the academic year and at least one occurred during the second half of the academic year.

The District next delineates that for each of Lefkowitz’s three (3) observations in 2013-14, a post-observation conference was held within fifteen (15) days pursuant to N.J.A.C. 6A:10-4.4(b).

The District maintains that N.J.A.C. 6A:10-4.4(c) was satisfied when Mashore conducted a pre-observation conference with Lefkowitz preceding his announced observation. Pillsbury testified that Thompson inputted Lefkowitz’s SGO scores, a 4 and a 2.9 respectively, into Teachscape. Subsequently, Thompson entered Lefkowitz’s SGO scores into his summative evaluation. (P. Ex. #75). Also, Lefkowitz had a summative evaluation conference on June 12, 2014 and Thompson included his Domain 4 score into his summative evaluation.

The Respondent was placed on a CAP and met with Goode on September 12, 2014 to review his CAP. Lefkowitz acknowledged his signature was on the CAP directly under the statement which read: “My signature below indicates that I have received a copy of this Corrective Action Plan and that I understand and contributed to its contents. (P. Ex. #3). It is undisputed that a

teacher on a CAP and his supervisor must meet by February 15th to review his progress toward his goals in the CAP. N.J.A.C. 6A:10-2.5(m). It is undisputed that Mr. Lefkowitz met with either Hope Edwards Perry or Principal Gehring on February 11, 2015 to review his progress in accordance with his CAP. (Tr. @ 33-34)(P. Ex. #8). Mr. Lefkowitz admitted that he met with someone on that date and that he signed off on the mid-year CAP review portion of his CAP document.”

Gehring testified that Lefkowitz was provided with “weekly coaching sessions, grade-level meetings and professional development sessions each week.” Prior to Ms. Goode’s death, she also met weekly with Lefkowitz concerning his CAP. According to the testimony of Gehring and Lefkowitz, he participated in a mid-year CAP review on February 11, 2015. In addition, the District notes that Lefkowitz was given the opportunity to observe an effective music teacher but chose not to do so.

According to the District, the Respondent failed to achieve an effective summative rating for the 2013-2014 school year, despite the fact the District followed the evaluation process.

Similarly, for the 2014-15 school year, the District observed Lefkowitz four times, on September 11, 2014 (Goode), October 16, 2014 (Gehring), November 21, 2014 (Gehring) and March 10, 2015 (Gehring). The particulars of the observation process were adhered to as in 2013-14, including observations of at least 20 minutes, post-observation conferences within 15 days, and one pre-observation conference preceding the announced and 4th observation.

Respondent also had a summative evaluation conference on May 26, 2015 where his Domain 4 scores were included in his summative rating. Lefkowitz admitted that he did not bring any documents to be reviewed at his Domain 4/summative meeting.

VIII. Arbitrary and Capricious

Referring to the statutory criteria, the District asserts that its “actions with regard to Mr. Lefkowitz were neither arbitrary nor capricious.” Defining “arbitrary and/or capricious” in the case law as an action having “no rational basis” or a “willful and unreasoning action, without consideration and in disregard of circumstances,” the District maintains that “the fact the District observed Mr. Lefkowitz allegedly without considering that certain students had IEPs was not an arbitrary and capricious action.”

The District alludes to the testimony of Ketterer that it was the teacher’s responsibility to obtain the IEPs and implement them. The District deems dubious Lefkowitz’s claim that he could not obtain the student IEPs in 10 months. “While Mr. Lefkowitz described weak efforts to obtain the IEPs, he admitted that he got frustrated and gave up.” He is also deemed “not credible where he admitted that he never brought any of his concerns to his principals in his post-observation conference or by way of rebutting his observation scores.” (See, Tr. @ 872-873; 876-877).

The District further disputes the Respondent’s contention that the scoring of critical attributes and consideration of evidence was arbitrary and/or capricious. “This claim lacks any iota of merit. Mr. Pillsbury testified that there is

no requirement that evidence be inputted into Teachscape in support of a component/subdomain in order for an observer to score same.”

“In short, since the evaluator’s determination as to the quality of an employee’s classroom performance is not subject to review under TEACHNJ and the observer has the discretion regarding how to score the components/subdomains within a particular observation as far as assigning evidence and critical attributes in Teachscape, the District’s actions cannot be considered arbitrary or capricious.”

The District contends that Principal Thompson’s observation of Lefkowitz on March 12, 2014 was not arbitrary and/or capricious. Although this third observation occurred on the same day as or sometime before the post-observation for his second observation, the District maintains that “there is no statutory requirement which states that a pre-observation conference must occur prior to the next observation. There was testimony that sometimes observations would occur in overlapping cycles.” Also, Lefkowitz never brought this concern to the Principal’s attention. Moreover, “even if this action was considered to be arbitrary and capricious, there is no way it materially affected the outcome of Mr. Lefkowitz’s evaluation...”

IX. Mistake of Fact

The District argues that “no mistakes of fact were made with regard to Mr. Lefkowitz.” Mr. Pillsbury testified that the SGO scores of 4 and 2.9, which were entered by Ms. Thompson into Teachscape, negate the Respondent’s claim that he should have received two 4s for his 2013-14 SGOs. “It can be inferred that at

the end of the school year, as Mr. Pillsbury testified, Ms. Thompson determined that a 72% success rate was not enough to give Mr. Lefkowitz a score of 4 on that particular SGO and therefore, determined that he would receive a 2.9.” Irrespective of his SGO scores, the District contends that Lefkowitz would still have been rated “partially effective,” and placed on a CAP for the 2014-15 school year.

Lefkowitz’s claim for the 2014-15 school year that he should have received a 2.31 on his SGO #1 score instead of a 2.19 is refuted by Gehring’s testimony that Lefkowitz erred when he gave himself a zero (“0”) in some categories when one (1) is actually the lowest score. The letter submitted by Gehring explains the change to 2.19 as follows:

1. Lefkowitz filled the “Results of Student Growth Objective” portion of the SGO form out incorrectly. He gave himself a Teacher SGO Score of 0 for the High Preparadeness Group. A 1 is the lowest score you can receive. His Teacher SGO score should be high: 1, medium: 2, low: 4.
2. The medium students at target score should be 85% (as reflected on the attached spreadsheet), not 75%, which he noted.
3. Also, at the end of the year, he had 12 students in the medium group, not 15 as he reported on the form (total number of students was actually 18, not 21) and thus, his weight (based on students per group) is wrong. To get the weight (based on student’s per group), you do the following: high: $3/18=.17$ (as opposed to what he did, which was $3/21$), medium: $12/18=.67$, high= $3/18=.17$.

(See *id.*) Mr. Lefkowitz argues for a straight average ($1+2+4/3=2.33$). This is incorrect, in the 2014-2015 school year, the scores were weighted (e.g. the score of 2 in the medium group is weighted heavier than the other scores b/c they only encompassed 3 students each). The correct weighted score is high: $17*1=.17$, medium: $67*2=1.34$, high: $17*4=.68$. Total SGO

score is 2.19. Therefore, there was no mistake of fact. (Dist. brief @ 45).

It is the District's opinion that, even if there were a mistake of fact and his SGO score was 2.31, Lefkowitz's summative rating would still have been partially effective. Therefore, the SGO calculation could not have materially affected the outcome of his evaluation.

X. The District's Scoring Method is Proper and in Sync with the TEACH NJ Statute and the District's Policy

The pertinent District policy reads as follows:

All observations will be scored based on the evidence collected during the observation and additional evidence collected since the previous observation. At the end of the year, scores from all observations throughout the year are averaged at the domain level and then weighted appropriately to produce an overall Teacher Practice rating of 1-4. (See Exhibit P-52.)

Contrary to the Respondent's position that the District average all the subdomain scores within a particular domain equally, to obtain the average at the domain level, the District averages each domain per observation, then averages all of the domain averages to obtain a final domain score. The Lefkowitz method is as follows:

Total Domain 3 Score, SY 13-14: 3+2+3+2+3 (Observation #1)
+2+1+2+1 (Observation #2) +3+2+3+2+3 (Observation #3) =
32/14=2.28

The District applies a scoring system utilized by the "overwhelming majority across the State using Teachscape...TEACHNJ does not provide any requirement regarding how the scores for the four domains must be weighed or calculated to arrive at the numerical teacher practice score, which would then be converted into one of the four (4) rating categories. Therefore Lefkowitz's

argument that the component/subdomains must be assigned equal weights is completely without merit...”

In reliance on the testimony of Ms. Karlie Termotto, the District maintains that it reasonably utilized the Teachscape pre-loaded formula to determine Lefkowitz’s teacher practice score as discussed supra. Were Lefkowitz’s contention to prevail, “every teacher facing tenure charges for inefficiency would file motions for summary decision challenging the method utilized to calculate their teacher practice score and championing whatever method yielded an effective rating from their subdomain/domain scores. This would lead to widely inconsistent results within the District, as teachers with the same subdomain/domain scores would be assigned different ratings (e.g. some effective and some partially effective or ineffective). Further, it would permit teachers who should have received ineffective or partially effective ratings to remain with the District without fear of removal or incentive to improve the quality of their instruction.”

XI. Both Natalie Goode’s Full Observation Report and Karlie Termotto’s Testimony must be admitted into Evidence

The District takes the position that Exhibit P-22, the full-observation report of Ms. Goode, should be admitted on three grounds: “(1) Mr. Lefkowitz waived any future reliance on N.J.S.A. 18A:6-17.1(b)(3) when he requested such documents in his interrogatories to the District and the parties agreed to extend that statutory timeframe; and/or (2) Exhibit P-22 is simply an incomplete copy of Exhibit P-77 (which was produced timely) due to a printing error in Teachscape.”

Since the Respondent Interrogation No. 23 specifically requests “copies of any and all documents contained on Teachscape with regard to Respondent...,” the District produced Exhibit P. #22. As a result, the District argues that this request waived any reliance on the statutory deadline. Also, the Respondent used other documents produced at the same time as P. #22. Further, the exhibit was produced well in advance of the first hearing date with this matter.

With respect to the Respondent’s claim that the testimony of Ms. Termotto should be excluded on the ground that she was not named as witness by the District upon referral of the case to the arbitrator, the District notes that the need to call Ms. Termotto only arose following the decision of the arbitrator on Mr. Lefkowitz’s Motion for Summary Decision. (See Decision of Arbitrator re: M. Lefkowitz’s Motion for Summary Decision.) In denying said Motion, “the arbitrator requested that testimony be heard on the matter at the hearing. As such, the District amended its witness list to include Ms. Termotto, who could provide testimony on that issue. Lefkowitz had sufficient notice of the District’s intent to call Ms. Termotto as a witness and thus, was not prejudiced by her testimony.” (Dist. brief @ 51).

Therefore, Ms. Termotto’s testimony should not be excluded but instead, should be admitted into evidence in this matter.

The District distinguishes I/M/O Michael Wilson, State-Operated School District of Newark (Dkt. No. 302-10/15) from the instant case in that “the parties did not agree to extend the statutory time period, there was not an arbitrator decision requesting testimony on a particular issue, and there were no

interrogatories requesting the specific documents to be produced, and there was no printing error ...”

Finally, the District concludes that Mr. Lefkowitz must be dismissed from his position with the Camden City School District because he failed to “show that any of the actions falling into one of the four [statutory] categories impacted the outcome of the evaluation.”

Respondent Position

The Respondent, Michael Lefkowitz, argues that the District’s Amended Charge of Inefficiency pursuant to N.J.S.A. 18A:6-17.3 should be dismissed because “the District failed to allege Lefkowitz was ‘partially effective’ for two (2) consecutive school years.” Respondent further argues that “Lefkowitz was an ‘effective’ teacher for the 2013-2014 School Year and the District failed to properly calculate, pursuant to its own Evaluation Policy, 1) Lefkowitz’ subdomain scores for the Teacher Practice portion of his Summative Score, and 2) Lefkowitz’ Student Growth Objective (“SGO”) scores. As a result of the District’s miscalculation and nonconformance with its own Evaluation Policy and approved SGOs, Lefkowitz received a 2013-2014 Summative Score of 2.56, a “partially effective” rating, when he should have received a Summative Score of 2.73, an “effective rating. In the event, the Arbitrator determines that the District did not deviate from its Evaluation Policy, the Arbitrator should find that the Evaluation Policy is arbitrary and capricious.”

“Second, the District’s Evaluations failed to substantially adhere to its Evaluation Policy by failing to observe Lefkowitz in the first observation cycle,

failing to provide Lefkowitz with any evidence, notes, and critical attributes associated with his Domain 4 subdomain scores for the 2013-2014 School Year, and failed to provide any evidence, notes, or critical attributes to several other subdomain scores.”

“Third, the District’s action during the 2013-2014 and 2014-2015 School Years were arbitrary and capricious with regard to its failure to provide Lefkowitz with his students’ IEPs and failing to implement a uniform system of teacher evaluation as evidenced by the testimony of each of Lefkowitz’ observers who all utilized different evaluation procedures.”

“Fourth, the District failed to provide Lefkowitz with the necessary documents requested during discovery. As well, the District inappropriately attempted to introduce evidence at the arbitration hearings that were not produced in a timely manner pursuant to the TEACHNJ ACT.”

“Fifth, the Arbitrator should uphold his bench decision denying the District untimely filed Motion for Summary Decision for the reasons set forth on the record during the February 11, 2016 arbitration meeting.” (Resp. brief @ 1-2).

After reviewing the procedural history and Lefkowitz’s educational background, Lefkowitz focuses on his assignment to the Davis Elementary School where he taught vocal music, instructed general music classes, in-school and after-school choir practices and participated in other performances with the students. “In addition, Lefkowitz taught entire classes of students just like any other teacher, unlike the instrumental music teacher who taught one to three students at a time.”

During the 2014-15 school year, when Lefkowitz was transferred to the Cream School, “his students ranged in ages from 3-4 years old pre-K, to 10-12 years old 6th grade. There were approximately 2-4 classes per grade, and Lefkowitz was the only music teacher who taught each of these classes on a weekly basis.”

IEPs

“Students with Individual Education Plans (‘IEPs’) were not precluded from participating in Lefkowitz’ music class. (Tr. @ 753- 754). To Lefkowitz’ knowledge, there were no District level policies for requesting students’ IEPs for review. (Tr. @754). At no time in the District, including during the 2013-2014 or 2014-2015 School Year, did anyone present Lefkowitz with any of his students’ IEPs. (Tr. @ 754). Lefkowitz indicated that reviewing the IEPs for his students would be useful in designing specific instructional strategies for students with a hearing, visual, or a behavioral disability that would affect their ability in the classroom.” (Tr. @ 755).

“During the 2013-2014 School Year, Lefkowitz had concerns that some of his students may have IEPs, so he affirmatively requested, both verbally and through email, the IEPs for his students from his administrators. (Tr.@ 754- 755). Specifically, he requested on numerous occasions the IEPs for his students from their classroom teachers, the nurse, the guidance counselor, and the principal, all without success because they were either too busy or instructed him to ask someone else. During the 2014-2015 School Year, Lefkowitz also had concerns regarding whether his students have IEPs, and requested them accordingly. (4T

813:20 to 815:1). In both school years, he was unable to obtain and review the IEPs for any of his students.” (Tr. @ 755-758; 815)(Resp. brief @ 10).

Extra-Curricular Activities

While at Davis Elementary, Lefkowitz maintains that he “participated in numerous extracurricular activities, which included the preparation and participation of vocal music winter and spring concerts, holiday concerts, black history month concerts, Chinese New Year concerts, Hispanic appreciation month concerts. Some of these concerts were attended by a local television station due to the positive reputation associated with the music program. In addition, he tutored students in piano and successfully helped them prepare for auditions to gain admission, with scholarship, into the Moorestown Friends School, which is a private school ranked among the best in the State of New Jersey for academics and extracurricular activities, on scholarship.” (Tr. @ 717-719)

Music Supervisor

“Prior to the 2013-2014 school year, Lefkowitz was assessed by the building principal and the music supervisor. The role of the music supervisor was also to lead PD opportunities for music teachers in the District. In addition, the music supervisor would confer with the building principal regarding the evaluation of music teachers and offer specific advice to improve music instruction. Lefkowitz reported to and relied upon the music supervisor for general support such as instruction specific questions, feedback on lessons, implementation on advices, and any other concerns. (Tr. @ 751). However, the

position of the music supervisor was abolished just prior to the commencement of the 2013-2014 School year, and no one has since assumed the music supervisor's duties and responsibilities. (Tr. @ 729-730)(Resp. brief @ 11).

2012-2013 Evaluation

The Respondent has cited the evaluation ratings he received prior to the evaluation period at issue in the instant case, namely 2013-14 and 2014-15. He notes that on November 27, 2012, he was rated "satisfactory" by Principal Thompson. Also, on January 8, 2013, Principal Thompson rated him "proficient" in 3 out of 4 Domains, and "basic" in the remaining domain using a different evaluation form.

Danielson Framework 2013-2014

According to Lefkowitz, the document titled "Camden Teacher Evaluation Overview ('Evaluation Policy') was the only document he received regarding the District's evaluation policies for the 2013-14 school year. At no time was Lefkowitz advised that he had the ability to request additional observations." He also was not advised that he could request a change in a subdomain score during a post-observation conference.

Evaluation Policy

The Respondent interpreted the Evaluation Policy language that "All observations will be scored based on the evidence collected during the observation and additional evidence collected since the previous observation...to mean that an observer would only score a particular subdomain on the evidence recorded." (Tr. @ 764).

With respect to the Evaluation Policy Statement, “At the end of the year, scores from all the observations throughout the year are averaged at the domain level and then weighted appropriately to produce an overall teacher practice rating of 1 to 4,” Lefkowitz did not “understand this phrase to mean that the District would first average each [domain] at the observation level, and then again at the domain level before weighing the Domains into the Teacher Practice score accordingly.” Also, Lefkowitz “did not understand the possible ramifications of a subdomain score of ‘insufficient evidence’ on the overall observation.”

Regarding his SGOs for 2014-15, “Lefkowitz expressed his concern to Ms. Goode that he had no experience in preparing a tiered SGO and did not know his students well enough to set a prior ‘baseline data.’” (Tr. @ 771-772). Also, Lefkowitz received no training on the Danielson Model or SGO specific to music or special area instruction.

2013-2014 School Year

With respect to his first observation on January 21, 2014, Lefkowitz maintains that “while every subdomain in Domains 1, 2 and 3 received a score from Mr. Mashore, for Domain 1, no evidence, notes, critical attributes, or summaries were provided for any of the subdomains; for Domain 2, no critical attributes or summaries were provided for any of the subdomains with minimal notes and evidence provided for and some of the subdomains; for Domain 3, minimal notes, evidence, and critical attributes were provided for and some of the subdomains. No scores were provided for Domain 4.” (P. Ex. #35).

Regarding the March 4, 2014 observation by Ketterer, Lefkowitz notes that “for Domain 1, Mr. Ketterer only scored subdomain 1a and 1e without providing any notes, evidence, or summaries in support of those scores; for Domains 2 and 3, Mr. Ketterer provided insufficient notes, evidence and/or critical attributes in support of some of the subdomain scores; and for Domain 4, no scores were provided. The Post-Observation Conference occurred on March 21, 2014.” (P. Ex. #32).

Lefkowitz encountered students “with extreme behavioral inconsistencies and high energy.” The Respondent did not consider Ketterer, a teacher trainer, to be a supervisor.

Regarding the March 13, 2014 observation conducted by Principal Thompson, Lefkowitz notes that “[w]hile every domain score in Domains 1, 2, and 3 received a score, Ms. Thompson did not provide any notes, evidence, critical attributes, or summaries, to any of the subdomain scores. The District did produce a document that contained Ms. Thompson’s notes and evidence, but it was untagged to any specific subdomains. No Domain 4 scores were provided. (P. Ex. #41). The Post-Observation Conference occurred on the same day, March 13, 2014.” (P. Exs. #40, 41, 42).

Since Thompson observed the same class Ketterer had observed a week prior, with a very similar lesson, he had not participated in a post-observation conference with Ketterer. Therefore, he could not use the feedback from Ketterer prior to Thompson’s observation.

Lefkowitz had no recollection that he was to be placed on a CAP. Unlike Mashore and Thompson, who had background knowledge of the students in his classes and made positive comments, Ketterer “was coming in cold” and made “very negative” comments.

2014-2015 School Year

The September 11, 2014 observation was conducted by Ms. Goode. “[F]or Domains 1, 2 and 3 Ms. Goode provided insufficient notes, evidence, and/or critical attributes in support of some of the subdomain scores; and for Domain 4, no scores were provided.”

According to Lefkowitz, on September 12, 2014, he was presented with a CAP “drafted solely by the District without any input or collaboration from Lefkowitz.” (Tr. @ 802).

The second observation was conducted on October 16, 2014 by Principal Gehring. “While every subdomain score in Domains 1, 2 and 3 received a score, Ms. Gehring provided inconsistent notes, evidence, critical attributes and/or summaries to the subdomain scores. No Domain 4 scores were produced.” (P. Ex. #9).

The third observation was also conducted by Gehring on November 21, 2014. The same comment as above was made regarding this observation.

Cream School Flood

The flood at Cream caused Lefkowitz and other teachers to relocate to the Hatch Family School (“Hatch”). “Lefkowitz was advised to bring a week’s worth of materials to the new school...As a result, Lefkowitz did not have adequate materials at Hatch, did not have a classroom, and never was allowed back to Cream School.” During this period, Lefkowitz testified that “coaching was not as consistent.”

Mid-Year CAP Review

Ms. Perry-Edwards, Vice Principal, requested evidence that she would review in preparation for the CAP meeting. “After receipt of the evidence, Ms. Perry-Edwards indicated Lefkowitz was making progress toward each of his goals on the CAP.” (P. Ex. #3).

March 10, 2015 Observation

Lefkowitz’s fourth and final observation occurred on March 10, 2015. Principal Gehring conducted the observation. The Respondent raised the same concerns about the lack of evidence, notes, critical attributes and/or summaries for each subdomain in Domains 1, 2, and 3. “Only subdomain 4a was scored in Domain 4 without any notes, evidence or summaries.”

Coaching Sessions

Lefkowitz contends that Gehring’s coaching sessions were inconsistent “with about half of the sessions cancelling with no rescheduling. When the coaching sessions did occur, they lasted about 5-15 minutes, with Ms. Gehring multi-tasking on the phone or computer. Lefkowitz did not receive substantive instructional feedback in music at any time during the 2014-2015 School Year.

(Tr. @ 811-812). Once Lefkowitz moved to Hatch Family School following the flood at Cream School, all coaching sessions ceased.”

Additional Testimony

Respondent alludes to Mashore’s testimony that a teacher on a CAP should be observed for an entire lesson as evidence that his evaluation was insufficient. Mashore’s testimony that he was trained to assign critical attributes to subdomains that received a score of ineffective or partially effective is deemed relevant. Also, he testified that for a teacher to obtain a highly effective score of four (4), “the students would need to lead the class and do a majority of the work.”

Ketterer’s testimony is cited that IEPs are important for a music teacher to review in order to provide “differential instruction” and accommodate disabilities. Ketterer assumed that “every class he observes has at least some students with IEPs and that the teacher has reviewed them.” As he put it, “[i]n music, you would look at the accommodations, although you’re not teaching – the student’s disability is not in music per se, although he may have difficulty in literacy.” According to Ketterer, he is able “to identify critical attributes from the standpoint of a music teacher that a non-music teacher may not have observed.” (Tr. @ 340).

Ms. Thompson approved Lefkowitz’s SGOs for 2013-14 and testified that he should have received a score of “4” for both SGOs. She has never given a subdomain score of “insufficient evidence.” District Exhibit #40 contained her evidence for Lefkowitz’s observation, untagged to any subdomains. Thompson

referred to District Policy indicating that one observation should ideally occur within each cycle.

Ms. Gehring testified that Ms. Goode coached Lefkowitz during the “first cycle” (September to November) and she coached him during the “second cycle” (December to February). Ms. Goode was supposed to coach him during the “third cycle” (March to April) before she passed away. Gehring had a practice of assigning a score of “insufficient evidence” to subdomain 4a if a teacher did not timely submit the post-observation conference form. She testified that Lefkowitz was not provided with any IEPs for his students during 2014-2015.

With respect to Gehring’s practice of taking notes and evidence, and assigning it to critical attributes, she testified that it is possible to have different levels of critical attributes for a single subdomain (i.e., an “effective” critical attribute and a “partially” effective critical attribute). (Tr. @ 141- 145). In that situation, it becomes a “professional judgment call” as to what subdomain score should be assigned. However, if there were multiple critical attributes assigned, the weight of the critical attributes would not be noted anywhere on the observation. (Tr. @145- 146).

According to Ms. Gehring, critical attributes, notes and evidence are not required before assigning a subdomain score, whether or not it is a positive or negative score. (Tr. @146- 148).

With regard to Lefkowitz’s CAP for 2014-15, she did not review his 2013-14 observations or speak to any of his previous observers. “Ms. Gehring was

part of the School Improvement Panel, which produced meeting minutes kept by Ms. Goode in her own binders.”

Mr. Pillsbury reviewed the summative score ranges set by the State as follows: “Mr. Pillsbury indicated the summative score ranges set by the State are as follows: 1 – 1.84 (ineffective); 1.85 to 2.64 (partially effective); 2.65 to 3.49 (effective); and 3.50 to 4.0 (highly effective). (Tr. @ 544). Mr. Pillsbury further testified that a Domain Average is derived from the average of the subdomain scores within a Domain, by observation first, then by averaging those results together (the ‘Formula’). (Tr. @ 539). This method was called ‘the default method in Teachscape’ because it was allegedly ‘preloaded’ into the system from Teachscape. (Tr. @ 552-553). However, Mr. Pillsbury indicated that the Evaluation Policy does not state it averages scores within each observation.” (Tr. @ 639).

“The information regarding the Formula being preloaded into Teachscape was derived solely from conversations Mr. Pillsbury had with Ms. Termotto.”

Respondent finds inconsistent Pillsbury’s testimony regarding the need for evidence. On the one hand, he testified that a teacher should not be given a score if there is no evidence. (Tr. @ 550). On the other hand, he testified with regard to evidence and assigning a score “nothing is required,” “no critical attributes are required,” and that “a teacher could get just an evaluation with just numbers, no evidence, no critical attributes.” In response to the arbitrator’s question, Pillsbury testified that “observers may ‘feel’ a teacher deserves a score ‘based on [the observer’s] judgment.” He ultimately stated that ‘everyone should

be collecting some kind of notes and evidence' and that it would not be the best practice to exclude evidence before assigning a score." (Tr. @ 663-664).

Pillsbury acknowledged that "if Lefkowitz had received a "4" for both SGOs, his summative score would have been 2.64, just 0.01 point below an 'effective rating'"

Ms. Karlie Termotto ("Termotto"), an employee of Frontline Technologies, a company which recently acquired Teachscape, testified that the District Evaluation and Advisory Committee ("DEAC") determines the scoring methodologies of its evaluation policies. She denied the existence of a Teachscape default scoring method; however, Teachscape did provide a recommendation to the District. She has no personal knowledge of the "particular scoring method" utilized by other districts. With respect to the District's formula, Termotto agreed that it can take less data to generate an observation that would be weighted equally when compared to another observation with more data. (Tr. @@ 237). Respondent objects to "Termotto's testimony as evidence because it was not timely produced by the District."

Legal Argument

After reviewing the TEACHNJ standard of review, the four factors to be considered by the arbitrator in rendering a decision and the board of education's "ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met," the Respondent argues that "the Amended Tenure Charge must be dismissed because Lefkowitz was not rated 'ineffective' and/or 'partially effective' for two (2) consecutive years."

As the Respondent argued in its Motion for Summary Decision, Lefkowitz maintains that he was an “effective teacher for the 2013-2014 School Year.” The Respondent further argues that “[t]he District improperly calculated Lefkowitz’ Teacher Practice Score by failing to adhere to its own scoring policies. Had the District followed its own scoring policies, Lefkowitz would have been rated an “effective” teacher for the 2013-2014 School Year. In addition, the District’s calculation method is arbitrary and capricious, and results in mistakes of fact with regard to Lefkowitz’s observations.”

Alluding to the Arbitrator’s January 9, 2016 Award and Opinion where the Arbitrator opines that the phrase “averaged at the domain level” was ambiguous and required an interpretation, at this juncture, Respondent contends “there is no longer a genuine issue of material fact precluding the Arbitrator from finding in favor of Lefkowitz on this issue. Therefore, and for the reasons stated more fully below, Lefkowitz must be found to have been ‘effective’ during the 2013-2014 school year, and the amended Tenure Charge must be dismissed with prejudice.”

Moreover, the credibility of Pillsbury is deemed dubious with respect to his certification that the Teachscape’s default scoring method is utilized by 190 school districts in New Jersey. Absent personal knowledge of such facts, Pillsbury presumably “became aware of those facts in his conversations with Ms. Termotto.” In addition, Termotto “refuted any contention that Teachscape had a ‘default scoring formula.’” Finally, with respect to Pillsbury’s contention that the Formula is used to track teacher progress throughout the year, his testimony that

32% of a teacher's overall score is not available until the end of the year ostensibly negates this assertion.

In arguing that “the Amended Tenure Charge should be dismissed because the District failed to calculate Lefkowitz’s Teacher Practice Score pursuant to its evaluation policy,” the Respondent construes the phrase “averaged at the domain level” as consisting of only two specific calculations. The first calculation takes “all observations through the year” and averages those subdomain scores on the “domain level.” The second calculation takes those “domain level” averages and weighs them accordingly (i.e. 20% for Domains 1 and 4, and 30% for Domains 2 and 3).”

Since nothing in the Evaluation Policy requires that another calculation must first be done on the “observational level,” as Pillsbury acknowledged, Respondent argues that his Teacher Practice score was distorted.

The Respondent next reiterates the examples of a proper method of calculating the subdomain scores within a particular Domain as set forth in his Motion for Summary Decision as follows:

By way of example, assume a teacher, John Doe, received the following subdomain scores for Domain 1:⁴

Observation One (3, 3, 3)

Observation Two (3, 3, 3,)

Observation Three (1, no score, no score).

⁴ This method of calculation shall be referred to hereinafter as the “Camden Teacher Evaluation Overview Method” or “CTEO Method” for short.

To obtain the “average at the domain level” the District simply needs to add all the subdomain scores and divide that answer by the total number of subdomain scores. Thus, in this example, John Doe’s overall score for Domain 1 will be 2.71. The following steps were used to calculate that score:

Step 1 – add all the subdomain scores for Domain 1 (3, 3, 3, 3, 3, 3, 1).

Step 2 – divide the answer in Step 1 (19) by the total number of subdomain scores (7).

Illustration: $19/7 = 2.71$

However, the District does not calculate Domain Scores in this manner, and in accordance with its own Evaluation Policy. Instead, the District calculates the Domain Score by averaging each Domain per Observation, then averaging all of these Domain averages to obtain a final Domain Score.⁵ The following steps are used by the District to calculate Domain Scores using the above John Doe example:

Step 1 – add all the subdomain scores for each observation.

Illustration:

Observation 1: $3+3+3 = 9$

Observation 2: $3+3+3 = 9$

Observation 3: $1 = 1$

Step 2 – divide each answer in Step 1 by the total number of subdomain scores in each observation.

Illustration:

Observation 1: $9/3 = 3$

Observation 2: $9/3 = 3$

⁵ This method of calculation shall be referred to hereinafter as the “District’s Actual Method” or “DA Method” for short.

Observation 3: $1/1 = 1$

Step 3 – add all the Step 2 answers (3, 3, 1) together.

Illustration: $3+3+1 = 7$

Step 4 – divide the answer in Step 3 (7) by the total number of observations (3).

Illustration: $7/3 = 2.33$

From the Respondent's perspective, "[e]ach calculation yields a different Domain Score because Observation 3 has missed subdomain scores. Under the DAM, the single subdomain score for Observation 3 receives much greater weight in the overall Domain score than it would if the District followed the CTEO. Said another way, under the DAM, John Doe's Observation 3 Missing Subdomain scores effectively become 1's, or default to the average of the Observation Domain. However, if John Doe received subdomain scores for every subdomain, then both methods of calculation would yield the same result."

According to Respondent, for the 2013-14 School Year, "Domains 1, 2 and 3 were calculated to be lower under DAM than they would have been if the District used the CTEOM. This ultimately affected his Summative score by rating him 'partially effective,' when he was otherwise an 'effective' teacher for the 2013-2014 School Year."

The Respondent next proceeds to give several examples illustrating how the DAM "improperly inflates or deflates a teacher's Domain score depending on the number of subdomains assigned a score of 'insufficient evidence.'"

The germane scoring circumstances are those where the DAM lowers a teacher's score from effective to partially effective, or partially effective to ineffective.

Through a series of charts, the Respondent analyzes how the effect of the DAM and the factoring in of "insufficient evidence" materially affects the outcome of the teacher's evaluation. The inclusion of an "insufficient evidence" score on a subdomain is shown to have a disproportionate impact on the teacher practice calculation for a particular Domain. A fictitious teacher with ten (10) "partially effective" subdomain scores and only one (1) "highly effective" subdomain score is deemed effective using DAM. Utilizing subdomain percentages, the Respondent asserts that under DAM, "a score of 'Insufficient Evidence' will pass its weigh[t] on to the other subdomains that receive a numerical score, which could lower or raise the domain score."

In Respondent's case, "two (2) 'Ineffective' subdomain scores received in Observation 2 were 33.3%, or 16.67% each, of the Domain Score, where all other subdomain scores in the Domain were only 6.67% of the Domain Score. This is the definition of arbitrary and capricious scoring and may amount to a form of Simpson's Paradox whereby the aggregate data (the Teacher Practice Score) is not truly reflective of the underlying data, and thus leads to improper conclusions. Respondent is in essence being punished for the observer's failure to score the other subdomains in Observation 2."

In addition to the arbitrary and capricious statutory criteria manifest in the DAM, the Respondent argues that his evaluations for the 2013-14 and 2014-15

school years “failed to adhere substantially to the evaluation process.” Alluding to Thompson’s testimony regarding the observation cycles, Lefkowitz notes that he “was observed three times in the first cycle and once in the third cycle.”

Second, the development of the CAP after the first observation occurred in 2014-15 is deemed a violation because Lefkowitz was not apprised of his goals and objectives in advance of the first observation.

Third, “Lefkowitz did not receive adequate coaching and support during the 2014-15 School Year. “While Ms. Goode provided regular coaching sessions, she did not provide any substantive instructional feedback to Lefkowitz, like the music supervisor would have.” When Gehring took over, he “received less feedback and attention, with almost half of his sessions cancelled.” Following the flood at the Cream School, “[a]ll coaching essentially ceased at that point and Lefkowitz was forced into a new building with no supplies for the remainder of the 2014-15 school year.”

The Respondent maintains that contrary to the Evaluation Policy, his observations entailed “numerous subdomain scores without any notes, evidence, critical attributes and/or summaries.” Also, he “did not receive any support whatsoever for 2013-2014 Domain 4 scores.”

Alluding again to the “arbitrary and capricious” statutory criterion, the Respondent claims that “the District failed to provide Lefkowitz with his student IEPs.”

Pursuant to N.J.A.C. 6A:14-3.7(a)(2), “[e]very student’s IEP shall be accessible to each regular education teacher, special education teacher, related

services provider, and other service provider who is responsible for its implementation.” Pursuant to N.J.A.C. 6A:14-3.7(a)(3), “[t]he district board of education shall inform each teacher and provider described in (a) (2) above at his or her specific responsibilities related to implementing the student’s IEP and the specific accommodations, modifications, and supports to be provided for the student in accordance with the IEP” and “shall maintain documentation that the teacher and provider, as applicable, has been informed of his or her specific responsibilities related to implementing the student’s IEP[.]” (Emphasis Resp.).

Indeed it has been held that the New Jersey Administrative Code is “unambiguous in requiring that both regular education teachers and support services providers have access to a student’s IEP.” Z.R., v. Fort Lee Board of Education, 2008 N.J. AGEN LEXIS 828, 260.

According to Lefkowitz, notwithstanding his “numerous attempts and requests for both the 2013-14 and 2014-15 school years,” his efforts were of no avail. The lack of IEPs precluded Lefkowitz from “implementing appropriate classroom management procedures given he was not made aware of the unique conditions affecting his students.”

The District Evaluation Policy was purportedly “arbitrary and capricious” because it was inconsistently applied by Lefkowitz’s observers during the 2013-2014 and 2014-2015 school years and did not result in “a fair, accurate and comprehensive picture of the teacher’s performance.”

Since “Lefkowitz’s observers differed in their understanding of the Evaluation Policy with regard to the necessity of evidence, [they] were

inconsistent as to whether notes, evidence, critical attributes, and/or summaries were necessary before a subdomain score could be assigned...[I]t is axiomatic that Lefkowitz was not being evaluated by the same standard.”

Mr. Thompson and Mr. Ketterer are described as giving “vastly different scores during observation of the same class with a similar lesson.” He received mostly “effective” subdomain scores from Thompson as opposed to mostly “ineffective subdomain scores from Ketterer even though he did not have his post-observation feedback from Ketterer prior to the Thompson observation.”

Respondent was not advised that Ketterer, who was not employed in a supervisory capacity during 2013-2014, as a “Teacher Trainer and Evaluator” had any “supervisory authority over him.” Moreover, the “Teacher Trainer & Evaluator” job description makes no reference to any supervisory role, authority, or other similar duties that position has with respect to teachers. (See R-C, CCSD ML 231-233). Instead, under the section captioned ‘Supervises,’ it specifically states ‘N/A’ Here, the statute requires that an individual be employed in a supervisory role before they are eligible to observe teachers.”

The Respondent avers that “[t]he Amended Tenure Charge should be dismissed because the District failed to produce evidence in a timely manner and/or failed to produce documents responsive to Lefkowitz’s interrogatories.”

With respect to this claim, Respondent maintains that “the District failed to produce and/or notice Ms. Termotto’s testimony and District Exhibit P-22 ‘upon referral of the case for arbitration.’” In support of its contention, the Respondent cites Wilson and the State Operated School District of the City of Newark, Essex

County, (Dkt. No. 302-10/15) where Arbitrator Lewis R. Amis dismissed the tenure charge of inefficiency because the school district “untimely provided its evidence 14 days following the referral of the matter to arbitration.” Also cited is I/M/O Tenure Hearing of Ebert, State-Operated School District of Newark (Dkt. No. 267-9/14) where Arbitrator Denenberg also dismissed the tenure charge of inefficiency due to the school district’s failure to provide its evidence in a timely manner as set forth in the TEACHNJ Act.

The Respondent contends that the District did not produce any documents responsive to his Interrogatory No. 11, namely DEAC evaluation policies and procedures. Also, not produced were documents responsive to Interrogatory No. 8, Lefkowitz training documents on the Evaluation Rubric. “The District did not produce any documents responsive to this Interrogatory, but merely attached documents showing Mr. Lefkowitz attended these training sessions/workshops,” without specific reference to the Danielson Model.

Additional documents were not produced are set forth in Interrogatory No. 23 as follows:

Provide copies of any and all documents contained on Teachscape with regard to Respondent, including but not limited to, observations, Corrective Action Plans, walkthrough notes, artifacts, and evidence in support of Domain 4 for the 2013-2014 and 2014-2015 school years, as well as prior years, if applicable.

The Arbitrator is urged to uphold his bench decision and deny the District’s Motion for Summary Decision. Lefkowitz reiterates the points made in his Motion for Summary Decision in that he filed an answer, rather than a Motion for Summary Decision in lieu of a response, and his Answer to the Amended

Tenure Charge conforms to the applicable administrative codes.” And even if the requirements of N.J.A.C. 6A:3-5.3(a) apply, Lefkowitz’s answer conforms to all the “necessary requirements.”

DISCUSSION

It is undisputed that the Arbitrator’s review of inefficiency tenure charges pursuant to N.J.S.A. 18A: 6-17.2 is limited to: “(1) whether the evaluation substantially adhered to the evaluation process; (2) whether there was a mistake of fact in the evaluation; (3) whether the charges were brought for a prohibited reason; (4) whether the District’s actions were arbitrary and capricious.”

I. The District’s Evaluation Policy Prior to the 2013-2014 School Year

As a preliminary matter, the Arbitrator concurs with the District in finding that its “Evaluation Policy and Process prior to the 2013-2014 school year is irrelevant and cannot be considered under N.J.S.A. 18A:6-17.2.”

Despite the Respondent’s reference to the evaluations he received during the 2012-2013 school year, including two observations conducted by Principal Thompson and ratings of “satisfactory” and “proficient” respectively, this evidence is irrelevant.

The Respondent has been charged with inefficiency under the TEACHNJ statute, which had not been enacted in 2012-2013. During the preceding period, the District was utilizing an evaluation system distinguishable from the Danielson Framework. Since the Respondent has been rated “partially effective” for two consecutive years in 2013-2014 and 2014-2015 and charged under TEACHNJ, any ratings he received prior to the District’s decision to implement the

Danielson Framework pursuant to the enactment of the statute have no bearing on the issue before the Arbitrator. As the District has correctly argued, Lefkowitz's performance under an evaluation system prior to 2013-2014 is not only irrelevant but also "outside the bounds of what the arbitrator may consider under TEACHNJ."

II. The District's Evaluation Scoring Method

The crux of the Respondent's defense to the tenure charge of inefficiency is his claim that the District improperly calculated his Teacher Practice Scores by failing to adhere to its own scoring policy. But for the District's purported failure to adhere to its own scoring policies, Lefkowitz contends that he would have been rated an "effective" teacher for the 2013-2014 School Year.

The Arbitrator, in his January 9, 2016 Interim Award and Opinion, denying the Respondent's Motion for Summary Decision, found that the phrase "averaged at the domain level" was ambiguous and required an evidentiary hearing for clarification. In addition to finding a genuine issue of material fact that precluded a finding in favor of the Respondent in his Motion for Summary Decision, the Arbitrator further acknowledged that "an issue of credibility had arisen with respect to Pillsbury's Certification that the Teachscape default scoring method is utilized in 190 school districts in New Jersey."

Following the hearing, the Respondent argues that "there is no longer a genuine issue of material fact precluding the Arbitrator from finding in favor of Lefkowitz on this issue. Therefore, and for the reasons stated more fully below,

Lefkowitz must be found to have been 'effective' during the 2013-2014 School Year, and the amended Tenure Charge must be dismissed with prejudice.”

Considering the evidence in its entirety, the Arbitrator is persuaded that the District's scoring method complies with TEACHNJ and the alternative method of calculating the Teaching Practice Score as proposed by the Respondent is unsupported by the evidentiary record. Although the Respondent's alternative method of calculating his teacher practice score by “averaging at the domain level,” designated the “Camden Teacher Evaluation Overview Method” or “CTEO” for short, produces a different outcome, the Arbitrator is not persuaded that the District's Actual Method (“DAM”) is arbitrary or capricious.

Whereas the Respondent notes that pursuant to N.J.A.C. 6A:10-1.2, “[t]he purpose of a scoring guide is to provide a transparent and reliable evaluation process,” TEACHNJ “merely requires that the teacher practice instrument include scoring guides that differentiate among a minimum of four (4) levels of performance and provide a conversion to the four (4) rating categories of ineffective, partially effective, effective, and highly effective. Inasmuch as TEACHNJ does not specify how scores for the four (4) levels of performance or Domains must be calculated, absent a preponderance of evidence to the contrary, the District could exercise its discretion in selecting the method of calculating the Teacher Practice score it deemed “transparent and reliable.”

The District has established that its selection of the Danielson Framework as the method for calculating its Teacher Practice Score was neither arbitrary nor capricious but rather consistent with the decision made by several other New

Jersey school districts to adopt an evaluation rubric approved by the NJDOE. Having selected the Danielson Framework as its evaluation rubric, the District was required to contract with Teachscape, which not only owns the copyright for the Framework, but also “is currently the only software program available to implement the Framework.”

The testimony of Pillsbury and Termotto clarified the District’s use of Teachscape as the method for calculating the Teacher Practice Score given its incorporation as the pre-loaded formula or “default method,” which consisted averaging at the domain level during the 2013-2014 and 2014-2015 school years. In the Arbitrator’s opinion, the fact that Pillsbury and District personnel referred to the District’s Method of Calculating the Teacher Practice Score as the “default” method whereas Termotto referred to it as the “pre-loaded formula” constitutes a semantic distinction that neither diminishes their credibility nor supports the contention that the method, irrespective of its description, is arbitrary and capricious.

The District takes the subdomain scores for each of the four (4) domains, scored on a scale of 1-4, based on evidence of the teacher’s performance during a classroom observation, and averages them to obtain the domain scores for that particular observation. The domain scores for each observation are then averaged to obtain the total domain scores for the school year. The total domain scores are next assigned to specific percentage/weight of the Teacher Practice Score and added together to obtain the Teacher Practice score for the school year. The District provided the following illustrations:

This method is best demonstrated by reviewing Mr. Lefkowitz's Domain 3 scores during the 2013-2014 school year:

Observation #1, Domain 3: 2.6, effective ($3+2+3+2+3=13/5=2.6$)

3a: Communicating with students: Effective, 3

3b: Using questions and discussion techniques: Partially Effective, 2

3c: Engaging students in learning: Effective, 3

3d: Using assessment in instruction: Partially Effective, 2

3e: Demonstrating flexibility and responsiveness: Effective, 3

Observation #2: Domain 3: 1.5, ineffective ($2+1+2+1=6/4=1.5$)

3a: Communicating with students: Partially Effective, 2

3b: Using questions and discussion techniques: Ineffective, 1

3c: Engaging students in learning: Partially Effective, 2

3d: Using assessment in instruction: Ineffective, 1

3e: Demonstrating flexibility and responsiveness: Insufficient evidence

Observation #3: Domain 3: 2.6, effective ($3+2+3+2+3=13/5=2.6$)

3a: Communicating with students: Effective, 3

3b: Using questions and discussion techniques: Partially Effective, 2

3c: Engaging students in learning: Effective, 3

3d: Using assessment in instruction: Partially Effective, 2

3e: Demonstrating flexibility and responsiveness: Effective, 3

(See P-75.) The three Domain 3 scores are averaged to produce a total Domain 3 score of "2.23" for the 2013-2014 school year ($2.6+1.5+2.6=6.7/3=2.23$).

id.; 551:15-553:6.)⁶ The Domain 3 score is then assigned its percentage/weight of the overall Teacher Practice score for the academic year ($2.23 \times .3 = 0.669$).

(Tr. @ 539) This process was repeated for the remaining domains and produced the following scores:

Domain 1, SY 13-14: $2.33 \times .20 = 0.466$

Domain 2, SY 13-14: $2.43 \times .30 = 0.729$

Domain 3, SY 13-14: $2.23 \times .30 = 0.669$

Domain 4, SY 13-14: $2.67 \times .20 = 0.534$

These scores were then added, producing a Teacher Practice Score for the 2013-2014 school year of 2.398 or “2.4” ($0.466 + 0.729 + 0.669 + 0.534$). Teacher Practice scores were assigned their respective weights/percentages (15% and 85% respectively), and added together to produce a summative rating which corresponds with one of the four (4) ratings categories:

Lefkowitz’s SY 13-14 Summative Score: $3.45 \times .15 = 0.5175$ (SGO) + 2.398
 $\times .85$ (Teacher Practice) = 2.5558 or 2.56, Partially Effective.

In contrast, the calculation method proposed by the Respondent would first add all the scores for Domain 3 ($3+2+3+2+3/2+1+2+1/3+2+3+2+3=32$ and

⁶ The District notes that “[t]hroughout these proceedings, Mr. Lefkowitz has maintained that when certain components/subdomains within a particular domain are assigned “insufficient evidence,” that particular domain arbitrarily has greater weight in the overall Teacher Practice Score than domains in which all components/subdomains have numerical scores. This is simply incorrect. Both Mr. Pillsbury and Ms. Termotto testified that domains having component/subdomain scores of insufficient evidence do not receive greater weight under the Teachscape pre-loaded formula, as each observation is viewed as a snapshot of teacher performance on that given day and thus, the domain scores for each observation are kept separate and averaged together at the end of the year to obtain the total domain average (e.g. Domain 2 scores for each of the three observations are averaged to obtain the total Domain 3 score for the year). (See 2T 247: 6-248:21; 3T 559:13-560:15; 3T 631:7-632:20.) In fact, Ms. Termotto was only aware of one district utilizing Mr. Lefkowitz’s proposed method of averaging all the component/subdomain scores at the end of the year.” (See 3T 248:22-249:6.)

second divide the answer in Step 1 (32) by the total number of subdomain scores (14) = $32 \div 14 = 2.85$.

As compared to the District's calculation of 2.23, a higher number of 2.85 is calculated.

Using a different set of subdomain scores for a fictitious John Doe teacher, with three observations, encompassing nine (9) subdomains for Domain 1, with two (2) insufficient evidence scores, the Respondent offers the following calculations:

Observation One (3, 3, 3)
 Observation Two (3, 3, 3)
 Observation Three (1, no score, no score).

In the Respondent's CTEO Method, averaging at the Domain level would entail adding all the subdomain scores and dividing that answer by the total number of subdomain scores, namely:

$$3+3+3+3+3+3+1 = 19 \div 7 = 2.71$$

In contrast, the District's Method ("DAM") calculates the Domain Score by averaging each Domain per observation, then averaging all of these Domain averages to obtain a final Domain score.

Step 1 – add all the subdomain scores for each observation.

Illustration:

Observation 1: $3+3+3 = 9$
 Observation 2: $3+3+3 = 9$
 Observation 3: $1=1$

Step 2 – divide each answer in Step 1 by the total number of subdomain scores in each observation.

Illustration:

Observation 1: $9/3 = 3$

Observation 2: $9/3 = 3$

Observation 3: $1/1 = 1$

Step 3 – add all the Step 2 answers (3, 3, 1) together.

Illustration: $3+3+1 = 7$

Step 4 – divide the answer in Step 3 (7) by the total number of observations (3).

Illustration: $7/3 = 2.33$

According to the Respondent's CTEO Method, these respective calculations yield a different Domain Score because the missing (insufficient evidence) scores in Observation 3 under the District's Actual Method disproportionately receives much greater weight in the overall Domain Score as would not be the case if the District followed Respondent's CTEO Method.

Since the District's Method is shown to have a detrimental impact on Lefkowitz's Teacher Practice Score to the extent he would have been rated "effective" rather than "partially effective" for the 2013-2014 school year, Respondent maintains that the "District Method is arbitrary and capricious scoring that is inconsistent with the Evaluation Policy."

In the Arbitrator's opinion, the fact that Respondent has generated another method of calculating his Teacher Practice Score which is more beneficial to him is not tantamount to a conclusion that the District's Method is arbitrary or inaccurate. Probably, there are multiple permutations and combinations of averaging and calculating the subdomain and Domain scores that yield a range of results that are not necessarily arbitrary.

Since the method of averaging at the Domain level is only one variable that can affect a Teacher Practice Score and subsequently a summative rating, other components of domain scoring are similarly susceptible to alternative calculations. For example, increasing the weight assigned to the four (4) domains could change the Respondent's Teacher Practice Score. For example, increasing the percentage weight of Domain 4 where Lefkowitz received 2.67 to 30% of the total and reducing the weight of Domain 3 where Lefkowitz received 2.23 to 20% would have increased his teacher practice score to 2.442 as follows:

$$\begin{aligned} &\text{Domain 1 (0.466); Domain 2 (0.729); Domain 3 (0.446);} \\ &\text{Domain 4 (0.801) = 2.442}^7 \end{aligned}$$

A Teacher Practice Score of 2.442, when added to his SGO of 0.5175 = 2.9595; therefore, still partially effective (1.85-2.64).

Absent evidence that the District scoring method irrationally deviates from the statute or unreasonably implements the District's Evaluation Policy, the District's exercise of discretion in selecting Teachscape and its concomitant scoring policy must prevail.

In this regard, the District notes that if every teacher were allowed to experiment with the Teacher Practice Scoring Method until s(he) found the subjective method most conducive to an effective rating, the District's method of calculating the Teacher Practice Score would be reduced to a nullity. Moreover, as the District correctly projects, "it would be required to re-calculate the summative ratings for all of Lefkowitz's 1100+ colleagues, resulting in an

⁷ The rounding up effect from 2.38 would have left Lefkowitz at "2.4" in any event and his Summative Score would have remained unchanged.

avalanche of tenure charges for inefficiency being filed against teachers who were previously deemed effective.”

In the Arbitrator’s opinion, so long as the Respondent’s Teacher Practice score was calculated using a method that conforms to the general concept of “averaging at the domain level” and no evidence was adduced that Lefkowitz was placed at a disadvantaged vis-à-vis his similarly evaluated colleagues, the Arbitrator can discern no grounds for singling out Lefkowitz for special treatment. Absent evidence, preferably expert testimony, discrediting the District’s interpretation of the phrase “averaged at the domain level,” in its Evaluation Policy, the Respondent’s claim cannot be sustained.

In this connection, the Arbitrator finds credible the testimony of Pillsbury and Termotto that approximately 170 New Jersey school districts, who utilize the Danielson Framework, also were compelled to utilize Teachscape in calculating their Teacher Practice scores. The fact Pillsbury initially obtained this information from Termotto constitutes admissible hearsay evidence.

III. Substantial Adherence to the Evaluation Process

Insofar as the District’s adherence to the evaluation process for the 2013-2014 and 2014-2015 school years is concerned, the Respondent has raised four (4) claims:

- (1) the District failed to observe him within the observation cycles or rounds for each school year;
- (2) the District untimely developed his Corrective Action Plan (“CAP”);
- (3) the District did not provide him with adequate coaching and support during the 2014-2015 school year;

(4) in multiple observations during 2013-2014 and 2014-2015, he received numerous subdomain scores without any notes, evidence, critical attributes and/or summaries.

A. Observation Cycles

According to the Respondent, the District violated its own policy by not observing him throughout the school year within each of the three (3) observation cycles. Relying on the testimony of Principal Thompson regarding the timeframe for the three cycles, Lefkowitz contends that in 2013-2014, he was “observed once in the second cycle and twice in the third cycle, with the latter two observations occurring within one week of each other. During the 2014-2015 school year, Lefkowitz was observed three times in the first cycle and once in the third cycle.”

Notwithstanding the testimony of Thompson regarding the observation cycles and their inclusion in the parties’ collective bargaining agreement, the Respondent does not cite any District policy requiring that a specific number teacher observations be allocated to the purported cycles. Given Thompson’s testimony that neither TEACHNJ nor District policy requires the use of these cycles, the Respondent’s reliance on her testimony is misplaced. She subsequently testified that due to scheduling conflicts, an observation scheduled in one cycle could be moved to the next cycle. (Tr. @ 449).

Contrary to the Respondent’s assertions, the Camden Teacher Evaluation Overview for the 2013-2014 school year states:

Formal observations began in early November and will continue up until summative evaluation conferences for both tenured and non-

tenured teachers. While observers were given a schedule of observation rounds to guide them, they will continue to observe and coach teachers throughout the district outside of those rounds, where necessary, to prepare for summative conferencing. (P. Ex. #52).

Similarly, the Overview for the 2014-2015 school year states:

Observations will begin in September 2014 and will continue up until summative conferences for both tenured and non-tenured teachers. Classroom walkthroughs will occur throughout the entire school year. Observation schedules will be developed within each building and will guide completion of the observations. Observers will continue to observe and coach teachers throughout the year to provide support and coaching where necessary and to prepare for summative conferencing.

Since N.J.A.C. 6A:10-4.4(c) requires only that one observation occur during the first half of the school year and one observation occur during the second half of the school year, the evidence indicates that the District was in compliance with this regulation. Given the commencement of the second half of the school year on February 1, 2014, Lefkowitz's observation by Mashore on January 21, 2014 fell within the first half of the 2013-2014 school year. His second (3/4/14) and third (3/13/14) observations occurred during the second half of the school year. During the 2014-2015 school year, Lefkowitz was observed three (3) times prior to February 1, 2015, or in the first half of the school year, and once (3/10/15) in the second half.

Other than the Respondent's testimony that the proximity of the two March 2014 observations deprived him of the opportunity to obtain feedback before being observed again, there is no evidence that this factor either constituted a substantial deviation from the evaluation process or materially affected the outcome of his evaluation. It is noteworthy that Lefkowitz neither

raised this issue during his post-observation conferences with Ketterer and Thompson nor submitted a rebuttal.

B. Corrective Action Plan (“CAP”)

The Respondent avers that the development of his CAP after his first observation occurred in 2013-2014 constituted a failure to adhere to the District’s evaluation process. According to Lefkowitz, since his CAP was not in place as of his first observation on September 11, 2014 by Ms. Goode, he was “unaware of what goals and focus areas he would need to focus on.” He also maintains that the CAP was developed without his input or collaboration. Although he signed the CAP to avoid being “adversarial,” he testified that he did not contribute to its contents. (Tr. @ 802).

The Respondent has not provided any statutory/regulatory support for his position. As the District correctly notes, N.J.A.C. 6A:10-2.5(b) requires only that “...then the corrective action plan shall be developed and the teaching staff member and his or her supervisor shall meet to discuss the corrective action plan prior to September 15th of the following school year.” Given this language, there is no support for the Respondent’s position that observations are precluded prior to the initial CAP meeting.

Moreover, there is ample evidence that Lefkowitz had full access to his observation reports and scores once they were entered into Teachscape, had the opportunity to review the scores with his observers during his 2013-2014 post-observation conferences, had received coaching in all the areas in which he was rated partially effective or insufficient evidence on various subdomains, and

had reviewed the aggregate feedback and observation reports with Principal Thompson during his Summative Conference on June 12, 2014. Principal Thompson testified credibly that not only was Lefkowitz provided with coaching during 2013-14 through walk-throughs, she also discussed his need for improvement during the Summative Conference. There is also a record of Lefkowitz's Professional Development plan, including professional development in-service training on Danielson, Teachscape and related subjects. (P. Ex. #46).

Lefkowitz's claim that he had no input into the development of his CAP is refuted by his signature under the statement:

My signature below indicates that I have received a copy of this Corrective Action Plan and that I understand and contributed to its contents. (P. Ex. #3).

Moreover, Principal Gehring testified credibly that Ms. Goode gave Lefkowitz the opportunity to make adjustments to his CAP, after "Natalie drafted it based on what she thought were the highest needs for him to improve so that he can keep his job," but he declined to do so. (Tr. @ 152). Here again, Lefkowitz did not submit a rebuttal.

C. Support and Coaching During the 2014-2015 School Year

Lefkowitz asserts that he did not receive adequate coaching and support during the 2014-2015 school year. In his recollection, he received consistent coaching from Ms. Goode, but this ended when Ms. Gehring took over and the flood occurred at the Cream School. Once Ms. Gehring took over, Lefkowitz contends "he received even less feedback and attention, with almost half of the sessions cancelled."

Respondent acknowledges that by the commencement of the 2014-2015 school year, he had been fully apprised of the deficiencies that resulted in him being placed on a CAP for 2014-2015. Lefkowitz further acknowledges that Ms. Goode provided him with weekly coaching sessions as well as support through grade level meetings, professional development with her on Mondays, and feedback via frequent informal walk-throughs.

The record evidence indicates that when Gehring assumed the coaching responsibility for Lefkowitz prior to the holiday break and retained those responsibilities after Ms. Goode's unfortunate passing, she also provided consistent coaching prior to the mid-year CAP review on February 12, 2015. Lefkowitz admitted that he had a coaching session with Ms. Gehring prior to the March 10, 2015 observation, and three coaching sessions from February 2105 to the end of the year. (Tr. @ 885-886). It was not until the mid-February 2015 flood when all students and staff had to be relocated to Hatch that the formal weekly coaching sessions ceased.

The Arbitrator is not persuaded that the one month cessation of his coaching sessions between his February 12, 2015 mid-year CAP review and his final observation on March 10, 2015 materially affected the outcome of his evaluation. As the District notes, Lefkowitz had been previously observed formally three (3) times in 2014-2015 concurrently with weekly coaching sessions provided by Goode/Gehring. It is also noteworthy that the March 10, 2015 observation was rated "his best" by Gehring. The Respondent's improved performance was attributed, in part, to the presence of the classroom teacher in

the room, which assisted in classroom management – the area in which Lefkowitz was in most need for improvement and because Gehring gave him the “benefit of the doubt” due to the flood.

Given evidence that the highest observation score Lefkowitz received during the two years at issue in his tenure charge resulted from his 3/10/15 observation, Respondent cannot reasonably claim that the four (4) week period during which he did not receive coaching at Hatch adversely or materially affected the outcome of his evaluation. If this had been the case, he had the opportunity to raise his concerns with Gehring either during their pre-observation or post-observation conference. Lefkowitz also did not avail himself of his right to submit a rebuttal to the observation.

D. In Multiple Observations, Observers gave Subdomain Scores without any Notes, Evidence, Critical Attributes and/or Summaries

Although there was clearly ambivalence in the testimony of District witnesses as to whether the availability of evidence was a prerequisite in their scoring of subdomains/components, the Respondent failed to prove that specific evidence was required in order to substantially adhere to the evaluation process. On the one hand, Mashore testified that for certain subdomains/components where he observed effective teaching practice, he did not include evidence in the Teachscape input because there was nothing negative to bring to Lefkowitz’s attention. On the other hand, Pillsbury initially testified that an observer’s task is to “align the evidence to components or subdomains...So a classroom observation is basically the observer going in, observing the lesson, taking their notes, assigning scores for those components...if you don’t see any evidence for

that specific component – and you don't feel...they should be getting a score for nothing that's when you would put insufficient evidence, because it's not weighted at all." Later, Pillsbury testified, "[w]hen they're typing their notes, if they don't see anything, yes, they could still assign a score. They could say I give a 4 because I didn't see any evidence of bad behavior." (Tr. @ 565-567). Pillsbury reinforced this testimony when he explained that with regard to evidence and assigning a score that "nothing is required," "a teacher could get just an evaluation with just numbers, no evidence, no critical attributes." (Tr. @ 625).

However, the determinations of the evaluators/observers regarding their collection of evidence during Lefkowitz's classroom observations and their decisions with respect to assigning that evidence or the lack thereof to critical attributes is beyond the scope of the arbitrator's review. N.J.S.A. 18A:6-17.2(c) clearly states that "the evaluator's determination as to the quality of the employee's classroom performance shall not be subject to an arbitrator's review."

The Arbitrator construes this statutory provision as permitting significant deviation in the scoring practices of evaluators so long as these deviations do not materially affect the outcome of the evaluation. Evidence that Mashore may have assigned a score for a subdomain without including evidence in the Teachscape report and Gehring assigned a sub-domain score without any critical attributes, or notes, or evidence such as "the behavior is excellent the entire time and there's no evidence of misbehavior" are, in the Arbitrator's

interpretation of the statute, both permissible, and more importantly, beyond the scope of the Arbitrator's review.

IV. Arbitrary and Capricious

A. IEPs

The Respondent alleges that the District violated N.J.A.C. 6A:14-3.7(a)(2) when it did not provide Lefkowitz with access to the IEPs for the students in his classes and violated N.J.A.C. 6A:14-3.7(a)(3) when it did not "inform each teacher and provider described in a (a)(2) above of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations..." Respondent further alleges that the District also violated "the Administrative Code provisions in failing to advise and/or provide him with any of his students' IEPs, notwithstanding Lefkowitz's numerous attempts and requests for both the 2013-2014 and 2014-2015 School Years to obtain them."

Considering the evidence in its entirety, the Arbitrator is not persuaded that Lefkowitz exercised due diligence or made a reasonable effort to obtain the IEPs for the students in his classes. Whereas Lefkowitz testified that during the 2013-2014 school year, he requested the IEPs through email, he provided no proof of his email requests. (Tr. @ 754). Although Lefkowitz testified that when he asked Principal Thompson how he could get the IEPs she referred him to the guidance counselor, there is no evidence that he followed through in his efforts. In fact, Lefkowitz testified that after making two attempts to obtain the IEPs, "he got frustrated and gave up." In addition, there is a dearth of evidence that Lefkowitz raised this issue during his post-observation conferences when the

need to improve his classroom management arose. He neither filed a grievance nor a rebuttal on the subject.

Principal Thompson described the process for obtaining IEPs as follows:

“...they have a special ed teacher who makes the teacher, whatever teacher it is, aware that they have a student in that room [with an IEP]...[T]hey just request it [the IEPs]...” (Tr. @ 239-240).

For the 2014-2015 school year, Lefkowitz testified that he requested IEPs from Ms. Goode, but did not pursue these requests during the numerous coaching sessions she conducted or raise this issue in any of his post-observation reflection forms. (Tr. @ 873-876). He acknowledged being told by Ms. Gehring during 2014-2015 that the IEPs were accessible for teachers in the main office. As she put it, “All IEPs are housed in the office on the first floor. He didn’t have to request, he can just go and physically get it.” (Tr. @ 161-162).

The Arbitrator finds incredulous Lefkowitz’s testimony that despite raising the IEP issue with Principal Thompson, the guidance counselor and the nurse during 2013-14, he made no progress in obtaining the IEPs. During 2014-15, despite being told by Principal Gehring that the IEPs were available in the main office, he never discovered where they were housed and admitted that his concern that “teachers were yelled at by the office staff” discouraged his further pursuit. Ms. Goode purportedly “brought in information about the students, but didn’t actually show me the IEPs that I had requested.” (Tr. @ 874-876).

In the absence of any email or other correspondence from Lefkowitz regarding his request for the IEPs, any reference to IEPs in his post-observation conference, or any rebuttals where the IEP subject was mentioned, the Arbitrator

cannot credit his claim that the District acted in an arbitrary and capricious manner in denying him access to the IEPs of his students. Interestingly, the testimony of Ms. Ketterer corroborates the position of the District in that he assumed that each teacher he observed would have reviewed the IEPs for students in his class, and this assumption was based on the fact that it was the teacher's responsibility to obtain the IEPs. (Tr. @ 307).

B. Ms. Thompson and Mr. Ketterer gave vastly different scores during an observation of the same class with a similar lesson

During the 2013-2014 school year, Ketterer and Thompson each observed the same class a week apart. However, Lefkowitz was not able to incorporate or utilize any feedback from Ketterer prior to Thompson's observation. To the extent the variation in his scores are a function of the individual observer's assignment of evidence or critical attributes to the sub-domains within an observation, the Arbitrator, pursuant to N.J.A.C. 18A:6-17.2(c) is precluded from reviewing this aspect of the Respondent's observations. Moreover, the fact that two observers recorded vastly different scores during the observation of the same class within a week, in addition to the observer's scoring style, could be attributed to the difference in the Respondent's performance during those two observations.

C. Ketterer's Supervisory Role During the 2013-2014 School Year

The Respondent challenges the authority of Ketterer to conduct an observation of him during the 2013-2014 School Year because "he was not employed in a supervisor role or capacity." Citing N.J.A.C. 18A:6-119 that "an evaluation shall include formal observations, as well as post conferences,

conducted and prepared by an individual employed in the district in a supervisory role and capacity and possessing a school administrator certificate, principal certificate or supervisor certificate,” Lefkowitz contends that he was never advised by the District that Mr. Ketterer, a “Teacher Trainer and Evaluator,” was his “supervisor” or possessed any “supervisory authority” over him during the 2013-2014 School Year. According to the Respondent, “Mr. Ketterer did not assert any supervisor authority over Lefkowitz’ and indeed Lefkowitz’ did not understand Ketterer to be a supervisor.”

The Arbitrator dismisses the Respondent’s claim that Ketterer was not properly certified to serve in a supervisory capacity and conduct formal observations as part of the District’s evaluation process. The Respondent’s misconception of the “Teacher Trainer and Evaluator” position does not negate the District’s approval of Ketterer’s supervisory authority and related role of evaluating teachers, and providing teachers with coaching and feedback on their performance. Inasmuch as the job description, Teacher Trainer & Evaluator requires the holder to possess a “valid principal or supervisory license in the State of New Jersey” and among “qualifications and responsibilities: support the teacher observation and feedback cycle by: conducting observations and evaluations of teachers across the district,” the Arbitrator is convinced that Ketterer was qualified to observe Lefkowitz. (R. Ex. #C, CCSD ML 231).

D. The District's Failure to Produce its Evidence in a Timely Manner
and Assert Proper Objections to Lefkowitz's Discovery Requests
Requires its Exclusion

The Respondent argues that the testimony of Ms. Karlie Termotto and District Exhibit No. P-22 should be excluded because Termotto was not on the District's witness list on or before December 18, 2015 "upon referral of the case for arbitration."

The Arbitrator shall admit the testimony of Ms. Termotto as an exception to the statutory rule because her testimony arose only in response to the Arbitrator's request, set forth in his dismissal of the Respondent's Motion for Summary Decision, for clarification of the District scoring method, specifically the phrase "averaged at the Domain level." In addition, Mr. Pillsbury's testimony corroborates that of Ms. Termotto regarding the District's scoring method.

The cases cited by the Respondent are distinguishable, and the Arbitrator discerns no basis to dismiss the tenure charge on this ground.

In I/M/O Wilson, there was no waiver of the statutory time period by serving interrogatories after the statutory deadline, seeking "copies of any and all documents contained on Teachscape with regard to Respondent..." and no decision of the Arbitrator in response to Respondent's Motion for Summary Decision requesting additional testimony regarding the District's scoring method.

The Arbitrator shall also admit Petitioner's Exhibit No. 22, which represents the long form version of the observation begun by Ms. Goode on September 11, 2014 and completed on September 17, 2014. As such, P-22 is the best evidence of the observation conducted by Ms. Goode and, irrespective

of the inclusion of P-22, the P-77 truncated scores have been entered into Teachscape and used to calculate Lefkowitz's summative rating. The Arbitrator also credits the testimony of Mr. Pillsbury that Exhibit P. 22 is a correct and full copy of P-77 which was produced in the District's initial disclosures, but due to a printing error less complete than P-77. Given this evidence, the Arbitrator discerns no prejudice to Respondent in admitting P-22.

Moreover, the Arbitrator is persuaded that an exception to the rule regarding the District's submission of evidence upon the referral to arbitration arises when the document is generated in response to the Respondent's interrogatories or request for documents.

The Respondent further asserts that the tenure charge should be dismissed because the District failed to provide documents in response to Interrogatories Nos. 3, 5, 8, 11 and 23, which substantially prejudiced his defenses. "Lefkowitz initially raised this argument after two full days of hearing were complete via his attorney's February 19, 2016 correspondence to this office." The District maintains that it "asserted valid and lawful objections to each and every one of the subject interrogatories when it provided its responses on January 22, 2016 pursuant to the discovery schedule agreed upon by the parties. After receipt of the District's responses, Lefkowitz did not send a deficiency letter seeking more specific responses to the subject interrogatories or file any type of action with the Arbitrator seeking to compel such responses or any additional production of documents. As such, the District believed that

Lefkowitz did not oppose its lawful and appropriate objections to the subject interrogatories.”

Inasmuch as Lefkowitz not only had the District’s responses to the subject interrogatories approximately three (3) weeks before the start of the hearing on February 11, 2016 and also had access to these materials in Teachscape during the 2013-2014 and 2014-2015 School Years, the Arbitrator is persuaded that his defense was not prejudiced. Moreover, the Respondent had the opportunity to raise these discovery issues with the Arbitrator and seek his intervention in order to compel the responses and/or additional production of documents prior to the commencement of the hearing and opted not to do so.

E. District’s Motion for Summary Decision

The Arbitrator reaffirms his denial of the District’s Motion for Summary Decision. The basis for the denial was the District’s untimely filing of the Motion ten (10) days before the start of the arbitration hearing.

Conclusion

Having found that none of the actions delineated by the Respondent satisfies one or more of the four (4) areas of allowable challenge under the statute pursuant to an Arbitrator’s review of inefficiency tenure charges, the Arbitrator concludes that Mr. Lefkowitz must be dismissed from his position with the State-Operated Camden City School District.

The Respondent failed to establish that his evaluation by the District for the two (2) consecutive years, 2013-2014 and 2014-2015, where he was rated “partially effective,” failed to substantially adhere to the evaluation process. The

Arbitrator is persuaded that in evaluating the Respondent's performance, including his three (3) classroom observations in 2013-2014, his Corrective Action Plan, and his four (4) classroom observations in 2014-2015, the District followed, or at least substantially followed the evaluation process. His observations conformed with N.J.A.C. 6A:10-4.4(c) in that at least one observation occurred during the first half of the school year and one observation occurred during the second half of the school year. In addition, the Respondent was given ample opportunity to improve his performance through coaching sessions, informal walk-throughs, as well as in pre and post observations with his observers and supervisors.

The Respondent further failed to establish that the District's actions were arbitrary or capricious. The District complied with TEACHNJ in calculating his Teacher Practice Score utilizing the State approved Danielson Framework and Teachscape software program. The Respondent's Teacher Practice score was calculated using a method applied to all teachers in the District that was also consistent with the statute. The methods used by the observers in collecting and assigning evidence to score the Teacher Practice components/subdomains was not subject to challenge as per N.J.S.A. 18A:6-17(c).

In addition, the correction of an error made by Lefkowitz in calculating his 2014-2015 SGO scores resulted in an increase in his summative rating from 2.26 to 2.36. Nevertheless, Lefkowitz's summative rating remained "partially effective" for 2014-2015.

In the final analysis, the District has sustained its burden of proof by a preponderance of the credible evidence. It has established and implemented an evaluation policy in accordance with TEACHNJ and District policy. It has preferred a tenure charge of inefficiency against Lefkowitz based upon his two consecutive partially effective summative ratings for 2013-2014 and 2014-2015. In the absence of preponderant evidence that the District's actions were arbitrary or capricious, substantially deviated from its evaluation process, encompassed mistake of fact, or the tenure charge was brought for a prohibited reason, the Arbitrator is required to uphold the Respondent's dismissal.

Accordingly, the Respondent, Michael Lefkowitz, is dismissed from his position as a teacher with the Camden City School District.

NOW THEREFORE, as the duly selected Arbitrator, having heard the evidence presented, I hereby issue the following:

AWARD

Pursuant to the TEACHNJ Statute, the Respondent, Michael Lefkowitz, shall be dismissed from his position as a teacher in the State-Operated School District of the City of Camden, New Jersey.

April 27, 2016

Robert T. Simmelkjaer
Robert T. Simmelkjaer
Arbitrator

STATE OF NEW JERSEY}
COUNTY OF BERGEN} SS

On the 27th day of April 2016, before me came Robert T. Simmelkjaer to me known as the person who executed for foregoing instrument and he acknowledged to me that he executed his Award in Agency Docket Case No. 329-10/15 sustaining tenure charges as set forth above.

April 27, 2016

Notary Public