

IN THE MATTER OF THE TENURE :
HEARING OF DORETHA BROWNLEE, :
STATE-OPERATED SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF THE CITY OF NEWARK, ESSEX : DECISION
COUNTY. :
_____ :

SYNOPSIS

District certified tenure charges of inefficiency against principal due to alleged unsatisfactory performance in seven areas.

ALJ found that prior to certification of charges, the District followed the timelines with respect to correction of inefficiencies -- after providing respondent with written notice specifying areas of inefficiency, the District provided a minimum of at least 90 days in which to remedy them. *N.J.A.C. 6:7-1.3(a)*. Thereafter, respondent was evaluated as to her success in correcting the inefficiencies. *N.J.A.C. 6:7-1.3(b)*. Because respondent's inefficiencies remained uncorrected, the District had the option to dismiss respondent from her position as principal. ALJ concluded that respondent was appropriately dismissed.

Commissioner adopted the initial decision with modification. Notwithstanding respondent's contention that the ALJ's failure to specify findings of fact compelled remand, Commissioner held that, under these circumstances, his declaration of such findings would not offend the Administrative Procedures Act. Having stated findings and conclusions of law, the Commissioner concurred with the ALJ that the documentary and testimonial record in this matter supported the conclusion that respondent did not satisfactorily correct four of the seven areas of inefficiency noted. Commissioner further concurred with the ALJ that the District was not obliged to demote respondent or to rehire her. In that the District met its burden of proving the charges, the Commissioner found that the appropriate penalty was dismissal. Commissioner ordered respondent dismissed from her position as a tenured principal as of the date of this decision and the matter was referred to the State Board of Examiners for further appropriate action.

April 16, 1998

IN THE MATTER OF THE TENURE :
HEARING OF DORETHA BROWNLEE, :
STATE-OPERATED SCHOOL DISTRICT : COMMISSIONER OF EDUCATION
OF THE CITY OF NEWARK, ESSEX : DECISION
COUNTY. :
_____ :

The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Both respondent and the District submitted exceptions to the initial decision and both parties submitted replies in accordance with *N.J.A.C.* 1:1-18.4.

Respondent's exceptions primarily recast her arguments as presented to the Administrative Law Judge (ALJ), as she contends: (1) that the District is required to provide positive assistance to a tenured principal to help her overcome her inefficiencies (Respondent's Exceptions at p. 3); (2) that the District bears an affirmative duty to notify an employee with pending charges of inefficiency of the exact time period during which her job performance will be evaluated (*id.* at p. 9); and (3) that demotion is an available penalty in this matter (*id.* at p. 17). Respondent further objects to the ALJ's failure to make specific findings of fact on the allegations raised by the District, as the ALJ is required to do by law. (*Id.* at p. 11) Citing *State, Department of Health v. Tegnazian*, 194 *N.J. Super.* 435, 450, 451, respondent contends that this failure compels the Commissioner to remand this matter for said findings, as the Commissioner can only make specific findings of fact *after* the ALJ has made his findings. (*Id.* at pp. 15, 16)

In reply to respondent's exceptions, the District maintains that the ALJ correctly found that *N.J.A.C. 6:24-5.1(c)4*, which compels a district bringing tenured charges of inefficiency against a tenured staff member to modify her individual professional improvement plan, is not a required element for tenure dismissal procedures alleging inefficiency of a principal in a State-operated school district. (District's Reply at p. 2) The District maintains that the streamlined process for removal of tenured principals under the pertinent statute demonstrates "***that the legislative intent is contrary to the assistance to overcome deficiencies and the provision of individual improvement plans that respondent claims she is due in recognition of her many years of service." (*Id.* at p. 4) Moreover, the District asserts that it did provide respondent with support and assistance during the corrective period, as noted:

- a. Assistant Executive Superintendent Marinaro specifically re-located his office to Camden Middle School in order to be available to assist Respondent on a daily basis. (T2:105:1-8)
- b. Dr. Marinaro provided the respondent with a corrective action plan to address areas of deficiency. (P-19) (T2:117:11-20)
- c. Dr. Marinaro personally observed 17 teachers with the respondent and along with other staff, arranged for the transfer or removal of teachers identified as "problems" by the respondent.
- d. Other members of the administration, at Dr. Marinaro's request, assisted respondent in completing goals to implement the CALM (Camden Middle Attitude Learning Management) program.
- e. Prior evaluations included suggestions for improvement in the areas in which petitioner was determined to be weak. Of the seven charges of inefficiency originally identified to respondent, she was able to overcome three. (*Id.* at p. 5)

The District further counters that respondent suffered no injury as a result of her being granted an improvement period in excess of 90 days. (*Id.* at p. 6) As to the ALJ's failure to make specific findings of fact, the District disputes that such failure requires a remand. Distinguishing *Tegnazian, supra*, from the instant matter, the District argues that in *Tegnazian* the ALJ's decision was reversed by the Commissioner of Health, and, further,

***[t]he problem *** in that case was that the initial decision and final decision were not reconcilable due to the diversity and

incompleteness of the findings at the two levels which resulted from the [conclusory] nature provided by the ALJ to certain issues and the failure of the Commissioner to address the ALJ's findings. (*Id.* at p. 8, citing *Tegnazian, supra*, at 449, 450)

Finally, the District refutes respondent's contention that it is obligated to demote her, rather than dismiss her. (*Id.* at p. 9)

In the District's exceptions to the initial decision, it first sets forth, in detail, its proposed findings of fact. (District's Exceptions at pp. 5-27) These findings are essentially as presented to the OAL in the District's post-hearing brief. The District next asserts that the Commissioner is authorized to modify the initial decision in accordance with the requirements of the Administrative Procedures Act, *N.J.S.A. 52:14B-1 et seq.*, and provide specific findings of fact and conclusions of law. (*Id.* at p. 28) Finally, the District urges that the Commissioner refrain from remanding this matter, as proposed by respondent, inasmuch as respondent has been collecting an annual salary of \$80,000, in accordance with *N.J.S.A. 18A:6-14*, and additional delay will result in significant cost to the District. Moreover, the District concludes that further delay would frustrate the legislative intent to provide for prompt evaluation, and where necessary, removal of building principals in State-operated districts "****so as to enable those districts to move forward promptly with the effective leadership necessary to implement district plans to provide a thorough and efficient education to its pupils." (*Id.* at p. 32)

In reply to the District's exceptions, respondent affirms that the Administrative Procedures Act, compels that this matter be remanded, since that statute specifies that

A recommended report and decision which contains recommended findings of fact and conclusions of law shall be filed ... with the agency in such form that it may be adopted as the decision in the case. (emphasis in text) (Respondent's Reply at p. 2, citing to *N.J.S.A. 53:14B-10(c)*)

Respondent maintains that *Tegnazian, supra*, stands for the proposition that the ALJ must make findings of fact. (*Id.*) Respondent adds,

To hold otherwise would be to reach the bizarre conclusion that the ALJ need not make findings of fact unless his decision is overturned by the administrative agency, a backwards method of dealing with the administrative process. By this theory, if the Commissioner decides to adopt the ALJ's determination, his decision stands as it is without findings of fact, but if the Commissioner decides to overturn the ALJ's decision, the Commissioner may not do so without remanding to the ALJ for findings of fact. (*Id.* at pp. 3, 4)

Having conducted an independent and exhaustive review of the record in this matter, which included a copy of the transcripts from the four days of hearing conducted at the OAL¹, the Commissioner determines to affirm the initial decision of the ALJ, with modification as set forth below.

Initially, the Commissioner concurs with the ALJ's view that, contrary to respondent's assertion, she was not "entitled to a determination" on November 18, 1996, the 90th day following the District's service of a Notice of Alleged Areas of Inefficiency, pursuant to *N.J.A.C. 6:7-1.3(a)*. (Respondent's Exceptions at p. 9-10) Rather, the pertinent regulation requires that the District "***provide *at least* 90 days in which to correct or overcome the areas of inefficiency." (emphasis added) (*N.J.A.C. 6:7-1.3(a)*) As the ALJ notes, the intent of the law is to provide a minimum improvement period to the employee, not a deadline by which a district must act, and, further, "petitioner alleges no harm from being notified at [a] later date." (Initial Decision at pp. 13, 14)

The Commissioner further concurs with the ALJ's finding that the first two "formative" evaluations of respondent were dated December 5, 1995 and April 23, 1996. Respondent was thereafter served with a Notice of Alleged Areas of Inefficiency as per *N.J.A.C. 6:7-1.3(a)* on June 21, 1996. (Initial Decision at pp. 13-14) The minimum 90-day corrective action period thus began on June 21, 1996, rather than on April 23, 1996, as noted in

¹ Said transcripts shall hereinafter be referred to as: "T1," the May 19, 1997 transcript; "T2," the May 20, 1997 transcript; "T3," the June 30, 1997 transcript; and "T4," the July 1, 1997 transcript.

the initial decision. By respondent's calculations (*id.*), the 90-day period expired on November 18, 1996. The District's third, and summative, evaluation was dated December 20, 1996. (*Id.* at p. 14) Thus, the District met the regulatory requirement to provide respondent with at least 90 days in which to correct or overcome the areas of inefficiency. *N.J.A.C.* 6:7-1.3(a). Thereafter, respondent had "at least one evaluation conducted after the expiration of the time period given to correct or overcome the areas of inefficiency." *N.J.A.C.* 6:7-1.3(b).

As to respondent's claim that the District failed to comply with *N.J.A.C.* 6:24-5.1 because it did not inform her in writing that it would certify the charges of inefficiency if the inefficiencies were not corrected within the minimal 90-day period, *N.J.A.C.* 6:24-5.1(c)3, and because the District did not allow a modification of her professional improvement plan, *N.J.A.C.* 6:24-5.1(c)4 (Respondent's Exceptions at p. 4), the Commissioner notes that these requirements are *not* contained in the regulations which were specifically adopted to establish the procedures for evaluating and bringing inefficiency charges against building principals in State-operated school districts. In *Jersey City, supra*, petitioners challenged the principal evaluation procedures employed by the State-operated School District of the City of Jersey for failure to comply with the procedures set forth in regulation at *N.J.A.C.* 6:3-1.21², the regulations which govern the evaluation of tenured teaching staff members. There, the Commissioner found that

***both *N.J.S.A.* 18A:7A-45 and *N.J.A.C.* 6:7-2.1 and 2.2 provide a separate and distinct process for evaluating the performance of principals in a State-operated school district, thus precluding application of other criteria and procedures for the evaluation of teaching staff members. Had the Legislature wished that the provisions of *N.J.A.C.* 6:3-1.21 be criteria in addition to those extant for the evaluation of principals in State-operated school districts, it could have so stated. It did not do so. *Jersey City Administrators & Supervisors Assn. v. Jersey City School District*, 92 *N.J.A.R.* 2d (EDU) 150, 155.

² That section has since been repealed and recodified as *N.J.A.C.* 6:8-4.8(a)3.

Similarly, the State Board of Education, presumably aware of its existing regulations under *N.J.A.C. 6:24-5.1(c)*, adopted more specific regulations governing the procedures for evaluating and bringing inefficiency charges against principals in State-operated school districts; said procedures [merely] require that “[t]he format of the certificate [of determination] shall be as set forth in *N.J.A.C. 6:24-5.2* ***.” *N.J.A.C. 6:7-1.3(f)*. Moreover, although *N.J.A.C. 6:7-1.3(h)* establishes that all dismissals of tenured building principals in State-operated school districts “***shall be conducted in accordance with the procedures in *N.J.S.A. 18A:6-10, 11, 13, 14, 16, 17* and *18A:7A-45d* ***,” contrary to respondent’s position, there is no provision in these referenced statutes which contradicts the regulatory requirements found at *N.J.A.C. 6:7-1.1 et seq.*, or provides respondent with procedural protections *other than those* enumerated by law, or within *N.J.A.C. 6:7-1.1 et seq.*

Further, the Commissioner concurs with the ALJ’s view that the District did not violate the conditions of *N.J.S.A. 18A:7A-45c*. That statute provides, in pertinent part that,

Notwithstanding any other provision of law or contract, the State district superintendent, after completion of an assessment cycle of not less than 12 months, may dismiss any tenured building principal or vice principal for inefficiency, incapacity, unbecoming conduct or other just cause ***. (*N.J.S.A. 18A:7A-45c*)

Where the establishment of the District’s assessment unit presumably took place on or before September 18, 1995 with the appointment of Dr. Marinaro (Initial Decision at p. 18) and where respondent was not served with a Notice of Uncorrected Ineficiencies until January 29, 1997 (*id.*), the Commissioner determines that the District acted well outside the minimum 12-month time frame required by statute.

The Commissioner further rejects respondent’s claim that the District’s charges must be dismissed as violative of the requirement in *Rowley, supra*, to incorporate “a guarantee of meaningful assistance” during her 90-day corrective period. (Initial Decision at p.15) To the

extent the holding in *Rowley* applies to the instant matter, and the Commissioner makes no finding herein that it does, the record supports the conclusion that the District, within the period for correcting deficiencies, provided respondent with documentation sufficient for her to understand “clearly the basis for the criticism supporting the allegations of inefficiency” and was “offered constructive advice” as to how she could overcome the noted weaknesses in her leadership skills. See *Rowley, supra*, at 73.

With respect to respondent’s contention that this matter must be remanded to OAL for specific factual findings, the Commissioner determines that, under these specific circumstances, where the Commissioner concurs with the ALJ’s summary of the evidence, where he has fully reviewed the transcripts from each of the four days of hearing, together with all the related exhibits, and where respondent raises no exception to the credibility assessments rendered by the ALJ, but essentially objects to the import of the evidence presented by the District and to the procedures employed by the District in this matter, findings of fact as rendered herewith will not offend the Administrative Procedures Act.

Therefore, the Commissioner finds the following to be facts:

1. On July 5, 1995, the State Board of Education abolished the Newark Board of Education and thereby created the State-operated School District of the City of Newark, pursuant to *N.J.S.A. 18A:7A-34 et seq.*
2. The State Board of Education thereafter appointed Dr. Beverly L. Hall as the State District Superintendent, pursuant to *N.J.S.A. 18A:7A-35.*
3. Dr. Hall created an assessment unit, pursuant to *N.J.S.A. 18A:7A-45*, for the purpose of evaluating building principals and vice principals.
4. Dr. Don Marinaro was appointed Assistant Superintendent to the District on September 18, 1995. (T2:65) As Assistant Superintendent, Dr. Marinaro manages 15 schools

assigned to Cluster V (also known as School Leadership Team V, or “SLT V”), including the Camden Middle School. Dr. Marinaro is responsible for instruction, student support services, and student achievement, as well as for the evaluation of principals and vice principals assigned to his schools. (T2:65)

5. While the overall responsibility for assessment rested with the particular assistant superintendent who recommended a rating to the State District Superintendent, (T2:67), assessors were also hired to serve as agents to conduct assessments during a three-cycle period. In each cycle, the assessor visits the principal or vice principal. At the conclusion of the cycle, the assessor meets with the assistant superintendent to discuss his/her findings. The assistant superintendent may then make a recommendation to the State District Superintendent.

6. The assessment process was initially conducted by Dr. Greta Shephard, then turned over to Dr. Frederick Hill. (T2:70)

7. According to Dr. Marinaro, the seven criteria noted in *N.J.A.C. 6:7-1.3* are the sum total of what is necessary to make a successful school. Respondent’s performance was measured against these criteria. (T2:74) (Exhibits P-2A and P-2B)

8. The State District Superintendent established goals and made it a major priority to focus on instruction and curriculum. The District’s mission was to improve instruction in the classroom and improve student performance. (T2:77)

9. The District conducted a meeting to introduce the assessment process to the principals and vice principals. The process was explained and they were provided information regarding the performance indicators. (T2:70) Dr. Marinaro first met the respondent at this meeting in September 1995.

10. Respondent was appointed principal at the Camden Middle School in 1993. When she arrived, two vice principals were already in place, Robert Mobley and Walter Genuario. (T4:30,

31) Respondent has a B.A. degree in chemistry from Bloomfield College, a Master's in Science and Urban Education from Rutgers University, and has completed her course work for her Ed.D. from Rutgers University. (T4:26, 27) She was a science teacher in the District from 1974 until 1980, when she became a teacher advisor to secondary teachers for approximately two years, then a supervisor from approximately 1982 until 1984. Respondent was an administrative supervisor under Superintendent Columbus Salley for two years, then a basic skills supervisor until the principal's position opened up in 1993. (T4:27-30)

11. On October 5, 1995, Dr. Marinaro held a meeting with all principals in the cluster to review his goals and objectives for the year. He prepared a detailed agenda for the meeting. (P-20) Respondent attended the meeting. (T2:209) Dr. Marinaro shared, *inter alia*, his expectations for principals preparing observation reports and professional improvement plans. Specifically, he noted that all observation reports were to adhere to the following model:

- a. Use of a lesson narrative as a record
 - objectively written
 - highlighting strengths/weaknesses
- b. Post Observation Conference
 - suggestions
 - conference notes
 - Continuity of professional development throughout the year. (Exhibit P-20 at pp. 2, 3)

12. The District retained several assessors to perform evaluations, Dr. Annette Kearney, Dr. James Lewis, Jr., and Dr. Joseph A. Kreskey. Each performed an evaluation on respondent.

13. The assessment process utilized an assessment model, criteria used to judge the performance of principals (Exhibit P-2A), definitions of those criteria (Exhibit P-2B), an operation framework and indicators of the criteria. (T1:19) The process included a number of activities, beginning with an introductory interview with the principal, followed by a formal interview. The assessor would obtain portfolio information for review, would shadow the principal, observe the

performance of his/her duties and would conduct a post-shadowing or debriefing session. The final step required the completion of a summative evaluation.

14. The first formative evaluation was performed by Dr. Kearney, dated December 5, 1995. (Initial Decision at p. 14)

15. After the first formative evaluation, Dr. Marinaro developed a corrective action plan, P-9, dated February 9, 1996 for respondent. (T2:82) The corrective action plan addressed two weaknesses: staff development and pupil progress indicators, which Dr. Marinaro believed to be the central areas of weakness. (T2:118) It was intended for implementation by respondent immediately before the next assessment period.

16. The second formative evaluation was performed by Dr. James Lewis, dated April 23, 1996. (Initial Decision at p. 14) Dr. Lewis did not receive the results from Dr. Kearney's evaluation. (T2:92) Dr. Lewis rated respondent as unsatisfactory in all seven areas. (T2:97)

17. Dr. Marinaro recommended filing inefficiency charges against respondent, (Exhibit J-1), based upon the following: a) Dr. Kearney's evaluation dated December 5, 1995, wherein respondent was rated unsatisfactory in four of the seven criteria; b) Dr. Lewis' evaluation dated April 23, 1996, wherein respondent was rated unsatisfactory in all seven criteria; and c) personal observations by way of visits to the Camden Middle School; and d) observations by the SLT V (School Leadership Team V) staff. (T2:79) Respondent was served with a (first) Notice of Inefficiency Charges by letter dated June 19, 1996. She was advised that she would have 90 days from receipt of the letter, excluding summer recess, to remedy the inefficiencies. She was also advised that, during the 90-day period, she would be assessed at various intervals by external evaluators and by the Assistant Executive Superintendent so that she would have an opportunity to demonstrate that the inefficiencies had been remedied. (Exhibit J-1) However, if after the

expiration of 90 days she was determined to have failed to correct identified inefficiencies, the Superintendent would make a determination as to whether there was probable cause to credit the evidence in support of the Charges and whether, if such evidence is credited, the charges are sufficient to warrant dismissal. (Exhibit J-1) Respondent testified that she received the (first) Notice of Inefficiency on June 21, 1996. (T4:172)

18. Dr. Marinaro subsequently met with respondent and her union representative after the inefficiency charges were served upon her in June 1996. (T2:98) Dr. Marinaro believes this meeting took place in July 1996. The parties discussed the charges, and the 90-day improvement, or corrective action, period. (T2:99)

19. Dr. Kreskey was hired by the District as one of the assessors. Before starting with the District, however, Dr. Kreskey met with Dr. Marinaro to review the inefficiency charges, the scope of his responsibilities and his function as an assessor. (T1:31) He attended his first training session on October 21, 1995, and later participated in training session in December 1995, February, March and May of 1996. (T1:22)

20. Dr. Kreskey first met with respondent on October 23, 1996. His purpose was to focus on the inefficiencies cited in the inefficiency charges. (T1:26) His responsibility was to determine the degree to which respondent had corrected those deficiencies. He was not to provide respondent with any assistance or feedback. (T1:159)

21. The introductory conference lasted approximately three hours and forty-five minutes. A significant amount of time was dedicated to reviewing the charges. Dr. Kreskey gave respondent the opportunity to advise him how she felt about the charges and to identify her efforts to correct the inefficiencies. (T1:26)

22. Subsequent to the meeting, Dr. Kreskey visited respondent at the Camden Middle School on 15 occasions. (T1:27) During these visits, he shadowed her as she performed her duties; he

attended various faculty, grade level and core team meetings; he attended classroom observations and post-classroom observations and conferences. Dr. Kreskey reviewed student portfolio documents, including the Educational Improvement Plans (EIPs) relative to student achievement, standardized test scores, attendance profiles, student performance and outcomes, mission statements, copies of observation reports, and staff development programs and activities. (T1:28)

23. Dr. Kreskey also conferred with Dr. Marinaro during respondent's corrective action period. (T1:31)

24. Dr. Kreskey prepared a summative assessment report which he submitted to Dr. Marinaro on December 20, 1996, and which was later revised in January 1997. (Exhibit P-1) (T1:31) The purpose of the report was to present his findings with respect to respondent's progress in addressing the deficiencies. It was intended for use only by the assistant superintendent. (T3:68)

25. Dr. Kreskey's report (Exhibit P-1) utilized the seven criteria as noted in *N.J.A.C. 6:7-1.3*, or "charges" as they were termed in P-1, which were broken down into subparts. He indicated whether respondent successfully corrected each inefficiency. (T1:35) Although Dr. Kreskey found that respondent successfully corrected Charge 1 (Curriculum Program), Charge 4 (Community Relationships) and Charge 7 (School Based Planning), he also found that respondent had *not* satisfactorily corrected the following inefficiencies:

***[Charge] 2: The respondent has failed to demonstrate consistent and effective leadership in the supervision of instruction by showing that observation of teaching and learning is a major priority. The respondent has specifically failed to:

- a. Consistently conduct classroom observations of all staff to ensure effective development and refinement of instructional skills. ***
- b. Demonstrate that student work products such as a student portfolio are reviewed as part of evaluating classroom instruction.***
- c. Demonstrate that professional growth via the professional improvement plans of staff is a priority during post-observation conferences. ***

- d. Conduct post-observation conferences with staff to promote effective teaching. ***

Charge 3: The respondent has failed to demonstrate consistent and effective leadership in the area of staff development. The respondent has specifically failed to:

- a. Develop a comprehensive staff development plan for the Camden Middle School.
 - i. Demonstrate that classroom observations are utilized to determine staff development needs.
 - ii. Demonstrate that the school testing program is utilized to determine staff development needs. ***
- c. Identif[y] staff development skills necessary to improve teaching effectiveness.***
- d. Develop knowledge and skill in validated teaching and learning principles and share with staff.***
- e. *Demonstrate personal knowledge of innovative curricular programs and to introduce such programs to staff for discussion and adaptation/adoption.****
- f. Demonstrate that teachers share the results of their participation in in-service activities during faculty meetings.***
- g. Demonstrate that staff members learn from each other through peer observation/feedback and other forms of sharing.***
- h. Demonstrate that sufficient resources are utilized in support of staff improvement.***
- i. Demonstrate that staff development efforts in previous years are reflected in current instructional practices.***
- j. *Demonstrate the availability of technical assistance to staff as they develop school improvement activities.****

Charge 4: The respondent has failed to demonstrate consistent and effective leadership in establishing and maintaining an assessment program that measures individual and group achievements. The respondent has specifically failed to:

- a. Establish an assessment program with clear relationships among learning goals, instructional activities and student assessments.***
- b. Conduct teacher meetings to discuss student progress, review of test results, grade reports and other measures.***
- e. Demonstrate that assessment results are utilized to make reteaching decisions.***
- g. Demonstrate periodic review of student and staff attendance records, standardized test results, grade reports and school

enrollment figures and to spot potential problems, and make changes in instructional programs to meet identified needs.***

Charge 6: The respondent has failed to demonstrate consistent and effective leadership in the are of school climate insuring that pupil and teacher behaviors support a productive learning environment. The respondent has specifically failed to:

- a. Develop a set of shared values in consultation with staff, parents and the community.***
- b. Develop a consistent, uniform code of conduct in consultation with staff and students which is linked to consequences and conspicuously posted in classrooms.***
- e. Enforces firm policies regarding appropriate conduct of students and staff to maximize learning time.***
- f. Identify indicators of low morale of staff and formulate steps to alleviate them.***
- g. Assessment of school climate on annual basis as part of school improvement plan.***
- h. Demonstrate frequent classroom visitations to discuss school issues with teachers and students.*** (Exhibit P-1, emphasis added)

26. On January 29, 1997, the District presented respondent with a (final) Notice of Inefficiency Charges, which appended a formal Notice of Uncorrected Inefficiencies. (Exhibit J-2)

27. The inefficiencies in Exhibit J-2 are, for the most part, as noted above in Dr. Kreskey's report, with the following exceptions: a) Charges 2, 3, 4 and 6, *supra*, became Charges 1 through 4, respectively. b) The uncorrected inefficiencies, or subcharges, which are identified above in italics were inexplicably dropped from the District's final notice, notwithstanding that they were contained in Kreskey's report, P-1. Accordingly, these subcharges are *not* deemed as part of the tenure charges brought herein; and c) Without explanation, the District also included subcharges which Dr. Kreskey's report identified has having been satisfactorily addressed. Those subcharges are:

- Demonstrate staff involvement in planning, decision making, execution and evaluation of staff development programs. (Charge 2b in Exhibit J-2, Notice of Uncorrected Inefficiencies) and

- Demonstrate leadership in restructuring grouping and services to address deficits identified through assessments. (Charge 3d in Exhibit J-2, Notice of Uncorrected Inefficiencies).

Respondent is deemed to have satisfactorily addressed these inefficiencies.

28. Dr. Marinaro moved his office to the Camden Middle School, in part, so that he could provide respondent with resources and assistance during the corrective action period. (T2:105)

Marinaro further instructed his staff that they were assigned to the Camden Middle School, in addition to any other schools to which they had been assigned, in order to be accessible. (T2:105)

Dr. Marinaro engaged in informal dialogue with respondent on an almost daily basis during the corrective action period. (T2:105)

29. Dr. Marinaro scheduled a meeting with respondent on November 8, 1996 to discuss her progress. (T2:138) (Exhibit P-10) Dr. Marinaro conducted a building walk-through, where he visited 17 classrooms, looked at every student's notebook, and reported his findings relative to supervision of instruction, school climate and staff development. (T2:139, 140) He prepared a detailed report, Exhibit P-11, entitled Summary of Formative Program Evaluation - Camden Middle School.

30. Based on Dr. Marinaro's walk-through, he concluded that there was a low level of instruction in the school. (T2:158) There was little evidence of lesson planning, higher order learning objectives and student participation in activities.

31. Dr. Marinaro received a teacher observation schedule from respondent, but was concerned that the teachers respondent was scheduled to evaluate were not core curriculum teachers who were identified as weak and needing support. (T4:217) Respondent was notified that the schedule was insufficient.

32. Dr. Marinaro developed an in-school suspension program which was called CALM (Camden Middle Attitude Learning Management). (T2:182) The CALM plan was to work in

conjunction with the behavior modification program. The plan was written at his direction by Ms. Patricia Pallante and a committee. (Exhibits P-4, P-5)

33. Ms. Pallante has been employed by the District for 28 years. She is currently employed as an Assistant Director of Special Education, assigned to SLT V. Her responsibilities are primarily supervision of child study teams. She also supervises special education teachers, speech and language therapists in SLT V. (T4:13)

34. Ms. Pallante testified that the CALM room provides, for regular education students, an in-school suspension option similar to what is available for special education students. Ms. Pallante sat on the committee to develop the CALM plan, and later took over the committee. The plan, P-4, was developed by December 1995, and presented to administrative staff at Camden Middle School in draft form. It was formally adopted around January 1996, and scheduled for implementation in September 1996. (T4:16)

35. In November 1986, Ms. Pallante visited Camden Middle School to assess the implementation of the CALM plan. She visited both the crisis room (for special education students) and the CALM room, and made suggestions for both. (T4:19)

36. Ms. Pallante found that that implementation of the CALM program was disorganized. She found there were no materials in the room, there was no schedule posted for the teacher, and there were no lesson plans. The room was being used as a drop-off for teachers to send students to do their work. (T4:21) When the plan was initially drafted, it included a staff development component for all teachers. Ms. Pallante had a conference with Dr. Marinaro, who thereafter wrote P-11, a memorandum to respondent dated November 6, 1996, which noted the deficiencies Ms. Pallante observed in the implementation of the CALM program. (T4:21, 22) Although respondent refutes that there were no supplies available in the room, she could not recall whether the rules were posted in the room. (T4:182) Respondent also disputed the need for interest

centers, as noted by Ms. Pallante, in a room which was for discipline. (T4:183) Respondent did not dispute that she failed to develop bar graphs for students who showed improvement in their behaviors. (T4:186)

37. Dr. Marinaro provided respondent with reviews and feedback regarding the monthly reports which she submitted to him, wherein he critiqued the teacher observations conducted by respondent and also gave her constructive advice. (T2:192-198, Exhibits P-12, P-13) Dr. Marinaro found that, despite training, respondent's evaluations lacked basic elements and were not useful.

38. Jill Watkins, Special Assistant assigned to the SLT V, is supervised by Dr. Marinaro. She has been employed by the District for 34 years. She acts as liaison between the central office and the schools. (T4: 4, 5) Ms. Watkins' office was in the Camden Middle School for the 1996-97 school year. She had frequent interactions with respondent during the 1996-97 school year.

39. Ms. Watkins collaborated with Dr. Marinaro in reviewing the monthly reports submitted by principals. She performed a formal observation of Dr. Elizabeth Melie, a teacher in the Camden Middle School. The respondent was concerned about Dr. Melie's ability to control her class; the class was frequently out of order, some of the students were in the hallway, etc. Ms. Watkins testified that respondent frequently expressed dissatisfaction with Dr. Melie, yet respondent had not observed Dr. Melie herself prior to Ms. Watkins' observation. (T4: 7, 8) A vice principal had observed Dr. Melie and rated her as satisfactory. Ms. Watkins rated Dr. Melie as unsatisfactory, noting that she struggled in the classroom. After the observation, Ms. Watkins recalled speaking to Dr. Melie again, and documenting her observations in a memorandum. Subsequently, Dr. Melie was transferred to another school in a home economics position. (T4:8)

40. By memorandum dated October 17, 1996, Dr. Marinaro informed respondent that the School Organization document she had submitted to him was incomplete. (Exhibit P-15) (T3:5)

Dr. Marinaro considered the document essential to the operation of the school. (T3:5) This was the only school under his charge which had submitted an incomplete organization. (T3:7)

41. By memorandum dated December 5, 1996, Dr. Marinaro informed respondent that the Camden Middle School was the only school in the SLT V which was not represented by any staff developers at a professional development workshop conducted the day before at Kean College, despite prior notice and registration forms having been provided to respondent. (Exhibit P-16, T3:7) Dr. Marinaro does not know for certain, however, if respondent received the prior notice. (T3:102)

42. By memorandum dated December 6, 1996, Dr. Marinaro informed respondent that she had employed improper exiting and supervision procedures during the fire drill that day. (Exhibit P-17) (T3:9-13) Dr. Marinaro requested that respondent provide him with fire drill procedures and directives, which she did, and that she include the information on an agenda for a future staff meeting.

43. On the day of the fire drill, Ms. Watkins heard a fire alarm, followed by conflicting announcements from respondent about whether to exit the building. Upon leaving the building, Ms. Watkins observed some boys playing basketball in the playground during the fire drill. Ms. Watkins also noted that she could not tell where the classes were; the teachers were all together in one area and the students were in the playground. There did not appear to be an organized plan to carry out the drill. (T4:11)

44. By memorandum dated December 13, 1996, Dr. Marinaro notified respondent that he had received written concerns from a teacher that there was inadequate supervision on the playground, resulting in vandalism to cars. (Exhibit P-18) (T3:13, 14) Dr. Marinaro testified that it is the responsibility of the administrative staff to ensure such supervision, along with school aides or teachers whose schedules permit such supervision. (T3:14)

45. Dr. Marinaro testified as to acts of vandalism at the school. He removed from a female student a can of spray paint which matched the paint which had been sprayed inside the school, his own car was vandalized, teachers and visitors had reported to him that their cars had been vandalized, and students had put a tire on top of a car belonging to a substitute teacher. (T3:15) Dr. Marinaro acknowledged that the parking lot was accessible to persons outside the school. (T3:104) Respondent did not dispute that these incidents occurred but, rather, explained that the Camden Middle School playground and parking lots are readily accessible, and she only provided security during lunch. (T4:139) Respondent affirmed that sometimes security guards were available, and she had no staff to safeguard the cars. (T4:140)

46. Dr. Marinaro met almost weekly, from October 23, 1996 until January 29, 1997, with Dr. Kreskey during respondent's corrective action period to discuss her progress. (T3:19)

47. Both Dr. Marinaro and Dr. Kreskey independently arrived at the conclusion that respondent had reached a level of competence in only three of the seven areas of inefficiency. (T3:20) Dr. Marinaro agreed fully with Dr. Kreskey's report, P-1. (T3:21)

48. On December 11, 1996, Dr. Marinaro provided respondent with a summary of a second formative evaluation which he had conducted. (Exhibit P-14) (T3:38) Also, Dr. Marinaro conducted a conference with respondent on December 17, 1996. She refused to sign the evaluation. (T3:39)

49. Dr. Marinaro provided respondent with assistance regarding supervision of instruction through the monthly meetings he had with principals, and through the selection of a new vice principal, David Wright, as respondent had requested, and through the accessibility of his staff. (T3:73) Dr. Marinaro never "[sat] down" with respondent and told her how to complete an appropriate formal observation report. (T3:75) However, on cross-examination, respondent affirmed that she performed annual teacher evaluations as an administrative supervisor and as a

supervisor, prior to becoming a principal. (T4:161) Accordingly, she cannot credibly claim that she was a novice needing extra assistance in this area. Neither did Dr. Marinaro meet with respondent during the corrective period and review with her how to conduct a post-observation conference. (T3:76) As for respondent's performance in the area of assessment of pupil progress, Dr. Marinaro brought two of his resource teachers to work with respondent's staff developers. (T3:77) Additionally, there were meetings with the principals and vice principals on assessment of pupil progress. Dr. Marinaro did not provide, nor was he required to provide, respondent with one-on-one assistance. (T3:78) Dr. Marinaro's two special assistants, Eva Ortiz and Jill Watkins, provided technical assistance to respondent in the areas of school organization, budgeting, personnel, and conducting teacher observations. They were "on call" for her questions. (T3:98-101)

50. The Camden Middle School students were involved in a city-wide debate tournament in either the 1995-96 or the 1996-97 school year. (T3:93) They performed well.

51. Dr. Marinaro acknowledged that although respondent had some good ideas and tried to organize them, she was unable to bring them together to form a common consensus and lead her staff. Although she produced some good plans on paper, she was unable to follow through on those plans. (T3:117, 118)

52. Respondent describes the time when she arrived as principal of the Camden Middle School as a period of chaos. She felt she was receiving opposition from Vice Principal Mobley. (T4:32-34)

53. When she arrived in 1993, she placed emphasis on student test scores and, she asserts, the Camden Middle School did so well that, as a result, she lost all her basic skills teachers, as they were no longer needed. (T4:35)

54. Respondent presented a plan for discipline, as written by teachers on her staff, which was implemented in the 1994-95 school year. (T4:39, 40) A teacher was later assigned to effectuate the on-site suspension plan. (T4:45)

55. Respondent testified that whenever a teacher was rated as unsatisfactory in any category in an evaluation, the evaluator would provide suggestions for improvement. (T4:60) She also indicated that she always conducted post-observation conferences. (T4:60)

56. Respondent admitted that, at times, she went into classrooms and, upon finding a teacher trying to teach a concept which respondent knew she could teach better, she started teaching the class. (T4:66) However, respondent never memorialized such incidents in writing. (T4:67) Instead, she would provide feedback by chatting with the teachers. (T4:68)

57. Respondent stated that she had an “overall plan” for staff development which included focusing on a new reading series, on student achievement, sending a team of teachers to a middle school in the Montclair School District to make observations and exchange ideas, and presenting a mini-series of workshops for teachers. (T4:84-89) Respondent affirmed that she used student test scores to determine staff development needs. By way of example, she indicated that where vocabulary development was found to be necessary, she purchased thesauruses for the eighth grade student class. (T4:90) This strategy, however, while it may have reaped some benefit, was not a demonstration that respondent had utilized the school testing program *to determine staff development needs*.

58. Respondent testified that the school obtained a grant which allowed instructors from Montclair State University to provide staff development, specifically, to assist the Camden Middle School with its program to design and implement innovative approaches for the integration of the creative arts throughout the curriculum. (T4:101) These instructors were her “external” source,

while her “internal source” consisted of her staff developers who utilized faculty meetings for staff development. (T4:102, 103) The courses started in January of 1997.

59. When questioned by the ALJ, respondent stated that Exhibit P-3 was intended as her comprehensive plan for staff development, in response to the charges noted above. (T4:98)

60. Respondent acknowledged that, as the principal, she was responsible for the total student assessment program. (T4:117) Respondent testified that she and the vice principals targeted skills from the standardized tests on a monthly basis. (T4:119) That is, they encouraged teachers to concentrate on specific reading, writing and mathematics skills each month. They would also review lesson plans to see if the learning objectives correlated with the skills to be targeted. (T4:120) However, in response to the ALJ’s question as to how she addressed Charge 3, *i.e.*, her failure to demonstrate consistent and effective leadership in establishing and maintaining an assessment program that measures individual and group achievement, respondent did not offer a clear and cogent response, but conceded that what she produced was “part of the program,” as it apparently was not completed. (T4:121-125) Respondent could not present evidence of formal, coordinated procedures for the utilization of teacher-made test data, district-made test data, student portfolio data and other sources of assessment in relation to student achievement, instructional activities and goals and objectives, as she testified she did not have access to her documents. (T4:189; Exhibit J-2)

61. Respondent testified that the teachers gave weekly tests, the results of which were used to make reteaching decisions. (T4:128, 129)

62. Respondent redesigned the groupings of students so that, similar to secondary school, students had different teachers for reading, writing, and math. (T4:131) They had five different teachers in five disciplines. (T4:132)

63. Respondent affirmed that attendance was reviewed daily. (T4:132)

64. Respondent said the school had developed both a mission statement and a broader vision statement, which she identified as a “dream” for the school. (T4:133) Although she prepared the vision statement, she could not recall what it was, but said it was very general. (T4:132) She did not prepare the mission statement, but noted that a set of shared values were part of the mission statement which was on bulletin boards throughout the school. (T4:134, 135)

65. Respondent testified that a uniform code of conduct for staff and students was developed at grade level meetings. (T4:135) The rules were presented on posters throughout the school. She affirmed that she and the vice principals monitored rooms on a daily basis to ensure that the posters were in place. (T4:137) Although Dr. Marinaro’s Summary of Formative Program Evaluation (Exhibit P-11) subsequent to his November 8, 1996 walk-through indicated that Mr. Howard, a seventh grade teacher, did not post the rules of behavioral management in his class, respondent could not recall whether this was true. (T4:177)

66. Respondent testified that the suspension of seven teachers during the 1996-97 from the Camden Middle School subsequent to an insurance fraud investigation negatively affected the morale of her teachers. (T4:143) In response to this morale problem, the school celebrated each teacher’s birthday in the building every month. (T4:148) In addition, she allowed the union president to come into the building and talk to the teachers. (T4:148, 149) Dr. Marinaro also met with the staff and secured the services of an Employee Assistance Program to assist with teacher morale in the building. (T4:220, 221)

67. Respondent felt strongly, according to her testimony, that if she was undergoing an improvement or corrective action period, she should not “be dumped with teachers that are questionable or unsatisfactory.” (T4:156) However, on cross-examination, she testified that, as of September or October of the 1996-97 school year, she had no problems with her teachers, save for one whom she had to closely monitor. (T4:193, 194) She further averred that, other than

some of the problems she addressed to Dr. Marinaro in her monthly reports, the school was running smoothly and there was no division among the faculty. (T4:194)

68. The ALJ repeatedly questioned respondent about the actions she took to demonstrate that she had addressed the inefficiencies in the notice which had been served upon her by the District. In response to the ALJ's direct and pointed questions, respondent spoke about educational philosophy, and, at times, presented anecdotal information. (See T4, exchanges beginning at page 37 regarding student discipline, page 98 regarding staff development, page 105 regarding sharing information with staff members from in-services opportunities, page 121 regarding student assessment, page 137 regarding postings with rules of behavioral management, and page 146 regarding school climate.) In any event, respondent often did *not* give direct answers to the ALJ's questions, nor did she appear to grasp the notion that she bore the responsibility to not only address the areas noted as inefficiencies, but to *demonstrate to her assessors that she was addressing those areas*. (See T4:106-110.) In one exchange, respondent's attorney interjected,

MS. OXFELD: --I--I think that that may have been part of the communication problem between Mrs. Brownlee and the assessors, is that they are paper people and she's not a paper person. And so that her response would be to say, yes. It's happening. If you come here, you will see it happening. But not to create a document that says this is ---

THE COURT: Okay.

MS OXFELD: ---where it happens, or how it happens, or when it happens. She knows it's happening.

THE COURT: All right. (T4:109, 110)

69. The District's witnesses were credible.

70. Respondent admitted to the ALJ that she does not so much dispute the fact that the District seeks to relieve her of her duties as principal, but rather that it seeks to dismiss her, rather than demote her to a vice principal or supervisory position. (T4:203, 204) She does not dispute that during the time that she was principal, she could have done a better job and did not. (T4:204)

71. But for the exceptions as noted in finding number 27 above, the documentary and testimonial record support the conclusion that respondent has not satisfactorily corrected the inefficiencies included in the Notice of Uncorrected Inefficiencies.

Finally, the Commissioner has carefully considered respondent's argument that, should the tenure charges against her be upheld, her employment in the District should not be terminated, but rather, she should be demoted, in recognition of her long history of service in the District and her asserted improvement in performance during the corrective action period. (Respondent's Exceptions at p. 17) However, such demotion is not an option to be ordered by the Commissioner; the sole question before him in this proceeding is whether the charges here proven warrant respondent's dismissal from her tenured position as principal or a reduction in her salary. In this instance, the Commissioner is more than satisfied that the charges as proven, which evince inefficiencies uncorrected even after the remediation period prescribed by law, fully warrant respondent's dismissal, notwithstanding her history of success in other capacities while employed in the District and her improvement in some respects during the course of the present proceedings. Inefficiency is one of the bases expressly provided by the Legislature for loss of tenured employment, and where, as here, it is clear that the inefficiencies proven are sufficiently substantial to render the charged party's continued presence in a particular position untenable in view of the District's obligations to its students, the Commissioner will not impose a lesser penalty. As to respondent being employed by the District in another capacity, the Commissioner concurs with the ALJ that, while the District could have transferred respondent to, or may elect to hire her for, a different position within her area of certification, it is under no legal obligation to do so, and the Commissioner cannot direct such result herein.

Accordingly, the initial decision of the ALJ is adopted, as modified herein. Respondent is dismissed from her position as a tenured principal as of the date of this decision.

This matter shall be referred to the State Board of Examiners pursuant to *N.J.A.C.* 6:11-3.6 for action against her certificate as it deems appropriate.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

April 16, 1998

³ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.