

**STATE OF NEW JERSEY  
COMMISSIONARE OF EDUCATION  
AGENCY DOKET NO. 235-8-14**

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**IN THE MATTER OF THE TENURE HEARING  
OF SANDRA BRIENZA,  
(RESPONDENT)**

**-AND-**

**AWARD AND OPINION**

**STATE OPERATED SCHOOL DISTRICT OF  
THE CITY OF NEWARK, N.J. COUNTY OF ESSEX  
(DISTRICT)**

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BEFORE: ERNEST WEISS, ARBITRATOR.

APPEARANCES: FOR THE RESPONDENT:

AILEEN O'DRISCOLL, ESQ.  
ZAZZALI, FAGELLA,  
NOVAK, KLEINBAUM &  
FRIEDMAN, P.C.

FOR THE DISTRICT:

TERESA L. MOORE, ESQ.  
RIKER, DANZIG, SCHERER,  
HYLAND, PERRETTI, LLP

### **POSITION OF RESPONDENT ON MOTION TO DISMISS**

Ms. Aileen O'Driscoll, Esq. argued in relevant part on behalf of Respondent, that the instant motion to dismiss the charge herein, against Ms. Brienza, who is a tenured elementary-education teacher in the Newark public schools since about 2008.

During the course of her tenure there she received distinguished and proficient annual ratings. Additionally, she taught summer school every year since she has been employed by the district and received similar ratings for her summer school work.

Ms. O'Driscoll further argued that the Board's charges of inefficiency by Ms. Brienza, cannot be sustained because it was unlawfully filed. She further argued that recently the Department of Education of New Jersey published an identical arbitration decision involving *Sandra Cheatham*, a teacher in the same District and available on the internet, the morning of October 20, 2014. The complete Arbitrator Bluth's Award was presented in evidence during the instant arguments of the parties herein with the claim that the issue of the respondent herein is nearly identical to the *Cheatham* case in terms of the legal arguments.

In addition, Counsel for respondent argued that the District could not possibly comply with regulations that did not exist until  $\frac{3}{4}$  of the 2012-13 school year and was not statutorily implemented until 2013-14 school year.

Also, the District repeatedly argued that the Memorandum of Agreement (MOA) with the NTU, provided additional merit compensation during the 2012-13 school year.

However, Ms. O'Driscoll insisted that tenure is not negotiable in the CBA with the NTU and cannot be included in the contractual MOA.

She also pointed out that In his March 2012 memo, Chief Talent Officer Mr. Peter Shulman himself announced to all the School Administrators in the State, of which Ms., Anderson, the NSP Superintendent is one, that 2013-14 would be the first year for full implementation of a new teacher evaluation system, and further that

"we have designated 2012-13 as a planning and capacity-building year During this time, districts must engage in one of two options: participate in a second cohort of our pilot program, or build capacity through a defined series of steps for implementing the new system in 2013-14"

( see O'Driscoll Certification dated October 30, 2014, Exhibit 3, p.1 Memorandum from Peter Shulman.)

The respondent also argued that the "District's ship has sailed." It also pointed out that the above FAQ from the Department of Education was removed from the Department website. It was available on line for several years and has now vanished.

For all the above reasons the Respondent requested that the motion to dismiss the charges herein be granted and that she be reinstated to her position with the NPS with full back pay and all other benefits and credits.

### **THE POSITION OF THE CITY OF NEWARK, (NPS)**

In its October 29, 2014, letter brief NPS argued in relevant part, that the recently decided arbitration award in the Tenure Charge of Sandra Cheatham, Agency Dkt. No. 226-8/14 should not be considered and followed herein.

In his October 16, 2014 award, Arbitrator Bluth granted a motion to dismiss her tenure charge of Sandra Cheatham for inefficiency. NPS also argued that his decision has no precedential value for the tenure case herein and I should decline to follow it.

NPS further argued that the *Cheatham* decision, if upheld, would give the poorly performing public school teachers a free ride for school year 2012-13. It repeatedly argued that the pilot took place in the school-year of 2011-12 not 2012-13.

It further insisted that if the *Cheatham* decision is followed it would result in no accountability for poor performance of NPS public school teachers, contrary to the explicit provision of TEACHNJ.

### DISCUSSION AND OPINION

On August 6, 2012 the Senate and General Assembly of the state of New Jersey created legislation "...to raise student achievement by improving instruction..." It created an Act with the short title to be known and may be cited as the "*Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) ACT.*"

I have extensive correspondence from both parties regarding the now four prior arbitration awards involving school teachers in the same district. I received copies of the awards in duplicate, which I carefully studied and considered.

The most recent award, was issued December 20, 2014, by Arbitrator David Gregory in the case of Lorraine Williams and the State Operated School District of the City of Newark Agency Dkt. No. 25-9/14.

In transmitting the award to me on December 22, 2014, Ms. Aileen O'Driscoll, Esq. argued convincingly in part, on behalf of respondent Sandra Brienza that, "this decision addresses precisely the same issues and reaches the same conclusions as the decisions rendered..." by Panel Arbitrators Klien, Simmilkjaer, and Arbitrator Bluth.

In considering the recent awards by the above distinguished panel members, I agree with Arbitrator Gregory where he correctly quotes that "*...the precedential value of a prior award between the parties is to be determined by the subsequent arbitrator*" Elkouri and Elkouri, *How Arbitration Works* (6<sup>th</sup> Edition) (at 598.)

The TEACHNJ pilot period was intended to prepare an acceptable evaluation rubric for the implementation of the new state wide evaluation system at the "beginning of the 2013-14 school year." as directed by the TEACHNJ Act of August 6, 2012. TEACHNJ obviously intended for 2012-13 to be a "preparation and practice" for the following school year.

*"d. Beginning no later than January 31, 2013, a board of education shall implement a pilot program to test and refine the evaluation rubric.*

*"e. Beginning with the 2013-14 school year, a board of education shall ensure implementation of the approved, adopted evaluation rubric for all educators..." (C.18A:6-123 d. e.)*

Prior to the above statutory *beginning*, a District Evaluation Advisory Committee was instructed to hold their first meeting by November 30, 2012. Also suggested to hold additionally monthly meetings to discuss challenges and opportunities. The 2012-13 school year was obviously intended to prepare for the TEACHNJ beginning.

In a March 28, 2012 letter, from Chief Talent Officer Peter Shulman, updated resources for 2012-13 school year as a "planning and capacity-building year" and prepare for the implementation of the new system in the 2013-14 school year. He further indicated that from January 2013 through August 2013, districts should test and refine implementation of the observation instruments and rubrics and prepare for full implementation in the 2013-14 school year. Also, he advised that "By June 2013, thoroughly train teachers on the teacher practice instruments;"

In view of the above evidence, there appears to be no question that the March 28, 2012, communication, from Chief Talent Officer Shulman to Chief School Administrators of New Jersey, indicates that the time in question herein, prior to school year 2013-14, the period prior to the "beginning", was a learning time and clearly premature to officially evaluate respondent Sandra Brienza, and therefore, I hereby grant her Motion to Dismiss the Tenure charges against her and I make the following Award.

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AWARD

The undersigned arbitrator having been randomly assigned pursuant to P.L. 2012 c.26, signed by Governor Christie on August 6, 2012, and was appointed on September 15, 2014, by M. Kathleen Duncan, Director of the Bureau of Controversies and Disputes, to hear and decide the above captioned tenure matter, AWARDS as follows:

**For the above stated reasons, the tenure charges against Respondent Sandra Brienza are hereby dismissed.**

**The District is herby directed to reinstate Respondent Sandra Brienza to her teaching position and make her whole with respect to salary and benefits.**



**ERNEST WEISS, ARBITRATOR.**

On this 30 day of December, 2014, before me came and appeared Ernest Weiss, to me known and known tom to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.

NOTARY PUBLIC OF NEW JERSEY  
COMM. EX. (EP) 11-11-2005