
In the Matter of Tenure Charge of Inefficiency of

Sandra Cheatham

Docket No. 226-8/14

-and-

School District of the City of Newark

BEFORE: STEPHEN M. BLUTH, ARBITRATOR

BACKGROUND

The Newark School District (District) preferred charges of inefficiency against Sandra Cheatham (Cheatham or Respondent). As a result it seeks the termination of her employment. Respondent Cheatham claims the charges against her are premature and must be dismissed.

POSITIONS OF THE PARTIES

The District contends it acted appropriately toward Respondent. It points out TEACHNJ was enacted on August 6, 2012 and went into effect at the beginning of the 2012-2013 school year. Further, it emphasizes, the Department's first set of regulations implementing TEACHNJ became effective on March 4, 2013 and required school districts to adopt district educator evaluation rubrics, procedures to train evaluators on the teaching practice evaluation instrument, establish a school improvement panel in each school and complete trainings on the teacher and principal practice instruments in the summer of 2013. Also, the District avers, the March 2013 regulations required school districts to adopt policies and procedures requiring the annual evaluation of all tenured staff members. However, those regulations did

not specify the number and type of evaluations to be conducted.

Moreover, TEACHNJ required public schools to develop evaluation rubrics and obtain approval of them from NJDOE by December 31, 2012. In order to comply with that mandate, the District developed an evaluation rubric as part of a performance evaluation to be implemented beginning with the 2012-13 school year. It also published a Guidebook to the introduction of that rubric and provided guidance on its implementation for use in the 2012-13 school year the District declares.

Further, the District stresses, it had already conducted a teacher evaluation "pilot" program with several other school districts during the 2011-12 school year. In that program teacher performance was not counted for purposes of tenure charges, the District relates. Also, it advises, teachers who were evaluated in this program received regular evaluations using the performance evaluation system then in effect. The District advises multiple "stakeholders" participated in this project, the goal of which was to develop a new teacher evaluation system for the District, which eventually developed a new program with the aim of developing a practice evaluation rubric and an

evaluation process, which became the District's new Framework for Effective Teaching, the District avers. This program was approved by the Department of Education, it reports. Shortly thereafter, the District declares, the Newark Teachers Union agreed to a provision that the District could implement a new evaluation system beginning in the 2012-13 school year, according to the District.

Additionally, the District relates, the Commissioner approved its teacher practice evaluation rubric for that year. Thus, the District began using it for that year. The District emphasizes, as well, prior to the new school year, the District provided extensive training to administrators, including material for the new rubrics. As a result, the District declares, all tenured teachers received at least one observation in that school year. The District also explains when the October 2013 regulations were issued it updated its Guidebook by making minor changes so as to conform to the new requirements.

Moreover, the District rejects Respondent's claim her 2012-2013 evaluation for purposes of the "inefficiency" tenure charge against her was invalid because it was not the product of a "pilot" program.

However, the District stresses, the "pilot" program was during the 2011-2012 school year. Thus the 2012-13 evaluation system was not a pilot program. It further rejects her claim a Department of Education memo precludes action against her because it stated the 2012-13 school evaluation would have no impact on tenure decisions. However, according to the District, that statement applied only to situations where there was a decision to grant or not grant tenure to a teacher, not whether it should count to matters of "inefficiency" ratings with regard to tenure decisions

Additionally, the District explains, in the fall of 2013 the State Board of Education adopted a second set of "Educator Effectiveness" regulations that required all tenured teachers be observed at least three times per school year and that at least one observation had to be unannounced. The other two could be announced or unannounced. Also, teachers with a corrective action plan (CAP) were to receive one additional observation that was to be unannounced. It also required the district to hold a pre-observation conference prior to the announced observation. The District reminds that TEACHNJ required all school districts to develop evaluation rubrics by January 31, 2013 at the latest. It

also required school districts to implement their evaluation rubrics by the beginning of the 2013-14, it emphasizes. Also, the District insists, state did not require districts to wait a year to implement a pilot program for 2012-13 if its rubrics were adopted earlier. The District maintains nothing in TEACHNJ or its regulations provides the evaluations adopted and approved in 2012-13 were not to be treated differently from those performed in 2013-14. Accordingly, the District insists, teacher evaluations for 2012-13 were valid and should be counted for all purposes including tenure charges.

With regard to the issue of teacher observations, the District rejects Respondent's contention that because both of her observations were unannounced and none were announced, the evaluation process did not conform to what was required. However, the District points out, the requirements for observations in 2012-13 were different from those of 2013-2014.

Moreover, the District relates, the TEACHNJ Act has no provision specifying the type and number of observations that were to be included. It emphasizes the requirement to perform at least one announced observation per year of each tenured teacher, preceded

by a pre-observation conference did not exist until October, well after the end of the 2012-13 year. Thus, it avers, the lack of the announced observation should have no impact on my decision in this matter.

Finally, the District contends, even if I were to conclude the requirements for inefficiency charges under Section 25 have not been met, such finding would not require dismissal of the charge against Respondent. It relates Section 25 provides for mandatory charges brought on the basis of two consecutive annual ratings of ineffective or partially ineffective. However, the District declares, even if those conditions have not been met, Section 8 of N.J.S.A. 18A:6-16 provides even if those specific conditions have not been met, dismissal is nonetheless warranted on the basis of inefficiency or any other grounds specified in the Statute. Thus, it concludes, should I determine the requirement for inefficiency tenure charges under Section 25 have not been met, I should not dismiss the charge. Rather, it concludes I should treat the matter as if it had been filed under Section 8 and the case should proceed to hearing. For the reasons delineated herein the Respondent's motion should be denied and the case proceed to hearing.

Respondent avers the charges against her were based solely on her 2012-13 and 2013-14 school years.

Additionally, she declares, during the 2012-13 year she received only two formal observations, both of which were unannounced and did not include a pre-observation conference.

Moreover, Respondent argues, pursuant to applicable statutory provisions as well as guidance from the Office of the Commissioner, the 2012-13 year served only as a "pilot" program for the purpose of allowing the District to develop, enhance and refine its observation and evaluation forms, procedures, training, guidance, and rubrics. Respondent stresses those statutory and regulatory provisions allowing for the removal of a tenured teacher for ineffective or partially ineffective performance in two consecutive years were not intended to, and, as a matter of law, did not go into effect until the commencement of the 2013-14 school year. Accordingly, Respondent maintains the 2012-13 rating cannot serve as a basis for the charges against her. She emphasizes the regulations include provisions governing the content of evaluation rubrics and components, procedures on rubrics approved by the Commissioner, and procedures concerning the timing, form,

nature and number of evaluations and observations. Further, she explains, the utilization of the preliminary evaluation rubrics was merely a "pilot program" to test and refine those rubrics. Cheatham also refers to N.J.S.A. 18A: 6-123 that states, "beginning with the 2013-14 school year a board of education shall ensure implementation of the approved, adopted evaluation for all educators in all elementary, middle and high schools in the district." She emphasizes the teacher evaluation and observation guidelines were not established by the Commissioner until October 2013, after the school year had already begun.

Also, Respondent relates, the District did not have a School Improvement Panel (SIP) at her school during the 2012-2013 school year and met for the first time in March 2014. She reports New Jersey law required each school within a district to have a SIP that conducts evaluations and oversees the mentoring program. Respondent refers to N.J.S.A. 18A:6-120 that provides, in part, "the panel shall oversee the mentoring of teachers and conduct evaluations of teachers, including an annual summative evaluation. . . ." Respondent asks how an SIP can be responsible for the conduct of evaluations and implementation of TEACHNJ during the

2012-13 school year when the Panel did not exist until March 2014? She stresses the evaluation and observation was intended to bring both teachers and evaluators up-to-speed on the new system and its requirements during the 2012-13 school year with formal implementation at the beginning of the 2013-14 school year. The District's failure and inability to meet the standards of the above-mentioned regulations and required standards, renders judgment on teachers' performance for 2012-13 through tenure removal proceedings inappropriate and unlawful, she insists. For the reasons delineated herein, Respondent asks the charges of inefficiency be dismissed and she be restored to full employment and be made whole by the District.

DISCUSSION AND FINDINGS

I have carefully reviewed the evidence in this matter. Based my examination, I conclude the District erred when it discharged Respondent at the end of 2013-14 school year. I reach this conclusion for several reasons. First, I reject the District's claim its participation in the 2011-2012 and 2012-13 "Pilot" programs exempts it from the applicable law. I so find for several reasons. First, the evaluations in both years preceded the passage of TEACHNJ, which legislation

was passed in August 2012 but was not implemented until October 2013. The District produced no evidence the Act exempted it, or any other district from compliance with TEACHNJ. Simply put, the passage of TEACHNJ superseded any evaluation procedures that had been in place prior to its enactment. Thus, in my view, the "clock" began with the 2013-14 school year.

Additionally, I note, the Department of Education's first set of regulations implementing this new program were to be effective March 14, 2013. How, therefore, can the District claim their program was in compliance with the Department's regulations when the 2012-13 school year began? The clear answer is they could not because the District had no way of knowing what the effects of TEACHNJ would be until March 2013. By that time, approximately seventy percent of the school year had elapsed. This undermines the District's claim its evaluation program, which was implemented in September 2012 was the same as the plan outlined by the Department of Education in March 2013.

Moreover, I note, the rules in this matter are clear. In this, I observe, the law provides school districts had to implement a pilot program to test and refine the evaluation rubric by January 31, 2013. This,

of course, was already in the middle of the 2012-13 school year. The language of this requirement convinces me the 2012-13 school year was essentially an "experimental" one that would produce an evaluation system for 2013-14. Also, I note, the regulations intended to implement the statute were not implemented until October 2013. Therefore, it is impossible the District could know what the regulations of the new law required. Thus, it had no way of knowing whether it was in compliance with those regulations for 2012-13 because they did not exist.

Also, all documents submitted by Respondent support her claim 2012-13 cannot count toward decisions. For example, the DOE's "Guide to the TEACHNJ Act" contains a statement in its question and answer section as to whether 2012-13 ratings would count toward tenure decisions. The answer clearly stated no evaluation in the 2012-13 school year would impact tenure decisions; 2013-14 is the first year in which the statewide system will be in place and the first year the summative rating clock would start.

Moreover, I reject the District's position its evaluation system conformed with that of TEACHNJ. The District's position is that different regulatory

requirements were in effect for in 2012-13 and 2013 with respect to the required number of observations and whether pre-observation conferences were required. This demonstrates there were significant differences between its self-developed program for 2012-13 and that of the statewide plan for the 2013-14 school year. If the criteria for both years were different, it demonstrates the District's 2012-13 plan and the evaluation that was implemented for 2013-14 were not the same.

As for the District's contention the "tenure law" applies only to the matter of deciding whether or not to grant tenure, I find this argument holds no water at all. The term "tenure decisions" is not limited to the granting of tenure, I find. An examination of the "Guide to the TEACHNJ Act" contains a topic heading called "Tenure Decisions" wherein the Department of Education included topics such as "Tenure Acquisition" and "Tenure Revocation." Thus, it is clear the District is incorrect when it states the rules refer only to a teacher acquiring tenure.

Finally, I reject the District's contention that if a teacher is exonerated under Section 25, that does not preclude a similar procedure under Section 8 by which a teacher may be dismissed under the conditions that are

delineated under that Section. The District insists if I find Respondent not culpable of the charges against her in Section 25, I should treat the charges as if they had been filed under Section 8. I reject this notion completely. The fact is the District chose to file under Section 25. It now asks if it loses in that forum I should convert it to a Section 8 matter. To acquiesce to that request would give the District the proverbial "two bites at the apple." The District made a choice. That choice was Section 25. The fact it has been unsuccessful in achieving its goal does not give it a sound basis to ask for a "do-over." For all the reasons delineated herein, I find the District erred when it discharged Respondent when it used 2012-13 as one of the two evaluation two years. Accordingly, I determine, the appropriate remedy is reinstatement with full back pay and benefits. It is so ordered.

AWARD

The District erred when it discharged Respondent.
The appropriate remedy is reinstatement with full back
pay and benefits.

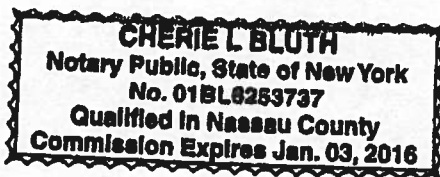
10/16/14 Stephen M. Bluth
Stephen M. Bluth, Arbitrator

State of New York)

County of Nassau)SS:
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On this, the 16 day of October, 2014, before me a
notary public, the undersigned officer, personally
appeared Stephen M Bluth, known to me (or satisfactorily
proven) to be the person whose name is subscribed to the within
instrument, and acknowledged that he executed the same for the
purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.



Cherie L. Bluth
Notary Public