

**STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION  
BUREAU OF CONTROVERSIES AND DISPUTES**

In the Matter of Tenure Hearing of Leon Mashore:

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**THE STATE OPERATED SCHOOL DISTRICT  
OF THE CITY OF CAMDEN**

Case No. 303-10/14

and

**OPINION  
and AWARD**

**LEON MASHORE**

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Before:

Edmund Gerber, Arbitrator

Appearances:

For the Camden City School District:

Louis R. Lessig, Esq.

Benjamin S. Teris, Esq.

Brown & Connery, LLP

For the Respondent:

Robert M. Schwartz, Esq.

Andrew L. Schwartz, Esq.

Schwartz Law Group, LLC

This matter was initially referred to me on November 7, 2015. On November 10, 2104 the Respondent Mashore filed a Motion to Dismiss. The motion was consolidated with three other matters and referred to Arbitrator Walt DeTreux. The consolidated motion was denied in an Opinion and Award of Arbitrator DeTreux, December 23, 2014 (Dkt no. 505/14). The

procedural history of this matter is set forth in that award; it is attached as Appendix A and is incorporated herein.

The matter was then referred back to me and arbitration hearings took place on June 4, 9 and 10, 2015. On July 18, 2015, both parties submitted briefs. In addition, the Respondent submitted the arbitration award of Arbitrator Scott Buchheitt, The State Operated School District and the City of Camden and Gay Brown, Agency Dkt. # 300-10/14 to me for my consideration and on July 20, 2015, the Petitioner, Camden City School District, filed a letter response urging that the Buchheitt award be disregarded by me.

### **FACTS**

The Respondent, Leon Mashore, is a tenured Vice Principal employed by the Petitioner. His employment in the Camden School District began in September of 1992 as a seventh grade math teacher and in September of 1997 he became a Vice Principal assigned to Veterans Memorial Middle School. He remained there as a Vice Principal until August 1, 2010 when the Respondent was reassigned as a Vice Principal of the Hatch Middle School. He served as Vice Principal there through the 2010-2011 school year. In August 1, 2011, the Respondent was reassigned as Vice Principal of the Yorkship Elementary School for the upcoming school year, but ten days later he was reassigned to a Vice Principal position at the H.B. Wilson Family School and remained there for the duration of the 2011-2012 school year. Respondent was again transferred to serve as Vice Principal of Cream Elementary School for the 2012-2013 school year. In July of 2013, Respondent was once again transferred and was assigned to the Davis Elementary School and served as Vice Principal for the 2013-2014 school term effective August 2, 2013.

Prior to the Respondent's assignment to the Davis Elementary School, the State of New Jersey, pursuant to the State Intervention Statute, N.J.S.A. 18A:7A-45, assumed control of the Camden City School District effective June 25, 2013. Immediately prior to the State's assumption of control of the

school district, Peggy Nicolosi was appointed as the Interim Superintendent of Schools.

Beginning August 19 2013, the District conducted a convocation of principals and vice principals and on August 21, 2013, the District conducted a training session at which the Respondent was present. At this session, new evaluation rubrics used to evaluate teachers, principals and vice principals were discussed. The District presenters distributed a document describing the framework for the evaluation of principals and vice principals titled, "Attachment 1: Vice Principal Evaluation and Support in Camden City Schools 2013-2014" (Attachment 1). The document explained the new evaluation system that was to be used to evaluate principals and vice principals. It states in pertinent part:

At the end of the school year, the Vice Principal's evaluator will review data collected during the course of the observations. The following are minimum requirements:

Additional observations or walkthroughs may occur at any time.

- All vice principals are required to have at least three observations a year;
- Vice principals on corrective actions plans receive additional support and must have at least one additional observation per year;

The document also states that:

Any principal or vice principal who is rated ineffective or partially effective on the evaluation will receive additional support through a CAP (Correction Action Plan) with targeted areas of improvement and professional development for the subsequent year. Vice Principals identified as struggling at any time may be placed on a CAP. The CAP will include timelines for corrective plan and clearly delineate responsibilities of the vice principal versus the district in implementing the plan.

Further, under the heading "Summative Evaluation," Attachment 1 provides that all vice principals will receive individual professional development plans or corrective plans based upon their ratings.

Respondent testified that the presenters emphasized that if a vice principal was rated partially effective or ineffective at the end of three evaluations, he would receive a CAP.

The new evaluation instrument was approved by the Department of Education through its request for qualification process. The rubric for the evaluations had four domains: instructional leadership, internal leadership, organizational leadership and effectiveness of teacher evaluations. Each domain had sub-domains. For each sub-domain, a vice principal received one of four possible scores (ineffective, partially effective, effective or highly effective) followed by narratives entitled Evidence and Recommendations. The ratings for each sub-domain, which earn scores of 1 for ineffective to 4 for highly effective, had an overall score for each domain and ultimately an overall score for the entire evaluation. At the conclusion of the evaluation form was a section entitled Evaluator's Summary Comments.

Two former school administrators were assigned to evaluate the Respondent, Dr. Victor Gilson and Mr. Cleve Bryan. Both men had advanced educational degrees and had served as superintendents of school boards. Both men received training on how to conduct the evaluations and the specific evaluation rubric used by the District.

The Respondent's first evaluation was conducted by Gilson on January 14, 2014. Respondent's overall rating was 1.51 - Ineffective. Gilson had a post-evaluation conference with the Respondent at which Gilson stressed that the Respondent should focus his efforts on completing teacher evaluations with specific recommendations as to data utilization and the District's walkthrough form.

The Respondent's second evaluation was also conducted by Gilson and occurred on March 24, 2014. Respondent received a score of 2.24 - Partially Effective. The evaluation included summary comments as to how Respondent could be more effective and Gilson had a post-evaluation

conference with Respondent in which Gilson gave advice to the respondent as to how he could be more effective.

The Respondent's third evaluation was conducted by Bryan on June 12, 2014. The Respondent received a score of 2.36 - Partially Effective. Bryan and the Respondent had a post-evaluation conference on June 12, 2014 and a summative evaluation conference on June 24, 2014 in which the scores for the three evaluations were reviewed and both Dr. Gilson and Respondent signed the summative evaluation.

Although the Respondent was never evaluated higher than partially effective he never received a Corrective Action Plan or a fourth evaluation as per Attachment 1.

Nicolosi testified that the recommendations in the Respondent's three evaluations contained substantive advice as to how to become more effective and were effectively a CAP. However, Bryan testified that, at the evaluators meetings with the District's administrators, the evaluators were told that they could include recommendations for corrective action in their evaluations but were not to prepare Corrective Action Plans (CAPs). Although an ineffective or partially effective evaluation would warrant a CAP (T2, P419 L1-11) someone else was going to do the CAP (T2, P 417, L1-10 & T2, P 437, L1-13).

On July 31, 2014, the District served the Respondent with tenure charges for inefficiency pursuant to the State Intervention Law. On August 27, 2014, the Respondent submitted an answer to the charge. On October 21, 2014, the District certified the charges to the Commissioner of Education and on October 27, 2014, the Respondent submitted an answer to the certified charges.

## **ARGUMENTS**

### **Position of the Petitioner**

**The Instrument and Process Used to Evaluate Respondent Produced Fair, Unbiased and Reliable Results.** The instrument used to evaluate principals and vice principals in the school district was fair, unbiased,

reliable and had the tendency to produce actionable feedback. The Respondent offered no credible evidence to discredit the instrument and process used to evaluate vice principals during the 2013-2014 school year.

The inefficiency charges against Respondent were timely filed under the State Intervention Law. The assessment cycle did not conclude until the charges were certified to the Commissioner on October 8, 2014, 16 months after the cycle began on June 25, 2013.

N.J.S.A. 18A:7A-45(c) only requires a State District Superintendent to wait until after a 12 month assessment cycle to dismiss a tenured administrator for inefficiency. Pursuant to the unchallenged testimony of Dr. Fisicaro, in June 2013, immediately around the time of the State intervention, the school graded the office of evaluation which was a unit designated to assess principals and vice principals in the District. Accordingly, the Camden Office of Evaluation was the assessment unit referenced in N.J.S.A. 18A:7A-45(b). The creation of that assessment unit marked the commencement of the assessment cycle for principals and vice principals in the school district.

The State Operated School District evaluated the Respondent three times throughout the school year. Not until after those three evaluations as well as a summative evaluation did the State District Superintendent serve Respondent with inefficiency charges on July 21, 2014. The assessment cycle did not conclude until the State District Superintendent certified the charges to the Commissioner on October 13, 2014, 16 months after the commencement of the assessment cycle. Accepting Respondent's argument to the contrary regarding the extent of the assessment cycle would negate the intent of the State Intervention Law. The continuity of instruction for students would have been significantly disrupted if the school district had been forced to wait until sometime in the middle of the 2014-2015 school year to file inefficiency charges against the Respondent. The District would have been forced to keep an inefficient vice principal in a school for part of the school year and then find a new vice principal in the middle of the school year. The framers of the State Intervention Law could not have intended for such an absurdly harsh and detrimental interpretation of the time

requirements. There are no regulations presently in effect guiding the interpretation of the State Intervention Law, nor is there current pertinent case law that can be used as guidance. The only reasonable interpretation is that the assessment cycle commenced upon creation of the Camden Office of Evaluation and concluded upon certification of the charges against Respondent to the Commissioner of Education.

A formal corrective action plan was not required. The State Intervention statute is silent on the issue of Corrective Action Plans. Moreover, although the TEACHNJ procedural evaluation requirements do not apply to this matter, formal corrective Action Plans under TEACHNJ are required only for the staff member who will be employed the following school year. See N.J.A.C. 2A:10-2.5(a). An individual cannot be placed on a Corrective Action Plan for the next year if he is dismissed under the State Intervention Statute. In regards to the document entitled Vice Principal Evaluation and Support in Camden City Public Schools 2013-2014 (Attachment 1) which was distributed to the Respondent and other vice principals, it makes no mention that a formal Corrective Action Plan would be implemented during the 2013-2014 school year. The section entitled Corrective Action Plan specifically states:

Any principal or vice principal who is rated ineffective or partially effective on the evaluation will receive additional support through a CAP with targeted areas for improvement and professional development for the subsequent year. VPs identified as struggling at any time may be placed on a CAP. The CAP will include timelines for corrective action and clearly delineate responsibilities of the VP versus the District in implementing the plan. If a Vice Principal is dismissed pursuant to the applicable State Intervention Law.

As Ms. Nicolosi indicated, obviously the Respondent could not be placed on a CAP for the subsequent year. Notwithstanding the foregoing, the recommendations contained in Respondent's evaluations equate anything that would have been in a formal Corrective Action Plan. Thus, a formal CAP would have been superfluous.

Respondent was provided with multiple recommendations which if implemented would have placed him in the effective or highly effective range by the time of his third evaluation. He simply chose to ignore them. The inefficiency charges against Respondent must be sustained as the school district has proven he is both unwilling and unable of being an effective vice principal. The law requires prompt removal of ineffective principals and vice principals. One of the goals of the State Intervention Statue was to allow the State District Superintendent to remove ineffective administrators and supervisors early in the process of rebuilding and revitalizing the failing school district. Respondent failed woefully in all categories of an effective vice principal. Respondent's inability and lack of effort as a vice principal were apparent from the start. Respondent's inefficiency warrants termination which is the only appropriate remedy. The State Intervention Statue provides that the State District Superintendent may dismiss any tenured building principal or vice principal for inefficiency, incapacity, unbecoming conduct or other just cause. N.J.S.A. 18A:7A-45(c). The policy behind the statue is to allow the efficient removal of incapable administrators to reform a failing school district. It does not contemplate any penalty short of dismissal.

Here, the Respondent knew or should have known the expectations for the 2013-2014 school year and failure to meet those expectations could result in termination. He was notified early in the process that he needed to do more to support teachers and implement data driven instruction but failed to do so. The Respondent has been a Vice Principal since 1997. At this point in his career, there is no reason he should be learning on the job. It is unacceptable to allow a barely partially effective vice principal to hold a school back from implementing the high level instructional practices the students of Camden so desperately need. A change in leadership is necessary. Respondent must be dismissed.

### **Respondent's Argument**

The Petitioner failed to implement a CAP as required by its own process and by TEACH NJ and its implementing regulations. Arbitrator DeTreuX set out the legal framework under which this matter must be



examined in his decision on the consolidated motions to dismiss. Arbitrator DeTreux concluded that the intervention statute N.J.S.A. 18A:7A-45 and TEACHNJ N.J.S.A. 18A:6-117, et. seq. both apply. They must be read in concert. If this were not a State Operated School District, under TEACHNJ the tenure dismissal proceedings could only have occurred upon the completion of an evaluation cycle encompassing two full school years. However, because the Petitioner is a State Operated School District, Arbitrator DeTreux concluded that tenure dismissal may occur after the completion of an evaluation cycle of not less than twelve months prior to the filing of any dismissal action on the grounds of inefficiency. As determined by Arbitrator DeTreux, the criteria referenced in the Intervention Statute are those found in TEACHNJ.

A former regulation in N.J.A.C. 6:7-1.1 which authorized a state District Superintendent to establish an assessment unit which shall conduct onsite evaluations. The regulation stated that members of the assessment unit were to carry out no less than three evaluations within an assessment cycle of not less than twelve months. The Respondent argues that the assessment unit is in place only when the assessors are in place as held in State Operated School District of the City of Newark v. Brownlee, 1998 WL 665, 967 decided January 7, 1998 OAL Dkt. # EDU3634-97.

The Respondent cites the language of the handout given to the Respondent in the summer of 2013 entitled Attachment 1: Vice Principal and Support in Camden City Public Schools, 2013-2014. The document expressly states that a corrective Action Plan (CAP) will be given to any principal or vice principal who is rated ineffective or partially effective and the CAP will include timelines for corrective action and clearly delineate responsibilities of the vice principal versus the district in implementing the plan. It further provides that vice principals or principals identified as struggling at any time may be placed on a CAP. The last paragraph of the document states: "the State District Superintendent, after completion of an evaluation period of not less than 12 months may dismiss any tenured principal or assistant principal for inefficiency, incapacity, unbecoming conduct or other just cause as defined by the criteria for principal and vice principal performance." The Petitioner has offered no explanation as to why

this last provision obviates the rest of the document which is what the Petitioner has contended. It has not offered any explanation as to why the corrective action component of Attachment 1 does not apply; why the requirement that principals and vice principals who received less than satisfactory evaluations not be given additional support as set forth in Attachment 1.

The Petitioner seeks to rewrite the history of the document. It wants to ignore the history of its own people who insist that the State take over authored the document with the purpose of advising principals and vice principals about the evaluation process during the State takeover. If the rest of the document is inapplicable as the Petitioner asserts, why was it distributed to the principals and vice principals at the completion of explaining the new evaluation process for the 2013-2014 school year, the first year of the takeover? Why not state clearly and unequivocally that neither the CAP, nor professional development on rubrics, nor additional evaluations matter?

The process that the Petitioner set out for itself in Attachment 1 comports with the process in TEACHNJ N.J.S.A. 18A:6-128. Part of TEACHNJ, speaks to the need to provide professional development, as well as corrective action plans, both of which are intended to foster better student achievement through better teaching practices. Subsection (b) of the statute provides that additional professional development is to be offered to any teaching staff member who "fails ... to meet the performance standards established by the Board, as documented in the teaching staff member's annual summative evaluation." The additional professional development is "designed to correct the needs identified in the annual summative evaluation." N.J.S.A. 18A:6-128(b). The statute mandates that when an employee is rated ineffective or partially effective, a corrective action plan be provided that includes "timelines for corrective action and responsibilities of the teaching staff member and the school district for implementation of the plan." N.J.S.A. 18A:6-128(b). N.J.A.C. 6A:10-2.5, part of the TEACHNJ regulations, also addresses the need for a CAP for teaching staff members rated ineffective or partially effective on their annual summative evaluation. The regulation states that a CAP shall be developed jointly by the teaching

staff member and his or her supervisor. The CAP can be implemented at any time, even after one evaluation.

The tenure charges are procedurally defective requiring dismissal. It is clear that for a teaching staff member to achieve tenure, he or she must meet the precise conditions set forth in the statute. If the precise conditions of the statute have to be met to achieve tenure, it follows that the same requirements must be met to remove tenure.

The charges must be dismissed because the Petitioner did not provide Respondent with a CAP or an additional evaluation or additional professional development or support as was required under its own framework of the evaluation process as set forth in Exhibit R-11.

Both Ms. Nicolosi and Dr. Gilson testified that the recommendations listed in the evaluations constituted the CAP. However, that argument does not comply with the requirements of Exhibit R-11, nor does it comply with N.J.S.A. 18A:6-128 or the regulations found in N.J.A.C. 6A:10-2.5. The burden is upon the District to provide a CAP. See The Tenure Hearing of La Rhonda Ragland and the State Operated School District of the City of Newark, Agency Dkt. # 285-9/14, February 2, 2013.

The Petitioner failed to provide an assessment of not less than 12 months before it filed the within charges.

N.J.S.A. 18A:7A-45 states in part that:

Upon appointment, the State district superintendent may establish an assessment unit to conduct on-site evaluations of each building principal and vice-principal in accordance with the criteria established by the commissioner and render evaluation reports to the State district superintendent. No less than three evaluations shall be performed for each building principal and vice principal within 18 months following the establishment of the school district under full state intervention.

And 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 ... N.J.S.A. 18A:7A-45

The statute provides State operated school districts up to 6 months from State takeover to establish an assessment unit comprised of assessment evaluators over an assessment cycle of not less than 12 months prior to the filing of tenure charges for inefficiency against a principal or vice principal. In State Operated School District of the City of Newark v. Brownlee, supra, the administrative law judge held that if an assessment unit was not in place for a minimum of twelve months, the statutory requirement could not be fulfilled. It was specifically held that the appointment of the first assessor evaluator triggered the start of the twelve month cycle.

Respondent argues that the State takeover occurred on June 25, 2013 but the district superintendent was not appointed until August 21, 2013 and the District did not hire Dr. Gilson, Respondent's lead and primary evaluator, until December 2013. The Respondent first was notified by an email on December 5, 2013 that Dr. Gilson would be his evaluator. An evaluation did not take place until January 14, 2014. The District served the Respondent with tenure charges of inefficiency and placed him on suspension on July 31, 2014. The District certified the tenure charges for inefficiency on October 9, 2014. Even assuming *arguendo* that the assessment cycle completed on the date that the District certified the charges, October 9, 2014, the District still did not provide the Respondent an assessment cycle of not less than twelve months. That cycle could not have begun until Dr. Gilson, his lead and primary evaluator was hired which did not occur until December 2013. Evening assuming the assessment cycle began with the hiring of Dr. Bryan. That hire did not occur until November 2013, so the District would still be out of compliance. Accordingly, the charges must be dismissed.

## DISCUSSION

Although the Petitioner argues that since the District is subject to the state intervention statute, N.J.S.A. 18A:7A-45, the procedural requirements

of TEACHNJ do not apply in this matter, Arbitrator DeTreuX ruled that the intervention statute 18A:7A-45 and TEACHNJ 18A:6-117, et. seq. both apply. It is the law of the case that they must be read in concert. Significantly, the State intervention statute makes no mention of procedures for evaluations but N.J.S.A.18A:6-17.2 which defines my authority as arbitrator makes specific reference to Corrective Action Plans.

N.J.S.A.18A:6-17.2. "Considerations for arbitrator in rendering a decision" provides in pertinent part:

23. a. In the event that the matter before the arbitrator pursuant to section 22 of this act is employee inefficiency pursuant to section 25 of this act, in rendering a decision the arbitrator shall only consider whether or not:

(1) the employee's evaluation failed to adhere to the evaluation process, including but not limited to providing a corrective action plan

(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 paragraphs (1) through (4) are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.

No distinction is made in 18A:6-17.2,23. a(1) as to whether the employee is in a state administered school district. By the statute's plain language, a district's failure to provide a CAP is a failure to adhere to the evaluation process and may be grounds to deny a charge of inefficiency.

A CAP was never provided to the respondent. Although Nicolosi testified that the recommendations and comments included in the Respondents three evaluations effectively constituted a CAP, the District's own evaluator, Cleve Bryan testified that the evaluators were told not to

prepare CAPs. Someone other than the evaluators were going to do CAPs for those vice principals who failed to attain an effective rating. The comments and recommendation contained in the evaluations were only to be used to help construct a CAP.

Further, the Board promulgated Attachment 1 which states several times that vice-principals who were rated as less than effective would be given a CAP and further, if necessary, those employees would be evaluated a fourth time. The Respondent was never afforded a fourth evaluation.

In the State's apparent haste to assume control of the school district, Attachment 1 was prepared with several inconsistencies; it drew from portions of Title 18 and the Department of Education's regulation which contemplate a two year cycle in which to bring tenure charges against vice principals, even though, as a State controlled District, the evaluation period is a twelve month cycle. It is evident that the District's own administrators did not understand what procedural rights are enjoyed by vice principals and what is required of administrators.

By both the terms of Section a (1) and the failure of the District to follow its own published procedures, the Petitioner failed to adhere to the evaluation process within the meaning of N.J.S.A. 18A:6-17.2. Section 23, a (1). I must therefore determine if this failure, "materially affected the outcome of the evaluation" as per N.J.S.A. 18A:6-17.2. Section 23, b.

I don't question the findings of the District's evaluators that the Respondent was not an efficient administrator, but I cannot say that, even if the respondent would have been provided with a CAP, such assistance would not have materially affected his performance to the extent that he would have been rated effective. Looking at his evaluations during the 2013,-2014 school year, the Respondent went from a ratings of 1.51 (ineffective) on January 14, 2014 to 2.36 (partially effective) on June 12, 2014, five months later. A score above 2.70 would have given the respondent an overall "effective" evaluation. The responded made demonstrable improvement in his performance during the evaluation period, so granting him additional guidance through a CAP might have enabled him to

sufficiently improve his performance to achieve an effective rating, but it is impossible to say with certainty. Nevertheless, the burden is upon the District to demonstrate that full adherence to the evaluation process would not have materially affected the outcome of the Respondent's final evaluation; the Petitioner failed to do so.

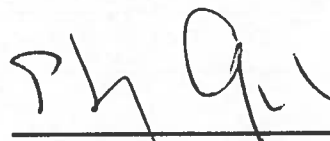
See also, The Matter of the State Operated School District and the City of Camden and Gay Brown, Agency Dkt. # 300-10/14, Arbitrator Scott Buchheitt failed to sustain tenure charges and found that this same Petitioner's failure to adhere to its own evaluation and support system (as set forth in Attachment 1), prior to bringing tenure charges against Gay Brown was arbitrary and capricious.

It is also noted that, as argued by the Respondent, the strict accountability standards that are required of teachers, must be reciprocal. The District cannot promulgate rules and procedures and then simply choose to ignore them. Such action is arbitrary and capricious. There was clear confusion among the administrative staff as to the procedures for evaluations and the burden is upon the Employer to follow its own promulgated plan.

Based upon all of the foregoing, the Petitioner failed to prove its case. I will dismiss the tenure charges against the Respondent. I will also order that he be reinstated with all back pay and emoluments owed.<sup>1</sup>

### **AWARD**

The tenure charges against the Respondent are dismissed. He will be reinstated with all back pay and emoluments owed.



Edmund Gerber, Arbitrator  
August 4, 2015

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<sup>1</sup> Having found that the Petitioner failed to prove its case, it is unnecessary to rule upon the balance of the issues raised by the parties.

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

***In the Matter of the Tenure Hearings of:***

**LEON MASHORE, EDWARD BROWN,  
GAY S. BROWN, BRIAN MEDLEY,  
STATE OPERATED SCHOOL DISTRICT  
OF THE CITY OF CAMDEN**

**Agency Docket #303-10/14;  
290-9/14; 300-10/14;  
291-9/14**

**Walt De Treux, Esq., Arbitrator**

***Decision Date: 12/23/14***

**Appearances:** For Respondents Mashore, E. Brown, G. Brown – Robert M. Schwartz, Esq.; Andrew W. Schwartz, Esq., *SCHWARTZ LAW GROUP LLC*;  
For Respondent Medley – Wayne Oppito, Esq., *NJ PRINCIPALS AND SUPERVISORS ASSOCIATION*  
For Petitioner School District – Louis R. Lessig, Esq.; Benjamin S. Teris, Esq.; Lauren E. Tedesco, Esq., *BROWN & CONNERY, LLP*

**Introduction and Statement of Relevant Facts**

On June 25, 2013, the State of New Jersey assumed operation of the Camden City School District pursuant to the State Intervention Statute, N.J.S.A. 18A:7A-45. As part of the takeover, the State District Superintendent directed an evaluation of each building principal and vice-principal during the 2013-14 school year. The State-appointed officials employed an evaluation instrument, approved by the New Jersey Commissioner of Education, that was intended to comply with the Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ") evaluation criteria, N.J.S.A. 18A:6-123, and its related regulations, N.J.A.C. 6A:10-1.1 et seq.



The principals and vice-principals were evaluated in four domains – instructional leadership, cultural leadership, organizational leadership; and effectiveness of teacher evaluation. In each area, the administrators were scored “ineffective,” “partially effective,” “effective,” or “highly effective.” The ratings earned a score of 1 (“ineffective”) to 4 (“highly effective”). The scores were averaged for a total score on the 1 to 4 scale with a corresponding rating.

During the 2013-14 school year, principals and vice-principals in the Camden City School District were evaluated three times. Respondents Mashore, E. Brown, G. Brown, and Medley received ratings of “ineffective” or “partially effective.” After the conclusion of the school year, the State District Superintendent brought tenure charges against Respondents, seeking their removal for inefficiency. The Commissioner of Education found that the charges, if proven, are sufficient to warrant dismissal and referred the case of each Respondent to an Arbitrator for a tenure hearing.<sup>1</sup>

On November 7, 2014, prior to receipt of the Commissioner’s assignment of the Mashore case to Arbitrator Edmund Gerber, Counsel for Respondent Mashore filed a Motion To Dismiss, arguing that the tenure charges “were defective and premature in that such charges were not based on a two-year evaluative cycle pursuant to N.J.S.A. 18A:6-17.3 and were not preceded by the issuance of a corrective action plan as required by N.J.A.C. 6A:10-2.5.” In short, Respondent

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<sup>1</sup> The tenure case of Brian Medley was referred to Arbitrator Joseph Licata; the case of Edward Brown to Arbitrator James Mastriani; the case of Leon Mashore to Arbitrator Edmund Gerber, and the case of Gay Brown to Arbitrator Walt De Treux.

asserted that the District did not comply with the legal requirements of TEACHNJ regarding evaluations.

The Commissioner's referral of the Mashore case to Arbitrator Gerber overlapped Respondent Mashore's motion. Counsel for Respondents Medley, E. Brown, and G. Brown indicated their intention to file similar motions in each Respondent's case, leading to several discussions between Counsel for Respondents and Petitioner, the four assigned Arbitrators, and the Commissioner's office.

For purposes of judicial economy and efficiency and to achieve uniformity regarding the resolution of what would be identical motions in four separate cases, Respondents and Petitioner agreed to treat the Mashore Motion To Dismiss as a consolidated motion, applicable to each of the four tenure cases, to be decided by one Arbitrator. The parties executed a consent order encompassing that agreement and submitted it to the Arbitrators and the Department of Education's Division of Disputes and Controversies.

The parties submitted written briefs in support and opposition to the Motion To Dismiss. Oral argument was heard on the motion on December 2, 2014, and Respondents filed a reply brief and Petitioner a sur-reply brief soon thereafter. The Motion was then submitted to the Arbitrator for a decision.

## **Issue**

*Should Respondent's Motion to Dismiss the tenure charges be granted or denied?*

## **Analysis and Decision**

### **Procedural Objection**

In its Brief In Opposition to Respondents' Motion To Dismiss, Petitioner raised several procedural objections. First, it argues that the motion is untimely in that the Mashore motion was not "filed with the time allotted for the filing of an Answer." (citing N.J.A.C. 6A:3-5.3(a)(1)) Second, it contends that a motion to dismiss cannot be filed after the Commissioner has referred the charges to an Arbitrator. Finally, it asserts that the American Arbitration Association Labor Arbitration Rules do not allow for submission and consideration of dispositive motions.

The four cases present a novel legal argument and complex procedural concerns in that each of the four cases had been referred to a different Arbitrator. As identical motions would have been filed in each case, there was the likelihood of four different outcomes, beginning with the question of whether each individual arbitrator would have entertained a Motion To Dismiss or would have addressed Respondents' legal argument only after a hearing on the merits. Depending on the Arbitrators' rulings on the motion or on the ultimate issue of whether the tenure charge should be sustained, the parties would have been faced with the decision to appeal each case individually or to consolidate the cases for appeal. The possibility

of different motion and hearing procedures and of different outcomes hardly presented a model of judicial economy and efficiency.

For that reason, the parties wisely agreed to consolidate the Motion To Dismiss before one Arbitrator. And for that reason, Petitioner's procedural objections to the Motion are misplaced. If the Motion To Dismiss is denied for procedural reasons, Respondents still have the opportunity to raise the substantive challenges asserted in the Motion at the tenure hearings before each Arbitrator. Respondents would argue to the Arbitrators that the tenure charges "were defective and premature in that such charges were not based on a two-year evaluative cycle pursuant to N.J.S.A. 18A:6-17.3 and were not preceded by the issuance of a corrective action plan as required by N.J.A.C. 6A:10-2.5." The parties would once again be faced with the possibility of four separate outcomes related to a common issue in each of the four cases – the very result they were trying to avoid by consolidating the Motion before one Arbitrator.

For that reason alone, I find that the Consent Order waives any procedural argument to the Motion To Dismiss.

Moreover, the Petitioner's procedural objections are without merit. Respondent Mashore's Motion To Dismiss was, in effect, a motion for summary decision since he had already filed an Answer. N.J.S.A. 18A:6-16 provides that the Commissioner may decide a motion for summary decision prior to referral of the case to an Arbitrator. Respondent Mashore filed his Motion on November 7, 2014, three calendar days before receiving notice of the Commissioner's referral of the case to Arbitrator Gerber. The Motion and referral may have "crossed in the mail,"

but at least at the time Mashore filed the Motion, he had not been advised that his case had been referred to an Arbitrator. Accordingly, his motion was not untimely.

As Petitioner has agreed to consolidate the remaining three cases with the Mashore case for purposes of deciding identical motions that would have been filed in each case, it cannot now argue that the Motion is untimely in those three cases.

Finally, the AAA Labor Arbitration Rules may not specifically provide for dispositive motions; but it is within the Arbitrator's discretion to allow such motions. In the present tenure cases, the four Arbitrators acknowledged and, in effect, affirmed the parties' agreement to allow the Mashore Motion to Dismiss to be applicable to all four cases.

For these reasons, the Petitioner's procedural objections are without merit.

#### **State Intervention Statute and TEACHNJ**

The State Intervention Statute, N.J.S.A. 18A:7A-45, first effective January 1988, allows the state to essentially take over a school district that is not providing a "thorough and efficient" education for its students. The state-appointed officials are charged with making sweeping changes to reverse the failed course of the district. To that end, the State District Superintendent is authorized to remove administrators and supervisors after s/he has the opportunity to evaluate their effectiveness or lack thereof.

N.J.S.A. 18A:7A-45(b) requires principals and vice-principals to be evaluated a minimum of three times within the first 18 months after the state-operated school district has been established. N.J.S.A. 18A:7A-45(c) provides, in relevant part,

**"Notwithstanding any other provision of law or contract, the State district superintendent, after the 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 as defined by the criteria for principal or vice-principal performance in districts under full State intervention established by subsection a. of this section..."**

Accordingly, principals and vice-principals in a state-operated school district can face tenure charges after a minimum of three evaluations in an assessment cycle of not less than 12 months. N.J.S.A. 18A:7A-45(a) requires that the evaluations be based on criteria adopted by the Commissioner of Education.

As Respondents note, neither the statute nor the current regulations provide defined criteria for the evaluation of principals and vice-principals in a state operated school district. In the present case, Timothy Matheney, Chief Intervention Officer for the New Jersey Department of Education, was tasked with approving an evaluation instrument and criteria for principals and vice-principals in the Camden City School District after it became subject to state intervention. The evaluation instrument developed under his supervision "was intended to comply" with the TEACHNJ evaluation criteria, i.e., the four cited domains – instructional leadership, cultural leadership, organizational leadership, and effectiveness of teacher evaluation – on a 1 to 4 scale from "ineffective" to "highly effective." The New Jersey Department of Education's Office of Evaluation approved the evaluation instrument and criteria.

Respondents seize upon the District's use of the TEACHNJ evaluation criteria to argue that evaluation of principals and vice-principals in a state-operated school district must be governed by TEACHNJ and its requirement for a two-year assessment cycle and a corrective action plan.

TEACHNJ, N.J.S.A. 18A:6-117, *et seq.*, effective August 2012, revised the process for removing ineffective teachers from the classroom. Under TEACHNJ, districts could file tenure charges against ineffective teachers after a two-year evaluation period and a corrective action plan. In the case of *I/M/O Tenure Charge of Inefficiency of Sandra Cheatham and the School District of the City of Newark*, Agency Dkt. #226-8/14, Arbitrator Bluth held that the TEACHNJ evaluation criteria set forth in N.J.A.C. 6A:10-2.1 applied to teachers in all districts, including state-operated school districts. Respondents contend that the TEACHNJ evaluation process must be extended to principals and vice-principals in state-operated school districts.

TEACHNJ does not specifically reference the State Intervention Statutes as it applies to the evaluation of principals and vice-principals in state-operated school districts. By its terms, it does not supersede the State Intervention Statute. Respondents nonetheless argue that TEACHNJ replaces the evaluation process outlined in the intervention statute for principals and vice-principals in state-operated school districts.

The State Intervention Statute requires three evaluations and an assessment cycle of not less than 12 months for principals and vice-principals in state-operated school districts, "notwithstanding any other provision of law or contract." The legislature chose not to specifically override that provision of N.J.S.A. 18A:7A-45 when it passed TEACHNJ. Accordingly, the State Intervention Statute and TEACHNJ have to be read in concert. °

One of the goals of the State Intervention Statute was to allow the State District Superintendent to remove ineffective administrators and supervisors early in the process of rebuilding and revitalizing the failing district. Extending the assessment cycle for principals and vice-principals from "no less than 12 months" to 2 years would be a significant departure from the goal of the intervention statute. It is unlikely the legislature would enact such significant change without clearly stating so in the TEACHNJ statute.

Arbitrator Bluth found that the 2-year TEACHNJ evaluation period applied to teachers in state-operated school districts. The State Intervention Statute does not address the evaluation of teachers, so the Arbitrator's ruling was not an affirmation that TEACHNJ supersedes the intervention statute. Further, TEACHNJ dramatically revised teacher evaluations in a way that the new criteria allowed for more effective removal of ineffective teachers. Applying the 2-year assessment cycle to principals and vice-principals in state-operated school districts would result in an arguably less effective removal process than currently permitted by the State Intervention Statute. Again, if the legislature so intended, it would be expected to specifically reference such a significant change in the evaluation process.

Absent specific language in TEACHNJ superseding N.J.S.A. 18A:7A-45, one must conclude that the legislature did not intend to change the evaluation process for principals and vice-principals in state-operated school districts.

Petitioner's utilization of an evaluation instrument intended to comply with the TEACHNJ criteria to evaluate principals and vice-principals does not mandate that Petitioner adopt all aspects of the TEACHNJ evaluation process, such as the 2-



year assessment cycle. The intervention statute instructs that the Commissioner adopt the evaluation criteria. In the present cases, the Commissioner adopted the criteria from TEACHNJ. The adoption of criteria developed pursuant to another statute does not remove the evaluation of principals and vice-principals in state-operated school districts from the State Intervention Statute, particularly when the legislature has not expressly overridden the provisions of the intervention statute.

For these reasons, I find that Petitioner properly brought tenure charges against Respondents for inefficiency pursuant to the provisions of the State Intervention Statute as it relates to the number of evaluations and the length of the assessment cycle.

**Corrective Action Plan and Alleged Non-Compliance with the 12-Month Assessment Cycle**

Respondents also argue, either in their brief and/or reply brief, that Respondents were not trained in the evaluation rubrics as required by N.J.A.C. 6A:10-2.2 and were never given a correction action plan as required by N.J.A.C. 6A:10-2.5. Petitioner counters that Respondents had notice of the criteria by which they were to be evaluated as early as June 25, 2013 and were provided feedback and the opportunity to improve.

Additionally, at oral argument and in their reply brief, Respondents argue that Petitioner violated the requirement in N.J.S.A. 18A:7A-45 that tenure charges of inefficiency may only be filed after “not less that a 12 month assessment cycle.” Respondents assert that Petitioner filed charges before the 12-month period had

lapsed. Petitioner first objects to Respondents raising this matter for the first time in their reply brief, and it counters the argument by asserting that it has complied with the 12-month assessment cycle requirement.

These issues – notice of the evaluation criteria, the imposition of a corrective action plan, if required, and/or the opportunity for feedback and improvement, and compliance with the timeline for filing tenure charges after an assessment period – raise genuine issues of material fact that can only be resolved through an arbitration hearing on the merits of the charges. As the parties dispute the facts giving rise to their arguments, the arguments cannot be disposed of through the present Motion To Dismiss.

#### **Award**

Respondents' Motion To Dismiss tenure charges is denied. The cases shall proceed to hearing before the assigned Arbitrators. Pursuant to the parties' Consent Order, the undersigned hereby withdraws from the Gay S. Brown case, and the Department shall appoint a new arbitrator to hear the matter.

  
WALT De TREUX

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

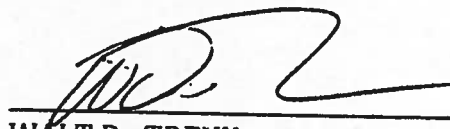
***In the Matter of the Tenure Hearings of:***

**LEON MASHORE, EDWARD BROWN,  
GAY S. BROWN, BRIAN MEDLEY,  
STATE OPERATED SCHOOL DISTRICT  
OF THE CITY OF CAMDEN**

**Agency Docket #303-10/14;  
290-9/14; 300-10/14;  
291-9/14**

**Affirmation**

I, Walt De Treux, affirm that I am the individual who executed this Decision and Award.

  
WALT De TREUX