

**Pursuant to Referral By the Commissioner of Education  
State of New Jersey  
Before Timothy J. Brown, Esquire**

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**In the matter of:**

**The Tenure Hearing of  
LaRhonda Ragland**

**State Operated School District of the  
City of Newark, Essex County**

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: **Agency Docket No. 285-9/14**  
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**Decision and Award**

**Appearances:**

**On behalf of the State Operated School District of the  
City of Newark, Essex County:**

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**On behalf of LaRhonda Ragland:**

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## **Introduction**

This matter arises from tenure charges submitted on September 26, 2014 by the State Operated School District of the City of Newark (the School District or the District) based upon inefficiency pursuant to N.J.S.A. 18A:6-10, N.J.S.A. 18A:6-11, N.J.S.A. 18A:6-17.3 and N.J.S.A. 6A:3-5.1 against LaRhonda Ragland (Respondent) and an October 6, 2014 referral of the tenure charges to the undersigned by the New Jersey Department of Education, Bureau of Controversies and Disputes pursuant to N.J.S.A. 18A:6-17.3c. At the time of the referral of the tenure charges, the Commissioner also referred a Motion filed with the Commissioner by the District seeking an order that the Tenure Charges be deemed admitted pursuant to N.J.A.C. 6A:3-5.3, that the Answer and Defenses stated in Respondent's answer be stricken from the record as being untimely, and that Respondent should be dismissed as a matter of law. By Order dated November 24, 2014 the undersigned denied the District's Motion. No further dispositive motions were filed by the deadline for such established by the undersigned<sup>1</sup>, and the hearing in the matter was conducted on December 4 and 17, 2014 and January 13 and 14, 2015 in Newark, New Jersey. At the hearing all parties were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Respondent LaRhonda Ragland was present for the entire hearing and testified on her own behalf. At the close of the hearing on January 14, 2015 the parties

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<sup>1</sup> The originally established date for such motions was extended by the undersigned at the request of Counsel for Respondent, however no motion was filed by Respondent by the established-and-extended deadline. Thereafter, Respondent filed a Notice of Motion to Dismiss and the undersigned informed the parties that the motion was denied as untimely but that such denial did not preclude Respondent from presenting any defense(s). Respondent's post-hearing argument includes much of the argument previously presented to support her late-filed, Motion to Dismiss.

elected to submit written closing argument, upon the receipt of which by the arbitrator on January 27, 2015 the matter was deemed submitted.

This Award is made following my careful consideration of the entire record in the matter, including the under-sign's observations of the demeanor of all witnesses.

### **Issues**

The issues on the merits presented in this matter may be accurately stated as follows:

Has the District met its burden of establishing the truth of its tenure charges against Respondent, and if not, what is the appropriate remedy?

Additionally, the Respondent raises an issue as to the arbitrability of the matter, arguing that the tenure charges should be dismissed on summary basis as they are insufficient on their face.

### **The Tenure Charge**

The tenure charges in this matter are based upon inefficiency pursuant to N.J.S.A. 18A:6-10, N.J.S.A. 18A:6-11, N.J.S.A. 18A:6-17.3 and N.J.S.A. 6A:3-5.1 and states:

#### **CHARGE ONE: INEFFICIENCY**

During the period from January 24, 2013 to the present, Respondent has demonstrated an inability to completely and responsibly execute her duties as a teacher in the following manner:

- a. The Respondent has failed to implement curricular goals and objective(s).
- b. The Respondent has failed to design coherent instruction.

- c. The Respondent has failed to assess student learning.
- d. The Respondent has failed to create an environment of respect and rapport.
- e. The Respondent has failed to manage student behavior.
- f. The Respondent has failed to establish a culture of learning.
- g. The Respondent has failed to communicate clearly and accurately.
- h. The Respondent has failed to use questioning and discussion techniques with flexibility and responsiveness.
- i. The Respondent has failed to reflect on teaching.
- j. The Respondent has failed to contribute to the school district.
- k. The Respondent has failed to grow and develop professionally.
- l. The Respondent has failed to demonstrate promptness and attendance.
- m. The Respondent received an overall rating of Ineffective in an Annual Summative Evaluation for School Year 2012-2013.
- n. The Respondent received an overall rating of Partially Effective in an Annual Summative Evaluation for School Year 2013-2014.

### **Respondent**

Respondent is certified by the State of New Jersey to teach dance. She taught dance in the District for 9 years; initially teaching dance at the elementary level at the Dayton Street School and more recently at the Maple Avenue School. During her years as a dance teacher Respondent received annual evaluations of "proficient" for at least five years and "basic" for the 2011-2012 school year. For the 2012-2013 school year, the District's record reflect that Respondent was rated "Ineffective," however, both Respondent and the Maple Avenue School Principal (at the time) who evaluated Respondent and gave the teacher her rating testified that the rating was "Partially Effective."

In 2013 Respondent's permanent assignment at the Maple Avenue School was eliminated for budgetary reasons and she was transferred to Arts High School in an "employee without placement" (EWP) status. As an EWP teacher at Arts High School Respondent was not given a permanent classroom teaching assignment and was required to wait in the school principal's office each morning until assigned work by the principal. During the 2013-2014 school year the only full dance class periods she taught as a lead teacher were the three for which she was subject to observation and perhaps a few others. Respondent's other assignments during the 2013-2014 school year included clerical work, attendance, housekeeping, monitoring tardy students and substitute teaching in various academic subjects, as well as a one or two week period during which she was to observe dance classes taught by other teachers.

Respondent received an annual evaluation of Partially Effective for the 2013-2014 school year.

### **Testimony**

#### **The 2012-2013 School Year**

Former Principal of the Maple Avenue School Deneen Washington testified that the Maple Avenue School was one of the schools selected to participate in the teacher evaluation pilot program established by the District pursuant to TEACHNJ. According to Washington, Respondent taught dance at the elementary school for a number of years during which Washington evaluated Respondent, including the 2012-2013 school year. Washington identified an unsigned 2012-2013 evaluation of Respondent from the District's records giving Respondent an Ineffective rating. Washington maintained that she recalled that she later changed the annual rating to "Partially Effective." Washington

testified that Respondent would email her lesson plans to the principal and that although there were some grammatical errors in the emails, Washington understood the meaning of the emails.

Washington also admitted that she has a pending legal action against the District and that she is represented in that pending action by counsel for Respondent in the instant matter.

Hillary Dow was the Vice Principal of Maple Avenue School during the 2012-2013 school year. Teachers that school year, Dow testified, were evaluated based upon the District's 2012-2013 Framework for Effective Teaching which Dow understood was part of a pilot program for teacher evaluations. Dow did not personally perform any formal evaluation of Respondent but did informally observe Respondent teach on occasion throughout the year.

Dow testified that she issued written discipline to Respondent during the school year, including a write-up for conduct unbecoming dated January 1, 2013 for comments Respondent made to another teacher. According to Dow, Respondent often displayed this type of behavior with the staff and the administration often had to mediate between Respondent and other members of the staff. Dow also issued Respondent two warnings for inappropriate comments to students: one addressing Respondent's comments to a male dancer to hold his arms "like a male" and another addressing Respondent's conduct of tapping a female student to get the student's attention and then stating; "Oh, I thought you were someone I liked." In the view of Dow, such conduct by Respondent goes to the teacher's efficiency because it in the first instance relating to a coworker, the performing

arts faculty is a team and Respondent's conduct could impact negatively upon the team, and the comments to students impact the students directly.

Dow explained that Respondent had issues with written communication. Respondent's writings were grammatically incorrect and had no fluency of thought, Dow asserted, and Respondent was required to have her written material reviewed before she sent them to parents. Basically, Dow testified, Respondent would have to orally tell the office clerk what she wanted to say to the parents and the clerk would do the writing.

### **The 2013-2014 School Year**

Lynn Irby-Jackson is the Principal of Arts High School and testified that when Respondent was assigned to the High School in the autumn of 2013 Irby-Jackson was aware that Respondent had received a 2012-2013 school year performance evaluation rating of "Ineffective." According to Irby-Jackson, she recommended the instant tenure charge of inefficiency based upon what the principal and school administration observed of Respondent during the 2013-2014 school year. Respondent's 2012-2013 rating was taken into account by the High School Administration, Principal Irby-Jackson explained, for purposes of establishing a Corrective Action plan (CAP) for Respondent for the 2013-2014 school year.

### **The District's Evaluation Tool**

Principal Irby-Jackson testified that in evaluating Respondent the school applied the 2013-2014 "Framework for Effective Teaching, Newark Public Schools Teacher Evaluation" guidebook adopted by the District. The Framework includes five "competencies" for which teachers are evaluated: (1) Lesson Design and Focus; (2) Rigor



and Inclusiveness; (3) Culture of Achievement; (4) Student Progress Toward mastery and (5) Commitment to Personal and Collective Excellence. The Framework contemplates that teachers will be evaluated through evidence; evidence of three general types; (a) what can be observed, (b) what can be seen in artifacts and (c) what can be seen in quantitative data. Teachers may receive ratings at four levels in each competency: Highly Effective, Effective, Partially Effective and Ineffective. Both administrators and teachers received significant and continuing training on the evaluation tool, according to Irby-Jackson.

The Framework provides that any teacher who received an annual evaluation rating of Partially Effective or Ineffective in the 2012-2013 school year must receive a Corrective Action Plan (or CAP) in the 2013-2014 school year. The Framework specifies that a Corrective Action Plan should be developed in the beginning of a school year through a collaborative process between the teacher and supervisor. The “Frequently Asked Questions” portions of the Framework discusses the CAP process. There, the Framework poses, among others, the following questions and provides the following answers:

*How is the CAP used throughout the year?*

The CAP is a living document and should be referenced and updated throughout the year. At each post-observation conference and the mid-year review, the teacher and principal should review the goals outlined in the CAP and assess the teacher’s progress toward meeting those goals. The CAP is the main format by which the teacher and the principal collect and report evidence of the teacher’s growth and improvement.

*What is the responsibility of a teacher on a CAP?*

A teacher on a CAP is responsible for the development goals outlined in his or her CAP with the principal. These development goals should be specific and time-based; the teacher should use these goals to guide his or her activities and efforts to develop. In addition to being responsible for implementing these goals and actions in order to improve, the teacher will also participate in professional



growth opportunities, reflect on his/her growth areas and request additional support when needed.

*What is the administrator's responsibility to support a teacher on a CAP?*

An administrator with a teacher on a CAP is responsible for reviewing and co-developing the CAP with the teacher and then supporting the teacher in meeting the development goals outlined in the CAP. The CAP should explicitly articulate actions the administrator will take to directly support the teacher. The administrator is also responsible for conducting classroom observations to collect evidence of progress towards goals, ensuring the teacher has opportunities and guidance on how to access and participate in professional learning opportunities throughout the year, and for sharing clear, regular feedback with the teacher about his or her development.

Irby-Jackson testified that at the end of the summer of 2013 her school received five or six Employees Without Placement (EWP) employees, including Respondent. As a recipient of EWP teachers, her school was charged with getting those teachers into the classroom so they could be evaluated. Irby-Jackson explained that she conducted Respondent's first observation during the 2013-2014 school year. According to Irby-Jackson, prior to that observation she held a pre-observation conference with Respondent, informed Respondent ahead-of-time of the date of her observation and conducted a post observation conference with Respondent. The "Long Observation – Observation Summary Form" relating to that observation is signed by Irby-Jackson on November 15, 2013. The witness signature on the document is dated November 20, 2013. Respondent's signature does not appear on the document. The record establishes that the observation took place in or about the first week of November 2013. The form reflects that the Observation was "announced" and the grade level was "12<sup>th</sup>." In the "Lesson Summary" portion of the form, Irby-Jackson wrote:

The objective on the lesson plan was different than what was stated in the pre observation conference which was different from the written and posted lesson plan at the time of

the lesson. The teacher was ready at the start of the lesson and began by reviewing vocabulary words that were written on wrinkled Kraft paper and posted on the wall. She called on the students to read the word and then demonstrated the movement. At one point she asked a student to "parmesan" around and the student corrected her by stating the proper term was 'promenade'. The students were then directed to go to the barre to start the class at 1:30pm. By 2:00pm they had only completed 3 exercises. This was due to the teacher not having planned the combinations. The students were noticed standing in idle with no clear understanding of what to do. She did not use proper terminology when explaining the combination, Teacher articulated the next combination of dance steps and when the students questioned the order of the of the combination steps she repeated it differently numerous times. The students indicated that they were confused. The teacher was not prepared with the selection of music for each exercises and time was spent waiting while she figured it out. When the students did the exercises no verbal response was given to either correct or clarify misconceptions. This continued for the entire barre exercises. The students then moved directly to grand allegro which is out of sequence for a proper ballet class in order to prevent injury.

At this point the teacher no longer gave verbal directions but while attempting to choreograph the combinations, the students made attempts to understand what she was doing. Again the combination changed each time she showed it and when the students asked clarifying questions the teacher responded 'yes'. Each pair of students did the combination differently yet no directions were given to correct the student's mistakes before moving on to the next side.

The teacher then noticed the time and ended the class.

In her "Summary Comments" Irby-Jackson wrote:

Based on the evidence collected the teacher demonstrated not only a lack of pedagogy in her certified area but a basic knowledge of instructional best practices. The regular misuse and mispronunciation of dance terminology by the teacher in a level IV class resulted in confusion among students as they themselves questioned their prior knowledge and understanding of previously learned movement and vocabulary.

Respondent received an overall rating for the long observation of "Ineffective."

Irby-Jackson held a mid-year review with Respondent on February 14, 2014. The related Mid Year Review Summary Form completed by Irby-Jackson provides the following "Summary of Performance":

Ms. Ragland has a limited knowledge of classical ballet and modern dance techniques which limit her ability to have a productive class. The students are constantly providing corrections to the teacher and when seeking clarity none is offered or incorrect information is given. This leads to confusion and therefore disruption in the class.

In the space on the Form reserved for teachers on a CAP, and asking "[w]hat specific actions have been taken by administrators to support the teacher in these growth areas? What actions will administrators provide for the remainder of the year?" Irby-Jackson wrote:

The administrators have provided opportunities for classroom observations, followed by discussions with 2 high school dance educators of the existing dance classes specifically in ballet and modern. A class observation form was suggested for reflection to guide post observation discussions which are not utilized. In the discussions Ms. Ragland had no questions nor did she offer ideas as to what she observed. An opportunity to change or update the professional growth goals on the CAP was given to Ms. Ragland who declined. In an effort to provide additional support and opportunity for growth the following plan will be implemented: Ms. Ragland will immerse herself in the Level A classes. She will observe the teaching of these students on a daily basis for one week with an opportunity to engage in conversation with the teacher, review plans, and get to know the students. She will then write a one week unit plan with five daily lesson plans. She may consult with the teacher if she chooses. Ms.

Ragland will then teach the Level A class for 3 class periods, during which time she will have an unannounced observation. Ms. Ragland will be provided with several articles for her review.

The record evidence does not establish whether or not the plan for Respondent to observe classes, write a one-week lesson plan and teach three class periods was implemented. In April 2014 Irby-Jackson again performed a long observation of Respondent, this time teaching an A-level 9<sup>th</sup> & 10<sup>th</sup> grade ballet class, and rated the teacher as "Partially Effective."

James Manno, Arts High School Vice-Principal for Curriculum and Instruction was assigned by Principal Irby-Jackson to be the administrator on Respondent's CAP plan. According to Manno he was not informed of the details of Respondent's former evaluations but is aware that the 2013-2014 Framework provides that teachers who received a Partially Effective or Ineffective rating for the 2012-2013 school year were required to have a CAP for the 2013-2014 school year. He recalled that he met with Respondent and went over the CAP form with her, but that Respondent never completed her portion of the form; a first such failure by a teacher in the experience of Manno. The Corrective Action Plan "Official Form" provides in its introductory statement that:

At the beginning of the year, the teacher and supervisor sit down to reflect on last year's performance and goals for the current year. This is an opportunity to map out (1) goals and focus areas for the students; and (2) development areas and opportunities for the teacher. Once this form is completed it must be uploaded by the teacher into BloomBoard and a paper copy must be signed and added to the teacher's file.

According to Manno, he never saw Respondent's 2012-13 evaluations and there was never a complete Corrective Action Plan for Respondent to perform for the 2013-2014 school year, as the teacher did not complete the plan.

Manno testified that he also conducted a short observation of Respondent in February 2014 in which he rated Respondent Partially Effective. He did not conduct a pre-conference with Respondent as such are not required for short observations.

According to Manno, the ninth grade students in the dance class taught by Respondent and observed by Manno were not new to Respondent. In this regard, Manno maintained, Respondent had observed the students in the class and had taught them for other observations. The "Summary Comments" by Manno of the short observation state:

It is imperative that Ms. Ragland become engaged in intensive professional development in the area of modern dance specifically Graham/Horton in an effort to increase her pedagogical skill level. She also must review best practices in effective teaching methods emphasizing lesson planning and standard alignment, engagement, questioning techniques, and increasing rigor in the classroom. It is further suggested that she research national and state standards in the area of dance. It is recommended that the observation form provided to Ms. Ragland when observing classes be utilized to engage in discussions regarding lesson design, and teaching methods.

Manno testified that he did not informally observe Respondent at any time during the school year. He testified that Respondent attended three to five of the ten mandatory Dance Department monthly meetings during the 2013-2014 school year. According to Manno, based upon written communication received from Respondent, he is of the view that Respondent's poor writing abilities had a significant impact upon her ability to teach.

Respondent was given one more formal observation during the school year, her third; a long observation in April 2014 conducted by Irby-Jackson. Again, Irby-Jackson testified, she met with Respondent prior to the observation. Irby-Jackson gave Respondent a Partially Effective rating for this observation.

In addition to the two formal observations she conducted of Respondent, Irby-Jackson testified that she attempted to informally observe Respondent. In this regard, the Principal explained, several times she went to the classes the administration had given Respondent to observe the teacher and found that Respondent was not present. Irby-Jackson acknowledged that under the District's Framework for the 2013-2014 school year, teachers on a CAP were required to have four observations during the year and that Respondent was given only three. Irby-Jackson asserted that a fourth observation was not provided Respondent because, in the view of the principal, too much damage was being done each time Respondent taught and Irby-Jackson could not further subject the children of the school to the dangers of Respondent's teaching.

### **Respondent's Annual Evaluation and Tenure Charges**

Irby-Jackson completed Respondent's Annual Evaluation dated May 12, 2014 and gave Respondent a Partially Effective rating. Irby-Jackson also testified that she recommended tenure charges against Respondent. Teachers are required to write. They must write in the classroom for students, they must write lesson plans, they must write student evaluations, they must be able to communicate with other teachers, etc. Respondent cannot write, Irby-Jackson testified, and consequently could not meet competency I; Lesson Design and Focus.



**Counseling and Discipline of Respondent and Complaints by Irby-Jackson  
about Respondent during the 2013-14 School Year**

**October 7, 2013**

By memorandum of October 7, 2013 Irby-Jackson notified Respondent that the teacher had been assigned as Hall Monitor for the HSPA administration held on October 1-3, 2013 and was not at her post at the assigned time. The memorandum to Respondent concludes:

Please understand it is the expectation of Arts high School administration that when a directive is given under any circumstances it must be followed...Should this occur again, you will be written up for insubordination and further disciplinary action will follow.

**October 24, 2013**

By memorandum of October 24, 2013 from Irby-Jackson Respondent received a "Second Notice" providing:

On Wednesday October 23, 2013 at approximately 8:50am you were assigned by me to report to the main office every morning and wait for your daily assignment. You were then informed that you will be stationed at the front door signing in students who were late for school. I clearly articulated to you in the presence of Vice Principal Ricardo Pedro, Vice Principal Jim Waldron, and Head security guard Nancy Johnson that you must be on that post by 8:30-9:15am, and provided you with materials and instructions on the procedure.

Today, Thursday, October 24, 2013 you were not in the main office waiting for your daily assignment, nor did you report to your assigned post i.e., the late door at 8:30. Mr. Pedro found you in the dance studio at 9:05 where you indicated that you were only assigned the late door for the previous day.



Since being assigned to Arts High School in September 2013, this is your second notice in writing notice (sic) of 'failure to follow directive' and 'neglect of duty'. As a result labor relations will be contacted.

Ms. Ragland you are an EWPS teacher assigned to Arts High School for additional support, you are not an Arts High School dance teacher. Therefore you are directed NOT to go to the dance studios unless you are specifically assigned by me, and report to the main office every day and wait for an assignment. Failure to do this will result in additional disciplinary action.

**November 1, 2013**

Irby-Jackson asserted that based upon the written materials she read authored by Respondent, the Principal believes Respondent is a "functional illiterate." She opined such to her Assistant Superintendent of Schools, Brad Hagerty, on November 1, 2013, where she wrote:

I know that we have spoken many times regarding my concern over the ability of assigned EWPS dance teacher [Respondent]. Not only does she not have the technical or artistic ability to teach (sic) any of my dance classes including the middle school, but we have discovered that she is functionally illiterate. I have sent you several copies of correspondence she has had with.... To say that I am outraged that such a person has survived in the Newark Public Schools and been allowed to teach children is an understatement, but now that this atrocity has been made known to the arts world that supports Arts High School I must take additional steps to ensure that children are no longer damaged...

I know that we have been searching for an alternative placement for her but I cannot pass her on to another school as she was passed on to me. As a former dancer, I am the only administrator who can successfully observe her in the dance studio and have the knowledge to effectively point out her deficiencies. Let me state that she does have the capacity to effectively teach Hip-Hop and Tap but that is not the discipline that is taught at Arts High School.

I have asked her to write a lesson plan for next week when I conduct a formal observation of her teaching. I must inform you that she has been written up on 3 different occasions for failure to follow a directive which today left 25 7<sup>th</sup> grade students unattended and without instruction. I must also bring to your attention that upon checking with certification she carries a Vocational certification that she received based on her professional experience as a Nets cheerleader. She does not have a college degree.

Something must be done, as I cannot allow this to continue, my children and all children of Newark Public Schools deserve better.

**January 6, 2014**

Irby Jackson also testified that following her first observation of Respondent in November 2013 she and NTU local president Mike Jackson met to discuss a plan to assist Respondent's development. Relating thereto Irby-Jackson issued Respondent a January 6, 2014 memorandum relating to "Insubordination." In part, the memorandum provides:

...Prior to the Winter break we discussed this plan for implementation beginning January 2014. You responded favorably to the plan stating: "I want and am willing to learn." Today, January 6, 2014 at approximately 8:25am, you received an administrative request to observe a dance class, and you refused to do so stating: "I do not feel comfortable doing that." I responded by stating: "you do not feel comfortable teaching a class"? To which you replied "NO". You made a verbal request to transfer you, and I replied that I do not have the authority to do so.  
....Be advised:

- Failure to follow an administrative directive especially those pertaining to your duties and responsibilities as a teacher constitutes insubordination. You are hereby directed to follow the attached schedule of observations and teaching schedule. Failure to comply with this directive will result in appropriate disciplinary action.
- Your refusal to participate in this action plan agreed upon between you and your selected representation, demonstrates a lack of commitment to education and growth.

This serves as a reminder that in the future, you are expected to adhere to and follow all directives in a timely manner. Your fullest cooperation is expected.

### **Respondent's Testimony**

Respondent testified that she received her teaching certification through alternate route and that hers is a standard certification. Prior to being transferred to Arts High School as an EWP she taught at the elementary level and had up to eight classes a day. She recalled that her first evaluation for the 2012-2013 school year was conducted in January 2013, that her second and final evaluation for that school year was conducted in July 2013, and that she had no announced evaluations and no pre-observation conferences during that year. She testified that after her transfer as an EWP to Arts High School she had no expectation of teaching under her certification, and that the few times she taught dance class there was for purposes of observation. Contrary to Irby-Jackson, Respondent testified that she and the principal did not have a formal pre-observation meeting. Rather, Respondent asserted, the principal communicated to her by email and instructed Respondent to draft a lesson plan and that she would be observed on November 6, 2013. The November 6, 2013 observation was her first at Art High School, Respondent testified.

As for the CAP, Respondent maintained that Manno met with her and told her this was something Respondent had to do because that is what they do at Arts High School. Respondent asserted that Manno did not tell her the purpose of the CAP.

Respondent testified that Irby-Jackson wrote she was a functional illiterate not because it is a true statement but rather because the principal does not like Respondent. Respondent explained that in her experience Irby-Jackson was very distant and did not

communicate directly with Respondent. Respondent testified that she felt bullied and harassed by the Principal.

### **Positions of the Parties**

#### **Petitioner / District**

The District argues - as it has unsuccessfully in many recent cases involving motion to dismiss tenure charges of inefficiency filed by the District - that it is appropriate under TEACHNJ for it to consider Respondent's 2012-2013 evaluation as well as her 2013-2013 evaluations as they were performed pursuant to an evaluation rubric established consistently with the statute and NJ Department of Education (Department) guidance. In this regard, the District asserts, the District was one of eleven school districts approved to participate in the Department's 2011-2012 teacher evaluation pilot program. As a result, the Department of Education allowed the District to begin using a new "framework" and new rating system on a "pilot" basis to evaluate teacher performance in the 2011-2012 school year. During that school year Respondent taught at one of the eleven schools in the District participating in the pilot program and her evaluations during that year have not been proffered by the District to support its inefficiency charges. The framework and new rating system was then used throughout the entire district in the 2012-2013 school following the adoption of a related Memorandum Of Agreement (MOA) between the District and Teacher Union and passage of TEACHNJ. The District made a few minor modifications to its framework to comply with Department of Education requirements and again applied the framework to teachers

in the 2013-2014 school year. As a result, Respondent was subject to evaluation under the 2011-2012 pilot, the 2012-2013 framework and the 2013-2014 framework.

Contrary to the assertion of Respondent, the District argued, it implemented its 2012-2013 evaluation rubric in a timely manner to be effective under governing law. In this regard, TEACHNJ establishes “deadlines” by which certain requirements must met. Thus, the statute required school districts to institute pilot programs to test their new evaluation rubrics by January 31, 2013, at the latest. N.J.S.A. 18A:6-123(d) (“Beginning no later than January 31, 2013, a board of education shall implement a pilot program...”). (Emphasis added). Here, the District did just that; it implemented a pilot program with Department of Education approval in the 2011-2012 school year – thereby complying with the requirement that its pilot program be instituted “no later” than January 31, 2013.

Similarly, the District continued, TEACHNJ required all New Jersey public school districts to develop “evaluation rubrics” to assess the performance of their teachers, and established a deadline to obtain approval for their “rubrics” from NJDOE by December 31, 2012. The District complied with that mandate. The District adopted an evaluation rubric – a rubric approved by the Department - as part of a performance evaluation system known as the Newark Public Schools Framework for Effective Teaching to be implemented beginning in the 2012-13 school year. To inform its teachers and school administrators of the new Framework and to provide guidance on its implementation, the District conducted training and published a Guidebook to the Framework for use in 2012-2013. The Framework clearly describes the new “levels of performance” as highly effective, effective, partially effective and ineffective.

The District further argued that it complied with the deadline established by the Act that school districts implement their evaluation rubrics by the beginning of the 2013-2014 school year **at the latest**, citing N.J.S.A. 18A:6-123(e) (“[b]eginning with the 2013-2014 school year, a board of education shall ensure implementation of the approved, adopted evaluation rubric”). Again, the District asserted, the District complied with the statute and implemented its framework containing the evaluation rubric for the 2012-2013 school-year; an implementation date that predated the 2013-2014 deadline set by statute. Nothing in TEACHNJ nor any regulations, the District maintained, provides that evaluations performed in 2012-2013 in accordance with an adopted, approved rubric are to be treated differently from those performed in 2013-2014, for purposes of triggering tenure charges under N.J.S.A. 18A:6-17.3.

Considering the plain meaning of the statute’s language and the guidance and actions of the Department of Education, the District argued, neither the statute nor the DOE required school districts to; (a) treat the 2012-2013 school year, and only 2012-2013, as a “pilot” year and (b) wait a year to implement their evaluation rubrics if the rubrics had been adopted and approved earlier.

Consequently, the District asserted, its efficiency charges against Respondent are appropriately considered by the arbitrator under TEACHNJ.

Respondent’s attempt to have the charges dismissed on procedural grounds is inappropriate, the District maintained. In this regard, the District argued, it is the Commissioner of Education who is solely authorized to determine the sufficiency of the evaluation process and resulting tenure charges. N.J.S.A. 18A:6-16. Thus, a dispositive motion by a teacher subject to tenure charges based upon the failure of a board of



education to follow the evaluation process may only be made to the Commissioner prior to the referral to an arbitrator.

Once it is found that the tenure charges are sufficient, based upon appropriate criteria and a referral is made to an arbitrator, an arbitrator's authority is confined to a determination of the following: (a) whether or not the employee's evaluation failed to adhere substantially to the evaluation process; (b) whether there was a mistake of fact in the evaluation; (c) whether the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, or discrimination, or; (d) whether the board of education's actions were arbitrary and capricious. N.J.S.A. 18A:6-17.2. Therefore, whether the District acted in compliance with law in filing charges based upon the 2012-2103 school year has been answered in the affirmative by the Commissioner of Education and is outside the scope of the arbitrator's authority.

Moreover, the District asserted, the statute does not contemplate that arbitrators will have the authority to interpret the statute or to evaluate the legislative intent of the Act. That authority is the courts.

Considering all of the evidence presented at the hearing, the District argued, it has met its burden of supporting the charge. The teacher evaluations conducted within the District in 2012-2013 were valid, effective, and "counted" for all purposes, including to support tenure charges such as those presented here, as were the evaluation conducted in the 2013-2014 school year. Respondent's contention to the contrary should be rejected.

The arbitrator's authority under TEACHNJ is limited to a determination of whether the approved evaluation system contained in the District's Framework was "substantially" adhered to when applied to Respondent. In this regard, the relevant



evidence offered at hearing by the District including the total number of observations conducted each school year, and voluminous other evidence and testimony of witnesses establishes the Respondent's inefficiency as a tenured teacher to children. Even though the District did not conduct a fourth "short" observation of the Respondent during the 2013 – 2014 School Year, the Decision could not have "materially affected" the outcome of the Annual Summative Evaluation as Principal Irby-Jackson testified that performing the exercise of assigning the Respondent a class had proven futile thrice, and it was inconceivable to waste further instructional time and potentially injure students by placing her in the classroom. Ms. Dow, Ms. Washington, Ms. Irby-Jackson and Mr. Manno all evaluated the Respondent in accordance with the TEACH NJ Act and in substantial compliance with District policy. The Respondent was offered a collaborative CAP Process and extensive professional development opportunities and recommendations

Alternatively the District continued, should the rubric of N.J.S.A. 18A:6-17.2 be found not to be the appropriate criteria under which to judge the evidence in this matter, the District has met its burden under the long-established efficiency standard of the preponderance of credible evidence. That standard requires that the District offer evidence that would lead a reasonably prudent person to conclude that the Respondent is an ineffective educator. Considering the totality of the circumstances here, including the testimony of Ms. Dow, Ms. Washington, Ms. Irby-Jackson and Mr. Manno and the numerous memoranda addressing the Respondent's unbecoming conduct and neglect of duty, along with the statements of her own Union Representative and her own testimony,

a reasonable person could conclude that the ineffectiveness of Respondent as an educator sufficient to revoke her tenure protections.

The tenure charges are appropriately before the arbitrator and the District has met its burden of supporting its charges and Respondent has failed to rebut the District's case by establishing that; (a) the employee's evaluation failed to adhere substantially to the evaluation process, (b) there was a mistake of fact in the evaluation, (c) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, or discrimination or (d) that the board of education's actions were arbitrary and capricious. Under such circumstances, the District concluded, Respondent's employment as a tenured teacher within the District should be terminated.

### **Respondent**

The tenure charges against Respondent must be dismissed, Respondent argued, as they unlawfully rely upon evaluations performed during the 2012-2013 school year. In enacting TEACHNJ the Legislature clearly intended the 2012-2013 school year to serve as a "pilot year" for all administrators and teaching staff members in assessing teaching effectiveness. See N.J.S.A. 18A:6-123. Under TEACH NJ, it was not until the 2013-2014 school year that the statute was deemed to be in full force and effect and was the first year that evaluations would count for purposes of tenure charges. Try as it might, Respondent maintained, the District cannot avoid that simple and obvious reality and fact. The purpose of 2012-2013 pilot-year was to train certified teaching staff members and evaluators on the District's evaluation instruments and procedures, and for the Department of Education ("DOE") to prepare and finalize its regulations, which later

became known as Achieve NJ and which did not become effective until October 2013. The pilot nature of the 2012-2013 school year is further supported by the obvious fact, Respondent asserted that the implementing regulations were not even promulgated until after the 2012-2013 school year had concluded. Additionally, such a conclusion is further supported by the Department of Education's own guidance on the questions. Thus, in its "Educator Evaluation Frequently Asked Questions (FAQ)" previously published on its web-site in answer to the question "Will summative ratings "count" this year (2012-13) toward tenure decisions?" the Department of Education stated:

A: No- the only item "on the clock" is the mentorship year for new teachers. No evaluation outcomes in the 2012-13 school year will impact tenure decisions. 2013-14 is the first year where the statewide system will be in place, and the first year when summative rating "clock" (for teachers needing to be rated at least effective for two of three years) will start.

Although the Department FAQ statements were informal in nature and may not rise to the status of regulation, the Respondent argued, the Department's statements nevertheless represent the practical interpretation of the statute by the agency charged with instructing local governmental units on how they were to comply with the new law. As such, Respondent maintained, there is judicial precedent to support Respondent's assertion that the DOE FAQ guidelines should be given substantial deference.

Respondent further argued that numerous recent decisions of arbitrators relating to motions to dismiss efficiency charges filed by the District<sup>2</sup> support its position that the evaluations performed by the District on Respondent during the 2012-2013 year are not

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<sup>2</sup> In the Matter of Sandra Cheatham; In the Matter of Neil Thomas; In the Matter of Elena Brady; In the Matter of Charles Coleman; In the Matter of Lorraine Williams; In the Matter of Sandra Brienza; In the Matter of Leonard Yarborough; In the Matter of Ursula Whitehurst; In the Matter of Ratiba Ahmed; In the Matter of Toni Lenzand In the Matter of Leslie Johnson.

appropriately considered for purposes of efficiency tenure charges. In those cases Respondent asserted, arbitrators held that the charge affecting their respective Respondent alleging inefficiency pursuant to N.J.S.A.18A:17.3 was insufficient and/or premature because the TEACH NJ Act was not enacted until August 2012 and not implemented until October 2013, and further because the District presented no evidence that it was somehow exonerated from the requirements of Act.

The inapplicability of the 2012-2013 evaluations to charges of inefficiency are further established by the absence of a School Improvement Panel (SIP) during the 2012-2013 school year. Again, Respondent maintained, the District must be in compliance with all requirements of TEACH NJ as established by the Commissioner of Education and/or Department of Education as a precondition for considering annual summative evaluations as a basis for filing efficiency tenure charges. As the schools in which Respondent was assigned in the 2012-13 and 2013-14 school years did not have SIPs for those entire years, Respondent asserted, the District was out of compliance with TEACH NJ and, consequently, her 2012-13 and 2013-24 evaluations may not be used as a basis to file tenure charges.

Respondent argued that considering N.J.S.A. 18A: 6-17-3(c) provides:

Notwithstanding the provisions of N.J.S.A. 18A: 6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a of this section, the commissioner shall examine the charge. The individual against whom the charges are filed shall have 10 days to submit a written response to the charge to the commissioner. The commissioner shall, within five days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to hear the case, unless he determines that the evaluation process has not been followed.

And that where a District has filed tenure charges alleging inefficiency premised upon teacher evaluations, but has failed to follow the evaluation development process required by TEACH NJ, the Commissioner may dismiss the tenure charges or simply forward to an assigned Arbitrator for further assessment of a District's compliance with the evaluation requirements of the TEACHNJ Act. As a result, Respondent asserted, if a matter has been referred to an assigned Arbitrator, then the Arbitrator is charged with the responsibility to assess a District's compliance with the evaluation and assessment requirements of the TEACHNJ ACT. If the assigned Arbitrator finds that the Petitioner District has failed to follow the evaluation requirements or is deficient for any reason, the Arbitrator is obliged to dismiss the tenure charges. Here, it is undisputed that the District failed to abide by the evaluation process set forth in the TEACHNJ ACT and accordingly, the tenure charges against Respondent Ragland must be dismissed.

In conclusion, Respondent argued, the Petitioner School District is unable to cite any legal authority and evidence that would permit the Arbitrator to simply ignore the plain and unambiguous language of the relevant statute and regulation. The District's compliance with the portions of TEACHNJ relating to the establishment and approval of evaluation procedures is a prerequisite to proceeding with Inefficiency Charges and any finding to sustain those charges, Respondent asserted. Accordingly, Respondent's 2012-2013 summative evaluation is not properly the subject of consideration by either the Commissioner or the Arbitrator in this case. Moreover, Respondent argued, if said evaluation is not subject to consideration, then the District's tenure charges are facially deficient in that it includes only one (1) deficient summative evaluation for the 2013-2014 school year, as opposed to the two consecutive deficient annual evaluations

required by TEACH NJ. Likewise the evidence is clear that (1) the Petitioner District failed to provide Respondent with the required minimum three (3) observations during the 2012-2013 school year even assuming that year was not a “pilot” year for the District and (2) that the Petitioner District failed to provide the Respondent with the required fourth observations in the 2013-2014 school year based on her CAP status. As such, the tenure charges at issue should be dismissed consistent with the procedural defects identified and with other arbitration rulings involving this Petitioner School District.

### **Discussion**

#### **The Referral of the Matter to the Arbitrator**

By letter dated October 17, 2014 from the State of New Jersey Department of Education the parties were notified that:

...following receipt of Respondent’s answer on October 10, 2014, the above-captioned tenure charges have been reviewed pursuant to N.J.S.A. 18A:6-17.3c; upon review the Commissioner is unable to determine that the evaluation process has not been followed, and accordingly, on this date, the case is being referred to Arbitrator Timothy J Brown, Esq. as required by statute.

(Emphasis added)

#### **Respondent’s Argument Relating to the Arbitrator’s Authority**

Respondent asserts that the arbitrator is without authority to hear and consider the instant matter and must dismiss the tenure charge against Respondent. In this regard, Respondent argues that the instant efficiency tenure charges, in the first instance, as a matter of law should not be considered by the arbitrator at all, and in the alternative should be dismissed, because the District has not complied with certain requirements of



TEACH NJ relating to the promulgation, approval and implementation of the District's evaluation process; requirements including piloting/testing, approval and establishment of an evaluation rubric, teacher improvement processes and SIPs; and the application of such for a minimum of two school years - none of which school years may have occurred prior to the 2013-14 school year. As part of her argument, Respondent asserts that at least two post-2012-13 school year evaluations are a "prerequisite" for; (a) the Commissioner of Education to refer an efficiency case to an arbitrator for hearing and (b) the jurisdiction of an arbitrator to hear and consider tenure charges alleging inefficiency. In support of her argument Respondent relies upon:

- (i) The language of N.J.S.A. 18A: 6-17-3(c),
- (ii) Arbitration decisions finding that a referral of a charge by the Commissioner of Education alleging teacher inefficiency where the Commissioner has not found that an "evaluation process has not been followed" necessarily amounts to a referral of authority to determine whether the District has complied with all provisions of the statute relating to the promulgation and institution of its teacher evaluation process, and
- (iii) Recent arbitral decisions in other cases involving motions to dismiss of similar inefficiency charges by the District finding either that the District did not comply with TEACHNJ in its promulgation and implementation of its evaluation process or that a determination by the arbitrator that the District has complied with all provisions of the statute relating to the promulgation and institution of its teacher evaluation process is a legal prerequisite to an arbitrator proceeding to hearing on the charges.

### **Sections 23 and 25 of TEACHNJ**

Sections 23 of TEACHNJ, among other things, establishes the extent of the authority of arbitrators relating to their consideration of, and rendering decisions upon, charges of teacher inefficiency. In this regard, Section 23 provides:



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

b. In the event that the employee is able to demonstrate that any of the provisions of paragraphs (1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.

c. The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.

d. The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

e. The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case. The arbitrator shall render a written decision within 45 days of the start of the hearing.

Sections 25 of TEACHNJ, concerns the responsibilities of superintendents, boards of education and the Commissioner of Education in evaluating and processing charges of inefficiency. Section 25 of the Act provides:

C.18A:6-17.3 Evaluation process, determination of charges.

25. a. Notwithstanding the provisions of N.J.S.18A:6-11 or any other section of law to the contrary, in the case of a teacher,

principal, assistant principal, and vice-principal:

(1) the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation;

(2) if the employee is rated partially effective in two consecutive annual summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective in the annual summative evaluation, the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency, except that the superintendent upon a written finding of exceptional circumstances may defer the filing of tenure charges until after the next annual summative evaluation. If the employee is not rated effective or highly effective on this annual summative evaluation, the superintendent shall promptly file a charge of inefficiency.

b. Within 30 days of the filing, the board of education shall forward a written charge to the commissioner, unless the board determines that the evaluation process has not been followed.

c. Notwithstanding the provisions of N.J.S.18A:6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a. of this section, the commissioner shall, within five days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to hear the case, unless he determines that the evaluation process has not been followed.

d. The only evaluations which may be used for purposes of this section are those evaluations conducted in accordance with a rubric adopted by the board and approved by the commissioner pursuant to P.L.2012, c.26 (C.18A:6-117 et al.).

#### **TEACHNJ Grants Only Narrow Authority to Arbitrators in Inefficiency Cases**

Considering the above-quoted language of TEACHNJ, I am not persuaded by Respondent's argument. Section 23 of TEACHNJ establishes the authority of arbitrators in cases presenting questions of efficiency. Section 25 establishes the authority of the

Commissioner of Education in cases presenting questions of efficiency. Section 25 c. (18A: 6-17-3(c), (ii)) grants the Commissioner of Education authority to make one of three determinations upon receipt of a charge of inefficiency filed under Section 25 a.; the Commissioner may (1) determine the evaluation process has been followed and refer the case to an arbitrator, (2) determine the evaluation process has not been followed and dismiss the charges, or (3) determine that based upon the submissions of the parties the Commissioner cannot conclusively determine one way or the other whether the evaluation process has been followed and consequently cannot determine that the evaluation process “has not been followed.” Where the Commissioner refers a matter to an arbitrator, as the Commissioner has done here, after concluding that he cannot determine that the evaluation process has not been followed, I am of the view that the statute affirmatively directs the arbitrator to “hear the case” pursuant to Section 23 of the Act. Section 25 is focused upon the authority of superintendents, boards of education and the Commissioner and with perhaps the exception of the assignment of a case to an arbitrator to “hear the case” nothing in Section 25 grants authority to arbitrators.

Considering the specifically described authority of arbitrators contained in Section 23 of the Act and the absence of any similarly enabling language in Section 25, I am persuaded that Section 25 does not confer authority upon the arbitrator to either; (a) rule upon a motion to dismiss based upon the evidence already considered by the Commissioner and found to be insufficient basis upon which to make a determination, or (b) grant authority upon the arbitrator to step into the shoes of the Commissioner and

determine whether the District has complied with statutory requirements in the promulgation and implementation of the District's evaluation process.<sup>3</sup>

It is widely recognized that an arbitrator's authority is defined by the mutual grant of authority by the parties or, as in this matter, by statute. In either event the authority of an arbitrator is only as broad as the authority granted. In the instant matter, I am of the view that the authority grant to me by statute as arbitrator in this matter is a very tightly fitting suit. Considering the pointed and narrow grant of authority to me in Section 23 of the ACT, the statute leaves me little, if any, wiggle room to wander into matters of legislative intent and/or District compliance with provisions of the statute governing the promulgation and establishment of evaluation rubrics, SICs, CAPs, mentorship programs, etc. The Act assigns such tasks to the Commissioner.

The Commissioner's referral of this matter to me was specifically pursuant to TEACHNJ Section 25 (N.J.S.A. 18A:6-17.3c) and no other Section of the Act, and grants me the narrow authority to determine the case under the provisions of Section 23 and no other.<sup>4</sup>

### **The District Failed to Meet Its Burden Under Section 23 of TACHNJ**

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<sup>3</sup> In this latter regard, I note that the reference in Section 25 d. to the portions of the Act concerned with the promulgation and establishment of evaluation rubrics, like the other portions of the section, is addressed to the activities of superintendents, boards of education and/or the Commissioner, not arbitrators.

<sup>4</sup> In contrast, in the case of *The Tenure Hearing of Edgard Chavez, State Operated School District of The City of Newark, Essex County Agency*, Docket No. 269-9/12, (February 6, 2013), the assignment of the case to the undersigned by the Department of Education was made pursuant to N.J.S.A. 18A:6-16 as amended by *P.L. 2112, c. 26*.

I find that the District has failed to meet its burden of establishing the truth of its efficiency tenure charges. Even setting aside the question of whether or not Respondent's 2012-13 annual evaluation may be considered under the TEACH NJ standard, the District failed to show that it met the standard for the 2013-14 school year. In this regard, I find (1) that Respondent's 2013-14 evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan, (2) that the District's actions toward Respondent throughout the 2013-14 school year were arbitrary and capricious and (3) and that such failures by the District materially affected the outcome of the Respondent's 2013-14 annual evaluation.

**The District's 2013-14 Evaluation Failed to Substantially Adhere to the District's Framework – the District's Evaluation Process**

The District's 2013-14 Framework for evaluating Teachers requires that a teacher, such a Respondent, who has received either an Ineffective or Partially Effective on his or her annual summative rating for the 2012-13 school year must have a Corrective Action Plan (CAP) and that such teachers must have a minimum of four observations throughout the school year with at least one observation in each semester and at least one pre-observation conference. Tenured teachers on a CAP may not have all of their observations performed by the same observer. The Framework recommends that for teachers on a CAP the pre-observation conference take place prior to a long observation and that the "most important questions to answer" in a pre-observation conference are:

- Is the teacher clear on what students should know and be able to do by the end of the class?
- Are the strategies and objective aligned to the standards?
- Are the strategies the teacher is planning to use likely to ensure mastery?
- How will the teacher know whether the students mastered the content?
- Has the teacher considered all students in the planning?
- Is there anything in particular the teacher would like feedback on as part of the observation?

Although principal Irby-Jackson testified that she held a pre-observation conference with Respondent prior to the early November 2013 long observation, she did not offer details about the conference or whether or not she attempted to address the important questions for such a conference outlined in the Framework. Respondent testified that her pre-observation conference consisted of an email notice that she would be observed on November 6 and the she should have her lesson plan submitted on “BloomBoard” by November 3, 2013.

Whether the principal and Respondent met for a pre-observation conference, I find that any such meeting that may have occurred consistent primarily of principal Irby-Jackson merely giving Respondent notice of the observation and establishing a deadline for the teacher to submit a lesson plan. I find that there was no pre-observation conference between Irby-Jackson and Respondent during which the parties engaged in a substantive exploration of the questions to be answered in such a conference as contemplated by the District’s Framework. Nor was there sufficient evidence offered to establish that any other pre-observation conference offered Respondent during the 2013-14 school year. I find that the District did not satisfy the requirements of such a conference contained in the District’s Framework.



The Framework also required that Respondent, as a teacher on a CAP, have at least four observations during the school year. It is undisputed that Respondent was given only three observations and I am not persuaded by the District's claim that it was excused from conducting a fourth observation because a fourth observation would have harmed students. The Framework does not provide for such exception. Rather it specifically provides that "teachers on a CAP **must have** one additional observation for a total of four observations." (Emphasis added). In addition to establishing that four observations are a minimum, the Framework encourages school administrators to conduct more than the minimum. The District failed to satisfy the Framework's requirements of four observations of Respondent; the District failed to do the "minimum" required in this regard.

The District also admits that there was never a complete Corrective Action Plan (CAP) established for Respondent during the 2013-14 school year, but placed the responsibility and blame for the lack of such a plan upon Respondent. It is true that Respondent did not submit some parts of the CAP. However, the District also failed to satisfy their obligation. In this regard, I find insufficient evidence to establish that the administration attempted to follow-up on the CAP with Respondent or work collaboratively with the teacher to assure that the CAP was completed. Nor did the administration of Arts High School review Respondent's 2012-13 annual evaluation as required by the Framework to develop a CAP. The Framework does not contemplate that school administrators can simply sit on their hands and shift the burden of establishing a CAP onto the struggling teacher. Rather the Framework contemplates that the CAP is a "living document;" and that the development of a CAP is an ongoing and dynamic

process between the teacher and responsible administrator. Again, the Framework provides:

An administrator with a teacher on a CAP is responsible for reviewing and co-developing the CAP with the teacher and then supporting the teacher in meeting the development goals outlined in the CAP. The CAP should explicitly articulate actions the administrator will take to directly support the teacher. The administrator is also responsible for conducting classroom observations to collect evidence of progress towards goals, ensuring the teacher has opportunities and guidance on how to access and participate in professional learning opportunities throughout the year, and for sharing clear, regular feedback with the teacher about his or her development.

I find that the District failed to satisfy the requirements relating to Respondent's CAP contained in the District's Framework.

I do not question the evaluator's determinations as to the quality of Respondent's classroom performance as reflected in the three observations made of Respondent in the 2013-14 school year. However, when the District's failures to comply with the provisions of the District's Framework are weighed in full along with the considerations I rely upon below for finding arbitrary conduct by the District, I find that Respondent's 2013-14 evaluation "failed to adhere substantially to the [District's] evaluation process, including, but not limited to providing a corrective action plan."

### **The District's Actions Toward Respondent were Arbitrary and Capricious**

The District's Actions toward Respondent relating to her evaluation and attempts to correct her deficiencies were arbitrary and capricious. In this regard, I find that rather than making a real effort to mentor and assist Respondent in developing and improving her teaching ability and skills during the 2013-14 school year, the administration of Arts

High School predetermined that Respondent was a lost cause, undertook a “warehousing” of Respondent and placed form over function by going through the motions of observing Respondent rather than exercising the time and energy contemplated by both TEACHNJ and the District’s Framework in evaluating and helping Respondent develop. The District set Respondent up to fail and simply marked time until it could file tenure charges against the teacher. In reaching this conclusion I rely upon the following considerations:

- 1) It is fiction to believe that Respondent would succeed in observations of her teaching high school students at a high school devoted to the arts when Respondent had previously taught dance only at the elementary school level and had been assigned hall monitoring and substitute teaching in non-dance subjects at the arts high school.
- 2) On October 24, 2013, only a week or two before her first observation, Respondent was unambiguously advised in a disciplinary write-up from principal Kirby-Jackson that “...you are a EWPS teacher...**you are not an Arts High School dance teacher**...” (Emphasis added) Such reflects Respondent’s status as an outsider at the school and the Principal’s view that Respondent was not at the High School for purposes of teaching dance.
- 3) Four or five days prior to her first observation for which the principal rated Respondent “Ineffective,” Kirby-Jackson expressed her firm predisposition toward finding Respondent unable to teach when the principal wrote her assistant superintendent that Respondent is “functional illiterate,” that Kirby-Jackson was “outraged” that

Respondent had been allowed to teach students in the District's schools, that Irby-Jackson is the "only administrator who can successfully observe her in the dance studio and have the knowledge to effectively point out her deficiencies," and that "[s]omething must be done, I cannot allow this to continue, my children and all the children of the Newark Public Schools deserve better."

- 4) As discussed above, The District failed to perform even the minimum number of observations of Respondent and failed to complete Respondent's Corrective Action Plan.
- 5) Respondent taught only a very few days throughout the 2013-14 school year.<sup>5</sup> Respondent was not permitted to develop relationships with students; she was not given the opportunity to get to know students and students the opportunity to get to know her within the context of a teacher-student relationship. The three classes for which Respondent was observed were not even the same students; the first being 12<sup>th</sup> graders, the second 9<sup>th</sup> and 10<sup>th</sup> graders and the third 9<sup>th</sup> graders, and
- 6) Most importantly, it is arbitrary to require Respondent to be assessed as to her ability to teach effectively for an entire school year – the period of time contemplated by the District's Framework and TEACHNJ, when she was given the opportunity to teach for only a handful of class periods.

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<sup>5</sup> The record establishes that Respondent actually taught at least three classes during the year and may have taught no more than a few more.

**The District's Failure to Adhere Substantially to the Evaluation Process, and the District's Arbitrary and Capricious Conduct Toward Respondent Materially Affected the Outcome of Respondent's 2013-14 Evaluation**

TEACHNJ contemplates that before he or she may be terminated from a teaching positions, to improve the performance of the struggling teacher, such a teacher will receive a real – rather than feigned – prolonged effort to provide guidance and mentorship from the most advanced and knowledgeable educators in the teacher's school; the principal and high-level administrators. Here, the District, through its administrators at Arts High School, predetermined that Respondent would never improve and could not be successfully reformed and arbitrarily withheld such efforts from Respondent.

By its actions and inactions described above, the District pursued a course of conduct that assured that rather than conduct observations of a dance teacher teaching a dance class of the teacher's students, the District could conduct observations of a substitute teacher/hall-monitor attempting to teach students for whom the teacher had no teacher-student relationship. The outcome of such observations were effectively determined before they began and, consequently, I find that the failure of the District to adhere substantially to the evaluation process, and the District's arbitrary and capricious conduct toward Respondent materially affected the outcome of Respondent's 2013-14 evaluation.

**Conclusion**

The 2013-14 school year annual evaluation of Respondent by the District may not be relied upon to support the termination of a tenured teacher. The District has failed to meet its burden of establishing the truth of its tenure charges against Respondent.

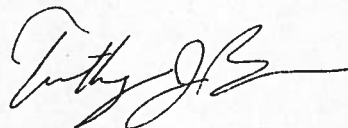
## AWARD

The subject tenure charge against Respondent, LaRhonda Ragland is dismissed.

The District is ordered to:

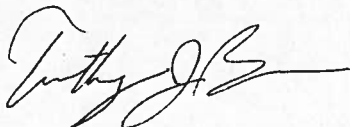
1. Promptly offer Respondent reinstatement to a dance teaching position.
2. Make Respondent whole for any and all losses of pay, seniority and other benefits she may have suffered as a result of her termination from the date of her termination to the date of her reinstatement by the District.

Dated: February 2, 2015



Timothy J Brown, Esquire  
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket case No. 285-9/14 relating to tenure charges against LaRhonda Ragland on Monday, February 2, 2015.



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Timothy J Brown



