

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges Against
Nancy Mastriana

**SCHOOL DISTRICT OF THE TOWNSHIP OF
HILLSBOROUGH**

Agency Dkt. No.
233-8/15

Petitioner

**Opinion
and
Award**

- and -

NANCY MASTRIANA

Respondent

Before: Deborah M. Gaines, Arbitrator

APPEARANCES:

FOR THE PETITIONER:
VITTORIO S. LA PIRA, ESQ.
FOGARTY AND HARA

FOR THE RESPONDENT:
EDWARD A. CRIDGE, ESQ.
MELLK O'NEILL

Pursuant to NJSA 18A:6-16, as amended by P.L. 2012, c.26 ("TEACHNJ"), the tenure charges brought by the Township of Hillsborough ("the District" or "Petitioner") against Nancy Mastriana ("Mastriana" or "Respondent") were referred to me by the Bureau of Controversies and Disputes for a hearing and

Decision on October 20, 2015.¹ I conducted hearings at the District's Offices in Hillsborough, New Jersey on December 11, 21, 2015 and February 2 and 29, 2016.

At the hearing, the parties had full and fair opportunity to examine and cross-examine witnesses, introduce documentary evidence and make argument in support of their respective positions. The hearings were transcribed. The parties submitted written closing statements which were received on March 31, 2016, whereupon the record was closed.

THE CHARGES

The Sworn Tenure Charges brought against Nancy Mastriana on August 26, 2015, are as follows:

Charge No. 1

Nancy Mastriana, a tenured teaching staff member in the employ of the Hillsborough Township Board of Education, *consistently demonstrated inefficiencies and ineffectiveness in her teaching skills* throughout the 2013-2014 and 2014-2015 school years and, as a result of the significant negative impact that her poor teaching performance has upon the quality of education of her students, *she must be dismissed from her position.*

1. Nancy Mastriana ("Mastriana") has been employed by the Hillsborough Township Board of Education (the "Board") to serve as a full-time teaching staff member in the Hillsborough Township Public School District (the "District") since September 1, 2003. The District provides educational programs and services to

¹ The case had originally been assigned to Arbitrator Licata. Respondent filed a Motion to Dismiss on September 23, 2015. The motion was denied on October 9, 2015.

students who reside in the Township of Hillsborough from kindergarten through grade twelve.

2. The Board has employed Mastriana as a Special Education/Resource Center teacher at Hillsborough Middle School ("Middle School") throughout the course of her employment with the Board. Mastriana received tenure on or around September 1, 2006.

3. For two consecutive school years, 2013-2014 and 2014-2015, Mastriana's performance was rated partially effective on her summative evaluations, thereby necessitating the filing of the within charge for inefficiency.

4. Joseph Trybulski ("Trybulski") is the Principal of the Middle School and one of Mastriana's supervisors. As such, Trybulski, along with other members of the school improvement panel, is responsible for observing and evaluating Mastriana in her position as the special education teacher.

5. During the 2013-2014 school year, the administrative staff observed and evaluated Mastriana on three separate occasions, specifically on October 29, 2013, January 29, 2014, and March 12, 2014. The first observation, performed by Trybulski, was announced and was a "long" observation (a full period). Leonore Johnston, the Director of Special Services at that time, performed Mastriana's second evaluation, which was also announced, while Trybulski performed her third evaluation (which was unannounced).

6. Near the end of the school year, the District prepared Mastriana's annual summative performance report. When her evaluation was scored, Mastriana received a score of 2.58, which falls within the "partially effective" category. (Exhibit 1). That score was among the lowest in the District.

7. A Teacher Summative Performance Report ("summative report") was discussed and agreed upon by Trybulski and Mastriana for the 2013-2014 school year. In the 2013-2014 summative report, Mastriana was rated as "partially effective" in following performance standards:

- a. Professional Knowledge;
- b. Instructional Delivery;
- c. Assessment of and for Student Learning; and
- d. Learning Environment.

Professionalism as it relates to parental communication was also noted as an area for improvement. (Exhibit 1).

8. In the area of professional knowledge, Mastriana inconsistently demonstrated her understanding of appropriate curriculum standards or a full understanding of the subject matter and skills necessary to promote student development. Despite Mastriana's participation in professional development activities, there was an evident lack of fluidity in her demonstration of such knowledge in practice. Mastriana periodically demonstrated lack of understanding of the social, emotional, and psychological needs of her students, thereby, hindering the student development. (Exhibit 1, p. 1).

9. Specifically, during a classroom observation on November 14, 2013, Mastriana failed to recognize elements of a *correct response* from a student's answer, which went beyond the textbook definition. Instead of building upon the student's answer, Mastriana repeatedly stated that the answer was incorrect and called upon another student who provided an exact textbook definition of "terminal velocity." (Exhibit 2). Mastriana did not demonstrate her ability to build her students' confidence and recognize how their reasoning is connected to the larger themes or terms being used in class.

10. For the 2013-2014 school year, Mastriana received a "partially effective" summative rating in her "instruction delivery." Although Mastriana demonstrated *some* evidence of her ability to effectively engage students, the effectiveness of her limited instructional methods and strategies was inconsistent across all students and failed to meet their individual learning needs. (Exhibit 1, p. 3-4). During her observation on November 14, 2013, Mastriana utilized Nearpod in efforts to implement the use of technology as part of a 1:1 pilot program, which was ineffective in a small-group setting and created distance between the students and the activity. (Exhibit 2). Trybulski noted in Mastriana's evaluation that she needed to develop "a better understanding of the cognitive and psycho/social needs of students as well as a deeper understanding of the content/skills associated with the curriculum and diversify her instructional strategies to better meet individual needs as well as enhance communications with student/parents that provide more specific, detail and solution-oriented guidance." (Exhibit 1, p. 4).

11. Likewise, Mastriana also demonstrated only partial effectiveness in her "assessment of and for student learning" for the 2013-2014 school year. The sample of assessments provided by

Mastriana demonstrated assessment methods of a content area teacher and failed to demonstrate how Mastriana used the data to plan or modify instruction or guide the students' learning and achievement beyond that provided by the content area teacher. (Exhibit 38). Trybulski recommended that Mastriana look for ways to monitor students' progress on specific skills and concepts and report that information to students, parents and content area teachers with specific strategies to assist in remediating or strengthening those skills and concepts over the course of the school year. (Exhibit 1, p. 6).

12. With respect to the "learning environment" in Mastriana's classroom for the 2013-2014 school year, she demonstrated only partial effectiveness due to inconsistency in the classroom dynamics, as well as a lack of appropriate level of enthusiasm, respect, and teamwork. (Exhibit 1, p. 6-7). Additionally, Mastriana demonstrated inconsistency in her ability to establish positive and trusting rapport with all students. Mastriana's failure to establish a positive teacher-student relationship was evidenced in meetings with the Administration, Child Study Team ("CST") and communication with parents and students. During her classroom observation on November 14, 2013, Mastriana was observed to persistently and audibly huff and sigh with each statement that conveyed a sense of boredom, irritation or lack of interest in the lesson. (Exhibit 2). Additionally, at least two parents of students with special needs in Mastriana's classes raised concerns about Mastriana's lack of sensitivity to their children's emotional needs, requiring administrative intervention to assist in re-establishing a trusting relationship between student-teacher and parent-teacher.

13. Although Mastriana managed to achieve an effective rating in the area of professionalism in the 2013-2014 school year, she continued to exhibit weakness in the area of communication with parents. (Exhibit 1, p.7-8). Mastriana demonstrated evident lack of sensitivity, solutions, guidance and accommodations to the problems being presented in her communication with S.F.'s parents. For example, on September 25, 2013, Mastriana e-mailed the following correspondence to S.F.'s parents, which did not lead with a positive as she had been instructed to do:

We are beginning to see a pattern with [S.F.], and we are beginning to get very concerned. [S.F.] did not bring either of her novels to school today, and was unable to complete the classwork for the day. At this point [S.F.] is chronically forgetting material at home and it is going to negatively impact her progress across the board. I am hoping that you will be able to help her

organize her materials every night for the next school day.

[Exhibit 40].

Additionally, on October 9, 2013, Mastriana sent the following correspondence to S.F.'s parents, wherein she did not offer any suggestions or solutions to address S.F.'s issues:

Yes, [S.F.] did not attempt to work on her assignment. It is also frustrating for us because we spend a lot of time with each student commenting on their work, modeling and providing assistance. We are able to see everything each student does on their documents by looking at their revision history... so when [S.F.] tried to tell us she worked on it, but did not finish because she didn't understand we were able to see that she was not being truthful. I am not sure that anything can be done to prevent her from failing her classes if she does not do the work.

[Exhibit 39].

Notably, when T.J.M.'s mother reached out to Mastriana to obtain extra help for her son who was struggling in Science class, Mastriana responded with the following (providing no constructive suggestions):

I am sorry that [T.J.M.] was upset yesterday after school. I spoke to Miss Pierfy yesterday and told her that [T.J.M.] rarely does homework, therefore he is not getting the practice and reinforcement that he needs in order to be successful. I spend a lot of time in support class on the science curriculum reinforcing what was taught in class. *Unfortunately I do not offer extra help before or after school.* Hopefully this will help.

[Exhibit 41 (emphasis added)].

The examples were consistent with the long-standing issues the Administration had with Mastriana, and demonstrated that Mastriana continued to fail to provide constructive feedback to parents in her role as a support professional for the students. Improvement in the effectiveness of communication with parents was noted as an important area of development for Mastriana, and ultimately became a part of her corrective action plan ("CAP").

14. As a result of Mastriana's "partially effective" summative rating for the 2013-2014 school year, the District developed and implemented an individualized and comprehensive CAP to address the areas noted for improvement. (Exhibit 3). The CAP included multiple demonstrable goals intended to assist Mastriana and facilitate professional development. Specifically,

- a. Facilitate understanding of social, emotional and psychological needs of her students with special needs;
- b. Provide Mastriana with professional development opportunities to enhance student learning;
- c. Conduct weekly monitoring of lesson plans to ensure implementation of differentiated strategies in support of students in content area classrooms;
- d. Provide mentoring services to assist Mastriana with implementing various instructional strategies that engage students in meaningful activities and are specifically designed for individualized learning; and
- e. Encourage Mastriana to systematically gather formative data on student learning and utilize such data to guide instruction, provide timely feedback to students and parents, and promote collaboration with colleagues to improve communication with students and parents.

15. At the conclusion of the 2014-2015 school year, Mastriana failed to successfully accomplish a single demonstrable goal set forth above. (Exhibit 4). In some cases, she inexplicably made *zero effort* to comply with the CAP requirements, notwithstanding the knowledge that her future employment could be in jeopardy.

16. In her 2014-2015 CAP, Mastriana was responsible to read "*Brainstorm: The Power and Purpose of the Teenage Brain*" by Dr. Daniel Siegal and provide a reflection on the text as it relates to her teaching practices or engaging students. (Exhibit 3, p. 3). During her interim CAP evaluation in January of 2015, Mastriana only completed one section of the text and provided a one and one-half page bullet point summary of the text for her summative CAP review. (Exhibits 5, 6 and 45). At the summative CAP review on April 28, 2015, Mastriana demonstrated that she read the text, but failed to provide a reflection on the text as to how it relates to her teaching practices as required by the CAP. (Exhibits 4 and 7).

17. At the time of Mastriana's interim CAP evaluation in January of 2015, she did not demonstrate participation in any professional development activities. (Exhibit 5). Although by the end of the school year, Mastriana provided evidence of her participation in professional development opportunities, she provided "limited to no evidence" of specific application of the professional development to her classroom learning strategies, enhancement of student participation, differentiation in instruction or increase in student performance. (Exhibits 4 and 8). Moreover, all of the professional development activities were in the District, and many were required for all teachers—nothing representing any initiative on her part. Although Trybulski recommended that she contact her statewide union for resources, it does not appear that she ever did so, nor did she ever ask Trybulski for either course recommendations or for his input on whether the courses she selected (if any) were appropriate. As such, Mastriana failed to meet her CAP goal of "enhancing student participation, differentiating instruction, or increasing student performance."

18. The 2014-2015 CAP identified "lesson planning" as one of the areas in need of improvement. The four classroom observations throughout the 2014-2015 school year demonstrated Mastriana's mixed attention to lesson planning with inconsistency in the detail and degree of completeness and availability prior to the scheduled lessons. (Exhibits 9, 10, 11 and 12). Mastriana's classroom observations on October 29, 2014, December 11, 2014, February 5, 2015, and April 17, 2015 provided limited and inconsistent evidence of the use of varied instructional strategies that engaged the students in meaningful activities based on individual student needs. (Exhibits 9, 10, 11 and 12). As such, Mastriana failed to successfully complete her assigned goal. Notably, during the interim CAP review, Trybulski emphasized the following recommendation to Mastriana:

As your assignment this year involves only in-class support, it is particularly important for your lesson planning to indicate the specific actions or areas in which you are addressing student needs reflecting IEP goals and accommodations. *It is not clear what differentiates your actions in the classroom from that of a content-specific teacher.* Naturally your plans should mirror the content-teacher's objectives and student activities, however, once you have copied and pasted that information, you should then indicate your plans to accommodate and support individual student needs.

[Exhibit 5 (emphasis added)].

Despite the above-stated recommendation, Mastriana failed to demonstrate significant efforts to differentiate herself from the content teacher and clearly define her role in the classroom.

19. As part of her 2014-2015 CAP, Mastriana was responsible to visit the classroom of her mentor, at a minimum, two to three times per marking period for the first three marking periods. (Exhibit 3). The Administration developed this requirement in efforts to facilitate development of strategies and ideas that would enhance meaningful student engagement. During her interim CAP review, Trybulski advised Mastriana of her failure to conduct even a *single classroom observation of her mentor*. (Exhibit 5). Further, he reminded Mastriana of her responsibility to complete the same. Nevertheless, by the end of the school year, Mastriana *still failed* to conduct a single classroom observation of her assigned mentor, thereby, completely disregarding her responsibility under the CAP (again with full knowledge that her future employment with the District depended in part on attainment of these goals). Mastriana never offered an excuse or rationale for her admitted failure to achieve this goal. (Exhibit 4).

20. Mastriana also completely failed to meet her 2014-2015 CAP goal of systematically gathering formative data on student learning and using the same to guide instruction and provide timely feedback to student and parents. (Exhibit 4, Exhibit 14). Mastriana did not provide Trybulski with *any examples* of formative assessment development or use. (Exhibit 4, Exhibit 13). The purpose of this goal was to "promote the use of formative assessments and specific/focused data collection on student behaviors and/or academic progress that could be shared with students to help develop self-monitoring skills, with parents to help inform their support at home, and with teachers/CST to help monitor and inform instruction and program decisions. This was not met." Again, Mastriana provided no justification for her admitted failure to achieve this goal. (Exhibit 4).

21. In accordance with the 2014-2015 CAP, Mastriana was required to collaborate with her mentor and colleagues in developing successful communication approaches, implementing such approaches and discussing their effectiveness with her mentor and supervisor. Special emphasis was placed on improving Mastriana's communication with parents. (Exhibit 3). However, the samples of e-mail communication with parents that Mastriana provided during her mid-year review did not demonstrate her implementation of effective communication strategies that Mastriana's mentor reviewed with her. Trybulski specifically advised Mastriana to start parent communication with "a positive opening regarding the child before addressing concerns" and framing the communication

"with positive solutions... so parents understand what we are doing at school to help." Nevertheless, Mastriana's e-mails "often launched bluntly into the problem, detail all of the issues, but fail to provide much in terms of positive behavioral or motivational strategies/solutions." Instead, Mastriana's e-mails demonstrated, for example, the following: "I will continue to give [student] lunch detention for his behaviors, but I am not sure how well he will be prepared for the (test) retake with no notes," or "I just wanted to make you aware of the issues." (Exhibit 3).

22. Mastriana acknowledged the accuracy of the 2014-2015 CAP summative review and did not file a rebuttal statement, despite her right to do same. (Exhibit 3).

23. A Teacher Summative Performance Report ("summative report"), dated June 6, 2015, was prepared for the 2014-2015 school year that evaluated Mastriana's job performance as a special education/resource center teacher for the District. (Exhibit 15). Mastriana's overall rating was determined to be "partially effective." The summative report set forth Mastriana's rating of "partially effective" in the following performance standards:

- a. Professional Knowledge;
- b. Instructional Planning;
- c. Instructional Delivery;
- d. Assessment of and for Learning; and
- e. Professionalism.

24. The Administration delineated specific evaluative statements regarding Mastriana's inefficiencies for each of the five performance standards set forth in the 2014-2015 summative report. Despite her CAP and the comprehensive support the District provided and made available to Mastriana throughout the school year, her performance and overall summative rating declined for the 2014-2015 school year.

25. Under the individual performance standards of "Professional Knowledge," Mastriana demonstrated inconsistent understanding of the curriculum, content and student development and lacked fluidity in the use of her knowledge. During two of the three formal classroom observations in the 2014-2015 school year, the evaluators could not observe evidence of Mastriana's professional knowledge. (Exhibits 11 and 12). Specifically, Trybulski noted that during the April 17, 2015 observation,

professional knowledge was "[n]ot observed" as the "content teacher facilitated the presentation of material, student dialogue and class discussions throughout the period." (Exhibit 12). In other words, Trybulski did not see her actively engage with the students to address the specific and individual needs of the at-risk children she served.

26. With regard to the performance standards of "Instructional Planning," Trybulski noted that although Mastriana's lesson planning tended to improve toward the second half of the school year, she nevertheless demonstrated inconsistency in the "detail and degree to which those plans were complete and made available prior to the lessons." (Exhibit 15). Trybulski further noted that Mastriana demonstrated "limited evidence of best practices/effective strategies, significant modification [in] development of resources beyond those of the content teacher, or collection [and] application of formative data to inform or drive instructional decisions regarding individual needs for student growth on a consistent basis." (Exhibit 15).

- a. During the October 29, 2014 formal classroom observation, Trybulski noted that it was not clear "what differentiates [Mastriana's] actions in the classroom from that of a content-specialist teacher." (Exhibit 9). Such observation was notable due to the Mastriana's assignment for the 2014-2015 school year solely as "in-class support." Due to Mastriana's limited assignment, it was particularly important for her to indicate specific actions or areas in which she was addressing student needs, reflecting IEP goals and accommodations, and not merely copy content teacher's objectives and student activities. Additionally, Mastriana's lesson plan document, as initially submitted, was "one long chart spanning over 100 pages" which made it "somewhat difficult to work with." (Exhibit 16).
- b. At the completion of the December 11, 2014 formal classroom observation, the improvement panel member, Eloise Stewart ("Stewart"), encouraged Mastriana "to find a way to share [her] lesson plans so they are available for easier access." (Exhibit 10).
- c. Mastriana apparently did not fully heed Stewart's advice, because two months later, during the February 11, 2015 formal classroom observation (which Mastriana was aware of in advance), the evaluator, Michael Volpe ("Volpe"), was unable to review the lesson plans for the week; they were not available, and had not been put into the shared Google Drive before the lesson, *even though they are required to*

be consistently available. Volpe also reiterated Trybulski's recommendation that Mastriana differentiates her lesson plans from the ones of a content teacher by finding ways to accommodate and support individual student needs. (Exhibit 11).

27. Mastriana's performance in the performance standards of "Instructional Delivery" declined from the previous school year. The classroom observations on October 29, 2014, December 11, 2014, February 11, 2015, and April 17, 2015 provided "limited" and "inconsistent" evidence of Mastriana's use of varied instructional strategies that would engage students in meaningful activities while simultaneously consider the students' individual needs and advance learning. (Exhibits 9, 10, 11 and 12).

- a. During the formal classroom observation on February 11, 2015, Volpe observed and noted the following:

Ms. Altomari, the classroom teacher, began today's class by giving an overview of the next unit through the end of March... When some students had some difficulty in following the directions to download the textbooks, Ms. Mastriana helped one student step by step to download the textbook. During this time, Ms. Mastriana went to the back of the class to assist a student who was taking a make-up quiz for a brief period. After the students all attempted the download, they were directed to come to the back of the class where they would be discussing eclipses. This was 22 minutes into the period. Ms. Mastriana went to continue to work with the student who was taking the quiz. After helping the student, Ms. Mastriana joined the group in the back of the class where Ms. Altomari was using globes and lights to create shadows on the wall. During this time, Ms. Mastriana watched Ms. Altomari's presentation. With two minutes left, students were told to go back to their seats as they would watch a video about eclipses. A YouTube video was played, but had to get through a commercial before starting. The video then started and was watched for approximately 1 minute and 20 seconds. At that time, the bell rang and students left the class.

[Exhibit 11].

Mastriana thus did not demonstrate an effective and efficient use of her time in the classroom, notwithstanding the fact that she was fully aware of Volpe's presence and

her prior less than favorable observation reports. As Volpe suggested, the textbook could have been downloaded ahead of time, allowing the students to focus on instruction. Additionally, once Mastriana's immediate assistance was no longer required, she did not proactively engage in the lesson and instead sat in the back of the classroom, passively watching the presentation by the content teacher. Ultimately, Mastriana demonstrated a lack of planning and coordination with her co-leader, resulting in a less than effective lesson.

- b. Mastriana's lack of effort to seek out opportunities to engage students using instructional strategies and resources to enhance lessons and overall academic development was evident *in all* of her formal observations, as expected of an instructional aide, not a certified special education teacher. (Exhibits 9, 10, 11, 12 and 15). According to the evaluator, Mastriana mostly circulated throughout the classroom, "periodically checking on student and quietly addressing questions as needed." (Exhibit 12).

28. In the individual performance standards of "Assessment of and for Student Learning," Mastriana's rating was "partially effective" due to her limited selection of assessment strategies, inconsistent linking of assessments to intended learning outcomes, and lack of use of assessments in planning and modifying instruction. (Exhibit 15).

- a. Trybulski provided the following comments regarding Mastriana's performance in the area of assessments of and for student learning:

[T]here is limited evidence of any systematic approach to gathering, analyzing, or maintaining data on a consistent basis regarding academic progress or behavioral interventions. A critical role of in-class resource support is to provide for the use of formative assessment and specific/focused data collection on student behaviors and/or academic progress that can in turn be shared with students to help develop self-monitoring skills, with parents to help inform their support at home, and with teachers/CST to help monitor and inform instructional methods and program decisions.

[Exhibit 15].

- b. Both the February 11, 2015 and April 17, 2015 formal classroom observations produced no evidence of "assessments of and/or for learning" on Mastriana's part. (Exhibits 11 and 12).

29. Mastriana's rating in the performance standards of "Professionalism" also declined from the prior school year. (Exhibits 1 and 15). Although she attended mandatory in-District professional development courses and activities, that all teachers attended, she did not avail herself of any other performance development activities as required by her CAP, there was limited evidence of specific application of any learned strategies to enhance student participation, differentiate instruction, increase student performance or, at the very minimum, demonstrate reflection of such efforts. (Exhibits 8 and 15). Despite the fact that the Administration specifically identified improvement in communication with parents as a focus in Mastriana's 2013-2014 summative performance review and CAP, the examples of communication with parents at the mid-year review reflected "a lack of sensitivity toward providing meaningful resources, strategies or follow-up to address concerns or developing issues." (Exhibits 1, 3 and 15).

- a. For example, in October 23, 2014 e-mail correspondence to N.I.'s parents, Mastriana stated the following:

We have had a couple incidents with [N.I.] today. When he first came to class he asked me to go to the bathroom. I did let him go when he didn't come back for a long time I went and waited for him to come out. While coming out of the bathroom he was putting his phone away. He was gone for 10 minutes. The same thing happened yesterday. We cannot have him out of class for that long so I am not going to allow him to go to the bathroom during period 8.

When he came back to class he started playing with his empty water bottles creating a lot of noise and distracting the other kids in the class. Mrs. Kiel asked him to put his empty water bottles away. Instead he got up and was walking over to the sink. When I asked him what he was doing he said he was going to fill them up. I told him no and to sit down, and he proceeded to tell me to get out of his way several times. When I refused to move he walked around the table and went and filled his water bottled up.

I am not sure how to handle [N.I.] at this point. Every method I have tried does not seem to work.

[Exhibit 19]. This merely identified problems without providing solutions.

- b. Mastriana clearly demonstrated lack of sensitivity and meaningful solutions in her correspondence with N.I.'s parents. Additional e-mails provided by Mastriana, *which she submitted* as samples of her successful communication with parents, included short confirmation responses regarding parents dropping off their children for extra help. (Exhibit 20). Notably, in Mastriana's final CAP documentation log, she confirmed at the very beginning of the school year, on September 29, 2014, that she discussed proper ways of writing e-mail correspondence to her student's parents with her mentor. Specifically, she documented, "[w]hen writing an email about what the child didn't do or for negative behavior always start the email off with positive opening... [f]rame the email with the problem and a possible solution. This lets the parent know what we are doing at school to help." (Exhibit 14). Notwithstanding the foregoing, Mastriana's correspondence with parents does not demonstrate her implementation of the proper parent communication procedures.
- c. The final CAP documentation log created by Mastriana demonstrates that on October 13, 2014, she confirmed that she will be "[s]ending home 1-2 positive emails a week to parents." (Exhibit 14). However, Mastriana failed to provide *any evidence* of weekly positive communication with the parents.
- d. Further, during two separate formal classroom observations, on February 11, 2015 and April 17, 2015, evaluators were unable to ascertain any evidence of professionalism on the part of Mastriana. (Exhibits 11 and 12).

30. Importantly, Mastriana's performance has been declining and in need of improvement as early as the beginning of the 2005-2006 school year and demonstrates a pattern of ineffectiveness and inefficiency. In Mastriana's annual performance report for teaching staff members for the 2005-2006 school year, Trybulski noted the need for improvement in the following three areas: employing instructional methods and materials that are most appropriate for meeting stated objectives, providing activities

and experiences to meet the needs, interests and abilities of students, and creating a classroom environment that is conducive to learning and appropriate to the maturity and interests of students. (Exhibit 22). During the January 17, 2006 observation, Mastriana demonstrated lack of preparedness for class by failing to have an actual lesson plan prepared for that day. (Exhibit 23). During the classroom observation, Mastriana also did not provide her students with sufficient time to respond to questions and instead quickly proceeded to call on other students. Mastriana's observer, William Lyons, the Director of Special Services at the time, also recommended for Mastriana to be "more animated," use her voice "to show enthusiasm and excitement," and to "[e]njoy the class." Importantly, he noted that if her "performance continues at this level, a recommendation for future employment in Hillsborough cannot be made." (Exhibit 23). Notably, Mastriana's lack of enthusiasm proceeded to be a concern years after it was first brought to her attention in the 2005-2006 school year.

31. Mastriana's 2006-2007 annual performance evaluation demonstrated the need to improve the area of "questioning," requesting that Mastriana "include questions which elicit the higher level of thinking skills, such as applying, synthesizing, analyzing, and evaluating." Mastriana was also provided with a defined professional improvement plan that would address such need. (Exhibit 24). Nevertheless, as evidenced in Mastriana's more recent 2013-2014 performance evaluation, she continued to have such deficiencies, as she still failed to consistently elicit higher level of thinking from her students, despite the support and guidance provided by the District. (Exhibit 24).

32. In the 2007-2008 annual performance review, Mastriana's supervisor noted the following:

As demonstrated in your classroom observation this year, there is a definite need to work on better and current planning. Your plans were not reflective of the lesson your supervisor observed and did not show evidence of modifying curriculum and strategies to meet the need of your special education students... I do have some concerns about the role you play as the special education teacher on your team. In December of this school year, the district supervisor of special education issued you an evaluative memorandum reflecting the fact that you had not shared any information with your team about a student who was classified... I am also very concerned to find that you had not followed through regarding our conversations about a plan to provide support for J.M.R.

[Exhibit 25].

Mastriana's lack of preparedness for class and lack of a defined role in the classroom have thus been outstanding concerns for years as well.

Further, Mastriana's 2007-2008 annual evaluation also demonstrated an issue regarding Mastriana's inability or unwillingness to form positive and collaborative relationships with teachers on her team. (Exhibit 25). During the 2007-2008 school year, Mastriana did not establish a "comfortable or positive" relationship with the teachers on her team and was transferred onto a different team to ensure that her relationships with colleagues do not interfere with the students' success. (Exhibit 25). That continued to be an issue, up to and including the 2014-2015 school year, as various teachers requested that Trybulski not pair them with Mastriana.

33. Mastriana's consistent lack of lesson planning and differentiation of instruction was also noted in her 2008-2009 annual performance evaluation. (Exhibit 26). Procedural timelines with specific improvement goals were implemented by the Administration to assist Mastriana in completing lessons plans, developing strategies in motivating disaffected and difficult students, developing an organized system of identifying the classified students on her team, gathering information regarding the students' progress, and achieving specific IEP goals and accommodations. (Exhibits 26 and 42). However, despite the support provided by the District, Mastriana continued to show lack of improvement in the areas specified above.

34. In fact, in the 2009-2010 school year, Mastriana's performance declined even further. (Exhibit 27). The persistent lack of improvement in lesson planning was noted *yet again* in the 2009-2010 annual performance evaluation. Mastriana failed to timely complete students' progress reports, transition statements, IEP goals and objectives, and present levels of academic achievement and functional performance ("PLAAFP") that are necessary for IEP reviews and parent meetings. (Exhibit 27). The CST issued at least four separate memoranda to Mastriana, addressing her failures to provide timely information. (Exhibits 27 and 28). Additional concerns were expressed regarding Mastriana's "inattentiveness in class, including sleeping, text-messaging and working on the computer during instructional class time" in January of 2010. (Exhibits 29, 30 and 43). Mastriana was once again provided with an improvement plan, developed by the Administration, in efforts to assist Mastriana with her declining performance. Notably, Mastriana's lack of preparedness for class

and timely completion of her duties as a special education teacher continued throughout the years and into the most recent 2013-2014 and 2014-2015 school years.

35. In the 2010-2011 school year, Mastriana continuously failed to demonstrate any improvement in her lesson planning, as evidenced in her annual performance evaluation. (Exhibit 31, Exhibit 44). Despite the administrative support and prior requests for improvement, Mastriana also continuously failed to prepare important records of student progress that are essential for monitoring students' response to intervention and for review of IEP and parent meetings.

36. Despite the Administration's repeated discussions with Mastriana regarding her lack of lesson planning, including by way of a meeting on March 27, 2012 and a follow up notice, Mastriana failed to respond to the notice or post lesson plans as requested. (Exhibits 32 and 33). The lack of lesson planning continued to be a major concern for the 2011-2012 school year. By the 2011-2012 school year, Mastriana "failed to comply with school policy regarding lesson planning... *for the past 5 years.*" (Exhibit 33) (emphasis added). Additionally, despite prior notices and requests, CST members were yet again forced to follow up with Mastriana throughout the school year in efforts to obtain required information for IEP review and development in advance of parental meeting and for proper monitoring and reporting of student progress. (Exhibit 34). In her annual evaluation, Mastriana was once again reminded that her limited attention to District standards for professional responsibilities "places the [D]istrict at risk for procedural violations, including failure to ensure student progress toward IEP objectives and [free and appropriate public education]." (Exhibit 33). The annual evaluation further expressed a concern regarding Mastriana's preparation and engagement in classrooms as well as "unexplained lateness to class or absence from significant portions of ICR classes." (Exhibit 33). Despite the administrative support in efforts to assist Mastriana in improving her performance, she continued to demonstrate an inability or unwillingness to meet the District's standards of professional responsibilities.

37. In her 2011-2012 annual performance evaluation the evaluator noted that, "[Mastriana] ha[d] indicated her participation in the special education PLC meetings, however, [Mastriana] ha[d] provided no evidence of efforts to complete lesson plans in accordance with school and department standards or to develop an organized system of identifying the classified students on team, their specific goals and accommodations, useful strategies for their success, and regularly conveying and

gathering information regarding the students' progress with the team. In addition, [Mastriana] made no attempts to meet with the principal as per her PDP for the past 2 years."² (Exhibit 33). Notably, in 2013-2014 and 2014-2015 school years, Mastriana also indicated participation in professional development, yet failed to demonstrate any evidence of incorporating the learned material into her teaching practice.

38. On June 20, 2011, based upon a recommendation of the Superintendent, the Board took action to withhold Mastriana's employment and adjustment increments for the 2011-2012 school year. (Exhibits 35 and 36). The Board's decision was guided by Mastriana's "overall performance" being "unsatisfactory" and "not reflecting the professional standards expected of the teachers in the [District]." (Exhibit 36). Importantly, Mastriana did not appear before the Board to persuade the Board not to withhold her increments, nor did she ever challenge or appeal the same. Thus, when Mastriana began the 2013-2014 school year, two years later, under the new rubric, she knew that her employment record and evaluations were a major concern—but was still unable or unwilling to change her teaching practices to obtain an evaluation within the effective range.

39. Indeed, although Mastriana's performance *temporarily improved* following the withholding of her increment, her annual performance evaluation for the 2012-2013 school year demonstrated "continued need of improvement in the level of support of students in the ICR setting, enhanced communication with parents/teachers, and even more significant academic engagement with students during ICR instructional time and during support." (Exhibit 37).

40. In sum, beginning with the 2005-2006 school year, Mastriana's teaching performance began to noticeably decline, as indicated by her annual observations and evaluations. As the District moved towards the adoption of the Common Core State Standards, and began to implement District-wide instructional initiatives, culminating with the full implementation of TEACHNJ and ACHIEVENJ, Mastriana's ineffective and inefficient teaching skills became increasingly evident. In the first full year of ACHIEVENJ implementation, Mastriana earned one of the *lowest ratings* within the District on the teacher evaluation rubric.

41. Throughout the 2013-2014 and 2014-2015 school years, Mastriana demonstrated *inefficiencies and ineffectiveness* in her

² She also made no attempt to meet with her supervisor, either.

teaching skills which deleteriously impacted the education of the students assigned to her.

42. Mastriana's evaluations for the 2013-2014 and 2014-2015 school years adhered substantially to the evaluation process.

43. Mastriana has never alleged any mistakes of fact in any of her observation reports or evaluation reports.

44. The instant tenure charges were brought consistent with N.J.S.A. 18A:6-17.3, which requires the Superintendent to file them in this circumstance, because of her partially effective ratings in two consecutive years and the absence of any exceptional circumstances warranting the deferral of such charges. In filing these charges, the Superintendent has not given any consideration to political affiliation, nepotism, or union activity, nor is he discriminating against Mastriana in violation of State or federal law, or engaging in other conduct prohibited by law.

45. The District's actions were, at all times, taken in good faith and in no way arbitrary or capricious.

46. Mastriana's continued ineffectiveness, and her unwillingness or inability to improve, constitute inefficiency that warrants her dismissal.

BACKGROUND

Respondent was hired by the Hillsborough Board of Education as a full time teacher in September 2003 after graduating with a B.A. from Temple University the same year. She is certified in teaching both Kindergarten through 12th grade Special Education and Kindergarten through Elementary Education. Since 2003, she has been assigned as an In-Class Support and Resource Room teacher for special education. For a majority of her classes, she co-teaches with another educator. Her main role is to support the special education students in a mainstream

classroom. She has worked at the Middle School for the relevant time period.

As part of its implementation of the TEACHNJ Law, the District has adopted the Stronge Teacher Effectiveness Performance Evaluation System (TEPES). The model uses seven performance standards; each comprised of numerous performance indicators to provide evidence of the standard. The seven standards are: 1) Professional Knowledge; 2) Instructional Planning; 3) Instructional Delivery; 4: Assessment of/for Learning; 5) Learning Environment; 6) Professionalism; and 7) Student Progress.

Classroom observations comprise one of the primary methods of data collection to assess teacher performance under the under the model. A minimum of three observations must be completed for each teacher, one of which must be a formal observation. The formal observations include a pre-observation conference in which the teacher has the opportunity to advise the administrator about the lesson to be delivered. In addition, a post observation conference is also conducted to ensure the teacher obtains feedback from the observation. These events are documented in the school's database platform, which is referred to as "OASYS".

The observations themselves are not specifically rated. Rather, they are used as "evidence" for the summative

evaluation, along with other sources of data, some of which may be supplied by the teacher.

The specifics of the model, including the scoring rubric, are included in a handbook, which was submitted into the record. The Stronge model was adopted by the District on a pilot basis in 2012-2014 school year and rolled out to the entire school for the 2013-2014 school year. Prior to the roll out, all teachers received an in-service training on the model. In addition, all evaluators receive annual calibration on the model to ensure they are applying the standards correctly.

2013-2014 School Year

Respondent received her first observation on October 29, 2013. The observation was conducted by Principal Trybulski. This was a long or 40 minute evaluation. Principal Trybulski performed the pre-observation conference electronically on October 25, 2013. This included having the Respondent complete the pre-observation conference record where she provided her learning objectives and the materials she intended to use. Following the observation, Trybulski met with Respondent to have a post-observation conference.

Respondent's second evaluation was conducted by then Director of Special Services, Leonore Johnston on January 29, 2014. This was an announced short observation, which included a pre-observation conference. Respondent testified she recalled

speaking with Johnston following the observation and the comments were primarily positive.

Respondent received a third observation on March 12, 2014. This was a short unannounced observation which was conducted by Principal Trybulski. The observation contained mostly positive remarks. The results were posted on the database system. Respondent acknowledged the observation, but did not file any comments or responses to the observations.

At the end of the 2013-2014 school year, Dr. Trybulski completed Respondent's summative evaluation. This is the tool used under the model to rate the teacher for the year. All evidence, including the observations conducted during the year, as well as information contained in Respondent's documentation log went into the score. Respondent received a score of 2.58, which is considered Partially Effective Under the rubric. Of the seven indicators, Respondent receive partially effective in the following areas: 1) Professional Knowledge; 2) Instructional Delivery; 3) Learning Environment.

2014-2015 School Year

Based upon her 2013-2014 summative evaluation, Respondent received a Corrective Action Plan for the 2014-2015 school year. Under the TEACHNJ regulations, the plan is to be developed

between the principal and the teacher in order to provide a roadmap to improvement.

CAP requirements include having the teacher observed by at least two observers during the year and also an additional observation of at least 20 minutes. In addition, the teacher must be given a mid-year evaluation. The written CAP must include a description of the documented deficiencies, timelines for corrective action and a detailed list of responsibilities for both the teacher and the District.

Respondent's CAP was developed by Dr. Trybulski. He testified he shared the plan with Respondent prior to their meeting to provide her with the opportunity to give input into it, but she did not make any comments. Respondent explained that based upon her experience in the school she did not believe Trybulski welcomed any input. Respondent testified she understood the expectations that were set forth in the CAP.

Respondent received her first observation that school year on October 23, 2014. This was an announced observation. The school's records show the pre-observation documentation was submitted online. According to Dr. Trybulski, he offered to meet with Respondent beforehand, but she did not come to see him. Following the observation, Trybulski met with Respondent and then finalized his report.

Dr. Stewart conducted Respondent's second observation on December 2, 2014. As this was an unannounced observation, no pre-observation was conducted. Following the observation, Dr. Stewart conducted a post observation conference with Respondent. Respondent had access to the observation before the conference. According to Dr. Stewart, Respondent acknowledged and demonstrated she understood the concerns expressed in the observation report. Respondent did not file any objections to the observation.

According to Dr. Trybulski, he contacted Respondent on January 5, 2015 to meet with her regarding her mid-year evaluation. At that time, he requested Respondent provide him documentation regarding her progress with her CAP. Trybulski did not receive the type of material he expected and requested she provide additional documentation.

Trybulski reviewed the material and a document meant to summarize his assessment of her progress. He shared this plan with Respondent prior to their meeting. Specifically, Trybulski found Respondent failed to make any progress toward her participation in professional development to enhance student learning. He noted she failed to include specific strategies in her lesson plan, as required by her CAP, to show specific strategies to show improvement. She failed to meet with her mentor teacher. She also did not show evidence of systematic

gathering of formative data to guide instruction and give feedback to parents.

The areas where Trybulski noted some progress included implementation of varied instructional strategies; 2) her book study project on the teenage brain; and 3) meeting with her mentor teacher to discuss enhancing communication skills with parents.

Respondent received her third observation on February 11, 2015. This was an unannounced observation conducted by Human Resources Director Volpe. Volpe testified that he stayed longer than the planned short observation because of the nature of her assignment. According to Volpe, he was surprised by Respondent's performance (she watched a presentation with the students) and offered Respondent the opportunity to have an additional observation if she believed this observation did not properly reflect her performance. Respondent did not object to this observation report either in writing or verbally when she met with Volpe.

Dr. Trybulski conducted a fourth observation of Respondent on April 7, 2015. This was an unannounced observation, and therefore, only a post observation conference was held. Respondent acknowledged the observation and did not file any written or verbal comments.

Dr. Trybulski also met with Respondent on April 28, 2015 to review her CAP. Trybulski testified that as of that date, she had not made any meaningful progress toward her CAP. She did not meet any of the four goals laid out under the plan. Trybulski testified Respondent had not attended any professional development in the areas they discussed, nor had she observed her mentor teacher. Respondent did not note any problems she had in achieving these goals.

Respondent's summative evaluation was prepared on June 3, 2015. At that time, she received a score of 2.54 on her summative evaluation, which is considered partially effective under the rubric. Respondent and her Union Representative Mr. Goodhue requested the opportunity for her to upload additional documentation to be considered. Dr. Trybulski testified he reviewed all of the documentation submitted, but it did not impact her evaluation score.

As a result, the District filed charges of inefficiency against Respondent in accordance with TEACHNJ.

Positions of the Parties

Position of the Board

The Board maintains it has complied with the statutory requirements to sustain charges of inefficiency under TEACHNJ. It notes the legislature specifically limits arbitrators' decision making authority to determine whether one of four

factors materially effected the outcome of the evaluation. In so doing, the arbitrator is prohibited from questioning the evaluator's determination of the quality of instruction; thus the arbitrator must determine the case based solely upon the factors noted. To that end, the Board maintains there is no evidence it did not substantially comply with the evaluation procedure, made a mistake of fact in the evaluation or was arbitrary or capricious.

According to the Board, it has demonstrated substantial adherence to the evaluation process during both the 2013-2014 and 2014-2015 school years. With respect to 2013-2014, it notes the District adopted the Stronge TEPES model, which was one of the evaluation rubrics specifically approved by the Department of Education as compliant with its regulations. According to the Board, the record evidence shows all evaluators were trained and calibrated under the model and all teachers were provided in-service training to ensure their understanding of the procedures.

With respect to the evaluation process, it maintains the record evidence shows Respondent was observed at least three times and at least once each semester in accordance with the regulations. It notes two of her observations were announced and preceded by an electronic pre-observation conference which is allowable under the regulations. Post observation

conferences followed the observations and the record evidence shows, the Board maintains, Respondent was provided feedback regarding the observation and the opportunity to dispute any of the findings.

With respect to the 2014-2015 school year, the Board argues the record evidence also demonstrates substantial adherence to the evaluation process. It notes that it developed a CAP for her as required by Section 6A:1-02.5(a)-(e); conducted at least four observations of her using multiple observers as required by statute; and ensured she received a mid-year evaluation.

The Board argues the Board timely met with Respondent to review her performance under the CAP in February 2015 at which time her deficiencies were explicitly stated. They included failure to demonstrate progress toward participating in professional development to enhance student learning; failed to include specific strategies in lesson plans; failed to visit the classroom of her mentor teacher; and failed to show evidence of gathering formative data to guide instruction. It notes Dr. Trybulski met with Respondent to discuss these issues and provided resources for her to meet these goals.

The Board cites Respondent's 2014-2015 summative evaluation and end of year failure to meet the standards of her CAP as the basis for her end of year partially effective rating. It notes Respondent was provided the opportunity to raise any issues

regarding her observations or provide any documentation to show her compliance with the CAP, which she never did. It notes Respondent's only explanation was, that it was pointless to dispute his assertions. The Board maintains that any minor deviations did not impact substantial compliance with the process. It argues that although the pre-observation conferences were electronic, Respondent was provided the opportunity to meet with Dr. Trybulski but declined.

The Board notes the goals set in her CAP were clear and Respondent acknowledged understanding them. According to the Board, the summative evaluation was made based upon the classroom observations that were conducted, as well as the documentary evidence provided by Respondent and gathered in preparation for the evaluation. It argues Respondent had the opportunity to achieve an effective rating, even if she failed to meet all the terms of the CAP.

The Board noted that recent arbitrator decisions support the conclusion that it adhered to the procedures and that Respondent failed to meet her burden to demonstrate that any such action or inaction materially affected the outcome of her evaluation.

The Board notes the only evidence of "mistakes of fact" in either her 2013-2014-2015 evaluations were not material. It argues during the hearing, Respondent raised only three things

she characterized as "mistakes of fact". First, was the comment in her observation that she huffed or sighed audibly because of frustration. It argues she did not dispute whether she sighed, but only that it was not out of frustration for the students. The Board notes the observation was that the sighing appeared this way to the reviewer. It notes that it was therefore not a mistake of fact, but even if it were considered to be one, there is no evidence it would have materially affected the outcome of her overall evaluation.

Second, it notes Respondent claimed that concerns about her lack of sensitivity to her students and failure to provide a safe and supported environment were never brought to her attention. The Board argues that she never took issue with these allegations until after charges were filed against her. The Board notes it has provided extensive documentation of her email communication with parents to support this conclusion.

As to the 2014-2015, Respondent raised only one mistake of fact, that her lesson plans were not readily available. The Board contends there was evidence to support this observation, but that even if it did constitute a mistake of fact, there is not evidence it materially affected the outcome of her evaluation.

The Board argues the evidence shows the Board adhered to the evaluation process by observing Respondent at least three times and at least once per semester. It argues two of the Position of Respondent

Respondent argues the charges must be dismissed because the Board cannot meet its burden to demonstrate it has complied with the evaluation process as required by TEACHNJ. It maintains there is a paradox raised by Respondent's receiving a highly effective rating for student achievement for both years at issue while being rated partially effective for the year. It avers that Respondent's partially effective ratings, therefore, are based on serious flaws in the evaluation process which require the charges to be dismissed.

First, Respondent contends the Board failed to comply with the law and regulations applicable to the teacher evaluation process. Specifically it maintains, the record evidence shows: a) the Board of Education did not approve an evaluation rubric prior to the 2014-2015 school year; b) the Board could not confirm whether all teachers were notified of the evaluation procedures adopted by the Board of Education for both school years at issue; c) the Board could not confirm whether the District notified the Department of Education of the instruments that would be used in connection with the District's evaluation rubric or the 2014-2015 school year; and d) the Board could not

provide evidence it certified to the Department of Education that its observers met the necessary statutory requirements as required by law. Respondent maintains these were material deficiencies. It maintains that after four days of testimony, the Board failed to show what exactly the "Stronge Model" is. Given the Board's failure to follow the law, Respondent maintains it cannot ask the undersigned to presume its subjective assessments of Respondent's performance are correct.

Secondly, Respondent maintains the Board improperly evaluated Respondent as if she were a general education teacher. Respondent maintains her role as an in-class support teacher is distinct in that she plays a supporting role in a "one teach, one support" co-teaching model. As a result, it argues, even Principal Trybulski recognized that her unique role gave her limited opportunity to demonstrate her mastery of the TEPES. However, it argues, Trybulski admitted he did not expand his observation and he chose to evaluate Respondent when observing another teacher who was also on a CAP the same year. As such, Respondent did not have the opportunity to demonstrate her skills.

Third, Respondent argues the Board's 2013-2014 evaluation was premised on a mistake of fact, which materially impacted her score. It notes her evaluation was premised on the score Respondent received for "Learning Environment" which Principal

Trybulski wrote "students who did not feel safe, supported, understood or respected by Ms. Mastriana." However, Respondent argues there is no evidence for this claim. It notes no one mentioned this to her throughout the year. Trybulski justified this with mention of only one student and the allegations were vague. Respondent argues there is no competent evidence to support this allegation and therefore given how close Respondent came to receiving an effective rating, it is clear this materially impacted her score.

Fourth, Respondent argues the Board acted arbitrarily and capriciously when it evaluated Respondent poorly for failing to provide extra help. It cites Trybulski's testimony that Respondent's 2013-2014 summative evaluation was affected because she did not offer "before or after school help during the school year. It argues there was no contractual obligation to offer such help and, therefore, it cannot be a factor for scoring an evaluation. Moreover, it argues Respondent was never aware that this was an expectation. It maintains it was an unfair expectation to arbitrarily require, especially since she had child care issues to attend to before and after school.

Finally, Respondent argues the Board failed to follow the CAP provided to Respondent. Specifically, the CAP required Principal Trybulski to work with Respondent - yet he never met with her to discuss the content and ideas generated from the

book assignment given to her, never took any meaningful steps to identify appropriate professional development resources and gave her no feedback and failed to take the initiative to arrange coverage for her to observe her mentor teacher. Moreover, it argues, Trybulski never conducted additional observations as specified in the CAP.

Decision

After carefully considering the entire record before me, including my assessment of witness credibility and the probative value of evidence, I find the Board has met its burden under the statute to sustain the charges of inefficiency against Respondent. My reasons follow.

Charges of inefficiency are specifically governed by TEACHNJ, which not only provides specific requirements for the teacher evaluation process, but also the limits the decision-making authority of the arbitrator in the process. To that end, the statute provides that in rendering a decision, an 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 the consideration 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 or capricious.

The statute prohibits the arbitrator from reviewing the evaluator's qualitative determination of an employee's classroom performance. If the arbitrator finds that none of the above factors were either present or materially affected the outcome of the evaluation, "the arbitrator shall render a decision in favor of the Board and the employee shall be dismissed."

N.J.S.A. C.18A:6-17.2 23.b

The credible record evidence shows Respondent received partially effective summative evaluation ratings in the 2013-2014 and 2014-2015 school years. The 2013-2014 summative evaluation resulted from a record of three observations, documentation from Respondent's documentation log and results from Respondent's students in meeting their School Growth objective. The 2014-2015 summative evaluation was based upon four observations performed with at least two different reviewers, documentation including a CAP, and the student achievement score, made up her Student Growth Objective.

Respondent's contentions that the Board failed to adhere to the regulations regarding the evaluation process is not supported by the credible record evidence. I credit Dr. Schiff's testimony the Board approved the evaluation policy submitted by the District, which specifically referenced the evaluation rubric used by the District. Of course, it was the

same rubric used the year before. Thus, I find no basis to find it was not properly approved.

Likewise, I find insufficient record support to find that teachers failed to be notified of the evaluation procedure as required under the statute. Both Dr. Trybulski and Dr. Schiff testified the entire staff received a one-day training session on the new evaluation procedures at the start of the 2013-2014 school year. The record evidence included a letter issued by Dr. Schiff advising the staff of the training and Respondent acknowledged receiving in-service training.

In addition, I find no merit to the claim that the Board failed to satisfy whether the District certified to the Department of Education that the District Observers met the necessary statutory requirements. I credit Dr. Trybulski and Dr. Stewart regarding the training they received, including ensuring they were properly calibrated. They both described receiving training in the each of the standards and scoring a mock evaluation in each standard.

Finally, I note the model adopted by the District is one of the four evaluation models specifically approved by the Department of Education. Thus, even if any particular element were not satisfied to the letter under the statute (i.e., a timeline failed to be met), it is clear that the model used complies with the statutory requirements for the evaluation

process and, I find no basis for determining any technical violation existed which materially affected Respondent's evaluation during the relevant time period.

I find no record support for Respondent's allegations the Board improperly evaluated her as a general education teacher rather than as an in-class support teacher. Respondent bases its contention upon a comment made in her October 23, 2014 evaluation by Dr. Trybulski. He noted the lesson he observed was driven mainly by the content teacher and because Respondent's assignment that year was as an in-class support teacher, additional short observations might be necessary in order to gather evidence on all seven indicators.

I do not Trybulski's comment to reflect a difference in the procedural standards applied to Respondent in the evaluation process. No such distinction exists in the statute or the Stronge evaluation model. In fact, Dr. Trybulski testified the same standards of evaluation are applied to all teachers. Susan Eckstein provided numerous examples of how Respondent, as a co-teacher in special education could meet all of the standards. She noted co-teaching requires planning and cooperation between the teachers. Such planning and cooperation would ensure Respondent being able to implement specific strategies such as using various assessment tools, such as exit tickets, which were indicated in her CAP.

While Dr. Trybulski acknowledged he did not increase the number of times Respondent was observed, Respondent was observed in accordance with the standards required under the statute. Moreover, the record evidence shows Respondent's 2014-2015 summative evaluation contained evidence of all seven indicators. As a result, I find no material deficiency in the evaluation process.

There is insufficient record support to substantiate Respondent's contention that her 2013-2014 summative evaluation was based on a mistake of fact, as alleged. Respondent argues her 2013-2014 summative evaluation rating of partially effective in the Learning Environment standard is mistakenly premised upon an allegation that students did not feel safe and supported by her. However, I credit Dr. Trybulski's testimony. He testified more than one parent expressed concerns to him regarding Respondent's insensitivity in class. He noted this was a specific concern in her CAP and assigned Respondent work with Ms. Eckstein on these issues. Ms. Eckstein testified she addressed these issues with Respondent directly. Given this evidence, I do not find there was a mistake of fact in Respondent's evaluation.

The record evidence also does not support Respondent's contention the District acted arbitrary and capricious by evaluating Respondent poorly for failing to provide extra help

2013-2014 school year. I note the issue was not cited in Respondent's summative evaluation. Rather, Respondent's CAP included a requirement to provide additional help to students outside of classroom hours. On cross-examination Dr. Trybulski testified that he considered it an element of professionalism and noted that there were many things teachers were required to do outside their school day.

I note Respondent fulfilled this aspect of her CAP and did not grieve it as being outside the scope of her duties. Moreover, while Trybulski testified that he considered this an aspect of professionalism, I did not find his testimony to indicate that it materially affected her 2013-2014 evaluation.

Finally, I do not find record evidence showing the District failed to follow its obligations under the CAP. While Dr. Trybulski did not meet with Respondent to discuss the book assignment given to Respondent, she met with Ms. Eckstein regarding this assignment.

As noted in prior arbitration decisions, the CAP is a two-way street with obligations falling to both parties. In this case, the evidence shows Respondent was specifically advised to seek out professional development opportunities to assist with enhancing student participation, and differentiated instruction. Dr. Trybulski testified he discussed with Respondent the various places where she could find such courses. Respondent never

identified such opportunities, nor did she advise her supervisor of any difficulties she had in finding these resources.

Likewise, I find no basis for Respondent's contention the District took no action in arranging substitute coverage for Respondent to observe her mentor teacher. The record evidence shows Dr. Trybulski specifically advised Respondent he would provide her such time. However, Respondent testified she never asked Dr. Trybulski. There is no evidence to suggest he would not have provided her such time, especially since it was a CAP requirement. Here, the evidence demonstrates Respondent failed to take responsibility and comply with its requirements.

Finally, I return to Respondent's most compelling argument - how close she came each year to being rated Effective in both of the relevant school years. The record evidence shows her students were succeeding and yet she failed to achieve an effective rating. However strange this may seem, the legislature determined the weight that student achievement should play in a teacher's rating and the type of review to which the evaluation process is subject. Having found none of the statutory factors present that would materially impact Respondent's evaluations in either 2013-2014 or 2014-2015 school years, the undersigned is required by statute to uphold her termination from service.

AWARD

The charges of inefficiency against Respondent Nancy Mastriana are substantiated.

Deborah Gaines

Dated: April 16, 2016 _____

Deborah Gaines, Arbitrator

Affirmation

State of New York }
County of New York } ss:

I, DEBORAH GAINES, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my award.

Date: April 16, 2016

Deborah Gaines
