

STATE OF NEW JERSEY – DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES

In the Matter of:

STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF CAMDEN

Case No. 310-10/15

and

EVA LEWIS

Before:

Edmund Gerber, Arbitrator

Appearances:

For the School District of the City of Camden
Benjamin S. Teris, Esq.
Tara L. Humma, Esq.
Brown & Connery, LLP

For the Respondent:
Cristal Holmes-Bowie, Esq.
Law Office of Michael A. Armstrong

On October 6, 2015, the Camden City School District filed tenure charges against Eva Lewis (“Respondent”). After reviewing the charges, pursuant to N.J.S.A. 18A:6-17.3c, the Commissioner of Education referred the tenure charges to me, Edmund Gerber, as Arbitrator.

I conducted hearings on November 30, 2015 and December 1, 2015. Both parties examined and cross-examined witnesses and introduced evidence. The parties submitted briefs which were received by December 31, 2015.

FACTS

Respondent was first employed in the District as a substitute teacher in 1993. She subsequently received a B.A. degree Rowan University and a Master’s Degree in Special Education and in Curriculum. She acquired certification to teach Special Education, and was

employed by the District as a full time teacher and beginning in school year 2010-11 was employed as a full time special education co-teacher in an inclusion class in Woodrow Wilson High School. She continued there through 2013-14 school year. She was then assigned to the Coopers Poynt Family School as a general education teacher in a second (2nd) grade inclusion class for the 2014-15 school years.

At the conclusion of the 2014-15 school year the District brought tenure charge for inefficiency against Respondent pursuant to N.J.S.A. 18-A:6-17.3 based upon her two consecutive “partially effective” summative evaluations.

The evaluations were made using the Charlotte Danielson Framework (“Danielson”) as its instrument for performing evaluations. Under Danielson, teachers are scored on a scale of 1 to 4: 1-1.84 – ineffective; 1.85-2-.64 – partially ineffective; 2.65-3.49 – effective; 3-.5-4 – highly effective. The Teacher Practice Instrument is one part of the two-part evaluation process under TEACHNJ.

Daniel encompasses four (4) domains: (1) Planning and Preparation, (2) Classroom Environment, (3) Instruction, and (4) Professional Responsibilities. Teacher scores are based, in part, on classroom observations as required by TEACHNJ. Each domain contains “subdomains,” which are scored to then produce a score in the four domains based on percentage of the total teacher practice score attributed to each specific domain. The scoring under this framework is as follows: 1-ineffective, 2-partially effective, 3-effective and 4-high effective.

The District also implements Teachscape, a software program used to access and store the records of the Danielson system.

Under TEACHNJ, the second element to the evaluation process, is the calculation of a teacher's Student Growth Objective ("SGO"). A teacher's total evaluation score for any particular year is based partially upon an SGO score.

TESTIMONY

Nicole Harrigan, is currently Principal of the Hatch Family School. She testified that during the 2013-14 school year, Harrigan was a Teacher Coach Evaluator. As such, she went to several different schools to perform training of teachers in the Danielson system. Teams that were trained in Danielson went to every school in the District to teach Danielson so that all the teachers in the District had received training in the Danielson; that training lasted six (6) hours and included practice videos, and scoring those videos and, moreover, in the 2013-14 school year, teachers are also trained in Teachscape.

Harrigan also performed evaluations of teachers and did coaching of teachers, as well. During the 2013-14 school year, the Principal of the Woodrow Wilson High School took a leave of absence and Harrigan was assigned to the High School to do evaluations.

According to Harrigan, the first observation of the Respondent in school year 2013-14 was performed on December 10, 2013 by Deborah Olusa who assumed the role of Co-Principal that year (Ms. Olusa is no longer an employee of the District). Prior to the observation, Olusa had a conference with Respondent and, also conducted a post-observation conference. Olusa's evaluation was partially effective and Respondent filed a rebuttal to that evaluation.

The second evaluation of Respondent that year was by Jill Trainor who was a Trainer and Evaluator during the 2013-14 school year. Trainor testified that she attempted an unannounced evaluation of Respondent but, on three separate occasions Respondent was not in her classroom. On the third attempt, neither Trainer nor the school Vice Principal was able to locate Respondent. Trainor finally observed Respondent on April 2, 2014; the observation lasted a minimum of 20 minutes, and Trainer found that entire observation was concerning. Respondent never submitted lesson plans for the class and the questions she asked to the students were of a lower level. Trainer scored Respondent with mostly ineffective and a few partially effective scores in the sub-domains. Trainer completed a post-observation conference with Respondent and, during the conference, spoke with Respondent about her “guided reading lesson,” which, according to Trainor, Respondent taught incorrectly.

Trainor also completed an informal walk-through of Respondent’s class on May 8, 2014. Respondent was late to the classroom on that date and claimed that she had a meeting with administrative staff. When Trainor inquired of the named staff members, both denied they had met with Respondent.

Respondent’s third evaluation in 2013-14 was performed by Kristen Reid who, at the time, was a Teacher Trainer and Evaluator. Reid conducted a formal observation on May 2, 2014 which lasted at least 20 minutes. Reid specifically recalls there was minimal observable instruction during the period because Respondent spent a significant amount of time with one

student who could not remember a computer password. Respondent also took a personal phone call in the middle of her class.

Reid had a post-observation conference with Respondent on May 5, 2014 and made recommendations for Respondent during the meeting. She also afforded Respondent the opportunity to have a fourth observation and coaching to help her improve, but Respondent never contacted Reid to schedule another observation or coaching. Also during the conference, Respondent mentioned that a student had broken her wrist during the school year. Reid indicated that it did not affect her observation because if Respondent was fit to return to work, she was fit to be evaluated.

In completing the evaluation, Harrigan reviewed all three of Respondent's observations for the year to prepare for the summative evaluation. She specifically recalled Olusa's observation and believed it was accurate and consistent with her own observations. The concerns and issues mentioned in the other two observations were similar to those mentioned by Olusa.

Harrigan had a summative conference with Respondent on June 3, 2014. Respondent's summative evaluation for the year was partially effective. Although she received a highly effective score of 4 on her SGO portion of her evaluation, overall, after weighing each component, the Respondent's overall summative rating of 2.15, which is only "partially efficient.." In the Danielson system a score must be at least 2.62 to be considered efficient.

Harrigan discussed the summative evaluation with Respondent and gave her an opportunity to voice any concerns.

In the following year, 2014-15, Respondent was assigned to the Coopers Poynt School. Stephen Bourne is the Principal of the school. He testified that the District notified him that Respondent needed to be placed on a Corrective Action Plan ("CAP") due to her partially effective summative evaluation score for the 2013-14 school year.

Bourne created a CAP for Respondent at the beginning of the school year and met with her twice as part of the process. During their first meeting on September 22, 2014, they reviewed the CAP and Respondent suggested a change with regard to an attendance issue. Based upon her concerns, Bourne removed the attendance issue from the CAP. Bourne did not consider the fact that Respondent taught at the high school level the prior year significant in the creation of the CAP. According to Bourne, the areas Respondent needed to improve upon would have been the same whether she was teaching in the high school or second grade, and whether she was teaching general education students or special education students. Every teacher is evaluated upon the same rubric.

Bourne detailed three major areas in which Respondent needed improvement: (1) the quality of her lesson plan, (2) increased higher order thinking questions during discussion, and (3) improved classroom routines and procedures to avoid loss of instructional time.

Pursuant to the CAP created for Respondent, Bourne noted that all teachers at the school were provided with training on Danielson and, during the school year, there were professional development meetings every Monday which also focused on Danielson. Bourne specifically recalled Respondent attending the mandatory Danielson training and taking at least two optional

refresher courses. Bourne noted that if a teacher had any problems with Teachscape, she could approach Nick Pillsbury an expert in the program; teachers were able to contact Pillsbury directly.

Bourne provided Respondent with common planning time as well as lesson plan review and feedback specifically as to both the substance and implementation of her lesson plans. He also provided her with a questioning tool in order to assist her in promoting higher order questioning of her students during lessons.

Respondent was also provided with weekly “PinPoynt” coaching sessions to provide feedback and suggestions regarding her lessons. Reid was also provided support to Respondent. Reid conducted coaching sessions and completed a walk-through of Respondent’s classroom.

Respondent was provided a Children’s Literacy Initiative consultant who would model and demonstrate effective literacy practices, although the consultant complained to Bourne that Respondent avoided her and would not get back to her.

Respondent was provided with a Peer Mentor, Nicole Almanzar, a highly effective teacher of a primary class whose classroom was nearby. Almanzar was basically Respondent’s grade level mentor.

Almanzar testified that she met with Respondent to discuss multiple topics including instructional practices, lesson plans, setting up the classroom, curriculum and teaching practices. Respondent would approach Almanzar outside of more formal meetings and ask questions about

grade keeping, report cards, lesson plans and setting up things on the computer. Almanzar was assigned as Respondent's mentor at the beginning of the school but first thought that she was assigned as mentor because Respondent was new in the building; she did not learn that she was Respondent's CAP mentor until October or November of that year.

Respondent's first observation for the year was on September 24, 2014 by Bournes who has completed approximately 150 teacher observations since starting work with the District. Bournes' observation report shows that the observation lasted at least 20 minutes. He noted that Respondent was inconsistent in addressing all of the students; she used some harsh tones with the students, there was a lack of structure to her lessons and the classroom was chaotic. Bournes conducted a post-observation conference with Respondent on October 1, 2014.

Kristen Reid, a Lead Educator, conducted a 40-minute evaluation of Respondent on October 20, 2014. Reid and Respondent had a pre-observation on October 17, 2014 and a post-observation conference October 27, 2014. In that post-observation conference, Respondent produced evidence of student work and Reid raised at least one of Respondent's scores from a 2 to a 3

Reid testified that all Teacher Trainer Evaluator/Coaches received training in Danielson in August of 2013 and throughout the year in 2013-2014.

Bournes conducted a third observation of Respondent on November 24, 2014. The observation lasted at least 20 minutes and Bournes had the same concerns during this observation

as he did in his prior observation of her. He also conducted a post-observation conference with Respondent on December 10, 2014.

Respondent's fourth observation of the school year was conducted on February 19, 2015 by Reid. The observation lasted at least 20 minutes. Reid recalled the students bickering and antagonizing one another during this observation and some of these behaviors were addressed by Respondent harshly while some were ignored. Reid held her post-observation conference with Respondent on February 27, 2015. Reid also prepared Respondent's summative evaluation for the 2014-15 school year.

As part of the evaluation in Domain 4, Respondent produced a binder of materials that Reid believed needed some work and Reid permitted Respondent to provide supplemental materials.

Reid completed the end-of-the-year summative evaluation for the Respondent in 2014-15. Although Respondent again received a score of 4 on her SGO, her final summative rating was 2.49, which was again "partially effective." (To receive an "effective score," one needs a rating of 2.65 or higher.)

Reid noted that the Respondent's high SGO scores for both years were based on the test Respondent that were created by Respondent and were at such a low grade level they may have artificially inflated the SGO scores. Reid also explained this issue was not addressed at the time the tests were scored because the apparent ease of the final tests was not discovered until later.

Reid conducted a summative conference with Respondent on June 3, 2015. Reid described Respondent's classroom as being tough due to kids fighting and crying. Respondent's interactions with students was intimidating, especially in the way she spoke to them.

Reid reviewed Respondent's CAP in connection with the summative evaluations and found Respondent on the low end of "partially effective." She testified, "I don't think she's an effective teacher. I would not want my child in that classroom." Reid further testified that if Respondent were to return to work, that students would not receive well-designed and implemented instruction, nor would they be in an environment that is conducive to academic growth and/or well-being.

Bournes described some of Respondent's struggles as those he would expect from a novice teacher, not an experienced one. Respondent often had grammatical errors on her black board and in student work handouts. He suggested to Respondent that she have another person review these materials to ensure they were correct, but the problem persisted throughout the year.

A number of parents of students in Respondent's class expressed serious concerns over errors on report cards and grades, as well as issues with Respondent yelling at students. Some parents requested to transfer their children out of her classroom and related that Respondent had embittered conversations with some parents. Bournes had to remove four (4) students from Respondent's classroom and place them in a different second grade class.

Bournes testified that based upon his twenty-two (22) years as an educator, he believes that Respondent is an ineffective teacher, “She is not able to sustain and maintain the quality of instruction that is expected of a teacher to be highly effective both in terms of knowledge of pedagogy and in terms of classroom routines and procedures and overall instruction.”

Respondent testified that in the 2013-14 school year, in addition to her assigned classroom, she was often assigned to cover other classes as well as English as a Second Language and bilingual classes. Whenever there was a need for substitute in the high school, she would be assigned even though she was a special education teacher.

Respondent attended a class given by the District about how to do SGOs for special education students. Respondent had students in the ninth and tenth grade students reading at third grade levels and she would have to make up her own tests for SGOs. The tests she made were signed off by the school Principal.

Respondent initially denied that she received training in Teachscape and Danielson. However, later in her testimony she acknowledged that her colleagues showed her how to use Teachscape and acknowledged that she did, in fact, receive training in Danielson.

She believes that the quality of her teaching was affected by an incident in the Spring of 2014. A student had broken her wrist apparently in class and she had to take leave after the injury. Subsequently, she suffered from Post-Traumatic Stress Disorder (“PTSD”) because of the injury.

Respondent claims that her first evaluation of the 2013-14 year by Olusa lasted only nine (9) minutes and in the midst of the observation, Olusa got a telephone call on her cell phone and took the call. Olusa said that she would resume the observation at another time but she never did. Respondent prepared a rebuttal to Olusa's evaluation but there is no mention in the rebuttal that: Olusa never completed the observation, that the observation only lasted nine minutes or that Olusa took a telephone call during the observation.

As to Respondent's second observation in 2013-14 by Trainor, Respondent claimed that the first time Trainor found Respondent unavailable, Respondent was covering another class. As to Trainor's claim that Respondent was not in her class when Trainor went to do a "walk through", Respondent claimed that she was speaking with two administrators.

As to her third observation in 2013-14 by Reid which was critical of Respondent for spending too much time trying to get one student online, Respondent claims the students were in the computer lab and she was not there to teach but to "get kids their Google accounts."

Although Respondent does not dispute that she received a rating of only "partial effective" in her summative evaluation at the end of 2013-14, she was unaware she was going to be placed on a CAP until her meeting with Bournes on September 22, 2014. Respondent acknowledged that Bournes told her to ask Almanzar for assistance if needed, but denied she was part of any professional development class or program with Bournes or anyone else in the school.

RESPONDENT'S ARGUMENT

Respondent makes a number of arguments in her defense. Specifically:

The District failed to comply with the TEACHNJ statutory and regulatory requirements in the first evaluation of 2013-14. There is no evidence that the first observer, Deborah Olusa, was appropriately trained using the evaluation instrument pursuant to N.J.A.C. 6A:10-2-2(b). Other evaluators have testified of the lengthy training process they underwent to implement the Danielson evaluation instrument but there was no proof at all that Olusa received appropriate training in the evaluation instrument or demonstrated competence in using that evaluation instrument as required by N.J.A.C. 6A:10-2-2 (4)(i.) (1-3).

Respondent was entitled to at least one announced observation and the observation by Olusa was the only announced observation in 2013-14. Respondent testified that the evaluator took a cell phone call and left the classroom after approximately nine minutes, not the required minimum of twenty minutes. Respondent testified that Olusa promised to continue the evaluation at a later time, but there is no evidence that it ever took place. There is nothing indicated in the text of Olusa's observation report to provide the time the observation took place.

While Trainor testified that Respondent was uncooperative with scheduling evaluations, there was no such finding in her summative evaluation nor was there a problem with Respondent's SGO in 2013-14. There were no disciplinary issues with Respondent In 2013-14.

In 2014-15, Respondent was assigned as a regular education teacher for an inclusion class, but in the prior year, her assignment was as a Special Education co-teacher in Woodrow Wilson High School. Respondent expressed concern about this change in assignment; however, Bournes did not take into consideration the differences in the students' ages, grades or abilities when evaluating Respondent. The District failed to have an established process of transferring the areas of concern in her CAP from one teaching position to another.

There were also issues about the level of assistance from a Special Education teacher who was assigned since she was splitting her time with other classes. The lack of support from the Special Education teacher affected Respondent's ability to comply with the recommendations of the evaluator.

N.J.A.C. 6A:2.5 requires that teaching staff members rated "partially effective" in a summative evaluation meet to discuss a CAP prior to the September 15th of the following school year. Respondent was unaware she would be placed on a CAP until September 22, 2014.

TEACHNJ requires the District implement a research-based mentoring program as per N.J.S.A. 18A:6-128. No evidence was presented that this program was in place in the District to assist Respondent to improve her teaching skills. There is no evidence that Respondent's meetings with Almanzar were developed in consultation with a CAP. Respondent testified that she saw Almanzar as a helpful colleague, not as a formal mentor. Almanzar testified that she did not know she was assigned as a mentor for any reason other than to assist Respondent as a new person in the building.

Respondent objects to the testimony of Reid as to any discrepancy of SGO testing in the 2014-15 school year. Similarly, Reid's testimony regarding classroom management alleged intimidation and student behaviors should be disregarded because this was never disclosed in support of the charges in discovery.

Prior to the filing of the tenure charges, the District was on notice of Respondent's treatment for PTSD due to the incident that occurred at Woodrow Wilson High School in May, 2014. Respondent testified she was treated by the District's psychologist. Bournes testified he was aware of Respondent's illness during the school year. The District had knowledge and information of the violent attack on Respondent well before the tenure charges were filed. There is no evidence that there was any consideration of Respondent's circumstances.

The District produced no proof of the certification or training of the evaluators nor was any evidence produced of the certification by Danielson of training of any of the evaluators. Based upon the District's failure to comply with the evaluation process, the District has acted in an arbitrary and capricious manner. Therefore, Respondent's evaluations should be set aside and Respondent should be returned to work.

DISCUSSION

Given the tenure charges brought against the Respondent were for being rated “partially effective” for two (2) consecutive years my authority as Arbitrator is limited by N.J.S.A. 18A:6-

17.2. Specifically:

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 paragraph (1) through (4) of subsection a. of this section are applicable, the arbitrator shall determine if that fact materially impacted 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 [district] and the employee shall be dismissed.

Respondent’s arguments must be evaluated in light of the statute and, accordingly, the scores issued by the observers and evaluators cannot be challenged *per se*.

Respondent challenged the observations of Olusa on two grounds. Respondent testified that Olusa’s evaluation, which was the first of three evaluations performed during the 2013-14 school year, failed to adhere substantially to the evaluation process. Specifically, Respondent

testified that the observation only lasted nine (9) minutes, not twenty (20) minutes as required by regulation and there is no evidence that Olusa received the required training to be an evaluator.

I do not find Respondent's testimony credible that Olusa's observation only lasted nine minutes. The Respondent submitted to a post observation conference with Olusa even though Olusa supposedly told Respondent that they would continue that observation at another time but never did. Although Respondent was dissatisfied with the grading of the observation and filed a rebuttal to Olusa's overall evaluation, the rebuttal does not mention that the observation was too short, was interrupted by a cell phone call to Olusa or that Olusa failed to come back to finish the observation as promised.

However, there is no clear evidence that Olusa, who did not testify, had training in the evaluation process (Danielson) as required by regulation N.J.A.C. 6A:10-2-2(b). Both Trainor and Reid testified that every teacher was trained in Danielson before the start of the school year in August 2013 and Reid testified that all Evaluator/Coaches received training in Danielson in August of 2013 and throughout 2013-2014. But neither witness could testify that Olusa received such training. Given that evaluator training is a clear requirement of the regulation, and the District failed to establish Olusa received training, Olusa's evaluation failed to adhere substantially to the evaluation process.

After such a finding the statute requires a determination as to whether the finding materially impacted the outcome of the evaluation. As Reid so testified, Olusa's scoring of Respondent's observation is consistent with all six subsequent evaluations received by

Respondent, both as to issues which the Respondent was either ineffective or partially effective and as to overall scoring (See also, Exhibit P-3). I do not find that Olusa's lack of observation training materially impacted upon her overall evaluation of Respondent.

As to Respondent's other arguments, specifically:

The district did not provide any documentary evidence that the Respondent's r evaluator, apart from Olusa, received training in Danielson. Aside from Olusa, all of the Respondent's evaluators testified that they received training. Absent some issue as to the witnesses lack of credibility, and there was none, their testimony was sufficient to establish that they were trained in Danielson.

Trainer's testimony that the Respondent was uncooperative with scheduling her evaluations should not be considered. The tenure charges filed by the district are based upon partial ineffectiveness, not specific misconduct. Accordingly, Respondent's alleged failure to cooperate with the evaluation process is not relevant to my decision.

Respondent had difficulty transitioning from teaching Special Education at the high school level to teaching a second grade inclusion class. The transition should have been taken into account in her evaluations. This argument is one of an educational nature and is outside my authority under N.J.S.A. 18A:6-17.2. Similarly, Respondent's contention that she did not receive sufficient support from her co-teacher is an educational issue outside of my authority.

The District failed to meet and discuss Respondent's CAP prior to September 15, 2015 as required by regulation. However, Respondent was absent from school from September 9, 2015 until September 15, 2015. Accordingly, Respondent was not informed of her CAP until September 22, 2015. Given Respondent's absence, such a minor deviation from the regulation did not substantially interfere with the Respondent's right to a CAP under TEACHNJ.

The District failed to implement a research based monitoring program pursuant to N.J.S.A. 18A:6-128. However, the statutory reference to Research based mentoring appears in N.J.S.A.18A:6-127 and is addresses mentoring of first year teachers. N.J.S.A. 18A:6-128b, provides for :

additional professional development for any teaching staff member who fails or is struggling to meet the performance standards established the board, as documented in the teaching staff member's annual summative evaluation. The additional professional development shall be designed to correct the needs identified in the annual summative evaluation.

Bournes testimony is clear that he prepared a multi-phased Corrective Action Plan. The statute does not require that the district establish that the plan is "research based" The plan is education based and not subject to my substantive review.

Testimony regarding discrepancies in her SGO rating should not be considered in my consideration. The Board of Education has not challenged the results of those SGO ratings and

used the final score of 4 or “highly effective” in computing Respondent’s overall evaluation score; that score was still only partially effective. The District has never taken the position that the SGO scores should not be counted in Respondent’s overall evaluation score. The argument is without merit.

The District should have taken into consideration the fact that she suffered PTSD after she was attacked by a student and suffered a broken wrist at Woodrow Wilson High School in May of 2014. However, it is noted that Respondent did not introduce any medical evidence in support of her claim that she suffered from PTSD. Reid was aware of the attack when she prepared Respondent’s summative evaluation for 2013-14 and Bournes was aware of Respondent’s condition during the 2014-15 school year. Given Bournes’ evaluations were performed in light of Respondent’s condition, and I cannot reasonably evaluate the severity of the symptoms due to the lack of medical evidence, the district’s responses to Respondent’s medical condition were educational based and beyond my authority to review.

Respondent argues that the District’s actions were arbitrary and capricious, but offers no specifics and facts in support of her argument beyond those previously mentioned herein. The argument is without merit.

Based upon the entire record, I make the following:

AWARD

The tenure charges for inefficiency brought against Respondent, Eva Lewis, by the State Operated School District of the City of Camden, are sustained. Eva Smith is dismissed from her tenured teaching position in the State Operated School District of the City of Camden.

A handwritten signature in black ink, appearing to read "Edmund Gerber", written over a horizontal line.

Edmund Gerber, Arbitrator

January, 12. 2016