
In the Matter of the Tenure Hearing of Carrie Osborne, State Operated School
District of the City of Paterson, Passaic County, Agency Dkt. No. 288-9/15

In the Matter of the Tenure Hearing of Thomas Schaefer, State Operated School
District of the City of Paterson, Passaic County, Agency Dkt. No. 247-9/15

In the Matter of the Tenure Hearing of Ardeena Long, State Operated School
District of the City of Paterson, Passaic County, Agency Dkt. No. 262-9/15

**INTERIM DECISION ADDRESSING DISTRICT'S IMPLEMENTATION OF STATE
DEPARTMENT OF EDUCATION-APPROVED TEACHER PERFORMANCE EVALUATION
SYSTEM AND PROCEDURES**

Before
Robert C. Gifford, Esq.
Arbitrator

Appearances:

For the School District:

Brenda C. Liss, Esq.
Teresa L. Moore, Esq.
Amanda L. Lukof, Esq. (Brief only)
Riker Danzig Scherer Hyland & Perretti

For Respondents Osborne and Schaefer:

Sanford R. Oxfeld, Esq.
Samuel Wenocur, Esq.
Oxfeld Cohen

For Respondent Long

Theodore Kyles, Esq.

The State-Operated School District of the City of Paterson ["District" or "Petitioner"], certified tenure charges of inefficiency separately against Respondents Carrie Osborne, Thomas Schaefer and Ardeena Long pursuant to *N.J.S.A. 18A:6-11* and *N.J.S.A. 18A:6-17.3*. Respondents filed Answers opposing the charges filed against them.

On October 26, 2015, I received notice from M. Kathleen Duncan, the Director of the Bureau of Controversies and Disputes, New Jersey Department of Education, that the matter pertaining to Respondent Osborne was referred to me pursuant to *N.J.S.A. 18A:6-16* as amended by *P.L. 2012, c. 26* and *P.L. 2015, c. 109*:

Please be advised that, following receipt of respondent's answer on October 16, 2015, the above-captioned tenure charges have been reviewed pursuant to *N.J.S.A. 18A:6-17.3c*. Upon review, the Commissioner is unable to determine that the evaluation process has not been followed. The arbitrator's decision with regard to those charges shall be made pursuant to *N.J.S.A. 18A:6-17.2*, subject to determination by the arbitrator of respondent's defenses and any motions which may be filed with the arbitrator.

The balance of the charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by the arbitrator of respondent's defenses and any motions which may be filed with the arbitrator, including, but not limited to, whether *N.J.S.A. 18A:6-17.2* and *6-17.3* now provide the exclusive mechanism for bringing inefficiency charges. The arbitrator shall review those charges brought pursuant to *N.J.S.A. 18A:6-16* – which are not dismissed as the result of a motion – under the preponderance of the evidence standard.

With respect to Respondent Osborne, a settlement conference was conducted on November 5, 2015, at the Law Offices of Oxfeld Cohen in Newark, New Jersey. At that time, the parties brought to my attention that there were global issues common to all of the Respondents' cases that needed to be addressed. The Respondents contend that "the manner in which Paterson Public Schools ("PPS") implemented its teacher evaluation system during the 2014-2015 school year violated New Jersey State evaluation statutes and regulations." [Respondent Brief, p. 1]. More specifically:

Respondents assert that PPS' actions in implementing Student Growth Objectives ("SGO"), PPS' non-disclosure of key evaluation grading rubric information for its teachers' observations and evaluations, and PPS failure to implement and enforce uniform and objective observation scoring rules all violated State statutes and regulations, thus bringing the integrity of all of PPS's 2014-2015 school year teacher evaluations into doubt. [Id. at 2, footnote omitted].

The parties mutually requested that I conduct a single hearing on the global issues in accordance with the following tentative schedule:

- Respondent will serve witness certification(s) in support of argument of defects in the District-wide implementation of its performance evaluation system and procedures by Monday, November 16th;
- Petitioner will serve witness certification(s) in support of the Paterson Public Schools' District-wide implementation of its performance evaluation system and procedures by Monday, November 23rd;

- A hearing in the Osborne case will occur before Arbitrator Gifford on Wednesday, December 2nd. This hearing will be limited to cross-examination (and rebuttal testimony) of the witnesses;
- The parties will file briefs regarding this issue only, due one week after receipt of expedited transcripts;
- Arbitrator Gifford will issue a decision regarding District-wide implementation of its performance evaluation system and procedures by January 13, 2016.¹ [Ex. J-1, p. 1].

The parties and the Arbitrators who are addressing the charges against Respondents Schaefer and Long agreed to rely upon my interim decision “as to the District-wide implementation of its performance evaluation system and procedures, and for each case to then separately address the remaining issues.” [Ex. J-1, p. 2].²

The Respondents submitted certifications from Mary Chowhan – Treasurer of Paterson Education Association [“PEA], Executive of PEA Evaluation Committee, and Math Teacher; and Sasha Wolf – NJEA Field Representative. The District submitted a certification from Sandra Diodonet – Acting Associate Chief Academic Officer. The parties timely exchanged their witness certifications. [Exs. R-1 (Chowhan), R-2 (Wolf), SD-1 & SD-2 (Diodonet)]. Then, two (2) days of hearing took place on December 2 and 8, 2015 in Paterson, New

¹ The parties did not object to my request for an additional day to render this decision.

² The parties notified Director Duncan of the agreed upon tentative schedule. Director Duncan granted an extension of time for each Arbitrator to issue an Award.

Jersey. A stenographic recording of the proceedings was taken in accordance with the tentative schedule above.³ Sworn testimony was received Chowhan, Wolf and Diodonet. The parties submitted post-hearing briefs on December 21, 2015. The record was closed upon receipt of the parties' briefs.

RELEVANT PROVISIONS OF THE NEW JERSEY STATUTES

N.J.S.A. 18A:6-10. Dismissal and reduction in compensation of persons under tenure in public school system

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state, or

(b) if he is or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution conducted under the supervision of the commissioner;

except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to this subarticle, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or

³ The transcript for December 2nd and 8th shall be referred to as T1 and T2 respectively. The pages in T1 and numbered 1-101 and 102-374 for T2.

employments under the conditions and with the effect provided by law.

N.J.S.A. 18A:6-17.2. Considerations for arbitrator in rendering decision.

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

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

(2) there is a mistake of fact in the evaluation;

(3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or

(4) the district's actions were arbitrary and capricious,

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

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

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

e. The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case.

The arbitrator shall render a written decision within 45 days of the start of the hearing.

N.J.S.A. 18A:6-17.3. Evaluation process, determination of charges.

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

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

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

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

c. Notwithstanding the provision of N.J.S. 18A:6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a. of this section, the commissioner shall examine the charge. The individual against whom the charges are filed shall have 10 days to submit a written response to the charges to the commissioner. The commissioner shall, within five days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to

hear the case, unless he determines that the evaluation process has not been followed.

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

FINDINGS

The parties presented proposed findings of fact in their post-hearing briefs. Having reviewed the entire record, I have adopted the proposed findings as modified below.

1. Sandra Diodonet has been employed in the District either as a teacher or an administrator since 2003. (*Diodonet Certification*, Ex. SD-1, ¶12). Diodonet has been the Acting Associate Chief Academic Officer since May 2015. (*Id.* at ¶1). Prior to that, Diodonet serves as a Principal at Public School No. 5 from August 2013 to April 2015, an Interim Principal at Public School No. 5 from December 2012 to July 2013, and a Supervisor/Department Head at International High School from January 2011 to November 2012. (*Id.* at ¶12). Diodonet was the District's sole witness in this proceeding.
2. To comply with the mandates of *TEACHNJ*, N.J.S.A. 18A:6-123(c), the School District developed, and the State District Superintendent adopted,

a teacher evaluation rubric to be followed beginning in the 2013-2014 school year. (*Id.* at ¶14). The New Jersey Department of Education ("NJDOE") approved the School District's teacher evaluation rubric by letters dated September 7, 2012 and October 4, 2012. (Ex. SD-1(A)). NJDOE notified the District that "[i]f you release a new version [of the Teaching Practice Evaluation Instrument], or if a district employing your instrument makes substantial modifications to the approved version, this information must be submitted through the next review cycle for potential inclusion on the approved list." (*Id.*).

3. In 2013, the District held staff development programming regarding *TEACHNJ* and *AchieveNJ*. (Ex. SD-2, PPS-SD-103). The staff was provided with an opportunity to submit questions to the District. On June 24, 2013, Deputy Superintendent Eileen Shafer provided staff members with a copy of the questions and answers. (Ex. SD-2, PPS-SD-104-152). The District later provided another opportunity for questions. The answers were provided in a September update. ((Ex. SD-2, PPS-SD-104-153-157).
4. Pursuant to the District's teacher evaluation system, teachers are evaluated on either two or three components: Teacher Practice, Student Growth Objectives ("SGO" or "SGOs"), and Student Growth Percentage ("SGP"). (*Wolf Certification*, Ex. R-2, ¶ 13). For most teachers, the Teacher Practice Score ("TPS") and the SGO are the two components used to determine the summative rating. (T2:305; Ex. SD-2, 2014-2015 Guidebook,

PPS-SD-256). Teachers assigned to teach in non-tested areas (subjects other than grades 4-8 math and English Language Arts) receive annual summative evaluation ratings comprised of two parts: (i) a teacher practice score based on their performance on the evaluation instrument; and (ii) an SGO score based on the academic growth shown by their students over the course of the school year. (Ex. SD-1, ¶10).

5. Teacher Practice Scores are calculated by measuring teaching performance according to seven standards: (1) Preparation for Instruction, (2) Use of Data to Inform Instruction, (3) Delivers Quality Instruction, (4) Interventions to Meet Diverse Needs, (5) Classroom Environment, (6) Leadership and (7) Professionalism. (Ex. SD-1, ¶11; Ex. SD-2, 2013-2014 Guidebook, PPS-SD-11; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-257.) Each standard is comprised of several indicators:

Standard 1: Preparation for Instruction

- Indicator 1a. Establish a culture of high expectations for learning and achievement.
- Indicator 1b. Use district-adopted curriculum and content knowledge to design coherent lessons.
- Indicator 1c. Post aligned lesson objectives and plan for demonstrations of learning.

Standard 2: Use of Data to Inform Instruction

- Indicator 2a. Focus on improving instruction using data.
- Indicator 2b. Use a variety of assessment methods when designing classroom assessments.
- Indicator 2c. Involve students in assessing their own learning.

Standard 3: Delivers Quality Instruction

- Indicator 3a. Instruct bell to bell.
- Indicator 3b. Use a variety of instructional strategies to focus instruction.
- Indicator 3c. Engages students in learning.
- Indicator 3d. Continually checks for understanding.
- Indicator 3e. Deliver rigorous and relevant content.
- Indicator 3f. Integrate 21st Century Skills in instruction.
- Indicator 3g. Provides feedback about student proficiency.

Standard 4: Interventions to Meet Diverse Needs

- Indicator 4a. Differentiate instruction based on student needs and background.
- Indicator 4b. Implements interventions with fidelity and adjusts interventions based on results.
- Indicator 4c. Adapt and modify instruction for the unique needs of learners.

Standard 5: Classroom Environment

- Indicator 5a. Contribute to a safe and orderly learning environment.
- Indicator 5b. Use effective classroom management procedures.
- Indicator 5c. Effectively manage student behavior.
- Indicator 5d. Foster collaboration and self-regulation in students.
- Indicator 5e. Promote positive and respectful rapport.

Standard 6: Leadership

- Indicator 6a. Understand their role and responsibility in implementing the District and/or Building Action Plan.
- Indicator 6b. Promote the concept of Professional Learning Communities/ Professional Forums through collaboration and purposeful involvement.
- Indicator 6c. Continue professional growth.

Standard 7: Professionalism

- Indicator 7a. Adhere to federal laws, state statutes and regulations pertaining to education, Board of Education (BOE) policies, and school rules.
- Indicator 7b. Demonstrate professionalism.

- Indicator 7c. Effectively communicates and solves problems.

(Ex. SD-1, ¶11; Ex. SD-2, 2013-2014 Guidebook, PPS-SD-10 through 38; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-168, 257).

6. For each sub-indicator, there are three (3) sub-indicators. (Ex. SD-2, 2013-2014 Guidebook, PPS-SD-10 through 38; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-196 through 222).
7. In order to evaluate teacher performance observed in classroom observations, the administrators (*i.e.* principal) assigned ratings for each of the indicators being measured in that observation. (Ex. SD-1, ¶12; Ex. SD-2, 2013-2014 Guidebook, PPS-SD-64). The ratings ranged from “exemplary” (or highly effective) to “unsatisfactory” (or ineffective). Evaluation categories were as follows:

Unsatisfactory (Ineffective, 1 point)
Progressing I (Partially Effective, 2 points)
Progressing II (Partially Effective, 3 points)
Proficient I (Effective, 4 points)
Proficient II (Effective, 5 points)
Proficient III (Highly Effective, 6 points)
Exemplary (Highly Effective, 7 points)

(Ex. SD-1, ¶12; Ex. SD-1(H), p. 11; Ex. SD-2, 2013-2014 Guidebook, PPS-SD-64 & 66).

8. The numerical ratings for the seven performance standards (based on the rating of each component indicator) were then weighted with one to three, based on the following weights:

- Standard 1: Preparation for Instruction (2)
- Standard 2: Use of Data to Inform Instruction (2)
- Standard 3: Delivers Quality Instruction (3)
- Standard 4: Interventions to Meet Diverse Needs (3)
- Standard 5: Classroom Environment (2)
- Standard 6: Leadership (1)
- Standard 7: Professionalism (1)

(Ex. SD-1, ¶13; Ex. SD-2, 2013-2014 Guidebook, PPS-SD-51 & 52; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-167.) Performance Standard 6 (Leadership) was initially weighted once, but later changed to a weight of two (2) in the Spring of 2014:

- Standard 1: Preparation for Instruction (2)
- Standard 2: Use of Data to Inform Instruction (2)
- Standard 3: Delivers Quality Instruction (3)
- Standard 4: Interventions to Meet Diverse Needs (3)
- Standard 5: Classroom Environment (2)
- Standard 6: Leadership (2)
- Standard 7: Professionalism (1)

(Ex. SD-1 ¶13; T2:321; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-255 through 257).

9. Diodonet testified that in order to calculate the annual Teacher Practice Score, the teacher's ratings in each observation were averaged, and the total point values in each of the seven standards were weighted as outlined above. (Ex. SD-1, ¶14; Ex. SD-1(H)). That final sum was then applied to the following chart:

PPS Weighted Sum Intervals	Score
14-27	1
28-55	2
56-83	3
84-105	4

(Ex. SD-1, ¶¶ 14 & 23.)

The same point values and weights were applied to calculate the summative ratings in the 2013-2014 and 2014-2015 school years. (*Id.* at ¶¶ 26 & 27). As more fully discussed below, the Respondents claim that they were not fully informed that the point values and weights would not change for 2014-2015.

10. In the Spring of 2014, teachers were given a PowerPoint presentation concerning the implementation of the teacher observation and evaluation system, specifically with respect to the weighting of the teacher practice standards. (Ex. SD-1(H)). The presentation explained how each of the seven (7) standards were weighed, the scoring of the summative rating, and when a particular standard was rated in more than one observation that the scores for the standard were added and averaged. (Ex. SD-1(H), p. 11).
11. In addition to evaluating their practice, teachers are evaluated on the extent to which they meet their SGOs each school year. N.J.A.C. 6A:10-1.2 defines "Student growth objective" as "an academic goal that teachers and evaluators set for groups of students." "SGOs are long-term academic goals for groups of students set by teachers in consultation with their supervisors." (See <http://www.nj.gov/education/AchieveNJ/teacher/objectives.shtml>). SGOs are required to be set by each teacher in collaboration with the

principal or supervisor, with the principal having the authority to make the final determination. (N.J.A.C. 6A:10-4(e)3; Ex. SD-1, ¶17; T2:219-220, 267-268.) The teacher determines annual academic goals for a class or group of students and tracks the academic progress of that class or group towards the assigned goals during the school year. (Ex. SD-1, ¶17.) These goals are aligned with Common Core Standards, Core Curriculum Content Standards and school goals, and are based on student learning data from pre-assessments and post-assessments. (*Id.*). Student progress on an identified SGO is determined by an assessment of the increase in learning between two points in time, as indicated by: (i) acquisition of knowledge or skill from a particular starting point or readiness level; or (ii) development of a portfolio indicating a change in skill or knowledge over a period of time; and (iii) difference in learning on pre-assessments and post-assessments. (*Id.* at ¶18). Additional information concerning SGOs can be found on the New Jersey Department of Education's website in the AchieveNJ Home section.

12. On October 1, 2013, Assistant Superintendents Maria Santa and Aubrey Johnson issued a memorandum to all principals regarding the SGO Professional Development scheduled for October 4, 2013. (Ex. SD-1(J)). The memorandum included an agenda for the October 4th meeting. Attached thereto were comprehensive materials related to the SGO PowerPoint presentation including, but not limited to, an SGO planning

calendar, information addressing SGO specific best practices, SGO samples, and other SGO information from the New Jersey Department of Education. (*Id.*) The memorandum indicated that the purpose of the half day of development was "for teachers to actually write SGOs". (*Id.*)

13. The Annual Summary Conference Form is the document that reports a teacher's annual summative evaluation rating. The form includes both the Teacher Practice Score and SGO score. In the 2013-2014 school year, teacher practice scores counted for 85% of a teacher's overall rating and SGO scores counted for the remaining 15%. In the 2014-2015 school year, teacher practice scores counted for 80% of a teacher's overall rating and SGO scores counted for the remaining 20%.
14. On the 2013-2014 Annual Summary Conference Form, the Teacher Practice Score and the SGO are listed in their raw data form, and the form indicates the weight given to each piece of data in the calculation of the final rating: 85% for the Teacher Practice Score, and 15% for the SGO. (Ex. SD-1, ¶21). Those scores were then weighted and the annual summative score determined. (*Id.*) The form also includes a summative rating scale in order to show teachers how this numerical summative rating ranks them as highly effective, effective, partially effective or ineffective. (*Id.*)
15. The data to establish the Teacher Practice Score is summarized in the Teacher Practice Summary Report that accompanies the Annual Summary Conference Form, which shows the teacher's average scores in

each of the seven performance standards from observations throughout the year. (Ex. SD-1, ¶122). This report also shows the weight given to each performance standard and includes a weighted sum interval chart. (See SD-2, PPS-SD-256).

16. In the 2014-2015 school year, the District continued to use the evaluation rubric that had been approved previously by the Commissioner of Education. (Ex. SD-1, ¶126). The framework for evaluation was outlined again for teachers in the 2014-2015 Guidebook. (*Id.*; Ex. SD-2, 2014-2015 Guidebook). Diodonet indicated that the point values assigned to each indicator were the same as those that had been used in the 2013-2014 school year, as the 2013-2014 Guidebook had set forth. (Ex. SD-1, ¶127). The same calculation method was used in both 2013-2014 and 2014-2015. (Ex. SD-1, ¶15; T2:321).
17. As in the 2013-2014 school year, the 2014-2015 Annual Summary Conference Form contained a Teacher Practice Score and SGO score. (Ex. SD-1, ¶129). Also as in the 2013-2014 school year, the Teacher Practice score was determined based on the ratings assigned for each performance indicator in classroom observations throughout the school year, and the weights assigned to each performance standard, while the SGO score was determined based on the calculations in the teacher's SGO goal-setting process. (*Id.*). On the 2014-2015 Annual Summary Conference Form, the Teacher Practice Score and SGO were listed as

weighted data, rather than in their raw data form as in 2013-2014. (*Id.* at ¶130). The form also indicated the 80% weight given to teaching performance and 20% to student growth in the calculation of the final rating. (*Id.*). The weighted Teacher Practice and the SGO scores were added together to determine the summative evaluation score. (*Id.*).

18. In addition to formal classroom observations that were rated, the rubric requires administrators to observe teacher performance informally by doing informal "walkthroughs". (*Id.* at ¶134). A walkthrough identifies and informs teacher practice in the areas of classroom environment, instruction and student engagement. (*Id.*). Trained administrators debrief with the teacher and provide feedback and recommendations to improve teaching and learning. (*Id.*; SD-2, 2013-2014 Guidebook, PPS-SD-44-47). A walkthrough is a non-evaluative classroom visit of no more than ten (10) minutes. (Ex. SD-1, ¶134; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-183).
19. Diodonet testified that toward the end of the 2013-2014 school year, principals, supervisors and teachers in the Paterson Public Schools were directed to begin drafting Corrective Action Plans ("CAPs") for those teachers who did not earn a summative rating of "effective" or "highly effective." (Ex. SD-1, ¶125). A CAP requires "[t]he teaching staff member to work with their supervisor to create a plan of professional development that is designed to correct the needs identified in their evaluation. The

CAP includes timelines for corrective action, and clearly delineates responsibilities of the teaching staff member versus the district in implementing the plan."

<http://www.state.nj.us/education/AchieveNJ/intro/TeachNJGuide.pdf>.

CAPs were to be drafted by principals in collaboration with teachers and supervisors, meaning that the teachers were to be provided with an opportunity to provide input into the content of their individual CAPs. (Ex. SD-1, ¶25).

20. Diodonet indicated that the 2014-2015 Guidebook originally required that eight walkthroughs be conducted each year for teachers on a CAP, an expectation which was reduced later in the 2014-2015 school year. (Ex. SD-1, ¶35; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-183).
21. Diodonet testified, as reflected by the guidebooks, training and guidance with respect to implementation of the new evaluation system was initially provided to teaching staff members, including school administrators and teachers, in the 2012-2013 school year and continued during the 2013-2014 and 2014-2015 school years. (Ex. SD-1, ¶¶5, 8, 28). As a reference, the District produced manuals describing each aspect of the evaluation framework, which were distributed to all teaching staff in the 2013-2014 and 2014-2015 school years. (Ex. SD-1, ¶19; Ex. SD-2, 2013-2014 Guidebook and 2014-2015 Guidebook). The District also distributed "District Updates"

to further inform teachers on the new evaluation system. (Ex. SD-1, ¶17; Ex. SD-1(D); SD-2, 2013-2014 Guidebook, PPS-SD-87-100).

22. Teachers received training from the District's Office of Accountability during the 2012-2013 school year. (Ex. SD-1, ¶16; Ex. SD-1(B) & (C)). In the training conducted in May and June 2013, teachers were informed that the new framework would be the basis on which their performance would be evaluated beginning in the 2013-2014 school year. (Ex. SD-1(B) & (C)). During these sessions, teachers were informed that at the end of the 2013-2014 school year, and in following years, each teacher would receive an annual summative rating of "highly effective," "effective," "partially effective," or "ineffective" based on a points rating system; and that if any teacher earned a summative rating of "ineffective" or "partially effective" in both the 2013-2014 and 2014-2015 school years, the District would be required to file a tenure charge of inefficiency after the 2014-2015 school year. (*Id.*).
23. Diodonet testified that additional training sessions were conducted over several days in preparation for rollout of the system in the 2013-2014 school year. (Ex. SD-1, ¶15). At multiple training sessions, principals were instructed on how to train teachers on the purpose and implementation of the new evaluation framework. (*Id.*; T2:243-245). Principals were directed to train their teachers on the evaluation system. (*Id.* at ¶16; T2:243-245). Training was also conducted throughout the 2013-2014

- school year for teachers and school administrators. (Ex. SD-1, ¶18; Ex. SD-1 (E), (F), (G), (H) & (I)).
24. The point values and the weights given to the performance standards were communicated to teachers in the 2012-2013 school year, prior to implementation of the evaluation system, and again in the 2013-2014 and 2014-2015 school years. (Ex. SD-1, ¶¶15, 27; Ex. SD-2, 2013-2014 Guidebook, PPS-SD-51-52 and 2014-2015 Guidebook, PPS-SD-167).
25. As to training on SGOs in particular, information about SGOs was delivered to all District principals on October 1, 2013. On October 4, 2013, a half day was devoted to district-wide professional development for the purpose of teachers drafting their SGOs with principals and supervisors. (Ex. SD-1, ¶19; Ex. SD-1(J)). The materials used on that training day are attached to Diodonet's Certification, Ex. SD-1(F). (T2:315-316). Additionally, information about SGOs was distributed to teachers in the 2013-2014 and 2014-2015 school years. (Ex. SD-1, ¶16; SD-2, 2013-2014 Guidebook, PPS-SD-70 through 85, 2014-2015 Guidebook, PPS-SD-171 through 175).
26. The calculation of the Teacher Practice Score was explained in a March 2014 training provided by the District, which included PowerPoint slides with an audio explanation. (Ex. SD-1(H), Slides 10, 11 and 12; T2:326-327). In the 2014-2015 school year, principals and central office administrators continued to train teachers on the evaluation framework. (Ex. SD-1, ¶28;

Ex. SD-1(K), (L) & (M)). Diodonet testified that the District had also provided training to principals and that principals trained their teachers in March 2014 on the evaluation framework. (T2:326).

27. With respect to the Teacher Practice Score, the Respondents contend that there were problems with how the District's observers (*i.e.* principals) differentiated between the different scores for the seven (7) standards and the sub-categories (indicators) within each standard for 2014-2015.
28. Mary Chowhan is a Math Teacher at the School of Business, Technology, Marketing & Finance at John F. Kennedy High School. She is also the Treasurer of Paterson Education Association ["PEA], and was the Executive of PEA Evaluation Committee in 2014-2015. Chowhan testified that teachers were unable to determine Standard scores either for a given observation or for the full year for purposes of calculating their TPS. (T1:78-79). During the 2013-2014 school year, when the District provided its teachers and the PEA with written explanations of how the District would calculate the TPS for annual summative evaluations. (Ex. R-2, ¶15). For instance, the 2013-2014 guide included a chart for calculating the raw scores for each of the seven Standards considered for the TPS. (Ex. SD-2, PPS-SD-64). Chowhan testified that for 2013-2014 she was able to calculate the total summative rating based upon the information contained in the Summary Report and the Annual Summary Conference Form. (T1:38-39; See Ex. SD-2, PPS-SD-256-257). In comparison, however,

Chowhan explained that during the 2014-2015 school year, teachers received scores for the sub-categories during observations, but not an overall score for the Standard. (T1:16). Chowhan testified that the teachers were never told how the scores were added together for an observation standard score or how the standard scores were added together to determine the TPS. (T1:97-98). Chowhan asked her department chair to explain the ratings process who informed her that the ratings were compiled on a software system called McREL. (T1:67-68; 94). Diodonet testified that as a principal she did not personally perform the calculations because that was done by McREL, a system that was later replaced by Media-X. (T2:297, 301).

29. The Respondents claim that during the 2014-2015 school year, the District also failed to provide any training or information for calculating an overall Standard score for an observation. As a result, teachers did not know how the District's observers differentiated between the different scores for sub-categories and Standards. Teachers were also unable to determine Standard scores either for a given observation or for the full year for purposes of calculating their TPS. (T1:78-79).
30. Chowhan testified that the lack of information regarding the Standard scores became problematic as teachers and the PEA were unable to check the accuracy of the observation reports, which varied significantly in their calculations. (T1:59-60). Although teachers received observation

reports, they could not know their standing for the school year. The observation reports did not include whether the teachers were on track for effective ratings in their eventual annual summative evaluation. (Ex. R-1, ¶16). Further, for the Standards that were observed more than once during the school year, the District failed to explain to the PEA or its members how multiple observation scores for a particular Standard were considered together in the District determining a final Standard score for the year. (T1:64-65).

31. Chowhan testified that PEA members reached out to her during the 2014-2015 school year to raise their concerns with the District's teacher evaluation system, including regarding the scoring rubric for the teachers' annual summative evaluations. (Ex. R-1, ¶ 5). Chowhan shared in the teachers' concerns. Chowhan testified that she asked her department chair for an explanation, but was told that the calculations were done by the computer associated with the McRel evaluation system, without elaboration. (T1:66-67).
32. Sasha Wolf is a Field Representative for the NJEA. Wolf testified that the PEA approached him with respect to its concerns with the scoring rubric and Standard scores. (Ex. R-2, ¶ 12). On November 11, 2014, Wolf emailed Superintendent Evans to address the scoring guide rubric. (Ex. R-2(C)). On November 24, 2014, Acting Chief Human Resources Officer Marnie McKoy responded to Wolf. McKoy wrote that there had been

training during the 2013-2014 school year and that the District's principals would provide additional training the following January. (Ex. R-2(D)). Wolf was not aware of any such training taking place in or after January 2015. (Ex. R-2, ¶ 17; T2:148:6-12).

33. Chowhan developed her own charts in an effort to help the members understand the significance of the observation reports. (Ex. R-1, ¶ 7). Chowhan testified that her calculations were only approximations and did not always match up with the averages established by the District. (T1:69). The PEA ran CAP training seminars, some of which were conducted by Wolf, in which the PEA addressed member concerns about their evaluations. (T1:24; T2:158-159). Wolf testified that during the seminars members described not knowing how their 2014-2015 observation scores would be tallied for the purposes of determining their TPS. (T2:158-159). Chowhan testified that teachers also independently asked their principals for information about their standing for the year, but were not provided the information to be able to calculate their Standard scores or TPS. (T1:25).
34. Wolf testified that there was no indication that the March 2014 teacher training (which occurred during the 2013-2014 school year) was applicable to the 2014-2015 evaluations. (T2:224). Wolf indicated that the materials provided at the training were apparently not even up to date as of the end of the 2013-2014 school year. (Ex. R-1(H); T2:329-330). Wolf

testified that other training materials previously provided to District teachers included significantly important errors, such as a supposedly false depiction of the evaluation instrument summary and inaccurate calculations of sample summative evaluation scores. (Ex. SD-2, PPS-SD-64; Ex. SD-2, PPS-SD-256; T2:278-279, 294).

35. The Respondents claim that the District never told its teachers that the scoring rubric and evaluation procedures would remain the same for the 2014-2015 school year. To the contrary, as Chowhan testified, the District during the 2013-2014 school year informed its teachers that they would be made aware of the changes when they returned to school in September 2014, but the District never made follow-up comments as to the changes taking effect for the 2014-2105 school year. (T1:85-86).
36. The Respondents point out that the Diodonet has only been the Acting Associate Chief Academic Officer since May 2015. Prior to that, she did not previously hold any District-wide position. She, therefore, was not responsible for disseminating information to other schools or ensuring that principals complied with State evaluation requirements. (T2:217-218; 238-239). The Respondents indicate that out of all of the documents attached to her certification, Diodonet's input was limited to one page of the 2014-2015 evaluation manual and the May 2015 presentation to District principals. (T2:231-232; 236-237). For these reasons the Respondents submit that Diodonet could not comment as to how other schools trained

their teachers on the evaluation framework for the 2014-2015 school year. (T2:243-244).

37. Chowhan testified that the District never gave the PEA information for distinguishing between a Proficient 1 or a Proficient 2 performance (both of which fall within Proficient) in a sub-category. (T1:16). Diodonet acknowledged that a decision between a Proficient 1 or Proficient 2 or other scores was left to the principal's discretion. (T2:277).
38. Chowhan testified that during the 2014-2015 school year she asked multiple District evaluators and administrators to explain how they determined teacher observation scores. These individuals included, but not limited to Pamela Powell (Principal at BTMF), Jorge Osoria (BTMF Vice Principal) and Judy Rhodes (Chowhan's supervisor). (T1:29-30). Chowhan testified that the administrators gave inconsistent answers. For instance, one person told Chowhan that a Standard was determined by taking an average of the relevant observation scores, while another based a Standard score on whichever rating had the most check marks. (T1:30-31).
39. Chowhan also testified that one (1) District official admitted to artificially lowering observation scores in multiple respects because he did not believe in giving out 7's (on a 1-7 scale) in observations because everyone always had room to grow. (Ex. R-1, ¶ 13). Chowhan also indicated that administrators at District schools #7 and #28 admitted to

their teachers that they gave lower scores during the first observation of the year because they felt the need to have an opportunity for a teacher to show growth during the course of the year. (*Id.* at ¶ 14).

40. With respect to the Student Growth Objectives, Wolf testified that during the Spring and Summer of 2014 he received complaints from leadership members of the Paterson Education Association that some of the District's supervisors and/or administrators were unilaterally dictating the content of SGOs on teachers for the 2014-2015 school year. (Ex. R-2, ¶17; T2:109, 114-115). The schools where each of the Respondents taught were not identified as participating in this alleged practice. (T2:132).
41. The District concedes that if, in fact, any administrator had unilaterally decided on a teacher's SGOs, doing so would have been contrary to the District's evaluation system that requires a collaborative SGO-setting process. (Ex. SD-1, ¶17; Ex. SD-1(F) & (J); T2:317). Diodonet testified that developing an SGO is a complicated process that depends on incorporating student academic achievement data that teachers have, not administrators. (T2:219-220; 270). Diodonet indicated that it would have been impractical for any principal to "impose" an SGO on a teacher, because the principal does not have the student achievement data necessary to develop an SGO. (T2:270, 314-315).
42. On August 21, 2014, Wolf emailed District Superintendent Donnie Evans regarding the PEA's concern that the District was unilaterally

implementing SGOs. (Ex. R-2(A)). Wolf requested a meeting with Evans for the purposes of discussing the SGOs. (Ex. R-2(A)).

43. On September 12, 2014, Wolf and other PEA representatives met with District representatives - Assistant Superintendent Susie Peron, District Director Lauren Kazmark, Deputy Superintendent Eileen Shafer, and District General Counsel Lisa Pollack. (T2:177-178). Wolf indicated that two members of the New Jersey State Department of Education were also in attendance. (Ex. R-2, ¶19). Wolf testified that during this meeting Peron and Kazmark both admitted to the District's unilateral development of the SGOs for the 2014-2015 school year. (T2:119). According to Wolf, Kazmark remarked that the District would try to work on a different method for developing SGOs and Peron indicated that there had not been solicitation of staff member input. (T2:120-121). Wolf testified that neither Shafer nor Pollack denied the accuracy of Kazmark and Peron's statements. (T2:178). Diodonet was not present at the meeting and has never talked to Peron or Kazmark about the statements they made during the meeting. (T2:255; 334-335).

44. Diodonet testified that Peron and Kazmark were central office administrators whose job responsibilities were to develop and provide assessments to teachers for use with their students; those assessments were approved for use in obtaining data to be used to set SGOs. (T2:310-311). According to Diodonet, those administrators likely provided the

assessments for teachers to use in order to obtain the data needed to develop SGOs, rather than determining the SGOs themselves. (T2:311).

45. On September 24, 2014, Wolf followed up on the meeting with an email to Peron. (Ex. R-2(B)). Wolf testified that despite this communication the District never informed him of any changes to its SGO implementation. (T2:179). Wolf testified that if such changes had been made that he would have heard about it from the PEA because the SGOs represented an existential threat to the PEA members. (T2:179-180).
46. The Respondents submit that the District's "neglect in its obligation to inform the PEA of the calculation methods for the scoring rubric not only violated Article 14 of the collectively negotiated agreement between PPS and PEA, it also violated PPS' Board policy and PEA's right to challenge increment withholdings." (Respondents' Brief, p. 9; T2:138-139). The Respondents note that "[t]he PEA filed a grievance against [the District] because of [its] failure to provide information for the scoring rubric." (Respondents' Brief, p. 10; Ex. R-1, ¶18). The PEA then filed a Petition of Appeal against PPS on the issue with the State Commissioner of Education. (Respondents' Brief, p. 10; Ex. R-2(E)).

The parties presented the following legal arguments and conclusions of law in support of their respective positions.

The Respondents' Position⁴

The following legal arguments have been presented in the Respondents' post-hearing brief:

PATERSON PUBLIC SCHOOLS ACTIONS ON A SCHOOL DISTRICT WIDE SCALE VIOLATED STATUTORY AND REGULATORY REQUIREMENTS FOR NEW JERSEY TEACHER EVALUATIONS

A. Paterson Public Schools' Legal Obligations for Teacher Obligations

Under the Teacher Effectiveness and Accountability for Children of New Jersey Act ("TEACHNJ"), an arbitrator rendering a decision for inefficiency based tenure charges can consider whether:

- 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.

⁴ Footnotes 5-7 herein are actually numbered 11-13 in the Respondents' Brief.

N.J.S.A. 18A:6-17.2(a). The issues identified in N.J.S.A. 18A:6-17.2(a)(1) are meant to ensure that a school district drafted and complied with a State-approved teacher evaluation system in the observations and evaluations of its teachers during a school year. An arbitrator may consider evidence that a teacher's annual summative evaluation score is an inaccurate depiction of his or her performance during a school year if the underlying reason for the divergence falls under one of the enumerated subsections.

TEACHNJ and State regulations identify numerous requirements for a school district to follow to ensure a reliable and fair system in that school district's evaluation of its teachers. For instance, school districts are required to annually submit to the Commissioner of Education the evaluation rubric it intends to use for teacher evaluations in the subsequent school year. N.J.S.A. 18A:6-122. The evaluation rubrics are due to the Commissioner by June 1st, with the State's approval by the following August 1st. N.J.A.C. 6A:10-2.1. The evaluation rubrics include a description of "scoring guide," which is defined by the state as:

"Scoring guide" means a set of rules or criteria used to evaluate a performance, product or project. **The purpose of a scoring guide is to provide a transparent and reliable evaluation process.** Educator practice instruments include a scoring guide that an evaluator uses to structure his or her assessments and ratings of professional practice.

N.J.A.C. 6A:10-1.2 (Emphasis added). A school district is also obligated to ensure that the data it uses for the evaluations is collected and stored in an accessible and usable format. N.J.A.C. 6A:10-2.2(a)(6).⁵

School districts must comply with additional State statutes and regulations concerning administering teacher evaluations. Some of the statutes and regulations concern the creation, measuring and evaluating of SGOs. SGOs are expected to be specifically tailored to an individual teacher,

⁵ Respondents acknowledge that as a State-Operated School District, PPS' Board of Education do not have the same authority or responsibility as other boards of education. However, the management of the Board of Education would not affect the ability or obligation to ensure that data is safely stored and accessible in a usable format.

rather than broad, generally applicable plans. N.J.A.C. 6A:10-4.2(a)(2). To ensure that the SGO's are properly developed to comply with State obligations:

3. Each teacher shall develop, in consultation with his or her supervisor or a principal's designee, each student growth objective. If the teacher does not agree with the student growth objectives, the principal shall make the final determination.

N.J.A.C. 6A:10-4.2(e). A School district must also provide its teachers with ongoing professional development, including additional professional development for any teacher who is struggling to meet performance standards. N.J.S.A. 18A:6-128.

TEACHNJ also addresses the relationship between a School District and any representative labor union. Under TEACHNJ school districts and labor unions can negotiate over teacher evaluations. In fact, unless a subject is superseded by State statute or regulation, all aspects of teacher evaluations are mandatorily negotiable. N.J.S.A. 18A:6-126.

B. Paterson Public Schools' Implementation of the 2014-2015 Student Growth Objectives violated State Requirements and the Purpose of Student Growth Objectives.

Prior to and during the 2014-2015 school year, PPS wholly ignored the State's laws addressing the formation of SGOs. Rather than pursuing a collaborative process which would have buttressed the reliability of this element of the annual summative evaluations, PPS opted to take short cuts in the creation of the SGOs, compromising the integrity of its teachers' SGOs and the regulatory scheme in the process.

Under N.J.A.C. 6A:10-4.2(e), PPS needed to first allow its teachers to develop their SGOs for the 2014-2015 school year. A teacher must be provided the first opportunity to draft his or her SGO. Only if a PPS teacher and his or her supervisor were in disagreement with the content of the SGO was a PPS administrator permitted to make a final determination as to the content of the SGO. Although PPS had latitude in what ultimately went into the SGO, the State still required PPS to

undertake a collaborative process with its teachers in creating the documents.

PPS' admissions during the September 12, 2014 meeting that it unilaterally imposed SGOs to its teachers at the majority of the PPS schools must be treated as a confession of PPS' violation of N.J.A.C. 6A:10-4.2(e). The uncontroverted testimony establishes that Peron and Kazmark, both high ranking PPS officials, admitted that PPS unilaterally developed SGOs for the 2014-2015 school year. Peron and Kazmark declared that PPS had failed to solicit staff members and that PPS would work on changing the method for SGOs. Neither PPS' deputy superintendent nor general counsel denied or otherwise tried to backtrack from Peron and Kazmark's remarks. Notwithstanding PPS' admission at the September 12, 2014 meeting, it did not rectify the problem during the 2014-2015 school year. The only reasonable conclusion is that the improper SGOs were largely or entirely left intact for the duration of 2014-2015 school year.

PPS' violation of N.J.A.C. 6A:10-4.2(e) undermined the SGOs' purpose of trying to correctly measure a teacher's impact on his or her students' improvement during the course of a school year. PPS' and Respondents' witnesses agreed at the hearings that a teacher is in the best position to draft an SGO. Only the teacher can best determine student placement and address other factors within the class which would affect an SGO.

Diodonet admitted that principals setting the requirements for an SGO (which PPS admitted to doing during the September 2014 meeting) would be unwise. Absent significant prior interaction with a class prior to drafting an SGO, it would be nearly impossible for a principal or other administrator to tailor SGOs as directed N.J.A.C. 6A:10-4.2(a)(2) to adequately reflect a classroom's teaching environment. Absent teachers' significant involvement from the beginning of an SGO's formation, SGOs would be imprecise and inaccurate depictions of teaching performance, thus losing all utility for teacher evaluations. Accordingly, it must be found that PPS' actions in the creation of the 2014-2015 SGOs violated State rules and regulations and otherwise compromised the purpose of the teacher evaluation system.

C. Paterson Public Schools' Failure to Disclosure Scoring Rubric Information Violated State Statutes and Regulations.

In addition to the problems with the SGOs during the 2014-2015 school year, PPS' handling of teacher observation scores also violated TEACHNJ. By failing to share the information needed to determine the teachers' Standard scores for the annual summative evaluations, PPS prevented its teachers from being able to determine during the school year whether they were meeting their goals and performing at an effective level. This impediment was exponentially more troublesome for teachers under a CAP in the 2014-2015 school year, as it left those teachers in doubt for the entire year as to whether they were at risk for the filing of tenure charges.

The evidence established that PPS, even after a grievance and the PEA's filing of a Petition of Appeal on the issue, failed to provide its teachers or the PEA the grading rubric information required under TEACHNJ. Chowhan and Wolf's certifications and testimony demonstrated that hundreds of PPS teachers across most if not all of PPS' schools had the same issues about calculating their teaching performance. Without fail, all of the teachers told Chowhan and Wolf that PPS had not given them enough information to determine their projected TPS and annual summative evaluation scores. Despite the PEA and its teachers' best efforts, they could not independently ascertain the missing information for the Standards and annual summative evaluation scores, it was unfeasible to make accurate calculations without PPS' cooperation. In fact, the PPS teachers and PEA's efforts served to highlight the PPS administrators' lack of knowledge about how the scores were tabulated and the administrators' inability to find the Standard scores used for the Standard Summary Report.

The PEA's communications with PPS confirms PPS' neglect in the sharing of scoring rubric information. Wolf's emails to Superintendent Evans put PPS on notice of the issue. McKoy's response that PPS would rectify the issue with additional training in January 2015 was an admission that PPS had not met its obligations as of November 2014. PPS' lack of

the promised training meant that it also failed thereafter to meet these obligations.

Although PPS provided some training to its teachers in September 2014, there is no evidence that PPS ever addressed the issue of calculating Standard scores either within an observation report or for the annual summative evaluation. The March 2014 training asserted by PPS could not and did not serve as training for the 2014-2015 evaluations. Diodonet testified that the March 2014 training session was intended for the 2013-2014 school year. It would have been impossible for PPS to have known its 2014-2015 evaluation procedures as of that date. Its evaluation plans were not due to the Commissioner of Education for nearly another three months, with approval likely occurring on or around August 1, 2015. N.J.S.A. 18A:6-122; N.J.A.C. 6A:10-2.1. It is obvious that neither prior to nor during the 2014-2015 school year did PPS provide its teachers or the PEA information on how to calculate Standard scores, a central component of the teachers' evaluation grading rubric.

The one documented instance of PPS training of teachers on the 2014-2015 scoring rubric generally also did not comply with N.J.S.A. 18A:6-128's requirement to provide ongoing professional development. One training seminar for teachers in September 2014 cannot qualify as ongoing professional development. Media-X did not cure any defects or provide additional training as Diodonet admitted that the only information Media-X provided relevant to the annual summative evaluations was the information provided in the observation reports.⁶ As the observation reports did not include the missing Standard scores, Media-X⁷ did not ameliorate this issue.

Because of the deficiencies in PPS' training and materials, its teachers faced insurmountable hurdles in their efforts to independently calculate their teaching performance during the 2014-2015 school year. First, the

⁶ The other information allegedly provided on Media-X (classroom visitations, walk throughs and prior annual summative evaluations) did not go into the calculations for a TPS or annual summative evaluation. (T336:17-T337:6).

⁷ Even assuming for the purposes of this brief that Media-X was running and operational for PPS teachers throughout the 2014-2015 school year, which Respondents deny.

2013-2014 observation reports differed from the 2014-2015 reports because the 2014-2015 reports only included scores for a Standard's sub-categories, with no Standard scores included. The PEA and PPS teachers could not have relied upon training from the 2013-2014 school year as calculating an observation report's Standard score was not previously an issue. Moreover, the 2014-2015 training materials actually had less information regarding the Standard score than the materials from the prior school year, as PPS left out information previously found within the 2013-2014 manual regarding the calculations of the Standard scores. See Exhibit R-2A at SD-64.

Unable to determine the Standard scores from an observation, it already would have been an impossible for someone to calculate his or her Standard scores for the year with any degree of confidence. However, since PPS also refused to divulge how it added multiple observation Standard scores together in order to calculate the final Standard score for the year, teachers and the PEA were that much further in the dark as to how to calculate their TPS and annual summative evaluation scores. This was extremely important as accuracy was paramount in tracking teaching performance. Even a one point change in the average of some of the Standards would result in a three point swing in a teacher's weighted sum score. Considering that many PPS teachers were near the 56 weighted sum score which served as the cut-off for a 3 for the TPS (and for all intents and purposes as the cut-off between an overall partially effective and effective rating), certainty as to the precision of their Standard scores was a prerequisite for determining a teacher's performance. Instead, PPS teachers and the PEA could only wait until Standard Summary Report at the end of the school year to find out a teacher's TPS and Standard scores, unable to independently verify the accuracy of PPS' numbers.

Despite the PEA's best efforts, it was unable to crack the code to help PPS teachers find out the missing evaluation rubric information. The PEA, including Chowhan, tried to calculate observation scores for its membership, but was unable to determine the formula which matched up with the method used by PPS. This was unsurprising since much of the PPS' information previously provided to the PEA was flawed.

PPS admitted at the hearing to multiple mistakes in documents it had given to the PEA and PPS teachers, such as the unannounced changing of the evaluation instrument summary previously included in the evaluation materials and an inaccurate "Summative Rating" in the 2014-2015 evaluation training manual. See Exhibit P-2B at SD-256. If even PPS could not accurately express or understand key aspects of its grading rubric, there was no way the PEA or its members could have deciphered PPS' grading rubric with any conviction. Simply put, PPS' errors and omissions further robbed its teachers and the PEA of any meaningful opportunity to review their teaching performances during the course of the 2014-2015 school year.

As Diodonet explained in her testimony, PPS' is supposed to support its teachers rather than run an "I got you" system. (T247:18-T248:9). Diodonet's statement captures the requirements of N.J.S.A. 18A:6-128, especially PPS' obligation under subsection (b), to provide additional professional development for teachers who are failing or struggling to meet PPS' performance standards. Because of PPS' refusal to share observation Standard scores and other evaluation rubric information, PPS teachers (and supervisors) were left in the dark during the year as to whether they were struggling to keep up with or failing expectations. Denied this critical information, PPS teachers who were in need of help were not put on notice of their situations until the end of the year, thus depriving them of the opportunity for additional professional development as required under N.J.S.A. 18A:6-128. Instead, PPS set up these teachers for an "I got you" moment at the end of the 2014-2015 school year.

PPS' refusal to explain how it calculated Standard scores for observations and the Annual Summary Report also defied N.J.A.C. 6A:10-2.2(a)(6). This regulation required PPS to keep all of its evaluation data in an accessible and usable format. Neither the PPS teachers nor the PEA were able to access this vital data. For the entire 2014-2015 school year, PPS withheld from its teachers and the PEA key ingredients for how PPS determined Standard scores, and ultimately the TPS. When confronted, PPS responded by saying that McRel took care of it, that teachers would be trained later (supposedly in January 2015), ignoring pending grievances and cases, or by falsely asserting that no changes took place at all.

Throughout the 2014-2015 school year, the teachers and PEA were kept in the dark. As a result, they were denied the State recognized right to review PPS' records and determine if PPS' calculations were inaccurate, arbitrary or otherwise inappropriate.

PPS' incomplete description of the scoring rubric used for the TPS is contrary to TEACHNJ also because it does not meet the definition of a scoring guide. The State's definition of "scoring guide" under N.J.A.C. 6A:10-1.2 expressly declares that a scoring guide is supposed to provide a transparent and reliable evaluation process. PPS' system during the 2014-2015 school year was neither transparent nor reliable. Rather, the few parts divulged to the teachers and PEA gave false impressions of PPS' true system. Even now, PPS teachers and the PEA are uncertain as to how PPS calculated the teachers' annual summary report scores, unable to determine the reliability of the documented results. PPS has never shared the Standard scores earned by teachers during their 2014-2015 observations. PPS has never shared how it added up the observation Standard scores to determine the year-end Standard score. As far as the teachers and PEA are aware, there was no formula at all for calculating the average Standard scores for the 2014-2015 school year.

Objectivity, consistency, reliability and accuracy are the foundations of the evaluation system under TEACHNJ. If the PPS teachers (and its union) are unable to confirm that PPS' evaluation has any of these features, the evaluation system ceases to be an effective tool of evaluating teacher performance. PPS' refusal to share its evaluation grading rubric undermined the credibility of the 2014-2015 teacher evaluation determination. Accordingly, PPS' failure to share evaluation rubric information with its teachers and the PEA must be found to have violated State statutes and regulations.

D. Paterson Public Schools' Failure to Implement and Enforce Objective Observation Scoring Rules violated State Statute.

Two of the grounds for which an arbitrator can dismiss inefficiency tenure charges under N.J.S.A. 18A:6-17.2 are if an evaluation failed to comply with a school district's evaluation

process, and if a school district's actions were arbitrary and capricious. If an arbitrator makes one of these findings, then the arbitrator must decide whether the school district's transgressions materially affected the outcome of the teacher's evaluation. The PPS, by failing to implement or divulge the scoring metrics for teacher observation or otherwise failing to train and require its teachers to comply with the supposed system, so significantly violated N.J.S.A. 18A:6-17.2 as to require a further determination as to whether they so significantly affected the integrity of the Respondents' 2014-2015 evaluations as to have materially affected the outcomes of Respondent's evaluations.

Differences of even one or two points in sub-category or Standard scores in an observation can significantly impact a teacher's TPS and annual summative evaluation scores. PPS, however, never explained how its observers picked between point values. PPS failed to clarify how observers distinguished between a Proficient I or II performance (the options within the Proficient classification) or a Progressing I or II performance (the options within the Progressing classification). The PPS Guidebooks did not clear up the confusion as they did not differentiate between the two performance ratings for the four classifications. Without this information, neither a PPS teacher nor the PEA could determine if the observation report supported a 2 vs. 3, a 4 vs. 5, or a 6 vs. 7 for a sub-category (such as Standard 3(a)), or for a full Standard in an observation. Without this tool, teachers and the PEA could not properly check PPS' observation reports for mistakes of fact or for the observers' compliance with evaluation procedures. When a single point in an observation can make the difference between a raw score of 55 (condemning a teacher to a CAP and tenure charges) or 56 (all but ensuring an effective rating at the annual summing evaluation), teachers must be presented an accurate and justifiable explanation for every score within an observation.

At the hearing, PPS, for the first time, tried to explain how it distinguished between different performance ratings within a classification. However, since there was no evidence to support the assertion, there is no basis to conclude that PPS actually used the asserted method during the 2014-2015 school year. Crucially, even in the hypothetical that PPS

actually wrote out a method to differentiate between the different performance ratings, PPS' nondisclosure of the system to its teachers and the observers' flouting of the alleged steps negated any legitimacy it could have provided to the evaluation process.

Diodonet, in alleging that PPS actually had a way on paper to differentiate between to performance ratings in calculating sub-category and Standard scores, admitted that she did not believe that this information was ever provided to PPS' teachers. Accordingly, the supposed method was as worthless as no method at all since a secret formula hidden from PPS teachers and the PEA does not protect the State's interests in ensuring fair teacher evaluations. A school district's evaluation system is supposed to promote clarity. Absent the sharing of information regarding the performance ratings, PPS teachers and the PEA could not ensure honesty or accuracy in the teacher observation reports.

PPS' supposed method to distinguish between performance ratings also fails to validate PPS' actions because if such a system existed, PPS' administrators either were unaware of it or ignored it with impunity. Chowhan's conversations with at least half a dozen administrators establish that there was no common understanding between PPS' administrators for how to calculate sub-category or Standard scores. Chowhan described how some administrators took an average of the scores below while others made their decisions based upon the mode of the scores (even if they differed from the average). There was no rhyme or consistency in determining a sub-category or Standard scores.

The actions of other PPS officials only further revealed the subjectivity and unreliability of the observation reports. Numerous teachers at multiple schools (all wholly separate from the schools represented in Chowhan's conversations) described administrator admitting to lowering observations scores for reasons wholly unrelated to teaching performance. This artificial suppression of sub-category and Standard scores negatively impacted all teacher evaluations. If the highest scores were now only a 5 or 6 rather than the listed seven, teaching performances that would have otherwise received a 4 or 5 were moved down a point or two to reflect the

difference between their performances and those of the highest performers.

When a single point in a single observation can make the difference between a 'partially effective' and 'effective' rating, administrators cannot be allowed to refuse to give out highest scores or to temper scores in order to demonstrate a supposed improvement in performance. Evaluation systems under TEACHNJ are reliable only if they can demonstrate consistency and objectivity. If observation scores are influenced by inconsistent or conflicting scoring methods and subject to an observer's personal opinion as to how PPS should administer or grade observations, the entire evaluation system implodes. Unfortunately, such an implosion occurred here.

The only reasonable determination is to find that there was no effective performance rating differential system in place at PPS for observation reports, resulting in the elimination of any semblance of objectivity during teacher observations. As a result, PPS' actions must be found to have substantially failed to adhere in evaluation process and to have been arbitrary and capricious, in violation of N.J.S.A. 18A:6-17.2.

CONCLUSION

For all of the aforesaid reasons, Respondents Carrie Osborne, Thomas Schaefer and Ardeena Long respectfully requests that Paterson Public Schools be found to have violated New Jersey teacher evaluation statutes and regulations in its school district wide actions during the 2014-2015 school year.

The District's Position

The District provides the following conclusions of law in its post-hearing brief:

Under TEACHNJ, the arbitrator's decision is final and binding, subject only to judicial review pursuant to the New Jersey Arbitration Act, N.J.S.A. 2A:24-7 *et seq.* See N.J.S.A. 18A:6-17.1. On the other hand, under TEACHNJ, the arbitrator is prohibited from second-guessing the evaluators' determinations regarding the quality of the teacher's classroom performance. N.J.S.A. 18A:6-17.1(c). Thus, while the arbitrator's authority is broad, the standard of arbitral review of teacher evaluations is quite deferential, and the factors to be considered in the arbitrator's review of a tenure charge of inefficiency are limited. In light of the required deference and the limited scope of review, the evidence to be considered in arbitration is similarly limited. In this case, review by the arbitrator is further limited, based on the agreement of the parties, to the implementation of the School District's teacher evaluation system and the procedural challenges brought by Respondent.

The arbitrator's analysis at this stage in the proceeding must be conducted within the analytical framework of N.J.S.A. 18A:6-17.2. To that end, the arbitrator should consider not only whether any facts support Respondent's procedural claims, but also whether those facts "materially affected" the evaluation system. (In further proceedings, the arbitrator also will need to consider whether any facts presented in support of Respondent's defenses "materially affected" her own evaluation.) The evidence establishes that even if any facts in support of Respondent's claims could be proven, none can be found to have materially affected the validity of the School District's evaluation system or its compliance with applicable legal requirements.

I. THE SCHOOL DISTRICT COMPLIED WITH ALL APPLICABLE LEGAL REQUIREMENTS FOR ITS TEACHER EVALUATION SYSTEM IN THE 2013-2014 AND 2014-2015 SCHOOL YEARS.

A. The School District's Evaluation Rubric Satisfies All Applicable Requirements.

N.J.S.A. 18A:6-122(a) requires school districts to "annually submit to the Commissioner of Education, for review and approval, the evaluation rubrics that the district will use to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members." The School District submitted its evaluation rubric for approval from the Commissioner for the first time in 2012 and received approval for its rubric at that time. (SD-1, ¶12 and Ex. A.) TEACHNJ sets forth specific guidelines for the minimum standards for Commissioner approval of district evaluation rubrics. Those standards include, at a minimum:

- (1) four defined annual rating categories for teachers, principals, assistant principals, and vice-principals: ineffective, partially effective, effective, and highly effective;
- (2) a provision requiring that the rubric be partially based on multiple objective measures of student learning that use student growth from one year's measure to the next year's measure;
- (3) a provision that allows the district, in grades in which a standardized test is not required, to determine the methods for measuring student growth;
- (4) a provision that multiple measures of practice and student learning be used in conjunction with professional standards of practice using a comprehensive evaluation process in rating effectiveness with specific measures and implementation processes. Standardized assessments shall be used as a measure of student progress but shall not be the

predominant factor in the overall evaluation of a teacher;

- (5) a provision that the rubric be based on the professional standards for that employee;
- (6) a provision ensuring that performance measures used in the rubric are linked to student achievement;
- (7) a requirement that the employee receive multiple observations during the school year which shall be used in evaluating the employee;
- (8) a provision that requires that at each observation of a teacher, either the principal, his designee who shall be an individual employed in the district in a supervisory role and capacity and who possesses a school administrator certificate, principal certificate, or supervisor certificate, the vice-principal, or the assistant principal shall be present;
- (9) an opportunity for the employee to improve his effectiveness from evaluation feedback;
- (10) guidelines for school districts regarding training and the demonstration of competence on the evaluation system to support its implementation;
- (11) a process for ongoing monitoring and calibration of the observations to ensure that the observation protocols are being implemented correctly and consistently;
- (12) a performance framework, associated evaluation tools, and observation protocols, including training and observer calibration resources;
- (13) a process for a school district to obtain the approval of the commissioner to utilize other evaluation tools; and

- (14) a process for ensuring that the results of the evaluation help to inform instructional development.

N.J.S.A. 18:6-123(b)(1)-(14). See also N.J.A.C. 6A:10. In order to receive approval from the Commissioner, as the School District did here, the evaluation system was required to meet these minimum standards. Respondent has failed to show that the School District's approved evaluation system, including its evaluation rubric, does not meet any of these requirements. Therefore, the arbitrator should rule that Respondent's defense to the tenure charge (if any) based on any alleged failure of the School District's evaluation rubric to meet applicable requirements is rejected.

B. The School District Satisfied All Applicable Legal Requirements Regarding Training and Professional Development on its Evaluation System.

N.J.S.A. 18A:6-128 requires school districts to conduct ongoing professional development for teaching staff. More specifically, Section 128(a) requires districts to "provide its teaching staff members with ongoing professional development that supports student achievement and with an individual professional development plan." N.J.S.A. 18A:6-128(a). See also N.J.A.C. 6A:10-3.2(a)(4); N.J.A.C. 6A:10-2.4(e)(3). Respondent has failed to show that the School District has not met this requirement, either with respect to training and professional development provided to principals and supervisors or with respect to that provided to teachers. Extensive training, information, and professional development regarding the evaluation system and process were provided to administrators and teachers over the course of three school years. The evidence presented—specifically, Sandra Diodonet's testimony—demonstrates the School District's support of its teaching staff through professional development:

Based on the observation trends from the building, [administrators] would develop professional development for your teachers. [For example], if you have a teacher who, let's say, did not do well on Standard 4 . . . the job of the principal and the observer would be to get [that teacher] the

professional development or support that she needs to do well at the next time around. Because the system is supposed to be not an "I got you" system, but a support system . . . [If an administrator sees teachers] coming in proficient I or progressing II or unsatisfactory in an area, you, as the building leader, as the principal, are supposed to create professional development for that. So every month or so we have those professional development days that could be used for that; or you can send your teachers to a training; or your school-based supervisor, at grade level meetings, vertical articulation meetings, could address that standard that needs fixing.

(T247-248.)

Thus, the School District satisfied all applicable requirements regarding training and professional development for its teaching staff members with respect to its evaluation system, its rubric, and calculation of evaluation ratings. Therefore, the arbitrator should rule that Respondent's defense to the tenure charge based on the School District's alleged failure to provide sufficient training and professional development, failure to "disseminate information regarding the grading rubric for calculating annual summative ratings for the 2014-2015 school year," or failure to "teach its teachers about the formula for the grading rubric for calculating annual summative evaluating ratings for the 2014-2015 school year" is rejected.

C. The School District Satisfied All Applicable Legal Requirements Regarding Development of Student Growth Objectives.

N.J.S.A. 18A:6-123(b) requires SGOs to be developed through a collaborative process between each teacher and his or her principal or the principal's designee. See also N.J.A.C. 6A:10-4.2(e). In other words, school districts and administrators are not permitted to "impose" SGOs on their teachers without receiving input from each teacher regarding his or her own SGOs. Respondent has failed to show that the School District violated this requirement. The evidence presented demonstrates that the School District has

satisfied its obligations regarding collaborative development of SGOs. Not only that, the evidence also demonstrates that it would be nearly impossible for principals to "impose" SGOs, as the data necessary for the development of SGOs is held by teachers. (T267-268; T314-315.) Indeed, as Diodonet testified, it "would be almost impossible" for an administrator to assign SGOs to teachers without any teacher involvement "because you cannot set an SGO without having data in front of you." (T270:4-13.) Furthermore,

It's virtually impossible for [principals] to do this for all of their teachers. It's a lot of work, because there's a lot of math that goes into it and a lot of debating back and forth with the teacher and seeing what group the kid would fall in and the evidence that the teacher has to say the kid should stay here. And you have to look at data in the teacher's spreadsheets and her evidence to show that 20 percent increase. [It's] rigorous. So a principal would have to assess the students herself, get that data and do it. And I don't think that a principal would shoot themselves in the foot to blindly give a percentage of kids that are going to meet the SGO because, again, at the end of the school year, every teacher in the building, all those SGOs get averaged out [and] the principals get that rating.

(T314-T315.)

Therefore, the arbitrator should rule that Respondent's defense to the tenure charge based on the School District's alleged failure to provide for collaborative development of SGOs, or based on any alleged unilateral drafting or "imposition" of SGOs on teachers, is rejected.

D. Respondent Cannot Have Been Affected by any Alleged Deflation of Observation Scores for Higher Performing Teachers.

As noted, the testimony presented on behalf of Respondent regarding alleged "deflation" of observation scores should be ruled inadmissible. Even if it were admitted into the record, Respondent – who indisputably was not a "higher performing teacher" – cannot have been affected

by any such action. Therefore, the arbitrator should rule that Respondent's defense to the tenure charge based on any alleged "deflated observation scores," or based on any alleged district-wide policy or practice permitting such deflation, should be rejected.

CONCLUSION

For all the foregoing reasons, the State-operated School District of the City of Paterson respectfully submits that on the basis of the evidence presented the arbitrator should find in favor of the District on the procedural issues raised in this hearing.

DISCUSSION

I have carefully reviewed the entire record of this proceeding. N.J.S.A. 18A:6-17.2 sets forth the "[c]onsiderations for arbitrator in rendering decision":

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

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

(2) there is a mistake of fact in the evaluation;

(3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or

(4) the district's actions were arbitrary and capricious,

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

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

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

The New Jersey Department of Education has published on its website a document entitled "Summary of Legal Requirements for Teacher Evaluation and Tenure Cases". This document can be found at www.nj.gov/education/AchieveNJ/implementation/legalrequirements.pdf. As indicated therein, "this guide outlines the actions required in law before bringing an inefficiency charge based on the new tenure revocation process, including the following elements:

- A. Minimum Requirements to Ensure Compliance with Evaluation Procedures
 - I. Observation Requirements
 - II. Student Achievement Requirements
 - III. Summative Evaluation Requirements
 - IV. Corrective Action Plan (CAP) Requirements
 - V. Additional Requirements
- B. Requirements for Filing an Inefficiency Tenure Charge
- C. Streamlined Tenure Revocation Process".

This guide must be read in conjunction with the applicable laws, rules and regulations. (See *N.J.A.C. 6A:10 et seq* ("Educator Effectiveness"), Title 18A of the New Jersey Statutes ("Education")).

I will initially address the Respondents' claim that the District unilaterally implemented Student Growth Objectives. *N.J.A.C. 6A:10-4(e)* provides:

(e) Student growth objectives for teachers shall be developed and measured according to the following procedures:

1. The chief school administrator shall determine the number of required student growth objective for teachers, including teachers with a student growth percentile. A teacher with a student growth percentile shall have a least one and not more than four student growth objectives. A teacher without a student growth percentile shall have at least two and maximum of four student growth objectives. By August 31 prior to the academic year in which the evaluation rubric applies, the Department shall provide on its website the minimum and maximum number of required student growth objectives within this range.
2. A teacher with a student growth percentile shall not use the standardized assessment used in determining the student growth percentile to measure progress toward a student growth objective.
3. Each teacher shall develop, in consultation with his or her supervisor or a principal's designee, each student growth objective. If the teacher does not agree with the student growth objectives, the principal shall make the final determination.
4. Student growth objectives and the criteria for assessing teacher performance based on the objectives shall be determined, recorded, and retained by the teacher and his or her supervisor by October 31 of each academic year, or within 20 work days of the teacher's start date if the teacher begins work after October 1.
5. Adjustments to student growth objectives may be made by the teacher in consultation with his or her supervisor only when approved by the chief school administrator or designee. Adjustments shall be recorded in the teacher's personnel file on or before February 15.
 - i. If the SGO covers only the second semester of the school year, or if a teacher begins work after

October 1, adjustments shall be recorded before the mid-point of the second semester.

6. The teacher's designated supervisor shall calculate each teacher's student growth objective score. The teacher's student growth objective score, if available, shall be discussed at the teacher's annual summary conference and recorded in the teacher's personnel file.

Section 3 above requires collaboration between the teacher and his/her principal or supervisor before an SGO is set. Establishing an SGO without input from the individual teacher would be inconsistent with the requirements of this provision. Wolf testified that he received complaints that SGOs were being implemented without teacher input. Diodonet acknowledged that if such action took place that it would be contrary to the District's legal obligations. With this said, there is insufficient evidence to conclude at this point in the proceedings that SGOs are being unilaterally implemented by the principals and/or supervisors either globally or individually. Such a claim must be reviewed and considered by the appointed Arbitrator on a case-by-case basis after the parties have had an opportunity to fully develop their evidence and claims specific to each individual Respondent.

I now turn my attention to the Respondents' claims pertaining to the calculation of teacher observation and evaluation scores. To summarize, the Respondents claim that the District failed to disclose scoring rubric information, refused to explain the calculation of Standard scores for observations and the

Annual Summary Report, and failed to implement and enforce objective observation scoring rules. With respect to the scoring on the evaluation rubric, N.J.A.C. 6A:10-1.2 defines and expresses the purposes of a "scoring guide":

"Scoring guide" means a set of rules or criteria used to evaluate a performance, product, or project. The purpose of a scoring guide is to provide a transparent and reliable evaluation process. Educator practice instruments include a scoring guide that an evaluator uses to structure his or her assessments and ratings of professional practice.

N.J.S.A. 18A:6-17.2, paragraph 23(a) provides that "the evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review." However, the District must comply with fourteen (14) minimum standards set forth in N.J.S.A. 18A:6-123, paragraph 17.b including, but not limited to, "guidelines for school districts regarding training and the demonstration of competence on the evaluation system to support its implementation"; "a process for ongoing monitoring and calibration of the observations to ensure that the observation protocols are being implemented correctly and consistently"; and "a performance framework, associated evaluation tools, and observation protocols, including training and observer calibration resources".

During the arbitration proceedings, the District provided extensive information concerning the training that was provided to teachers during the

2013-2014 and 2014-2015 school years. The District also indicated that the evaluators received training on how to evaluate the teachers, but this area of discussion was presented in a broader context. The evidence to date does not detail the measures that the District has in place to ensure that it is able to satisfy the minimum requirements of the statute. The District can avail itself of this opportunity during the case it will present against each individual Respondent.

As to the calculation of the scoring on the rubric, the District's explanation as to how the indices within each standard factored into the score of the standard and the overall Teacher Practice Score currently lacks specificity. For instance, Performance Standard #1: Preparation for Instruction Indicator, is comprised of three (3) indicators:

- 1a. Establish a culture of high expectations for learning and achievement.
- 1b. Use district-adopted curriculum and content knowledge to design coherent lessons.
- 1c. Post aligned lesson objectives and plan for demonstrations of learning.

Within each of these indicators are three (3) sub-indicators that the evaluator must rate the teacher as unsatisfactory, progressing, proficient and exemplary. Based upon these ratings, a teacher can receive a performance rating for each indicator of unsatisfactory, progressing I, progressing II, proficient I, proficient II, proficient III, and exemplary. Depending on the scores of the indicators, a

teacher will receive a performance rating for the overall Performance Standard of unsatisfactory, progressing I, progressing II, proficient I, proficient II, proficient III, and exemplary.

I am unable to determine from the record before me how the sub-indicators factored into the rating for the indicator. By way of example, if a teacher who has been evaluated on Indicator 1a received a rating of "unsatisfactory" for the first sub-indicator, "progressing" for the second, and "exemplary" in the third, I am unable to ascertain how those ratings, when combined, factor into the rating of Indicator 1a for Performance Standard #1. I have reviewed the PowerPoint presentation that the District presented to its teachers on March 19, 2014, with respect to the "Weighting of Components". Although this information shows how the seven (7) standards factor into the Teacher Practice Score, similar information is not provided for the indicators or the sub-indicators. Wolf and Chowhan testified that the issues about the District's calculation methods were brought to the District's attention after receiving numerous inquiries from teachers, but they did not receive a satisfactory response. As Chowhan testified, her department chair indicated that a software program took care of the calculations. Whether or not the individual Respondents were given additional guidance by their evaluators or other District representatives that went beyond the information provided during the professional development sessions has yet to be addressed.

My analysis only addresses the evidence that has been developed on the record to date. Notwithstanding my discussion above, there is insufficient evidence to conclude at this point in the proceedings that the District has failed to meet its legal requirements. Put simply, the issues raised by the Respondents pertaining the calculation of the teacher observation and evaluation scores must be reviewed and considered by the appointed Arbitrator on a case-by-case basis after the parties have had an opportunity to fully develop their evidence and claims specific to each individual Respondent.

Accordingly, based upon the foregoing and the entire record, the arbitration proceedings for each individual Respondent shall move forward.

DECISION

There is insufficient evidence in the record at this time to conclude that the District has failed to satisfy the legal requirements of TEACHNJ. The arbitration proceedings for each individual Respondent shall move forward.

Dated: January 14, 2016
Sea Girt, New Jersey



Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this 14th day of January, 2016, before me personally came and appeared Robert C. Gifford to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

Linda L Gifford

