
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

DECISION AND AWARD

Before
Robert C. Gifford, Esq.
Arbitrator

Appearances:

For the School District:

Brenda C. Liss, Esq.
Riker Danzig Scherer Hyland & Perretti

For Respondent Osborne:

Samuel Wenocur, Esq.
Oxford Cohen

The State-Operated School District of the City of Paterson ["District" or "Petitioner"], certified tenure charges of inefficiency against Respondent Carrie Osborne pursuant to *N.J.S.A. 18A:6-11* and *N.J.S.A. 18A:6-17.3*. The Respondent filed an Answer opposing the charges filed against her.

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 the cases of three (3) separate Respondents (Osborne, Long and Schaefer) that needed to be addressed. The Respondents contended 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 were addressing the charges against the other Respondents (Long and Schaefer) 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,

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

two (2) days of hearing took place on December 2 and 8, 2015 in Paterson, New Jersey. A stenographic recording of the proceedings was taken in accordance with the tentative schedule above. 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.

On January 14, 2016, I issued an Interim Decision that included findings of fact and addressed the global issues raised by the Respondent. After careful consideration I concluded that there was insufficient evidence in the record at that time to conclude that the District failed to satisfy the legal requirements of *TEACHNJ* and, therefore, the arbitration proceedings for each individual Respondent would move forward. The interim decision is posted on the New Jersey Department of Education's website at <http://www.state.nj.us/education/legal/teachnj/2016/>.

On April 3, 2016, Arbitrator Joel M. Weisblatt issued his Decision and Award (#128-16) with respect to Respondent Long. On April 30, 2016, Arbitrator Jacquelin F. Drucker, Esq. issued her Decision and Award (#168-16) with respect to Respondent Schaefer. In each case, the Arbitrator sustained the charge of "Inefficiency" and upheld the Respondent's dismissal after concluding that the District met its burden of proving that the Respondent received "partially effective" annual summative evaluations in 2013-2014 and 2014-2015 and that

the District properly conducted the evaluations under the applicable laws and regulations. The decisions are posted on the New Jersey Department of Education's website at <http://www.state.nj.us/education/legal/teachnj/2016/>.

With respect to Respondent Osborne, hearings were held on January 28, 2016, February 4, 2016, February 11, 2016, March 15, 2016, April 11, 2016, and April 15, 2016. A stenographic recording of the proceedings was taken. Testimony was received from Respondent Osborne, Principal Boris Simon, Vice-Principal Charla Holder, Kimberly Rieder – Supervisor of Literacy, and Principal Courtney Glover. Time extensions to hear and decide this matter were timely requested and granted.

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 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.).

TENURE CHARGE

The District raised the following charge and specifications against the Respondent:

Tenure Charge: Inefficiency

1. Respondent has been rated Partially Effective in two consecutive annual summative evaluations, as follows:
 - a. Respondent was rated Partially Effective in her 2013-2014 annual summative evaluation. This rating was based on a teacher practice score of 2.00 and a student growth objective score of 1.30 for an overall score of 1.90.

- b. Respondent was rated Partially Effective in her 2014-2015 annual summative evaluation. This rating was based on a teacher practice score of 2.00 and a student growth objective score of 1.60 for an overall score of 0.73 for an overall score of 2.33.
2. Respondent has demonstrated an inability to effectively perform the duties of a teacher.
 3. Respondent has failed to effectively prepare for instruction.
 4. Respondent has failed to effectively use data to inform instruction.
 5. Respondent has failed to effectively deliver quality instruction to her students.
 6. Respondent has failed to effectively intervene to meet the diverse needs of her students.
 7. Respondent has failed to effectively foster a safe, effective, respectful and collaborative classroom environment.
 8. Respondent has failed to effectively exhibit leadership.

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. Respondent Carrie Osborne has been employed by the District as a Teacher at School 26 since September 2001. (T3:362). Respondent earned tenure rights on or about the first day of the 2004-2005 school year. (T3:363). From 2012 through the filing of the tenure charges Respondent taught first grade at School 26. (T3:364).
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 ¶4). 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, ¶110).
5. Teacher Practice Scores are calculated through the use of an evaluation rubric 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, ¶111; 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, ¶112; 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. With respect to the rubric, the decision between a Proficient 1 or Proficient 2 or other scores is left to the principal's/evaluator's discretion. (T2:277).
10. 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). The ratings were inputted by the administrators into a computer software program ("Media-X") that was approved by the Commissioner of Education. (T7:1102-1103, 1160). The software program performed the necessary calculations and then generated an annual summative report. (T7:1102-1103).

11. 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).

12. 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 ¶118). Additional information concerning SGOs can be found on the New Jersey Department of Education's website in the AchieveNJ Home section.

13. 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.*) The training session was then held.

14. 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%.
15. 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, ¶121). 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.*).
16. 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).

17. 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). 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, ¶115; T2:321).
18. 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 TPS 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.*).

19. 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).
20. 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, ¶25). 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).

21. 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, ¶135; Ex. SD-2, 2014-2015 Guidebook, PPS-SD-183).
22. 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, ¶¶15, 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).
23. 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.*).

24. 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)).
25. 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).

26. 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).
27. 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)). The District also provided training to principals and that principals trained their teachers in March 2014 on the evaluation framework. (T2:326).
28. During the 2013-2014 school year, 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).

29. In both the 2013-2014 and 2014-2015 school years, Respondent was assigned to teach first grade at School 26 in the Paterson Public Schools. Her annual summative evaluation was conducted in both school years by Principal Courtney Glover. In both years, the District's teacher evaluation system provided for an annual summative evaluation rating for each teacher, consisting of a TPS and an SGO score. In 2013-2014, the teacher practice portion of Respondent's evaluation was based on observations conducted by Glover and Boris Simon who was an Assistant Principal at that time. In 2014-2015, the teacher practice portion was based on observations conducted by Glover, Assistant Principal Charla Holder and Kimberley Rieder - Supervisor of Literacy.
30. In addition to the formal observations conducted in 2013-2014 and 2014-2015, informal walkthrough observations of the Respondent occurred throughout each school year. Some of walkthroughs were documented, and others were not.
31. Glover, Simon, Holder and Rieder received all of the training for administrators outlined and described in paragraphs 2-28 above. They testified to their familiarity with and use of the rubric. They described their frequent reference to the rubric and their reliance on it in rating teacher performance. They provided similar explanations of how ratings within the

categories of "Progressing" or "Proficient" would be given, *i.e.*, the differences between "Progressing 1" and "Progressing 2" and between "Proficient 1" and "Progressing 2". As testified, the differences in the ratings were a matter of judgment, degree and consistency. Their ratings of the Respondent were based on their professional judgment and application of the rubric, reflecting evidence obtained in the observations and/or presented by Respondent during post-observation conferences. They also described how co-observations required "calibration" to ensure consistency in observation ratings.

32. Respondent received all of the training for teachers outlined and described in paragraphs 2-28 above.
33. Respondent has been a member of the Paterson Education Association. She has served as an Association building representative since around the 2004-2005 school year. (T3:365). The Respondent claims that her union activity caused members of the District's administration to have "negative feelings" towards her. (T3:367). More specifically, she recalled during the 2011-2012 school year that Principal David Cozart stated to her in the presence of students and Holder, "You're a union rep. You should know better." (T3:367). The Respondent felt berated. She testified that Holder never disapproved, disavowed or apologized to the Respondent for Cozart's actions. (T3:370). Holder and Glover both testified that they were not aware of the Respondent's union activities. (T5:760, T7:1048).

34. Respondent received a summative evaluation rating of "partially effective" for the 2013-2014 school year. (Ex. SD-3(6)). This rating was based on the weighted average scores in seven standards (each with several indicators) and a measure of the SGOs. The scores were reflective of three (3) formal observations conducted during the 2013-2014 school year on October 18, 2013, January 27, 2014, and March 19, 2014. (Exs. SD-3(3); SD-3(3A); SD-3(4); SD-3(5)). Glover conducted the first two (2) observations, one (1) of which she was accompanied by Simon as a co-observer. (T3:683). Simon conducted the third observation. Post-observation conferences occurred on October 23, 2013 (first observation), January 31, 2014 (second observation), and April 1, 2014 (third observation). Glover and Simon testified that during the post-observation conferences they afforded the Respondent with an opportunity to rebut the ratings and that her input, if any, was considered. The Respondent did not submit a written rebuttal to any of the 2013-2014 evaluations. (T8:1275).
35. Respondent's rating of "partially effective" for 2013-2014 was based on a teacher practice score of 2.00, given 85% weight, and an SGO score of 1.30, given 15% weight, for an overall score of 1.90. The score of 1.90 was within the "partially effective" range, which was from 1.85 to 2.64.
36. Respondent's 2013-2014 TPS of 2.00 reflects the calculation required by the District's teacher evaluation process: the total of the weighted

average scores received by Respondent on seven teacher practice standards. Her total score was 32.67, within the PPS weighted sum interval of 2 (on a scale of 1 to 4), which resulted in the TPS of 2.00. (Exs. SD-2; SD-3(6)).

37. Respondent's 2013-2014 SGO score of 1.30 reflects the calculation required by the District's teacher evaluation process for teachers assigned to grades and subjects in which no standardized tests were given: the average of two SGOs, based on objectives chosen by the teacher, either in math or language arts or both, based on a data set (whole-group or tiered) chosen by the teacher. (Ex. SD-2; T4:529-536, 547, 561-565).
38. Respondent testified that there were issues with her SGO for 2013-2014 that negatively impacted her summative evaluation rating. The STAR assessment is a test given to students three (3) times per year in order to collect data and formulate the teachers' SGOs. (T3:371). The Respondent claims that the timed STAR assessment testing was flawed because she was directed to switch from English Language Arts ("ELA") testing to Math after the students encountered computers issues during the test. The Respondent indicated that her "lower achieving students" were unable to complete the testing and, therefore, were excluded from her baseline scores. As a result, her SGO goals were set artificially high. (T3:374-377). The Respondent claims that she was deprived of an opportunity to establish SGOs of her choosing (i.e. two (2) in Math or ELA,

or one (1) in each). The Respondent also points out that she did not have the same complement of students from the beginning to the end of the school year given that students moved in and out of the district. (T3:382-387). Holder and Glover testified that teachers were aware that they could request a re-test of their students. (T5:784-786, T7:1068-1069). The Respondent claimed that she was not initially aware of this option. (T4:540). Holder testified that the State's system has accounted for transiency. (T5:784). Glover testified that the Respondent's classroom did not experience higher transiency than others in the district. (T7:1049-1050). The Respondent eventually had her class retake the ELA assessment, but the test results were not obtained in time to use in the development of her SGO. (T3:375-376).

39. Respondent's summative evaluation rating of "partially effective" would not have changed even if she received the highest SGO score in the 2013-2014 school year. Her summative evaluation score would have been 2.30, calculated as follows:

$$\text{Teacher Practice } 1.7 [2.00 \times 85\%] + \text{SGO } .60 [4.0 \times 15\%] = 2.30.$$

40. Simon testified that he mistakenly provided the Respondent with a higher score for Standard 5, Classroom Environment, as he inputted a rating of "Proficient 2" rather than "Progressing 2". (See SD-3(5), T5:739-740).

41. The Respondent testified that during 2013-2014 she had an unusually high number of student disciplinary problems in her classroom and this negatively impacted her overall rating for Classroom Environment. (T3:391-394). Simon testified that the disciplinary issues that the Respondent faced in her classroom were no different from those encountered by other teachers. (T4:699).
42. The Respondent was placed on a Corrective Action Plan ["CAP"] because of her "partially effective" rating for 2013-2014. Glover was the Respondent's CAP supervisor responsible for monitoring the Respondent's progress. (Ex. SD-3(7); T8:1128-1129, 1228). Glover met with the Respondent in June 2014 to discuss her CAP. (Ex. SD-3(7)). Three (3) areas for improvement were identified: planning and preparation, use data to inform instruction, and intervention to meet diverse needs. (Ex. SD-3(7)). The CAP also identified goals and the professional responsibilities of the Respondent and her supervisors. Glover discussed the CAP with the Respondent and she sought her input. (T7:1112, 1220-1221). The Respondent expressed some disagreement with the plan but did not suggest any alternatives. (T3:398, T4:571, 576, 595, T7:1117). Glover indicated that the Respondent did not express a lack of understanding of the plan. (T7:1119). The CAP form bears signatures from Glover and the Respondent. Expressly written above the signature lines provides, "My signature below indicates that I have received a copy of this Corrective

Action Plan and that I understand and contributed to its contents." (Ex. SD-3(7)). The Respondent claims that she was not given an opportunity to make changes to the CAP or to provide any input into the contents of the CAP. (T3:398, T4:625). The Respondent also claims that she did not know that Glover was her CAP supervisor. (T3:402).

43. Rieder testified that Glover asked her to support the Respondent with the areas listed in the CAP. (T6:864).
44. Glover met with the Respondent to develop her SGO for 2014-2015 in the Fall of 2014. Despite Glover's testimony to the contrary, the Respondent claims that she was not given an opportunity to provide input into the SGO process. (T3:462, 465). Although Glover could not recall if the Respondent requested an amendment to her SGO, the evidence shows that the Respondent made such a request on February 13, 2015, and Glover approved it on February 17, 2015. (Ex. SD-3(11)).
45. Respondent received a summative evaluation rating of "partially effective" for the 2014-2015 school year. (Ex. SD-3(13)). This rating was based on a TPS of 1.60, given 80% weight, and an SGO of 0.73, given 20% weight, for an overall score of 2.33. The score of 1.60 was within the "partially effective" range, which was the same as in the 2013-2014 school year, from 1.85 to 2.64. This rating was based on the weighted average scores in seven standards (each with several indicators) and a measure of the SGOs. The scores were reflective of four (4) formal observations

conducted during the 2014-2015 school year on September 23, 2014, November 20, 2014, January 21, 2015 and April 21, 2015. (Exs. SD-3(8); SD-3(9); SD-3(10); SD-3(12). Holder conducted the first observation, Glover conducted the second and fourth observations, and Rieder conducted the third observation. Post-observation conferences occurred on September 30, 2014 (first observation), November 20, 2014 (second observation), February 6, 2015 (third observation), and no later than May 18, 2015 (fourth observation).

46. Respondent's 2014-2015 SGO score of 3.625 (shown as 0.73 on the Annual Summary Conference Form, reflecting 20% weight) reflects the calculation required by the School District's teacher evaluation process, which was the same as in the 2013-2014 school year except for the increased weight given to the SGO score, from 15% to 20%. (Ex. SD-3(11)).
47. Respondent's 2014-2015 teacher practice score of 2.00 (shown as 1.60 on her Annual Summary Conference Form, reflecting 80% weight) reflects the calculation required by the School District's teacher evaluation process, which was the same in 2014-2015 as in 2013-2014. The total score, based on the scores received by Respondent on all of the seven teacher practice standards, was 51.26. (T7:1182).
48. Respondent identified certain individual scores that she disagreed with and/or appeared to her to be incorrectly calculated for the formal observations in 2014-2015. (See generally T3:421-425, 439-440, 457-458, Exs.

SD-3(8), SD-3(10), SD-3(12)). Even assuming the individual scores had been as Respondent claimed they should be, the total of the weighted average scores received by Respondent on the seven teacher practice standards still would have been within the PPS weighted sum interval of 28 to 55, resulting in a TPS of 2. (Ex. SD-3(13), T4:600-601, see Exs. SD-5, R-12, R-14). Therefore, the Respondent's summative evaluation rating still would have been "partially effective". When asked on re-cross whether she knew that the adjustments to the purported errors "would have been enough for you to have obtained a rating of Effective rather than Partially Effective?" the Respondent replied "I do not...." (T8:1352-1353; see T4:600-602). The Respondent did not submit a written rebuttal to any of the 2014-2015 evaluations. (T8:1275).

49. The Respondent claims that her formal observations on September 23, 2014, January 21, 2015 and April 21, 2015 were negatively impacted by the fact that during each observation there was an infusion of students into her classroom that she did not normally teach. The Respondent testified that these actions occurred with little or no notice. (T3:413-415, 431-433, 441).
50. The observation form used in 2014-2015 shows the teacher's overall rating for each sub-standard (1a, 1b, 1c, etc.) but does not show the overall score for each standard. Glover testified that the sub-standard ratings

provided sufficient information for the Respondent to be aware of her progress:

The obvious thing is ... if you have any progressing areas on your observations throughout the year, that would be an indication that, I'm not proficient, I'm not doing well. It's progressing. And you would see that ... at the post-conference, and note that progressing means progressing, progressing means not proficient.... That's an issue that should raise a flag or a level of concern. (T7:1167-1168).

51. Rieder testified that the Respondent was "upset" during the post-observation conference for the February 2015 observation "because there were a lot of progressings." (T6:943-944).
52. Each of Respondent's observations was followed by a post-observation conference. Post-observation conferences are supposed to be conducted within 15 school days after the observation. (See N.J.A.C. 6A:10-4.4(b)(1)). Two (2) out of the four (4) observations clearly complied with this requirement. As to the others, and assuming that there were no holidays between each formal observation and the post-observation conference, the post-observation for the formal observation in January 2015 took place two (2) school days beyond the 15 school day period, and the post-observation (assuming May 18th to be correct) for the formal observation in April 2015 took place four (4) school days beyond the 15 school day period. The Respondent claims that the delay affected the value of the conference because "the recall wasn't really there".

(T3:456). Rieder testified that the Respondent was upset about the "progressing" ratings. Rieder further testified that she agreed to change a few of the ratings based upon the input the Respondent provided during the post-observation conference. (T6:943-944).

53. The deadline for the Respondent's Interim CAP review was February 15, 2015. Glover did not conduct the Respondent's review until February 26, 2015. (Ex. SD-3(14)). The document that Glover used during the review was not presented during the hearing, but as the Respondent testified, it was similar to the Interim CAP review sheet that the Respondent signed in June 2015. (See Ex. SD-3(14), T4:592-594). The Respondent testified that her CAP did not change as a result of the meeting with Glover. (T3:412). She also testified that she did not propose any changes to Glover. (T4:595).

54. The Respondent contends that the District did not fulfill its obligations under the CAP. One of the tasks listed in the CAP is "Teacher will collaborate with data coach to develop data binders" and, correspondingly, "Data coach will assist Ms. Osborne with creating data binder." (Ex. SD-3(7)). Respondent claims that the data coach did not assist her in this task, but admitted that she had not collaborated with the data coach either, admitted that she needed no help in creating a data binder, and admitted that in any event she received assistance in this task from the math supervisor. (T4:590-592, 599). She also admitted that she

had no evidence that her evaluation rating would have been higher if someone had met with her regarding the data binder. (T4:629). Rieder testified that she provided guidance to the Respondent on the data binder. (T6:868-869).

55. Other tasks listed in the CAP is "review plans and provide feedback using Lesson Plan Review Memo" and assistance on differentiated instruction. (Ex. SD-3(7)). Rieder testified at length regarding the assistance and feedback she provided to the Respondent in these areas. (*See generally Testimony of Rieder, i.e. T6:864-869, 875-896, 909-919, 952-953*). Respondent contends that the District did not satisfy its CAP responsibilities in the review of lesson plans because the five-hour estimate that Glover provided in the CAP had not been reached, the "Lesson Plan Review Memo" had not been used as often as was required under the CAP, and the Rieder's lesson plan reviews occurred while class was in session. Respondent admitted that she did not have evidence to show that her evaluation rating would have been higher if additional lesson plan reviews had been provided. (T4:629).
56. Another task listed in the CAP is "Conduct walk throughs (2 per month)." Rieder testified that a "walk-through" is "about a 10-minute snapshot of what's happening in the classroom during that time." (T6:870). Although Glover testified that walk-throughs should be documented, Rieder sometimes created a written report of a walk-through and others times

she would simply "take a pad and just write down some suggestions for the teacher". (T7:1138, T6:870). Rieder further testified that she conducted walk-throughs of Respondent's classroom "maybe twice a month." (T6:872). Respondent claims that this CAP requirement was not met because only seven (7) walk-throughs were documented. Rieder testified that, in her opinion, Respondent received sufficient support:

Q. Were you able to tell whether it was a matter of Ms. Osborne not getting enough support or training on those issues and that's why she was not incorporating the strategies you had been working on into her teaching?

* * *

A. In my opinion, I think that she was provided enough support to be able to. She did make an improvement in multiple response strategies and I think that she could have also improved on those questions. She had the Bloom's Taxonomy.... I explained to her how to put it in the book, how to put the different questions in there, into her read-aloud books. So I feel that, in my opinion, I think that she could have made more progress in differentiated instruction, in Rager, student engagement, the questioning. Because she did it in multiple response strategies, so I really feel she could have. (T6:956-957).

57. The Respondent was required under the CAP to have monthly peer-to-peer lesson plan implementation observations. (Ex. SD-3(7)). She was only able to observe one other first grade teacher because of the fact that all of the first grade teachers had the same lunch and special subjects

periods. (T8:1330). The Respondent addressed this issue with Glover.
(T8:1328-1330).

The District's Position

The following is a summary of the legal arguments and conclusions of law that were presented in the District's post-hearing brief.

The District's evaluations of the Respondent, including her observations, SGOs and CAO, substantially adhered to the evaluation process. Any deficiencies did not materially affect the outcome of the Respondent's evaluations in either 2013-2014 or 2014-2015. The evaluations did not contain significant mistakes of fact. Even assuming there were miscalculations in the Respondent's TPS for 2014-2015 they did not materially affect the outcome of her evaluation because her rating would not have improved from being "partially effective". Further, the tenure charges against the Respondent were not motivated by her union activity. The District's actions were not arbitrary or capricious as they were "consistent with the mandate of *TEACHNJ*, 'to raise student achievement by improving instruction.'" (District Brief, p. 18).

The District has satisfied its burden of showing that the statutory criteria for a tenure charge of "inefficiency" has been met. The evidence shows that the Respondent received two (2) consecutive "partially effective" summative ratings. The Respondent was provided with a full and fair opportunity to rebut

the District's case, but she failed to show that she is entitled to the available defenses in N.J.S.A. 18A:6-17.2a.

It is for the reasons above, and the entire record, that "the tenure charge of inefficiency against Respondent Carrie Osborne should be upheld, and Respondent should be dismissed from her employment with the School District." (District Brief, p. 19).

The Respondents' Position

The following is a summary of the legal arguments and conclusions of law that were been presented in the Respondents' post-hearing brief.

The District is required to provide the Respondent with a list of witnesses with a complete summary of their testimony upon referral of the case for arbitration. (See N.J.S.A. 18A:6-17.1(b)(3)). In *Wilson*, Agency Dkt. No. 302-10/15, the arbitrator strictly applied the statute and dismissed the charges due to the school district's 14 day delay between the charges being referred to arbitration and presenting the list and summary. The arbitrator indicated that "any significant delay in the presentation of salient evidence by one party prejudices the other party's ability to represent its client." He concluded that the 14 day delay "significantly curtailed the time Respondent had to prepare and present

its evidence which was due within ten days of the first hearing – a hearing that must be and was scheduled forty-five days after the arbitrator's appointment as provided in 18A:6-17.(b)(1)." *Wilson* at 7, see also *Ebert*, Agency Dkt. No. 267-9/14.

Similar to *Wilson*, the District in this case did not submit a witness list until two (2) weeks after the referral for arbitration. Even when the list was submitted it was incomplete because it lacked specificity as to the descriptions of the expected testimony from the District's witnesses. As a result, the Respondent was denied "a meaningful opportunity to prepare against those witnesses expected to testify against [her]...." (Respondent's Brief, p. 41). For this reason, the District's non-compliance requires dismissal of the charges against the Respondent.

Aside from the procedural issue discussed above, there were issues with the District's evaluation system that materially affected the outcome of the Respondent's evaluations, caused the District to fail to adhere substantially to the evaluation process, and/or resulted in arbitrary and capricious actions. Additionally, the Respondent's evaluation ratings were "attributable at least in part" to the Respondent's union activity. (*Id.* at 53).

To begin, there were District-wide issues with the manner in which the District implemented and administered its evaluations that violated the minimum statutory and regulatory standards. The District failed to produce additional documentary evidence to show how the rubric standards and scores therein were calculated. The District's reliance on witness testimony was insufficient as they could not explain how the Media-X program calculated the scores. Consequently, the District failed to develop an effective scoring guide as is required by *N.J.A.C. 6A:10-1.2*. The District failed "to share adequate information regarding the scoring of its evaluation standards." (*Id.* at 45).

There was also a lack of adequate training. The District's witnesses acknowledged that the grading rubric itself did not expressly describe how to differentiate between two scores such as a "Progressing I" and a "Progressing II". Further, there is nothing expressly written in the training materials that provide such an explanation.

The District also unilaterally implemented the Respondent's SGOs. The evidence shows that Glover "did not include any outside input by Respondent or consider any outside factors which could have altered the SGO." (*Id.* at 48).

There were several problems with the SGO for 2013-2014 including, but not limited to the District "neglect[ing] to inform [Respondent] of the opportunity to

amend the SGO", the Respondent being directed to switch test subjects during the middle of the STAR assessment rather than to reschedule the test, and "numerous changes in Respondent's class roster". (*Id.* at 49). As a result, the "Respondent's SGO goals bore no relationship to her teaching performance...." (*Id.* at 51).

The District's observations of the Respondent during the 2013-2014 school year failed to comply with State requirements. Glover and Simon lacked specific recollection of their formal observations and post-observations conferences. It is therefore "proper to conclude that Respondent did dispute her observation scores and that Simon was informed of Respondent taking outside classes relevant to her employment." (*Id.* at 52). The lack of consideration to these areas resulted in lower observations scores.

The Respondent's evaluation results were negatively impacted by her union activity as a building representative. This is shown through the scores in Holder's September 2014 observation report that "were far lower than any other observation report from the 14-15 school year." (*Id.* at 54). Had these scores been "even remotely close to the scores from the other observation reports, Respondent would have receive at least a 3 for the TPS and an overall effective rating." (*Id.*). Holder's consideration of the Respondent's union activity must be treated as inappropriate retaliation.

The Respondent's evaluations were also negatively impacted by the District's failure to support her with student discipline. The Respondent made efforts to control her students by sending them to the office. Rather than keeping them away from her classroom for the remainder of the day, as the District did with students with disciplinary issues in other classes, the District repeatedly sent the students back to the Respondent's classroom.

The District committed multiple violations in the creation and administration of the Respondent's CAP. Glover drafted the Respondent's CAP without her input, deprived the Respondent with an opportunity to amend the CAP by ignoring her suggested changes, and failed to identify herself as the Respondent's CAP supervisor. Even if Glover was the CAP supervisor she neglected her duty to participate in all of the post-observation conferences. (See *N.J.A.C. 6A:10-4.4*). By her own admission, Glover only participated in two (2) of the Respondent's observations thus depriving the Respondent of the opportunity to receive feedback of her progress. The CAP simply was not tailored to the Respondent's deficiencies. In addition, the District never discussed the Respondent's CAP during her post-observation conferences which is a requirement of *N.J.A.C. 6A:10-2.5(f)*. Further, her interim CAP review took place 11 days after the February 15th deadline in violation of *N.J.A.C. 6A:10-2.5(j)* – an issue that has been previously cited a deficiency by other arbitrators. (See

Ebert, Agency Dkt. No. 49-3/15 and *Ojomoh*, Agency Dkt. No. 239-9/15). The District did not provide an explanation for the delay.

The District did not perform the requisite number of walkthroughs that were expressly required in the Respondent's CAP. Although 20 were required, only seven (7) were documented. This was particularly troublesome given that only two (2) of the walkthroughs occurred in the second semester of 2014-2015, and they took place less than a week apart. The Respondent simply was not provided with the feedback that was needed for her professional development.

The District did not comply with the "supervisor responsibilities" outlined in the CAP. The Respondent only received two (2) lesson plan reviews in 2014-2015 rather than the required amount under her CAP. The Respondent provided lesson plans to Holder bi-weekly, but Holder never provided her with feedback.

The District also failed to assist the Respondent in the model lesson plan implementation. Rieder provided materials to the Respondent, but she did not testify "to modelling how to implement the lesson plans". (Resp. Brief, p. 65). Neither Rieder's directive to visit another classroom nor her abbreviated visits to the Respondent's classroom fulfills the obligation to model. Rieder's lack of elementary school experience must also factor into whether she had the skill to assist the Respondent.

The District also failed to assist the Respondent with the creation of her data binder as evidenced by the fact that her data coach never reached out to her.

The CAP placed responsibilities on the Respondent and her supervisors. The evidence shows that the Respondent made good faith efforts to comply with the CAP but the District did not.

Turning to the District's observations during 2014-2015, they did not accurately capture the Respondent's teaching performance. They are flawed for the reasons that follow. The initial observation took place on September 23, 2014, which was only a few weeks into the school year. This did not give the Respondent sufficient time to implement her lesson plans, particularly in light of the fact that Rieder did not provide and review the lesson plans with the Respondent until September 26th. The initial observation also did not appropriately account for the Respondent's handling of a new student during the beginning of class or the lack of technology in the classroom.

As to the second observation, it took place before the Respondent was afforded an opportunity to meet with a supervisor to go over her CAP. And despite this, the Respondent "received superb marks in this observation". (*Id.* at 72).

With respect to the third observation, Rieder failed to take into consideration the fact that special education students were not pulled from her class as scheduled. The observation report is also unreliable because the post-observation conference, without any justification, did not occur within 15 working days of the observation. The Respondent's recall of her observed lesson was affected by the delay.

As to the fourth observation, Glover inappropriately criticized the Respondent's handling of middle school students in her classroom who were not her students. Further, this post-observation conference took place nearly four (4) weeks after the observation. It is emphasized that the fourth observation was the only time that the Respondent was rated on Standard 6.

The District violated *N.J.A.C. 6A:10-2.5(1)* when it failed to provide multiple observers during the Respondent's observations in 2014-2015. It is undisputed that none of the Respondent's observations in 2014-2015 were conducted by co-observers and had that occurred it is likely that more consistency would have been provided to the "wild disparities, such as Holder's scoring in the September 2014 observation". (Resp. Brief, p. 77).

The observations in 2014-2015 also contain multiple calculation errors that reduced her weighted ratings by more than one (1) point. These errors must call all of Media-X's calculations into question. The following must be emphasized:

Respondent was never provided a Teacher Practice Summary Report at the end of the 14-15 school year, instead receiving only the Performance Standard and the Annual Summary Conference Form. (SD3-6; SD3-13). As Respondent never received official scores for her Standards, it is impossible for Respondent to verify if Media-X's calculations for Respondent's Standard scores were otherwise accurate or if it made even more mistakes in the process. Comparing the Performance Standard to the Annual Summary Conference Form, though, must lead to the conclusion that Media-X made additional errors with Respondent's evaluation. (Resp. Brief, p. 78-79).

When all of the District's deficiencies and errors are considered, the Respondent's SGO score for 2014-2015, notwithstanding the District's unilateral implementation of the objectives, is the "most trustworthy and objective measurement of Respondent's performance from the 2014-2015 school year" and "undeniable proof that Respondent could and did perform at an effective level throughout a school year". (*Id.* at 80). Further, if it were not for the District's "widespread failures" the Respondent would have received overall "effective" ratings. The cumulative effect of these errors require dismissal of the tenure charges. (See *Ragland*, Agency Dkt. No. 285-9/14). To summarize:

Upon reflection of the totality of District's actions, the only reasonable conclusion is that the District's actions materially affected the outcome of Respondent's 14-15 evaluation. The District admitted to violating numerous State statutes and regulations during the course of the 14-15 school year. Respondent has demonstrated numerous other violations by the District. The State statutes and regulations were drafted to ensure the conducting of a fair evaluation process and that teachers are given a fair opportunity to try to improve their teaching performance. Each statute and regulation must be found to have some impact on teaching performance or else that language is rendered meaningless. Even if each of the District's violations are treated as having had a minimal impact on Respondent's teaching performance, that would be enough to have cumulatively negatively impacted Respondent's sum of weighted ratings by more than 2 or 3 percent.

Respondent was an effective teacher during the past two school years, especially so during the 14-15 school year when even Respondent's supervisor acknowledged Respondent's improved performance. But for the District's non-compliance with State evaluation procedures, Respondent's evaluation reports would have reflected this truth. Thus, the only acceptable determination is that in consideration of N.J.S.A. 18A:6-17.2(a) and (b), the entirety of the problems related to the District's evaluations of Respondent materially affected the outcomes of Respondent's 13-14 and 14-15 evaluations, requiring the dismissal of Respondent's tenure charge. (Resp. Brief, p. 83-84).

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")).

N.J.A.C. 6A:10-4.4 provides for the observation requirements for tenured teachers. The minimum observation schedule requires three (3) observations per year for at least 20 minutes (one in the first semester/first half of the year, one in

the second semester. One of these observations must be preceded by a pre-conference which must occur at least one but not more than seven work days prior to the observation. Each observation must be followed by a post-conference within 15 teacher work days where the teacher and supervisor/observer discuss data and evidence collected from the observation, as well as additional evidence brought to the conference related to the district's teacher practice instrument and the teacher's PDP or progress on a CAP, where applicable. An observation report is required for each observation and is signed by the observer and the teacher. The teacher may attach a written objection within 10 work days. The observers must be employed by the District, serve in a supervisory role, and possess an administrative certificate. For teachers on a CAP, there must be one extra observation for a minimum of 20 minutes with a post-conference, and at least two (2) observers must be used throughout the year.

With respect to the 2013-2014 school year, the evidence shows that the Respondent received three (3) observations: an unannounced 20 minute co-observation by Glover and Simon on October 18, 2013, followed by a timely post-conference [Ex. SD-3(3)&(3A)], an announced 40 minute observation by Glover on January 27, 2014, preceded by a timely pre-conference and followed by a timely post-conference [Ex. SD-3(4)], and a 20 minute observation by Simon on March 19, 2014, followed by a timely post-conference [Ex. SD-3(5)]. The

observation reports were signed by an observer and the Respondent. The Respondent did not file written objections to the contents of the observation reports.

With respect to the 2014-2015 school year, the Respondent was on a CAP. The evidence shows that the Respondent received four (4) observations required under the CAP: an announced 40 minute observation by Holder on September 23, 2014, preceded by a timely pre-conference and followed by a timely post-conference [Ex. SD-3(8)], an unannounced 20 minute observation by Glover on November 20, 2014, followed by a timely post-conference [Ex. SD-3(9)], an announced 40 minute observation by Rieder on January 21, 2015, preceded by a timely pre-conference and followed by a post-conference on or about February 13, 2015 [Ex. SD-3(10)], and an unannounced 20 minute CAP round observation by Glover on April 21, 2015, followed by a post-observation conference on May 18, 2015 [Ex. SD-3(12)]. The observation reports were signed by an observer and the Respondent.³ The Respondent did not file written objections to the contents of the observation reports or to any delay in the post-observation conferences beyond the 15 work day period. The only concerns that the Respondent raised about time limitations during the post-observation conference process pertained to those in the collective bargaining agreement which she addressed orally. As noted by Arbitrator Weisblatt, “[t]he Arbitrator’s

³ Glover may not have signed the April 21st observation report, but it is undisputed that the report includes her ratings of the Respondent.

jurisdiction in this dispute is derived from the *TEACHNJ* statute and the determinations herein are made within that structure.” *Weisblatt* at 31.

Glover, Simon, Holder and Rieder are employed by the District, serve in a supervisory role, and possess administrative certificates. The evidence also shows that they were thoroughly trained by the District to conduct observations, discussed their ratings with the Respondent, considered the Respondent's concerns over her ratings and appropriately exercised their discretion and judgment in providing such ratings. Multiple observers were used in each year – two (2) in 2013-2014 and three (3) in 2014-2015.⁴ The evidence does not support any claim that the observers failed to discuss the data and evidence they collected or to consider the Respondent's input concerning the ratings that she received. The evaluation documents include commentary and cite areas needing improvement. I conclude that the District satisfied the observation requirements under the rules and regulations. Respondent's evaluations in 2013-2014 and 2014-2015 were based on information collected in observations conducted in accordance with applicable rules by appropriately qualified and trained School District employees who exercised their best judgment in each instance. There is a lack of evidence to support any claim that the delay in any post-observation conference had a material effect upon the Respondent's ratings. With respect to 2014-2015, I am satisfied that the Respondent could

⁴ *N.J.A.C. 6A:10-2.5(l)* on its face does not require co-observers for teachers on a CAP. It only requires that multiple observers be used during the CAP period.

have anticipated her annual evaluation rating (i.e. progressing, proficient) by noting the ratings given in each observation, because the overall scores are the result of the ratings given on each indicator in each observation. Furthermore, the observers discussed their ratings with the Respondent who was provided with an opportunity to ask questions and, if necessary, rebut the ratings. I also conclude that the observers objectively considered the Respondent's classroom issues (i.e. student behavior) in their ratings.

The Respondent claims that the District unilaterally implemented Student Growth Objectives. *N.J.A.C. 6A:10-4.2(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 objectives 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. The evidence shows that the Respondent had the requisite number of SGOs in 2013-2014 and 2014-2015. The evidence also shows that the

Respondent's SGOs were initially drafted by the District but that the Respondent was afforded with opportunities to provide input in both 2013-2014 and 2014-2015. In fact, the Respondent's request to amend her SGO in 2014-2015 was approved by Glover. The Respondent raised several issues concerning the development and implementation of her SGOs. Having reviewed the entire record the evidence does not show that the District failed to consider any of the concerns that the Respondent raised during the evaluation process. The Respondent's claims of deficiencies in her SGOs are unsupported by the evidence.

I now turn my attention to the Respondents' claims pertaining to the calculation of teacher observation and evaluation scores. To summarize, the Respondent claims 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 indicated that the evaluators received training on how to evaluate the teachers, and the use of the rubric. The District's witnesses testified to the training they received and how they exercised their judgment in determining how to rate the Respondent which was a matter of degree and consistency. The Respondent testified that she did not agree with all of the ratings she received, but she did not file a single a written objection as is her right under the applicable rules and regulations. The

evidence shows that the Respondent's input was considered by each evaluator and, at times, resulted in improved ratings.

As to the calculation of the scoring on the rubric, I am satisfied that the District's witnesses received appropriate training, exercised their professional judgment, and considered the Respondent's input. The Respondent challenged several ratings that were provided by Media-X, a software program approved by the Commissioner of Education. Although there appears to be some discrepancies in the scoring, the evidence does not show that the program is wholly unreliable. Moreover, even assuming the Respondent's ratings should have been higher in the areas that she testified to, the evidence does not support the assertion that her overall rating of "partially effective" for 2014-2015 would have changed.

Glover, Simon, Holder and Rieder were credible, persuasive witnesses notwithstanding the fact that they did not always have an independent recollection of the Respondent's performance during the formal observations that led to her ratings. Glover provided detailed testimony concerning the evaluation process and how it applied to the Respondent. (See generally Testimony of Glover, T7:1041-T8:1313). The formal observation ratings included detailed commentary and suggestions. I am satisfied that the Respondent's ratings of the Respondent were based upon the judgment appropriately

exercised by Glover, Simon, Holder and Rieder and represent an accurate reflection the Respondent's teaching performance.

The Respondent claims that her union activity had a negative impact upon her ratings. Holder and Glover both denied any knowledge of the Respondent's role with the PEA. I reject the Respondent's claim as it is speculative and unsupported by the evidence. I do not reach a conclusion that the Respondent's role with the PEA negatively impacted her ratings.

I have also thoroughly considered the Respondent's CAP concerns. I conclude that Glover afforded the Respondent with an opportunity during the CAP meeting to discuss the proposed CAP and provide input into the process, but I find that the Respondent simply did not avail herself of this opportunity. The Respondent's claim that she did not know that Glover was her CAP supervisor is simply unsupported by the evidence. I also conclude that the Respondent was provided with ample support during the CAP period as demonstrated through Rieder's testimony and the training opportunities that were readily available. The Respondent's CAP review did not occur on or before February 15th, but there is no evidence to support the assertion that the delay until February 26th had a negative impact on her final evaluation ratings as there was ample opportunity for her to improve her teaching performance before her fourth (and

final) observation that did not occur until April 21, 2015. I have also considered the fact that there were only seven (7) documented walkthroughs in 2014-2015. The number of documented walkthroughs did not satisfy Glover's guidelines in the CAP, but I do not consider this to be a contributing factor in the Respondent's "partially effective" rating for 2014-2015.

Based upon the above, and the entire record, I conclude that the employee's evaluations adhered substantially to the evaluation process, there are no mistakes of fact in the evaluations that would have altered the Respondent's overall ratings of "partially effective", the charges were not brought as a result of the Respondent's union activities or any other prohibited basis, and the District's actions were neither arbitrary nor capricious. I have considered such factors as the timelines that the District may have missed (i.e. the CAP review, post-observations), but I do not conclude that these or other alleged deficiencies, either individually or their cumulative effect, had a material effect on the outcome of the Respondent's evaluations.

The parties filed motions (i.e. motion to dismiss, summary judgment) during these proceedings upon which I reserved judgment. In particular, the Respondent claims that the delay in the District's witness list requires dismissal of the tenure charges. I reject this motion because even assuming this was a procedural error on the part of the District I cannot conclude that it had a


material effect upon this matter, particularly in light of the extensions of time provided and the Respondent's full and fair opportunity to develop the record in this case. I reject all of other motions as well and conclude that my discussion and analysis above amply addresses the District's tenure charges and the Respondent's defenses.

Accordingly, based upon the foregoing and the entire record, the District has met its burden of proving that the Respondent received "partially effective" annual summative evaluation ratings in 2013-2014 and 2014-2015. The District provided convincing evidence that the evaluations were properly conducted under *TEACHNJ*. The charge of "Inefficiency" is sustained and the dismissal of the Respondent is upheld.

AWARD

For the reasons set forth in this Decision and Award, the Arbitrator finds that the District has met its burden of proving that the Respondent received "partially effective" annual summative evaluations for two (2) consecutive school years 2013-2014 and 2014-2015, and that the evaluations were properly conducted under the applicable laws and regulations. Therefore, the charge of "Inefficiency" is sustained and the dismissal of the Respondent is upheld.


Dated: July 11, 2015
Sea Girt, New Jersey



Robert C. Gifford

State of New Jersey }
County of Monmouth }ss:

On this 11th day of July, 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.



Notary Public
Expires 1-10-2021

