

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
TRENTON, NEW JERSEY

IN THE MATTER OF THE TENURE CHARGE)
OF INEFFICIENCY)

- against -)

DANIELLE CARROLL,)
Respondent-Teacher)

- filed by -)

STATE- OPERATED SCHOOL DISTRICT OF)
THE CITY OF NEWARK,)
District-Petitioner)

AGENCY DOCKET NO. 261-9/15)

Before: Prof. Robert T. Simmelkjaer, Esq.
Arbitrator

OPINION
AND
DECISION
WITH RESPECT TO
RESPONDENT'S
MOTION TO DISMISS

APPEARANCES

FOR THE SCHOOL DISTRICT

Teresa L. Moore, Esq., Counsel,
Riker Danzig Scherer Hyland Perretti, LLP

FOR THE RESPONDENT

Colin M. Lynch, Esq.,
Zazzali Fagella Nowak Kleinbaum & Friedman, P.C.

BACKGROUND

On August 7, 2015, Armando Cepero, Principal of Miller Street School, State-Operated School District of the City of Newark ("District") filed a charge of inefficiency against Danielle Carroll ("Respondent"), a tenured teacher pursuant to N.J.S.A. 18A:6-11 and N.J.S.A. 18A:6-17.3.¹

The bases for the tenure charge was that "Respondent has been rated Partially Effective and Ineffective in two consecutive annual summative evaluations as follows:

- 1) Respondent was rated Partially Effective in her 2013-14 annual summative evaluation;
- 2) Respondent was rated Ineffective in her 2014-15 annual summative evaluation."

Section 25 or N.J.S.A. 18A:6-17.3 of the TEACHNJ Act requires that in order to bring charges of inefficiency against a tenured teacher, he or she must have had two consecutive annual summative evaluation ratings of either "ineffective," "partially effective," or a combination thereof.

On November 15, 2015, the Respondent filed a Motion to Dismiss the Inefficiency Charge because "Carroll's summative evaluation is fatally flawed and, as a matter of law, may not form the basis of the instant charges."

Specifically, Respondent maintains that "her SGOs were simply ignored by her Principal in evaluating her 2014-15 teaching performance." According to the Respondent, "Carroll's Corrective Action Plan ('CAP') established two (2)

¹ By letter dated October 14, 2015, the District indicated that it "is willing to proceed at hearing as if the charge had been brought solely on the basis of N.J.S.A. 18A:6-17.3."

specific Student Growth Objectives ('SGOs') as required by applicable law for the purpose of objectively analyzing student performance, and more importantly, for present purposes, for the purpose of analyzing Carroll's teaching performance."

STATEMENT OF FACTS

Respondent Carroll is a ten-year tenured teacher, most recently assigned by the District to teach Second Grade Elementary Education at the Miller Street School for the 2014-15 school year.

The District placed Carroll on a Corrective Action Plan for the 2014-15 school year. Since Carroll taught Second Grade, instructing in both Math and English, her SGOs contained objective data-driven measures of student growth in both of those subject areas.

For Math, on page 2 of Carroll's five-page CAP, the students were given a "baseline" assessment. "The baseline assessment was the MIP Pre-Test Numbers to 1,000 which is the district's recommended baseline assessment. Based on this assessment 9 students (60%) performed at or above grade level; 6 students performed below grade level." (See Ex. #A). Predicated on that baseline assessment, Carroll's Math SGO was specifically established as follows:

The student growth objective for the above students is for 9 students to maintain mastery and an additional three students to perform at or above grade level. By the mid year (sic) assessment 80% of students will be performing at or above grade level. By the May (sic) 14 students (93%) will be performing at or above grade level in mathematics.

Respondent identified several metrics in her CAP, by which she would measure whether her students met their learning goals in Math, as follows:

- o Interim Assessment
- o Unit Assessment
- o PARCC

In her mid-year review, the metric that would be used to measure student progress in Math was changed and listed as follows: "Math in Focus Assessments."

Respondent identified several metrics in her CAP by which she would measure whether her students met their learning goals in ELA as follows:

- o DRA2 ["Diagnostic Reading Assessment"]
- o KLA Unit Assessments ["Core Knowledge Language Assessment"]
- o Weekly Writing Assessment

"In addition to the Math SGO, the CAP also established an SGO for 'ELA' or English Language Arts. Here too, the CAP identifies the students' baseline assessment for measuring growth: 'At the time that the DRA 2 assessment was administered 10 students (59%) performed at the suggested DRA2 performance level of a 16 or above for students entering grade 2. 7 students (41%) fell below the suggested benchmark and therefore are performing below grade level.'" (See Exhibit 'A'). Predicated on that baseline assessment, Carroll's ELA SGO was specifically established as follows:

By June the student growth objective is for the 10 students (59%) that are performing at or above grade level to maintain mastery of their fluency skill in reading. An additional 5 students will join their classmates and be performing on a second grade reading level. This will increase the fall projection of 10 students (59%) to 15 students (88%) of students performing on grade level by the mid year (sic) assessment. The remaining two students who are significantly below grade level will move from a 6 DRA level to a level 12 demonstrating 33% growth from October to January. At the time of reevaluation I can project that these students will leave second grade performing on second grade level with an

improvement rate of 67% from January doubling their growth objective for the year.

According to the Respondent, the foregoing SGOs met the legal requirement under NJTEACH to objectively measure student growth. Section (d) of N.J.S.A. 18A:6-17.3 states that tenure charges filed against an employee alleging inefficiency may only be based on “those evaluations conducted in accordance with the rubric adopted by the board and approved by the commissioner pursuant to N.J.S.A. 18A:6-16 et al. The evaluation rubric is governed by another section of the TEACHNJ Act, N.J.S.A. 18A:6-123, which specifies the minimum requirements for its approval. Among other things, the evaluation rubric ‘shall’ include:

- 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.” [emphasis added].

“Evaluation rubrics for all teachers shall include the requirements described in N.J.S.A. 18A:6-123, including, but not limited to... (1) Measures of student achievement pursuant to N.J.A.C. 6A:10-4.2”; (2) Measures of teacher practice

pursuant to N.J.A.C. 6A:10-4.3 and 4.4. N.J.A.C. 6A:10-4.2 outlines detail the student achievement components, which includes the SGOs, that must be considered as part of a teacher's annual summative evaluations, as was set forth in N.J.A.C. 6A:10-4.1 as follows:

The student achievement measure shall include the following components... Student growth objective(s), which shall be specific and measurable, based on available student learning data, aligned to Core Curriculum Content Standards, and based on growth and/or achievement... (i) For teachers who teach subjects or grades not covered by the Core Curriculum Content Standards, student growth objectives shall align to standards adopted or endorsed, as applicable, by the State Board. (emphasis added).

Evaluations underlying inefficiency charges brought pursuant to the Act must be at least partially based on objective measures of student performance, commonly referred to as SGOs.

The District's Framework for Effective Teaching policy manual, specifically the "Overview of Evaluation Components" section, instructs teachers and administrators to "start the yearly evaluation process with a goal setting conference which will focus on setting both specific learning goals (sometimes called Student Growth Objectives or SGOs) and professional development goals for the teachers... [which] are captured in the teacher's Individualized Professional Development Plan ('IDPD') or Corrective Action Plan ('CAP'). The policy goes on to define a student learning goal as a 'long-term objective on which the teacher will focus for his/her classes or groups of students. Each objective or focus area should be a skill or behavior critical to the students' success in the course and be aligned to the standards and/or curricular

objectives. The goals should be measurable and based on available student learning data." (Id. at p. A11) (emphasis added).

Each teacher without a student growth percentile ("SGP") (such as Carroll) shall have at least two (2) SGOs developed by the teacher in conjunction with his or her supervisor or a principal's designee. SGOs "and the criteria for assessing teacher performance based on the objectives shall be determined, recorded and retained by the teacher and his/her supervisor by October 31 of each academic year." N.J.A.C. 6A:10-4.2(e)(4). In calculating Carroll's summative evaluation for the 2014-15 school year, the Respondent asserts that the District was required to include scores from Respondent's SGOs based on specific, measurable and available student learning data.

At the required "mid-year review" of Carroll's CAP, the evaluator found that she had made "significant progress" toward her goals and was "effective" in making progress toward her SGOs. (Resp. brief, Ex. #B).

On page 5 of 10 of Carroll's summative evaluation, the Principal listed only her ELA SGO.

Respondent's summative evaluation for 2014-15 included a rating as to whether her student learning goals/student growth objectives were met. In a section called "Competency 4: Reflecting on the Student Learning Plan," the summative noted that "the finding from this section should relate to the ratings that you assigned to the teacher for Indicator(s) 4d, 4e and 4f." (Petitioner's Statement of Evidence, Ex. #15 @ 4-5). The Evaluator rated Ms. Carroll on

Indicators 4d, 4e and 4f, which are subsections of Competency 4, "Student Progress Toward Mastery" as follows:

- 4d. Partially Effective
- 4e. Partially Effective
- 4f. Ineffective

"In addition, the 2014-15 summative includes three questions about student learning goals, and the evaluator gave the following answers to those questions:"

- Q. What were the student learning goals set during the creation of the IPDP/CAP, including any revisions made at the mid-year review or after observations?
- A. By June the student growth objective is for the 10 students (59%) that are performing at or above grade level to maintain mastery of their fluency skills in reading. An additional 5 students will join their classmates and be performing on a second grade reading level. By the fall 15 students (88%) of students performing on grade level by the mid-year assessment. The remaining two students who are significantly below grade level will move from a 6 DRA to a level 12 demonstrating 33% growth from October to January. At the time of reevaluation I can project that these students will leave second grade performing on second grade level with an improvement rate of 67% from January doubling their growth objective for the year. [This goal was not revised during the course of the school year.]
- Q. What progress did students demonstrate specifically around the earning [stet] these student learning goals? Please describe what metrics were used to assess progress of these goals.
- A. As demonstrated by formal and informal observations, Ms. Carroll has not met students' learning goals. Below is list:
- AIP, PLC's, implementation of professional development, lesson plans, unit plans and yearlong plans, quality of student work samples, gradebook, MIF [Math in Focus] training, CLI training and students responses and feedback.
- Q. Overall, did the teacher meet the goals?

A. Did Not Meet Goals.

The mid-year review provides the following clarification regarding the "Math in Focus Assessment" metric:

Yes. Ms. Carroll is on track to meet the goals that were set. Yes. For the DRA, students demonstrated 38% growth from September to January. Math in Focus Mid-Year Assessment: 72% or 16 students received 70% or above on the math mid-year assessment. Additional work with word problems through modeling and guided practice is necessary, as well as continual review of calendar routines to practice value, rounding, etc.

CONTENTIONS OF THE PARTIES

Respondent Position

The Respondent contends that her Motion for Summary Decision should be granted because her 2014-15 summative annual evaluation is "fatally flawed" due to the failure of her principal to provide either a SGO score or any objective data as to whether she met her SGOs. The District's conclusory assertion that she did not meet her SGOs supported only by "subjective, non-data driven criteria, such as 'Carroll's training' and generalized 'observations' is deemed insufficient to fulfill the statutory mandate." According to the Respondent, "[t]his deficiency is not a mere 'procedural' shortcoming, but rather, a substantive defect rendering Carroll's 2014-15 summative evaluation effectively void."

Given the purported defect in Carroll's 2014-15 summative evaluation, the Respondent argues that she "isn't required – as claimed by the District – to demonstrate that the error 'materially affected the outcome of the evaluation.'" To the extent that Respondent would be required to make such a demonstration, "she has done so, since SGO scores are a core requirement of any evaluation.

They represent 'a,' if not 'the,' centerpiece of the Act." The Respondent further argues:

Their exclusion from her evaluation is statutorily material, such that her evaluation, in the absence of such scores, is inherently arbitrary and capricious and cannot serve as a basis for inefficiency tenure charges. Because Carroll's 2014-15 annual evaluation cannot serve as a basis for the charges, the District lacks the two summative annual evaluations necessary to pursue charges against Carroll for "inefficiency," and the charges must, respectfully, be dismissed.

With respect to the mid-year change made in Carroll's Math SGO, the Respondent notes that "she still met her Math SGO at mid-year. She also met her ELA SGO, and the determination she did so was based upon data-driven objective metrics. In Component 4(f) of her mid-year evaluation, it is undisputed that she was rated 'effective' based upon those objective data-driven metrics." (See, Dist. Ex. #12 @ p. 12).

In response to the District's assertion based on the Q&A portion of Carroll's evaluation that "[t]hese answers demonstrate that the evaluator used not only the metrics listed in Respondent's CAP, as revised in the mid-year evaluation, to determine whether she met her 2014-15 student learning goals, but also used other sources of information that were listed plainly in the summative," the Respondent notes that "the District then acknowledges that the summative evaluation 'does not recite a math goal in the answer to the question for the student learning goals recited.'" In addition, the Respondent notes that the District omitted noting that "the 'summative' also fails to state Carroll's Math SGO, or that the 'summative' fails to recite Carroll's ELA SGO score, which was also part of her CAP." The Respondent further takes issue with the District's

claim that the “overwhelming amount of evidence demonstrates that Respondent’s student learning goals were considered and rated in her 2014-15 summative evaluation.”

Notwithstanding the District’s claim of an “overwhelming amount of evidence,” the Respondent contends that “no actual evidence is cited or proffered.” With respect to the Principal’s response to the query: “What progress did students demonstrate specifically around those student learning goals? Please describe what metrics were used to assess progress of these goals?”, the Respondent concludes that the undisputed answer cites “no specifics” or “metrics” were used to assess progress. “Nor does the Principal bother to cite any of the “assessment/metrics” from either Carroll’s Math or ELA SGOs cited in her CAP, the alleged revised “Math in Focus” assessment cited in her Mid-Year review, or even her ELA SGO assessment quoted in the summative evaluation.”

“What we get instead of a ‘specific’ and ‘metric’ based assessment of Carroll’s SGOs is as follows:

As demonstrated by formal and informal observations, Ms. Carroll has not met student learning goals. Below is a list:

AIP [Attendance Improvement Plan], PLC’s [Professional Learning Communities], implementation of professional development, lesson plans, quality of student work samples, gradebook, MIF [Math in Focus] training, CLI training and students responses and feedback.”

In the absence of a SGO score, specifics or metrics, either those in Carroll’s CAP or mid-year review, the District relies on Carroll’s “ineffective” rating on Component 4(f) in her summative, “progress toward goals” – with “no

explanation provided as to why or how the determination was made based upon either Carroll's SGOs or the stated 'metrics' that were supposed to be used to determine if she met them – i.e., an SGO score.”

Rather than cite to any specific metric – i.e., an SGO score, the Respondent characterizes as “gobbledy gook” the above-stated Principal’s list of non-quantitative items. None of the above is deemed a metric that measures student growth. The Attendance Improvement Plan (AIP), Professional Development, lesson plans and student work samples, “do not objectively measure student growth as contemplated by the applicable law and regulations and certainly are not the measures of student growth identified in Carroll’s CAP or mid-year evaluation.”

Referring to the DOE guidance for “Developing and Using Practical Measures of Student Learning,” SGOs are: “(1) long term goals; (2) that are specific and measurable; (3) aligned to state academic standards; (4) based on student growth and/or achievement; (5) set using available student learning data; (6) developed by a teacher in consultation with his or her supervisor; and approved and scored by a teacher’s supervisor.” (emphasis added).

The Respondent further maintains that “an evaluation rating may not be provided at all to a teacher in the absence of an SGO score.” See N.J.A.C. 6A:10-2.4(4)(d). “[i]f any scores for teaching staff member’s evaluation rubric are not available at the time of the annual summary conference due to pending assessment results, the annual summative rating shall be calculated once all component ratings are available.”

The Respondent further cites the Legislature's findings and declarations regarding the TEACHNJ Act as follows:

- b. The New Jersey Supreme Court has found that a multitude of factors play a vital role in the quality of a child's education, including effectiveness in teaching methods and evaluations. Changing the current evaluation system to focus on improved student outcomes, including objective measures of student growth, is critical to improving teacher effectiveness, raising student achievement, and meeting the objectives of the federal "No Child Left Behind Act of 2001." (emphasis added).

Moreover, the DOE's implementing regulations, specifically 6A:10-4.1, Components of teacher evaluation rubric, mandate that teacher evaluations include student achievement components.

- (c) To earn a summative rating, a teacher shall have a student achievement score, including median student growth percentile and/or student growth objective(s) scores, and a teacher practice score pursuant to N.J.A.C. 6A:10-4.4.

The Respondent reiterates that, given the absence of a 2014-15 SGO score, "the District simply does not have the required two consecutive years of 'ineffective' or 'partially ineffective' performance evaluations necessary to pursue charges under Section 25 of the Act. Inasmuch as N.J.S.A. 18A:6-17.2(d) places the "ultimate burden" on the District "of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met," the Respondent argues that the District cannot meet its burden because "[t]he only evaluations which may be used for the 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.)."

N.J.S.A. 18A:6-17.3.

With respect to the statutory defenses, the Respondent maintains that “defenses (1) and (4) would easily apply.” According to the Respondent, defense one (1) is applicable because her evaluation “failed to adhere substantially to the evaluation process, including but not limited to providing a corrective action plan.” Also, defense four (4) is applicable because “the substitution of non-metric considerations in allegedly analyzing whether or not Carroll met her SGO’s is the very height of arbitrary and capricious conduct...”

Finally, the Respondent rejects the Certification of Larisa Shambaugh, dated December 28, 2015, wherein “she explains how student growth objectives are incorporated into the annual summative scores of teachers in the Newark Public Schools (NPS).” The Respondent also takes issue with the District’s “belatedly provided ‘Equivalency Application’” as a rationale for not providing Carroll with a SGO score.

Although the Respondent acknowledges that “the District sought and received approval to wrap the SGO score into its Teacher Practice components, and more specifically ‘Competency 4,’ which contains a sub-section ‘4(f),’ entitled ‘Progress Toward Goals’... and increased the value of Competency 4 to 32% to ensure ‘equivalency,’”² the Respondent argues that “neither the waiver application, nor the Commissioner’s approval of the application exempts the District from issuing a SGO score for the Respondent nor, even more importantly, utilizing objective measures of student growth in evaluating her and

² “The District increased the value of Competency 4 to 32% of the evaluation score, rather than 21% which would have been the case if the SGO score were an independent standalone component of the evaluation.’

her peers.” Thus, the District neither sought, nor was granted, waiver from N.J.A.C. 6A:10-4.1(c) (“to earn a summative rating, a teacher shall have a student achievement score, including median student growth percentile and/or student growth objective(s) scores, and a teacher practice score pursuant to N.J.A.C. 6A:10-4.4.”).

The District’s own “equivalency application” confirms this, by noting, “[t]o be clear, NPS is not requesting any waiver from the weighting or inclusion of SGOs or SGP...[i]ndeed, the district follows this regulation explicitly.” (See ¶3 of Waiver Application).

In seeking the “waiver,” the District informed the Commissioner that it would include within Competency 4 (presumably through sub-competency 4(f)) what is “seen through quantitative data, (e.g., progress on student learning goals set at the beginning of the year, interim assessments, standardized tests, etc.).” (See ¶2 of Waiver Application).

Since neither the District nor the Commissioner can waive a statutory mandate, the District’s equivalency waiver does not exclude the requirement “that the evaluation rubrics include ‘multiple objective measures of student learning that use student growth;’ including the utilization of ‘standardized assessments...’ Certainly, there is no evidence in the 2014-15 summative evaluation of any quantitative data – only reference to patently subjective criteria that do not jibe with the SGOs established in Respondent’s CAP or her mid-year evaluation.”

District Position

The District, in opposition to the Respondent's Motion to Dismiss, maintains that it "complied fully with its obligation to provide a summative evaluation of the Respondent's performance in the 2014-15 school year that included a rating based on whether Respondent's students met objectives for their academic growth. As such, the Motion should be denied."

After reviewing and amending the Respondent's mid-year metric for Math to substitute "Math in Focus assessments," noting her ratings in Indicators 4d, 4e and 4f (subsections of Competency 4, "Student Progress Toward Mastery"), and reviewing the evaluator's Q&A answers about learning goals supra, the District states:

"These answers demonstrate that the evaluator used not only the metrics listed in Respondent's CAP, as revised in the mid-year evaluation, to determine whether she met her 2014-15 student learning goals, but also used other sources of information that were listed plainly in the summative. The fact that the summative does not recite a math goal in the answer to the question asking for the student learning goals to be recited is hardly a 'fatal flaw,' as Respondent argues. Rather, the overwhelming amount of evidence demonstrates that Respondent's student learning goals were considered, and rated, in her 2014-15 summative evaluation."

The District acknowledges that TEACHNJ, inter alia, requires, in terms of measurable student objectives, the following:

P.L. 2012, c.26 ("TEACHNJ") requires that the school districts adopt a rubric approved by the Commissioner of Education, and that

The State Board of Education shall promulgate regulations...to set standards for the approval of evaluation rubrics for teachers, principals, assistant principals and vice-principals. The standards at a minimum shall include:

- (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 measure and implementation processes. Standardized assessment shall be used as a measure of student progress but shall not be the predominant factor in the overall evaluation of a teacher. N.J.S.A. 8A:6-123(a) and (b)...

"The School District adopted such a rubric, and its adoption and approval by the Commissioner are not at issue on this motion. The School District also abided by its obligation to use 'measures of student achievement' in teachers' summative performance evaluations, as the applicable regulation provides:

Measures of student achievement shall be used to determine impact on student learning. The student achievement measure shall include the following components:

Student growth objectives, which shall be specific and measurable, based on available student learning data, aligned to Core Curriculum Content Standards, and based on growth and/or achievement;

(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 of teachers, including teachers with a student growth percentile. A teacher with a

student growth percentile shall have at least one and not more than four student growth objectives. A teacher without a student growth percentile shall have at least two and a 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.

- (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 year, or within 20 work days of the teacher's start date if the teacher begins work after October 1..."

In its sur-reply, the District reiterates that the Respondent's "2014-15 summative evaluation included measures of student learning goals ('student growth objectives')...both in the narrative portion of the summative evaluation as well as in the accompanying rating sheet." See Petitioner's Statement of Evidence, Ex. 15 (pp. 4-5) [narrative] and pp. 8-10 [rating sheet].

The student learning goals incorporated into the Respondent's summative evaluation are in conformance with the District's state-approved teacher performance evaluation system (i.e., the Framework for Effective Teaching).

With respect to Competency 4, called "Student Progress Toward Mastery," the District notes that "Competency 4 outlines mechanisms for identifying whether or not students are learning in one lesson and over the

course of the year.” *Id.* Six indicators, each of which is rated, comprise

Competency 4:

In an individual lesson:

- 4a. Checks for Understanding
- 4b. Feedback
- 4c. Demonstration of Learning

Over the course of a year:

- 4d. Using Data
- 4e. Understanding of Growth
- 4f. Progress Toward Goals

According to the District, the ratings the Respondent received at her mid-year and summative evaluations for Competency 4 “but not in classroom observations during the school year,” entailed, as described in the Framework, “utiliz[ing] the evidence specifically around the teachers’ progress in meeting student learning goals in the teacher’s...CAP.”

The District disputes the Respondent’s contention that “her summative evaluation should include a standalone ‘SGO score,’ or something to that effect, and she moves to dismiss the charge contending, in essence, that the lack of a category so denominated renders her summative evaluation deficient. To the contrary, the applicable regulation provides:

Student growth objectives for teachers shall be developed and measured according to the following procedures: ...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.”
N.J.A.C. 6A:10-4-2(e)(6).

In short, the District argues that “the record shows plainly that student learning goals were included and rated in competencies 4d, 4e and 4f of the Respondent’s summative evaluation.”

The District has further submitted the Certification of Ms. Larisa Shambaugh (“Shambaugh”), Executive Director of Strategic Initiatives in the Talent Office of the NPS. Whereas Ms. Shambaugh “recognizes that the District’s method of calculating student academic growth and evaluating teachers on that progress ‘looks different’ from the SGO-setting methods that the State Department of Education has suggested in nonbinding guidance,” the District avers that it “requested a determination from the Department of Education pursuant to N.J.A.C. 6A:5 that its method of rating student growth is equivalent to the requirements of N.J.A.C. 6A:10-4.2 (student achievement components of teacher evaluation) (Shambaugh Cert. ¶¶1 9-11 and Ex. A).”

The District urges the Arbitrator to “be guided by the Department’s initial approval of the Framework and its January 2015 equivalency approval.” Unlike the Respondent’s reliance on NJSDOE guidance set forth in the “Student Growth Objectives Guidebook (undated), whose use is “suggested” rather than mandated, the District alludes to the Achieve NJ: Teacher Evaluation Scoring Guide which states:

“Local school districts have discretion on how to combine observation data and evidence about a teacher’s practice collected throughout the year into a final teacher practice rating on a 1 – 4 scale,” and on page 6, “SGO scoring can be approached in several ways. The specific approach must be determined at the local level (district or school)...” (emphasis added).

In her Certification, Shambaugh notes that the District's evaluation rubric was approved by the NJSDOE in October 2012 and entitled Newark Public Schools Framework for Effective Teaching Guidebook for Teachers and Administrators. The Framework focuses on five competencies, with each competency containing several "indicators" that are rated individually. When the overall summative evaluation is calculated at the end of the year, the evaluator determines the teacher's performance rating on each of the five competencies."

"The ratings on each competency is assigned a point value and the points are added together (or subtracted, which is possible with respect to the Competency 5 rating) to obtain an overall summative rating."

"The maximum possible number of points was seventeen (17) in 2013-14, and nineteen (19) in 2014-15 as a result of a two-point increase in weight given to Competency 4 in 2014-15. In 2014-15, teachers were rated 'highly effective' if their overall score was 17-19 points; 'effective' if their overall score was 13-16 points; 'partially effective' if their overall score was 8-12 points; and 'ineffective' if their overall score was 0 to 7 points."

"The School District's evaluation system factors annual measures of student academic achievement, called 'student learning goals' or student growth objectives, into each teacher's summative evaluation through ratings given in three of six indicators in Competency 4. Indicators 4(d), 4(e) and 4(f) measure various aspects of student learning progress in 'using data,' 4(d); 'understanding of growth,' 4(e); and 'progress toward goals,' 4(f). These three indicators address information that is gathered during the course of the school year, and

are rated at the mid-year evaluation and the summative evaluation, not in each classroom observation.”

“At no time did the Department mandate that NPS measure student achievement in the precise manner that is set forth in its guidance documents... The methods published by the Department are suggested, but not mandatory.” At some point, “the District submitted a formal equivalency application to the Department of Education requesting recognition that its method of implementing annual student growth objectives into annual teacher performance evaluations is equivalent to what N.J.A.C. 6A:4-2 requires.” It reads:

Progress on a teacher’s SGOs is included in a teacher’s annual evaluation through Competency 4. Specifically, there are several indicators in Competency 4 that focus on the teacher’s practice on setting goals (indicator 4d), reviewing data (4e), and ultimately accomplishing progress as set out in the SGOs (4f). As Competency 4 counts for up to 6 out of 19 points (or 32% of the overall rating), NPS is in compliance with the SGO requirements of TEACHNJ. (see third page)

The District explained that it was not seeking a waiver from the inclusion of SGOs that N.J.A.C. 6A:10-4.2 requires because “it follows that regulation,” but rather a declaration that “the manner in which the District incorporates these measures into a teacher’s annual summative rating,” as distinguished from the “typical approach of calculating the teacher’s practice rating and then adding on scores from SGOs and SGP separately,” was acceptable.

According to Shambaugh, “[a]ny argument that the NPS teacher evaluation system does not include a score for measuring student learning or SGO should be rejected because Competency 4 includes that very information.

Additionally, while the method that NPS uses 'looks slightly different in implementation than the typical approach,' the Department has determined that this method is in compliance with TEACHNJ."

The evidence collected using Framework includes "tangible outcomes or actions that can be seen and/or measured – that is, what can be *observed* (through classroom observations, team meetings, interactions with students, etc.); what can *be seen in artifacts* (e.g., examples of the teachers' and students' work, such as unit or lesson plans, student work portfolios, planning tools, etc.); and *seen through quantitative data*, (e.g., students' progress on learning goals set at the beginning of the year, interim assessments, standardized tests, etc.). Evaluators use what they have seen through all of these lenses to assign each teacher a score in each Competency, which leads to a single overall evaluation rating of Highly Effective, Effective, Partially Effective, or Ineffective."

DISCUSSION

The Arbitrator is persuaded that Respondent has made a prima facie case that when the State-Operated School District of the City of Newark filed tenure charges against her alleging inefficiency pursuant to the Section 25 of the NJTEACH Act not only was the District required include a student growth objective ("SGO") or student learning goal in her annual summative evaluation for each of the two years (2013-14/ 2014-15) where she had been consecutively rated "partially effective" and "ineffective, but also the SGO score had to be based on objective, measurable and data driven evidence of student growth or progress in the subject areas she taught. N.J.A.C. 6A:10-4.1.

It is undisputed that Ms. Carroll, who was placed on a Corrective Action Plan ("CAP") for 2014-15, developed a Math SGO and an English Language Arts or ELA SGO in consultation with her principal. It is also undisputed that the Respondent set her Math SGO in the CAP as follows:

The student growth objective for the above students is for 9 students to maintain mastery and an additional three students to perform at or above grade level. By the mid-year assessment 80% of students will be performing at or above grade level. By the May 14 students (93%) will be performing at or above grade level in mathematics.

Respondent further identified several metrics in her CAP that she would utilize to ascertain whether the students had met their learning goals in Math as follows:

Interim Assessment
Unit Assessment
PARCC

Subsequently, in her mid-year review, the metric that would be used to measure student progress in Math was changed to: "Math in Focus" assessments. Accordingly, Carroll's SGO was measured by this "metric" in her summative evaluation.

As distinguished from a typical standalone SGO, which is numerically weighted and added to the teacher practice score to obtain the total summative rating for the academic year, the State-Operated School District of the City of Newark received an "equivalency" approval from the NJSDOE to integrate the SGO score into its Teacher Practice domains, specifically "Competency 4," which, in sub-domain 4(f), contains "Progress Toward Goals."

The annual summative evaluation Carroll received on sub-domains 4(d), 4(e) and 4(f), including, "Progress Toward Goals" reads as follows:

Evidence-based Growth Areas for Competency 4

Ineffective rating 4a-Checks for Understanding; 4b Feedback; 4f Progress Toward Goal. Ms. Carroll reads to prepare and anticipate students' inquiries. As demonstrated, she will try to respond to students' questions, but she will not have sufficient information. Provide students the opportunity to put a wondering up and then allow students to research. She needs to utilize the computer lab and provide students the opportunity for research of specific topics. Example what system was in place to police these ancient countries or states? Is it any different than today?

The District has maintained that "the record shows plainly that student learning goals were included and rated in competencies 4d, 4e and 4f of Respondent's summative evaluation." With respect to sub-domains 4d, 4e, and 4f, upon which the District has predicated the Respondent's SGO, specifically 4(f) Progress Toward Goals, the evaluator wrote the following responses to the queries:

What progress did students demonstrate specifically around learning these student learning goals? Please describe what metrics were used to assess progress (toward) these goals.

As demonstrated by formal and informal observations Ms. Carroll has not met student's learning goals. Below is a list:

AIP, PLC's, Implementation of professional development, Lesson plans, Unit plans and year long plans, quality of student work sample's, gradebook, MIF training, CLI training and student responses and feedback.

Overall, did the teacher meet the goals?
Did Not Meet Goals

The crux of the Respondent's Motion for Summary Decision is the District's purported failure to comport its summative annual evaluation of

Respondent with N.J.A.C. 6A:10-4.4(c) which states: "To earn a summative rating, a teacher shall have a student achievement score, including median student growth percentile and/or student growth objective(s) scores and a teacher practice score."

Whereas the District acknowledges that its method of "calculating student academic growth and evaluating teachers on that progress 'looks different' from the SGO-setting methods that the State Department of Education has suggested in nonbinding guidance," with respect to the Respondent's Motion for Summary Decision, the pivotal issue is whether the SGO "scores" the Respondent received based upon Indicators 4d, 4e and 4f, particularly assessing students' progress toward goals, are tantamount to the statutory requirement that evaluation rubrics include "multiple objective measures that use student growth," including the utilization of "standardized assessments."

Inasmuch as the evidence indicates that, notwithstanding the change made in Respondent's Math SGO during her mid-year CAP review, she still met her SGO based on objective numerical data and was rated "effective" at that juncture, in the Arbitrator's opinion, the District's discontinuance of these data-based SGO measures [i.e., DRA (38% growth); MIF (72% received 70% or above)] for her annual summative evaluation requires explanation. The District's acknowledgement that the summative evaluation "does not recite a math goal in the answer to the question asking for the student learning goals to be recited" combined with the fact that the Principal does not cite any of the "assessment/metrics" from either Carroll's Math SGO (i.e., the revised "Math in

Focus”) assessment cited in her mid-year review or even her ELA SGO quoted in the summative evaluation is problematic.

As previously noted supra, the AIP and Math in Focus training references to metrics used to formulate a SGO are devoid of data or measurable objective information such as standardized tests. Clearly, neither the MIF and CLI training nor the lesson plans and student work samples measure student growth.

In the absence of specific metrics or scores comprising Carroll's SGOs, given the Respondent's prima facie case, the ultimate burden shifts to the District to prove that it met the statutory mandate to generate a SGO score for a tenured teacher charged with inefficiency. “The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.” N.J.S.A. 18A:6-17.3(2)(d).

In the Arbitrator's opinion, a determination of whether the District's method of developing a SGO, given the Achieve NJ: Teacher Evaluation Scoring Guide which states, inter alia, “SGO scoring can be approached in several ways,” and the District's reliance on its evaluation system approved by the NJSDOE, particularly its Framework for Effective Teaching, met the statutory criteria insofar as providing the Respondent with a data-based SGO is concerned, requires an evidentiary hearing. In this regard, it is noteworthy that the District's Framework for 2014-15 mandates that student learning goals “be measurable and based on available student learning data.”

Although the District acknowledges that by seeking an equivalency waiver, which allowed it to incorporate its SGO score into its Teacher Practice

components rather than using a standalone SGO score, "NPS was not requesting any waiver from the weighing or inclusion of SGOs or SGPs..." it is unclear how the District calculated whether the Respondent met the data-based SGOs set forth in her CAP. The evaluator conducting Respondent's mid-year review addressed the MIF assessment as follows:

Yes. Ms. Carroll is on track to meet the goals that were set. Yes. For the DRA, students demonstrated 38% growth from September to January. Math in Focus Mid-Year Assessment: 72% or 16 students received 70% or above on the math mid-year assessment. Additional work with word problems through modeling and guided practice is necessary, as well as continual review of calendar routines to practice value, rounding, etc.

Also problematic are the means by which the District converted the subjective "metrics" it used to rate Carroll partially effective in sub-domains 4d and 4e, ineffective for 4f of Competency 4 into objective data, and then calculated the number of points out of a maximum of six (6) points she was entitled to receive. The Arbitrator further deems subject to additional explanation and reconciliation the Framework evidentiary standard of "What can be seen in quantitative data?" (i.e., standardized assessment data, interim assessments, standardized tests, etc.) with the paucity of metrics/data in the summative evaluation.

In order to render a summary decision, the Arbitrator should be persuaded by a preponderance of evidence that there are no genuine issues of material fact in dispute, and the nonmoving party is entitled to judgment as a matter of law. The areas discussed above for which greater clarity is sought preclude granting the Respondent's Motion to Dismiss. "Motion for summary decisions must be

denied when there are genuine issues of material fact that can only be resolved through an evidentiary hearing.”

In the final analysis, the Arbitrator will have to determine on the merits whether, on the one hand, the District failed to provide the Respondent with a legally sufficient SGO based on specific measurements of student learning goals or “metrics” and thereby its issuance of Carroll’s 2014-15 annual summative evaluation, as well as the tenure charge of inefficiency based on two consecutive years of partially effective or ineffective summative evaluations, was statutorily deficient; or, on the other hand, as the District contends, there exists an “overwhelming amount of evidence that Respondent’s learning goals were considered and rated in her 2014-15 summative evaluation.”

Clearly, the DOE’s implementing regulations mandate that in order “to earn a summative rating, a teacher shall have a student achievement score, including median student growth percentile and/or student growth objective(s) scores, and a teacher practice score pursuant to N.J.A.C. 6A:10-4.4.” Moreover, these regulations further provide that “ [i]f any scores for the teaching staff member’s evaluation rubric are not available at the time of the annual summary conference due to pending assessments results, the annual summative evaluation shall be calculated once all component ratings are available.” N.J.A.C. 10-2.4.4(d).

Since both the District’s ultimate burden of proving that the tenure charges against Carroll for inefficiency brought, pursuant to Section 25 of the Act based on two consecutive years (2013-14 and 2014-15), of either partially effective or

ineffective annual summative ratings were made in accordance with law and the implementing regulations, and the four statutory defenses to the tenure charges as set forth in N.J.S.A. 18A:6-17.2 can only be determined "on the merits after a hearing and not procedurally without a hearing," the District's Motion to dismiss must be denied. See I/M/O Tenure Charge of Leonard Yarborough, (Dkt. No. 259-9/15)(Jan. 6, 2016)(Arbitrator Arthur A. Riegel). In the event the District either fails to meet its burden or the Respondent establishes that either statutory defense (1) or (4) or both are applicable in the instant case, evidence that the Respondent's "evaluation failed to adhere substantially to the evaluation process" as a result of the District's omission of a quantitative SGO score, or that such omission constitutes "arbitrary and capricious" conduct on the District's part, the Arbitrator would be required to determine "if that fact materially affected the outcome of the evaluation." N.J.S.A. 18A:16-17.2. A related issue is whether a finding that a deficient SGO score "materially affected the outcome" of the Respondent's "evaluation process" is tantamount to a finding that but for her deficient SGO score she would have been rated effective?

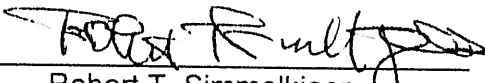
Considering the remedy proposed by the Respondent of dismissing the tenure charge of inefficiency filed against her by the District based on a "partially effective" rating for 2013-14 and an "ineffective" rating for 2014-15 and "restoring the Respondent to employment with full back pay, benefits, seniority, and all other emoluments of her position," the Arbitrator finds that a factual inquiry is necessary to ascertain whether the District substantially complied with the evaluation process.

NOW THEREFORE, as the duly selected Arbitrator, having heard the evidence presented, I hereby issue the following:

AWARD

- (1) The Respondent's Motion for Summary Decision is denied.
- (2) The evidentiary hearing will proceed when the Respondent, Ms. Danielle Carroll, is medically cleared by her physician to attend the hearing.

March 28, 2016




Robert T. Simmelkjaer

STATE OF NEW JERSEY}
COUNTY OF BERGEN} SS

I, Robert T. Simmelkjaer, hereby affirm that I have executed this instrument as my Interim Award in Agency Docket Case No. 261-9/15 denying Respondent's Motion for Summary Decision as set forth above.

March 28, 2016



Notary Public

**RENEE DISTELHURST
NOTARY PUBLIC OF NEW JERSEY
ID #21606
MY COMMISSION EXPIRES 8/12/2019**