
IN THE MATTER OF THE TENURE CHARGES REGARDING

RESPONDA SIMS

DOCKET No. 360-12/15

AND THE

**BEFORE JACQUELIN F. DRUCKER, ESQ.
ARBITRATOR**

**STATE-OPERATED SCHOOL DISTRICT
OF THE CITY OF PATERSON, PASSAIC
COUNTY**

AWARD

APPEARANCES:

FOR THE DISTRICT: **FRANK J. VITOLO, ESQ.
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FOR MS. SIMS: **JOHN BRANIGAN, ESQ.
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DATES OF HEARING: **FEBRUARY 11, 2016 (TELEPHONICALLY)
MARCH 1, 2016
MARCH 7, 2016**

I. PROCEDURAL BACKGROUND

The State-Operated School District of the City of Paterson, Passaic County (“District” or “Employer”) initiated and the State District Superintendent certified to the Commissioner of Education a tenure charge seeking the termination of employment of Responda Sims (“Respondent” or “Ms. Sims”), who is employed as a Secretary within the District. By letter dated December 28, 2015, the charges were referred to this Arbitrator pursuant to N.J.S.A. 18A:5-16 as amended by P.L. 2012, c. 26 and P.L. 2015, c. 109. By agreement of the parties, the hearing of this matter was commenced telephonically on February 11, 2016, and was

continued in person on March 1 and 7, 2016, at the offices of the District, 90 Delaware Avenue, Paterson, New Jersey. Throughout this proceeding, both parties were ably represented by legal counsel. Each party was provided a full and fair opportunity to present evidence through documents and testimony. All witnesses testified under oath and were subject to direct, cross, and redirect examination. The parties agreed to the presence of a court reporter and to the subsequent preparation and use of a transcript of the evidential hearings. When the taking of evidence was concluded on March 7, 2016, counsel agreed to present written closing arguments. Same were timely conveyed to the Arbitrator, whereupon the record was closed. In reaching the conclusions and making the Award set forth herein, the Arbitrator has given full, fair, and careful consideration to all evidence of record, all arguments, and all authorities and citations offered by the parties.

II. THE CHARGES AND APPLICABLE STANDARDS

Based upon the Notice of Tenure Charge of Inefficiency issued by the District, the State District Superintendent's finding of probable cause to credit the evidence in support of the charges, and Respondent's Answer, the Office of the Commissioner of Education concluded that the charges, if true, were sufficient to warrant dismissal or reduction in salary, "subject to determination by the arbitrator of respondent's defenses. . . ." The charges thus were referred to this Arbitrator by the Bureau of Controversies and Disputes pursuant to N.J.S.A.18A:6-16 as amended by P.L. 2012, c. 26 and P.L. 2015, c. 109, for her review "under the preponderance of the evidence standard."

In the charges against Respondent, the District asserts that she "has demonstrated an inability to effectively execute her duties as a secretary" and that, specifically, she failed to effectively perform the following duties (set forth in Paragraphs 3 through 21 of the Notice of Tenure Charge): to demonstrate competency in word processing, computer data bases, and organizational skills; to demonstrate communication skills and proper etiquette; to organize and maintain files; to maintain information for yellow cards, registers, and monthly reports; to exhibit a mature attitude; to exercise good professional judgment; to cooperate with School

District staff; to perform her duties skillfully; to exhibit good work habits; to accept constructive criticism; to establish and maintain rapport with parents and with administrators; to maintain confidentiality; and to maintain regular attendance and punctuality at work.

III. FINDINGS OF FACT

A. Background

Respondent has worked as a secretary since approximately 1995 and has been employed by the District as a Secretary for more than 16 years. Beginning in the year 2000, she worked at two schools in the District and then was assigned to Napier Academy, formerly known as School 4. She continued there until January 2013, when she was transferred to School 2, her current assignment. During Respondent's tenure at Napier Academy, the Principal to whom she reported completed evaluations in 2008, 2009, 2010, 2011, and 2012. In each, the Principal gave Respondent the highest of ratings for outstanding performance, with numerous accolades. In the performance evaluation at Napier Academy, issued in April 2012, the Principal wrote as follows:

She is my confidant and friend. There isn't anything she wouldn't do for me, my staff or the students of Napier Academy. She was friendly to parent[s] and visitors and, at the same time confidential and discreet in private matters. She has been a blessing to me and an asset to the school.

By the end of 2012, however, the working relationship between Respondent and the Napier Academy Principal had deteriorated as the result, according to Respondent, of an argument that involved inappropriate remarks by Respondent.

In January 2013, Respondent thus transferred to School 2 ("the School") and began working directly for Principal Felisa Van Liew and two Vice Principals, Dorothy Eason, who joined the school in July 2013, and Edward Cisneros who joined School 2 at the beginning of the 2013-2014 school year. Also working in this office was another Secretary, who had been assigned to that office for a number of years.

Secretarial tasks within the office were allocated in a general manner by which Respondent would handle most matters pertaining to students while the other Secretary addressed primarily matters involving teachers. In the absence of one of the Secretaries, it was expected that the other would assume responsibilities for the student or teacher tasks, as the case may be. Also, while Respondent was responsible for student-related issues, she also performed duties relating to substitute teachers, which was a category of functions separate from those pertaining to faculty.

Principal Van Liew testified that there was a very significant workload for these two Secretaries. They were, she said, busy all of the time, with the telephone presenting frequent interruption from teachers, parents, staff, and students. Principal Van Liew testified that the office was understaffed and actually needed three secretaries in light of the volume of activity.

B. May 2013 Positive Evaluation

In May 2013, following five months on the job at School 2, Principal Van Liew completed a formal evaluation of Respondent's performance. In it, she listed "commendable" or "satisfactory" in all applicable categories. In no category was Respondent rated as needing improvement or as performing unsatisfactorily, and in no category was she rated as having been "outstanding." It was noted in the comments that Respondent was still new to the School and was learning the responsibilities. Principal Van Liew wrote that Respondent "is to be commended for her interpersonal skills. She demonstrates a pleasing telephone etiquette and is pleasant to the parents, students and staff." Principal Van Liew testified that, at this five-month point, until she had had a better opportunity to evaluate Respondent's skills, she wanted to stay "middle of the road," confirming that Respondent had excellent communication and interpersonal skills with parents and staff members.

C. Performance during 2013-14 School Year; Mixed Evaluation

The record conveys little information regarding specifics of Respondent's performance in the course of the 2013-14 school year, but, by the end of the year, Ms. Van Liew was, she said, "beginning to see things that needed improvement" as well as some areas in which Respondent was performing unsatisfactorily. Ms. Van Liew noted specific concern regarding Respondent's organizational skills, and, in particular, filing, which were areas in which Ms. Van Liew relied heavily on Respondent. She found, however, that Respondent sometimes could not quickly locate items.

The evaluation for Respondent's first full school year at the School was completed on June 19, 2014, by Principal Van Liew. While she gave Respondent mostly satisfactory ratings and included commendable ratings as to rapport with staff, personal appearance, dependability, and attendance/punctuality, she rated Respondent as needing improvement in organizational skills, work habits, organizing and maintaining files, office management categories of mature attitude, professional judgment, cooperation, and skillful performance of duties. Respondent was rated as "unsatisfactory" with regard to computer competency in the area of "data base." These areas of needed improvement were noted in the comments, to wit: "organizational skills for performing a variety of secretarial and clerical tasks in a timely manner needs [sic] improvement." Also it was noted that Respondent maintained a positive working relationship with the office staff, demonstrated basic knowledge of office skills and maintained commendable attendance and punctuality.

The Summary stated as follows:

Overall the secretary exhibits a personality that relates well within the school community. However, her ability to perform confidential secretarial tasks for an effective and efficient school office are in need of improvement. Some of the tasks require a knowledge of the rules and regulations of the school and school system and the frequent exercise of independent judgment within the scope of the authority granted by the administration.

Respondent acknowledged receipt of the evaluation at the end of the school year but noted that she did not agree with the rating.

D. 2014-15 School Year and Imposition of CAP

When the following school year commenced, Respondent returned to work on or about August 23, 2014. A few weeks later, Ms. Eason found that Respondent was behind in preparing spreadsheets for lesson plans, faculty meetings, and “submitted documents.”

As of September 1, Principal Van Liew had prepared a Corrective Action Plan (CAP) to guide the steps for performance improvement for Respondent. The District and its witnesses have acknowledged that the CAP approach is used for teachers, rather than staff, but Ms. Van Liew and Ms. Eason testified that they regarded it as a useful tool for assisting Respondent to improve in the needed areas. Ms. Van Liew, Ms. Eason, and Respondent met on or about September 1, 2014, and Respondent asked to have some time to review the written CAP before signing or otherwise indicating agreement.

Respondent then was away on medical leave from mid-September until on or about October 21, 2014. On the day of her return, they met again, and Respondent asked to have Union representative involved. They reconvened on October 23, with a Union representative participating. A summary of that meeting indicates that the Union representative asked if Respondent needed any additional training and Respondent replied that she could always use additional training and asked specifically to attend a training program on the Infinite Campus software, which had been introduced while she had been on medical leave. Respondent was told that she could not go for training, as a report was past due¹, and she was instructed instead to seek assistance from the other Secretary in the office.

¹ Respondent testified that, upon her return from medical leave, she discovered that a number of tasks had not been completed in her absence and that numerous medical documents for students and some staff had yet to be entered into the computer system.

The CAP, which Respondent signed only to indicate receipt, addressed a list of essential tasks, responsibilities, and skills which comported with the School Secretary Job Description, followed by a statement of the type of performance expected for Respondent to achieve proper fulfillment of each responsibility. For each function, the CAP also references the steps that the District planned to take to help the Respondent achieve each type of improvement needed. The CAP was to apply, generally, throughout the remainder of the 2014-15 school year. It addressed the need to prioritize tasks; create a route sheet/spreadsheet label for lesson plans, etc.; generate student attendance notifications; check substitute staff in the assigned teacher; distribute notices to staff, students and parents; complete required monthly reports; maintain student files and records; develop proficiency in MS Office; undergo Infinite Campus training; protect confidentiality of records of students and staff; keep area clear of clutter; and act as receptionist. In some categories, specific subsets of the tasks were noted. With regard to the support that was to be provided, the CAP states, as to Infinite Campus, that “training will be provided by a district designee from the office of Ms. Anita West.” It also was recommended that Grievant have a refresher course on Microsoft. Other categories provided for support by “monitoring through observation” and review of policies.

Vice Principal Eason testified that, in the months that followed, she met with Respondent “various times” to walk through the CAP to “get her feedback as far as what was written in the tool and any concerns that she may have had.” Ms. Eason also recounted her efforts to fulfill the supportive steps that were listed in the CAP. She testified to having provided a template for a spreadsheet that Respondent could use for documents being collected, even though Respondent has said that she knew how to create such a spreadsheet. Ms. Eason said that she “assisted” Respondent by monitoring substitute teacher assignments, noting that substitute reports had to be faxed or scanned for weekly submission but, as she was receiving word that this was not happening, she would go back to make sure that the reports were being submitted. Ms. Eason stressed the importance of reviewing attendance notice documentation, which must be done daily, and the consequences of the failure, but there was no specific information provided regarding efforts to monitor or observe this work or specific ways in which Respondent could improve. She noted that she monitored the route sheets which reflect faculty attendance. Ms.

Eason also said that she monitored Respondent's progress through observations, although no formal account or record of same was produced, and it does not appear that such observation was conducted in any formalized or organized manner.

E. Training

Vice Principal Eason said that training was provided, although details were sparse, and that "there were times when Ms. Sims did receive support in the MIS support here at Central Office when reports were due," referring to Infinite Campus. Respondent had requested, at the October 23 CAP meeting, to attend training in Infinite Campus that she had missed due to medical leave. That request was not approved, as noted above, because, Ms. Eason said, a monthly report was overdue (although Respondent had just returned from multi-week medical leave and the delay in this instance would not have been attributable to her). Respondent was instructed to seek assistance from the other Secretary in the office. Mr. Cisneros asked one of the specialists in the IT department to assist Respondent. That IT Specialist worked with Respondent once, but he described it as "unofficial" and noted that he had spent approximately an hour. Mr. Cisneros testified that this was more time spent in training than the teachers received, but he also noted that the Secretaries have access to more extensive information than teachers and thus their functions are more complicated. To develop proficiency, Ms. Cisneros said, it was necessary to use the system frequently and to "play with it" to become readily adept.

F. Performance Issues in 2015

Early in 2015, issues arose regarding the assemblage of student emergency contact information. Respondent was asked several times over the course of a week in January 2015 to prepare a list to verify if such information had been supplied for each student. Ms. Van Liew testified that she wanted to know who the teachers were who were not obtaining and supplying the information. For this and other matters to which teachers were not attending promptly, such as late lesson plans, Ms. Van Liew had told Respondent, "The first time you send it out. Second time you go through this. Third time you tell me who they are." The student contact information, once

secured for all students, then had to be updated within Infinite Campus. To complete this work, Respondent asked if she could leave the office and work in an empty room. Ms. Van Liew at hearing acknowledged that this was a good point, as the office was very busy and Secretaries are often interrupted, but she noted that Respondent could not be permitted to leave the office, as it would result in only one Secretary being present.

Reporting of attendance is a key function to be performed by Respondent, yet there were instances in which she did not perform this task adequately. When teachers do not provide the necessary attendance information, the Vice Principal must be informed, for the consequences are significant. If a student is not recorded as being in attendance, a call automatically is placed to parents, and it of course creates undue alarm when the child is there but the attendance records are wrong. Ms. Eason testified, however, that, instead of reporting the teachers, Respondent would call them directly to get the attendance information in an effort, Ms. Eason believed, to protect the teacher from adverse action.

On January 28, 2015, Vice Principal Cisneros asked Respondent to obtain a list of staff members on the email list and to make corrections. Respondent on January 28 made an email inquiry to obtain this, and the IT person responded with a request for more specific information. Respondent apparently failed to reply, and Mr. Cisneros inquired two days later to spark Respondent to answer, which she did on February 5, resulting in receipt of the list on February 5. Mr. Cisneros then inquired as to whether the corrections had been completed. Having received no reply as of February 11, he emailed Respondent again on asking if the corrections had been made and advising her that he expected to receive an email confirming that the task was completed. Five days later he wrote again, noting that the changes had not been made, that he had expected an email from Respondent and that he regarded the directive he had given her as being incomplete. He advised Respondent that, at this point, he would handle the matter himself. Respondent replied that she had taken steps to have the changes made via a work order, as she had been advised that one "cannot just take anyone off the email list." Mr. Cisneros responded requesting the work order number and, when Respondent had not replied a few hours later, he wrote, "you can fwd me the email you got from the system. . ." The following day, Mr.

Cisneros emailed Respondent noting that he had not received information from her but that he had confirmed through IT that it had been done by another staff member at Respondent's request. He wrote that it had not been appropriate for her to pass this task along to another employee when she had been instructed to perform the task.

Issues also had arisen regarding the management of substitute teacher assignments and information. Information was not being forwarded in a timely manner, and Respondent in some instances attributed the failure to the scanner being inoperable, leading her to send facsimiles that reportedly were not received. This was, according to Ms. Eason, an ongoing problem and led to confusion as to which substitute teachers were assigned where and for what work they should be compensated.

G. CAP Review and June 2015 Evaluation

In April/May 2015, Ms. Eason reviewed the CAP with Respondent and noted in the CAP as follows:

It is recommended that Ms. Sims work on prioritizing task[s] by creating a daily to do list, which will create good work habits for the operation of the office. Organizing her task[s] as they pertain to documenting monthly reports, student attendance, substitutes, and lesson plans is critical. These areas are in continuous need of improvement and often require verbal reminders (email correspondence) from administration. Her inability to organize and maintain documents efficiently effects [sic] task[s] being completing [sic] in a timely fashion. (Example: preparation of assigning substitutes first thing in the morning. All substitutes need to be provided with a schedule, class attendance sheet and substitute folder).

Over all, Ms. Sims [sic] ability to perform secretarial and clerical task[s] are essential for the administration, faculty, students and parents of the school. It is imperative that she gain knowledge of the rules and regulations of the school, as it pertains to the maintaining an efficient and effective office.

Ms. Eason testified that it was her conclusion that Respondent had made no progress on the areas addressed in the CAP.

What followed, at the end of the 2014-15 school year, was an evaluation completed by Ms. Eason in which Respondent was rated as satisfactory in only seven categories and as needing improvement or as being unsatisfactory in most of the categories that corresponded with the CAP. In total, the evaluation reflected nine categories of unsatisfactory performance. For some reason, the “data base” was listed as not applicable, but computer competency in the area of communication was an area of unsatisfactory performance, as was organizing and maintaining files, organization skills in the area of maintenance of necessary information for yellow cards and monthly reports, and “cooperates and performance duties skillfully. She also was rated unsatisfactory in the “personal trait” categories of dependability, confidentiality, and good work habits.

In the comments, it was noted that, while Respondent presented a positive public relations image with the school community, “her level of confidentiality is questionable concerning business matters under her purview as the school secretary.” It also was noted as to personal traits that, although she was pleasant and personable, engagement in personal calls was overwhelming and resulted in a lack of job performance. It also cited Respondent’s use of 27.5 sick days, one personal day, and two instances of tardiness. The sick days appear to coincide with Respondent’s period of medical leave, and there is no additional information regarding issues of tardiness. With regard to the personal day, Respondent noting in the evaluation, and Ms. Van Liew confirmed at hearing, that Respondent had taken personal time so that she could go to Central Office to seek assistance from the MIS department in completing reports, a practice of which Ms. Van Liew reasonably disapproved.

In the Summary Statement, Ms. Eason wrote:

Despite numerous conversations about organization, the secretary’s method or lack there of [sic] is haphazard at best. While she does collect various documents, she does not present information or explain procedures in any consistent or uniform manner. Part of her difficulty is having a working knowledge of the process and prioritizing projects. Attention needs to be given to pressing matters such as school building reports. These reports fall under her responsibility and are often not completed when due. Showing initiative in her willingness to learn

would imply a willingness to accept constructive criticism which would improve her work habits.

On October 14, 2015, Principal Van Liew issued the Notice of Tenure Charge of Inefficiency. It set forth the charges noted above.

IV. ANALYSIS

A. Charges Not Supported by a Preponderance of the Evidence

The District bears the burden of proving the charges by a preponderance of the evidence. At the outset, the Arbitrator finds that insufficient evidence has been produced to support the charges alleging that Respondent failed to maintain regular attendance and punctuality. The June 2014 evaluation commended Respondent's performance in this area, and the only evidence in the record regarding subsequent absenteeism was the reference in the June 2015 evaluation, which cites two unidentified instances of tardiness, one personal day (used to seek training at the Central Office), and the single block of several weeks when Respondent was off duty due to medical procedure. While her attendance thus was not perfect, and the use of the personal day, while perhaps commendable for initiative was understandably not an action condoned by the District, the record does not establish a failure in attendance that could support a charge of ineffectiveness.

In addition, the charge relating to the critical responsibility of maintaining the confidential status of information is not supported by the record. Testimony by the District's witnesses indicated that certain information available only to the "front office" staff had become known beyond the administrative office and that the suspicion was that it had been conveyed by Respondent. Suspicion standing alone cannot prove a charge, and the record does not indicate the nature of the disclosed information, nor does it indicate why, other than the observation that Respondent has excellent communication skills and rapport with parents, students, and staff, it was believed to have been Respondent who released the information. Principal Van Liew testified only that

“we weren’t quite sure whether or not – things that would get things – that would come back to us from staff members, those were things that were discussed in the office.” Accordingly, the proofs fail as to this charge as well.

The District also contends that, with regard to the handling of Vice Principal Cisneros’ request for updates to the email list in January 2015, Respondent engaged in insubordination. Acknowledging that this allegation was not among the charges stated, the District argues that it is supported by the record and that the charges therefore should be viewed as having been amended to conform to the evidence. The Arbitrator finds, however, that the evidence upon which the District relies to establish insubordination shows a series of communications that resulted in compliance and completion of the task, albeit less than promptly and through means that did not meet with the Vice Principal’s approval. Respondent’s reaction was impertinent but it did not rise to the level of insubordination.

B. Remaining Charges/Procedural Shortcomings

What remain are charges that relate to Respondent’s technical skills and competency in use of the necessary computer programs and processes, her organizational skills, work habits and tasks, including filing and completion and submission of required reports; and her communication and interaction with others. The Arbitrator finds that the record establishes deficiencies in the areas cited. Respondent was falling short of timely and complete fulfillment of her responsibilities as they related to maintenance and submission of important reports and completion of significant tasks. The Arbitrator also finds, however, that the process by which these deficiencies were addressed was flawed and does not comport with any applicable standard to support a finding that termination is warranted.

Respondent argues that the District inappropriately held her to the standards used for evaluating teachers and applied the faculty-based CAP system to her, which was an overly rigorous, intended to address the high standards of performance required by teachers, making it inapplicable to personnel such as Respondent who handle matters not in the direct course of

educating children. In this regard, Respondent argues that, as secretaries were not included in the statutory system that involves the CAP, the prior system should apply. It provided for an employee to be given notice that his or her performance was inefficient and then the employee was to be given a 90-day improvement plan addressing those areas of inefficiency. The employee was to be informed with specificity of the areas in which performance was deficient and that unless the inefficiencies are corrected within a minimum of 90 days, the certification of inefficiency would result. As the District stresses, however, Respondent in this regard relies upon a statutory provision that is no longer in effect. Thus, application would not be appropriate.

The School in this instance chose to proceed with a process that roughly paralleled the approach required for tenured teachers. The School determined that using a CAP approach would be an effective means of helping Respondent improve and, if that failed, would provide the foundation which charges would be brought. The CAP process, however, cannot be borrowed to use as a sword while disregarding the elements that function as a shield. When the CAP process is applied to teachers, however, specific requirements exist, and comparable elements were lacking here. The absence is a flaw not because of imperfect application of a process that does not apply in the first place but because the omission eliminated important elements of corrective opportunity and notice that are fundamental elements associated with discharge from any form of tenured employment.

At the outset, the School moved to a CAP without a comparable history of poor evaluations. For teachers, the triggering element is the evaluation of partially effective or ineffective. Here, Respondent had received one very positive evaluation in April 2013, and then, in June 2014, she received an evaluation with commendable in four categories, satisfactory in 14, needs improvement in four, and unsatisfactory in one area of computer competency (“data base,” which the following year was rated as being not applicable). There was no overall rating. By contrast, the system for teachers under NJAC 6A:10 provides for a specific approach to and components of evaluations and categories that are highly effective, effective, partially effective, and ineffective. The evaluation instrument used for Respondent did not follow or exist within a system that followed this rubric. Thus, it cannot be said that Respondent’s June 2014 evaluation,

with a single finding, out of 23 categories, of one unsatisfactory element could be regarded as the equivalent of partially effective or ineffective such that it would trigger the serious action of imposing a Corrective Action Plan. Indeed, the Principal's testimony was that, at this point, she only had "begun" to see areas in need of improvement.

Thus, regardless of whether there is an effort to hew as closely as possible to tenured teacher process or whether it is used merely as a guide for a fair and productive foundation to begin the process of corrective action, the June 2014 evaluation was insufficient to trigger the establishment of a CAP for which a lack of success would lead to termination. Further, as the Respondent argues, the review process for teachers is defined and logical and involves several formal steps in the course of a year, such as the required number of observations. No such elements existed for Respondent, which further supports the idea that a CAP and the concept of moving toward imposition of charges were not reasonable under these circumstances, as the first element that would lead to imposition of a CAP is lacking.

Further, the processes to be implemented with a CAP and to be pursued in helping the employee fulfill the improvements stated therein also were lacking in this case. The CAP incorporated no structured review or process. There was a review meeting after several months, but the record contains evidence only of a few amorphous conversations between Grievant and the Vice Principal. Unlike the increased observations and post-observation conducted for teachers who are working under CAPs, nothing indicates that consistent, meaningful review and evaluation were provided within a structure for improvement. Further, while the District highlights efforts it says were made to help Respondent achieve the performance improvements needed in computer proficiency, the support in the record for same is thin. Instead of significant training regarding the new Infinite Campus software, the training provided to Respondent was, by the IT specialist's own description, "unofficial," consisting only of an hour. Respondent's requests to seek assistance were declined, as they would have taken her away from the office. In the final evaluation, the Vice Principal suggested that Respondent lacked a willingness to learn, and yet the evidence shows that Respondent continued her efforts, although often fruitless, to seek training.

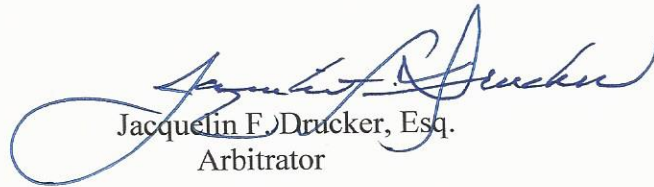
Most significantly, the system applicable to teachers ensures that effective notice is given so that the teacher is well aware when continued employment is in jeopardy. Through training, ready references, and the very clarity of the system itself, a teacher is aware of the process and that a CAP portends a possible step toward to termination of employment. In the instant case, Respondent was not put on notice that her job was in jeopardy, and nothing in the record suggests that she was ever advised that if she did not achieve the improvements sought in the CAP charges would be issued. The District argues that Respondent never became proficient in various tasks yet it appears that this was less a lack of proficiency or capability than a lack of focus or appreciation that precise and timely compliance with processes, without modification, was required and that failure in this regard could result in loss of employment. Teachers are made well aware that termination may result following a CAP, for it is part of a specific and formal process. That process does not apply to staff and thus there is no indication that Respondent would have known that a failure to fulfill the elements stated in the CAP or that a single poor evaluation would lead directly to discharge from a position she had held successfully (albeit at other schools) for 16 years.

For these reason, the Arbitrator must find that the procedures and processes employed by the School did not provide adequate notice, opportunity to improve, and support to do so. These steps are woven well into the process for teachers, but the School adopted only limited parts of that process, omitting the elements of notice and correction to which Respondent, as a tenured employee, is entitled. That is not to say that the District was wrong for attempting to parallel the process used for teachers, but the School failed to incorporate those essential elements that would have given Respondent proper notice of the potential for loss of employment, an understanding of the imperative for correction, and meaningful opportunities to improve.

AWARD


For the reasons stated, the charges against Respondent are dismissed. Respondent is to be restored to her position with full back pay and benefits.

Dated: March 27, 2016


Jacquelin F. Drucker, Esq.
Arbitrator

State of New York)
) SS:
County of New York)

On this 27th day of March, 2016, before me personally came and appeared Jacquelin F. Drucker, Esq., to me known and known to me to be the individual described herein, and who executed the foregoing instrument and acknowledged to me that she executed same.



Notary Public

JOHN H. DRUCKER
Notary Public, State of New York
No. 02DR6018984
Qualified in New York County
Commission Expires February 1, 2019