

**NEW JERSEY DEPARTMENT OF EDUCATION  
BUREAU OF CONTROVERSIES AND DISPUTES**

In the Matter of the Tenure Hearing of Brian Medley:

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**STATE OPERATED SCHOOL DISTRICT OF  
THE CITY OF CAMDEN, CAMDEN COUNTY**

Agency Dkt. No. 291-9/14

“Petitioner,”

- and -

**BRIAN MEDLEY**

“Respondent.”

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**OPINION  
AND  
AWARD**

**STATE OPERATED SCHOOL DISTRICT OF  
THE CITY OF CAMDEN, CAMDEN COUNTY**

Agency Dkt. No. 367A-12/14

“Petitioner,”

- and -

**BRIAN MEDLEY**

“Respondent.”

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**OPINION  
AND  
AWARD**

**Before  
James W. Mastriani  
Arbitrator**

**Appearances:**

**For the Petitioner:**

Louis R. Lessig, Esq.  
Brown & Connery

**For the Respondent:**

Wayne J. Oppito, Esq.  
New Jersey Principals and Supervisors Association

This proceeding arises from two separate sets of tenure charges filed by the State Operated School District of the City of Camden [the “Petitioner” or “District”] against Brian Medley [the “Respondent” or “Medley”], a tenured principal employed by the District. Specifically, the District determined to certify tenure charges with the Commissioner of Education on September 26, 2014 charging Medley with inefficiency pursuant to N.J.S.A. 18A:7A-45. Later, on December 19, 2014, the District filed additional tenure charges against Medley with the Commissioner of Education charging him with conduct unbecoming a school employee. Shortly thereafter, the District filed a Motion to Consolidate the initial and additional tenure charges. The additional tenure charges were filed after hearings had been scheduled on the initial tenure charges. Although the charges represent two separate cases, the Motion to Consolidate was granted. Thus, both the initial and additional tenure charges are properly before me for determination.

A pre-hearing conference was held on November 14, 2014. Formal arbitration hearings were scheduled and held on January 5, 7, 12 and 15, 2015 in Westmont, New Jersey. At the hearings, each party argued orally, presented and cross-examined witnesses and submitted documentary evidence into the record. Testimony was received from Timothy Matheney, Chief Intervention Officer, New Jersey Department of Education (October 2014, prior position Director of the Office of Evaluation) – Donna Agnew, Principal Evaluator,

Camden City School District – Catherine McClellan, Managing Partner and Principal Scientist, Clowder Consulting – Leroy Seitz, Interim Superintendent of Schools for the Franklin Township School District, Somerset, New Jersey – Robert Fisicaro, Superintendent of Schools, Mantua Township, Gloucester County – Margaret Jeker Nicolosi, County Superintendent for Camden and Burlington counties, and Interim Regional County Superintendent for Gloucester, Salem, Cumberland, Cape May, Atlantic Counties – Thomas Flemming, Administrator and Evaluator, Camden City School District – Paul Nedeau, Assistant Director in the Office of Evaluation, Department of Education – Susan Ficke, Senior Director of Teacher/School Leader Evaluations – Carmen I. Ortiz, Bilingual Department Chair, Camden School District – Barbara Hutchinson, Department Chair for Health and Physical Education, East Camden Middle School – Respondent Brian Medley, Principal, Pyne Poynt Middle School, Camden County School District. Each party filed post-hearing briefs on or about March 13, 2015.

The public employer is the State Operated School District of the City of Camden. Pursuant to the terms of the State Intervention Statute, the operations of the Camden City School District were assumed by the State of New Jersey on June 25, 2013. Thereafter, evaluations of building principals and vice principals were conducted during the 2013-2014 school year. The evaluations resulted in tenure charges being filed against four administrators. One Respondent, Leon Mashore, filed a Motion to Dismiss. The motion contended that the tenure

charges “were defective and premature in that such charges were not based on a two-year evaluative cycle pursuant to N.J.S.A. 18A:6-17.3 and were not preceded by the issuance of a corrective action plan as required by N.J.A.C. 6A:10-2.5.” Because of the likelihood that similar motions would have been filed in the cases involving the three other administrators, the parties executed a Consent Order in the Mashore case that extended to all of the cases. This resulted in an agreement to have the decision on the Motion to Dismiss application in the Mashore case be applicable to the other tenure cases, including the instant one involving Medley. The Motion to Dismiss in the consolidated case was denied in an Opinion and Award issued on December 23, 2014 by Arbitrator Walter DeTreuX. Because I have incorporated that Award into this decision, it will not be summarized in detail at this juncture. It is sufficient to note that Arbitrator DeTreuX denied the Motion and found that TEACHNJ, N.J.S.A. 18A:6-117, et. seq. and its accompanying regulations N.J.A.C. 6A:10-2.1, must be read in concert with the evaluation provisions set forth in the State Intervention Statute N.J.S.A. 18A:7A-45. Although he found that the District had the authority to file tenure charges under the State Intervention Statute, he found that genuine issues of material fact existed that required resolution through the respective arbitrations.

### **BACKGROUND**

Respondent is a tenured principal and was Principal of Pyne Point Middle School during the 2013-2014 school years. He began his career as an

elementary school teacher at Sacred Heart School in 1982, spent two years in the juvenile justice system, taught seventh and eighth grade English at the Martin Luther Christian Day School in Pennsauken, taught fifth grade at Bonsall Family School in the Camden School District in 1990, became a Vice Principal at the Bridgeton School District between 2002 and 2004, returned to the Camden School District in 2004 as a Vice Principal at the Molina Elementary School and became Principal of Forest Hill Elementary School in 2008 until August 2011, at which time he transferred to Pyne Point Middle School.

On June 25, 2013, the operation of the District was assumed by the State of New Jersey pursuant to the State Intervention Statute N.J.S.A. 18A:7A-45. Margaret Jeker Nicolosi was appointed at that time to serve as Interim State District Superintendent. Around this time, Dr. Robert Fisicaro<sup>1</sup> was assigned to create a District Office of Evaluation [the "Office"] as authorized by N.J.S.A. 18A:7A-45. The Office was responsible to assess the performance of the District's principals and vice principals. According to Ms. Nicolosi, the date of the takeover, June 25, 2013, was the date that the assessment cycle for the evaluation of principals in the school district commenced. She testified that she met with the principals on June 25, 2013 and briefed them on the time period for the assessment cycle and the manner and method that would be used to conduct their evaluations. Respondent, for reasons cited below, disagrees that this date

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<sup>1</sup> Dr. Fisicaro was the lead Implementation Manager for the Office of Evaluation, Department of Education.

can serve as the commencement of the assessment cycle for Respondent's evaluations.

Under the authority of Dr. Fisicaro, two evaluators were assigned to assess the performance of Medley. Dr. Fisicaro explained that the use of two evaluators was for the purpose of ensuring fairness and reliability in the evaluations. The primary evaluator was Dr. Donna Agnew. The other evaluator was Dr. Thomas Flemming. Both are retired school district superintendents. Dr. Agnew was hired in October of 2013. She first visited Pyne Point Middle School on October 21, 2013 and conducted the first formal evaluation of Medley on December 4, 2013. A post-evaluation conference was held between Dr. Agnew and Medley on December 12, 2013 for the purpose of reviewing Dr. Agnew's evaluation and recommendations. Dr. Agnew conducted a second evaluation on March 19, 2014. A post-evaluation conference was held between Medley and Dr. Agnew on March 25, 2014. Dr. Flemming was also hired in October 2013. He conducted a third evaluation of Medley on June 12, 2014.<sup>2</sup> A post-evaluation was held between Dr. Flemming and Respondent on June 14, 2014. Dr. Agnew completed a summative evaluation, the Annual Performance Report, on June 19, 2014 and held a summative evaluation conference with Respondent on June 23, 2014.

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<sup>2</sup> Dr. Flemming also held a pre-evaluation conference with Medley.

## The Evaluation Instrument

The instrument to evaluate the District's principals was the result of the involvement of several educators, including:

- Timothy Matheney, then Director of the New Jersey Department of Education ("DOE") Office of Evaluation;
- Dr. Robert Fisicaro, then Lead Implementation Manager for the DOE Office of Evaluation;
- Margaret "Peggy" Nicolosi (then Camden County Superintendent);
- David Hardy, then Executive Director of the Camden Regional Achievement Center ("RAC"); and
- Anjali Kulkarni, then Project Manager with the Camden RAC

Mr. Matheney provided detailed testimony as to how the criteria for the instrument was set and submitted to the Department of Education through its Request for Qualification process. The recommended instrument was approved by the Department of Education on June 14, 2013 and was authorized to be used thereafter by the District. According to Mr. Matheney, the instrument complied with standards set by the Interstate School Leaders Licensure Consortium ("ISLLC"). The instrument consisted of three domains with each domain having a set of sub-domains. Domain 1 is entitled Instructional Leadership, Domain 2 is entitled Cultural Leadership and Domain 3 is entitled Organizational Leadership. According to Mr. Matheney, a fourth domain was added to the instrument entitled Effectiveness of Teacher Practice Viewing and Evaluation Practice. This domain

was added for the purpose of assessing how principals performed teacher evaluations.

### The Evaluations

The testimony and documentation as to the evaluations of Medley is extensive. The record on the conduct of the evaluations has been thoroughly reviewed along with the respective positions of the parties as to whether they can properly serve as a basis for the tenure charges. The evaluations yielded numerical ratings that were determined by the evaluators based upon their judgment of the evidence that related to the domains and subdomains. The evaluations also contained “actionable feedback” that were connected to the ratings received by the Respondent for the purpose of future guidance, especially in areas where the evaluations yielded ineffective ratings.

As previously stated, the first evaluation was conducted on December 4, 2013 by Dr. Agnew. In the first domain (Instructional Leadership), Medley received an ineffective score of 1.5 due to his receipt of 1 or 2 ratings in every sub-domain. In the second domain (Cultural Leadership) Medley received a partially effective rating of 2 due to having either received a 1 or 2 rating in four of the five sub-domains. In the third domain (Organizational Leadership) Medley received a partially effective rating of 2. In the fourth domain (Evaluation Leadership), Medley received an ineffective rating of 1.2. The level of the ineffective rating was largely caused by Medley receiving the lowest possible



rating in four of the five sub-domains. Based upon each rating for each domain, Medley received an overall evaluation of 1.75. This rating is defined as ineffective.

Dr. Agnew also conducted the second evaluation on March 19, 2014. In the first domain (Instructional Leadership), Medley received an ineffective score of 1.5 due to his receipt of a rating of either a 1 or 2 in every sub-domain. In the second domain (Cultural Leadership) Medley received a partially effective rating of 2.2. In the third domain (Organizational Leadership) Medley received an ineffective rating of 1.4. In the fourth domain (Evaluation Leadership), Medley received an ineffective rating of 1.4. Based upon the ratings for each domain, Medley received an overall evaluation of 1.63. This rating is defined as ineffective.

The third evaluation was conducted by Dr. Flemming on June 12, 2014. In the first domain (Instructional Leadership), Medley received an ineffective rating of 1.5. In the second domain (Cultural Leadership) Medley received a partially effective rating of 2.2. In the third domain (Organizational Leadership) Medley received an ineffective rating of 1.8. In the fourth domain (Evaluation Leadership), Medley received a partially effective rating of 2. Based upon the ratings for each domain, Medley received an overall evaluation of 1.88. This rating is defined as ineffective.

An Annual Performance Report was completed by Dr. Agnew on June 19, 2014. Based upon her review of the evaluations that she and Dr. Flemming conducted, the Annual Performance Report, also known as a “summative evaluation,” yielded an average score for Medley in Domain 1 of 1.58, a rating deemed as ineffective. In Domain 2, Medley received a partially effective rating of 2.13. In Domain 3, Medley received an ineffective rating of 1.73. In Domain 4, Medley received an ineffective rating of 1.55. Based on these results, Medley received an ineffective overall score of 1.75. After the evaluations were completed, Dr. Agnew held a summative evaluation conference with Medley on June 23, 2014.

In addition to asserting that it had cause to dismiss the Respondent for inefficiency based upon the ratings in the aforementioned unsatisfactory evaluations, the District filed separate charges alleging that Respondent engaged in unbecoming conduct by directing teachers to change their “self-assessments” for Domain 4 for the purpose of achieving higher evaluation ratings. In this regard, it alleges that Respondent failed to adhere to a requirement that he not have any direct input into a teacher’s completion of a self-assessment form and further, to not view the teacher’s self-assessment until it had been uploaded into Teachscape, a certification requirement. The District alleges that, despite receiving training to the contrary, he directed teachers Jose Matos and Shabrees Chrisdon, as well as Librarian Tania Morgan, to change certain aspects of their self-assessments to reflect improvements in the assessments. Petitioner further

contends that while either tenure charge must be sustained individually, when the two tenure charges are considered as a whole, they form a basis to prove “other just cause” as an additional basis for dismissal.

### **Position of the District<sup>3</sup>**

The District contends that the September 26, 2014 charges of inefficiency were timely filed pursuant to N.J.S.A. 18A:7A-45(c). Under this provision, a State District Superintendent must wait until after the twelve (12) month assessment cycle has been completed to dismiss a principal for inefficiency. According to the District, that cycle commenced on June 25, 2013 when the former Interim State District Superintendent Peggy Nicolosi met with the principals, provided them with the evaluation instrument and informed them that they would be evaluated under new criteria. She informed them that they could be dismissed the following year if, pursuant to the State Intervention Law, they were deemed to have performed inefficiently after three evaluations. The District asserts that it complied with the minimum time requirements because Medley was evaluated three times during the 2013-2014 school year, he received a summative evaluation, was then served with inefficiency charges on July 15, 2014 and the District then certified the charges to the Commissioner of Education on September 27, 2014.

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<sup>3</sup> The arguments of the District are comprehensive and broad in scope. They will not all be summarized but all have been considered.

The District further contends that the evaluation Instrument was fair, unbiased and reliable. It was approved by the Department of Education and complied with ISLCC standards. The District cites the testimony of Dr. Catherine McClellan, an expert in the field of educator evaluation instruments. She concluded that the instrument and system used by the District would produce evaluation results that are fair, unbiased and reliable. The District cites her testimony:

The instrument is comprehensive in that it encompasses the key aspects of a school leader's job. It is clear and well-written. The evidence required is available to school leaders and should be relatively easy to procure and present. The evaluations ... contain actionable feedback, they are specific and detailed. The rubric has usable number of levels. It has four levels. So my experience and as a researcher in the space of using these types of scales, four levels is a usable number of levels. The subdomains are clearly related to and cover the space of each domain. And they are concrete and comprehensible.

The District also cited Dr. McClellan's testimony that the Instrument produced actionable feedback that in her view, and contrary to the view of Respondent, would make a formal corrective action plan ["CAP"] unnecessary. She concluded that there is not a "large distinction between having a formal corrective action plan and being given formal actionable feedback with a request that it be acted on by the next formal evaluation cycle." Dr. McClellan further opined that the training that the administrators' evaluators had received was effective and continued throughout the 2013-2014 school year. Her testimony also reflected her opinion that the time period of one year or even less was sufficient for the evaluatee, the Respondent, to act on the actionable feedback and the

recommendations that were made during the three full evaluation cycles. She concluded that the performance of a principal such as Medley, who was rated at partially effective or ineffective over a series of observations, is reflective of one with significant deficiencies who could not continue to serve in the critical position of a principal after one year of state intervention.

The District further contends that the additional tenure charges it filed against Respondent on December 19, 2014 for conduct unbecoming a school employee must be sustained. This view is based upon evidence that Respondent directed teachers to manipulate their teacher self-assessments for the purpose of inflating their ratings. The District points out that no teacher at Pyne Point School was rated below an effective summative rating and that this was contrary to the rating results in 25 out of the District's 27 schools.

### **Position of the Respondent<sup>4</sup>**

Mr. Medley, the Respondent, urges dismissal of the tenure charges involving both inefficiency and conduct unbecoming for several reasons. Initially, he asserts that the District failed to comply with the State takeover legislation. Respondent disputes that the District met the statutory requirement that a principal may be dismissed "after completion of an assessment cycle of not less

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<sup>4</sup> The arguments of the Respondent are comprehensive and broad in scope. They will not all be summarized but all have been considered

than twelve months.” Medley submits that his primary evaluator, Dr. Agnew, was not hired by the District to perform the evaluations until October 2013 and that timesheets show that October 24, 2013 was the first day that she actually visited Pyne Point Middle School. Thus, Respondent asserts that the assessment cycle could not have commenced until October 24, 2013. Because Respondent was served with tenure charges on July 15, 2014 after a June 23, 2014 summative evaluation, Respondent submits that the assessment cycle period was at best only 10 months in length and therefore violative of the statute. Respondent further notes that the tenure charges were filed only seven months after Dr. Agnew performed the first evaluation and only eleven months from the time that the principals received training in the evaluation procedures for principals on August 21, 2013. Given the above, Respondent argues that:

N.J.S.A. 18A:7A-45 clearly reads that the assessment cycle shall not be less than 12 months. The State-Operated School District in Camden did not afford Mr. Medley with the minimum amount of time for an assessment provided in the statute. The assessment unit was not hired until October, 2013. The charges must be dismissed because of the school district’s failure to comply with N.J.S.A. 18A:7A-45. N.J.S.A. 18A:1-1 provides for the definition of an “academic year” as being the period between the time school opens in September until the next succeeding summer vacation, generally a period of 10 months. The state takeover statute does not read that the assessment cycle is to be for an academic year. The Legislature could have done so, but it did not. The statute requires that the assessment cycle shall not be less than 12 months. The assessment cycle for Mr. Medley was considerably less than 12 months in violation of the statute. The tenure charges against Mr. Medley must be dismissed.

Respondent further contends that the District failed to comply with its own procedures. He cites a document in evidence that reflects the framework for the

conduct of principal evaluations. Respondent contends that he was not offered additional support as required by the District's procedures for those who have less than effective ratings. Specifically, under the Principal Practice Section, Respondent asserts that the District was required to provide him with a Corrective Action Plan (CAP) and that he never received one. Respondent points to the Summative Rating section which states that "at the conclusion of the 12 month evaluation period ... all principals will receive individual development plans or Corrective Action Plans based on their ratings." Respondent submits that the comments, or actionable feedback, that Dr. Agnew made in her evaluations do not amount to a CAP and even assuming that it did, Respondent was entitled to have, but did not receive, at least one additional observation per year pursuant to the reference to a CAP contained in the Professional Development and Support section of the District's procedures. Respondent cites to case law holding that a board of education is required to render positive assistance in an effort to overcome any deficiencies and that the District did not do so.

Respondent also contends that the District's actions were arbitrary, unreasonable and/or capricious. According to Respondent, the District's primary evaluator had no experience with inner city school districts. In this regard, the evaluator is said to have not taken into consideration that Camden is an inner city school district with a large non-English speaking parent population and that such districts typically have greater difficulty in obtaining parent involvement. Despite

this, Dr. Agnew was unduly critical of Respondent's efforts to obtain parental involvement. Respondent also contends that Dr. Agnew never testified as to what the basis was of her expectations for Respondent's involvement in school activities. Respondent further submits that the District did not consider State test scores which indicated that student performance at Pyne Point Middle School was actually improving.

Respondent offered expert testimony from Dr. Leroy Seitz who, in his long-term capacity as a school superintendent, testified to his familiarity with TEACHNJ and Achieve NJ. Dr. Seitz opined, among other things, that the evaluation process adopted by the District did not offer Respondent the opportunity to be aware of expectations and afford him with proper training on the evaluation instrument.

Respondent further contends that the tenure charge alleging conduct unbecoming is without merit and must be dismissed. It points out that in Domain 4, Professional Responsibilities, there was a new requirement for teachers to complete a Teacher Self-Reflection Form and that Respondent merely provided support for teachers in their effort to fulfill this new requirement. Respondent argues that:

In these situations, Mr. Medley offered support in a variety of ways, email being just one. What is being alleged by the school district as an egregious and deliberate act to circumvent the evaluation system process, in effect, was Mr. Medley suggesting how the document would give a fair and accurate assessment, or reflection



of the teacher's performance. These reports, as a part of all teacher evaluations, were forwarded to the Office of Evaluation, which reviewed them. To reiterate, this form was just one of the many, new requirements for teachers to fulfill in 2013-2014. More importantly, as the building principal, one of Mr. Medley's duties and responsibilities roles was to support his teachers. It would be unfair to the teachers to allow them to submit a document that did not give a true and accurate reflection of themselves as it relates to Domain 4. Mr. Medley's communications with teachers was very matter-of-factly with regards to the recommendations and/or directives for their document. He never mentioned or remotely alluded to anything about improving a "score." Mr. Medley's intent was to support teachers to include valuable information and data that would give a true and accurate reflection of their responsibilities during the 2013-2014 school year.

The charge indicates that the Self-Reflection form is "intended" to be done alone. However, no one from central administration (i.e., the Office of Evaluation) specifically stated to Mr. Medley that principals could not assist teachers in any way when completing Domain 4. As the building principal, Mr. Medley was responsible for support to his teachers. The school district's own witness, Sue Fricke, acknowledged that if teachers had questions, they would go to their principal. The suggestions Mr. Medley gave to the 3 teachers does not constitute unbecoming conduct and does not warrant his dismissal. Even, if Mr. Medley had a mistake in his recommendations to his teachers, the mistake would not warrant removal from his tenured position.

### **DISCUSSION**

This proceeding includes separate tenure charges certified to the Commissioner of Education on September 27, 2014 and December 19, 2014 for inefficiency, conduct unbecoming or other just cause. Pursuant to N.J.S.A. 18A:6-10, "[n]o person shall be dismissed or reduced in compensation ... 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 ... except for inefficiency, incapacity, unbecoming conduct, or other just cause." The District, as one

subjected to state intervention, cites the State Intervention Statute for its authority to file tenure charges without having to base such charges on a two year evaluation cycle. The burden is on the District to establish, by a preponderance of the evidence, that there is merit to the tenure charges and, if so, whether they warrant Respondent's dismissal from employment.

The December 19, 2014 tenure charges allege conduct unbecoming centering on Respondent's communications with three teachers over their self-assessments. They do not directly implicate the separate charges of inefficiency that center on Respondent's evaluations and the relationship between the State Intervention Statute and TEACHNJ. I first address this separate filing.

The District's allegations are serious in nature. In the event that Respondent manipulated teacher self-assessments for the purpose of inflating their ratings, such conduct would clearly constitute conduct unbecoming and warrant close examination of whether the penalty of dismissal was justified. The charges go to the character and integrity of portions of Domain 4 and the self-assessment evaluation process. Teacher evaluations not only affect an individual teacher's ratings. They also allow the District to draw comparisons among the District schools in order to assess relative school performance.

The District makes specific allegations that Respondent interfered with the self-assessments of teachers Jose Matos and Shabrees Chrisdon, as well as

Librarian Tania Morgan. The self-assessments fall under Domain 4 of the teacher evaluation in the area of professional responsibility. Domain 4 constitutes 20% of a teacher's summative evaluation rating.

The District has shown that Respondent was trained in Domain 4, received specific instruction on the self-assessment component of the domain and that the District conveyed caution to its administrators that the individual Domain 4 submissions were not to be subject to supervisory review until they were uploaded into Teachscape. The District, through documentary submissions, has established that Respondent did engage in email communication with the three individuals offering suggestions on how to revise their self-assessments through certain deletions and revisions. However, after thorough review of the record with respect to these communications, I cannot conclude that Respondent directly or indirectly attempted, or intended, to manipulate the teachers' self-assessments for the purpose of inflating their ratings or otherwise improperly alter the ratings by persuading the teachers to revise the substance of the self-assessments for that purpose.

The record does not include any evidence whatsoever that establishes that Respondent engaged in any oral or written communication with the teachers that concerned the actual ratings or scores in connection with the self-assessment form. It is important to note that the District had been no prior experience with this form prior to the 2013-2014 school year. It was not

unreasonable for teachers and their principal to engage in communications directed towards submitting accurate observations and responding to inquiries concerning the completion of information on this new aspect of Domain 4. District testimony acknowledges that such communication itself was indeed not improper. A more reasonable response by the District under all of the circumstances would have been to engage its administrators in broader discussion over what communication and direction was appropriate and what was not and to provide clearer distinctions between the two.

Based upon the insufficiency of evidence in support of the December 19, 2014 tenure charges, I conclude that they must be dismissed in their entirety.

As previously indicated, the September 26, 2014 charges, as well as three other District cases, were consolidated before a single arbitrator, Walt DeTreux, to decide a Motion to Dismiss applicable to all Respondents. In all four tenure cases filed by the District, the Respondents' contended that the tenure charges "were defective and premature in that such charges were not based on a two-year evaluative cycle pursuant to N.J.S.A. 18A:6-17.3 and were not preceded by the issuance of a corrective action plan as required by N.J.A.C. 6A:10-2.5." After entertaining full legal argument by the parties, Arbitrator DeTreux decided that the State Intervention Statute, N.J.S.A. 18A:7A-45, permitted the District to file the tenure charges by its terms and that such charges alleging inefficiency were consistent with the statute's goals of allowing the removal of ineffective

administrators early in the process of rebuilding and revitalizing a failing district. However, he also found that the State Intervention Statute must be read “in concert” with TEACHNJ, N.J.S.A. 18A:6-117, et. seq., statute that revised the evaluation process. He also determined that the subject matter of the Motions with respect to other issues raised genuine issues of material fact that can only be resolved through arbitration hearings on the merits of each individual tenure charge. Thus, the interrelationship, if any, of the two statutes and the parties’ interpretation of same must be analyzed and resolved on the facts of this case when considering the merits of the tenure charges and especially Respondent’s objections to those charges based upon the District’s alleged failure to apply TEACHNJ or to properly apply the terms of the State Intervention Statute.

The District has established that it acted promptly to implement its statutory authority under State Intervention. On or about the June 25, 2013 date of intervention, Ms. Nicolosi was appointed Interim State District Superintendent.<sup>5</sup> A School District Office of Evaluation had already been created under the authority of Dr. Fisicaro to evaluate the performance of vice principals and principals. Prior to State Intervention, on June 14, 2013, the Department of Education approved the evaluation instrument to be used by the District during the 2013-2014 school year. It was in place prior to Ms. Nicolosi meeting with the District’s principals on June 25, 2013. During that meeting she explained how

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<sup>5</sup> Ms. Nicolosi was Interim State Superintendent until August 21, 2014 when Paymon Rouhnifard became State Superintendent. She continued to assist the transition in the capacity of a Senior or Special Advisor.

the evaluation process was going to proceed for principals. She testified that on June 25, 2013:

I met with the principals, giving them the information about how they were going to be evaluated and the timelines, that it wouldn't be any less than 12 months and no more than 18 months.

The meeting was not limited to the procedures for the evaluation of principals. Discussions were also held concerning teacher evaluations. The principals were informed that in order to perform teacher evaluations, they were required to be certified in Teachscape.<sup>6</sup> Respondent attended the June 25, 2013 meeting. I find that the District has established that Respondent was properly noticed on the evaluation instrument and the timelines to be used for the conduct of the evaluations.

Formal evaluations of Respondent were conducted on December 4, 2013, March 15, 2014 and June 12, 2014. All overall ratings were "ineffective." At the end of the 2013-2014 school year, Respondent received an Annual Performance Report or "summative evaluation" on June 19, 2014. The overall rating on the summative evaluation was 1.75. Under the evaluation scheme, this score is deemed to be a rating of "ineffective." The overall score was based upon an average score of the evaluations that had been conducted by Evaluators Agnew and Flemming. There was general consistency in the results of virtually all of their evaluations. Although Respondent's testimony reflects that he had

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<sup>6</sup> The District provided evidence that Respondent was noticed regarding the implementation of Teachscape at least two years prior to state intervention.

differences of opinion as to the ratings he received, there is no basis to conclude that the evaluations were not fair, regular or inconsistent with the terms and framework of the State approved evaluation instrument. Respondent's main objections to the utilization of the ratings as a basis for the tenure charge of inefficiency are the District's calculation of the time period for the evaluation assessment cycle and its completion pursuant to N.J.S.A. 18A:7-45(c) and the District's failure to provide Respondent with a Corrective Action Plan.<sup>7</sup> I next address the merits of the tenure charges and the central objections asserting that they must be dismissed.

I have considered Respondent's objections to when the evaluation assessment cycle began. This issue is directly connected with calculating the length of the assessment cycle. I am persuaded, on this record, that the District has established that June 25, 2013 was the date that the assessment cycle for principals in the school district commenced. Respondent disagrees. He asserts that the assessment cycle could not have started prior to the evaluators being in place and that this date could not have been prior to October 24, 2013. Respondent regards this date as significant because Respondent's primary evaluator, Donna Agnew, was not hired until October 2013 and had not set foot in the Pyne Point Middle School until October 24, 2013. Thus, when this date is measured with the July 15, 2014 date when Respondent was served with tenure

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<sup>7</sup> N.J.S.A. 18A:7-45(c) states: Notwithstanding any other provision of law or contract, the State District Superintendent, after completion of an assessment cycle of not less than 12 months, may dismiss any tenured building principal or vice-principal for inefficiency, incapacity, unbecoming conduct or other just cause as defined by the criteria for principal or vice-principal performance in districts under full State intervention established by the commissioner pursuant to subsection a. of this section.

charges, Respondent asserts that the time period was only ten (10) months. Respondent argues that this violates the State Intervention Statute even if this dispute is found to be governed solely by that statute.<sup>8</sup>

After due consideration, I find Respondent's perspective as to the proper calculation of the time period for the evaluation assessment cycle under the statute to be overly restrictive. If the commencement of the evaluation cycle were to be tied to the date of hire of the evaluator, or the date the evaluator first set foot into the school, this would relieve Respondent of his responsibility to be held accountable for the educational processes under his authority after State intervention commenced on June 25, 2013 and, in this case, for four months thereafter. Respondent would limit such accountability by excluding performance during all of the time period prior to his primary evaluator being on site. This view is not consistent with the evaluation criteria in the evaluation instrument that made him accountable for his performance after June 25, 2013, nor the broad and specific authority set forth in the State Intervention Statute that grants the State District Superintendent immediate authority over the education process in the District once the State officially intervened. In this case, that date was June 25, 2013.

The June 25, 2013 date is not significant solely because it marked the date of State intervention. I do not find that this date, standing alone,

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<sup>8</sup> As noted, Respondent's objections to the tenure charges extend beyond a strict application of the State Intervention Statute.



automatically constitutes the commencement of the assessment cycle. Instead, it was the actions of the District upon state intervention that dictates the effective date. As indicated, the Interim State District Superintendent promptly held a meeting with principals on that date. Respondent was in attendance. The meeting included information on the process under which the principals would be evaluated and also the time periods for the evaluation. An Office of Evaluation had already been created prior to the date of intervention. According to the testimony of Dr. Fisicaro, the Office created the evaluation instrument that provided the evaluation rubric and the feedback portion of the evaluation to the evaluatee. The instrument was approved by the Department of Education prior to intervention. Testimony reflects that significant efforts were made by the District to guide evaluators to develop explicit standards for the development of evidence relating to the evaluation instrument that could not be misunderstood. According to Ms. Nicolosi, at the June 25, 2013 meeting, she gave an overview of the evaluation rubric, its domains and provided each principal with a copy of a portion of the State Intervention Statute that was relevant to principals and vice principals. She informed them that they would be subject to multiple evaluations during an evaluation period that was no less than twelve (12) months but no more than eighteen (18) months. The principals were then provided a document on July 24, 2014 that, among other things, again noticed them that a principal could be dismissed for failing to meet performance criteria after a twelve (12) month evaluation cycle. Principals were provided with training and information regarding the evaluation process for principals during the summer and prior to

the opening of schools in September. Specific training on the Instrument was provided by Mr. Matheney on August 21, 2013. Respondent was aware of the standards that were going to be applied. Training sessions were conducted during and after the commencement of the 2013-2014 school year. There is scant evidence reflecting that Respondent misunderstood or challenged the basis upon which he was going to be evaluated. The testimony from his evaluators consistently reflected that Respondent, whether intentional or not, did very little to engage them between evaluations, especially in regard to the actionable feedback that served as guidance for correction of the observations that led to the ineffective ratings. Evaluators Agnew and Flemming offered credible testimony as to their availability to meet with Respondent over any issues he had with the instrument, the ratings or the actionable feedback.

Respondent correctly points out that Dr. Agnew was not hired until October 2013 and Respondent's first evaluation was not conducted by Dr. Agnew until December 4, 2013. However, it is significant that the evidence that formed the basis for that evaluation consisted of information and standards set forth in the instrument that well preceded the date of the first formal evaluation and were known by the Respondent that they would serve as the basis for his evaluations. The overall rating on the December 4, 2013 evaluation was "ineffective." These findings included the Respondent's failure to attend subject matter meetings and to maintain sign-in sheets. These requirements were known to the Respondent and unrelated to the date that his main evaluator was

in place. Dr. Agnew noted that Respondent's failure to participate in instructional learning team meetings prevented him from following up on subject matters when he met with teachers in their classrooms. Dr. Agnew observed that Respondent had not taken any surveys from parents and had not identified low performing staff members for the purpose of developing remediation plans for them. He had not completed evaluations of his teaching staff despite his awareness of this important requirement at the June 25, 2013 briefing by the Interim State Superintendent. Dr. Agnew also observed that Respondent did not meet the standard required for communicating with his staff and the community. He did not adhere to teacher observation timelines to ensure that the required number of teacher observations were undertaken. Respondent was notified of the requirement to prepare for the Teachscape Danielson Certification Assessment. However, he did not achieve certification until October 2014. His failure to do so caused him to fall behind in his evaluation of teachers. Significantly, this time lag continued throughout the rest of the school year. Dr. Agnew found that Respondent did not perform walkthroughs nor complete evaluations in Teachscape in their proper format. It was an unreasonable and inaccurate argument by Respondent to assert that Dr. Agnew was barred from evaluating him for not meeting the requirements for which he had received proper and ample notice dating back to June 25, 2013. Actionable feedback was provided on this evaluation for Respondent's review to enable and assist him to correct the deficiencies that were found. Similar deficiencies and actionable feedback are reflected in the additional evaluations. The summative evaluation was also

based in part upon an evaluation of Respondent's performance commencing on the date of the intervention and the Interim Superintendent's briefing.

Although Respondent's arguments were clearly articulated and vigorously presented, I do not find merit in his contention that the assessment cycle should have been calculated from the time that his initial evaluator was appointed and set foot in the school. The District has established, through testimony and relevant exhibits, that it complied with N.J.S.A. 18A:7A-45 by noticing Respondent of the District's authority under the law and its expectations for principals. The record is clear that Respondent was informed of his requirement to successfully pass the test to be proficient in conducting teacher evaluations. This fact was known to him prior to the appointment of his evaluators and independent of their presence. Upon takeover, Interim State Superintendent reminded Respondent and others that teacher evaluation is a crucial part of transforming education throughout the District. Respondent did not meet this requirement and his explanations for his failure to do so are without merit. Respondent's evaluator, despite her lack of presence at that time, was clearly authorized to evaluate Respondent on whether he fulfilled this obligation after state intervention.

I next turn to Respondent's contention that he was deprived of a Corrective Action Plan or an additional evaluation period in which to assess his performance prior to the filing of the tenure charges. This issue must be

reviewed and considered within the overall dispute as to the District's statutory authority under the State Intervention Statute and/or TEACHNJ. This issue is also connected with Respondent's contention that he was entitled to a two year evaluation cycle prior to the filing of tenure charges based upon "inefficiency."

The initial issue for determination is the weight to be given to the substance of the statute that governs a state takeover district. Respondent's central objections are that notwithstanding the State Intervention Statute, TEACHNJ and its implementing regulations, as well as the District's own document explaining its evaluation process required either a Corrective Action Plan, "additional support" or "at least one additional evaluation" prior to deciding that tenure charges can be filed for "inefficiency." This is a matter of statutory construction and interpretation.

The District was subjected to state intervention pursuant to N.J.S.A. 18A:7A-45. The statute at subsection 45(c) states:

Notwithstanding any other provision of law or contract, the State District Superintendent, after completion of an assessment cycle of not less than 12 months, may dismiss any tenured building principal or vice-principal for inefficiency, incapacity, unbecoming conduct or other just cause as defined by the criteria for principal or vice-principal performance in districts under full State intervention established by the commissioner pursuant to subsection a. of this section.

The State Intervention Statute stands in contrast to certain provisions in TEACHNJ that provide for a two-year evaluative cycle (N.J.S.A. 18A:6-17.3) and

a corrective action plan (N.J.A.C. 6A:10-2.5). The contention that the District's actions were deficient by failing to adhere to these alleged requirements presumes that TEACHNJ either supersedes the State Intervention Statute or must be given greater weight when the State Intervention Statute is read "in concert" with TEACHNJ. Such conclusion would require that an addition or modification be read into TEACHNJ that would reflect a legislative intent to do so. Based upon the fact that State Intervention districts have been provided with clear and specific authority in N.J.S.A. 18A:7A-34, et. seq. with respect to dismissal of a tenured principal for inefficiency and the absence of any legislative action removing or modifying such authority, I simply cannot find evidence of such legislative intent. The authority of a takeover district has not been overridden, repealed or modified by subsequent legislation. As noted by Arbitrator DeTreaux, the legislature did not remove this authority when it approved TEACHNJ. I agree with his finding. The State Intervention Statute was, by its terms, legislation limited to the narrow legal action of the State taking over a local district that had been found not to have met its lawful obligations. Under the intervention statute, the District's utilization of an assessment cycle of twelve (12) months was consistent with its authority. If TEACHNJ had been intended to serve as a balance to the broad authorities granted to a State Intervention district, such intent was not manifested in the language of that statute. TEACHNJ does extend to public school principals but it did not remove the authority of a takeover district to act based upon a more narrow assessment

cycle than that provided to principals employed in a non-takeover district. This is consistent with Arbitrator DeTreaux's observation that:

One of the goals of the State Intervention Statute was to allow the State District Superintendent to remove ineffective administrators and supervisors early in the process of rebuilding and revitalizing the failing district. Extending the assessment cycle for principals and vice-principals from "no less than 12 months" to 2 years would be a significant departure from the goal of the intervention statute. It is unlikely the legislature would enact such significant change without clearly stating so in the TEACHNJ statute.

The application of the State Intervention Statute to the Respondent, based upon all of the above, clearly made him subject to a stricter standard for evaluation that he would have been had he not been employed, as here, by a district that was subject to state intervention. The record does show that the Respondent displayed important assets such as providing student supervision. Nevertheless, his employment in this District was subject to the exercise of unique statutory authority and the record supports the conclusion that this authority was properly exercised by the District in accordance with that authority.

I have closely examined Respondent's arguments that the District's evaluation policy required a corrective action plan that allowed additional periods of time to tenure charges being filed. I do not find reference to a corrective action plan thwarted the authority of the District to file tenure charges in this instance. Reference does exist to principals who are "on a corrective action plan." This is an apparent reference to those principals who may have been on such a plan at time of state intervention. Beyond this observation, there is nothing that would

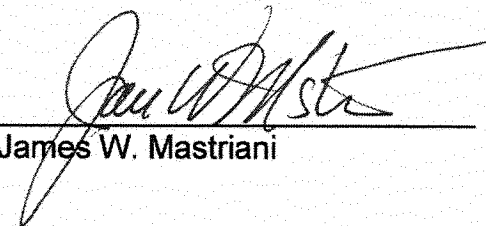
have prevented the District from providing such a plan at any time during the assessment cycle, in contrast with actionable feedback, if it deemed such course of action to have been appropriate. The fact that it did not exercise such discretion did not constitute a waiver of its statutory authority to file tenure charges. In the instant matter, the District did provide the Respondent with substantially similar direction for correction and improvement of his performance. Under the statutory scheme for state intervention, I find that the District has established that additional notice of ineffective performance and additional opportunity for improved performance was not required.



**AWARD**

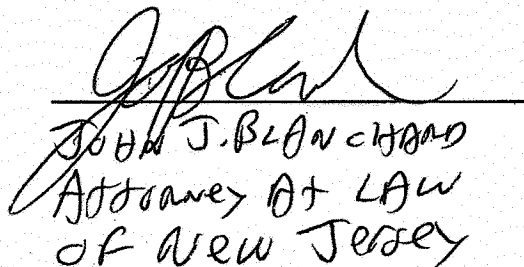
In accordance with the terms of the Opinion, the tenure charges filed in Agency Docket No. 367A-12/14 shall be dismissed in their entirety. The tenure charges filed in Agency Docket No. 291-9/14 shall be sustained. Pursuant to N.J.S.A. 18A:7-45(c), Respondent Brian Medley shall be dismissed effective on the date of this Award.

Dated: March 25, 2016  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey        }  
County of Monmouth       } ss:

On this 25<sup>th</sup> day of March, 2016, before me personally came and appeared James W. Mastriani 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.

  
JOHN J. BLANCHARD  
Attorney At Law  
of New Jersey