

NEW JERSEY DEPARTMENT OF EDUCATION

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In the Matter of The Tenure X
Charges Proffered by X

BOARD OF EDUCATION OF THE CITY X
OF NEWARK, IN THE COUNTY OF ESSEX X

Agency Docket No.
210-8/18

"Petitioner" X

-against- X

TONJA DeCARO X

"Respondent" X

Pursuant to the TEACHNJ Act X

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APPEARANCES

FOR PETITIONER

RIKER DANZIG SCHERER HYLAND & PERRETTI LLP
Teresa L. Moore, Esq.
Natalya G. Johnson, Esq.

FOR RESPONDENT

ZAZZALI, FAGELLA, NOWAK, KLEINBAUM & FRIEDMAN, P.C.
Kathleen Naprstek Cerisano, Esq.

BEFORE: Earl R. Pfeffer, Arbitrator

BACKGROUND

In a Notice of Tenure Charge of Inefficiency and a Written Statement of Evidence ("Charges"), sworn on July 30, 2018, by Roger León, Superintendent, Newark Public Schools ("School District" or "NPS"), the School District made allegations against Respondent, Tonja DeCaro ("Respondent"), of employee inefficiency mandating her dismissal pursuant to N.J.S.A. 18A:6-17.3.¹ The Petitioner, following Respondent's opportunity to submit her written Response to the Charges, certified the Charges on August 21, 2018, and, effective August 28, 2018, suspended Respondent without pay for 120 days under N.J.S.A. 18A:6-14.

The Charges thereafter, on August 24, 2018, were submitted to the Commissioner of Education, and the Commissioner, following receipt on September 4, 2018, of Respondent's Answer, found the Charges are subject to determination by an arbitrator, and on September 7, 2018, referred same to me for a hearing and decision. Respondent, in her answer, disputes the Charges, alleging that the allegations of inefficiency are based upon flawed, improper and mistake-laden observations and evaluations, as well as the District's own failure to assist her through fairly drawn Corrective Actions Plans, and were served upon an

¹The Charge asserts Respondent was rated partially effective in her 2015-16 annual summative evaluation; partially effective in her 2016-17 annual summative evaluation and ineffective in her 2017-18 annual summative evaluation.

"effective" teacher based upon improper considerations, such as discrimination and retaliation. Respondent demanded that the charges be dismissed or, alternatively, that she be given an appropriate penalty short of removal from employment.

Following a Pre-Hearing Conference on November 20, 2018, at which time arguments were made supporting and opposing Respondent's Motion to Dismiss, discovery disputes were resolved, and hearings were convened on December 4, 2018, December 5, 2018, December 12, 2018, January 4, 2019, January 7, 2019, February 1, 2019, February 15, 2019 and February 22, 2019. At the hearings, which were transcribed, the parties each presented evidence and argument in support of their respective positions.² Following completion of the proceedings, the parties on May 20, 2019, submitted post-hearing briefs. Following my receipt of same, the arbitration record was closed.

Many of the background facts are not in dispute. Under the Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ" or "the Act"), Public Law 2012, Chapter 26, NPS adopted its Framework for Effective Teaching (the "Framework") as the evaluation rubric the School District would use to assess the effectiveness of its teaching staff members. At all relevant times herein, the Framework has been reviewed and

²Citations herein to the hearing transcripts are denoted as "[hearing date] at [page]," e.g., "12/4 at _____."

approved by the Commissioner Education for use in the District. All teachers in the District, including Respondent are trained on the Framework and the rubric established thereunder.

The minimum standards the Framework is required to satisfy are delineated in TEACHNJ, specifically Section 17. N.J.S.A. 18A:6-123.³ The minimum standards include four (4) defined annual rating categories for teachers and administrators: ineffective, partially effective, effective and highly effective. N.J.S.A. 18A:6-123(b)(1). The Act additionally requires that each employee shall receive multiple observations during each school year which will be used to evaluate that employee. Id. at (b)(7). Also mandated is an opportunity for each employee to improve his or her effectiveness from evaluation feedback. Id. at (b)(9).

The evaluation rubric set forth in the Framework was explained at hearing by Yolanda Mendez, the School District's Acting Director of Human Resource Services. Mendez described five (5) "Competencies" or core professional standards upon which teachers are evaluated. These are (1) Lesson Design and Focus, (2) Rigor and Inclusiveness, (3) Culture of Achievement, (4)

³Evaluation rubrics are governed by standards promulgated through duly adopted regulations which minimally must include provisions and processes outlined in the Act. See N.J.S.A. 18A:6-123. Each board of education was required, beginning with the 2013-2014 school year, to adopt and implement an approved evaluation rubric.

Student Progress toward Mastery and (5) Commitment to Personal and Collective Excellence. Further, within each Competency are various "Indicators," which are more precise components or behaviors within a Competency, on which teachers being observed are given one of four ratings. Some Indicators pertain to components of teaching observable in a single lesson, while other Indicators relate to components of teaching observable "over-time," meaning over the course of the school year. Competencies 1 through 4 are assigned both single lesson and over-time indicators. Competency 5 has only over-time Indicators. For Competencies 1 through 4, the single lesson ratings for each indicator are: "highly effective," "effective," "partially effective" and "ineffective." The over-time ratings are "always," "frequently," "sometimes" and "rarely." For Competency 5, utilized only in a teacher's Mid-Year Reviews and Annual Summative Evaluations, the indicator rating categories are all over-time measures: "exceeds expectations," "meets expectations," "slightly below expectations" and "significantly below expectations." The rubric details the evidence-based indicia the observer looks for in rating a teacher in each of the Indicators.

A teacher's overall rating in each of the Competencies, and how it is derived from evidence-based assessments of the Indicators, is calculated using a scoring methodology described in detail in the Framework. So, too, the Framework provides a

precise methodology for calculating the final rating of each observation, as well as how to utilize the formal and informal observations, and the over-time Indicators. The evaluator will also consider the teacher's progress towards student learning goals, review information and data obtained in conferences and assess other interactions with the teacher, to calculate a teacher's Mid-Year Review score as well as the school year's Final Summative Evaluation score. The overall Mid-Year Review and year-end Annual Evaluation score for each teacher will be: "highly effective," "effective," "partially effective" or "ineffective."

Under the Act, the Superintendent of a school district must "promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation." N.J.S.A. 18A-17.3(a)(1). The charge against Respondent alleges she was rated partially effective in school year 2015-2016, partially effective in school year 2016-2017 and ineffective in school year 2017-2018.

* * *

Respondent has been a teacher in the School District for approximately thirteen (13) years, since the 2005-2006 school year. She previously worked in private preschools in Jersey City

and Newark. She is certified by the State of New Jersey to teach Pre-K through third grade. Thus, prior to the years covered by the instant charge, Respondent was assigned to various levels within her Pre-K to 3rd Grade certification. For instance, in 2009-2010 at the Clinton Avenue School, she recalls she was assigned to teach second grade. 2/15 at 67. In 2010-2011, she was assigned to teach a Pre-K class at the South Street School. 2/15 at 67-68. From 2011-2012 through 2013-2014, she was assigned as a "floating teacher" at the South Street School, and in that capacity covered classroom assignments, as needed, when teachers were absent. 2/15 at 70-74. These assignments were all within her state certification. Id.

Respondent recalls filing a grievance over the lack of a permanent or consistent grade level assignment, but learned that a school's Principal has the right to make and change teacher assignments. 2/15 at 71. For the 2013-2014 school year, she was rated "effective" on her annual summative evaluation. 2/15 at 98.

Respondent thereafter received a regular 1st grade classroom assignment at the South Street School for the 2014-2015 school year, and in her annual summative evaluation, was rated partially effective. R-58.⁴ Accordingly, for the 2015-2016 school year,

⁴The 2014-2015 school year is not covered by the instant charges.

wherein she again was assigned to teach 1st grade at the South Street School, she was placed on a Corrective Action Plan ("CAP"), R-24, as required under TEACHNJ.⁵ For the 2015-2016 school year, Respondent received a rating of partially effective. B-2.

Respondent was again placed on a CAP for the 2016-2017 school year. B-3. She remained at South Street School and taught Pre-K, although she did not receive a permanent assignment until the end of September. She was offered and received training that year on the Creative Curriculum for Pre-School, a Pre-K curriculum, portions of which had been used in the School

⁵Under N.J.S.A. 18A:6-119,

"Corrective action plan" means a written plan developed by a teaching staff member serving in a supervisory capacity in collaboration with the teaching staff member to address deficiencies as outlined in an evaluation. The corrective action plan shall include timelines for corrective action, responsibilities of the individual teaching staff member and the school district for implementing the plan and specific support that the district shall provide.

Under N.J.S.A. 18A:6-128(b),

[a] corrective action plan shall be developed by the teaching staff member and a teaching staff member serving in a supervisory capacity to address deficiencies outlined in the evaluation when the employee is rated ineffective or partially effective.

See also, "Newark Public Schools Teacher Evaluation Framework for Effective Teaching, a Guidebook for Teachers & Administrators," Board Exhibit 32 ("B-32") at 16.

District over the previous few years, but which became the mandated curriculum for all Pre-K instruction starting with the 2016-2017 school year. 12/12 at 112. For the 2016-2017 school year, every Pre-K teacher was provided a complete set of Creative Curriculum materials (the "full suite," 12/12 at 110), consisting of multiple volumes, pamphlets and guides. See Board Exhibit 30. The components of the suite along with supplemental resources that support the Curriculum are available online. 12/12 at 28-30.

Due to the uncertainty of Respondent's classroom assignment at the beginning of the 2016-2017 school year, she missed the "Introduction to Creative Curriculum" professional development class offered on two (2) Saturdays in September 2016. She also did not receive her own complete Creative Curriculum kit until the end of September. The District, however, made arrangements to repeat the "Introduction for Creative Curriculum" class on October 22, 2016, for teachers who missed the September training. Respondent declined to attend, citing previous commitments, although her coach, Lydia Eftimova, recommended she attend. 1/4 at 34, 80. See also B-25 (Summary dated October 6, 2016), B-26 (Log dated October 6, 2016).

At the October 6, 2016, coaching session, Eftimova stressed that Respondent, in advance of attending the October 22, 2016, "Introduction to Creative Curriculum" workshop, should

familiarize herself with the Curriculum and its components through her study of the materials in the Creative Curriculum kit. Id. Eftimova noted in her log of the October 6, 2016, coaching session, "[Ms. DeCaro] will begin diving deeper into the curriculum implementing the content by following the guidelines." Id.⁶

When Eftimova next met with Respondent, on October 20, 2016, she again emphasized "the importance of intentional planning and instruction following the Curriculum Guide and resources." B-28 (log dated October 20, 2016, at 3). She made this recommendation upon learning from Respondent that she had not yet begun implementing the Creative Curriculum, notwithstanding their discussion two weeks prior. Id. At this session, she learned Respondent would not be taking part in the October 22, 2016, professional training on the new curriculum. Id. She and Respondent agreed to "follow up in about two weeks." Id. In the interim, she reminded Respondent to reach out via email if she needed assistance. Id.

Indeed, as Eftimova testified, credibly, I find, her coaching duties were not confined to classroom visits and in-person meetings with the approximately twenty (20) teachers she

⁶According to the Creative Curriculum Touring Guide, B-30, the "Teaching Guides [are] a component of the *Daily Resources*, [and] offer daily plans to help teachers provide individualized instruction for every child and organize and manage every moment of their day, all year long." B-30 at 8 (emph. supp.).

was coaching in 2016-2017. 1/4 at 8. Rather, in order to be available to assist her charges "all the time," she made herself reachable via email and telephone. Id. at 9. (She similarly was available to provide support as needed to school administrators, social workers, and specialists. Id. at 9-10.) Eftimova, thus, was available to help Respondent anytime the latter needed her assistance. As explained by Genevieve Murray, Special Assistant in the Office of Childhood Pre-K Academics, teacher coaches are available for "daily conversations" with the teachers they are helping, obviously by phone or email, to assist them in planning instruction and using data. 12/12 at 101.⁷

Eftimova emphasized that she "pointed" Respondent to the Creative Curriculum itself as a resource for developing familiarity and ultimately expertise in its implementation. Thus, she explained, learning the Curriculum cannot be confined to "formal training," but also requires "personally initiated training." She explained,

The Creative Curriculum has a lot of links for online professional development, like webinars. So those are available to grow professionally and know the details.

1/4 at 19. She explained the value of using the Curriculum

⁷The hearing record does not indicate efforts by Respondent to call or email Eftimova, or otherwise communicate with her outside of their face to face meetings, save for an email on November 30, 2016, concerning her difficulty creating a class list in the GOLD System. Eftimova promptly arranged a visit to Respondent's classroom on December 6, 2017, to help her update the list. B-25 (12/6/2017 Summary); B-26 (12/6/2017 log).

daily, in short, implementing it, as a most valuable resource for learning how to apply and master it. She explained,

Well, today's implementation entails a lot of detail and it provides daily guides to how to teach a lesson, large-group lesson, small-group lesson, which story to read, and how to enrich the interest areas with the topic of study. So the teachers have the guides that they follow daily and they also have supplemental guides that we used to use even years before, but those supplemental volumes of the curriculum when used prior to [2016-2017], gave flexibility of planning lessons and topic and studies. Now the studies are given by our office and they follow the curriculum that way.

1/4 at 18. In short, Eftimova explained, in 2016-2017 the Creative Curriculum became "more scripted." 1/4 at 18. When Eftimova next met with Respondent on December 6, 2016, she again reminded her the importance of "learning from resources." B-26 (December 6, 2016 log at 3).

This was not a new recommendation. Indeed, as Eftimova recalled her meeting with Respondent on October 20, 2016, when she learned that Respondent would not be attending the October 22, 2016, Introduction to the Creative Curriculum workshop, she implored Ms. DeCaro to "mak[e] sure" she starts reading the curriculum materials. 1/4 at 55. Other than a vague claim by Respondent she found the Creative Curriculum "difficult," the record is devoid of evidence regarding specific difficulties she may have encountered as she read and studied, that is, utilized and implemented, the Curriculum.

Indeed, apart from issues related to implementation of the

GOLD Assessment component of the Creative Curriculum, Respondent has not pointed to any specific aspect of the curriculum on which she sought help from Eftimova after exhausting the resources Eftimova had recommended. Nor did she identify any specific request to Eftimova for help that was ignored or otherwise unanswered. See also B-27 (2016-2017 emails between Respondent and Eftimova).

Upon Eftimova's urging, Respondent did attend an "Introduction to Gold Assessment" training workshop in late October 2016. B-28. Creative Curriculum's Gold Assessment tool links data collection, individualized student assessment and differentiated instruction that promotes "tailored" learning into a single tool. As Teaching Strategies, the creator of the Creative Curriculum, explains in the Touring Guide,

Every child is different - it's no surprise that they learn differently too. At Teaching Strategies, we celebrate those differences - and are committed to developing tools that help you meet the individual needs of each child. That's why GOLDplus was created. GOLDplus harnesses the power of *The Creative Curriculum* to create a single, revolutionary solution for individualizing instruction. It's assessment plus automatically-tailored learning opportunities. GOLDplus takes the guesswork out of individualizing instruction, so you can get back to doing what you love most - building strong relationships and connecting with each child.

B-30 at 54.

Through GOLDplus (or "GOLD"), assessments of students and the validation of those assessments through data collection is a

daily and constant process. As Teaching Strategies explains,

GOLDplus helps make teaching and assessing a seamless, continuous process that's ongoing throughout every day, with "Teach" and "Assess" prompts that allow teachers to toggle between teaching and assessing in the moment, with just the tap of a finger.

Id. at 55. GOLDplus is a tool that meshed with Respondent's 2016-2017 CAP, which emphasized her need to measure her students' progress towards mastery in identified Student Learning Goals ("SLGs"). B-3 at 5. Indeed, in her 2015-2016 Teacher Annual Evaluation, she was placed on notice that,

[she] needs to know the students and where they are academically at all times. Teacher needs to insure that there are assessments to validate what the students have learned. These assessments need to be used to drive instruction.

Respondent Exhibit 2 ("R-2").

Although I find herein, below, that the "outcome" of Respondent's 2015-2016 Final Summative Evaluation, "partially effective," was "materially affected" by the District's "fail[ure] to adhere substantially to the evaluation process" established under the "Framework," and therefore cannot support the charge of inefficiency for the 2015-2016 school year, see discussion, supra, at 70-72, the law governing arbitral review of teacher performance does not permit me to change or ignore the determination by the South Street School Principal, Karen George-Gray, that Respondent's classroom performance in the 2015-2016 school year was only partially effective, nor thus discount

Principal George-Gray's determination that Respondent's tracking of student data, understanding of individual student growth, and use of assessments necessary to guide students towards mastery of grade level standards, see B-32 at 10, was only partially effective.

In short, although I find, under the arbitral jurisdiction I am given under TEACHNJ, that the South Street School administrators, during the 2015-2016 school year, failed substantially to adhere to the evaluation process set forth in the Framework such that her Annual Summative Evaluation for 2015-2016 cannot be used to support the charge of inefficiency that is before me, I still am required to give credence to the determinations of her reviewers concerning her less than effective teaching practices. I find, therefore, Respondent squarely was on notice, from at least the start of the 2016-2017 school year, that data collection, student assessments based on that data, and tailored and differentiated instruction based on those assessments were necessary components of effective teaching on which she needed to improve.

Indeed, given Respondent's past issues with unsatisfactory data collection, inadequate development of data-based and individualized assessments of students and appropriate tailoring of her instruction based on those assessments, it is not surprising that when she and South Street School Vice Principal

Elzira Prophete met to develop her 2016-2017 CAP, they jointly agreed that consistent data collection, development of data-based assessments and differentiated instruction necessarily were to be growth areas developed through identified action steps.

For Student Learning Goal ("SLG") #1 in Respondent's 2016-2017 CAP, identified as increasing the number of Respondent's Pre-K students who will be able to comprehend and retell a story that has been read out loud, and also expand the number of students able to identify at least 25 upper and lower case letters, the CAP acknowledged Respondent had not yet been trained on how to assess students using GOLD or the Creative Curriculum. Similarly, for SLG #2, which was to increase the number of students who could master the counting and sequencing of numbers 1-20, and who could ascertain "more or less" things bearing values 1 through 5, Prophete and Respondent agreed the assessment metric would be the "NJ Preschool Standard Mathematics."

So, too, in the agreed-upon Professional Growth Plan, Respondent and Prophete agreed that Respondent would tailor instruction through planning that incorporated "differentiated instruction for different levels of students," and in order to monitor "Student Progress Toward Mastery," Respondent, during the School Year's second quarter, would begin using GOLD to understand student growth, whereby the "[t]eacher can articulate specifically (and with evidence) whether or not each student has

internalized grade-level standards and, if not, what s/he has to learn." B-3 at 8, B-32 at 5. Respondent further agreed to use GOLD, starting in the second quarter, to monitor students' progress towards goals by using data to assess whether they are "mastering the objectives of the focus areas, leading toward mastery of grade-level standards." Id. Indeed, Respondent agreed, in her 2016-2017 CAP, that beginning the second quarter, she "will ensure that all anecdotal notes are documented into Creative Curriculum GOLD." Id.

Respondent asserted at the arbitration hearing, as she did at various times during the 2016-2017 School Year, that she encountered repeated difficulty accessing the GOLD System. Although she agreed with Eftimova on October 6, 2016, that she would enroll in the professional development workshop, "Introduction to Gold Assessment," to be given on October 25 and 26, 2016, B-25 (October 6, 2016, Summary), B-28, when Eftimova met with Respondent on October 20, 2016, she still had not registered for the training. Id. (October 20, 2016, Summary). Eftimova urged Respondent to register for the Introduction to Gold Assessment training, id., and she did so.

On November 9, 2016, Respondent received confirmation from Teaching Strategies that she was registered as a GOLD user, with an account number and a password. R-31. Teaching Strategies advised her that if she had "implementation questions," she

should contact them via email. Id. According to the hearing record, Respondent waited until approximately November 21, 2016, to begin using the GOLD System in accordance with her just completed training. Id. She wrote to Mara Kaplan, Senior Manager of Preschool Services that her class list in GOLD was incorrect, and she was unable to make corrections to her list of students that were necessary for her to begin making data and assessment entries. Id.

Kaplan immediately replied, "[m]ost likely your class needs to be archived. Your admins should have received instruction for completing this. If they are having difficulty, Lidia will be able to assist them." Id. Thereafter, on November 29, 2016, Kaplan responded to a request from South Street School Vice Principal Prophete for assistance how to archive and update Respondent's class list. Id. Kaplan referred her to Eftimova, and Respondent followed up with an email on November 30, 2016:

Hi Lidia. I know it has been sometime since we have spoken. I truly need your help. I need to archive students in the GOLD System so that I am able to create a new class list. I received my password to access GOLD about two weeks ago, however I cannot create the new class list until the old students are archived.

Id. Eftimova thereafter, on December 6, 2016, visited South Street School and met with Respondent. She wrote in her December 6, 2016, Log:

Our main focus for today's visit was to ensure that Ms. DeCaro was able to input the information for all the

children in the classroom in the GOLD System, and provide examples for uploading, analyzing and evaluating data. I archived children in Ms. DeCaro's GOLD account allowing her to add the remainder of the children, and assisting her with details of the process. We entered an anecdotal note together, analyzed and evaluated the evidence indicating preliminary judgment. We opened the Class Profile demonstrating how it could be utilized to plan lessons intentionally for individual and groups of children based on their level of development and learning.

B-26 (December 6, 2016, Log at 3).⁸ Eftimova planned a follow-up visit for January 9, 2017, *id.* at 2, but was unable to again meet with Respondent until February 28, 2017.⁹ There is no record evidence Respondent called or emailed Eftimova, or otherwise sought her assistance with any questions, problems or issues between Eftimova's visits on December 6, 2016, and February 28, 2017, in particular with respect to utilizing the GOLD System.

During the February 28, 2017, visit, Respondent did advise Eftimova that she still was having problems with her GOLD account. B-26 (February 28, 2017, Log at 3). Eftimova confirmed

⁸Respondent acknowledged that during this initial difficulty accessing the GOLD System, she learned about a course offered on December 7, 2016, called "Using GOLD Data to Support Implementation of Creative Curriculum," but declined to register for the course, believing it to be identical to the two-day GOLD Introductory workshop she took on October 25 and 26, 2016. 2/15 at 32-34. She did not explain, given her professed difficulties applying the GOLD System, why redundant training would not have been useful.

⁹She was unable to "follow up" on January 9, 2017, due to "ECERS assessment and action plan meetings, and prioritizing visits to 8 sites including mentoring responsibilities." B-26 (February 28, 2017, log at 1).

something was wrong with the account, at least from Respondent's school computer. Id. Two days later, on March 2, 2017, Eftimova successfully accessed Respondent's data from her own office, and advised Respondent and Prophete that the system appeared to be working, and asked that they advise her if either needed further assistance. Id. See also B-27 (March 2, 2017, email from Eftimova to DeCaro). It was not until May 12, 2017, during her next visit to South Street School, that Eftimova learned from Respondent that she had continued to have difficulty finalizing data she had inputted into the GOLD System. Id. (May 12, 2017, Log at 5). Eftimova spoke to Prophete, who "agreed that assistance with finalizing the data needed to be provided." Id.

During Eftimova's visit to South Street School on June 1, 2017, Respondent again "asked for assistance with finalizing her data in the GOLD System." Id. (June 1, 2017, Log at 4). Eftimova and Respondent opened Respondent's GOLD account and looked at the inputted data. According to Eftimova, "it was insufficient to be able to finalize." Id. In her log for that session, Eftimova noted that Respondent claims to have "many notes that she needed to input." She informed Respondent, "until the data is entered it [is] impossible to finalize." Id. Eftimova added,

In addition, we discussed how the class profile report could be utilized to inform planning and instruction, emphasizing though that the data needed to be authentic for the assessment to be accurate.

Id. (emph. supp.). In her hearing testimony, Respondent did not refute Eftimova's observation she did not have authentic data to substantiate she was performing proper and required individualized assessments of her students in aid of providing them with differentiated instruction tailored to their understanding and proficiency.

As noted above, GOLD System access was the sole issue for which Respondent sought help from Eftimova between their coaching sessions, and she only did that once, on November 30, 2016. There is no record evidence Eftimova ever denied a request from Respondent for more frequent school visits, or that Respondent identified to Eftimova in a request for a visit any other difficulties she was having with implementation of the Creative Curriculum.

The same is true for the issues, other than GOLD System access, which were discussed by Respondent and Eftimova during their sessions. For instance, at their October 6, 2016, session, a major focus was lesson planning and limiting transitions in order to maximize time for the children to engage with materials. B-25 (December 6, 2016, Summary). Respondent did not thereafter initiate any follow-up with Eftimova indicating she required additional assistance in those areas of classroom management and instruction.

At their October 20, 2016, session, Eftimova discussed her

goals for the coaching process, specifically mentioning following an appropriate daily schedule, intentional use of materials in the interest areas to develop concepts and skills with the children, and intentional lesson planning aligned with the New Jersey Preschool Teaching and Learning Standards. There is no record indication Respondent ever sought out additional help from Eftimova in these areas. Nor is there any record indication she sought, but did not find, webinar and other internet sources upon which to draw for development of these aspects of her pedagogy.

In their December 6, 2016, session Eftimova and Respondent discussed a "possible focus" of their next session being "powerful interactions in the classroom," which Eftimova characterized as having "crucial importance." B-25 (December 6, 2016, Summary). In fact, following the lesson, Eftimova, on December 8, 2016, sent to Respondent (as well as to another teacher and teaching assistant she was helping), a copy of a section of a book on powerful interactions with pre-school children. B-27. Eftimova noted in her introductory email that studying the resource "would help you to strengthen your interaction and your relationship with the children in your classrooms." Id. Although Eftimova's cover email invited Respondent to discuss the article and how it might help her with implementation of strategies, there is no record indication Respondent ever responded to the email or otherwise sought to

engage Eftimova in a discussion of the article.

Thereafter, when Eftimova met with Respondent on February 28, 2017, they covered pacing, in particular, Eftimova's recommendation Respondent align her curriculum with the Office of Early Childhood's pacing guide and thereby be able to collaborate with the School's other Pre-K teacher, Ms. Larkins. There is no record evidence Respondent initiated any follow-up with Eftimova, leaving open the possibilities that she either ignored the recommendation the teachers align their instruction, or that she achieved the alignment without seeking additional assistance. B-25 (February 28, 2017, Summary).

In short, although Respondent's CAP clearly stated she will "seek[] and incorporate[] feedback from others," "pursue his/her own growth and development," and "pursue professional development that focus[es] on Early Childhood Development," B-3 at 8, Respondent confined her "Commitment to Continuous Improvement," id., to an introductory course on the GOLD System, and the irregular meetings she had with Eftimova. Respondent correctly has noted the 2016-2017 CAP states she will "[m]eet with teacher coach one to two times per month to support her understanding of Creative Curriculum," but the hearing record does not support her claim that sole responsibility for scheduling the coaching sessions rested with Eftimova.

Even so, as Respondent was a co-drafter of the CAP, if she

believed Eftimova was obligated under its terms to initiate the semi-monthly sessions, Respondent did not demonstrate such a belief in any of her documented emails. Indeed, there is no indication in the hearing record that Eftimova was less than responsive to any inquiries or requests from Respondent for help in growth areas identified in the CAP.

In fact, after Respondent was rated partially effective in an informal observation conducted by Genevieve Murray on April 28, 2017 (a backwards step after she had shown improvement with an effective rating in a formal observation by Prophete on January 31, 2017), Eftimova was not contacted by Respondent, but rather by Murray, who indicated the areas in which Respondent needed Eftimova's help. B-27 (May 10, 2017, email from Murray to Eftimova). Murray specifically identified growth areas of focus, intentional planning, Question of the Day, and use of classroom space for displaying "the Web of Investigation and the KWL chart. Id. Murray additionally asked that Eftimova provide and discuss with Respondent an article entitled, "Consider the Walls." Id.¹⁰

¹⁰"Consider the Walls" discusses the ways a classroom's walls can be used as "tools" for student learning. 12/12 at 73. Murray testified "[i]t was evident" Respondent was not prepared for the lesson. 12/12 at 58. She did not have ready ahead of time the materials needed for the lesson, she had not written on the chalkboard the objective of the day, nor had she posted the question of the day (the previous day's question was still on the board). 12/12 at 59-62. Nor did she use a KWL Chart, a Creative Curriculum learning tool, in delivering the lesson. Id. at 63-64. Murray explained these omissions signify an obvious failure ahead of the lesson to utilize the Creative Curriculum's

Eftimova then visited Respondent in her classroom on May 12, 2017. B-26 (May 12, 2017, Log). In a Planning/Pre-Conference meeting with Respondent, Eftimova told her they would be covering each of the assistance areas identified by Murray in her May 10, 2017, email. Eftimova and Respondent "decided to focus on adult-child interactions throughout the day, and effective lesson planning and implementation." Id.

Eftimova's May 12, 2017, log is a comprehensive memorialization of what she observed and the advice and information she gave Respondent in connection with that observation. The log discusses the sequencing of the lesson, offering many fine details. It reflects that Eftimova told Respondent her pedagogy would grow if she were to focus on intentional planning, in particular by internalizing the content and objectives of lessons, so that she would not have to look at the Creative Curriculum Study Guide and related resources while in the middle of her lesson. Id.¹¹

That night, following the coaching session, Eftimova emailed Respondent to remind her of the follow-up they had agreed would occur during to their next visits. B-27 (May 12, 2017, email

guidance. Id. at 63.

¹¹This instruction echoed Murray's comment following the April 28, 2017, observation that Respondent did not appear to have utilized the Creative Curriculum toolkit in her lesson preparation, 12/12 at 63, and thereby failed to give the children the information the lesson was designed to impart. 12/12 at 128.

from Eftimova to DeCaro). This included, reading for subsequent discussion the article "Consider the Walls," as a vehicle for exploring strategies and ideas that could be implemented in Respondent's classroom; identifying an interest area in Respondent's classroom that would be developed in accordance with the Creative Curriculum Interest Areas Volume; and planning the details of a large group lesson, its implementation and subsequent reflection on the experience. They agreed they would meet to plan the large group lesson on May 22, 2017, and the lesson would be implemented on Friday, May 26. B-27 (May 12, 2017, email from Eftimova to DeCaro).

Prior to May 22, 2017, however, Herbert Daughtry, the School District's Executive Director for Educator Effectiveness, conducted an unannounced formal observation of Respondent on May 16, 2017. B-8. Under the Framework, tenured teachers on a CAP must have at least three (3) formal observations over the course of the school year, and those observations must be by at least two different observers. 12/5 at 438. Respondent's previous two (2) formal observations during the the 2016-2017 school year had been conducted by Prophete on November 15, 2016 (announced and rated partially effective) and by Prophete on January 31, 2017 (unannounced and rated effective). There was urgency in completing the mandated third formal observation, as there is a Framework target date of May 15th for completion of the annual

summative evaluation for a tenured teacher on a CAP. B-32 at 22. Daughtry rated Respondent's May 16, 2017, lesson partially effective. B-8.

Thereafter, as pre-arranged, Eftimova met with Respondent on May 22, 2017, to plan the large group lesson scheduled for May 26, 2017. B-27 (May 23, 2017, email from Eftimova to DeCaro). They created a detailed lesson sequence, and Eftimova reminded Respondent to have her materials ready, internalize the sequence and the content of the lesson, and anticipate children's answers and reactions and be ready to respond. Id. They planned Eftimova's observation of the large group lesson on May 26th, and agreed it would be based on the Creative Curriculum Study Teaching Guide on Insects. They agreed as well, that during Eftimova's May 26th visit, they would have a "reflective discussion" about lesson planning and implementation, discuss the "Consider the Walls" article and, if time allowed, begin a "deeper look" at the Dramatic Play Area. Id.

Eftimova and Respondent each had to cancel their co-plan for the May 26th large group lesson. B-27 (May 25, 2017, email from Eftimova to DeCaro; and, May 25, 2017, email from DeCaro to Eftimova). Eftimova advised Respondent she hoped to be able to again visit Respondent's classroom on June 1, 2017, but in the meantime she recommended Respondent proceed with the large group lesson and invite Prophete to observe. Id. She also advised

Respondent to “[p]lease continue to work on improving your teaching strategies guided by the important points we emphasized during our conversations, and interactions with the children in the classroom.”

Respondent thereafter did not give the large group lesson on insects when she returned to school after the Memorial Day holiday (and therefore did not take up Eftimova’s suggestion she invite Prophete to visit the classroom and observe). Instead she waited until Eftimova returned to South Street School on Thursday, June 1, 2017. B-27 (June 1, 2017, email from Eftimova to DeCaro). In her post-lesson email to Respondent, Eftimova offered several questions and comments, and invited Respondent to reflect on same. Id. Respondent did not send Eftimova a reply.

Prophete completed Respondent’s 2016-2017 Annual Summative Evaluation on June 12, 2017, which resulted in an overall annual evaluation score of partially effective. This required she be placed on a CAP for the 2017-2018 school year. However, because Respondent’s position at South Street School had been “cut,” as explained in a letter she received from Employee Services’ Talent Office on April 19, 2017, her 2017-2018 CAP would have to be developed in collaboration with the administration at her new school. R-16, R-17.

By letter from the Talent Office dated June 14, 2017, Respondent learned her placement for the 2017-2018 school year

would be as a Kindergarten Teacher at Thirteenth Avenue School. B-18. Upon contacting the school, Respondent learned there in fact was no open Kindergarten position, and she would likely be assigned a second grade class. R-59. She wrote to Employee Services to protest the assignment change, which she characterized as harassment and as an attempt to sabotage her success by giving her a placement for which she lacked experience and training. B-19. In the meantime, she communicated with Thirteenth Avenue School's Vice Principal, LaShanda Gilliam, regarding her experience with the 2nd Grade curriculum (CKLA). Respondent previously was trained on this curriculum, and she indicated she would review online materials. Id.

Gilliam recalled that at the beginning of the 2017-2018 school year, 13th Avenue School was still interviewing candidates for a second grade teacher vacancy. 1/7 at 91. She testified that the School District assigned Respondent to cover the vacancy until the position was filled through its regular hiring practices. See generally, Id. at 93-101. Respondent's temporary assignment to cover the vacant second grade class was appropriate, given her Pre-K through 3 certification. Id. at 91.

Gilliam added that when the second grade vacancy was filled by the new hire, approximately thirty (30) days into the school year, Daughtry advised Gilliam and 13th Avenue School Principal Simone Rose that Respondent would remain assigned to their

school. Id. at 106. Rose and Gilliam then determined Respondent could be effective as a support teacher for under-performing Kindergarten students. Gilliam explained,

Principal Rose and I started thinking about how Ms. DeCaro could really be a good fit for us. We knew she had preschool background. And I had three kindergarten teachers who had all been complaining about some of their students that came to kindergarten not ready, still needing reinforcement, lacking in their kindergarten skills. So then Principal Rose and I thought maybe we could have Ms. DeCaro . . . take a few of our kindergarten students from each of the three classes and give them more support so they were going to have the same literacy, same math as their counterparts, just in a smaller setting with more engagement with the teacher.

1/7 at 107.¹²

After Respondent's assignment as the Kindergarten support teacher, Gilliam scheduled a Goal-Setting Conference on October 23, 2017, to discuss Respondent's specific goals and areas for improvement as a teacher, including the student learning goals and professional development goals she previously should have shared with Gilliam through EdReflect. The purpose of the conference was also to finalize her CAP, which necessarily shall have incorporate those goals. B-15.¹³

¹²The assignment to support Kindergarten instruction was consistent with Respondent's initial placement notice at Thirteenth Avenue School, R-18, a placement which had been acceptable, even desireable to her. R-19.

¹³Under the 2017-2018 Framework, "[t]eachers must initiate the IPDP or CAP forms online in the EdReflect system and share them with their administrator" through the system prior to the

Respondent, however, refused to develop or complete her CAP. 1/7 at 122; B-15. She told Gilliam she had been advised by Labor Relations she should not complete a CAP. Id. After Gilliam determined Respondent had not been given such an instruction, 1/7 at 128-29, she again attempted, on November 6, 2017, to schedule a "CAP Goals/Pre-Conference" for November 8, 2017. B-15. She advised Respondent, "[a]t this meeting we will create a step by step plan of action to achieve targeted outcomes for your success this school year." Id. By email dated November 7, 2017, Respondent declined the invitation to attend the November 8th conference. Id.

Thereafter, the School District, on or about November 13, 2017, expressly instructed Respondent she must complete and sign her CAP. Id. (November 13, 2017, email from Xiomara Alvarez to Gilliam, Rose and Daughtry). By email dated November 15, 2017, Gilliam again wrote Respondent, requesting that they meet on November 17, 2017, to prepare and complete her CAP. B-15. Gilliam identified and detailed specific goals drawn from Respondent's 2016-2017 annual evaluation, specifically related to Competencies 1, 2 and 4. Id.; 1/7 at 125-26. Gilliam detailed

goal-setting onference that marks the start of "the yearly evaluation process. B-31 at 16, 23; 1/7 at 122-23. The CAP is then finalized at the goal-setting conference. Id. This is a collaboration that results in "a shared tool to use in communicating about goals and anticipating growth areas . . . throughout the year." Id. at 16.

expectations Respondent would improve and grow by, among other things, developing lessons that show evidence of reflection on previous learning, unit objectives and long-term goals; posting clear learning targets in her classroom; modeling the expectations aligned to each day's target and tasks; giving students clear directions; developing strategic learning tasks in which students participate in developing a plan of action that fosters an investigation approach through which children can problem solve independently; engaging children in a cycle of inquiry when exploring and experimenting with math; developing tasks in which students investigate, gather and analyze data and identify patterns and rules, and document the process; articulating with supporting evidence students' growth; documenting all data collected on students in the CKLA skills tracker and the AMOR math sheet, and thereby show evidence of each students' progress; developing an organized method of collecting and maintaining student work portfolios that provide evidence of each student's over-time growth during the school year; and making sure she is able to articulate clearly with supporting evidence students' growth to administrators and parents. Id. (November 15, 2017, email re "CAP Conference" from Gilliam to DeCaro and Rose).¹⁴

¹⁴Gilliam testified that this set of goals was not a CAP, but she was seeking still to establish a process that was CAP-like in order to provide assistance she had determined Respondent

On November 16, 2017, Respondent wrote to Gilliam,

Per my conversation with Ms. Alvarez, in Labor Relations, I explained that I would delineate any processes when it came time to do a CAP. I explained to Ms. Alvarez that until someone can tell me why I have not receive[d] any training from the district since 2011, I would not [partake] in the CAP process. However Ms. Gilliam, thank you, for extending yourself and planning the steps needed for my CAP.

B-16. Rose thereupon issued to Respondent a "Letter of Warning/Insubordination." Id. Rose provided Respondent with a copy of the statutory mandate requiring she prepare, with Gilliam, a CAP, and added that her "behavior is unacceptable and [her] failure to improve will result in further disciplinary action." Id.

Gilliam thereafter asked Respondent to meet with her on December 6, 2017, for a pre-observation conference in connection with an observation she scheduled for December 8, 2017. Gilliam told Respondent,

You can select the lesson you feel the most comfortable with. Attached is the pre-conference form. You may use this document to help plan your lesson though it is

might need in order to be successful. She explained,

Because I was given her 2017 annual from her previous school, and I read that and I saw some of things that they indicated she needed to work on and I just felt that since she hadn't developed her own, which is usually the process, let me look at this [and] see if I can pull out some things I could possibly use to help her.

1/7 at 147.

not mandatory. We will discuss this lesson in depth in an effort to make certain that I assist you as much as I can. I am also attaching the Effective Teacher Framework so that you consider the following indicators when planning the lesson: 1a, 1b, 1c, 2a, 2b, 2c, 2d, 3a, 3b, 3c, 3d, 4a, 4b, 4c. Make certain every indicator is represented in your lesson.

B-15 (12/5/2017 email from Gilliam to DeCaro). Respondent did not attend the pre-observation conference, but did respond via email on December 5, 2017:

Ms. Gilliam, once again I would like to take this time to thank you in making sure I am on pace with state-district guidelines. However, I must decline your offer for a pre-conference meeting due to ongoing grievances.

Id. (12/5/2017 email from DeCaro to Gilliam).

The observation was postponed and conducted on December 18, 2017. Gilliam scheduled a post-observation conference for December 20, 2017. By email dated December 19, 2017, she told Respondent, "[i]t was a pleasure being in your classroom. I'd like to invite you to the post-conference to discuss your lesson and provide you with your rating and constructive feedback toward your instructional practices." Id. Respondent refused to attend the post-observation conference. Id.; 1/7 at 175.

On December 20, 2017, Gilliam completed the Formal Observation Summary Form for the December 18, 2017, observation. She rated the lesson partially effective. B-10. The Observation Report echoed many of the issues highlighted in Respondent's

observations and evaluations from the prior school year:

- Respondent did not provide students with a clear understanding and direction on what to do because she did not spend enough time modeling what she wanted them to do.
- Instruction was not tailored to move students toward mastery, as they all were asked to do the same tasks in the same way.
- When she asked students questions they could not answer, she simply answered the questions herself instead of helping them with strategy to come up with answers.
- Respondent did not check for understanding. Students did not demonstrate that they knew more at the end of the lesson than they did at the start. The lesson was not a demonstration of learning, but of the students' knowledge of what they previously had been taught.

B-10. Gilliam noted she was unable to have a "CAP reflection" with Respondent, because there was no CAP and because Respondent had declined to meet with her in advance of the lesson to set goals. 1/7 at 162. However, she did provide Respondent with four (4) pages of "action steps" to assist her with clarity, to guide her in developing higher ordered questioning and tasks, to help her learn to demand greater precision and evidence from scholars, to encourage her to develop positive rapport with students, to assist her with strategies for checking for understanding. Gilliam effectively used her observation report to review with Respondent the range of strategies, skills and practices for improving her pedagogy that likely would have been reviewed and discussed at the goal-setting conference, had

Respondent agreed to attend. Indeed, along with noting Respondent's refusal to attend the post-observation conference, Gilliam wrote,

Ms. DeCaro refuses to attend any conferences with members of the leadership team. It is unclear how to effectively coach Ms. DeCaro if she refuses to attend conferences to discuss her areas of growth.

Id.

Thereafter, Respondent received a formal observation by Rose of a math lesson on January 25, 2018. It was unannounced. Again, she received an overall rating of partially effective. B-12. Rose noted, with reference to specific incidents, that Respondent was inconsistent in her demand for precision and in tailoring instruction. She noted the absence of systems and routines, and the poor transitions. Instruction time was lost because students frequently were off task.

Rose further noted that Respondent did not check for understanding of the whole group, and performed only limited checks for individual students. She did not circulate to give feedback and was not able to monitor student progress. Rose observed, "[t]eacher has not ensured to the growth and progress of students in the area of mathematics. Students are not able to demonstrate mastery during the lesson." She noted the scholars were not meeting grade-level expectations. Id. She added the following summary comments:

Ms. DeCaro develops a lesson where students are

supposed to show 14 in multiple ways. She does not model or practice with students the multiple ways. She breaks up into small group and students struggle to show mastery because they have not had instruction or time to practice. Students are easily distracted and discouraged. Teacher does not have systems, routines, or positive incentives that will keep students focused or engaged.

B-10.

Thereafter, Gilliam completed Respondent's Mid-Year Review on or about February 15, 2018.¹⁵ Respondent declined to attend. 1/7 at 185; B-15 (February 15, 2018, email from DeCaro to Gilliam). Gilliam prepared the Mid-Year Review based upon the observations she and Rose had conducted on December 18, 2017, and January 25, 2018, respectively. 1/7 at 187. Although each of those observed lessons was rated partially effective, the Mid-Year Review overall rating was ineffective. B-12; 1/7 at 191. Under the rubric for scoring competencies on the Mid-Year Review, Gilliam deducted two (2) points from Respondent's overall score because under Competency 5, Commitment to Personal and Collective Excellence, the rating equivalent to partially effective, "slightly below expectations," required the subtraction of the 2 points. This resulted in a total of six points (2 point each for competencies 1 through 4, and minus 2 points for competency 5), which is an "ineffective" rating. B-31 at 21. Respondent's low score for Competency 5 reflected her refusal to prepare a CAP and

¹⁵Respondent was out sick from February 1 through February 14, 2018.

attend meetings with administrators to discuss her growth and strategies for student progress. 1/7 at 200.

On the Mid-Year Review Summary Form, Gilliam wrote,

Ms. DeCaro has a great deal of improvements to make. Ms. DeCaro has admitted feeling stifled in her current placement. She believes a new assignment will encourage her to grow and improve her practice.

B-12 at 6. Although, as noted, Gilliam and Respondent did not meet to discuss the Mid-Year Review, Gilliam testified she knew from ongoing informal conversations with Respondent how she felt about her placement. 1/7 at 201.

Gilliam thereafter planned an unannounced formal observation and reported to Respondent's classroom for that purpose on April 4, 2018. B-13. However, when she entered the classroom to conduct the observation, Respondent refused to teach. 1/7 at 209. Respondent told Gilliam, in front of the children, that she was not subject to being observed, and she therefore was not going to allow the observation to proceed. Id. She restated the foregoing in an email to Gilliam at the end of the school day.

B-15 (April 4, 2018, email from DeCaro to Gilliam). Gilliam wrote in the Observation Report,

On April 4, 2018, at 9:00 a.m. you were scheduled for a formal observation. When the observation was scheduled to take place you refused to engage in instruction claiming that you were advised by labor relations not to teach when an evaluator was present. Rather than engaging your scholars in sound instruction you instead took them to the bathroom. When scholars returned you instructed them to put their heads down. Scholars were

supposed to be engaged in their literacy block at 9:00 a.m.

B-13 at 3, 5.¹⁶ Gilliam gave Respondent an overall observation score of ineffective. B-13 at 4.¹⁷

Subsequently, on or about May 1, 2018, Gilliam began completing Respondent's Annual Summative Evaluation. She gave her an overall rating of ineffective. B-14c. As with Respondent's Mid-Year Review, she received an ineffective rating even though her performance in Competencies 1 through 4, was rated partially effective, and her rating in Competency 5 was "slightly below expectations." In other words, she did not receive the lowest rating in any measured category. The final rating of "ineffective" came about because her Competency 5 rating, rather than being worth 2 points, as were her comparable ratings in Competencies 1 through 4, necessitated, under the

¹⁶Gilliam thereafter counseled Respondent that "[f]ailure to engage in instruction during instructional time constitutes a gross neglect of duty. . . . Please be advised that instruction must take place per your daily schedule. Continued failure to fulfill your duties and responsibilities as outlined in your job description will result in further disciplinary action." B-17. The following week, on April 12, 2017, Respondent was counseled again in connection with her refusal to cooperate with Gilliam's directive to provide instruction to students who did not go on a school trip to the Camden Aquarium, because she had expected, and wanted, to go on the trip herself. B-18. The record is unclear whether either of these incidents resulted in formal discipline. 1/7 at 220-21.

¹⁷Because Respondent refused to teach, Gilliam could not complete the evaluation for all competency indicators. However, for each of those she was able to score, she rated Respondent ineffective. B-13.

Framework, a deduction of 2 points. See B-31 at 21. This resulted in a total score of 6, which under the rubric constitutes an "ineffective" overall rating. B-14c, B-31 at 21.¹⁸

Respondent submitted an "Appeal" to Gilliam's Annual Evaluation of her 2017-2018 teaching performance. B-14b at 14-15. She based her appeal upon "emails located in my personnel file date 2011," but did not indicate what those emails stated or how they may have impacted the Final Evaluation under the Act's standard of review.¹⁹ She asserted NPS "allowed administrators

¹⁸Gilliam explained there are three (3) versions of Respondent's 2017-2018 Annual Evaluation on account of errors she made using the drop down box in the rating software. Gilliam testified about her realization, upon reviewing an initial draft of the Evaluation that she had incorrectly determined that Respondent had partially met the year's goals. Upon reflection, she realized that Respondent, by refusing to prepare or complete a CAP, had not set any goals. She consequently changed the entry in B-14c to "did not meet goals." 1/7 at 230. Gilliam further explained that she clicked the wrong box for Respondent's final rating as "partially effective," when the rubric application resulted in a final score of 6, which is "ineffective." She made the change in the final draft of Respondent's annual evaluation. B-14c. A review of all three drafts of Respondent's 2017-18 Annual Evaluation, B-14a, B-14b and B-14c, confirms that the tally on each is 6 points, and thus the "ineffective" rating was mandated under the Framework and therefore was correct.

¹⁹In her closing brief, Respondent argues that, "the new information she discovered when she obtained a copy of her personnel file in the fall of 2017 (i.e. the email exchanges between Gray and district employees such as Anita Ziyad, Anne Miller and Laurette Asante, Esq.), clearly demonstrate that the actions of Gray and the District in removing her from her classroom teaching assignment and keeping her out of that assignment for three (3) entire school years, were intentional." Respondent Brief at 87-88. In her brief, Respondent alleges that

to partake in unfair practices and procedures by removing [her] from [her] positions and gave [her] no training." She referred to unspecified actions by Gray going back to 2014. She asserted her partially effective ratings in prior years going back to 2014 were due to the practices of administrators who refused to give her training and who violated her CAPs. She alleged that her ineffective 2017-2018 rating was due to the fact NPS Labor Relations did not resolve "the grievance filed." Id. She added,

So I am appealing this ineffective based on the district's practices and procedures and withholding evidence in a federal case.

Id. She additionally protested the fact she was required to teach "pull-out" students, the fact she was assigned to a school with an extended day (to 3:50 p.m.), and the fact her CAPs were "never followed." Id. at 15. She complained about the statutory changes in TEACHNJ. Id.

As previously noted, the instant Tenure Charge of Inefficiency was filed on July 30, 2018.

Gray, Ziyad and others exchanged an email in early June 2011 about "filing another DYFS allegation" against Respondent after the Institutional Abuse Investigation Unit (IAIU) had determined on or about April 1, 2011, B-9, that the allegation of abuse on February 15, 2011, B-8, had been deemed "unfounded." B-9. June 2011 emails to or from Gray and others identified by Respondent in her appeal are all dated June 8, 2011, or later. See R-47. The concerns stated in these emails, however, appear most likely to have been prompted by a new abuse allegation related to a purported incident reported by a student's grandmother on June 7, 2011, prior to the emails at issue. Respondent's claim the emails evidence residual hostility against her because of an old "unfounded" abuse allegation is not demonstrated on this record.

DISCUSSION

Positions of the Parties

The School District asserts it evaluated Respondent consistent with the procedures and standards established under its State-approved Framework during the school years at issue, and the statutory criteria for tenure charges have therefore been met. It points out these charges against Respondent were mandated under TEACHNJ after Respondent's annual summative evaluations in three (3) consecutive years were "partially effective," "partially effective," and "ineffective." It argues that because Respondent cannot prove any of the four (4) statutory "defenses" that are reviewable in this proceeding, the charge of inefficiency must be upheld.²⁰

Moreover, the School District adds, even if Respondent is able to prove one of the four (4) statutory defenses, I still must uphold the charges and dismiss her, unless the hearing record demonstrates that the proven defense materially affected

²⁰The School District correctly points out that TEACHNJ, N.J.S.A. 18A:6-17.2(a), allows the arbitrator to consider only the following four (4) defenses:

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

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

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

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

the outcome of the evaluation. According to the School District, this is "a challenging burden." Citing Agency Dkt. No. 216-8/18, at 41.

The School District emphasizes the fact TEACHNJ does not authorize me to evaluate the quality of an administrator's evaluation, meaning that I am "prohibited from second-guessing an evaluator's judgment as to a teacher's classroom performance." NSD Brief at 37. Thus, the District argues, my being limited to the narrow statutory grounds for review, requires under the facts of this case that I uphold the inefficiency charge against Respondent and remove her tenure. In short, the School District asserts her performance evaluations for the 2015-2016, 2016-2017 and 2017-2018 school years support this tenure charge, and she must be dismissed..

With respect to Respondent's alleged defense NSD failed to adhere substantially to its evaluation process, the School District insists it satisfied the statutory requirements for observing and evaluating her teaching, and in doing so it adhered to the Framework. In fact, the School District argues, what stands out, particularly in 2016-2017 and 2017-2018, is Respondent's refusal to cooperate with her school administrators' sustained, good faith efforts to use the Framework as a means to improve her teaching skills and her ability to guide her students towards mastery of the Curriculum. Thus, it argues, what impeded

Respondent's progress towards teaching efficiency was not any failure by District personnel or school administrators to provide her support, as she claims, but rather her self-defeating hostility towards her supervisors' efforts to help her. As examples, the School District highlights Respondent's refusal to meet with Murray following her April 28, 2017, informal observation (B-13), her refusal to sign the May 16, 2017, observation report prepared by Daughtry (B-8), and her written rejection of Gilliam's invitation for her to attend the post-conference for the December 18, 2017, observation. B-10. The District adds that Respondent also refused to meet for a post-observation conference on April 4, 2018. (B-13).

It acknowledges that Respondent, in certain instances, did submit rebuttals challenging the findings contained within certain observations and evaluations, but her appeals at this stage amount to a request by her that I second-guess her evaluators' judgments of her classroom performance, a role I cannot assume under the terms of TEACHNJ. NSD Brief at 39.

NSD argues, moreover, that even if there might arguably have been some oversight in an observation, that fact cannot legally be deemed a "material effect" on the outcome of an evaluation that is otherwise well-supported by evidence-based assessments. Id. at 40.

Nor, according to the School District, is there evidence to

support a finding it departed substantially from its obligations to help Respondent develop and implement her CAPs for the relevant school years. For instance, it argues, the 2016-2017 CAP was prepared collaboratively between Respondent and the South Street School administration, set forth SLGs and professional improvement goals under a timeline chosen by Respondent. The School District argues, Respondent's 2016-2017 CAP was essentially her creation, with important feedback, of course from administrators, but a document only she could edit.

Indeed, the School District insists that in all of the back and forth during the parties' presentation of this case, it must not be forgotten that Respondent's CAPs were documents she largely created to set goals for her students and for herself, and she then resisted, in both 2016-2017 and 2017-2018, her administrators' efforts to help her use the documents as roadmaps for advancing her professional skills.

In fact, her approach to the preparation of her CAPs was, at most, half-hearted. The School District points out that Propete had to resort to serving her with a disciplinary notice to persuade her to complete her 2016-2017 CAP, and in 2017-2018 she rejected entirely Gilliam's instruction she was required to produce one. Respondent, the School District argues was lackadaisical about her CAP in 2016-2017, and defiant against preparing it in 2017-2018, even though its obvious purpose in

each was to help guide the improvement and growth of her pedagogy.

Further arguing that Respondent cannot pass the blame for her ineffectrive and partially ineffective evaluations onto others, the School District stresses her ongoing refusal, during the relevant school years, to record data necessary to measure student growth objectives. Such data collection was known by Respondent to be essential to her obligation to ensure her students' growth. The School District points out that teachers, particularly those like Respondent, who have been challenged to develop an effective practice of differentiated instruction to ensure all of her students, regardless of ability and past achievement are on the pathway towards mastery, must make special efforts to know where their learners are in order to provide them meaningful and, ultimately, successful, educational support. Respondent, the School District argues, consistently resisted that guidance.

The School District adds that Respondent's insistence her failure to record and monitor student progress was impeded by the unremitting failure of the District's information technology system to allow her access to Teaching Strategies' GOLD data collection and processing system, simply is not credible. Even allowing that she, apparently in a unique experience at South Street School, somehow was denied routinely the ability to access

the GOLD System, the School District points out that data entry was only part of her obligation.

Equally important was the data collection itself, which demonstrated that she was properly observing and monitoring her students' progress on a daily basis, and then recording those observations in a systematic and meaningful way so it could inform her approach to each child. According to the School District, there is no evidence that Respondent, even if she was frustrated by obstacles to her computer access, nevertheless kept paper records of her students' progress that she would then use to tailor future instruction, and for communication with her students' parents about their children's progress and targeted areas of growth.

With respect to Respondent's defense that her evaluations are tainted by mistakes of fact, the School District asserts there is no record evidence to support that claim. On the contrary, the School District argues, "Respondent's summative evaluation scores were based on formal and informal observations of her teaching, any data she provided, including "over-time" indicators, and that these components were scored in accordance with the School District's Framework." School District Brief at 46.

So, too, according to the School District, there is no credible evidence Respondent's evaluations were based on the

improper factors of political affiliation, nepotism, union activity, discrimination or other conduct prohibited by law as a motive for bringing the tenure charges. According to the School District, there is no credible evidence of "retaliatory animus" against Respondent by any school administrators or District personnel involved in rating and evaluating her teaching. Indeed, it points out, in order to ensure objectivity in the assessments made in various reports about Respondent's pedagogy, it arranged for multiple observations by persons with no previous connection to her or knowledge of her history in the NPS System. Nor, it adds is there actual evidence from which a fact-finder might conclude the administrators at 13th Avenue School had any knowledge about Respondent's past issues.

Concerning the statutory defense based on Respondent's claim the School District's evaluations of her teaching were arbitrary and capricious, her contention must fail, the School District argues. Citing Bayshore Sewerage Company v. Dep't of Env'l Prot., 122 N.J. Super. 184, 199 (Ch. Div. 1973), aff'd o.b., 131 NJ Super 37 (App. Div. 1974), the School District argues the evidence must show it had "no rational basis" for its tenure charges. It quotes Judge McGowan's decision in Bayshore Sewerage Co.:

Arbitrary and capricious action of administrative bodies means willful and unreasoning action, without consideration and in disregard of circumstances. Where there is room for two options, action is not arbitrary

or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been reached.

Id., 122 N.J. Super. at 199.

Applying this standard, the School District argues that Respondent's contentions regarding various errors by the administrators who observed and evaluated her teaching performance do not demonstrate arbitrary and capricious actions, especially where, as here, the evidence overwhelmingly shows that each reviewer and evaluator adhered to the rubric established by the Framework and, further, that they made findings that were based on facts rather than inference. Likewise, they drew conclusions and issued ratings that were grounded in those facts.

The School District argues, citing IMO Jastrzembski, Agency Dkt. No. 216-8/18, that my jurisdiction as arbitrator involves determining whether the District acted arbitrarily and capriciously, not whether its observers could have weighed different factors or performed a different evaluation. Here, it argues, the documented evidence of Respondent's inefficiency is so "voluminous," a finding the District acted arbitrarily and capriciously would be "unsupportable." NSD Brief at 48-49.

Thus, based on the foregoing, the School District asserts Respondent has failed to meet her burden of proving any defense against these charges, and there is no need for me to conduct a materiality analysis. Indeed, as to Respondent's claims of

harassment and/or retaliation pertaining to time periods pre-dating the school years covered by these charges, the District points out I previously sustained its objections to such testimony. 2/15/2019 at 32-33. It also points to my inquiry to Respondent concerning the nexus to this dispute of old child abuse allegations, as well as earlier and unrelated write-ups, as these are not part of the subject tenure charge. NPS Brief at 50-51.

The School District adds that Respondent reflexively points fingers, without evidence, as when she accused school administrators with having improper purposes in making changes to her classroom assignment at the beginning of the 2016-2017 school year, and when she sought to assign responsibility for her nearly routine unpreparedness to the fact she did not have a teaching assistant. Id. at 51. Regarding Respondent's contention her complaints about her inability to access the GOLD System were ignored, the School District points to the fact the lone time she contacted Eftimova by email about an access problem, Eftimova responded promptly, while on another occasion, immediately following Respondent's verbal complaint that her GOLD account remained inaccessible, Eftimova successfully gained access. NPS Brief at 52.

The School District further questions the credibility of Respondent's contentions she was denied the training and

assistance owed her under TEACHNJ and the Framework, when the record consistently shows the multitude of ways she rejected outright her administrators' efforts to give her support and help her succeed. It points to her refusal to complete her CAP in 2017-2018, her rejection of opportunities to attend pre-observation conferences, and her unresponsiveness to emails and other opportunities to share feedback with her supervisors.

The District argues, Respondent "evidenced absolutely no interest in her own professional development, and instead squandered the many resources provided to her by the School District, her schools, her teacher coach, and the curriculum itself." Id. It points to my inquiry at the hearing concerning specific steps she might have taken to improve her skill set as a teacher, especially following observations and evaluations that put her on notice what was expected from her in order to be deemed an effective teacher. Id. at 52-53, quoting 2/15/2019 at 19-19.

In sum, the School District argues that Respondent has failed to demonstrate any facts supporting any of the four defenses, and further, that there is no evidence any reasons other than proper factors influenced the observation reports and resulting evaluations that led to the instant charge. It argues, therefore, that the tenure charge of inefficiency should be upheld and Respondent should be dismissed from her employment by

the Newark Board of Education.

Respondent, on the other hand, asserts the tenure charge against her must be dismissed and she should be awarded back pay and reinstatement to an appropriate teaching assignment. According to Respondent, her Annual Summative Evaluations for the 2015-2016 and 2016-2017 school years are legally invalid, and the tenure charge must therefore be dismissed.

According to Respondent, the Annual Summative Evaluation for the 2015-2016 school year that was performed by South Street School Principal Gray, and which rated her partially effective, cannot properly be a basis for these tenure charges because of the District's failure, during that school year, to adhere substantially to the evaluation requirements of TEACHNJ and AchieveNJ. Respondent argues that she started the 2015-2016 school year at a tremendous disadvantage caused by the School District's prior failure, over several years in fact, to give her necessary and effective training and support. During the 2011-2012, 2012-2013 and 2013-2014 school years, she argues, the School District denied her a regular classroom and instead, assigned her to provide in-class support in various 1st and 2nd grade classrooms. As a result, she did not receive the professional development offered to other teachers in CLI or in the Framework. As a result, her transition to the position of

classroom teacher in 2014-2015 "was a difficult one." Respondent Brief at 69.

Respondent concedes her 2014-2015 rating of partially effective is not before me in this proceeding, but adds that her 2014-2015 year-end rating did require she be placed on a CAP for the following school year, 2015-2016, which is covered by these charges. She points out the law required that her 2015-2016 CAP be prepared by October 30, 2015; that she receive a minimum of three (3) observations lasting at least 20 minutes; that at least one (1) of those observations be announced with a pre-observation conference; that all the observations be followed by a post-observation conference withing fifteen (15) working days during which she and her designated supervisor shall have discussed her progress toward the goals outlined in her CAP; that the observations be conducted by at least two (2) different observers; and that she receive a timely mid-year review. Further, Respondent asserts that,

[a]s a teacher on a CAP, the law also requires that she be provided with additional professional development, beyond that provided to all other teachers, and specifically designed to correct any areas in which she was deemed to be struggling or failing to meet board established performance standards.

Respondent Brief at 69.

According to Respondent, the District failed substantially to adhere to the foregoing requirements, and the rating of partially effective she received on her 2015-2016 annual

evaluation therefore is "invalid for purposes of filing a tenure charge of inefficiency against [her]." Id. at 69-70. Respondent contends that her 2015-2016 CAP failed to delineate any specific responsibilities of the District and of her supervisor, Gray, to assist her with improving her pedagogy.

Her CAP, she argues, should have spelled out duties and obligations of her supervisors beyond mere walk-throughs, observations, conferences, reviews of lesson plans and logs, etc., as those are supervisory obligations owed all teachers. Respondent insists her CAP failed to meet bare minimum requirements by its failure to specify additional offerings of support, such as working with a teacher coach, or arranging for her to observe other high performing teachers. In short, she argues her 2015-2016 CAP was legally deficient because it failed to articulate the means and the framework for helping her meet specific, verifiable goals, in particular, professional development designed to correct the needs identified in her 2014-2015 annual evaluation. Respondent Brief at 70.

Respondent additionally points out she received only two (2) observations during the 2015-2016 school year, not the requisite three (3). So, too, she adds, her first observation, for which there is no paper record, occurred on October 22, 2015. Her post-observation conference did not take place until January 2016, plainly in violation of the fifteen (15) work day mandate.

Her second observation for the 2015-2016 school year, which was unannounced in early March 2016, also is not memorialized by a written report. Respondent argues that there is no record basis to confirm the reasonableness of her mid-year and annual evaluations without documentation of the ratings she received in her two (2) observations.

Respondent argues further that she was not provided with professional development in the 2015-2016 school year, beyond the CAP which, she adds, was finalized late, in November 2015. In short, she argues that the School District's serious failure to adhere to its basic responsibilities owed to her under the Framework for the 2015-2016 school year must negate her partially effective rating for that year. The 2015-2016 annual evaluation, accordingly, cannot fairly be used to support this tenure charge of inefficiency, and the charge, she argues, must be dismissed.

Respondent similarly argues her annual evaluation for the 2016-2017 school year is legally defective. She contends the School District failed in that school year, as well, to adhere substantially to the requirements of TEACHNJ and AchieveNJ, and her partially effective rating for 2016-2017 cannot be a basis for the instant tenure charge.

Respondent contends that from the very start of the 2016-2017 school year she was unfairly placed at a disadvantage, as her teaching assignment changed, and she consequently was not

afforded the training and professional support to which she was entitled. In particular, she points out, she only received her permanent assignment as a Pre-K teacher at the end of September 2016, and consequently missed the opportunity for critical and necessary training in the Creative Curriculum. She had not previously used or been trained on that Curriculum.

Indeed, Respondent argues, her 2016-2017 CAP specifically requires she use Creative Curriculum's GOLD assessment tool, even though she previously had received no training on the GOLD System. In addition, she asserts that her CAP set her growth areas in every one of the five (5) Framework competencies, each tied to specific action steps that were based on components of the Creative Curriculum. Given her obvious lack of familiarity with the Creative Curriculum, this ensured her inability to meet the professional goals set forth in her CAP.

Securing Respondent's pathway to failure, she argues, was the paucity professional development opportunities the School District provided, in contravention of the promises of assistance contained in her CAP. In particular, she points to the broken promise in her CAP that she will meet "one to two times per month" with a teacher coach to support her understanding of Creative Curriculum. That coaching was not provided, nor even offered, she argues. TEACHNJ and AchieveNJ required that the District shall have fully and properly provided her with the

support delineated in her CAP, and this they failed to do. She asserts, "the District's failure to provide [her] with any meaningful supports . . . constitutes a failure to adhere substantially to the evaluation process." Respondent Brief at 76.

Respondent focuses, in particular, on what she alleges was irregular and inadequate coaching she received from Eftimova during the 2016-2017 school year. She asserts Eftimova fully understood the uphill struggle she faced preparing to teach a Pre-K class after a seven (7) year hiatus from that grade and without any prior experience with the Creative Curriculum. She states Eftimova knew "they had a lot of work to do," and yet offered assistance that was intermittent and, even when available, focused too heavily on classroom set up rather than on the obvious help she needed with lesson preparation and instruction. Respondent Brief at 76. Rather than the twice-monthly coaching sessions she contends were promised her by Eftimova, during the entire 2016-2017 school year Eftimova arranged only seven (7) coaching sessions.

According to Respondent, moreover, the Creative Curriculum was far too vast and complicated to learn, let alone master, with the intermittent and brief training opportunities she received. Having been delayed that school year in receiving a permanent Pre-K class assignment, Respondent was denied the opportunity to

attend the comprehensive six (6) hour training symposium offered at the beginning of the school year. Moreover, while the other Pre-K teachers received their own copies of Creative Curriculum's "sizeable kit (several boxes) consisting of study guides, books, and other instructional materials that were required to be utilized in a very specific manner," id. at 76-77, the School District delayed Respondent's receipt of her own Curriculum materials until October. This full suite of books, guides, pamphlets, cards and other instructional tools were important not only to her learning the full Curriculum, but also to its daily implementation. To her further disadvantage, Respondent stresses that the only other formal training offered on the Creative Curriculum was scheduled on a day she had a personal conflict, and she therefore could not attend. The single day of training she received in using the GOLD data collection and assessment system was insufficient for a teacher with no prior experience in the Curriculum or its GOLD assessment system.

Respondent describes the coaching sessions provided her by Eftimova as meager, and calls them "far too little too late." Id. at 77. She recalls that her initial session with Eftimova on October 6, 2016, was, as noted, devoted primarily to discussing the help Eftimova would be giving her. The second session, on October 20, 2016, "essentially" involved an observation of some morning activities in the classroom, and some rearranging of the

classroom based on some safety and health concerns. Eftimova, according to Respondent, unreasonably stressed that she should be implementing the Creative Curriculum, and despite knowing Respondent was not familiar with it, the coach "did not spend any time with [her] on reviewing and implementing [it]." Id. at 77-78.

Although, Eftimova and Respondent planned a much-needed third session for early November 2016, Eftimova did not visit Respondent's classroom until December 6, 2016. By then, Respondent recalls, she had received her first formal observation from Prophete, on which she received an overall rating of partially effective. The primary focus of this third visit was helping Respondent archive her students into the GOLD System in order to enable her to generate a current class list and begin using the system for data collection.

Eftimova's fourth session with Respondent did not take place until February 28, 2017, 12 weeks after her previous visit, Respondent observes. This untimely meeting was convened after yet another formal observation as well as Respondent's mid-year review by Prophete. Respondent recalls that Eftimova's February 28, 2017 visit was very brief, as the coach was also assisting another Pre-K teacher. Respondent notes the unhelpfulness of this visit, and in particular, Eftimova's realization halfway through the school year and after only a handful of meetings with

Respondent, that her lessons were not aligned with those of the other Pre-K teacher. Respondent contends this should have been expected by Eftimova, since Respondent had acquired her set of Curriculum materials a month after the school year began, and Eftimova, although being aware Respondent had not received the training offered other teachers, made no special effort to assist her with its implementation. Indeed, according to Respondent, Eftimova should have realized she needed and was deserving of extensive one-on-one training, not only on Curriculum implementation, but also with "using the GOLD System and inputting her anecdotal information into the system." Id. at 79.

Moreover, and notwithstanding Respondent's obvious ongoing difficulties with the Curriculum, Eftimova did not make another visit to Respondent's classroom until May 12, 2017, nearly three (3) months later. This was the coach's 5th visit. According to Respondent, by then Eftimova should have completed approximately 15 of her promised semi-monthly visits, and her unhelpfulness was taking its toll. In the ten (10) weeks between Eftimova's 4th and 5th coaching sessions, Respondent received yet another formal observation (by Murray) and had been informed by South Street School Principal Nazario that her position at the school had been cut for the 2017-2018 school year, and she should seek a position at another school in the District.

According to Respondent, Eftimova, during the May 12, 2017,

coaching session, finally realized she had been remiss in helping her with using the Creative Curriculum materials to plan and deliver lessons. She therefore promptly scheduled a 6th coaching session for May 22, 2019, at which time "she and [Respondent] finally sat down together and planned a large group lesson using the Creative Curriculum study guide and other Creative Curriculum materials." Id. at 80. At the 7th and final coaching session, Eftimova observed Respondent deliver the lesson they had planned on May 22nd, and according to Respondent, had positive comments about what she observed. According to Respondent, her problems accessing the GOLD System had continued, and Eftimova gave her additional help in that final coaching session with inputting and finalizing data.

From the foregoing, Respondent argues the School District, during the 2016-2017 school year "failed to provide [her] with the professional support to which she was entitled as a teacher on a CAP." Id. at 81. According to Respondent, the training and assistance she received was intermittent and insufficient, and plainly not the level of support required to best ensure the success of a struggling teacher, particularly one who had been thrust into a situation where she had a late start with an unfamiliar curriculum. Eftimova's sparse involvement with Respondent violated her "pledge" to ensure Respondent would make up for her lost time and become proficient with the Creative

Curriculum. Id. Eftimova's cursory engagement with Respondent's professional development was especially glaring, Respondent argues, given the coach's direct familiarity with her lack of training and experience.

Although the limited assistance with GOLD that Eftimova gave Respondent often did answer her questions and concerns, the difficulties Respondent had using the GOLD System persisted, and that fact, she argues, should have signaled to Eftimova that the assistance she was providing was insufficient. In addition, according to Respondent, the intermittent nature of Eftimova's assistance, should have been brought to the attention of Prophete, who, Respondent argues, "had the primary responsibility for ensuring that [she] received the support she needed to get her data inputted on a regular and frequent basis." Id. at 82.

In short, Respondent asserts that the professional development she was given in 2016-2017 fell short of what was required for a teacher on a CAP. In fact, in the final analysis it amounted to nothing more than the help offered to all teaching staff members at the South Street School. Respondent contends she was entitled to training and assistance formulated to address her particular needs, and uniquely tailored to help her overcome her unfamiliarity with the Creative Curriculum and the relative newness of her Pre-K teaching environment, but did not receive it.

Respondent points out Prophete's testimony she "showed growth" during the 2016-2017 school year, as reflected on the January 31, 2017, observation on which she was rated effective. The subsequent decline in her performance, as noted in the observations of Murray and Daughtry, both from outside the school, is a snapshot of how the School's administration and Coach Eftimova failed her. Respondent asserts she highlighted in her 2017 appeal to the District's Evaluation Committee these deficiencies in her professional support, but never received a response.

According to Respondent, the School District chooses to sweep under the rug its "failure to provide her with any significant and timely training and coaching from Eftimova and additional professional development tailored to her particular needs." Respondent Brief at 84. She adds, because she was denied the basic support to which she was entitled under the CAP, her 2016-2017 Annual Evaluation cannot be used to support this tenure charge of inefficiency, and the charge must be dismissed.

Moreover, Respondent adds, the failures of the School District and the South Street School administrators to address her concerns about her evaluation process, in particular their silence and inaction in the wake of her complaints, materially affected the outcomes of those evaluations, as well as her 2017-2018 ineffective rating. Respondent asserts she was proactive

about improving her teaching right after receiving the partially effective rating on her 2015-2016 Annual Evaluation, as she submitted a written complaint to the District's Office of Affirmative Action ("NPS Complaint"), R-26, outlining the shortfalls in the assistance she was given that school year. According to Respondent, "no one from the District made any effort to address her concerns." Respondent Brief at 84.

So, too, when she was assigned the following school year, 2016-2017, "to teach a Pre-K class for which she was not given the necessary training and was not provided the requisite supports," she submitted a complaint to the School District's Labor Relations Office. Id. at 84-85. She contends she then learned from Labor Relations that the District planned to file tenure charges against her based upon her partially effective ratings in three (3) consecutive school years through 2016-2017, which caused her to believe, incorrectly, that the deficient 2015-2016 annual evaluation "could legally be used against her." Id. at 85. At that point, she submitted a written request for a copy of her personnel file. R-60. From that production, she contends she learned about a series of emails between South Street School Principal Gray and various District employees that discussed Gray's plans to keep her out of the classroom after the IAIU had determined on March 11, 2011, that the February 15, 2011, child abuse allegations against her were unfounded.

Respondent Brief at 86. See R-47 (6/9/2011 email from Gray to Terrell, Ziyad and Barton). These plans, according to Respondent, included the possibility of filing disciplinary charges against her and a "solution" to "switch" Respondent out of the Pre-K classroom. Id.

According to Respondent, these emails "clearly support[] the complaints she had been making to the District for the past several years about her administrators' failures to follow the State-mandated evaluation process and, more particularly, Gray's actions specifically denying her a classroom teaching assignment for three (3) entire school years." Respondent Brief at 86. Respondent summarized her findings in a submission to Labor Relations but received no response. Respondent "was sure that once the District saw [the June 2011] email exchanges, someone would take the time and effort to conduct a real investigation and to meet with [her] about her complaints." Id. According to Respondent, however, no one from the School District ever sought to meet with her about her complaints. In fact, she contends, no investigation of those complaints has ever been conducted.

Against that background, Respondent asserts she continued to try to perform as a classroom teacher, even as she was denied in 2017-2018 a regular classroom assignment. She asserts "she just 'bottomed out' when it came to her observations and evaluations during the 2017-2018 school year." Respondent Brief at 87.

Respondent suggests that if she had realized the District could not then have filed tenure charges against her, based on the substantially deficient 2015-2016 Annual Evaluation, she would have been in a stronger mental condition, receptive to professional assistance, and better able to continue her growth as a pedagogue. Id.

Respondent adds that the School District's bad faith is not in her imagination, but is reflected plainly in the 2011 email exchanges between Gray and District employees discussing ways to keep her out of the classroom at South Street School. Indeed, she argues, the School District's present contention her removal from classroom assignments between 2011 and 2014 was related to pending DYFS charges is demonstrably false. Rather, she insists, it was due to the arbitrary and capricious actions by School District employees to deny her the opportunity for professional growth and success as a teacher. According to Respondent,

It is apparent that the District's actions in keeping [her] out of the classroom for the three (3) school years from 2011-12 through 2013-2014, and its subsequent refusals to address concerns [she] raised in her 2016 NPS Complaint and her 2017 Labor Relations complaint, were arbitrary and materially affected the outcome of her annual evaluations during the 2015-2016, 2016-2017, and 2017-2018 school years.

Respondent Brief at 88-89.

In sum, Respondent argues the tenure charges of inefficiency must be dismissed, and she should be reinstated to a teaching position, and made whole for any losses in pay, benefits and other

emoluments to which she is entitled, retractive to the date the tenure charge was certified.

Opinion

As arbitrator of this dispute, I have a clearly delineated scope of review. My jurisdiction is expressly circumscribed by Section 23 of the Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ"), N.J.S.A. 18A:6-17.2. Indeed, the language of Section 23(c) of the Act, N.J.S.A. 18A:6-17.2(c), creates an unambiguous limit on my authority:

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

N.J.S.A. 18A:6-17.2(c). Thus, in my review of this tenure charge against Respondent, I am precluded from reviewing any evaluator's determination of the quality of her classroom performance, including the findings and conclusions in the observation reports and the annual summative performance reports upon which the District has based its charge of inefficiency against her. Simply stated, I am precluded from modifying Respondent's classroom observations, as well as her Mid-Year Reviews and her Annual Summative Evaluations.

I nevertheless still do have an important role to play under Section Section 23(a) of the Act to ensure the charges against Respondent are properly supported, are procedurally fair, and

that she was not subject to prohibited treatment. Section 23(a) of the Act states:

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

- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
- (2) there is a mistake of fact in the evaluation;
- (3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State of federal law, or other conduct prohibited by State of federal law; or
- (4) the district's actions were arbitrary and capricious.

N.J.S.A. 18A:6-17.2(a). (emph. supp.) That analysis, even if affirmative, is not the end of my review, however. Under Section 23(b) of the Act, even if I find support for any of the four (4) substantive, procedural or bias errors (the "defenses") identified in Section 23(a), the charged teacher does not necessarily prevail. Section 23(b) requires I conduct an additional inquiry:

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

N.J.S.A. 18A:6-17.2(b).

In short, the foregoing descriptions of my authority are plain and not subject to variable construction. They squarely provide that with respect to the instant charges of inefficiency against Respondent, I am allowed initially only to determine whether Respondent has demonstrated the applicability of any of the four "defenses" listed in Section 23(a), N.J.S.A. 18A:6-17.2(a). If none of them are applicable, I must uphold the inefficiency charges and sustain Respondent's dismissal under Section 9(a) and 23(b) of the Act, N.J.S.A. 18A:28-5(a), 18A:6-17.2(b). Only if Respondent proves the applicability of one of the defenses must I perform a materiality analysis.

The instant charges, as noted, are drawn from Respondent's ratings in school years 2015-2016, 2016-2017 and 2017-2018. In the latter school year, she was rated inefficient; in 2015-2016 and 2016-2017 she received year end ratings on her annual summative evaluations of partially efficient. I review the three (3) annual ratings, in order, based upon the statutory standard of review and the relevant hearing evidence.

SCHOOL YEAR 2015-2016

Based upon my careful review of the hearing record, I find Respondent's Annual Summative Evaluation for 2015-2016 failed to adhere substantially to the evaluation process. I further find

the non-adherence did materially affect the outcome of her 2015-2016 evaluation. Accordingly, her rating of partially effective on her 2015-2016 annual summative evaluation properly cannot support the tenure charge of inefficiency.

Respondent was on a CAP for the 2015-2016 school year. R-24. Accordingly, under the Framework, she shall have had three (3) observations. She at most had two, and there is no evidence in either instance she had a pre-observation conference. She thus was denied an opportunity for assistance planning a lesson which would be successful. She was entitled to the opportunity to have dialogue with her observer, in particular to discuss and highlight areas in which she needed to show improvement for her lesson to be effective. See Framework, B-32 at 17.

Nor, is there record evidence Respondent's two (2) observers in 2015-2016, Gray and Williamson-Green, conducted the post-observation conferences that are mandatory after every observation, whether formal or informal. Moreover, at least one post-observation conference shall have been face-to-face, wherein the observer shall have "[met] with the teacher to reflect on the lesson together," thereby establishing a "process" which "provides opportunity for dialogue around professional growth." B-32 at 19.

Nor is there evidence that either of the two (2) 2015-2016 observations provided any opportunity for "collaborative

analysis" in preparation for the post-observation conference in which Respondent "[was] encouraged to record [her] reflections in EdReflect in preparation for the post-observation conference."

Id. Indeed, the post-observation conference should have been provided as an essential opportunities for Respondent's professional growth and, in particular, for helping her refine her instructional practices, guide her in developing new strategies and approaches, and to encourage her implementation of additional resources to enrich her students' learning experiences. Id.

In the failure of Respondent's supervisors to provide her the minimum opportunity for three (3) observations, and by conducting those observations without properly ensuring they would be used to help her grow and develop as a teacher, they merely developed a negative teaching history instead of also creating authentic and well-conceived opportunities for Respondent to grow professionally and become a successful teacher, as required under the Framework and TEACHNJ. That plainly is a fair inference that might be drawn from the fact her Mid-Year Review was not completed until May 23, 2016 - as an obvious afterthought rather than as an opportunity to guide and advance her progress as a teacher. Indeed, the Mid-Year Review Conference, required for Respondent in 2015-2016 because she was on a CAP, properly should have been an opportunity for the

School's administrators to give her "formative feedback," rather than simply a summative rating. Id. at 20. The purpose of a Mid-Year Review Conference for a teacher on a CAP, like Respondent in this instance, is to offer her critical guidance for her development over the remainder of the school year, so she fairly shall have the opportunity to improve all aspects of her teaching performance and by year's end be an effective pedagogue. Respondent, in 2015-2016, was denied that opportunity.

2016-2017 SCHOOL YEAR

In the following school year, 2016-2017, the Administration of the South Street School responded, positively I find, to its failure in 2015-2016 properly to apply the Framework in manner to constructively guide Respondent on a pathway to effective teaching. It is evident that for the 2016-2017 school year, the District utilized the Framework according to its title: a "Framework for Effective Teaching," and as "a Guidebook for Teachers & Administrators." Based upon my careful review of the hearing evidence, I find that in 2016-2017 the School District did substantially adhere to the evaluation process in its treatment of Respondent, by giving her constructive feedback through observation reports and over-time evaluations that was formulated and presented to support her development and growth as a teacher. Contrary to Respondent's claims, the hearing evidence demonstrates she was given, over the course of the school year,

guidance and opportunities for success. That her annual summative evaluation rated her as only partially effective was not a reflection of omissions, shortcomings, deficiencies, or failures on the part of School Administrators or District personnel, but rather of Respondent's seemingly studied effort to ensure, or at least give the appearance the assistance that was provided her fell short of what she needed.

This became apparent at the beginning of the school year, after Respondent, due to what I find was an innocent delay in her being given a permanent teaching assignment until the end of September, missed the opportunity to take the professional development course on "Introduction to Creative Curriculum" that was offered on September 17, 2016, and September 24, 2017. A make-up of the course was scheduled on October 22, 2016, and Eftimova strenuously encouraged Respondent to attend. Respondent, however, put a personal commitment ahead of her professional needs, and declined to attend.

When Eftimova became aware Respondent would not be attending the October 22nd Creative Curriculum training, she implored her to read and study the suite of Creative Curriculum materials she by then had been provided. She recommended Respondent utilize the vast array of online resources, including webinars. Still, Respondent complained over and over, in an almost self-serving way, that she did not understand the Creative Curriculum. She

argues now that she lacked the skills necessary to implement the Curriculum due to her inexperience with the program. However, she makes these claims without having shown she followed Eftimova's recommendation to study the kit of materials, to access online resources and participate in webinars. So, too, there is a paucity of record evidence Respondent ever took seriously Eftimova's urging that she use the Curriculum materials as they are intended: as a scripted guide for the daily planning and instruction of her students. It is not enough in this proceeding for Respondent to assert she received too little by way of guidance and assistance, when she has failed to demonstrate she made a personal effort to learn the Curriculum on par with the instructional intensity she insists she should have received from Eftimova, Prophete and others.

Even with the development of her CAP, which was her opportunity to start off the 2016-2017 school year as the co-developer of a "shared tool to use in communicating [with her administrators] about goals and anticipated growth areas," B-32 at 16, Respondent needed repeated prodding from Prophete to complete the document. B-23, B-24.

Respondent insists she was denied a fair and necessary opportunity to learn the GOLD System before her failure to utilize it for data collection and student assessments became a negative factor in her observations and evaluations. Yet, every

time she actually sought help with the GOLD System, she received assistance. See R-31 (11/30/2016 email from DeCaro to Eftimova); B-25 (12/6/2016 Summary); B-26 (12/6/2016 log stating, "main focus of visit" was helping Respondent with her GOLD account). See also B-26 (2/28/2-17 log stating Eftimova immediately responded to new report of Respondent's difficulty accessing GOLD); B-27 (3/2/2017 email from Eftimova to DeCaro regarding apparent absence of any problem accessing Respondent's GOLD account).

Respondent has made various claims she simply could not either access the GOLD System or get it to work, despite the training she received in October 2016. B-28. Yet her efforts to receive help with data input and with tracking her student's academic growth and development were at best half-hearted. See generally B-29. Her tracking of her students' on objectives and dimensions was confined to only some of the required categories, and even then lacked differentiation that is essential to tailored instruction. Id. See also 12/5 at 509-16.

Moreover, even allowing that Respondent endured certain technical difficulties utilizing the GOLD System that apparently were not experienced to the same extent, or even at all, by other teachers, it remains that it was a requirement she maintain data on her students, track their development and differentiate her instruction, independent of her ability to utilize the GOLD

System. That is evident in her 2016-2017 CAP. Her obligation to record data and assess her student's progress was not tied to her ability to access GOLD. Those obligations existed apart from and even pre-dated the GOLD System, which was merely the tool she was expected to use in aid of that process starting the second quarter of the 2016-2017 school year. B-3.

Indeed, although GOLD may not have been usable by her, she still owed the obligation to her students (and their parents) to monitor the children's development and to tailor instruction for each accordingly. And, yet, when Respondent was queried about how she was tracking and assessing her students during times she was unable to utilize the GOLD System, she was at a loss in explaining the data she maintained and how she was using it in aid of her students. 2/22 at 271-75. This should not have been a challenging inquiry.

Moreover, the hearing record reveals that when the District's GOLD System Administrator became aware in November 2016 of the problems teachers were having accessing and utilizing the System, she advised that teachers properly could use Progress Report Forms in lieu of GOLD. B-31. There is no record basis for me to conclude, therefore, that Respondent was precluded from maintaining anecdotal notes and generating data relevant to her students' development and achievement simply because of her difficulties accessing the GOLD System.

In fact, issues with Respondent's data collection persisted for years. Although, as previously noted, her 2015-2016 Annual Summative Evaluation cannot be used to support charges of inefficiency, it remains part of her evaluation history, and placed her squarely on notice regarding a multitude of shortcomings in her teaching performance, most prominently her failure to collect data, monitor student work and tailor instruction in accordance with the specific needs of her scholars. She was counseled that she needed to know where each of her students was academically at all times and to ensure there were assessments to validate what each of her students learned, and then use those assessments to drive instruction.

In short, Respondent's failure properly to collect data, to perform assessments, and to differentiate instruction was not attributable to technical difficulties she had accessing GOLD, but rather to her history of treating the work of creating tailored instruction for her students as a chore rather than as a practice.

The primary object of Respondent's finger-pointing for the 2016-2017 school year is Eftimova. While it is true Eftimova did communicate to Respondent she would endeavor to assist her by meeting with her twice each month, I find no basis in Respondent's CAP, in the Framework or the Law for holding Eftimova solely responsible for setting up those meetings and for

ensuring Respondent and she adhere to the twice-monthly schedule. Eftimova testified, credibly I find, that Respondent had the ability to reach her via email and cell phone, and was told to utilize those contact methods for any assistance she might need. Record evidence demonstrates that Eftimova responded anytime Respondent actually reached out. If several months passed between Eftimova's coaching sessions with Respondent, so too several months, or more, passed between Respondent's efforts to contact her and speak to her about a problem, or even just a question, whether it be with the Creative Curriculum, with the GOLD System, or any other aspect of her teaching with which she needed or simply wanted Eftimova's help.

Eftimova committed to being available to assist Respondent twice-monthly, but there is nothing in Respondent's CAP or in her discussions with Eftimova which bound Eftimova to a particular schedule. There was nothing stopping Respondent from asking Eftimova to commit ahead of time each month to particular days. There was nothing stopping Respondent, as she prepared a particular lesson, or utilized one of the Creative Curriculum's guides in planning, preparing or delivering a lesson, from calling Eftimova for assistance, or even requesting she visit Respondent's classroom.

The record is devoid of evidence that supports a finding Eftimova was less than responsive to Respondent's needs to the

extent Respondent sought her help. While Respondent now contends she was requiring and expecting visits from Eftimova twice a month, the hearing record reveals no contemporaneous complaints about the frequency of the coach's visits, or demands to Eftimova for more involvement. In a record that demonstrates Respondent was never reluctant about registering complaints when she did not get what she needed or expected, I fairly conclude that Respondent's failure to obtain more coaching from Eftimova was from the simple fact she did not want or believe she needed the help being offered. Eftimova was not Respondent's supervisor, rather she was a resource. If Respondent under-utilized that resource, it was her decision to do so.

In sum, Respondent has not demonstrated evidence of any factors which taint or otherwise call into doubt the fairness or objectivity of Prophete's determination in Respondent's 2016-2017 Annual Summative Evaluation to rate her partially effective.

2017-2018 School Year

As noted, Respondent was rated ineffective by Gilliam for the 2017-2018 School Year. I have carefully considered the hearing evidence related to Respondent's behavior during that School Year, and the responses by the District, and I find no basis to conclude the rating was reached in consideration of other than lawful and proper factors. I thus reject Respondent's contentions of bias, discrimination and arbitrary and capricious

conduct by her supervisors and other District employees in 2017-2018 which she contends should preclude this tenure charge of inefficiency.

Rather, the reliable and uncontrovertible record evidence demonstrates that Respondent, from the beginning of the 2017-2018 school year, abandoned all responsibility for her growth and development as a teacher. She unjustifiably refused to participate in the development of her CAP, despite the reasonable, patient and professional requests from Gilliam for her to meet with her and work on the document. Respondent did not even deem it worth her while to prepare a draft of a CAP which might identify areas in which she could improve as a teacher, and the practices she would commit to in order to effectuate that growth. When Gilliam went the extra mile and prepared a document which fairly could have been used by Respondent as a foundation for an initial draft of a 2017-2018 CAP, Respondent rejected her supervisor's efforts.

Respondent's resistance to any role of 13th Avenue School administrators or by the School District in helping her improve her pedagogy only grew more obdurate as the School Year progressed. She refused to attend a post-observation conference for a formal observation by Gilliam initially scheduled for December 8, 2017, but then postponed to December 18, 2017. B-15. And then she declined to attend the post-observation conference

Gilliam scheduled for December 20, 2017. She simply abdicated her right to be a participant in her professional growth and a contributor to that part of the teacher observation process designed to ensure her co-participation and collaboration. Her rejection of Gilliam's invitation to attend the post-observation conference on December 20, 2017, was effectively a rejection of Gilliam's proper role as her supervisor to give her guidance, instruction and direction on how to be an effective teacher.

Her course of conduct rejecting supervision's proper role in monitoring her progress as a teacher continued. On February 1, 2018, she refused to attend a Mid-Year Conference scheduled by Gilliam to discuss a plan for improvement. Respondent simply refused to compromise on her decision against participating in the District's efforts to improve her performance. Her obstructionism reached its pinnacle on April 4, 2018, when Gilliam attempted to conduct a formal observation. Respondent refused to be observed. She openly decided not to teach and to refrain from giving her children instruction in order to ensure she would not be observed. Indeed, when Gilliam entered the classroom, Respondent took her students to the restroom, and then brought them back to the classroom and instructed them to put their heads down until Gilliam left. B-15. For this misconduct, she was issued a reprimand. B-17.

Gilliam rated Respondent ineffective on her Annual Summative

Evaluation. B-14c. Gilliam noted that Respondent, over the course of the 2017-2018 school year, failed to complete any data for her students, and refused to meet for a CAP conference. She wrote,

Ms. DeCaro does not pursue her own growth and development. To my knowledge she does not seek or incorporate feedback from others. I am not aware of any workshops Ms. DeCaro has taken on her own to improve her practice. Even when offered the opportunity to be coached, Ms. DeCaro denied the request.

Id. Gilliam added, "[w]hile Ms. DeCaro has attended school workshops, she refuses to debrief regarding her level of progress. It's difficult to provide feedback when the teacher refuses to sit and discuss the lessons they are executing."

Given Respondent's intentional obstruction of her supervisor's attempts to evaluate her teaching, and help her improve her pedagogy, I find there is no record basis to preclude her ineffective rating for 2017-2018 from being a basis for tenure charges. Respondent's contention she could not possibly have received fair treatment on account of bias and prejudice and alleged intention to retaliate against her by persons supervising her in 2011 is not persuasive.

In any case, a fair reading of the emails Respondent asserts she discovered during a recent document production by the School District does not establish the improper motive she alleges, but simply demonstrates a lingering concern in 2011 by certain

persons regarding her fitness to teach after multiple allegations of abuse had been leveled against her.²¹ On the contrary, Gilliam's efforts to assist Respondent, and help her, through the observation and evaluation process, to improve her pedagogy, had no fair connection to any of the events half a decade earlier at another school.

Respondent's actions refusing supervision and professional development from Gilliam were unreasonable and irresponsible. She not only hurt her chances to improve her professional skills and become a better teacher, and potentially avoid tenure charges, but she also hurt the children she was supposed to be helping, in this case a small group of very young children who had previously been identified as needing remedial attention.

With respect to Respondent's contention there is evidence of bias, or arbitrary and capricious treatment, evident from a series of emails to and from South Street School Principal Gray in 2011, I find her claim unpersuasive.

²¹Although all the allegations of abuse by Respondent ultimately were deemed "unfounded," record evidence reveals a new allegation on June 7, 2011, preceded several of the emails that stated concern about Respondent's return to the classroom. R-47 (6/7/2011 Staff Incident Report; 6/8/2011 email from Ocasio to Rodriguez re 6/7 incident). The concerns expressed by Gray and other District personnel in the wake of the new June 7, 2011, allegations, were not unreasonable nor are they evidence of bias or an intent to retaliate against Respondent five years later during the school years covered by this tenure charge.

CONCLUSION

Based on the foregoing, I find Respondent was rated partially ineffective in her annual summative evaluation for 2016-2017, and then the following school year, 2017-2018, she was rated ineffective. I further find that the "defenses" set forth in Section 23(a) of the Act are not applicable to Respondent's ratings on her 2016-2017 and 2017-2018 annual summative evaluations. Under the requirements of the Teacher Effectiveness and Accountability for the Children of New Jersey Act, Respondent shall be dismissed.²²

²²As discussed above, and for the reasons stated, Respondent's 2015-2016 Annual Summative Evaluation is not a basis for sustaining the instant tenure charge.

