

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**

***In the Matter of the Tenure Hearing of:***

**JAMELLE HOSKINS-NNAKWE**

**and**

**STATE-OPERATED SCHOOL DISTRICT  
OF THE CITY OF NEWARK,  
ESSEX COUNTY**

**Agency Docket #125-6/17**

**Walt De Treux, Esq., Arbitrator**

*Hearing Dates: 11/14/17, 3/1/18,  
5/10/18, 10/23/18  
Briefs Received: 12/7/18  
Decision Date: 1/20/19*

**Appearances:** For the School District – Michelle M. Schott, Esq., *PURCELL MULCAHY FLANAGAN*  
For the Respondent – Nicholas Poberezhsky, Esq., *CARUSO SMITH PICINI*

**Introduction and Statement of Relevant Facts**

Jamelle Hoskins-Nnakwe has been a teacher in the City of Newark School District since 2001. During the 2015-16 school year, she taught English as a Second Language (ESL) at Barringer High School. In early February 2016, several students in Respondent's Block 2 class complained to school administration that Hoskins-Nnakwe yelled at them after Principal Crystal Breedlove had visited the classroom. They more generally complained about her teaching style and methods. The administration obtained written statements from 9 students in the class, but took no further action at the time.

On March 30, 2016, Larisa Shambaugh, the District's Chief Talent Officer, visited the high school as part of an audit of teacher certifications. Hoskins-Nnakwe was one of the teachers randomly selected for verification. Shambaugh visited Hoskins-Nnakwe's classroom and noticed on the wall Black History Month posters created by the students. Upon closer

inspection, she saw that derogatory terms had been written in Spanish on the posters. The writings included terms such as “pendejo”, “bobito”, “feo,” “tonto”, and “ugly no bella” -- translated in English, *stupid*, *little fool*, *ugly*, *dumb*, and *ugly not beautiful*. At the conclusion of the visit, Principal Breedlove informed Shambaugh that students had complained about the environment in Hoskins-Nnakwe’s classroom. At Shambaugh’s instruction, Breedlove emailed her the students’ written statements as well as written statements on other incidents involving students, staff, and parents. Based on this information, Shambaugh assigned Michelle Takyi, Manager of Compliance and Tenure, to investigate.

During her investigation, Takyi reviewed the written statements submitted to school administration by students, a parent, and a staff member. She interviewed 4 students, three staff members, and Hoskins-Nnakwe. Takyi concluded her investigation with a written report dated January 6, 2017. In that report, she recommended that the District process tenure charges against Hoskins-Nnakwe, based on her finding that “the evidence supports that Ms. Nnakwe, on more than one occasion, made disparaging and hurtful comments to students...used derogatory words like “stupid” while referring to different students, yelled at students, and spoke negatively about their ability to speak English fluently.”

Soon after the start of the investigation, the District removed Hoskins-Nnakwe from the classroom and reassigned her to the Virtual Learning Center, derisively referred to as “the rubber room.” During her reassignment, Norma Diaz, Coordinator of Human Resources, reported that Hoskins-Nnakwe had been rude and behaved inappropriately with building security and custodial staff.

Based on Hoskins-Nnakwe's alleged conduct in her ESL class, with staff, and in the District building after reassignment, the District filed tenure charges against Respondent seeking her dismissal from employment for Conduct Unbecoming a Teacher. The tenure charges were certified by the NJ Commissioner of Education and referred to this Arbitrator for hearing.

On November 14, 2017, March 1, 2018, May 10, 2018, and October 23, 2018, hearings were held at the District's main offices in Newark, New Jersey, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties filed post-hearing briefs, and the matter was submitted to the Arbitrator for a decision.

## Issue

*Has the State-Operated School District of the City of Newark established the allegations of conduct unbecoming against Respondent Jamelle Hoskins-Nnakwe as set forth in the tenure charges? If so, do those charges warrant dismissal? To what remedies are the parties entitled?*

## Analysis and Decision

The School District has cited to numerous incidents of alleged misconduct by Hoskins-Nnakwe in support of the tenure charge of Conduct Unbecoming a Teacher. At hearing, the District relied primarily on hearsay evidence to carry its burden of proving the charges. It noted in its brief that in arbitration, “conformity to legal rules of evidence shall not be necessary.” (*citing Rule 27 of the Labor Arbitration Rules of the American Arbitration Association*) While the legal rules of evidence need not be strictly applied, evidence in arbitration is not freely admitted and accepted as true. The issues of relevancy, competency, and reliability that form the basis for many of the rules of evidence remain present and paramount in labor arbitration. The District can rest its case on hearsay evidence, but that evidence is only of value if it is deemed relevant, reliable, and competent. Each incident that was alleged in support of the tenure charges will be examined separately, but it will become quickly apparent that the District’s dependence on inherently unreliable hearsay evidence worked to its detriment.

### **Derogatory Words on Posters**

The investigation into Hoskins-Nnakwe’s conduct began when Shambaugh found derogatory terms written on student’s art work hanging in the classroom during the March 30,

2016 audit. The District does not accuse Respondent of writing the comments on the posters, but it faults her for failing to notice the added words and failing to remove the posters.

The District's emphasis at hearing on the marked-up posters is overplayed. Takyi acknowledged that the presence of the posters was not a significant factor in her recommendation of tenure charges and, standing alone, would not warrant tenure charges. Further, Shambaugh saw the posters on March 30, 2016 and made no effort to have them taken down. She did not bring the graffiti to Hoskins-Nnakwe's attention. Respondent did not learn of the posters until after she had been reassigned. The posters remained up at least through Takyi's April 14, 2016 visit to the school. The District's expressed concern about the posters was apparently not shared by those administrators who found or knew of the posters and left them hanging. Further, another teacher shared the classroom with Hoskins-Nnakwe, and he was not disciplined for not noticing the derogatory terms and not removing the posters.

For these reasons, I find that the District has failed to establish the charge of conduct unbecoming against Respondent as it relates to the marked-up posters in her classroom.

### **February 10, 2016 Principal Visit**

Principal Breedlove observed Respondents' classroom on February 10, 2016. According to the students' written statements, Hoskins-Nnakwe was showing a film about Hurricane Katrina. When the principal entered the room, she switched to a lesson she taught the day before and asked the students questions from that lesson. Thinking that their teacher was trying to make herself look good in front of the principal, the students refused to answer. When Breedlove left, Hoskins-Nnakwe allegedly yelled at the students for not responding.

When the students challenged her, she accused them of harassment, threatened to call their parents, and contacted security in an attempt to give the students Saturday detention.

After students complained to the principal that same day, Breedlove had 8 students<sup>1</sup> give written statements. Takyi reviewed those statements as part of her investigation and interviewed two of the students who had given written statements that day and a third who gave a written statement approximately 7 weeks later. The District's reliance on those statements to prove Hoskins-Nnakwe's conduct on February 10, 2016 clearly illustrates the inherent unreliability of hearsay evidence.

Respondent should have the opportunity to cross-examine the students to test the credibility of their statements. The District did not explain why the students were unavailable to testify. If they stayed in the Newark School District, they would have been in their junior year at the time of the first two hearings and presumably available to testify. But in the absence of the students, Respondent should at least have the opportunity to explore how the students came to give the statements and under what conditions. Principal Breedlove instructed the students write statements, but she did not testify. Prior to the hearings, she had resigned her employment, but the District did not explain why she was unavailable to testify. Breedlove's testimony is crucial in determining how the statements were obtained. Did the students write the statements individually or in a group? Were they allowed to consult with each other? Did Breedlove ask them questions or otherwise guide the writing of the statements? These questions and others allow Respondent (and this Arbitrator) to determine

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<sup>1</sup> Another student, DL, gave a written statement on the incident on March 31, 2016. Her testimony on this and other issues will be discussed in the next section.

the reliability of the statements. DL testified that many of the students had shared with each other their concerns about Hoskins-Nnakwe's classes. That prior conversation raises a question as to whether the students' statements were their own product or the result of a collaborative process. As evidence of that collaboration, DL included in her statement a recounting of the February 10, 2016 incident that occurred in a class that she was not enrolled. She was clearly just repeating what she had been told. Respondent was denied the opportunity to question whether any of the other students were doing the same.

Takyi interviewed two of the students who gave statements that day. She reported those interviews in her investigative report, but again, the hearsay concerns remain. Takyi summarized the students' responses in her report. There is no indication of whether she asked them questions or allowed them to narrate their complaints. Takyi indicated that Breedlove selected the students to be interviewed. Again, Breedlove did not testify and could not be asked the basis for her selection or the nature of any conversations she may have had with the students prior to the interview. Exploration of those issues through cross-examination of the students or Breedlove is necessary to determine the reliability of their statements.

The students' written statements are unreliable hearsay insufficient to prove allegations of Hoskins-Nnakwe's conduct on February 10, 2016.

Compounding the investigatory and evidentiary problems, Breedlove took no action at the time of the incident. She did not talk with Respondent or impose any disciplinary measures. She sat on the allegations for 7 weeks until Shambaugh visited the school. Takyi waited until June 1, 2016 to interview Hoskins-Nnakwe, nearly four months after the alleged occurrence, prejudicing her ability to recall or accurately relate her version of the incident.

It is also noteworthy that the District has filed a tenure charge of conduct unbecoming, not a charge of inefficiency or incapacity. Even if the District's evidence was found credible as to the February 10, 2016 incident, the students' complaints from that day focus mainly on their perception that Hoskins-Nnakwe is an incompetent and unprofessional teacher who does not adequately instruct them or explain the lessons and often loses her composure with the students. Those concerns speak more to alleged inefficiency or incapacity than to conduct unbecoming.

For all these reasons, I find that the District has failed to establish the charge of conduct unbecoming against Respondent as it relates to the February 10, 2016 principal visit.

### **DL Allegations**

Unlike other students who addressed the February 10 incident the same day, DL gave a statement to Breedlove on March 31, 2016, a day after Breedlove expressed concern about Hoskins-Nnakwe to Shambaugh. The timing of DL's statement is suspect, but it is the content that makes her statement and testimony not credible.

DL attributed some egregious and offensive comments to Hoskins-Nnakwe. She claimed that Respondent told her and other students, "You are in my country so you have to learn English" and "You are stupid guys, you don't deserve an A, you are crazy, you need to go to the psychologist." Although these comments were allegedly made in class, no other student reported similar comments except MT.<sup>2</sup> MT was a student selected by Breedlove to be

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<sup>2</sup> The District also submitted an undated, handwritten statement from an unidentified "representative" of another student. The statement alleges that Hoskins-Nnakwe was "motivating racism" by making reference to voting for Trump and getting rid of all the immigrants." This unidentified "representative is presumably an adult, who



interviewed by Takyi. MT had not given a written statement, and it is unclear how or why she was even brought to Takyi's attention. She did not testify at hearing. Takyi's summary of her interview indicates that MT made the shocking charge that Hoskins-Nnakwe, an African-American, "is racist" and tells the class, "If it was for her, she would vote for Donald Trump" so Donald Trump would send them back to their country.

The District did not explain why MT could not testify, and it did not question Takyi on the MT interview during her direct examination. Such serious allegations deserve to be fully explored at hearing. I find MT's responses to Takyi to be both unreliable hearsay and uncredible.

In Takyi's interview of DL, DL went further than her statement. DL told Takyi that Respondent told a student at the classroom door, "Get out of the fucking door" and called him "a son of a bitch." No other student reported hearing such comments.

At hearing, DL testified at length about Hoskins-Nnakwe's conduct on February 10, 2016 after Breedlove's visit. She had not described that conduct in her written statement or her interview with Takyi. During the course of her testimony, it was established that DL was not in that particular class. The Breedlove visit occurred during Block 2. DL was in Block 4. She was testifying to alleged conduct that she had not witnessed.

DL conceded that she was unhappy with Hoskins-Nnakwe's class because she was getting a "C" and thought she deserved an "A." She wanted to transfer to another classroom.

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learned this information from a student. Unreliable hearsay abounds with this statement -- a student reportedly told this adult, who told someone in the school, who evidently told Takyi. The adult was not interviewed, he/she did not testify, and the circumstances of his/her production of the statement was not addressed. The statement is unreliable hearsay insufficient to prove the charge of conduct unbecoming.

Whether or not DL fabricated her testimony to force that transfer, the fact is her testimony on the whole is not credible. No other students corroborated her testimony as to the very offensive comments she attributed to Respondent, and she did not witness an incident for which she attempted to give eyewitness testimony. She admitted to discussing with other students some concerns about Hoskins-Nnakwe, further suggesting that she and those students may have collaborated in their complaints to the school administration.

For these reasons, I find that the District has failed to establish the charge of conduct unbecoming against Respondent as it relates to the allegations made by DL regarding use of profanity and other offensive and arguably racist comments.

### **Breedlove allegations**

In her interview with Takyi, Principal Breedlove reported that she observed Respondent yelling at students, that she had received multiple complaints from parents about Respondents' conduct in the classroom, and that she had concerns with Hoskins-Nnakwe's classroom management and performance. Breedlove also reported to Shambaugh by email on a meeting between her, Respondent, and a parent. Breedlove alleged that Hoskins-Nnakwe made several generalizations about Hispanics in the meeting (e.g., "they don't want to learn English") and ignored Breedlove's instructions to cease making such comments.

Breedlove did not testify. Respondent did not have the opportunity to question the veracity of her statements, the context and circumstances of her reported observations, and her overall credibility. Moreover, it does not appear that Takyi interviewed Breedlove on the meeting with the parent. She apparently accepted the complaint as it was reported in the

email to Shambaugh. Finally, some of Breedlove's concerns, if accepted as true, relate to classroom management and performance and are more suited to a charge of inefficiency or incapacity than to conduct unbecoming.

For these reasons, I find that Breedlove's statements to Takyi are unreliable hearsay insufficient to support the charge of conduct unbecoming against Respondent.

### **Nhemi Theodore**

Takyi interviewed Nhemi Theodore, the high school's Operations Manager in charge of student discipline. He told Takyi that Hoskins-Nnakwe frequently removes students from her classroom, "seems very unstable," and accuses students and his colleague Jose Diaz of conspiring against her.

Theodore did not testify at hearing, and the District offered no explanation for his absence. As such, the basis for his statements and his observations and the circumstances by which he came to be interviewed by Takyi could not be explored at hearing or evaluated for credibility.

For these reasons, I find that his statements to Takyi constitute unreliable hearsay insufficient to support the tenure charge of conduct unbecoming against Respondent.

### **Altercation with Another Staff Member**

The statement of tenure charges included allegations that Hoskins-Nnakwe had a physical altercation on April 21, 2016 with another staff member regarding remarks to an aide

who was crying over the death of another aide. The charges indicate that Principal Deneen Washington completed a report on the incident.

At hearing, neither Washington or any other staff member testified to the incident. The District took no disciplinary action against Respondent at the time of the incident. The incident report without testimony or other additional evidence is insufficient to prove the underlying conduct.

For these reasons, I find that the District failed to establish the charge of unbecoming conduct against Respondent as it relates to this alleged physical altercation.

### **Norma Diaz**

Norma Diaz is the Coordinator of Human Resources at the District's Cedar Street office, the site of Respondent's assignment during the disciplinary investigation. Diaz gave a written statement and reported to Takyi that Hoskins-Nnakwe was involved in two incidents in which she mistreated staff.

On her first day on reassignment, Hoskins-Nnakwe did not have the required Newark School District identification card. Diaz observed Respondents engage in a verbal altercation with the security guards. During the altercation, Diaz heard her call the guards "devils." Hoskins-Nnakwe does not recall using the term "devils." She admits that she was frustrated and upset with her reassignment and her inability to get into the building because of her lack of proper identification. Diaz later assisted Hoskins-Nnakwe in obtaining the proper ID card.

Inexplicably, the District did not interview the security guards as part of their investigation. Nonetheless, I credit Diaz' testimony. She observed the incident and candidly

reported her observations. The incident, however, does not warrant Hoskins-Nnakwe's dismissal from employment. At most, it warranted a reprimand for her discourteous treatment of another District employee at the time it occurred. But such discourteous treatment does not equate to conduct unbecoming, a more serious charge signifying conduct that would negatively impact the teacher's ability to perform her job and undermine the public's confidence in the teacher and the District. An argument with security guards on the first day of her reassignment to "the rubber room" does not impact her ability to perform her job or undermine public confidence. It was an unfortunate moment at the start of a bad day for a frustrated and upset teacher.

For these reasons, I find that the District has not established the charge of conduct unbecoming against Respondent as it relates to her encounter with the security guards.

On April 21, 2016, Diaz found a custodial worker, "Ms. Suzette," upset because she felt disrespected by Hoskins-Nnakwe. Ms. Suzette told Diaz that Respondent had entered the restroom on three separate occasions as Ms. Suzette was cleaning it. Diaz witnessed one of those occasions and heard Ms. Suzette and Hoskins-Nnakwe arguing in the bathroom.

Hoskins-Nnakwe testified that she entered the bathroom because she was sick and was pleading with Ms. Suzette to let her use the bathroom. Hoskins-Nnakwe was hospitalized later that day with high blood pressure.

Again, the District inexplicably did not call Ms. Suzette to testify. The allegation that Hoskins-Nnakwe entered the bathroom on three occasions is based on Ms. Suzette's recounting

to Diaz. Her statements during her conversation with Diaz are unreliable hearsay because they could not be explored or tested during cross-examination.

As to the occasion witnessed by Diaz, the District has failed to prove any misconduct. Hoskins-Nnakwe did enter a bathroom that was closed for cleaning and was confronted by Ms. Suzette. But Hoskins-Nnakwe was sick and presumably had an urgent need to be in the bathroom. (Diaz confirmed that Respondent sought medical treatment soon after the incident.) Ms. Suzette may have felt disrespected, but she may also have been unaware of Hoskins-Nnakwe's condition. Respondent and Ms. Suzette may have had a disagreement, but Hoskins-Nnakwe's actions were understandable given her illness.

For these reasons, I find that the District failed to establish the charge of conduct unbecoming against Respondent as it relates to the bathroom incident.

### **Jose Diaz**

Jose Diaz works as a School Operations Assistant handling student discipline. On October 27, 2015, he wrote a statement about an encounter he had with Hoskins-Nnakwe in the hallway outside her classroom. He testified at hearing that she was raising her voice to a student and he asked her to lower her voice. Hoskins-Nnakwe refused and loudly challenged his authority to give her such an instruction. Respondent does not recall the incident, but noted that she and Diaz did not have a good rapport.

I credit Diaz' testimony, but the incident is too dated in time to be properly considered for a conduct unbecoming charge. The incident happened on October 27, 2015, yet the school administration and the District took no action to investigate or discipline Hoskins-Nnakwe. The

report of the incident presumably was filed away until five months later when the District initiated a broad investigation into Hoskins-Nnakwe's conduct. If the purpose of discipline is to correct unwanted behavior, the District cannot decline to take disciplinary action at the time of an occurrence only to resurrect the incident to build a case for dismissal from employment. Moreover, the incident – a brief tense exchange between co-workers, even if attributable primarily to Hoskins-Nnakwe – would at most warrant a low level of discipline, such as a reprimand.

For these reasons, I find that the District has failed to establish the charge of conduct unbecoming against Respondent as it relates to the incident with Jose Diaz.

#### **Award and Remedy**

The District has failed to establish the charge of unbecoming conduct against Respondent for all allegations included in the Statement of Charges. Accordingly, the tenure charges are dismissed.

As a remedy, the District is ordered to remove the dismissal from Hoskins-Nnakwe's record. It is further ordered to immediately reinstate her to her former position, or to a comparable position mutually agreeable to the parties, without loss of seniority. It is further ordered to make Hoskins-Nnakwe whole for losses, if any, incurred as a result of her dismissal.

The Arbitrator shall retain jurisdiction of the case for the sole purpose of resolving any dispute over the implementation of the remedy.

  
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WALT De TREUX

STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION

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**Affirmation**

I, Walt De Treux, affirm that I am the individual who executed this Decision and Award.

*Walt De Treux*

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WALT De TREUX

1/20/19