

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

**IN THE MATTER OF THE TENURE HEARING OF:**

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**BOARD OF EDUCATION OF THE CITY OF NEWARK**

Petitioner

and

**ADAM DiPAOLO**

Respondent

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**OPINION  
AND  
AWARD**

Agency Docket No. 223-8/1

**Before  
James W. Mastriani  
Arbitrator**

**Appearances:**

**For the Petitioner:**

Fiona E. Cousland, Esq.  
Riker Danzig Scherer  
Hyland & Perretti, LLP

**For the Respondent:**

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

This matter concerns a tenure charge of inefficiency filed by the Board of Education of the City of Newark [the “Petitioner”] against tenured teacher Adam DiPaolo [the “Respondent”]. This charge is governed by the Teacher Effectiveness and Accountability for the Children of New Jersey Act [“TEACHNJ”; “Act”]. N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1. The statute provides that where a teacher has received annual summative evaluations of “partially effective” or “ineffective” in two consecutive years, the teacher shall be subject to a charge of inefficiency. As discussed below, DiPaolo received a rating of “partially effective” for the 2016-2017 school year, “partially effective” for the 2017-2018 school year, and “ineffective” for the 2018-2019 school year. The Board filed the tenure charge at issue with the Commissioner of Education on or about August 26, 2019. On September 6, 2019, Respondent filed an Answer seeking dismissal of the tenure charges. On or about September 13, 2019, the Commissioner referred the matter to arbitration and, pursuant to the Act, I was appointed to serve as arbitrator on September 13, 2019.

On November 15, 2019, Respondent filed a motion before me to dismiss the charges or to compel the Board to answer interrogatories, arguing that the Petitioner had “effectively abandoned its obligation to provide any meaningful information whatsoever.” The Board responded in opposition, denying that it had failed to respond to the interrogatories as required by the Act. The parties agreed in the interim to go forward with the first previously scheduled hearing date on November 25, 2019 without prejudice to either party’s position and ability to

present evidence on the motion. After each party submitted a brief in support of its position, I issued an interim decision on the Respondent's motion on December 20, 2019. That decision held that the charges would not be dismissed for failure to provide adequate responses to the Respondent's interrogatories, but required the Petitioner to respond more fully to several of the interrogatories. The District complied with this order, as reflected in the completed record discussed below.

The parties submitted testimony and substantial documentary evidence during seven hearing days held on November 25, 2019, June 24, and June 25, 2020, and September 14, 15, 16, and 18, 2020. The State of Emergency in response to the pandemic caused several cancellations of scheduled hearing dates for various related reasons causing delay in the completion of the record and the need for extensions of time. Testimony was received from the District witnesses Vice Principal Elzira Prophete, Vice Principal Dr. Shana Burnett, Vice Principal Stephanie Vargas, and Principal Javier Nazario. The Respondent testified on his own behalf.

### **BACKGROUND**

Adam DiPaolo was hired by the District in 2005. He holds a teaching certificate earned in 2003 and could "teach pretty much anything K through eight." From his date of hire until the end of the 2016-2017 school year, DiPaolo taught at the South Street School. There he received "effective" evaluations in every year until the years at issue in this case. DiPaolo taught Kindergarten, which he

described as his “dream,” until approximately 2012. From 2012 through 2016, DiPaolo taught 5<sup>th</sup> grade math and science at South Street School, and was partnered with Carmela Fariola, an English Language Arts (ELA) and Social Studies teacher. According to DiPaolo, he had an excellent working relationship with Fariola.

DiPaolo testified that shortly prior to the 2016-2017 school year, there were many changes at South Street. Among these changes was the retirement of his supervisor, Principal Grey, with whom DiPaolo testified he had a good working relationship. Javier Nazario became the new principal at South Street in June, 2016. Around this time, DiPaolo was reassigned to teach a “self-contained” fourth grade. Self-contained is understood to mean that students do not rotate between teachers for different subjects, and are taught their subjects by the same teacher.

Vice Principal Elzira Prophete testified on behalf of the District. She was assigned to the South Street School in the 2015-2016 school year. In the 2016-2017 school year, she was assigned to observe and evaluate DiPaolo. Evaluations in the District are done in accordance with the Newark Board of Education Teacher Evaluation Framework for Effective Teaching (Framework). The Framework was developed by the Board in accordance with the Act in order to evaluate employees and provide them with a “roadmap” for improvement where necessary. The Framework contains five categories referred to as “Competencies”: Competency 1 is “Lesson Design and Focus”; Competency 2 is “Rigor and

Inclusiveness”; Competency 3 is “Culture of Achievement”; Competency 4 is “Student Progress Towards Mastery”; Competency 5 is “Commitment to Personal and Collective Excellence.”

Each Competency is broken into subcategories known as “Indicators.” Indicators are used to evaluate a teacher’s competence in both a one-time observation and also over the course of a school year. An exception is for the Indicators in Competency 5 which do not apply to specific observations. The Indicators evaluated in each competency are:

- Competency 1: Lesson Design and Focus
  - In one lesson:
    - 1a. Lesson Sequence. Individual, standards-aligned lessons build on previous lessons and on students’ prior knowledge
    - 1b. Lesson Components. Lesson components are standards-aligned and move students toward mastery of an objective that is aligned to essential understandings in the standards.
    - 1c. Pacing and Momentum. Teacher maximizes learning time.
    - 1d. Clarity. Teacher clearly and accurately communicates content and instructions.
  - Over the course of the year
    - 1e. Coherent Planning. Lesson plans are also standards-based, grade-level appropriate, and reflect work toward annual student achievement goals. Lesson plans are, when applicable, collaboratively developed with other staff who will be helping to implement the lesson plan

- 1f. Progression of Instruction. Lesson Objectives fit into a larger, coherent sequence that leads to student mastery of the appropriate standards.
- Competency 2: Rigor and Inclusiveness
  - In one lesson
    - 2a. Tailored Instruction. Teacher tailors instruction to move all students toward mastery
    - 2b. Questions and Tasks. Questions and tasks ensure student comprehension and ask for application, analysis and/or synthesis
    - 2c. Teacher anticipates and responds to student reactions and misunderstanding by adjusting instructional strategies.
    - 2d. Precision and Evidence. Teacher and students require precision and evidence in tasks and responses.
  - Over the course of the year:
    - 2e. Revisions. Student Work includes revisions based on teacher and peer feedback, especially revised explanations and justifications to demonstrate student movement toward mastery.
    - 2f. Depth of Knowledge. Lesson objectives, tasks and materials require students to demonstrate the following skills: recall and reproduction; basic application of concepts; strategic thinking; and extended thinking
- Competency 3: Culture of Achievement
  - In one lesson:
    - 3a. Enthusiasm for Learning. Students express satisfaction in solving problems and mastering new material
    - 3b. Persistence. Students show persistence in confronting demanding concepts and tasks
    - 3c. Community. Classroom norms promote positive and productive teacher-student and student-student relationships.
    - 3d. Attention. Teacher's strategies and routines capture and maintain student attention on learning.
  - Over the course of the year

- 3e. High Expectations. The teacher fosters a classroom culture that is consistently one of high expectations and hard work and the teacher models excellence.
    - 3f. Peer Accountability. Students hold themselves and their peers accountable for learning and supporting the culture of the classroom.
  - Competency 4: Student Progress Toward Mastery
    - In one lesson:
      - 4a. Checks for understanding. Teacher consistently checks for understanding.
      - 4b. Feedback. Teacher and students give and receive timely, specific, and constructive feedback.
      - 4c. Demonstration of Learning. Students know more at the end of the lesson than they did at the start.
    - Over the course of the year:
      - 4d. Using Data. Teacher tracks assessment data to understand each student's progress toward mastery and uses results to guide planning and instruction.
      - 4e. Understanding of Growth. Teacher can articulate specifically (and with evidence) whether or not each student has internalized grade-level standards and, if not, what s/he still needs to learn
      - 4f. Progress towards goals. Data reflect that students are mastering the objectives of the focus areas, leading toward mastery of grade-level standards.
  - Competency 5: Commitment to Personal and Collective Excellence
    - Over the course of the year:
      - 5a. Commitment to continuous improvement. Teacher accurately self-assesses strengths and substantive growth areas, seeks and incorporates feedback from others, and pursues his or her own growth and development.
      - 5b. Collaboration. Teacher contributes ideas and experience to further colleagues' and the school's growth and incorporates productive insights into his or her own instruction.

- 5c. Communication of student progress. Teacher communicates student progress clearly and consistently to students, families, and school leaders.
- 5d. Attendance and promptness. Teacher is present and prompt, and attendance reflects his or her focus on student learning as a priority.

Each indicator is scored as either Highly Effective (4 points), Effective (3 points), Partially Effective (2 points), or Ineffective (1 point). The Framework describes these scores as follows:

- Highly Effective: A Highly Effective teacher ensures exceptional rates of student growth. Such classrooms consist of a community of learners, with highly motivated and engaged students who assume considerable responsibility for their own learning. Highly Effective teachers have the knowledge, skills, and capacity to serve as models for other teachers. This performance level is reserved for teachers who are truly exceptional in their practice.
- Effective: An Effective teacher consistently [emphasis in original] meets the expectations set forth by the Framework. Effective teachers have a broad repertoire of strategies and activities to ensure students achieve mastery. Years of experience are not, in and of themselves, an indicator of effectiveness. Students grow in effective teachers' classes.
- Partially Effective: A Partially Effective teacher may meet some expectations articulated in the Framework, but either does not meet all expectations or is inconsistent in meeting these expectations. Typically there are clear areas where the teacher might improve his or her practice to achieve effectiveness. Partially Effective performance should not denote meeting expectations.
- Ineffective. An Ineffective teacher is not meeting expectations for teaching in NPS. There are several clear areas where the teacher must improve his or her practice to achieve effectiveness. In some instances, performance that Ineffective level represents teaching that is below the licensing standard of "do no harm." Immediate improvement is required for teachers at the Ineffective level to remain in NPS.



The total number of points obtained in each of the competencies is used to calculate the overall numerical observation rating. When calculating mid-year and annual summative evaluations, the same point structure is applied to both “in one lesson” and “over the course of the year” indicators, and Competency 5 is also assessed.

At outset of the school year, teachers develop a set of goals based on the Framework in coordination with their supervisor. If a teacher has received a “Highly Effective” or “Effective” rating in the previous year’s annual summative review, the teacher then creates an Individualized Professional Development Plan (IPDP). If the teacher received a “Partially Effective” or “Ineffective,” a more rigorous document is created known as a Corrective Action Plan (CAP). The IPDP and CAP are similar in structure and purpose. However, the CAP includes additional information to help guide the teacher’s progress for the upcoming year, as well as to set a benchmark for future evaluations. In this case, Respondent was subject to a CAP during 2017-2018 and 2018-2019 due to having received “Partially Effective” ratings.

Prophete and DiPaolo coordinated prior to the 2016-2017 school year at South Street to draft DiPaolo’s IPDP. His IPDP identified baseline student proficiencies and set target goals. Prophete testified that while she and DiPaolo worked together to formulate the IPDP, only DiPaolo had access to the computer program used to input the information. DiPaolo testified that he used general,

school-wide information in order to generate his 2016-2017 IPDP, because his class's composition had not yet been finalized. He believes that the data entered in his IPDP, particularly with respect to the Partnership for Assessment of Readiness for College and Careers (PARCC) standard, was supplied by Prophete.

A teacher with an IPDP must have a formal announced classroom observation, as well as a formal unannounced observation, during the course of the school year. A teacher with a CAP must have an additional formal announced classroom observation. A formal announced classroom observation entails a pre-observation meeting between the teacher and the evaluator to discuss the goals for the lesson. An unannounced observation is not discussed between the participants beforehand, but is still scored in accordance with the Framework, and weighed in the mid-year and annual summative evaluations. In addition, Prophete testified, there are also often various informal "walkthroughs," where observers enter the teacher's classroom, but do not necessarily document their experiences. Nevertheless, mid-year and annual summative evaluations include the totality of the evaluator's experience in the teacher's classroom, including informal observations both documented and undocumented.

Prophete conducted a 40-minute formal announced classroom observation on December 15, 2016. The observation evaluation form has fields for "Evidence-based strengths" and "Evidence-based Growth Areas" for each of the first four Competencies. Prophete evaluated DiPaolo as "Partially Effective" overall.

Prophete identified some of DiPaolo's strengths, such as, for example, Indicator 1b: Lesson Components. She complimented his ability to "balance the responsibility of each learner while balancing the workload among learners." She also identified several areas that DiPaolo should improve, such as, for example, Indicator 2a: Tailored Instruction. She stated that "there was no evidence of activities tailored to support varied learning styles or abilities...During this lesson no students were called to review the lesson or provided manipulatives or instructional tools." Prophete testified that DiPaolo needed to improve his ability to connect the individual lesson's goal to a longer-term, more overarching goal for the students. She also testified that DiPaolo "didn't use enough support materials," specifically the display of anchor charts throughout the classroom. Anchor charts are visual references that students can look at to help them learn. Finally, Prophete noted that DiPaolo tended to ask questions of students but was inattentive to correcting their answers, or sometimes provided the answer himself when they were incorrect.

DiPaolo's mid-year review for the 2016-2017 school year, as completed by Prophete, appears in the record. DiPaolo received an overall "Partially Effective" rating, based on the formal evaluation discussed above, as well as informal walkthroughs completed on December 13, 2016, January 20, 2017, and January 23, 2017. Prophete evaluated DiPaolo's various strengths and weaknesses, which aligned with her documentation of his formal observation. She reiterated that he had to organize information for students more clearly, and pay more attention to

tailoring his instruction to individual student needs. The mid-year assessment also included an objective component, comparing student performance scores against DiPaolo's documented goals. According to Prophete's testimony, this area showed modest student growth.

DiPaolo disagreed with Prophete's "Partially Effective" rating, especially against the backdrop of having received only "Effective" annual summative evaluations in the preceding school years. He also testified that he had had a similar situation with Prophete several years earlier, in which she had rated him "Partially Effective" by a narrow margin. According to DiPaolo, that result was overturned and his rating was revised to "Effective." He also noted that because he had not taught 4<sup>th</sup> Grade before, he did not have a collection of anchor charts at his disposal, and believed that the critique that he did not consistently post anchor charts was arbitrary and unfair. Prophete testified that she was unaware of whether DiPaolo offered a rebuttal to her evaluation. DiPaolo testified, however, that he had requested Prophete to revisit his classroom subsequent to his evaluation, but that she did not do so.

After receiving a "Partially Effective" rating, DiPaolo reached out to Principal Javier Nazario to request a different evaluator going forward. Nazario testified that DiPaolo "expressed a lot of dissatisfaction with his midyear rating with the process and the actual rating itself." Nazario testified that he himself had conducted many informal walkthroughs of DiPaolo's classroom throughout the

year, and that Prophete's rating was consistent with his own observations of DiPaolo's performance. DiPaolo testified, however, that Nazario's visits to his classroom, although frequent, were cursory. In response to DiPaolo's request, Nazario assigned Rhonda Williamson-Greene, another Vice Principal at South Street School, to complete DiPaolo's second formal evaluation of the year. In addition, Nazario modeled a lesson for DiPaolo.

Williamson-Green completed DiPaolo's unannounced formal observation for the 2016-2017 school year on June 9, 2017. The observation focused on Competency 2. Her rating was overall "partially effective." She identified DiPaolo's strength as Indicator 2b: Questions and Tasks, and noted that DiPaolo "asked targeted questions...his insistence on each student recognizing and then restating the question helped them to solidify their answers." She also identified areas for him to improve, for example, Indicator 2c, where she noted that the "teacher does not recognize misunderstanding or rarely adjusts instructional strategies based on student reactions." She wrote that DiPaolo was not attentive to all of the students in the class, and some of them were off-task and not redirected. In summary, she wrote, "Mr. DiPaolo has great enthusiasm when teaching in his classroom. Most of his students are thoroughly engaged in his teaching. Mr. DiPaolo needs to remember to engage all of his students in the work that goes on in his classroom and to use all modalities of learning."

DiPaolo requested that Williamson-Green return to his classroom to conduct another evaluation. She did, unannounced, on June 16, 2017. She observed the class for 15 minutes, focusing again on Competency 2. This time, she found that DiPaolo's strengths included Indicators 2a and 2b, which she rated as "Effective." She identified Indicator 2d as an area requiring improvement. Her overall rating for this observation was "Effective."

DiPaolo's annual evaluation for 2016-2017 appears in the record. It is dated 6/15/17, although testimony on the record indicates that this is the date that the record was opened, not necessarily the date that the annual evaluation was finalized. Prophete, who completed and submitted the evaluation, testified that the evaluation took into consideration the totality of the administration's observations of DiPaolo, including Williamson-Green's June 16, 2017 evaluation discussed above, as well as informal, undocumented evaluations. DiPaolo's annual rating was "Partially Effective." He received an "Effective" in Competency 1, receiving praise for his lesson design, pacing, and planning. However, Indicator 1d: Clarity, was ranked "Partially Effective" because "verbal and visual resources fail to effectively lead students to understand concepts. When misunderstandings occur, the teacher will at times continue with the lesson or re-explain in the same way rather than provide an effective alternative explanations [sic] or strategies." In addition, Indicator 1f: Progression of Instruction was rated "Partially Effective" because DiPaolo was not observed adjusting instructional strategies on the basis of "students' current levels of performance." In Competency 2, DiPaolo received

a “Partially Effective” with most Indicators rated “Partially Effective.” In Competency 3, DiPaolo received an “Effective” rating, with particular praise for his attitude and the engagement of his students. However, Indicator 3b: Persistence was discussed at length and ranked “Partially Effective,” with reference made to how DiPaolo had not sufficiently adjusted to the mid-year criticism of the placement of his anchor charts. In Competency 4, DiPaolo was rated “Partially Effective,” with criticism directed at his failure to adequately track and use data to tailor his teaching strategies to the students’ needs. The evaluation notes that DiPaolo’s students did not meet the objective testing goals that he had set for them in his IPDP. Prophete testified that his students did not meet their goals for the PARCC assessment, nor the SRI assessment which is used to determine reading level. DiPaolo was rated “Effective” for Competency 5, indicating that DiPaolo was punctual, professionally engaged, and collegial. It also noted that DiPaolo’s use of sick days resulted in him “falling slightly below the district and states [sic] mandate for attendance.”

In total, DiPaolo received 10 out of a possible 19 points in his annual evaluation. This indicated “Partially Effective” performance for the school year. In “Preliminary Professional Growth Areas,” which Prophete testified is a field in the evaluation intended to assist teachers to improve in the following year, Prophete wrote the following:

I strongly suggest that Mr. DiPaolo seeks professional development focused on alternative strategies to support students when they are

struggling and PD that will support tailoring instruction through differentiation in ELA and Math.

Provide helpful and positive suggestions when students are unable to answer questions rather than simply providing the answer to students.

Mr. DiPaolo must engage learners in tailored activities to support varied learning styles and abilities within his class. I strongly suggest that the teacher utilizes the Math in Focus Reteach resource book as well as scaffold instruction to reflect the needs of students during small group instruction. I also suggest that the teacher provides learners with graphic organizer [sic] to support them during writing tasks during their first draft.

It is important that Mr. DiPaolo monitors and adjusts his instructional pacing as well as the instructional needs of the learners by scaffolding instructional tasks.

I strongly suggest that the teacher incorporates opportunities that will engage students' lessons that will provide opportunities for them to take part in extended learning experiences integrating all core contents areas for learning focused on culminating activities.

Make certain that all materials are displayed in an organized manner. The teacher must make certain that the learning environment is organized in which students have access to materials, resources, technology and teacher-created anchor charts for instructional purposes. The teacher must post anchor [charts] in an organized manner around the classroom.

DiPaolo testified that he faced various challenges during that school year that negatively impacted his performance in a way that was overlooked by the administration in determining his rating for the year. He stated that there were an unusually large number of students that could not speak English at all, and that there were students with Individual Education Plans (IEP). In his view, this negatively affected his ability to make sure that these students were meeting their objective testing goals in ELA. He testified that he did not receive adequate



support from the administration to teach students who don't speak English, especially because he does not speak Portuguese, and is not credentialed to teach ESL. He stated that he received language support from a teacher named Ms. Almeda, but only from the months of October through February, and then only sporadically.

During the 2016-2017 school year, the South Street School was in the process of transitioning from an old building to a new building. During that year, the new building was still under construction. Instruction in the new building began in the 2017-2018 school year. At some point during the second half of the 2016-2017 school year, Nazario informed DiPaolo that he would not be transferring to the new building and would have to find a new school to work at. Nazario testified that because of a change in the programming at the new school, he told DiPaolo that "the real only opportunity that he had to remain at South Street School with us and move to the new South is if he had additional certifications or endorsements." Specifically, Nazario was looking for bilingual teachers, and DiPaolo did not speak Portuguese or Spanish. He told DiPaolo that if he could obtain a certification in Special Education, he might be able to transfer, but this was not possible. DiPaolo testified that he was "heartbroken" because he had taught at South Street for 15 years and felt he was "part of the community."

That summer, DiPaolo applied to approximately 20-25 schools through a District program called Talent Match. He was ultimately placed in the Rafael

Hernandez school for the 2017-2018 school year. DiPaolo's initial placement was as a support, push-in/pull-out instructor, but his assignment was switched to 4<sup>th</sup> Grade science the day before the school year started. His supervisor and evaluator for that school year was Vice Principal Stephanie Vargas, who helped him formulate his CAP for that year, which was first finalized in October, 2017. It was later revised by DiPaolo in February, 2018. Vargas testified that teachers sometimes revise their goals if they feel it would be "impossible to meet" them. The CAP in evidence reflects DiPaolo's revised goals.

DiPaolo's CAP identified two student goals and two professional growth areas. For each of his student goals, he indicated that he expected 9 of his 19 students to achieve a 65% or better score on applicable standardized testing at the end of the year. For his professional growth areas, he selected Competency 1a: lesson sequence and Competency 3c: community.

Vargas testified that as part of duties as Vice Principal she continuously visited teacher classrooms, including DiPaolo's, in an informal capacity. She characterized this as "conduct[ing] rounds." These visits were especially emphasized in the beginning of the school year, when teachers are still getting acclimated. Vargas testified that she had a meeting with DiPaolo at some point in the beginning of the school year, where they discussed his prior year's performance and how he had not had a good experience with his evaluators. Vargas expressed that she was "very sympathetic to that," that she would give him

“the benefit of the doubt,” and that she would make sure that she “was going to help him as much as I can.”

Vargas conducted her first formal observation of DiPaolo on October 11, 2017, which was unannounced. Initially, she noted that there was “no posted objective visible,” and that DiPaolo stated the lesson’s objective verbally. She identified several strengths of DiPaolo’s, including Competency 1d, which she graded “effective,” and commented that “content and instructions are communicated clearly and accurately...as a result, students were able to understand the text as well as the assignment they will be working on.” She also found him “effective” in Competency 2c, and noted that he “quickly recognizes misunderstanding(s) and employs effective strategies to reach most students.” DiPaolo received “partially effective” or “ineffective” ratings in Competencies 1a, 1b, 1c, 2a, 2b, 2d, 3a, 3b, 3c, 4a, and 4b, each of which were explained with a paragraph of text. For example, Vargas noted with respect to Competency 3c: community (an area identified as a growth area in DiPaolo’s CAP)

Teacher sometimes uses positive, productive language. Classroom values and norms are inconsistently reinforced. Mr. DiPaolo praised students with positive language and awarded student with candy when responded correctly...However, classroom norms were not always followed by the class. Students responded in incomplete sentences. Thus impacting the culture of the class. Mr. DiPaolo needs to ensure students are engaged in their learning and follow through with expectations.

In other competencies, Vargas observed that “checks for understanding occur only sometimes or may not be aligned with the objective,” and “teacher feedback is

academically focused and appropriate, but is not tailored to the unique needs of each student or is often teacher directed.” Vargas testified that “Mr. DiPaolo was asking low level questions” and that “the students were not given the opportunity to answer and we did not see evidence of the entire classroom being able to show mastery toward objective.” She also testified that DiPaolo did not address incorrect responses, and did not correct students when they answered in incomplete sentences. Vargas concluded her observation with identified “action steps” for DiPaolo, including (under Competency 1a) “provide students with a posted objective and have students connect the lesson to previous and future learning goals” and (under Competency 1b) “use a timer to keep students on task.” DiPaolo’s overall rating for the first evaluation was “partially effective.”

Vargas testified that following her first evaluation, she offered to co-plan and execute a lesson with DiPaolo, but that “there were numerous reasons why he said he couldn’t do that with me.” She stated that he cited not wanting to use his prep time and not wanting to come in early or leave late as reasons for why they didn’t end up employing this strategy.

Vargas conducted a follow-up informal observation on November 27, 2017. While such informal evaluations are not always documented, this one was. Vargas stated that the purpose of this evaluation was to give the teacher feedback, and that he was certainly aware of it, because each time an evaluation is filed, the teacher receives an automated email allowing them to view it. In her informal

evaluation, Vargas again emphasized that DiPaolo should have the lesson objective posted and should connect the lesson with previous and future learning.

DiPaolo's next evaluation was conducted by Vargas on December 1, 2017; this evaluation was a formal, announced evaluation. Vargas and DiPaolo first met on November 28, 2017 to discuss the lesson. She testified that at this conference, she "suggested based on his CAP goal that he should connect the lesson to the previous learning." They formulated the lesson plan together. DiPaolo again received a "partially effective" rating, with a mixture of positive and negative observations. Vargas identified Competency 2b: questions and tasks as a strength for DiPaolo, because "questions and tasks often ensure student comprehension as well [as] some application, analysis and synthesis." Also, she noted that DiPaolo clearly posted a lesson objective, which had been a weakness for him in previous evaluations. Similarly, DiPaolo performed well in Competencies 3a, 3c, and 3d. In competency 3c: community (a professional growth area in DiPaolo's CAP), Vargas observed that

Teacher and students often use positive, productive language and promote classroom values and norms. Students worked cooperatively within their group. When it was time to transition, Mr. DiPaolo use '1,2,3, eyes on me' to get students to quiet down and focus on him. Mr. DiPaolo used school wide Sharky system to reward students for good responses. As a result, students were on task and there were no discipline issues.

However, DiPaolo also received significant criticism, much of which carried over from his previous evaluations. For example, in competency 1a: lesson sequence,

DiPaolo received a “partially effective,” with the comment that “students did not connect lesson to future learning or unit objectives.” In competency 2c: responsiveness, Vargas stated:

Teacher sometimes recognizes student misunderstanding(s) and adjusts instructional strategy. Adjustments are somewhat effective. Teacher was cognizant of misconceptions when asking students question...Mr. DiPaolo consistently questioned to address misconceptions when discussing. However, when students were writing responses he did not clarify misconceptions. Students had mistakes such as writing simply...Moving forward, Mr. DiPaolo should use the same questioning strategies he uses with students during discussion to address misconceptions on written work.

DiPaolo received “partially effective” or “ineffective” in competencies 1a, 1b, 1c, 1d, 2a, 2c, 2d, 3b, 4b, and 4c. Vargas summarized her evaluation: “it is evident Mr. DiPaolo has worked on maintaining classroom norms and procedures. It is noted his ratings have improved in Competency 3 since his last formal evaluation. Students were attentive and engaged with their work. He should ensure to focus on areas we spoke about in the first observation of 1a. Lesson sequence, 1b. Lesson Components, and 1c, Pacing and Momentum.” Each competency received a paragraph of detailed explanation in the evaluation.

DiPaolo’s mid-year evaluation was overall rated as “ineffective.” He received “partially effective” ratings in competencies 1-3, as well as 5, and “ineffective” in competency 4. The mid-year evaluation is very long and detailed, but addresses similar themes to prior evaluations completed by Vargas. Vargas identified several areas where DiPaolo fell short in her testimony at hearing. She

testified that “there were numerous times when either the lesson objective was missing or connection to the previous and future learning goals were not evident.” She also took issue with DiPaolo’s lesson organization and time management. While Vargas noted that DiPaolo showed some improvement in competency 3c: community, which DiPaolo had identified as a professional growth area in his CAP, she also stated that “overall,” community remained an area within which DiPaolo needed to grow and improve. This included “making sure that the teacher is giving students...rigorous work” and “making sure that the classroom norms and routine are...followed.” She testified that “there was no evidence” that DiPaolo had posted anchor charts. Of particular importance to Vargas was that DiPaolo was “not on track to make the goals” he had set out in his CAP. She stated that “zero percent of the students mastered” the second of two objective goals he had set forth in his CAP, even though his CAP required at least nine students to do so. She also noted that DiPaolo “did not make specific progress” towards his CAP professional growth goals in competencies 1a: lesson and sequence and 3c: community. In summary, Vargas testified that she gave DiPaolo an “ineffective” overall evaluation because “competency 4 weigh[ed] heavily.”

In the second half of the year, Vargas continued to informally evaluate DiPaolo, but he received his formal, documented evaluation from April King, another Vice Principal at Rafael Hernandez school at the time. King did not testify. Vargas stated that King was brought in to evaluate DiPaolo “because you never want a teacher to feel like they are targeted.” King’s evaluation, on March 22, 2018,

was overall “partially effective.” King noted that DiPaolo used a timer for the lesson, which had been an issue previously identified that year by Vargas. However, also consistent with previous evaluations, King observed that DiPaolo did not effectively connect his lesson to larger unit goals, which negatively affected his Competency 1a score. Additionally, King wrote that “questions and tasks are not challenging or teacher does not ask questions” and “Mr. DiPaolo said to students at the beginning of the lesson ‘so basically all you have to do is take the quiz.’”

Vargas completed DiPaolo’s annual summative evaluation on April 6, 2018, after he received the required three formal evaluations (2 from Vargas, 1 from King). Vargas testified she completed the annual summative evaluation so early in the school year because all teachers who have CAP must have a summative evaluation by May 15 of that year, and that all three of the required evaluations had been completed. Vargas rated DiPaolo “partially effective” for the 2017-2018 school year based on the totality of her formal and informal evaluations, as well as the formal evaluation completed by King.

DiPaolo testified at length about his experience at Rafael Hernandez School in the 2017-2018 school year. He explained that he discovered, around the second or third day of the school year, that Rafael Hernandez had an “Election to Work Agreement” (EWA). A school with an EWA has a longer workday schedule than other schools in the District, with increased pay, but staff are not forced to work the longer hours but may elect to do so. DiPaolo testified that he “couldn’t sign it,”



because of personal circumstances that were out of his control. He stated that he believed that he was one of “maybe one or maybe two of the only teachers in that school that didn’t sign it.” He identified this as a potential problem because he felt like the other teachers and staff might see him as a “slacker.”

DiPaolo also testified with respect to “the composition of his class” in the 2017-2018 school year. He had a significant number of students with IEPs, which he estimated to be “more than half” of his class. At the time he submitted his CAP, he did not know the number of children he would be teaching that had IEPs. He testified that this substantially increased the difficulty of his job because “more students really need more individual help.” He detailed several instances of serious conflict that arose between his students because of behavioral issues.

DiPaolo testified that he was “taken aback” by the October 11, 2017 evaluation completed by Vargas rating him “partially effective.” In his opinion, the evaluation was overly harsh because “I was just getting my footing...it was October 11. I think we were in school maybe five weeks tops.” He also didn’t believe that the evaluation took into account the challenges presented by his new class.

He also took issue with the November 27, 2017 evaluation completed by Vargas. That evaluation was completed on the day after a return from Thanksgiving break, and “the children...want to share their week with you. They want to talk about who had turkey, who didn’t, you know, and it’s just a tough day

to get going that early.” Similarly, he disputed Vargas’s December 1, 2017 formal evaluation that resulted in his receiving a “partially effective.” He testified:

I have two thoughts about this observation that come to mind. One, was before this observation, I had shared with Ms. Gois and Ms. Vargas that my wife was diagnosed with breast cancer...and I was struggling with that. As well as with, you know, the children in my class with the IEPs and the extended workday and everything that came with that was going on...It was too important of a year being on a CAP and I didn’t want that to be held against me. So I did my best to come in and not only that, this observation was an announced observation that I prepared for more than I probably ever prepared for an observation. I mean, you know, I had it down. And, you know, without going through the entire observation and reading it, which I hope, you know, everyone does, I’m working with live animals. With a class full of children that are IEP or special needs and it was an incredible class....These children learned more in that lesson than sometimes you could ask for in a week...I mean, I rolled out the carpet I felt for Ms. Vargas that day and just to...shine. And when I came back to read it, I just couldn’t believe that, you know, such a lesson in my mind and my children’s reactions and learning that I saw that day could be written up in a manner that was partially effective.

DiPaolo received his annual summative evaluation on April 6, 2018, well before the school year ended on or about June 25 of that year. He testified that he believed that this was unfair because he still had a significant period of time left in the school year to try and adjust his performance. He also noted that the composition of his class had changed significantly since he had set his objective student growth goals in his CAP: “the nine out of 19 had changed tremendously that I no longer had the 19. The same 19, if not more...I’m not even sure who those nine students exactly were that were supposed to show mastery.”

At the end of the 2017-2018 school year, DiPaolo was informed that if he did not sign the EWA for the 2018-2019 school year, he could not continue to teach at Rafael Hernandez. He made attempts to apply to other schools in the District, but was not selected. On or about August 28, 2018, near to the beginning of the 2018-2019 school year, DiPaolo received written notice that he was being transferred to South 17<sup>th</sup> Street School as an elementary school teacher, but without a grade assignment. He arrived the following day, but was informed by the principal that they hadn't received notice of his transfer there and that they didn't have a space for him. The day after that, he was told by Yolanda Mendez<sup>1</sup> to report back to Rafael Hernandez School. As before, Rafael Hernandez did not have a teaching position open for him. Although DiPaolo testified that he was "fuzzy" on the specifics of the different assignments he received in this short period of time, he stated that "I was sent to at least three or four different schools." Eventually, the day before the beginning of the school year for the students, DiPaolo was assigned to teach at Cleveland Elementary School. When he arrived, Principal Erskine Glover did not expect him either, but ultimately assigned him to team-teach with a teacher named Mr. Powell, who was slated to retire in October, 2018.

DiPaolo co-taught fifth grade with Powell until Powell's retirement in October. Although Cleveland Elementary also had an EWA, DiPaolo did not sign it either, although he agreed with Glover to arrive to work at 8 AM, earlier than the District-

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<sup>1</sup> Mendez did not testify and her position is not clear on the record.

wide contract mandated. DiPaolo was not compensated extra for this time, even though he would have been if he were working under the terms of the EWA. After Powell departed, DiPaolo took full responsibility for the class assignment for the rest of the school year.

Because he had received a “partially effective” annual summative rating for the previous school year, DiPaolo was again placed on a CAP for the 2018-2019 school year. Vice Principal Dr. Shana Burnett worked with DiPaolo to develop this CAP. DiPaolo and Burnett met on September 27, 2018 to formulate the CAP. The CAP identified goals for student performance, including the requirement that 35% of his students would pass the standardized test PARCC, and that students would “demonstrate a 45% growth on the Inspired Science Assessments.” The CAP also identified professional growth areas in each of the competencies: 1d: clarity; 2d: precision and evidence; 3e: high expectations; 4d: using data; and, 5b: collaboration. Each of these professional growth areas had multiple “action steps” attached, including “I will use peer observations” and “I will use anchor charts!” It also identified specific metrics and processes for assessing his progress in each area. The CAP was finalized on October 12, 2018.

Burnett completed her first formal evaluation of DiPaolo on October 22, 2018, which was unannounced. Not all of the competencies were addressed in the evaluation, but Burnett testified that unannounced evaluations do not require all of the competencies to be assessed and only announced evaluations require

that. Burnett's evaluation only identified growth areas for DiPaolo, and no strengths were observed. Among the growth areas identified were competencies 2a: tailored instruction, 3a: enthusiasm for learning, and 4a: checks for understanding. Each competency received a detailed description of what was observed as well as an assessment of Mr. DiPaolo's performance. Comments included: "Mr. DiPaolo's feedback is not tailored to the unique needs of each student and is often teacher-directed" and "No lesson plans were provided for the lesson observed." Burnett assigned DiPaolo to follow up with a math coach to "refine his practices," and requested that he read "Teach Like a Champion," which contains strategies for teaching improvement. DiPaolo received an "ineffective."

DiPaolo testified that "there were definitely some things in [the evaluation] that I felt I did great and there were definitely some things in here that I could have improved on." He added his belief that students with IEPs or behavioral problems affected his rating.

Burnett and DiPaolo met on January 8, 2019 for a pre-observation conference, and his second formal (announced) observation was conducted on January 11. This evaluation, which was overall "partially effective," touched on each of the competencies, and identified both strengths and growth areas. Detailed information was provided in each of the fields. Burnett's mid-year evaluation mainly restated the points she addressed in each of her formal evaluations, and addressed competency 5, as well. Burnett wrote that "Mr.

DiPaolo does not accurately self-assess substantive growth areas, nor does he incorporate feedback from others timely...he is very defensive when conversations are held with him around was [sic] to improve his teacher practices.” DiPaolo testified that he disagreed with Burnett’s assessment, especially with respect to his defensiveness. Burnett’s overall mid-year evaluation was “ineffective.”

Principal Erskine Glover performed two evaluations of DiPaolo in the second half of the 2018-2019 school year. Glover did not testify, but the evaluations he performed appear in the record. The first, conducted on March 6, 2019, was an informal, unannounced evaluation with an overall “partially effective” rating. Glover emphasized that DiPaolo was not systematic enough in tracking his students’ growth, but stated “I am willing to review aggressive monitoring sheets on a weekly basis so that I can support you with scaffolding the work and plan for upcoming lessons.” Glover also wrote that he expected improvement in the organization of DiPaolo’s classroom and materials. Glover’s May 10, 2019 formal evaluation of DiPaolo was also “partially effective.” Glover focused on a mismatch between DiPaolo’s submitted lesson plans and the lesson that was taught on that day. He also evaluated each of the competencies, and identified several in which DiPaolo had to demonstrate growth.

Burnett completed DiPaolo’s final annual summative evaluation for the 2018-2019 school year. She rated him “ineffective” overall, and provided a very detailed review of all documented evaluations throughout that school year,

including Glover's May 10, 2019 formal evaluation. DiPaolo testified that he was not informed of Glover's May 10, 2019 evaluation until after he received his final summative evaluation for the year, and was not given an opportunity to review it or sign it until May 14.

## **DISCUSSION**

Pursuant to N.J.S.A. 18A:6-10, "[n]o person shall be dismissed or reduced in compensation ... if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public school system of the state ... except for inefficiency, incapacity, unbecoming conduct, or other just cause." Tenure charges concerning teaching inefficiency are governed by the Teacher Effectiveness and Accountability for the Children of New Jersey Act (TEACHNJ). TEACHNJ states that tenure charges be brought against a tenured teacher who receives two consecutive annual summative evaluations of "partially effective." When charges are brought, they are arbitrable but with a limited scope of review. The statute explicitly provides the standard of review in TEACHNJ arbitrations:

- 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 or federal law, or other conduct prohibited by state or federal law; or
  - (4) The district's actions were arbitrary and capricious.
- b. 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.
  - c. The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.

The burden is on the District to establish that it met all relevant standards consistent with the requirements of TEACHNJ. Thus, the Board must carry the burden to show, by a preponderance of the evidence, that it acted consistently with the above statutory criteria and TEACHNJ requirements. Each party has offered substantial arguments in support of their respective positions on the record evidence. I concisely summarize each.

The Board contends it has satisfied its burden. Initially, the Board states that the evidence at hearing demonstrates that it "adhered substantially to its evaluation process." It points out that the Framework provides a Department of Education-approved process for evaluating teachers in compliance with TEACHNJ. Also, it submits that the evaluators substantially followed the Framework when it rated DiPaolo in all three school years at issue. According to the Board, it is undisputed that DiPaolo received the correct number and type of evaluations in



each of his three years. He also received an IPDP and two CAPS, pursuant to the Framework. It points out that he was observed by different administrators in different settings, and received both announced and unannounced observations which led to ratings which provided it with the authority to seek Respondent's dismissal.

The Board further asserts, notwithstanding DiPaolo's argument that the difficulty of his assignments was not taken into account by his evaluators, that the arbitrator has no authority to "second guess the educational judgment of the Board in placing Respondent in classes he was certified to teach, nor may this arbitrator second guess the judgment of the Department of Education in creating a system in which teachers are expected to teach and to teach effectively, in any assignment for which they are certified." It also notes that while it could have brought tenure charges of inefficiency against DiPaolo after the 2017-2018 school year, when he received his second consecutive annual summative evaluation of "partially effective," it elected not to and instead gave him a third year to improve his teaching performance. Despite this, the Board contends that the evaluations reflect that he did not improve, thus resulting in the filing of the tenure charges for inefficiency.

The Board disputes that there were any mistakes of fact in DiPaolo's evaluations. Alternatively, if any mistakes of fact in his evaluations were to exist, it contends that none are material to the outcome of the evaluations. Specifically, the Board argues that in 2016-2017, the record is clear that although the annual

summative evaluation carries the date June 15, 2017, and that DiPaolo received an additional “effective” observation on June 16, 2017, the June 15, 2017 date only applies to the date the evaluation was opened, and not when it was finalized. It argues that Prophete’s testimony conclusively establishes that she took that final observation into account, and that it is reflected in DiPaolo’s evaluation for that year.

The Board also submits that there is no mistake of fact with respect to any professional judgment made by evaluators to “break a tie” in a specific Competency where two Indicators are “effective” and two indicators are “ineffective.” The Board asserts that all decisions made with respect to scoring were made over three years concerning DiPaolo’s overall performance, as observed by several different administrators in various settings and, as such, were not done arbitrarily. The Board states that its evaluation system “has been approved—the determination of scoring and weighing is an integral part of that system and cannot be second guessed here.”

Finally, the Board argues that its decision to bring the tenure charge against DiPaolo was not arbitrary and capricious. In doing so, the Board rebuts two specific allegations on the part of the Respondent. The first is DiPaolo’s claim that the evaluations were arbitrary and capricious because he did not receive enough support in his classrooms with special needs students, students with IEPs, and students who did not speak English. The second is that DiPaolo’s evaluations

were arbitrary and capricious because he was assigned to several different schools over the course of the three years and in one instance, immediately prior to the start of the school year. In response, the Board states that it has the responsibility and authority to expect that teachers will teach students with different needs, and that there is no evidence that Respondent was intentionally set up to fail. It also argues that it has the right to assign and reassign teachers to any class for which they have the certification to teach, and that there is no evidence that Respondent was assigned to a class without having the proper certification to teach.

Respondent first contends as a threshold matter that all three of the annual evaluations submitted by the District are “facially deficient” because they did not incorporate the correct measures of student growth. Respondent submits, assuming *arguendo* that the annual evaluations were not “facially deficient,” that his evaluations were “riddled with both procedural errors, as well as arbitrary and capricious conduct...which materially affected the outcome of the evaluations.” In support of this contention, Respondent points out that in the 2016-2017 school year, DiPaolo was faced with many new aspects of his teaching assignment that he had not encountered before, such as a new grade assignment, new subject matter, and new educational programs. He also was assigned to teach a class section with several students who did not speak English, without having a bilingual teaching certification and with inadequate support. In 2017-2018, DiPaolo was required to teach at a “renew” school with a new assignment and new class composition. He claims he was unlawfully assigned IEP special needs students in

excess of his teaching certification. In 2018-2019, DiPaolo submits he was again subject to a new environment and class composition with an excess of IEP students without sufficient support, and that he received his annual evaluation before he was able to review his mandated third observation. Respondent argues that the totality of the above challenges were insufficiently factored into his evaluations, thereby constituting arbitrary and capricious conduct on the part of the Board.

I observe at the outset that many of the factual elements of the record are not in dispute. The District completed the requisite number of evaluations. The evaluations were completed by administrators that were both authorized and qualified to complete them. Respondent was provided with CAPs where explicitly required by statute. There were no substantial inconsistencies between the ratings generated by the observations and those provided in the mid-year and final evaluations. Each evaluator used the same rubric for scoring DiPaolo, down to the repetition of many criteria, even across school assignments and evaluators. The evaluators were actually in the classroom when they said they were and they completed the requisite number and type of evaluations, and the evaluations followed the Framework and Rubric. The testimony from the evaluators was detailed, corresponded to the educational judgments each made with very specific recall of the evaluations each conducted. There is no evidence that the evaluators coordinated over their views to Respondent's teaching performance or prejudged him prior to the conduct of the evaluations.

Clearly, Respondent disagrees with the judgments made by the evaluators and the results of his evaluations which deprived him of “effective” status. The results were documented and explained in detail at hearing and each evaluator was subject to comprehensive cross-examination. Even assuming that the arbitrator might disagree with some of the judgments and discretion use in the District’s evaluations, the arbitrator lacks authority under the law to substitute his judgment and the discretion exercised by the evaluators. Some contentions of Respondent challenge the District’s educational policies and practices and the assignments he received which he believes affected the evaluation results. For example, assignments to specific schools, subjects, the placement of students with diverse backgrounds and the criteria upon which his performance was judged. However, the focus of the process before me is limited to whether the District followed the Framework, its Rubric, provided scores that were explained at hearing by the evaluators, whether the evaluations explained the rationale for their judgments and scores, whether there was a basis to find mistakes of facts that would have materially changed the content of the evaluations or the required method of scoring and whether there was evidence that the evaluators engaged in pre-textual conduct or acted with bias that impacted the factual findings and judgments made in either the evaluations or the scoring. Respondent’s arguments that the scoring in certain evaluations finding “partially effective” was so close to meriting an “effective” rating is not persuasive. While this may be so in theory, it would render cutoffs meaningless and unenforceable. Indeed, the scoring system

would be rendered moot because someone else may be a point or two below the person who also seeks a higher evaluation score because of proximity to the next rating. There is no basis to conclude that the cutoffs were “moving targets” that were finessed or manipulated by the evaluators to produce a certain result. Rather, I credit Prophete, Vargas and Burnett’s testimony that they calculated the Respondent’s scores in good faith and using their best professional judgment.

TEACHNJ provides a specific framework for arbitration proceedings that concern tenure charges based on inefficiency. Under this framework the arbitrator’s scope of review is limited to that set by law. After full review of the evidence and the arguments of each party within the context of the arbitrator’s authority as derived from N.J.S.A. 18A:6-17.2, I conclude that the Board has met its statutory burden and thus, the tenure charges must be sustained. The Board has established that (1) the evaluations *did* adhere substantially to the evaluation process, (2) there was no demonstrable mistake of fact in the evaluation or the scoring, and (3) the charges were not brought for considerations of political affiliation, nepotism, union activity, discrimination, etc.

The most substantial legal issue in dispute is whether the Board acted arbitrarily and capriciously in its evaluation process. Arbitrary and capricious action is that which is undertaken without rational basis. Respondent has raised several allegations of what he contends amounted to arbitrary and/or capricious treatment by the Board.

Respondent argues that his evaluators failed to take into consideration the makeup of his classroom in determining his effectiveness as an educator. Respondent alleges that he received inadequate administrative support for students with behavioral issues, those with learning disabilities, and those that did not speak English as a first language, or at all. Respondent's alleges that the failure of the evaluators to take into account the inadequacy of the administrative support in his classroom also constitutes an arbitrary or capricious act on the part of the Board.

The record does reflect that DiPaolo taught students in each of the 2016-2017, 2017-2018, and 2018-2019 school years who had behavioral issues, learning disabilities, or weren't fluent in English. It is also clear from Respondent's testimony, the documentary evidence he provided on the record, and some of the testimony adduced from the Board's witnesses, that having these students in his classroom presented challenges. However, these circumstances, standing alone, do not undermine the findings or ratings of the evaluators. Respondent asserts, without evidentiary support, that the evaluators held his students' difficulties against him as an educator and resulted in less than effective evaluations. I find no merit to this argument. There is no contention, nor evidence, that Respondent was treated differently from any other similarly situated teacher in the District, nor that the deficiencies found in his performance were the result of the makeup of the students in his class. The evaluations centered mainly on teaching methodology

and did not take the diversity of the students into consideration as a factor that diminished or enhanced his teaching methodology. It is entirely speculative that Respondent's evaluations would have been better had he taught a class with less challenging students. Moreover, even assuming that the Respondent's arguments are accurate, *i.e.* that his evaluators did not take the makeup of his classrooms into account when evaluating him, the Respondent has not demonstrated that such action was arbitrary and/or capricious. His contentions appear to accuse his evaluators of mistakenly assuming that his classrooms were populated by students without challenges and that he suffered as a result of having responsibility over students whose potential for success was lessened by their individual circumstances. There is simply no evidence that the presence of special needs students in Respondent's class negatively impacted on the criteria upon which Respondent was judged.

Much of the testimony and documentary evidence in the record actually reflect that they did consider Respondent's contention. Almost without exception, the evaluators praised DiPaolo's ability to interact with his students on a professional and personal level. This is especially true of the evaluations conducted in the first two school years at issue. All of the evaluations properly focused on the Respondent's teaching methodology and professionalism in relation to his students' performance, rather than on the students' perceived inability to match their performance to DiPaolo's expectations. The main focus of the three years of evaluations conducted by several evaluations and the results



have been previously summarized and need not be restated. In sum, they followed the Framework and Rubric, made detailed observations and scored the results based on the ratings that reflected the overall performance rating.

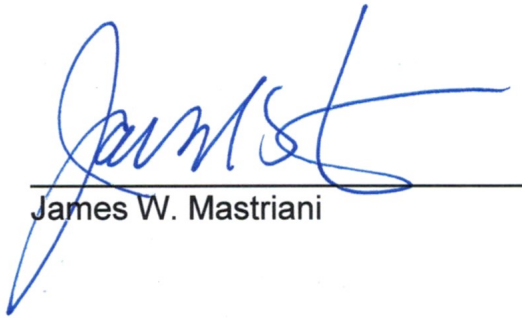
The Respondent's other allegations with respect to the Board's alleged arbitrary and capricious actions are dismissed because I do not find them to have materially affected the outcome of any of the respondent's evaluations. Paragraph (b) of TEACHNJ, as referenced above, requires that any applicable evidence of the failure of the Board to meet its burden must still be determined to have materially affected the outcome of Respondent's evaluations. I take specific notice of the consistency and comprehensiveness of the evaluations, the observers' and administrators' specific attempts to assist the Respondent in improving, and the Respondent's seeming inability to adjust his supervisors' expectations. These factors have been weighed against the Respondent's allegations that isolated or minutely specific errors, miscalculations, or procedural irregularities were material to the outcome of any or all of his evaluations. Such allegations mostly center on the timing of the Respondent's evaluations, and his ability to specifically rebut the observations with his own opinions with respect to his performance. The record is nevertheless clear that in all material and substantial ways, the observations were conducted fairly and in accordance with the Framework and the applicable statutes. Because I find that no individual criticism of the evaluation process offered by the Respondent, nor the totality of the criticisms alleged, were material to the outcome of his evaluations, the Respondent's remaining arguments are dismissed.

Accordingly and based upon all of the above, the District has established by a preponderance of the evidence that the tenure charges shall be sustained.

**AWARD**

The Board of Education of the City of Newark has established by a preponderance of the evidence that the tenure charges shall be sustained.

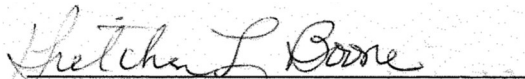
Dated: February 26, 2021  
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey        }  
County of Monmouth        } ss:

On this 26<sup>th</sup> day of February, 2021, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L. Boone  
Gretchen L Boone  
Notary Public  
New Jersey  
My Commission Expires 8-24-2022  
No. 50066778