

STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION

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IN THE MATTER OF TENURE CHARGES )

- against - )

SANYIKA MONTAGUE, )  
Respondent Teacher )

- filed by - )

BOARD OF EDUCATION OF THE )  
CITY OF NEWARK, )  
Petitioner )

AGENCY DOCKET NO. 221-8/22 )  
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OPINION  
AND  
AWARD

Before: Robert T. Simmelkjaer, Esq.  
Arbitrator

APPEARANCES

FOR THE PETITIONER BOARD OF EDUCATION

Adam S. Herman, Esq., Adams Gutierrez & Lattiboudere, LLC

FOR THE RESPONDENT

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

## **STATEMENT OF THE CASE**

This case arises under the Teacher Effectiveness and Accountability for the Children of New Jersey Act (“TEACHNJ”) N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1. The instant case involves a tenure charge of inefficiency filed by the City of Newark Board of Education (“Petitioner” or “District”) against Sanyika Montague (“Respondent”), who is a tenured teacher assigned to the Rafael Hernandez Elementary School.

Pursuant to N.J.S.A. 18:6A-10, “No 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, unbecoming conduct or other just cause.” Inefficiency charges are governed by TEACHNJ.

TEACHNJ provides, in pertinent part, that if a classroom teacher receives annual summative ratings of Partially Effective and Ineffective in two (2) consecutive school years s(he) will be subject to a tenure charge of inefficiency. N.J.S.A. 18A:6-17.2(d) places the “ultimate burden” on the District “of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.” In addition, the ACT provides that “[t]he only evaluations which may be used for the purposes of this section are those evaluations conducted in accordance with a rubric adopted by the board and approved by the Commissioner pursuant to P.L. 2012, C.26 (C.18A:6-117 et al.)” N.J.S.A. 18A:6-17.3.

Respondent earned the rating of “Partially Effective” for the 2020-2021 school year and the rating of “Ineffective” for the 2021-2022 school year.

When inefficiency charges are certified to the New Jersey Commissioner of Education and then transmitted to an Arbitrator, said tenure charges are subject to a limited scope of review. The Arbitrator’s jurisdiction is expressly circumscribed by Section 23 of TEACHNJ. S(he) is “precluded from reviewing any evaluator’s determination of the quality of her classroom performance, including the findings and conclusions in the observation report upon which the District has based its charge of inefficiency against her.” In other words, “an Arbitrator is precluded from modifying [Respondent’s] classroom observations, Mid-Year Reviews and Annual Summative Evaluations.”

In the event, the District can meet its burden by a preponderance of the evidence, then pursuant to N.J.S.A. 18A:6-17.2, the ACT provides several statutory defenses to a tenure charge alleging inefficiency in teacher performance as follows:

As set forth in the TEACHNJ statute:

- 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.

#### NEWARK BOARD OF EDUCATION TEACHER OBSERVATIONS AND EVALUATIONS

##### A. Framework of Effective Teaching Evaluative System

The Framework for Effective Teaching Guidebook outlines the process through which administrators in the Newark School District support and evaluate teachers in their professional practice. The Guidebook is the result of a collaborative process between the District and the Newark Teachers Union. This collaborative process was described by the District's Superintendent:

Over the past year, we worked together with the teachers' union to review and revise the Framework for Effective Teaching. We believe this updated framework results in an improved evaluation of a teacher's practice over the course of the school year because it is informed by class observations, student outcomes and professional behavior. The Competencies and Indicators of the framework describe the actions that effective and highly effective teachers possess to move students toward mastery of standards and college and career readiness. Consequently, the framework provides a roadmap for coaching as well as a measure for evaluation.  
(D. Exs. #24 and #25).

When the Framework for Effective Teaching was developed, the District designed it with inputs from educators addressing the following themes:

- **Teaching for student mastery:** The Framework focuses attention on both teacher behaviors and student actions that lead to student mastery of content. The Framework focuses not just on what is being taught, but whether or not students are actually learning the content and concepts presented.
- **High expectations:** The Framework requires that teachers hold high expectations for all students to achieve at high levels. This includes establishing learning goals that reflect the critical thinking skills that will put students in the pathway to college, providing evidence-based feedback to students, and effectively interacting with students to establish a culture and expectation that all students can and will master the content.
- **Elements observable in one lesson and over the course of the year:** NBOE recognizes that individuals, discrete classroom observations do not provide the complete picture of a teacher's performance and students' success at mastering content. As such, the Framework articulates both behaviors that are observable in an individual classroom lesson as well as behaviors that are observable over the course of the school year. This over-time guidance allows teachers and observers to identify and assess teacher behaviors and student actions that, as they build over the course of the year, lead to student mastery.
- **Accommodating individual needs:** Teachers should tailor instruction to address the diverse needs of all students and move all students toward mastery. This requires that teachers build relationships with their students and learn how to motivate and engage all students. Many students have special needs, which may be intellectual, emotional or physical. Each type of difference suggests different accommodations, from selecting instructional goals and designing instruction, to interacting with students and designing classroom norms. The Framework allows for, and encourages, this differentiation as critical to a teacher's practice.

The Guidebooks are distributed at the beginning of the year to all teachers. An electronic version of the Guidebook is posted on the District

website. Teachers and administrators receive training on all aspects of Competencies and Indicators. (Tr. @ 710-713 – 3128/23).

#### A. COMPETENCIES INCLUDING IN THE RUBRIC.

The structure of the Framework includes five (5) competencies, which set forth the overall expectations for each District teacher. These five (5) competencies, which are the core professional standards to which teachers will be held accountable, are:

- Competency 1 – Lesson Design and Focus: Students sustain focus on a specific, standards-aligned objectives that moves them toward mastery. Competency 1 outlines behaviors that ensure students are focused on the right content, in the right order, at the right pace. The Indicators associated with this Competency assess whether the teacher’s lesson design and execution is effective in focusing students on a clear and appropriate objective *today* while driving students toward mastery of grade level standards over time. Competency 1 includes four individual Indicators and two over the course of a year Indicators.
- Competency 2 – Rigor and Inclusiveness: Instructional strategies challenge all students and provide multiple pathways to mastery. Competency 2 sets forth expectations for the rigor of the teacher’s instruction, the learning demands on students, and the strategies the teacher uses to deliver content. This Competency ensures a rigorous classroom and articulates the characteristics of an inclusive classroom.

Competency 2 includes four individual lesson Indicators and two over the course of a year Indicators.

- Competency 3 – Culture of Achievement: A learning-focused environment of shared high expectations promotes mastery. The Guidebook makes clear that the most effective classrooms have strong classroom cultures. Competency 3 includes four individual lesson Indicators and two over the course of a year Indicators.
- Competency 4 – Student Progress Toward Mastery: Students show evidence of, and teacher monitors, growth. The Guidebook makes clear that in the District teachers are accountable for whether or not students learn – which is the ultimate focus as educators. This Competency sets forth mechanisms to identify whether students are learning. This Competency requires evidence of significant student growth and for teachers to measure, track and share information regarding progress. Competency 4 includes three individual lesson Indicators and three over the course of a year Indicators.
- Competency 5 – Commitment to Personal and Collective Excellence: The teacher demonstrates commitment to excellence and to the professional growth of his/her school and peers. This Competency articulates expectations for the teacher to prioritize the continuous improvement of his or her own practice and that of his or her peers. The Competency further articulates baseline expectations of professional behavior and

compliance with basic employment policies. Competency 5 includes 4 over the course of a year Indicators.

## B. INDICATORS INCLUDED IN THE RUBRIC

Indicators describe specific components or behaviors of the particular Competency. Indicators can be observed during individual lessons or over the course of the year. Competencies 1 through 4 include both in-one-lesson indicators and over-time indicators. Competency 5 includes only over-time Indicators. (D. Exs. #24, #25).

Competency 1 – Lesson Design and Focus: As set forth in the Guidebook for Teachers and Administrators, this Competency outlines how students sustain focus on a specific objective that moves the forward toward mastery. (Exhibits D-24 and D-25). Competency 1 outlines behaviors that ensure students are focused on the right content, in the right order, at the right pace. (D Exs. #-24 and #24); (Tr. @ 717-733).

The below listed indicators assess whether the teacher’s lesson design is effective in focusing students on a clear and appropriate objective today while driving students toward mastery of grade level standards over time. (D Exs. # 24 and #25).

- **Indicator 1a – Lesson Sequence:** Individual, standards-aligned lessons build on previous lessons and on students’ prior knowledge. This indicator is an “in an individual lesson” indicator.
- **Indicator 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. This indicator is an “in an individual lesson” indicator.

- **Indicator 1c – Pacing and Momentum:** Teacher maximizes learning time. This indicator is an “in an individual lesson” indicator.
- **Indicator 1d – Clarity:** Teacher clarity and accurately communicates content and instructions. This indicator is an “in an individual lesson” indicator.
- **Indicator 1e – Coherent Planning:** Lesson plans are also standards-based, grade-level appropriate, and reflect work towards annual student achievement goals. Lesson plans are, when applicable, collaboratively developed with other staff who will be helping to implement the lesson plan. This indicator is an “over the course of a year” indicator.
- **Indicator 1f – Progression of Instruction:** Lesson objectives fit into a larger, coherent sequence that leads to student mastery of the appropriate standards. This indicator is an “over the course of a year” indicator.

**Competency 2 – Rigor and Inclusiveness:** As set forth in the Guidebook for Teachers and Administrators, this Competency outlines how instructional strategies challenge all students and provide multiple pathways to mastery. (D Exs.#24 and #25). Competency 2 articulates expectations for the rigor of the teacher’s instruction, the learning demands on students and the strategies the teacher uses to deliver content. (D Exs.#24 and #25).

The below listed indicators assess and ensure a rigorous and inclusive classroom, which means that the teacher is expected to tailor instructional

strategies to meet the learning needs of all students and holds all students to a high standard. (D Exs. #24 and #25).

- **Indicator 2a – Tailored Instruction:** Teacher tailors instruction to move all students toward mastery. This indicator is an “in an individual lesson” indicator.
- **Indicator 2b – Questions & Tasks:** Questions & Tasks ensure student comprehension and ask for application, analysis and/or synthesis. This indicator is an “in an individual lesson” indicator.
- **Indicator 2c – Responsiveness:** Teacher anticipates and responds to student reactions and misunderstandings by adjusting instructional strategies. This indicator is an “in an individual lesson” indicator.
- **Indicator 2d – Precision & Evidence:** Teacher and students require Precision & Evidence in tasks and responses. This indicator is an “in an individual lesson” indicator.
- **Indicator 2e – Revisions:** Student work includes revisions based on teacher and some peer feedback, especially revised explanations and justifications to demonstrate student movement towards mastery. This indicator is an “over the course of a year” indicator.
- **Indicator 2f – Depth of Knowledge:** Lesson objectives, tasks and materials require students to demonstrate the following skills: Recall & Reproduction; Basic Application of Concept; Strategic Thinking; and Extended Thinking. This indicator is an “over the course of a year” indicator.

**Competency 3 – Culture of Achievement:** As set forth in the Guidebook for Teachers and Administrators, this Competency outlines how a learning-focused environment of shared high expectations promotes mastery. (D Exs. #24 and #25).

The below listed indicators assess whether there is explicit, positive interpersonal norms; rigorous instruction that builds students' abilities to persist through difficult concepts and tasks; strong processes that maximize instructional time; and joy in learning. ( D Exs. #24 and #25).

- **Indicator 3a – Active Engagement in Learning:** Students express satisfaction as they solve problems and master new material. This indicator is an “in an individual lesson” indicator.
- **Indicator 3b – Persistence:** Students show persistence in confronting demanding concepts and tasks. This indicator is an “in an individual lesson” indicator.
- **Indicator 3c – Community:** Classroom norms promote positive and productive teacher-student and student-student relationships. This indicator is an “in an individual lesson” indicator.
- **Indicator 3d – Attention:** Teacher’s strategies and routines capture and maintain student attention on learning. This indicator is an “in an individual lesson” indicator.
- **Indicator 3e – High Expectations:** The teacher fosters a classroom culture that is consistently one of high expectations and hard work. This indicator is an “over the course of a year” indicator.

- **Indicator 3f – Peer Accountability:** Students hold themselves and their peers accountable for learning and supporting the culture of the classroom. This indicator is an “over the course of a year” indicator.

**Competency 4 – Student Progress Towards Mastery:** As set forth in the Guidebook for Teachers and Administrators, this Competency outlines how students show evidence of, and the teacher monitors, growth. (Exhibits D-24 and D-25). This competency further outlines mechanisms for identifying whether students are learning in one lesson and over the course of the year, as teachers are accountable for whether or not students learn. (Exhibits D-24 and D-25).

The below listed indicators assess whether there is evidence of significant student growth. Which may include mastery of grade-level content, progression towards mastery, or in some cases, mastery of content beyond the students’ current grade level. (D Exs. #24 and #25).

- **Indicator 4a – Checks for Understanding:** Teacher consistently checks for understanding. This indicator is an “in an individual lesson” indicator.
- **Indicator 4b – Feedback:** Teacher and students give and receive timely, specific, and constructive feedback. This indicator is an “in an individual lesson” indicator.
- **Indicator 4c – Demonstration of Learning:** Students know more at the end of the year than they did at the start. This indicator is an “in an individual lesson” indicator.
- **Indicator 4d – Using Data:** Teacher tracks assessment data to understand each student's progress towards mastery and uses results to

guide planning and instruction. This indicator is an “over the course of a year” indicator.

- **Indicator 4e – Understanding of Growth:** Teacher can articulate specifically (and with evidence) whether or not each student has met grade-level standards and, if not, what they still need to learn. This indicator is an “over the course of a year” indicator.
- **Indicator 4f – Progress Toward Goals:** Data reflects that students are progressing towards mastery of the objectives of the focus areas, leading towards mastery of grade-level standards. This indicator is an “over the course of a year” indicator.

**Competency 5 – Commitment to Personal and Collective Evidence:** As set forth in the Guidebook for Teachers and Administrators, this Competency outlines the baseline expectations of professional behavior in any field and compliance with basic employment policies. (D Exs. #24 and #25).

The below listed indicators articulate expectations for the teacher to prioritize the continuous improvement of his or her own practice and that of his or her peers. (D Exs. #24 and #25).

- **Indicator 5a – Commitment to Continuous Improvement:** The teacher accurately self-assesses strengths and substantive growth areas, seeks and incorporates feedback from others, and actively engages in their own growth and development. This indicator is an “over the course of a year” indicator.

- **Indicator 5b – Collaboration:** The teacher contributes ideas and expertise to further colleagues' and the school's growth and incorporates productive insights into their own instruction. This indicator is an "over the course of a year" indicator.
- **Indicator 5c – Communication of Student Progress:** Teacher communicates student progress clearly and consistently to students, families, and school leaders. This indicator is an "over the course of a year" indicator.
- **Indicator 5d – Attendance and Promptness:** The teacher is present and prompt and attendance reflects their focus on student learning as a priority. This indicator is an "over the course of a year" indicator.

#### C. LEVELS OF PERFORMANCE INCLUDED IN THE RUBRIC.

As set forth in the Guidebook for Teachers and Administrators, descriptors identify evidence of the Indicator at each of the four levels of performance: highly effective, effective, partially effective and ineffective. (D Exs. #24 and #25).

Specifically:

- **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 at their practice.

- **Effective:** An Effective teacher consistently 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 the District. There are several clear areas where the teacher must improve his or her practice to achieve effectiveness. In some instances, performance at the Ineffective level represents that teaching is below the licensing standard of "do no harm." Immediate improvement is required for teachers at the Ineffective level to remain in the District.

#### OVERVIEW OF THE DISTRICT'S CLASSROOM OBSERVATION AND SUMMATIVE EVALUATION PROCESS

TEACHNJ sets a minimum number of observations that must be conducted during the school year. For a tenured teacher, there must be a minimum of two formal classroom observations. The minimum number of observations increases to three (3) when the teacher is on a Corrective Action Plan ("CAP"). All teachers are required to have at least one announced and one

unannounced observation during the school year. The District's practice is that everyone has a second observer. (Tr. @ 51). Specifically, the first observation is conducted by the immediate supervisor. The second observation is typically conducted by a different administrator. In the event there is a third observation due to a CAP, the Principal conducts an observation. (D. Exs. #24, #25).

**A formal observation can be either announced or unannounced.**

Formal observations must last at least 20 minutes. An unannounced observation occurs when the teacher has not been notified in advance. During an observation, "the observer captures evidence of teacher practice related to the Indicators of the Framework for Effective Teaching." The observer must choose a performance level for each Competency and Indicator observed "based upon a preponderance of low inference level evidence collected in that lesson." (D. Exs. #24, #25).

Irrespective of whether the observation was announced or unannounced, a post-observation conference is held wherein the teacher has an opportunity to review the lesson with the observer, receive positive and negative feedback, and incorporate this information into their practice.

Regarding the timing of observations for teachers on a CAP, the first observation is due by the end of November. The second observation is due by the end of December. The third and final observation is due by April.

Regarding summative evaluations for teachers on a CAP, the Mid-year review must be concluded by February 15<sup>th</sup>, while Annual review must be concluded by May 13<sup>th</sup>. (D. Exs. #24, #25).

### The Rafael Hernandez School

The Rafael Hernandez School is comprised of 590 students in pre-Kindergarten through the 8<sup>th</sup> grade. The school has one principal, three vice-principals, and approximately fifty teachers.

During the subject years, Natasha Pared served as Principal and LaContee Hill, Kinyetta Bird and Stephanie Vargas served as Vice Principals.

Principal Pared has worked for the District for approximately 12 years. She has served as Principal for 5 years.

Vice Principal Bird has worked for the District for 26 years. She has served as Vice Principal for 5 years. All administrators have been trained on the Guidebook which is used to evaluate teacher performance.

### THE DISTRICT'S EXPECTATIONS REGARDING WRITTEN LESSON PLANS

District teachers are required to submit written lesson plans every two (2) weeks. The District's expectation is that teachers will utilize the lesson plan template provided to them, fill in the template, and submit their written lesson plan bi-weekly via the Google Drive by uploading their written lesson plans into their specific electronic folder. Dr. Fuentes explained that the entire process is easy and straightforward, whereby the teacher saves the final lesson plan document to their computer and then "drags" the document to his or her assigned folder on the Google Drive. (Tr. @ 739-740; 116-117).

### HOW THE SUBMISSION OF WRITTEN LESSON PLANS, OR THE LACK THEREOF, AFFECTS OBSERVATION AND EVALUATION RATINGS

The Guidebook states that:

All good instruction begins with solid planning. The Framework contains Indicators that explicitly outline the observable elements of planning, most notably in over-time indicators and in Competency 1: Lesson Design & Focus. Additionally, elements of planning can be found throughout all of the Competencies of the Framework...

### **Procedural History**

The hearing was transcribed and in-person hearings were held on March 3, 2023, March 6, 2023, March 13, 2023, March 13, 2023, 17, 2023, March 28, 2023, March 31, 2023, April 25, 2023, April 27, 2023, May 10, 2023, May 12, 2023, May 22, 2023 and May 25, 2023. The parties submitted post-hearing briefs dated September 27, 2023.

### **RESPONDENT'S TEACHING PERFORMANCE DURING THE 2020-2021 AND 2021-2022 SCHOOL YEAR**

#### **District Position**

##### A. 2020-2021 School Year

##### (1) Individual Professional Development Plan ("IPDP")

The IPDP outlines goals for the teacher's students as well as professional growth goals that the teacher may have based on prior ratings. The IPDP is jointly developed between the teacher and the administrator.

In September 2020, Respondent and Principal Pared convened to reflect on the prior year's teaching performance (2019-2020) and the goals for the 2020-2021 school year. (D. Ex. #2) (Tr. @ 83-93). Respondent and Principal Pared established three (3) student goals:

- Goal 1: For 18 out of 44 7<sup>th</sup> grade students to demonstrate mastery of 7<sup>th</sup> grade standard 7.NS (The Number System) by achieving a 70%+ on the School Board Assessment, and for 26 out of 44 7<sup>th</sup> grade students to demonstrate growth towards mastery of 7<sup>th</sup> grade standard 7.NS (The Number System) by

achieving a 20% growth or more on the School Board Assessment.

- Goal 2: For 5 out of 23 7<sup>th</sup> grade students to demonstrate mastery of 6<sup>th</sup> grade standard 6.NS (The Number System) by achieving a 70%+ on the School Board Assessment and for 18 out of 23 6<sup>th</sup> grade students to demonstrate growth towards mastery of 6<sup>th</sup> grade standard 6.NS (the Number System) by achieving a 20% growth or more on the School Board Assessment.
- Goal 3: For 55% or more of 6<sup>th</sup> and 7<sup>th</sup> grade students to meet growth goal as determined through the MAP Growth for Math.

Additionally, Respondent and Principal Pared established three (3) growth areas:

- Indicator 4a – Checks for Understanding
- Indicator 1a – Pacing and Momentum.
- Indicator 2b – Tailored Instruction.

The Growth Areas included Action Steps, Metrics & Processes. (D. Ex. #2) (Tr. @ 83-93).

## (2) Respondent's First Classroom Observation by Principal Pared

Respondent was formally observed by Principal Pared on November 3, 2020. Respondent's post-observation conference was held on November 13, 2020. (D. Ex. #3).

The Respondent was rated "effective" overall for the lesson. However, for Indicator 2b he received a "partially effective" with respect to "Tailored Instruction." Principal Pared made suggestions on how Respondent could improve Indicator 1b – Lesson Components; Indicator 2b – Tailored Instruction; and 2c – Responsiveness. With respect to Indicator 2b - Tailored Instruction, Principal Pared noted that "Respondent is to create a digital vocabulary wall so

that students have access to terminology before, during and after class, especially since he focuses on terms when presenting new information.” (D. Ex. #3).

(3) October 13, 2020 Lesson Plan Feedback Form

Pursuant to this feedback form, Principal Pared notified Respondent that his lesson plans were overdue and directed him to submit the plans the following day. (D. Exs. #59, #67).

(4) By Memorandum dated December 8, 2020, Principal Pared advised Respondent that his lesson plans were due on December 3, 2020 and stated that “[u]pon entering your lesson plan folder, it was noted that yet again, no lesson plans were present.” She further stated that “[t]o date there is 1 lesson plan in your folder.” (D. Ex. #14).

(5) January 28, 2021 Lesson Feedback Form

Principal Pared notified Respondent that his lesson plans were overdue and directed him to submit the plans the following day. (D. Exs. #60, #68).

(6) March 5, 2021 Lesson Feedback Form

Principal Pared notified Respondent that his lesson plans were overdue and directed him to submit the plans the following day. (D. Exs. #61, #69).

(7) March 6, 2021, Written Warning for Not Submitting Lesson Plans

By Memorandum dated March 6, 2021, Principal Pared reminded Respondent that his lesson plans were due on March 4, 2021, that he had been previously reminded in January 2021 and that he had not submitted plans as per the schedule. Principal Pared stated that “[p]lans are not submitted via the

lesson planning folder nor via email as suggested if [Respondent was] unable to submit using the Google folder.” At the end of the Memorandum, Principal Pared advised Respondent that “[f]ailure to submit completed lesson plans may result in more severe disciplinary action up to and including loss of employment.” (D. Ex. #16).

(8) Respondent’s Second Classroom Observation

Respondent was observed for a second time during the 2020-2021 school year on March 29, 2021 by Vice Principal LaContee Hill. (D. Ex. #4) (Tr. @ 99-111). The post-observation conference was held on March 30, 2021. While Respondent was rated “effective” for the lesson, Respondent received “partially effective” ratings for three (3) Indicators.

For Indicator 1a – Lesson Sequence, Respondent was rated “partially effective.” Vice Principal Hill noted that Respondent “did not effectively demonstrate that the March 22, 2021 lesson was an individual, standards-aligned lesson built on previous lessons and on students’ prior knowledge.” Vice Principal Hill suggested that Respondent’s “lesson begin with what the past few lessons have been about, the learning intention for the day and how the lesson ties into the unit.”

For Indicator 2b – Tailored Instruction, which was rated partially effective, Vice Principal Hill noted that although Respondent had two (2) students in a breakout session<sup>1</sup> for the period, there was no other evidence of tailored instruction. As such, Vice Principal Hill suggested that Respondent have a point

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<sup>1</sup> Classroom instruction during the 2020-2021 COVID pandemic was conducted virtually using Zoom, including breakout sessions.

of reference such as an anchor chart or word wall for students to look at when working on what should be a review lesson.”

For Indicator 4c – Demonstration of Learning, which was rated “partially effective,” VP Hill noted that Respondent “did not effectively demonstrate that students knew more at the end of the lesson than they did at the start of the lesson.” She noted that a “specific objective was not laid out for the lesson, the lesson objective was unclear, too broad, not measurable or not aligned to grade level standards.” She further noted that the class ended with students working independently whereas Respondent “should have had the students complete an exit ticket directly related to the success criteria.”

(9) Write-Up by Vice Principal Hill for Respondent’s Conduct Unbecoming Behavior

By letter dated April 29, 2021, VP Hill issued a written memorandum regarding an inappropriate statement that Respondent had made to a parent about her child. Specifically, Respondent had told the parent that the child should spend some time with Respondent whereby Respondent could give the child a “whooping” and straighten him out. VP Hill advised Respondent that “his statement constituted conduct unbecoming and reminded him that it was not his role or responsibility to make any such comment.” (D. Exs. #64, #66).

(10) Respondent’s Summative Annual Evaluation for 2020-2021

Principal Pared provided Respondent’s summative annual evaluation on May 4, 2021. (D. Ex. #5). Respondent earned a partially effective rating for the school year. The post-observation conference was held on May 6, 2021.<sup>2</sup>

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<sup>2</sup> Respondent did not file a rebuttal with the District challenging any of the determinations or ratings.

Respondent earned a Partially Effective in Competency 1, which evaluates “Lesson Design and Focus.” Within Competency 1, Respondent earned a “Partially Effective” rating for Indicator 1a (Lesson Sequence). Principal Pared noted that Respondent’s classroom lessons did not effectively demonstrate that lessons were individual, standards-aligned lessons built on previous lessons and on students’ prior knowledge. Principal Pared suggested that Respondent’s lessons begin with what the past few lessons have been about, the learning intention for the day and how the day’s lesson ties into the unit. Respondent also earned an “Ineffective” rating for Indicator 1e (Coherent Planning). Pursuant to the Framework, lesson plans are to be standards-based, grade-level appropriate, and reflect work toward annual student achievement goals. (D Ex. #5). Lesson plans are also required to be submitted on a bi-weekly basis. Respondent earned an “Ineffective” for Indicator 1E because he only submitted one set of lesson plans for the entire school year. Since Respondent taught 6<sup>th</sup> and 7<sup>th</sup> grade classes, he was required to submit lesson plans for both grade levels on a bi-weekly basis but failed to do so. (D. Ex. #5) (Tr. @ 115-116). Principal Pared explained that she checked Respondent’s folder on the Google drive and confirmed that with the exception of a set of lesson plans that Respondent submitted for the first week of school, no other lesson plans were submitted by Respondent or on his behalf. (Tr. @ 115, 117-119).

Respondent also earned an “Ineffective” rating for Indicator 1f (Progression of Instruction). Pursuant to the Framework, lesson objectives must fit into a larger, coherent sequence that leads to mastery of the appropriate

standards. When reviewing Respondent's lesson plan submissions for the school year, Principal Pared noted that "[Respondent] has submitted one lesson plan as of May 4, 2021 during the 2020-2021 school year..." (D. Ex. #5).

Principal Pared explained that Respondent was not able to demonstrate how his lessons progressed through time because he did not submit any lesson plans.

With three (3) Effective Indicators, one (1) Partially Effective Indicator and two (2) Ineffective Indicators, the preponderance of the evidence of the Indicators equates to a scoring of Partially Effective. (Tr. @ 120-121).

Respondent earned a "Partially Effective" for Competency 2, which evaluates "Rigor and Inclusiveness." Within Competency 2, Respondent earned a "Partially Effective" rating for Indicator 2a (Tailored Instruction). Respondent did not effectively tailor instruction to move all students toward mastery. Respondent also earned an "Ineffective" rating for Indicator 2a (Revisions). For this Indicator, a teacher must demonstrate that student work includes revisions based on teacher and peer feedback, with especially revised explanations and justifications to demonstrate student movement towards mastery. Principal Pared, however, noted that Respondent failed to share any student work samples with the administration. Respondent did not provide any evidence of student feedback or revisions of student work. Respondent also earned an "Ineffective" rating for Indicator 2f (Depth of Knowledge). For this Indicator, the teacher must show that lesson objectives, tasks and materials require students to demonstrate a range of skills. Principal Pared, however, noted that because Respondent failed to share evidence and failed to submit lesson plans during the

school year, administration could not access the level of knowledge required of students throughout the school year. Principal Pared was unable to see lesson objectives over time and there was no evidence provided by Respondent to demonstrate that there was a depth of knowledge in his class over time. (D. Ex. #5) (Tr. @ 122-125).

Respondent earned a “Partially Effective” for Competency 3, which evaluates “Culture of Achievement.” Within Competency 3, Respondent earned an “Ineffective” rating for Indicator 3e (High Expectations). This Indicator outlines whether or not a teacher is modeling excellence for their students in their preparation, lesson delivery, and in the overall work ethic. (D. Ex. #5) (Tr. @ 125-126). Respondent did not foster a classroom culture that was consistently one of the high expectations and hard work that modelled excellence. Principal Pared noted in the evaluation document that:

[Respondent] has rarely demonstrated high expectations. He has not submitted lesson plans according to schedule, having only submitted 1 lesson plan to date. He has made a statement to a parent regarding a child’s behavior and his need for a “whooping” during a child study team meeting. His WebEx classes have often begun late as demonstrated by the notes sent by students via the 6<sup>th</sup> grade Google Classroom, or at times, he has not hosted class at all. (D. Ex. #5).

Principal Pared also explained that Respondent’s failure to prepare and submit lesson plans demonstrated a lack of classroom preparation and a lack of effort into the classroom and the learning that is supposed to occur. (Tr. @ 122, 125-26).

Respondent earned a “Partially Effective” for Competency 4, which evaluates “Student Progress Toward Mastery.” (Tr. @ 128). Within Competency

4, Respondent earned a “Partially Effective” rating for Indicator 4c (Demonstration of Learning). This Indicator evaluates if students know more at the end of a lesson than they did at the start. No specific objective was laid out for the students for the lesson observed by Vice Principal Hill. Respondent also ended that lesson by having students work independently whereas Respondent should have had student do an exit ticket at the end of the class that was directly related to the success criteria that would show where a student is in their learning. (Tr. @ 129).

Respondent earned an “Ineffective” rating for Indicator 4d (Using Data). As noted by Principal Pared, “[Respondent] has not shared lesson plans demonstrating his use of data as he has only shared a lesson plan for the 1<sup>st</sup> week of school. He has not shared trackers with student data as per the schedule...” Principal Pared expressed concern when she testified that the respondent did not provide any evidence of data collection or how it was being used. (D. Ex. #5) (Tr. @ 130-133).

Respondent earned an “ineffective” rating for Indicator 4e (Understanding of Growth). Principal Pared stated that “[Respondent] has not provided evidence of student growth over time. He has not shared student work samples, data reflections and his data trackers are not current...Data on all math standards taught to date have not been supplied.” Principal Pared expressed concern when she testified that Respondent did not provide any evidence.

In the Summary section of the annual summative evaluation, Principal Pared stated that:

[Respondent's] lack of planning and preparation has hindered his progress this year. He is to focus on lesson planning during the 2021-2022 school year. It is also note that his focus should shift and maintaining his professionalism at all times.(D. Ex. #5).

(11) Coaching and Professional Development during the 2020-2021 school year

Respondent received support from the Math Coach and other administrators, which included focus on curriculum, classroom feedback and lesson plan feedback. Respondent received in-class support and in-class modeling. Respondent also participated in Professional Learning Community ("PLC") meetings for additional support and assistance. (D. Exs. #1, #11, #12).

**Respondent Position**

The Respondent initially argues that "[i]n light of the indisputable direct evidence of discriminatory animus and/or retaliatory intent, the District cannot and has not met its burden of proving the instant charges are not a product of retaliation or discrimination."

According to Respondent, "(1) 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 conduct prohibited by state or federal law; (2) Montague's evaluations failed to adhere substantially to the evaluation process, including but not limited to providing a Corrective Action Plan; and (3) the District's actions were arbitrary and capricious."

Although the Respondent acknowledges that he was evaluated pursuant to an evaluation rubric governed by the Framework, the Arbitrator is urged "to look beyond the ratings issued, otherwise, the available defenses, and indeed,

the very concept of tenure, would be rendered meaningless.” The Respondent contends that “even if those procedures were followed, the Arbitrator may look toward whether they were applied in an ‘arbitrary and capricious’ manner. And lastly, but certainly not least, the Arbitrator may look toward whether the charges are the product of ‘bias’ in the form of unlawful retaliation, including discrimination and retaliation for engaging in Union activity or other lawful activity.”

Respondent notes that “the Framework utilized by the District has inherently subjective elements, including but not limited to the over-the-year indicators, and others through which an observer or evaluator seeking to undertake mischief, has ample room to undermine a rating – not only by what they choose to see, but what they elect to ignore, or focus upon, or even let slide.” In the Respondent’s view, even where “norming” is utilized to avoid subconscious bias – “that does not work and cannot work when the bias is intentional and manipulative.” It further notes that “the observation and evaluation process upon which the District relies is fundamentally predicated on the ‘good faith’ of the observers and evaluators.”

Since Respondent maintains that despite multiple observers, which potentially and in theory can ameliorate bias, “Pared’s observations and evaluations were, as a practical matter determinative of Montague’s ratings, according to her own self-process policies and procedures of ‘rounding-down.’”

From Respondent’s perspective, “once demonstrated bad faith is injected in the process, the ratings themselves are little to no value.” According to Respondent, the evidentiary record reveals not only substantial evidence or bad

faith but also direct evidence of retaliatory intent exhibited not only by Principal Pared but also by her loyal Vice Principals.”

In support of this contention, Respondent relies on the recently decided case of I/M/O Newark School District v. Jennifer Ferrara (Agency Docket No. 221-8/22 (September 18, 2023) wherein Arbitrator Lang dismissed the charges against Respondent finding, inter alia, that “Pared arbitrarily elected to observe Ferrara in a make or break observation in a ‘test-prep’ session not prepared by her, as compared to a normal lesson.” In addition, Arbitrator Lang found:

Pared’s intrusion into Union meetings, antipathy for Montague and interference in RHS Union leadership selection, convince me Ms. Ferrara’s participation in NTU complaints tainted Administration’s ratings of her teaching performance.

Based on the entire record in this matter I find the District’s Ratings of Respondent violated the Provisions of TeachNJ; that they were influenced by Farrara’s Union activity, were arbitrary and capricious, and failed to adhere to prescribed evaluation processes. I find all of that materially affected Ms. Ferrara’s Observations and Evaluation.

### **I. Anti-Union Animus**

To establish that an employer to adverse employment action against an employee in retaliation for protected Union activity by that employee, employee need first show that “the employee engaged in protected activity, the employer knew of this activity, and that the employer was hostile toward the exercise of the protected rights.” Once this is shown, “in a dual motive case, supported by direct evidence of discriminatory or retaliatory animus, the burden shifts to the employer to show that it would have reached the same decision even in the

absence of the protected activity.” See, Bridgewater Twp. v. Bridgewater Public Works Assn. 95 N.J. 235 (1984).

Insofar as the 2020-2021 ratings are concerned, the Respondent perceives a retaliatory intent in that VP Hill, who conducted his second observation, was removed and replaced with VP Bird who “either outright shared Pared’s sentiments or was at least willing to share them.” Evidence of retaliation toward Hill, who purportedly “declined to toe the proverbial line in the issuance of observation ratings and received a Partially Effective rating herself,” is her removal from supervision of Respondent on January 6<sup>th</sup>, 2022. VP Hill did not testify at the hearing “because the District did not trust her.”

A key element in Respondent’s claim of Union animus, discrimination and retaliation involves an April 28, 2021 faculty meeting “when she threatened her entire faculty and staff with what amounted to thinly veiled consequences if they spoke to the Union or Montague on matters or subjects she personally disagreed with.”

Contrary to Pared’s testimony that the “crux” of the meeting involved the “chain of command,” the Respondent contends that this meeting entailed “a classic anti-union threat by a supervisor and an inherent threat of discipline.” In advising the faculty of what they could speak to the NTU and Montague about (contract issues) and what they could not (“silly little things”), Respondent maintains that Pared was engaged in anti-union animus. Although Principal Pared eventually acknowledged at the hearing that her requirement that office staff and non-tenured staff report for in-person instruction and stay past 1:30 pm

when students were remote and the building was designated for cleaning, was a “Union issue,” her comment to staff about when they could speak to the Union representative was anti-Union animus. Moreover, Principal Pared’s projection of “consequences” for speaking to the Union, namely not having a relationship with the “administrative team,” including Vargas and Bird, and excluding them from the “family” or the “community” compounded the problem.

The mask break issue raised on April 28<sup>th</sup> is considered further evidence of retaliation and anti-Union animus. Principal Pared denied mask breaks to Montague, Ferrara and Crowe as well as others who were talking to Montague at the time of their alleged violation of the mask break protocol. These teachers were told that they would be “treated like children” by having other staff take their students on mask breaks for the remainder of the year. According to Respondent, the April 28<sup>th</sup> meeting was “instigated by Union objections to Pared requiring staff to work in person while students were remote on Wednesdays, to clean the building.” Rather than being imposed for the health of the students, the Respondent argues that the disciplinary actions “were out of concern for Montague’s Union activity and what she perceived to be his interference and ‘disrespect.’”

According to Respondent, “Evidence of hostility to Union activity and association in connection with the charge “is manifest in (1) Pared’s interference with Montague’s appointment as building representative; (2) her either listening in on Union meetings or claiming to do so; (3) threatening faculty if they associated with or communicated with either the NTU or Montague.” These activities

persuade Respondent that “Pared and her administrative team intended to retaliate against Montague and others associated with him, with respect to performance evaluations and observations, including those which form the basis of the instant charge against Montague for ‘inefficiency’ in performance.”

Citing the Employer Employee Relations Act (“EERA”), N.J.S.A. 34:13A-5.3 which states, “public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal to form, join and assist any employee organization,” Respondent asserts that the “hostility exhibited by Pared – openly and wantonly” is “in plain violation of State law.”

## **II. Other Retaliation**

With respect to the April 29, 2021 Write-Up authored by VP Hill, Respondent denies the incident occurred as reported. The claim by VP Hill that Respondent told a parent that her child needed a “whooping” was relied upon by Pared in rating Respondent “partially effective” for the 2020-2021 school year. Clearly, this incident/write-up is mentioned in Respondent’s 2020-2021 Summative Annual Evaluation, specifically cited for Competency 3e, “Culture of Achievement,” where Respondent received an “ineffective” rating for the “whooping” statement he made to a parent during a child study meeting. Respondent deems noteworthy the fact that the Write-up letter was written one day after the April 28, 2021 WebEx meeting.

The alleged incident occurred during a child study team meeting in which Ferrara participated as part of her duties. Ferrara testified that she did not hear Montague make the statement, despite VP Hill’s disciplinary letter. Moreover,

Respondent, who did not challenge the write-up when it was written, argues that since neither VP Hill nor Principal Pared spoke Spanish they could not have understood what the parent was saying.” “The bottom line is that Pared simply made it up to justify reducing his rating and she demonstrated a proclivity to invent facts to support her narrative.” Absent the date of the child study meeting, which is not specified in the write-up, since Ferrera testified that the same cohort of teachers met during the child study team meetings for IEP students, Respondent argues that Ferrera’s recollection she never heard him make the “whooping” statement should be credited. (Tr. @ 1279).

The Respondent contends that “Pared’s 2020-2021 Annual Evaluation Rating of Montague by Pared is Evidence of Retaliation.” According to Respondent, “Pared elected to take what amounts to a single alleged performance deficiency and use it to downgrade his annual evaluation in every Competency in the evaluation rubric to ensure he received a partially effective for the year.” Alluding to the testimony of Lovino, Respondent contends that “running one procedural deficiency as a thread through all areas of teacher practice, including practice areas that have no relationship to lesson plan submission, is illogical and contrary to the spirit of the Framework.”

Respondent contends that Principal Pared unfairly utilized over-the-year indicators, “which were uniquely in her control,” to downgrade Montague while, at the same time, “ignoring his observed effective performance in lesson design and other areas of teacher practice.”

Respondent disputes Pared's contention that there was only "one plan" in the folder for the entire school year. She wrote "one lesson plan" in the evaluation as opposed to one cycle of Lesson Plans. (Tr. @ 115-118).

Respondent distinguishes the submission of lesson plans from lesson planning. "His colleagues Montero and Bishop testified to his planning for lessons, their collaborative efforts with respect to same and their assistance to him in connection with both the planning and the submission of plans and data. There is no dispute that Montague is not tech savvy, since he acknowledged it at the hearing, and he relied on others. Pared was aware of that weakness and seized upon it to justify undermining his rating. It is worth noting that this is not a 'new' weakness and presumably it has persisted during his time entire time at RHS and with the District. Yet, it is only now – after his appointment as the representative; after the interference in that appointment; and after her threat of retaliation, that it is being radically used by Pared in an effort to seek his termination."

Irrespective of whether Respondent submitted lesson plans, he maintains that he planned. "When formally observed, there was evidence of effective planning – and using data to inform same during Grade Level Meetings ("GLMs") and PLCs." In this regard, Respondent relies on the testimony of Lovino that "a procedural failing is not demonstrative of a less-than-effective teacher. Also, other tools are available, such as increment withholding, to correct an educator's professional shortcoming. Lovino testified that "tanking" a teacher's entire

performance evaluation based upon one single area of teacher practice is inappropriate.

Whereas the Framework directs administrators to “gather” evidence through formal and informal observations, Respondent contends that “Pared never bothered to informally observe Montague at all. She did one formal observation at the beginning of the year, which she rated ‘effective’ prior to Montague becoming the representative, and then popped in his class for a few minutes at Montague’s request one other time. This was the extent of Pared’s ‘gathering’ and informal observation.”

The Respondent further takes issue with Pared’s evaluation where it states in Competency 4e, “Data on all math standards taught to date have not been supplied.” (D. Ex. #6). The testimony of Pared that the data was provided by his Math Coach, Ms. Bishop, persuades the Respondent that his “ineffective” rating was unfair. The testimony of Bishop that part of her job as Math Coach was to assist teachers with data collection is deemed supportive of Respondent’s effective performance on this indicator, which further states, “Mr. Montague has not provided evidence of student growth over time. He has not shared student work samples, data reflections and his data trackers are not correct as of May 4<sup>th</sup>...”

With respect to his 2020-2021 summative evaluation, Respondent takes issue with his over-the-year rating of “Slightly Below Expectation” on Indicator 5a “for not seeking professional development beyond that offered by the District.” The testimony of Fuentes that the District provides sufficient Professional

Development hours, obviating the need for additional Professional Development, negates this contention.

Finally, Respondent denies encouraging teachers “to rip down their bulletin boards because this was going above and beyond.” He testified that “decorating a classroom with a bulletin board material and poster paper is the ‘bare minimum’ and the statement attributed to him was ‘inconsistent with his practice.’”

### 2021-2022 School Year

#### District Position

As a result of the Respondent’s 2020-2021 Summative Annual Evaluation where he was rated “Partially Effective,” the Respondent was placed on a Corrective Action Plan (“CAP”) for the 2021-2022 school year. (D. Ex. #6).

The Guidance section of the CAP reads as follows:

At the beginning of the year, the employee and their supervisor sit down to reflect on last year’s performance and the goals for the current year. This is an opportunity to collaboratively map out development areas and opportunities for the employee as well as set goals for their students (otherwise known as Student Growth Objectives).

Respondent and VP Hill collaborated on the CAP and set two student goals, indicating what Montague’s students would demonstrate by the end of the school year as follows:

- Goal 1: By April 2022, for 9 out of 18 7<sup>th</sup> grade students to demonstrate mastery of 7<sup>th</sup> grade level standards by achieving a score of 75% mastery or above as assessed using the Into Math End of Year Assessment – AND – By April 2022, for 12 out of 18 7<sup>th</sup> grade students to demonstrate growth towards mastery of 7<sup>th</sup> grade level standards by achieving a score of 60%-75% mastery as assessed using the Into MAP Growth Assessment.

- Goal 2: By April 2022, for 10 out of 24 6<sup>th</sup> grade students to demonstrate mastery of 6<sup>th</sup> grade level standards by achieving a score of 75% mastery or above as assessed using the Into Math End of Year Assessment – AND – By April 2022, for 10 out of 24 6<sup>th</sup> grade students to demonstrate growth towards mastery of 6<sup>th</sup> grade level standards by achieving a score of 60%-75% mastery as assessed using the Into MAP Growth Assessment.

Additionally, Respondent and Vice Principal Hill established four (4) growth areas:

- Indicator 4a – Checks for Understanding
- Indicator 1a – Pacing and Momentum.
- Indicator 1a – Lesson Sequence.
- Indicator 3e – High Expectations. (D. Ex. #6).

The Growth Areas included Action Steps, Metrics and Processes. As part of Growth Area #4, Respondent agreed that “lesson plans will be submitted according to the schedule and the teacher will be ready at the start of the class.” (D. Ex. #6) (Tr. @ 163).

(1) September 10, 2021 Lesson Feedback Form

Pursuant to the RHS Lesson Feedback Form, VP Hill informed Respondent that his lesson plans were overdue and directed him to submit the plans the following day. (D. Exs. #62, #70).

(2) September 23, 2021 Lesson Feedback Form

On September 23, 2021, VP Hill notified Montague that his lesson plans were overdue and directed him to submit the plans the following days. (D. Exs. #63, #71).

(3) First Classroom Visit by Vice Principal Hill

On November 10, 2021, VP Hill conducted a formal observation of Respondent’s classroom. Although Respondent was rated “Effective” for the

lesson, he received a “Partially Effective” rating for one Competency and received a “Partially Effective” rating in three (3) Indicators.

In Competency 1 – Lesson Design and Focus – Respondent earned a “Partially Effective” in Indicator 1a – Lesson Sequence. VP Hill observed that the lesson did not build on previous lessons and on students’ prior knowledge. Specifically, VP Hill stated that Respondent failed to review with the class what was discussed in the prior lesson and also failed to connect the prior lesson to the November 10, 2021 lesson. (D. Ex. #7) (Tr. @ 165).

Respondent earned a “Partially Effective” in Competency 2, which evaluates “Rigor and Inclusiveness.” With Competency 2, Respondent earned a “Partially Effective” in Indicator 2c, which evaluates “Responsiveness.” VP Hill noted that Respondent ran through the math problem steps with the students but did not effectively recognize student misunderstandings and adjust his instructional strategy. VP Hill suggested that Respondent ensure that his students have a deeper understanding of the lesson. (D. Ex. #7) (Tr. @ 165). Respondent also earned a “Partially Effective” in Indicator 2d, which evaluates “Precision & Evidence.” VP Hill noted that while students were able to respond, Respondent did not consistently challenge his students to provide evidence of reasoning for their responses. (Tr. @ 167).

In the summary section of the observation, VP Hill explained how Respondent could improve. Specifically, VP Hill stated that:

By incorporating Habits of Discussion into the lesson, this will allow students to engage in academic discourse with one another where they will be able to demonstrate their knowledge and understanding (4c) and encourage students to provide evidence (2d) from one

another to justify their response. Lastly, as students share out, it will help to address misconceptions (2c) students might have. (D. Ex. #7).

(4) Change of Supervisors: Vice Principal Bird Replaces Vice Principal Hill as Respondent's Immediate Supervisor

As of January 6, 2022, VP Bird became Montague's supervisor. Dr. Fuentes testified that he facilitated the change when he discovered that certain teachers assigned to the RHS "had not received the proper number of observations in a timely manner. It was a concern because teachers on a CAP such as Montague had not been observed in accordance with the schedule."

According to Dr. Fuentes, VP Hill was "overwhelmed with other responsibilities, including testing, and had fallen behind with her observation duties." (Tr. @ 757-759). As a result of his discussion with Principal Pared, she redistributed the observation duties among the three Vice Principals to reduce VP Hill's workload. As a result, VP Bird assumed the observation duties of VP Hill.

(5) Respondent's Second Classroom Observation by Principal Pared

On December 16, 2021, Respondent was formally observed by Principal Pared. He received an overall "Partially Effective" rating for the classroom lesson. (D. Ex. #8) (Tr. @ 169-170).

In the course of evaluating the 6<sup>th</sup> grade lesson taught by the Respondent, Principal Pared testified that "[as of December 16<sup>th</sup>] no lesson plans were submitted for the date of the observation..." (D. Ex. #8) (Tr. @ 168-194).

As for the actual lesson, Respondent earned a "Partially Effective" for Competency 1, which evaluates "Lesson Design and Focus." (D. Ex. #8) (Tr. @

170). Respondent earned a “Partially Effective” for Indicator 1a – Lesson Design and Focus. Respondent did not review the lesson objective with his class. Principal Pared reminded Respondent to utilize the “Look Forward” technique from Teach Like a Champion, which includes: (a) to post on agendas and communicate to students in a way that gets them invested in completing the work to come; and (b) to introduce the objective to students, have them write it in their notebooks with the daily instructional task so that students are aware of the expectations for the lesson. (Tr. @ 171-172). Respondent earned a “Partially Effective” in Indicator 1b, which evaluates “Lesson Components.” Principal Pared noted that Respondent prepared a worksheet that was not aligned to the lesson as per the curriculum. Students did not utilize any physical or virtual manipulatives, and vocabulary was not taught as per the curriculum. Ultimately, only 1 out of 13 students were able to complete the worksheet correctly. (D. Ex. #8) (Tr. @ 172-173). Respondent earned a “Partially Effective” in Indicator 1c, which evaluates “Pacing and Momentum.” Principal Pared noted that Respondent did not maximize learning time. Principal Pared noted that the lesson started over 18 minutes late and too much time was spent on the Do Now, which did not leave an appropriate amount of time for the lesson. (Tr. @ 171-175). Respondent earned a “Partially Effective” in Indicator 1d, which evaluates “Clarity.” Principal Pared noted that Respondent’s lesson was unclear at times. She also observed student confusion in the classroom. Principal Pared observed two (2) students confused as to the next steps, and then observed several

students in the back of the room seeking support because they did not understand the lesson. (D. Ex. #8) (Tr. @ 176).

Respondent earned a “Partially Effective” for Competency 2, which evaluates “Rigor and Inclusiveness.” (Tr. @ 177). Respondent earned a Partially Effective for Indicator 2a – Tailored Instruction – because aside from referencing a chart in the back of the classroom, no tailoring of instruction occurred. (D. Ex. #8) (Tr. @ 184). Respondent earned a “Partially Effective” for Indicator 2b – Questions & Tasks – because Respondent asked lower-level questions which were not synthesis based. (Tr. @ 186, 198). Respondent earned a “Partially Effective” for Indicator 2c – Responsiveness – because Respondent did not properly recognize student misunderstandings. Respondent did not plan for error, which resulted in him having to pause the lesson and reset. (D. Ex. #8) (Tr. @ 186-187).

Although Respondent earned an Effective rating for Competency 3, he earned a “Partially Effective” rating in Indicator 3b – Persistence. (Tr. @ 188-189).

Respondent earned a “Partially Effective” for Competency 4, which evaluates “Student Progress Towards Mastery.” (Tr. @ 189). Respondent earned a “Partially Effective” for Indicator 4a – Checks for Understanding – because Respondent did not adequately check to see if his students were understanding the lesson overall, and simply focused on formulas for area and perimeter. (Tr. @ 189-191). Respondent earned an “Ineffective” for Indicator 4c – Demonstration of Learning – because only 1 out of 14 students were able to

respond to the question posed without direct support from Respondent. (D. Ex. #8) (Tr. @ 191-192). In the summary section of the observation document, Principal Pared noted that although Respondent understands the concepts he is teaching, he again failed to plan and prepare, which hinders his delivery of instruction and his student's acquisition of knowledge. ( D. Ex. #8) (Tr. @ 191-194).

(6) January 13, 2022 Written Warning for Not Submitting Lesson Plans

VP Bird issued a letter dated January 13, 2022 informing Respondent that he had failed to submit his bi-weekly lesson plans. Instead of having lesson plans in his folder, Respondent only placed a copy of the curriculum in his folder. (D. Ex. #15).

(7) Respondent's Mid-Year Summative Evaluation for the 2021-2022 School Year by VP Bird

Montague's mid-year evaluation pursuant to his CAP was rated "Ineffective" by VP Bird.<sup>3</sup> (D. Ex. #5).

VP Bird created Respondent's 2021-2022 Mid-Year Annual Summative Evaluation on January 12, 2022. Respondent, who refused to sign the document, viewed it on February 24, 2022. He earned an inefficient rating at the mid-year point for the school year.<sup>4</sup> (D. Ex. #9).

Respondent earned a "Partially Effective" in Competency 1, which evaluates "Lesson Design and Focus." Within Competency 1, Respondent earned a "Partially Effective" rating for Indicator 1a (Lesson Sequence), a

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<sup>3</sup> Respondent's last day of work was January 25, 2022.

<sup>4</sup> Respondent did not file a rebuttal with the District challenging any of the documentation or ratings for the Mid-Year Annual Summative Evaluation.

Partially Effective for Indicator 1b (Lesson Components), a “Partially Effective” for Indicator 1c (Pacing and Momentum), a Partially Effective for Indicator 1d (Clarity), an “Ineffective” for Indicator 1e (Coherent Planning) and an “Ineffective” for Indicator 1f (Progression of Instruction). The overall rating for Competency 1 was based on Respondent’s two (2) classroom observations and the undisputed fact that Respondent had not submitted any written lesson plans and data. (D. Ex. #9) (Tr. @ 598).

Respondent earned a “Partially Effective” in Competency 2, which evaluates “Rigor and Inclusiveness.” Within Competency 2, Respondent earned a “Partially Effective” rating for Indicator 2a (Tailored Instruction), a “Partially Effective” for Indicator 2b (Questions & Tasks), a “Partially Effective” for Indicator 2c (Responsiveness), a “Partially Effective” for Indicator 2d (Precision & Evidence), an “Ineffective” for Indicator 2e (Revisions) and an “Ineffective” for Indicator 2f (Depth of Knowledge). The overall rating for Competency 2 was based on Respondent’s two (2) classroom observations and the undisputed fact that Respondent had not submitted any written lesson plans and student work samples.

Respondent earned a “Partially Effective” in Competency 3, which evaluates “Culture of Achievement.” Within Competency 3, Respondent earned a “Partially Effective” rating for Indicator 3b (Persistence), an “Ineffective” for Indicator 3e (High Expectations) and an “Ineffective” for Indicator 3f (Peer Accountability). The overall rating for Competency 3 was based on Respondent’s two (2) classroom observations and the undisputed fact that

Respondent had not submitted any written lesson plans or shared his Google Classroom. (D. Ex. #9) (Tr. @ 598-639).

Respondent earned a “Partially Effective” in Competency 4, which evaluates “Student Progress Towards Mastery.” Within Competency 4, Respondent earned a “Partially Effective” rating for Indicator 4a (Checks for Understanding), a “Partially Effective” for Indicator 4c (Demonstration of Learning), an “Ineffective” for Indicator 4d (Using Data), an “Ineffective” for Indicator 4e (Understanding of Growth), and an “Ineffective” for Indicator 4f (Progress Towards Goals). The overall rating for Competency 4 was based on Respondent’s two (2) classroom observations and the undisputed fact that Respondent had not submitted any written lesson plans, had not submitted any data showing student growth, and had not submitted any student work samples. (D. Ex. #9) (Tr. @ 568-639). Respondent was rated “Significantly Below Expectations” for Competency 5 – Progress toward Goals.

(8) Respondent’s Year-End Summative Evaluation for the 2020-2022 School Year

Respondent ceased reporting to work on January 15, 2022. When Respondent did not report to work for a third (3<sup>rd</sup>) formal classroom observation, VP Bird reiterated his mid-year assessment, namely an “Ineffective” rating summarizing Respondent’s two (2) prior formal classroom observations.

VP Bird determined that Respondent’s “ineffective” ratings for several of the over-the-year indicators such as Coherent Planning (1e), Progression of Instruction (1f), Progress towards Goals (SGOs) (Competency 5) and Commitment toward Continuous Improvement, predominately due to not

submitting lesson plans and not submitting samples of student work warranted an overall 'Ineffective rating for the Mid-Year Evaluation.

VP Bird cited a District policy which provides that if a first observation of "effective" is followed by a second observation of "partially effective," the second observation is accorded more weight. However, in the instant case, Respondent's potential "partial effective" for the Mid-Year was reduced by over-the-year indicators of "ineffective" in several categories. With ratings of "partially effective" for Competencies 1, 2 and 3 and ratings of "ineffective" for Competencies 4 and 5, VP Bird gave Montague an overall rating of "ineffective." (Tr. @ 638-639, 664).

(9) Respondent's Leaves of Absence

Respondent's request for approved leave covering the January 25, 2022 through March 1, 2022 time period was retroactively approved on March 1, 2022. Although Respondent was expected to report to work on March 2, 2022, he did not. By email dated March 21, 2022, Respondent was reminded by the District's Human Resources Department that since his approved leave expired on March 1, 2022, he was deemed to be out on unauthorized leave and considered AWOL afterwards. (D. Exs. #17, #18).

Due to Respondent's late application seeking an extension of his approved FMLA, it was not until April 13, 2022 that the District's HR Department approved his leave from March 2, 2022 through April 22, 2022. Respondent was reminded to report to work on April 25, 2022. (D. Ex. #19). He did not report.

By email dated June 8, 2022, Respondent was notified by HR that his request to extend his FMLA from April 22, 2022 to June 23, 2022 was denied “because he had exhausted his statutory 12 weeks of FMLA leave and further because the medical reasoning submitted did not warrant a contractual illness leave. (D. Ex. #20).

According to the District, Respondent did not timely submit his requests for approved absences under the Family Medical Leave Act (“FMLA”). Ultimately, the District contends that he “blew off his obligation to report to work for the last two (2) months of school.”

(10) Coaching and Professional Development During the 2021-2022 School Year

The District maintains that Montague received support from the Math Coach and other administrators, including focus on curriculum, classroom feedback, lesson plan feedback, in-class support and in-class modeling. Respondent also participated in PLCs. (D. Exs. #1, #11 and #12).

(11) Principal Pared’s Written Recommendation for Inefficiency  
Tenure Charges Against Respondent

On July 29, 2022, Principal Pared listed twenty-eight reasons for the Tenure Charge of Inefficiency against Montague, encompassing Respondent’s rating of “Partially Effective” in his Annual Summative Evaluation for 2020-2021 and his “Ineffective” rating for his Annual Summative Evaluation for 2021-2022.

**Respondent Position**

I. Anti-Union Animus

The Respondent has predicated his defense to the tenure charges for the 2020-2021 and 2021-2022 school years on anti-Union animus, discrimination,

and bias on the part of Principal Pared. According to the Respondent, the bias of Principal Pared was manifested in actions she took that “failed to adhere substantially to the evaluation process,” deviated from the “spirit” of the Framework and introduced “arbitrary and capricious” elements.

From the Respondent’s perspective, Principal Pared’s retaliatory intent commenced with her inference in the lawful Union activity of electing Montague as the building representative for RHS. The Respondent perceives an inextricable connection between his role as Union leader and Pared’s less than effective ratings of his performance during classroom observations, his Corrective Action Plan, his “ineffective” mid-year report and his annual summative evaluations of partially effective and ineffective over two years. Principal Pared’s anti-Union animus and retaliatory motives have extended not only to the instant tenure charges against him, but also to the tenure charges brought against Jennifer Ferrara – charges recently dismissed by Arbitrator Lang.

Relying on the testimony of Montague and other witnesses at the hearing, Respondent contends that at the beginning of the 2020-2021 school year when the teaching staff found problematic the representation provided by then NTU building representative, Herman Gonzalez, Principal Pared interfered with the selection process. Although “Gonzalez himself had offered to step down and displayed no interest in continuing in the position, Pared refused to accept the transition to Montague absent a vote by the staff, but also demanded that Gonzalez be placed on the ballot.”

Given the testimony of Michael Iovino, Secretary-Treasurer of the Newark

Teachers Union (“NTU”) “that there was no ‘Union’ reason for a vote” and Gonzalez was “appointed” previously, Principal Pared’s interference constituted anti-Union animus. Since Pared as principal assumed an adversarial role vis-à-vis the NTU, her preference for Gonzalez over Montague pursuant to the pro forma Union prerogative of appointing a building representative is deemed “wildly inappropriate.”

Montague testified that after he was elected building representative in September 2020, he held his first meeting with Principal Pared on or about January 21, 2021. In her email summarizing the meeting Pared wrote: “Mr. Montague will provide me with all Union meeting dates.” (R. Ex. #39) (Tr. @ 1434).

Whereas Pared was able to “surreptitiously attend Union meetings” during the pandemic provided she had the link, once virtual meetings ended, she demanded to know the dates and times of these meetings. In her emails to Montague, first demanding to know the dates and times of Union meetings and, if not provided, asserting there will be no meetings in the future unless her demand was met, constituted unreasonable intrusion into Union business. Contrary to the District’s contention that the NTU contract gives the Principal the right to know meeting times and dates, the Respondent avers that the contract language pertains to in-person meetings on District property as opposed to remote meetings. (D. Ex. #27).

Subsequent to Pared’s interference with the staff’s selection of Montague, she is reported as informing staff that she “listens in on or ‘knows what goes on

in' Union meetings." These comments made during faculty meetings, which were attended by witnesses Ferrara, Dixon, Crowe and Hunter, had the effect of intimidating staff and undermining the Union and Montague. It had a chilling effect on staff expressions of complaints regarding Pared and the school administration.

Notwithstanding Pared's testimony that she never actually listened in on Union meetings, the Respondent relies on the testimony of both Carnemolla and Crowe that she made statements indicative of being present at a meeting. Moreover, Respondent contends that even the threat that she was listening in on Union meetings would be sufficient to intimidate the free expression of staff at such meetings.

Pared's anti-Union animus reached its apex during the April 28, 2021 meeting discussed supra where Pared attempted to restrict the communication of staff to Montague and the NTU. The consequence of deviating from Pared's so-called "chain of command" was exclusion from the "family" or the "community" – tantamount to the administrative team. Montague testified that shortly after the April 28, 2021 meeting Union attendance at meetings declined 35-40 percent.

Beginning with the 2021-2022 school year, Respondent was placed on a CAP, had his lunch period and his teaching cohort changed. Prior to these changes, his cohort consisted of Ferrara – ELA, Dixon – Science, while he taught 6<sup>th</sup> and 7<sup>th</sup> grade math. On January 6, 2022, his immediate supervisor was changed from VP Hill to VP Bird.

The change of Montague's cohort teaching group coincides with the group's complaint about Pared and her administrative team that they brought to a June 2021 meeting with Joanne Watson of Labor Relations.

On January 5, 2022, Pared called an emergency meeting termed the Culture and Climate Meeting, where she "basically apologized to the staff for any miscommunication of information that had caused hard feelings or just the general environment of the building to be less than what it should have." (Tr. @ 1512). Montague also spoke at the meeting and addressed what he considered to be the "toxic and retaliatory climate at the school." VP Bird also spoke at the meeting and described in the meeting that it is "us v. you."

The next day not only was Respondent's immediate supervisor changed from VP Hill to VP Bird but the supervisors of Ferrara and Crowe, who spoke at the meeting, also changed. VP Hill was removed from supervising and observing Montague, Ferrara and Crowe. According to Respondent, VP Hill was removed and denied access to the Whetstone System to conduct observations because she would not rate these three teachers less than effective. When Ferrara inquired about the need for the changes, "Hill confirmed to Ferrara...that the three of them were a 'package deal.'" At this time, Pared was preparing tenure charges against Montague and Ferrara circa January 13, 2022.

II. Respondent's Evaluation failed to adhere substantially to the Evaluation Process, including but not limited to providing a Corrective Action Plan

According to Respondent, "the CAP was invalid. The SGOs contained within the CAP are unlawful as are the 'Action Steps' for administration to provide assistance. However, even assuming the CAP was lawfully proper, the fact

remains that it was not implemented – that is, the meager assistance offered to Montague to help him become ‘Effective’ (assuming that he was properly rated to begin with) was not only not provided but was actively and intentionally undermined by Pared.”

“The purported CAP assistance was limited to: (1) formal and informal lesson plans; (2) lesson plan feedback; and (3) coaching support. Both (1) and (2) are not CAP support at all, since all teachers receive them, whether tenured or not tenured, whether Effective, Highly Effective, or not, and whether they are or are not on a CAP. The same is true with (3), as well – all teachers receive generic ‘coaching.’ But at least, in theory, coaching was potentially available to Montague.”

Respondent maintains that he received “virtually no CAP specific ‘coaching.’” Similarly, other CAP teachers such as Ferrara received insufficient CAP-based assistance. Given the testimony of Bishop, the Math Coach at the time, as to what “coaching” was needed for a teacher who required “specific individualized assistance,” the District purportedly fell short.

“It is not routine PLC’s or participation in routine GLMs, or even routine classroom support. Here, it is undisputed that Montague received no CAP coaching at all, beyond a single introductory meeting, there was only a single meeting in November regarding binders – this comes straight from the mouth of the Bishop, the ‘Math Coach’ who was the only one who could provide it. Why? Because Pared cancelled the coaching cycle prep period. The cycle was cancelled not just for Montague but Ferrara as well. It is also worth pointing out

that the other ‘Coach,’ ELA Coach Carnemolla, quit. She not only quit – she quit because of the toxic and retaliatory environment that Pared and her administrative team fostered at RHS.”

Respondent takes issue with Pared’s testimony that Bishop provided adequate CAP support. Bishop denied that the PLCs and GLMs that she participated in where Montague was present constituted individualized coaching. “She attempted to coach Montague individually, meeting with him two times early in the year during the coaching cycle (one of which was introductory) but the coaching cycle was cancelled.”

In Respondent’s recollection, CAP Coaching was indispensable for him as a “necessary reason to improve performance.”

Respondent disputes the District’s contention that the “coaching cycle” was just an extra prep period. By cancelling the coaching cycle and not replacing it, the Respondent attributes ulterior motives to Principal Pared, namely preventing the improvement of Montague and Ferrara to facilitate their departure.

Whereas Pared attributed VP Hill’s “partially effective” rating to her “lack of oversight and assistance provided to Respondent,” Respondent contends that VP Hill’s unwillingness to go along with the retaliation was the source of VP Hill’s negative rating.

Respondent also considers his prior history of Effective ratings not only for the decade preceding the 2021-2022 school year but also his two Effective formal ratings, including Competency 1, for Lesson Design and Planning, prior to the 2020-2021 annual rating on May 4, 2021 evidence of his competence.

Respondent deems noteworthy that “Pared undertook the annual evaluation on May 4, 2021 less than a week following her threats of retaliation at the April 28, 2021 WebEx meeting when the District Framework affords a Principal throughout both the full months of May and June to evaluate a tenured teacher not on a CAP...” (D. Ex. #24).

The Respondent challenges his rating of “Partially Effective” for Competency 3 under Culture of Achievement. Pared wrote: “Respondent has rarely demonstrated high expectations. He has not submitted lesson plans according to schedule, having submitted one (1) lesson plan to date.” Respondent asks: “What lesson plan submission has to do with that? The answer is nothing – one need only look at the District’s own description of that Competency for the answer.”

Respondent also argues that Pared’s efforts to undermine the credibility of Montero and Bishop regarding their testimony that they submitted Lesson Plans on Montague’s behalf, particularly with respect to the 2021-2022 school year. The Arbitrator is urged to reject Pared’s claims regarding what was in Montague’s folder and that “Montero went into his google drive post-testimony. It must be remembered that Pared is in control of these files.”

Respondent casts doubt on “a series of ‘lesson plan feedbacks’ ostensibly issued by Hill,” noting that the emails “came not from Hill’s email account – but Pared’s personal/home email account.” Absent Hill’s testimony, her rating of partially effective for, inter alia, “failing to provide Montague with lesson plan feedback or other support is challenged.”

The Respondent further maintains that the SGOs in his CAP are invalid because they were imposed on him. “The mastery levels of the students, (e.g., 9 out of 18 students will demonstrate 75% mastery or above as assessed using the intro Math End of Year Assessment) ‘do not identify the students to which they apply. They do not even attempt to measure ‘growth,’ but rather ‘mastery.’” “The two concepts are distinct. A student could be far short of ‘mastery,’ but demonstrate tremendous growth depending on their starting level. There does not appear to be a definition of ‘mastery.’ There is no beginning point from which growth could even be measured. The District’s failing is not some minor procedural misstep. Ignoring SGOs flies in the face of the very law, the TeachNJ Act, which created the very inefficiency standards which the District is now attempting to utilize to terminate Montague’s employment, and they were used to assess Montague’s rating under Competency 4 in his annual rating.”

Department of Education (“DOE”) guidance provides that SGOs must “be specific and measurable” and undertaken “by teachers in consultation with their supervisors. SGOs may not be set ‘school-wide’ or even generically “class-wide.” They are to be “tailored” to the teachers’ students in consultation with them. (See, DOE Guidance on SGOs). What an SGO should look like and how they are meant to be implemented are further identified in DOE guidance.

“The SGO’s contained in Montague’s CAP do not even attempt to meet these requirements. First, if nothing else, they were imposed on Montague and not done in consultation. The testimony is that it was VP Hill, who prepared the CAP and SGOs, presumably on the directive of Pared with respect to SGOs.

Her claims of 1,000% growth during remote instruction during an unprecedented pandemic are fanciful and the SGOs like reflect that unrealistic claim. Even if class wide, an SGO cannot simply be imposed, must be created in consultation with the teacher, must be specific and measurable, and tailored to the actual students – not simply some arbitrary level of ‘mastery,’ since students may not be capable of reaching that goal – particularly after a Covid shutdowns and virtual instruction. Arbitrators have found that this single failing, standing alone, may warrant dismissal of a tenure charge.” See, In the Matter of Dale Brown and State Operated Sch. Dist. of Newark, Agency DKT NO.: 254-9/16 (May 24, 2017) (dismissing charge finding insufficient SGO for, among other failings, the lack of specification as to which students were included in the pool, how those students were selected, or which of the respondent’s classes those students were to come from).”

The Respondent contends that there “are no valid ‘Action Steps’ for Administration.”

“Pursuant to applicable regulation, a CAP must include: “specific, demonstrable goals for improvement,” and more importantly, “include responsibilities of the evaluated employee and the school district for the plan’s implementation.” And, perhaps most importantly, the CAP must “include timelines for meeting the goal(s).” See N.J.A.C. 6A:10-2.5. Guidance issued by the New Jersey Department of Education advises that a CAP, must include a description of the teacher’s deficiencies, timeliness for corrective action, and responsibilities of the individual teaching staff member and the district, including

actions and professional learning activities to improve the staff member's performance. (See State of New Jersey Department of Education, Summary of Legal Requirements for Teacher Evaluation and Tenure Cases) (emphasis added). This is not only a regulatory requirement, but also a statutory requirement necessary to pursue charges of inefficiency under the TeachNJ Act.” See, N.J.S.A. 18A:6-119.

The District’s own Guidebook declares that “a CAP is similar to, but more robust than an IPDP to ensure struggling teachers receive the necessary support for their growth” (See Guidebook, D-24, p. 15) (emphasis added). Furthermore, it provides that, “an administrator with a teacher on a CAP is responsible for reviewing and co-developing the CAP with the teacher and then supporting the teacher in meeting the development goals outlined in the CAP. (Id.). It provides, the “CAP should explicitly articulate actions the administrator will take to directly support the teacher.” (Id.) (emphasis added). Further a CAP “shall...include specific metrics for monitoring progress toward goals, timelines for corrective action, responsibilities of the individual teaching staff member and his/her administrator for implementing the plan, and specific support that the district shall provide.” (Id. at p. 29) (emphasis added).”

“Montague’s CAP is a charade. It failed to include any specific individualized Action Steps to be provided by the administration to improve his teaching practice, nor any timelines for the provision of or completion of same. It also fails to identify Montague’s purported deficiencies. Two of the three areas of teacher growth identified in the CAP, identify areas in which Montague was rated

Effective the prior year. It is undisputed that the only administrative Action Steps listed in the CAP are generic support that all teachers receive and are not specific for teachers on a CAP: (1) formal and informal observations; (2) lesson plan feedback; (3) coaching. All teachers receive informal and formal observations and lesson plan feedback, as well as ‘coaching.’ That much was admitted to by Pared and Fuentes. The CAP offers nothing that any teacher would otherwise receive. Thus, the CAP provides for zero individualized supports and, of course, no timelines are set forth in the CAP to provide or complete the existing supports. Though the CAP is supposed to be more ‘robust’ than an Individualized Professional Improvement Plan (‘IPDP’) for non-CAP teachers, a comparison between Montague’s IPDP for 2020-21 and his CAP for 2021-22 shows, if anything, less robust supports. (Compare D-2 to D-7). These facts alone render the CAP invalid under applicable regulations and render Montague’s annual summative evaluation procedurally defective. Of course, even these ‘supports’ were not provided, as discussed below.”

In addition, Respondent argues that he was not afforded: (1) an announced observation; (2) three formal observations as a teacher on a CAP; and (3) a mid-year or annual evaluation conference.

In 2021-2022, Respondent received two observations, one of which had to be announced. Hill’s observation (D. Ex. #7) does not indicate whether or not it was announced. Pared testified that she did not know, and VP Hill did not testify. Similarly, Pared’s own observation (D. Ex. #8) is unclear on this point.

Teachers on a CAP are entitled to three observations per year. Montague had only two formal observations. The Respondent contends that Montague's absence from the beginning of January 2022 to the end of the school year neither excused the failure to provide a third observation, the mid-year conference or an annual evaluation conference. Since he was using his sick leave and/or was on an approved leave of absence, he should not be penalized. "By the time Montague is advised that his extension request is denied, it is well past the time for a mid-year evaluation or third observation. Rather than charge Montague with "inefficiency" while absence, Respondent argues that his increment could have been withheld.

Finally, in addition to the defenses of Retaliation and Procedural violations, Respondent argues that even in the absence of anti-Union animus, procedural violations, including the CAP deficiencies, "the conduct of the observation and evaluation process was otherwise arbitrary and capricious, such that it materially affected the outcome of Montague's evaluation. Evidence of Principal Pared's conduct deemed illustrative of the arbitrary and capricious behavior are as follows: (1) undermining Montague's 2020-2021 performance evaluation by citing false uncorroborated, or irrational justification in the over-the-year indicators; (2) removing Montague from his teaching cohort; (3) changing his lunch period; (4) imposing unlawful SGOs; implement a patently defective CAP; (5) denying Montague CAP assistance by cancelling the CAP coaching cycle;

(6) retaliating against his co-worker Ferrara; (7) removing his direct supervisor to avoid her evaluating him; (8) preparing tenure charges against him prior to his mid-year evaluation; (9) conducting a mid-year evaluation in the absence of a conference while his is on District approved FMLA leave; (10) conducting an annual evaluation in the absence of a conference; and (11) evaluating Montague in the absence of three required formal observations. “The foregoing is only a sampling of the arbitrary and capricious nature of Montague’s evaluation process during the two-years at issue in this case, and is enough, putting even all other considerations aside, to have materially affected the outcome of his evaluations such that the instant tenure charges should be dismissed.”

## **DISCUSSION**

### **I. Union Animus**

The Arbitrator is persuaded by a preponderance of the credible evidence that the administration of the Raphael Hernandez School, particularly Principal Pared, engaged in anti-Union discriminatory conduct prohibited by the State and Federal law. In the Arbitrator’s opinion, “the charges would not have been brought but for considerations of...Union activity, discrimination as prohibited by State or federal law.”

There is preponderant evidence which establishes that Principal Pared from the outset was hostile to the election of Respondent as building representative commencing with the 2020-2021 school year and continuing until efficiency charges were filed against him on July 29, 2022.

Considering the testimony of Montague and other witnesses at the hearing, supported by documentary evidence, the Arbitrator finds that Principal Pared interfered with the protected right of staff at RHS to select the building representative without coercion or intimidation. The evidence reveals that Pared displayed her anti-Union animus by initially insisting that the building representative be elected rather than appointed as had been the Union's practice, and that the former building representative, Herman Gonzalez, remain on the ballot when he had offered to step down. Whereas the staff perceived that Gonzalez had not been effective as Union building representative, Montague had been outspoken and critical of the principal and the school environment.

Early in Montague's role as building representative, Pared's demanded that she be given the times and dates of Union meetings, contrary to the Union's position that the NTU contract provision did not mandate that such information be given but rather a courtesy. Respondent construed the request as Pared's continued her interference with Union business.

In the Arbitrator's interpretation of Section 5, Union Meetings in the NTU contract, which states that while principals are required to cooperate with the Union "to facilitate the holding of such meetings despite relatively short notice and shall not schedule any activity or program which will interfere with the conduct of said Union meetings, except in cases of emergency" he finds that there is no explicit language requiring the Union to provide advance notice of all of its meetings for a school year. While it is clearly in the interests of both parties to reconcile the schedule of Union meetings with other activities the principal may

have scheduled in advance of notice from the Union, there is no mandatory requirement such as that sought by Principal Pared from Respondent.

Further evidence of anti-Union animus was Principal Pared's comment to staff that she "listened in" or "knew" what was going on in Union meetings. During a period where Union meetings were held virtually due to the restrictions imposed by the pandemic, Principal Pared's comments had the effect of intimidating Union members, undermining the Union and Montague, and chilling free expression by staff on matters of concern.

The Respondent reasonably relied on the testimony of Ms. Jessica Carnemolla, a literary coach, who resigned citing the toxic environment. She recalled that Pared had complimented her on a correction she had made concerning coaches at a Union meeting. (Tr. @ 1049). Similarly, Ms. Crowe recalled that Pared "said she heard some things were going on in our Union meeting." Vangela Crowe's contract was not renewed. The Arbitrator concurs with Respondent that irrespective of whether Pared actually listened in on Union meetings, which she denied, the statements alone would constitute interference with Union activity.

There is clear and convincing evidence that Principal Pared maximized her anti-union animus during an April 28, 2021 faculty meeting. In the audio and video recording of the meeting, Pared can be heard telling faculty that certain communications to the Union would result in negative consequences such as exclusion from the "family" or the "community." The so-called "chain of command" meeting was an overt attempt by Pared to restrict staff

communication with Montague on subjects she deemed improper that were in fact related to their conditions of employment. In asking, "Why do we need an intermediary?" Pared was engaged in blatant anti-union behavior.

In addition, during the April 28<sup>th</sup> meeting, Pared singled out Montague, Ferrara and Crowe for discipline by having other faculty take their students on mask breaks for the remainder of the school year. Ferrara and Crowe had been speaking to Montague when their deviation from the mask break protocol, namely, conversing with Montague outside of their designated areas, had occurred.

The 2020-2021 school year, insofar as Union activity was concerned, culminated with a group visit to the central administration and a meeting with Joanne Watson of Labor Relations. Montague, Ferrara and Crowe traveled to "765 Broad Street," Newark Board of Education, to complain about the Pared administration.

There is evidence that Principal Pared retaliated against Montague and Ferrara for their Union activity and criticism at the commencement of the 2021-2022 school year. Montague's 6<sup>th</sup> and 7<sup>th</sup> grade cohort, with Ferrara teaching E.L.A. and Dixon teaching science, was changed without explanation. While the principal undoubtedly had the discretion to make administrative changes she deemed conducive to the goals and objectives of the school, these changes, which affected only those Union members who were also the most critical of the administration, were suspect. Notice of the changes was conveyed in mid-June shortly after the Watson meeting. It is noteworthy that at this juncture,

Respondent had been rated “partially effective” for the 2020-2021 school year and would be placed on a CAP for 2021-2022.

Additional changes for 2021-2022 included a change in Montague’s lunch period. Significantly, immediately after the January 5, 2022 Climate and Culture Meeting, Montague’s immediate supervisor was changed from VP Hill to VP Bird, effective January 6, 2022. It is noteworthy that VP Hill had rated Montague effective for each of the lessons she had observed in 2020-2021 and 2021-2022.

Notwithstanding the recollection of the participants at the Climate and Culture Meeting that Pared offered an “apology” to the staff, Montague, Ferrara and others had reiterated their concerns regarding what they perceived to be a continuing “retaliatory environment.” VP Bird’s adversarial “us v. you” comment reinforced this perspective.

There is also some evidence that Pared’s distribution of a mug shot of Montague obtained from the Essex County jail following his “false arrest” (with charges ultimately dismissed) was designed to undermine his status at the school.

Clearly, the administration of Principal Pared was replete anti-Union animus or bias and, but for this factor, it is not probable that the tenure charges against the Respondent would have been brought. However, the TEACHNJ statute does not consider the presence of anti-union animus dispositive of a tenure charge of inefficiency. It requires a further determination by the arbitrator that this fact “materially affected the outcome of the evaluation.”

## II. Alleged Material Effects on the Outcome of the Respondent’s Evaluation

Given the statutory criteria to be considered by the Arbitrator includes:  
“(1) The employee’s evaluation failure to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan,” the Respondent claims the following procedural violations materially affected the outcome of his evaluation:

- (1) the absence of a legally valid CAP;
- (2) the absence of and, in fact, undermining of any assistance to Montague as a teacher on a CAP;
- (3) the absence of an “announced” observation or three required formal observations;
- (4) the lack of both a mid-year and summative evaluation conference.

The Respondent claims that his CAP was invalid, inter alia, because the Student Growth Objectives (“SGOs”) in his CAP were imposed on him. He disputes the Goal 1 terminology that “[b]y April 2022, 9 of the 18 7<sup>th</sup> grade students would demonstrate mastery of 7<sup>th</sup> grade level standards by achieving a score of 75% mastery or above.” A similar metric is cited for the 6<sup>th</sup> grade. The District notes that “the Growth Areas included Action Steps, Metrics & Processes and as part of Growth Area #4 that ‘lesson plans will be submitting according to the schedule and the teacher will be ready at the start of the class.’” (D. Ex. #6).

Respondent takes issue that the students to be assessed are not identity, “they do not attempt to measure ‘growth,’ but rather ‘mastery’ and there are no beginning points from which growth could even be measured.”

The Arbitrator disagrees. Clearly, the students are identified as those students in Respondent’s 6<sup>th</sup> and 7<sup>th</sup> grade classes, 50% of which (9 out of 18)

are to achieve mastery defined as a score of 75% or above using the Math End of Year Assessment. And the timeframe for the “Growth” measurement is from the beginning of the school year until April 2022.

More importantly, the evidence established that Respondent in a collaborative process sat down with Vice Principal Hill and agreed on the SGOs. (D. Ex. #6). The record indicates that Montague viewed his CAP on November 1, 2021 after it was created on September 9, 2021 and therefore had an opportunity to revise it. Respondent testified that he and VP Hill were involved in creating his CAP. Inasmuch as Respondent testified that VP Hill treated him fairly and considered her removal as his supervisor indicative of Principal Pared’s retaliatory intent, the Arbitrator is reluctant to credit Respondent’s argument, without proof, that his CAP SGOs were imposed on him.

The Respondent’s second claim is that his CAP contains no valid action steps. According to Respondent, his CAP lacked “demonstrable goals for improvement, responsibilities of the evaluated employees, timelines for meeting the goals and corrective action and professional learning activities to improve the staff member’s performance.” Here again, the Arbitrator finds that the Action Steps for Growth Areas Nos. 1-4 were collaboratively prepared by VP Hill and Respondent with no evidence that they were unilaterally imposed on him by his supervisor.

Respondent’s third claim is that he was denied adequate coaching assistance required for a teacher on a CAP. Although Montague acknowledged that a coaching cycle was set up with Gloria Bishop, Math Coach, “to provide me

with some assistance because I was a teacher on a CAP,” he testified that Principal Pared cancelled the coaching cycle in October/November 2021. (Tr. @ 1504). Referring to RHS topics and Support Person Schedule for 2021-2022, Respondent described the several PLC entries as “nothing unique or specific to anything to assist me. That’s assistance for all teachers.” (Tr. @ 1506). Other than the November 1, 2021 meeting on the topic of Binder Expectations, Respondent argues that he was provided “zero individualized supports or any individualized Action Steps” to improve his teaching practice.

The Arbitrator is persuaded that the District failed to adhere substantially to the evaluation process, primarily because Respondent was not provided with an adequate corrective action plan.

The Respondent’s observations for 2020-2021 began with Principal Pared’s first classroom observation on November 10, 2021 where Montague was overall rated a “effective.” Pared rated Respondent “partially effective” with respect to “Tailored Instruction,” and gave him suggestions on how he could improve Indicator 2b – Lesson Components.

For his second observation, conducted by VP Hill on March 29, 2021, Respondent was rated overall “effective.” However, he was rated “partially effective” for Lesson Sequence because VP Hill wrote that his lesson “did not effectively demonstrate that the lesson was an individual standards-aligned lesson built on previous lessons and on students’ prior knowledge. “ In his 2020-2021 Summative Annual Evaluation” he was overall rated “partially effective.” He was rated “partially effective” for Competency 1 “Lesson Design and Focus,”

“partially effective” for Lesson Sequence, Indicator (1a) and “ineffective” for Coherent Planning, Indicator (1e); “partially effective” in Competency 2, Rigor and Inclusiveness; “partially effective” for Competency 3, Culture of Achievement; “partially effective” for Competency 4; Student Progress Toward Mastery; “Significantly Below Expectations” for Commitment to Personal and Collective Excellence.

Clearly, placement of the Respondent on a CAP for the 2021-2022 school year was designed to address these ongoing deficiencies predominately focused on lesson design, lesson planning, lesson sequence and tailored instruction.

Despite the focus in the CAP on Growth Areas that encompassed Indicator 1a – Lesson Sequence, with Respondent agreeing that “lesson plans will be submitted according to the schedule and the teacher will be ready at the start of the class,” Respondent claims that during the 2021-2022 school year his coaching support was abruptly cancelled by Principal Pared.

Respondent recalled the process as follows:

Q. Are those things unique to you on a CAP?

A. No.

Q. What do you mean by that?

A. Every teacher gets informal and formal classroom observations. Every teacher is supposed to get coaching from administrators, and we certainly did from our actual coaches, the math coach and the literacy coach, and everyone gets lesson plan feedback.

Q. Did you get any unique assistance or support while on the CAP?

A. No, I did not.

Q. Where would that have come from?

A. It would have to be something that was set up by the administrative team.

Q. Administrative team being who?

A. Principal Pared and the vice principals of which we had three at the time.

Q. To your knowledge, was anything set up?

A. Initially, yes. Correction. There was something initially set up that was supposed to be additional support for us – or for myself, I should say, specifically as on a CAP.

Q. And what was that?

A. It was an additional coaching cycle with math coach Gloria Bishop.

Q. And what happened with that coaching cycle?

A. We had two coaching cycle meetings. The first one was basically introductory. I have a very positive relationship with math coach Gloria Bishop, and she basically came in and said she was scheduled to start meeting with me to provide me with some assistance because I was a teacher on a CAP. So, the first meeting was kind of introductory.

And then we had a second meeting where we specifically went over the format to create binders, and that was the end of the coaching cycle.

Q. Did you know what happened to the coaching cycle?

A. It was cancelled by Principal Pared.

Q. And did you receive any specific CAP assistance from Mrs. Bishop following that?

A. No, none.

Q. And do you recall when that last meeting was, approximately?

A. It had to be some time October/November, somewhere along those lines...

Q. And so there's a series of entries in here, some of them refer to – on the right-hand column, support person. I think there's a topic and on the left hand side there's a date, correct?

A. Yes.

Q. And you see the references to Gloria Bishop?

A. Yes, I do.

Q. You now, I think the first one starts at October 13, 2021.

A. I see it.

Q. And then they run through – just with respect to her, January 12, 2022.

Do you see that?

A. Yes.

Q. Okay, Do any of those entries to your knowledge, reflect specific individualized support for you on your Corrective Action Plan?

A. Absolutely not.

Q. What's your understanding of what the entries are?

A. The majority of these are PLCs. I noticed a lot of them it's PLCs. That's our Professional Learning Community. That's where all the teachers meet. So there's nothing unique or specific to anything to assist me. That's assistance for all teachers.

And then several of the dates appear to be nothing more than her regularly scheduled visits to my classroom. As a math

coach, that's part of her professional responsibility. She visits classrooms.

Q. And, in fact, do any of these – just looking at that page here, can you

identify the meeting that you had had, the CAP support

meeting you had had on here? And the dates are on the left-hand column, and the subject matter is in the middle.

A. the 11/1 meeting is definitely an individual support meeting.

Q. And how do you know that?

A. Because that's the Binder Expectations, and we did discuss binders individually. So, I'm assuming – I don't actually remember if these dates correspond to what actually took place, but I do definitely know that the binder-expectation meeting was myself and Ms. Bishop and one other individual... (Tr. @ 1502-1507).

The testimony of Gloria Bishop, Math Coach, corroborates the Respondent's recollection of his CAP support. Referring to the RHS Teacher Support Schedule for 2021-2022, Bishop testified that the October 25, 2021, Planning for the Next Lesson; November 1, 2021, Binder Expectations; and the November 22, 2021 Conference were the only three sessions that were individualized for Respondent. Although she was originally scheduled to meet with Montague during an additional preparation period – “at a designated time other than his prep...for me to meet with him individually for the coaching cycle,” “it was discontinued.” (Tr. @ 984). Bishop distinguished the In-Class Support entries on the schedule as “something I would do with all the teachers. I come into their classrooms. I would team teach. I would observe the lesson and provide feedback.” (Tr. @ 982).

Bishop further distinguished from the one-on-one CAP coaching, the In-Class Support she provided Montague in his classroom on November 17, 2021,

January 3, 2022, January 4, 2022 (virtual), January 5, 2022 and January 6, 2022 (virtual).

Similarly, she described the PLCs, Planning for Small Group, as group meetings where the “math teachers of the school met to collaborate and train on teaching strategies, planning, etc.”

Bishop testified, on redirect examination, that following the October 25, 2021 meeting where expectations for the coaching during the CAP were discussed and after the November 1, 2021 Binder meeting, “I didn’t have any additional prep to coach him. All the other coachings were the coaching cycle I would give a normal teacher.” (Tr. @ 1005).

Principal Pared acknowledged that she cancelled the coaching cycle, which was tantamount to Respondent having a sixth prep or an extra prep because Respondent was only entitled to have five (5) preparation periods. (Tr. @ 450-451). Shortly before the cancellation of the coaching cycle, VP Hill, following her November 10, 2021 formal observation of Montague, had rated the overall lesson “effective” and noted as “effective” progress toward two of the three professional learning goals planned at the start of the year, with (1a) Lesson Sequence rated as “partially effective.” (D. Ex. #8).

Subsequently, on January 6, 2022, VP Bird replaced VP Hill as Respondent’s supervisor, and VP Bird conducted his mid-year evaluation on January 12, 2022 rating him “partially effective,” in reliance on the VP Hill “effective” observation of November 10, 2021 and Principal Pared’s “partially effective” rating on December 16, 2021. It is noteworthy that for the 2021-2022

school year VP Hill herself was rated “partially effective” by Principal Pared for, inter alia, “not providing ample lesson plan feedback to Montague.”

Given the absence of Montague from approximately January 25, 2022 until the end of the school year, Respondent’s observations and CAP support, if any, ceased. VP Bird, for her part, had no role in Respondent’s CAP development. VP Bird issued Respondent’s Mid-Year Review on January 12, 2021, but due to Montague’s sick leave absence on January 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup>, 2022 and a personal leave day on January 18<sup>th</sup>, she did not conduct a Mid-Year Review Conference which the Framework “required for teachers on a Corrective Action Plan.”

In preparing the Mid-Year Review, “the administrator considers evidence gathered through formal and informal observations completed to date, evidence of over-time indicators, and evidence of progress toward learning goals. Based on this evidence, the administrator assigns a performance level to all five Competencies, focusing on Competencies that are most critical in order for the teacher to meet his/her goals.” In focusing on Respondent’s lesson plan deficiencies, VP Bird did not confer with VP Hill who jointly designed the CAP with Montague.

With Respondent unavailable after January 22, 2022, the remaining evaluation claims of Respondent need not be addressed. Neither a third observation for a teacher on a CAP nor whether he was entitled to an announced observation, absent evidence that either of his first two observations were announced, can be considered. Although Respondent’s FMLA leaves of

absence requests were retroactively approved by the District initially to March 2, 2022 (for the period January 25, to March 1, 2022) and subsequently to April 22, 2022 (for the period March 2, 2022 to April 22, 2022), his third request for an extension was denied. From the documentary record, the Arbitrator concludes that from April 25, 2022 to the end of the school year, Respondent was not on any approved leave of absence.

In the Arbitrator's opinion, but for the deficiencies in the District's administration of Respondent's CAP, there would be preponderant evidence in support of an inefficiency tenure charge. While the District adduced convincing evidence that Respondent was ineffective or partially effective over a two-year period with respect to competencies and indicators related to lesson planning, lesson sequence, lesson design and focus, tailored instruction and coherent planning, and Respondent had been put on notice of this deficiency as early as his first 2020-2021 observation, rated "effective" by Principal Pared, that he needed to tailor instruction to move students toward mastery, Respondent made minimal progress.

In his second 2020-2021 observation, VP Hill wrote that Montague needed to connect the lesson to previous learning objectives. This pattern continued during the 2021-2022 school year when Respondent displayed difficulty demonstrating learning by using data, lesson sequencing and coherent planning.

Overarching the Respondent's performance over the two years was his failure to submit written lesson plans. Although unequivocally required by the District every two weeks in his Google folder, for the 2020-2021 school year,

Montague submitted only set of plans for the first week of school. For the 2021-2022 school year, he only submitted copies of the curriculum.

The testimony of the Principal that there was absolutely no proof that Respondent had submitted his lesson plans is credited by the Arbitrator. On the other hand, the false testimony of Ms. Montiero that she uploaded lesson plans for Montague's 6<sup>th</sup> grade class to his folder that she had shared with Respondent is discredited. Despite several memos to Respondent charging him with Neglect of Duty and Insubordination for "failure to submit lesson plans" as of his Mid-Year Evaluation dated February 22, 2022, Respondent's Lesson Plan deficiency was unabated.

Clearly, the Respondent's CAP for 2021-2022 provided him with one last chance to correct this deficiency, comport his performance with the expectations of the District, and avoid the instant charge of inefficiency. However, the District's failure to substantially adhere to the evaluation process by denying Respondent the opportunity to receive individualized Match coaching, lesson plan design and training pursuant to his CAP growth areas, action steps and goals, exacerbated by a pervasive environment of anti-Union animus, persuades the Arbitrator to dismiss the instant tenure charge.

The decision of Principal Pared to change Respondent's immediate supervisor from VP Hill to VP Bird, deprived him of the opportunity to work with the administrator with whom he had collaborated on the design and ongoing implementation of his CAP growth areas, action steps and goals. Principal Pared compounded the deprivation of Montague's CAP support by cancelling his Math

coaching cycle. Without the assistance of Math Coach Bishop, many of the instructional deficiencies identified in Respondent's classroom observations, particularly lesson planning and lesson sequencing, could not be addressed.

Together, these decisions had the effect of denying Montague the requisite CAP support mandated under the Framework. Given convincing evidence that Respondent was denied an adequate Corrective Action Plan, the Arbitrator finds that Respondent has established a valid statutory defense to the tenure charge of inefficiency as set forth in TEACHNJ.

In finding that the charges would not have been brought but for considerations of Union activity, the Arbitrator further finds that this fact materially affected the outcome of his evaluation in that Respondent was not provided with an adequate Corrective Action Plan consistent with the Framework for Effective Teaching. Accordingly, the instant tenure charge is dismissed.

November 27, 2023

Robert T. Simmelkjaer  
Robert T. Simmelkjaer  
Arbitrator