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**IN THE MATTER OF THE TENURE CHARGES REGARDING**

**THOMAS SCHAEFER**

**DOCKET NO. 247-9/15**

**AND THE**

**BEFORE JACQUELIN F. DRUCKER, ESQ.  
ARBITRATOR**

**STATE-OPERATED SCHOOL DISTRICT  
OF THE CITY OF PATERSON, PASSAIC  
COUNTY**

**AWARD**

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**APPEARANCES:**

**FOR THE DISTRICT:**

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**FOR MR. SCHAEFER:**

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**DATES OF HEARING:**

**NOVEMBER 24, 2015  
JANUARY 19, 2016  
FEBRUARY 3, 2016  
FEBRUARY 10, 2016  
FEBRUARY 18, 2016**

**I. PROCEDURAL BACKGROUND**

The State-Operated School District of the City of Paterson, Passaic County (“District” or “Employer”) initiated and the State District Superintendent certified to the Commissioner of Education a tenure charge seeking the termination of employment of Thomas Schaefer (“Respondent” or “Mr. Schaefer”), who is employed as a tenured Teacher within the District. By letter dated October 13, 2015, the Commissioner of Education referred the charges to this

Arbitrator pursuant to N.J.S.A. 18A:5-16 as amended by P.L. 2012, c. 26 and P.L. 2015, c. 109. By agreement of the parties, the hearing of this matter was commenced on November 24, 2015. At that time, although no testimony was taken, discussions were held, documentation and exhibits were reviewed, and an outline of the full case proceeding was developed. The taking of testimony commenced on January 19, 2016, at the offices of the District, 90 Delaware Avenue, Paterson, New Jersey, and continued on February 3, February 10, and February 18, 2016. Throughout this proceeding, both parties were ably represented by legal counsel, and Respondent was present at all times. Each party was provided a full and fair opportunity to present evidence through documents and testimony. All witnesses were sequestered, other than Respondent, and all testified under oath and were subject to direct, cross, and redirect examination. The parties agreed to the presence of a court reporter and to the subsequent preparation and use of a transcript of the evidential hearings. When the taking of evidence was concluded on February 18, 2016, counsel agreed to present written closing arguments. As the result of various intervening events, including a weather emergency, family leave for one participant, and the agreement of the parties to proceed first to an interim decision in another arbitration addressing issues with potentially District-wide effect regarding the Paterson Evaluation System, the Commission approved an extension until April 30, 2016, for the issuance of this Award. In accordance, the deadline for closing briefs was established and then extended by agreement of the parties. Same, which were meticulously developed and documented, were timely conveyed to the Arbitrator, whereupon receipt of which the record was closed. In reaching the conclusions and making the Award set forth herein, the Arbitrator has given full, fair, and careful consideration to all evidence of record, all arguments, and all authorities and citations offered by the parties.

## **II. THE CHARGES AND APPLICABLE STANDARDS**

Based upon the Notice of Tenure Charge of Inefficiency issued by the District, the State District Superintendent's finding of probable cause to credit the evidence in support of the charges, and Respondent's Answer, the Office of the Commissioner of Education concluded that the charges, if true, were sufficient to warrant dismissal or reduction in salary, "subject to determination by the arbitrator of respondent's defenses. . . ." Thus, by letter dated October 13, 2015, the charges

were referred to this Arbitrator by the Bureau of Controversies and Disputes pursuant to N.J.S.A.18A:6-16 as amended by P.L. 2012, c. 26 and P.L. 2015, c. 109, for her review.

The District asserts one charge, citing “inefficiency,” contending that Respondent was rated as Partially Effective in two consecutive annual summative evaluations. The charge also asserts that Respondent failed to effectively perform the duties of a teacher, to effectively prepare for instruction, to effectively use data to inform instruction, to effectively deliver quality instruction to his students, to effectively intervene to meet the diverse needs of his students, to effectively foster a safe, effective, respectful, and collaborative classroom environment, to effectively exhibit leadership, and to effectively fulfill his professional responsibilities.

The actual summative ratings for the school years of 2013-2014 and 2014-2015 are not in dispute and are established in the record through the admission of joint exhibits documenting the cited scores. Respondent raises a number of arguments challenging the validity of the processes used, the manner in which the evaluation system was implemented and applied to Respondent, and specific conclusions reached therein, but there is no dispute as to the scores themselves, which were as follows: in the 2013-2014 annual summative evaluation, Respondent was rated partially effective based on a teacher practice score of 2.00 and a student growth objective score of 1.00, for an overall score of 1.85; and, in the 2014-2015 annual summative evaluation, Respondent was rated partially effective, based on a teacher practice score of 1.60 and a student growth objective score of 0.80, for an overall score of 2.40. This then resulted in two consecutive years of ratings of less than effective, which enabled the District to seek termination of employment.

The District has the ultimate burden of establishing that the statutory criteria for tenure charges have been met, but N.J.S.A. 18A:6-17.2(a) addresses specifically the standards for determination of cases involving charges of inefficiency. Under these provisions, the Arbitrator is to determine, in the first instance, only the following: whether the Respondent’s evaluations failed to adhere substantially to the evaluation process, including but not limited to a corrective action plan; whether there was a mistake of fact in the evaluation; if the charge would not have been brought

against Respondent but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by federal law or other conduct prohibited by State or federal law; or if the District's actions were arbitrary and capricious. If one of these shortcomings is found from the evidence adduced at hearing, the Arbitrator then must determine if that fact materially affected the outcome of Respondent's evaluation. If the established factors did not, then the charges must stand and removal will follow.

As an initial matter, however, the parties to this action, along with the parties in three other tenure proceedings, agreed that the challenges to the Paterson Evaluation System would be consolidated and addressed in a single interim award that potentially would have District-wide effect, which was issued by Arbitrator Gifford on January 14, 2016. In examining the District's evaluation system, Arbitrator Gifford concluded that "there is insufficient evidence to conclude at this point in the proceedings that the District has failed to meet its legal requirements." *In the Matter of the Tenure Charge of Carrie Osborne, et al.*, Agency Docket No. 288-9/15 (Jan. 14, 2016). The Respondents before Arbitrator Gifford had contended that the District had unilaterally implemented Student Growth Objectives, which would have been contrary to the statutory system, which requires that the teacher develop, "in consultation with his or her supervisor or a principal's designee, each student growth objective," with the principal making the final determination if the teacher does not agree with the student growth objectives. Arbitrator Gifford considered the allegation of unilateral implementation and concluded that any failings in this regard are to be reviewed on a case-by-case basis. The Respondents also challenged the calculation of teacher observation and evaluation scores, contending that the District had failed to disclose scoring rubric information, refused to explain the calculation of standard scores for observations and the Annual Summary Report, failed to implement and enforce objective observation scoring rules, and had not disclosed how sub-indicators are factored into overall scores. On these issues, Arbitrator Gifford indicated that the evidence had been presented in a broad context and can be detailed in future cases to indicate the steps the District has taken with regard to training and disclosure.

### **III. FACTS AND ANALYSIS**

#### **A. Background**

Respondent has taught in the District for more than 15 years and earned tenure in 2002. Grievant entered the teaching profession after having completed his bachelor's degree in journalism and having worked for several years as an accountant. He first secured teaching positions in parochial schools and New York City Public Schools. After becoming certified in New Jersey as an Elementary School Teacher, Respondent worked for one year (1995-96) in the District, teaching eighth grade. His contract was not renewed, and he taught elsewhere until hired again by the District in 1999. In the ensuing 14 years, Respondent taught at various schools within the District, teaching several subjects and differing grades. In addition to holding his initial certificate as an elementary school teacher, he later became certified as a teacher of business studies, bookkeeping, accounting and English.

Respondent's recent service included an assignment, in the 2010-2011 school year, to the John F. Kennedy High School, teaching business education, followed by a year at the Sports Business Academy, also teaching business education. For the 2012-2013 school year, Respondent moved to the New Roberto Clemente Middle School (NRC), where he was one of two Educational Technology Teachers for sixth, seventh and eighth grades. In teaching these programs, Respondent was trained in and used the District's computer technology curriculum, Learning.com, which includes lesson plans, lessons and assessments for students in various grades.

#### **B. The Evaluation Process at NRC**

At the end of Respondent's first year at NRC, 2012-2013, the District began the training process to implement the new Paterson Evaluation System. Respondent underwent training in these processes, which was designed to introduce the teacher evaluation process. Respondent also was given the Paterson Public Schools Teacher Performance Evaluation Packet, a comprehensive

document that sets forth the process in detail. The Evaluation Packet, or handbook, as it is commonly called, outlines the evaluation process and includes summaries, a glossary, goals and objectives, examples of the evaluation instrument, and an outline of the planning process for SGOs. It also contains 55 pages of question and answers. Within the handbook is an outline of the specific elements of each of the seven performance standards for the Teacher Practice Rubrics, which are: preparation for instruction; use of data to inform instruction; delivers quality instruction; interventions to meet diverse needs; classroom environment; leadership; and professional responsibilities. Within each standard are subcategories and rating elements reflecting whether a score would be considered unsatisfactory, progressing, proficient, or exemplary and also indicating the weight to be accorded each score.

With the commencement of the following school year, 2013-2014, came the actual implementation of the evaluation system, which Respondent recalled as including group training sessions or professional development sessions in which the evaluation process and scoring systems were addressed. He recalled specifically a session presented by NRC Vice Principals Ventura and Garcia in which he posed questions regarding the scoring process. Respondent has asserted throughout, however, that he did not understand aspects of the scoring process and that questions posed at training sessions and references to the handbooks did not provide answers.

One of the first steps, at the beginning of the school year, was for teachers to develop their SGOs for the purpose of tracking the development and progress of their students. Respondent alleges that the SGOs for both years were unilaterally determined and imposed by the District. Yet in testimony, Respondent addressed the assistance he received in formulating his SGO for the first year. He met with Principal Hector Montes, and they discussed the approach to development of his SGO. Principal Montes suggested to Respondent, as he did with most teachers, that at least one sixth-grade class be included, as this would provide a benchmark to show the students' progress as they advanced within the middle school. Respondent's chosen growth objective for that school year was that "[a]t least 70% of students will show improvement in their total proficiency level between the pre and the post assessments," a number that Respondent believed, in retrospect, was overly ambitious. Respondent testified in varying ways regarding the

development of this number and approach. He said that Principal Montes had “suggested” that the use of sixth grade classes for the logical reason of tracking their progress over the course of three years, yet he also testified that this was a “directive.” He also testified that Dennis Vroegindewy, the Director of Libraries and Technology, told him to use 70% and that when Vice Principal Garcia later said that the number could be reduced, he did not do so because he felt he needed to comply with what Mr. Vroegindewey had said and also because he believed that he could achieve this goal.

Respondent testified that, later that year, he learned that at least one technology teacher in another school was using a 3% measure for the SGO. Respondent attempted to contrast 3% with 70% without acknowledging that they were being used as completely different measures, with the 70% applying to the number of students advancing to the next level and the 3% being used to measure the students’ degree of improvement. He then went on in testimony, however, to explain the 3% calculation in a manner that reflected that he had a thorough understanding of that analysis at the time he discovered it, even though, after he had incorporated it the following year as his SGO, he repeatedly professed to supervisors that he did not understand what the 3% was or to what it applied. Respondent also testified at hearing both (a) that he learned of the more appealing 3% measure not long after the start of the year when he was still at NRC and yet (b) that for the following school year, at a different school, the use of 3% had been “assigned” by the then-Principal and had been “her idea.”

From a careful evaluation of testimony and all other evidence of record, the Arbitrator finds that the Respondent’s contention that the District unilaterally imposed the SGO levels that were used in both years is not supported by the evidence of record. Rather, the record establishes that Respondent agreed to the use of these standards. Further, as will be addressed below, the Arbitrator finds that Respondent was being disingenuous when, during and especially at the close of the following school year, 2015-2015, he purported to have no understanding of the application of the 3% element of his then-SGO.

In keeping with the new evaluation system, Respondent's teaching in the 2013-2014 year was given three formal observations, in which the seven factors incorporated in the evaluation program were assessed. These formal observations were conducted on October 16, 2013 (by Assistant Principal Jorge Ventura), January 16, 2014 (by Assistant Principal Ramona Garcia); and April 4, 2014 (by Principal Hector Montes with Mr. Vroegindewy). The evaluations produced mixed ratings in the seven categories. The factor of greatest concern was from the October 16, 2013, observation by Mr. Ventura, in Standard #3, "Delivers Quality Instruction." Respondent on this observation received a rating of unsatisfactory, with the notes indicating that he gave unclear directions to students, causing students to ask for clarification, led learning that was "passive rather than active," incorporated excessive "busy work," monopolized discussions, called on one student primarily, and sparked "low intellectual involvement."

Respondent also received ratings of "Progressing I/Partially Effective" in categories such as Preparation for Instruction, Use of Data to Inform Instruction, Interventions to Meet Diverse Needs, and Classroom Environment. In the April 2014 observation, Mr. Montes provided several ratings of "Progressing II" in categories of Preparation, Use of Data, Delivering Quality Instruction, and Intervention to Meet Diverse Needs. In all evaluation documents, significant commentary was provided, citing specific examples and areas in which improvement was needed. Each category indicated the value attached to that rating. The requisite meetings were held after each observation and rating, so that discussion could be held to enable Respondent to better integrate the comments and rating into his performance. Respondent submitted rebuttals to each, indicating that he had reviewed and considered the information stated therein.

Respondent contends that there was unfairness and there were procedural flaws in each of these three formal observations. At hearing, Respondent testified that, especially with regard to the October observation, there had been problems with the operation of the computers, resulting in the commencement of class being actually only on October 6, just a week prior to the evaluation. The result, he said, was that he had very little time to get up to speed to teaching in this environment, and the students were still involved with pre-testing in Learning.com. Mr. Ventura testified, however, that he and Respondent spoke about this, and he pointed out to Respondent



that if he did not have necessary data ready for the students a week into the class, it was not clear when he would have it ready. Mr. Ventura also noted to Respondent that there various ways in which the material may be taught, whether in a lab or a classroom, and the teacher needs to be able to engage in effective teaching in these different settings. Respondent at one point complained that he did not have adequate access to computers, noting issues with electricity, but Mr. Ventura testified in response that he had explained to Respondent before and at the time of the review that he had to stop leaving the laptop carts plugged in for long periods of time, as it was causing the batteries to diminish, and that this was why he was left with laptops that would not successfully maintain a charge.

Respondent also contends that it was inappropriate that the observation was of a bilingual class and that it was conducted by an administrator who spoke Spanish and thus could relate more directly to the students. He argues further that there was a mistake in the evaluation notation that he did not have data binders in the classroom when, in fact, the observer, in this instance, Mr. Ventura, had not looked in the correct place. Respondent also argues that he had been unfairly criticized in the observation by Principal Montes for not using smartboards when, in fact, the smartboard that he was assigned was broken. Mr. Montes testified, however, that he had not been aware until the observation that the smartboard was not operating and that, had Respondent notified him, he would have addressed the problem. Mr. Montes testified without contradiction that he takes pride in ensuring that such logistical matters are rectified immediately and that teachers know that they can email or call as soon as a technological problem arises and it will be addressed. Respondent's failure to attempt to have the smartboard repaired or replaced was an example of Respondent's inclination (noted also by other administrators) to be "very passive" as opposed to "being proactive and trying to find answers."

Respondent also alleges that the District did not comply during this school year with the evaluation process regarding informal walkthroughs. The record, however, indicates that at least four informal walkthroughs of Respondent's classes were performed at NRC in 2013-2014. According to the manual, a walkthrough is not more than ten minutes in duration and "identifies and informs teacher practice in the areas of classroom environment, instruction, and student

encouragement.” These walkthroughs were cited in the document prepared at the end of the year (the CAP, addressed below) to outline corrective efforts to be undertaken to help Respondent improve his performance.

From the foregoing information and the full record as it relates to the formal observation and evaluation process for Teacher Practice in 2013-2014, the Arbitrator finds no showing that the District failed to adhere substantially to the evaluation process, engaged in any mistake of fact in the evaluations, or was arbitrary and capricious.

### **C. Other Issues at NRC**

In the 2013-2014 school year at NRC, Respondent received a written reprimand for “unbecoming conduct” relating to Respondent having referred, in class, to a good student who had received his first detention as “detention kid” and, when the student objected, Respondent asked, “Are you going to tell your mommy?” Respondent was reminded in the written reprimand of the humiliation that this caused the student and that the District expected him to adhere to the high standards of performance and responsibility and professional rapport with students, earning their respect while treating them with respect. In testimony, Respondent acknowledged the incident and noted that his remarks had been inappropriate.

In May of 2014, Grievant initiated three grievances. In one, he challenged the assignment to teach in a content area that he said was outside of his certification. (See discussion below.) In this regard, Respondent testified that raised the issue because he wanted to get off the Corrective Action Plan (CAP) and he wanted to teach something he knew so that he could be successful. (Although the CAP was not in place as of May 2014, it would be clear from the nature of the evaluations that the summative evaluation was likely to be Partially Effective and that, therefore, a CAP would have to be put in place.) The grievance was denied and nothing in the record indicates that it was pursued further. Respondent also initiated a grievance alleging that he had been denied access to appropriate technology and materials that would enhance his level of instruction. In this regard, Respondent noted that he was referring especially to a “smart board”

that was not functioning, as addressed above. The District, he said, was aware of this but did not take steps to repair it. Another grievance initiated in May 2014 related to an alleged failure of Principal Montes to write comments on Respondent's lesson plans or to provide a copy of rubrics or of the observations a full workday prior to a conference to discuss observations.<sup>1</sup>

#### **D. Summative Evaluation for 2013-2014**

In June 2014, as prescribed in the Paterson Evaluation System, the Respondent's Annual Summative Performance rating was developed from the weighted combination of the Teacher Practice and Student Grown Objective scores. The Teacher Practice Score, based upon the three evaluations by three different administrators, as noted above, with weighting as indicated on the evaluation instrument that had been provided to Respondent, was a total score of 44.0. That score then translated to a Teacher Practice Score of 2.0 on the District's four-point scale, which is clearly set forth on the Annual Summary Conference Form.

Respondent's SGO score was calculated at rating of 1, which is the lowest rating, based on the average of the progress of the two sixth-grade classes Respondent had designated to monitor for student growth. Respondent's target of advancement by 70% of the students had not been met. As noted above, Respondent had recognized that the objective of having 70% of students advance may have been overly ambitious. He knew that he could follow the suggestion of Mr. Vroegindewey and take steps to amend the SGO as the year progressed, but he did not do so.

When the Teacher Practice Score was combined with the SGO, Respondent received an annual summative rating of 1.85. This number was achieved by an allocation of 85% to the Teacher Practice Score and 15% to the SGO. That score was within the range specified in the Evaluation

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<sup>1</sup> Respondent argues that he raised these, in addition to six grievance initiated in the following school year, to put the District on notice of what he believed were various deficiencies in the evaluation process. He argues that if the District had attended to these issues, rather than denying the grievances, problems that allegedly affected Respondent's performance and evaluations would have been rectified and the need for the instant charges eliminated. In this regard, the Respondent argues that the District's actions were arbitrary and capricious. The Arbitrator finds, however, that denial of grievances is not at issue or developed in this forum cannot form a basis for findings and conclusions in this case under the applicable statutory standards.

System as denoting performance that was only “Partially Effective.” In fact, the score was at the lowest end of that rating group, hovering precariously above “Ineffective.”

As a result of this rating, it was necessary, under N.J.A.C. 6A:10-2.5, for the District to develop and implement a Corrective Action Plan (CAP) for the upcoming school year. Vice Principal Ventura testified to his recollection post-evaluation discussions with Respondent in which Respondent said that he knew that he would have to go on a CAP but that he wanted to confirm that, if he made it through the following year with acceptable evaluations, he would be off the CAP. Vice Principal Ventura expressed frustration that Respondent was focused less on achieving excellence and becoming a better teacher than timing the good and bad evaluations, seeking to confirm that, if he had an acceptable year, then he could have another sub-standard year and not be “in trouble.”

Vice Principals Ventura and Garcia, along with Principle Montes, discussed the terms of the CAP, and then Mr. Ventura and Ms. Garcia actually developed it. Using the district-wide format, the CAP identified the areas in which improvement was needed and specified steps that would be taken by Respondent and also by administrative personnel to help Respondent achieve the needed improvement. Timelines also were established. Vice Principal Ventura testified that they had not discussed the CAP with Respondent, but they had intended to do so when school resumed in the fall.

#### **E. School 20 -- Implementation of the CAP**

Respondent, however, did not return to NRC for the following school year. For that year, the school schedule was to be changed. Respondent explained at hearing that, as the result of a grant, an additional hour of work was going to be required of teachers at NRC. Thus, he said, those teachers who did not want to or could not work the additional time were given the opportunity to leave the school. As a result, he said, he “opted out” and requested a transfer. Respondent had asked to be transferred to JFK High School. Respondent testified that, at first, at the end of the 2013-14 school year, he believed he was being transferred to JFK but in August he

was notified that, instead, he was being transferred to School 20, an elementary school, as the Educational Technology Teacher.

This, said Respondent, was the first time in his career that he had taught an age range below sixth grade. Although Respondent's first certification in New Jersey was in elementary education and he continues to hold that certification, the approach, he said, to teaching "babies" was very different from the approach with older children. He also has asserted in this proceeding that it was inappropriate for him to teach Technology, a subject for which he says he had no certification and has no desire to teach. A certificate or endorsement in educational technology is not required to teach that subject, however. Nonetheless, Respondent's New Jersey teaching certificate as an Elementary School Teacher qualifies him to teach a variety of subjects in grades K through six, including "computer and information literacy," and his certification in business education qualifies him to teach "keyboarding, computer data entry, word processing and exploration of related careers." N.J.A.C. 6A:9B-9.3(b)(2) (ii); 5.17(b); and 9.4(a)(1)(iv).

Respondent also argues that, by relying on Respondent's performance during this first year in a new school and with a new age group, the District was setting Respondent up to fail and, thus, acted arbitrarily and capriciously. As noted above, however, the points upon which the evaluations rest relate largely to matters and functions required for performing any teaching position, whether in a new environment or one of complete familiarity. Moreover, it was Respondent's choice to leave NRC, even though he knew that he had received a Partially Effective rating and would be dealing with a CAP. The Arbitrator thus is not persuaded by Respondent's argument in this regard.

Respondent thus began teaching at School 20, serving its only Educational Technology Teacher. At the beginning of the school year, on September 10, 2014, Respondent met with School 20 Principal Antoinette Young. It is clear from the testimony that Respondent had known that he would be receiving a CAP but that he had not yet seen it. Ms. Young gave him the CAP that had been prepared at NRC, and the District asserts that Respondent and Ms. Young then agreed to use adopt it. The record does not establish that Respondent overtly agreed to this, but, as the

District has argued, he did have opportunities before and after the adoption at School 20 to raise issues regarding the structure and content of the CAP. Respondent testified that he was given the CAP on September 10 and then signed the document on September 11 because, he said, although Ms. Young had not been in a hurry for the document, there was a deadline by which she needed to submit it. Respondent noted with his signature, "Disclaimed. I did not contribute to this CAP on 9/10/14 Understanding is from a cursory review from Ms. Young." The three areas of improvement noted on the CAP, listed below, related to preparation of appropriate and timely lesson plans, using data to create and implement plans incorporating strategies for all student, and delivering high quality and motivating lessons. Respondent testified that these categories did not make sense to him, for he had no shortcomings in performance in those areas.

The three areas in which Respondent and Administrators would work to achieve improvement are set forth in the CAP, as follows:

1. Teacher needs to prepare and submit lesson plans on time that are aligned with the district's model curriculum and pacing grid and incorporate differentiation of instruction and modifications for subgroups.
2. Teacher needs to be able to gather, analyze and use data from multiple sources in order to create and implement lesson plans that incorporate strategies and activities for all students.
3. Develop ability to attain student focus by delivering lessons that are high quality and motivating to students.

The CAP noted the responsibilities of Respondent and supervision as to each area in which improvement was needed, and timeline was developed for each. (At hearing, however, Respondent took issue with each of the areas designated for attention, contending that there had been no need to seek improvement in any of the specified areas.) Many of the steps involved plans for Respondent to view videos, interact with data coaches, develop lesson plans. Supervision, which included the Principal, Assistant Principal, and the Director of Libraries and Technology, fulfilled various steps by ensuring, for example, that Respondent had access to training and professional development videos as well as open time in his schedule to view them, arranging for Respondent to meet with a representative of Learning.com, reviewing with Respondent his level of proficiency with Learning.com, arranging meetings with the supervisors

of ELA, Math and Special Education for training, reviewing lesson plans, providing sample lesson plans, and providing access to the IEPs for students. Mr. Vroegindewey was readily available, as was Frank Zalocki, the Data Coach, who met with Respondent a number of times. His familiarity with Learning.com, the primary source for lesson planning and instruction, was assessed by Mr. Vroegindewey, who found him to be conversant with the program.

Deadlines existed in the CAP and, while Respondent has noted that some were missed, several items were regarded as being continuing functions and, for others, the timelines were extended to allow for completion.

Then, at the beginning of the calendar year, the administration changed at School 20, with Boris Simon, formerly Vice Principal, becoming Principal and Petula Harden-Brown coming in from another school as Vice Principal. Ms. Hardin-Brown thereafter met with Respondent to review the CAP and progress thereunder. She assessed progress regarding the various categories but found in several, such as the viewing of videos and preparation of written reflections, in which Respondent had done nothing. In addition, Principal Simon testified to having had numerous conversations with Respondent during the school year, often in the mornings or after school. He noted that Respondent occasionally would arrive early so that they could speak. Respondent, he said, was “proactive” in seeking conversations about how he could “get off of a CAP.”

#### **F. Other Issues at School 20**

In February 2015, Respondent received a written reprimand from Vice Principal Harden-Brown. The document, however, is not identified as a reprimand and, while Ms. Harden-Brown testified that it related to a lack of preparation for a parent meeting and what she described as a condescending approach to interaction with a parent, none of these allegations is reflected in the document issued to Respondent. The memorandum recommends and reiterates rules and policies. Of note, it also highlights Teacher Performance Rubric Standards three, five and seven. In any event, at hearing, Respondent acknowledged that the letter related to a discussion he had with a parent in which he had said that the student “might be failing” but at the same time had no

information to provide the parent to discuss the child's performance or grades. Respondent acknowledged that he should not have spoken with the parent in this manner.

### **G. Evaluation Process at School 20**

As the school year progressed at School 20, Respondent underwent four formal observations, each by a different administrator: September 29, 2014; November 24, 2014; March 10, 2015; and April 2, 2015. Respondent had noted to Principal Simon that he believed that evaluation of his performance in the classroom, where there are few computers, was unfair and that evaluations should be conducted in a computer lab. As a result, Principal Simon ensured that each formal observation was conducted when Respondent was teaching in a computer lab. (The District's witnesses, however, noted that teachers should be nimble in their ability to teach and address curriculum content in various environments, incorporating modalities that step beyond the computer screen.) The evaluations were in seventh grade, second grade, second grade again, and kindergarten, respectively. The ratings were all either Proficient I (and no higher) or Progressing 1 and 2, with mostly Progressing 1, which is just one step beyond unsatisfactory. (There was one rating of unsatisfactory, but the District has acknowledged that this was a software error and, based upon the actual evaluation, should have been "Progressing 1.") The total weighted score of these evaluations was 51.37, which translated to 2.00.

Respondent has argued that each of these formal evaluations is tainted by the timing. In this regard, Respondent relies on *In the Matter of the Tenure Hearing of Patsy Cuntrera, Passaic County Vocational School District*, Agency Docket No. 223-8/15 (Gandel, 2015), with regard to the element of timing and spacing of evaluations. In that case, the teacher, who had had a good record and long service, had been dealing with a serious health issue and related absences. Arbitrator Gandel found that the evaluation process had been fatally tainted and rendered arbitrary and capricious in that one evaluation was conducted on the teacher's first day of return after a two-week absence and then additional evaluations were held on consecutive days following a return from another multi-week absence. That case, however, is readily distinguished in that the timing issues raised by Respondent relate not to absences or evaluations



without sufficient time between to absorb and implement the recommendations. Rather, Respondent here cites only issues relating to access to the computer lab, arguing that he should not have been evaluated on what were returns to the lab after periods of classroom teaching, another which Respondent says was only the fourth time teaching the class in the lab, and another on the heels of a schedule change. These factors, which Respondent says disadvantaged him, have been shown to be reflective of the manner in which these classes and access to the computer lab must be juggled. Not every class will be in the computer lab, yet Respondent persuaded Mr. Simon that it was unfair to evaluate him in any other setting, even though an adept teacher must be able to fulfill his or her functions in this area when teaching in a classroom as well as a lab. The District accommodated Respondent's concern in this regard. Thus, for Respondent to allege that there was a lack of fairness or an arbitrariness in conducting evaluations when he had not recently been in the lab or had been in the lab only four times with a particular class is unpersuasive.<sup>2</sup>

Respondent also alleges that the evaluation process was not properly followed at School 20 in that too few walkthroughs were conducted. The record contains documentation of three walkthroughs, two of which were conducted by Vice Principal Harden-Brown. In addition to these, Principal Simon testified that he conducted a number of additional walkthroughs in the fall of 2014. He was, he said, "often" in Respondent's classroom throughout the school year because Respondent had many classroom management issues. (Principal Simon noted that students often reported that Respondent "talked down" to them and that there also were frequent issues with staff members perceiving Respondent as being condescending. This, he said, led to several verbal altercations in the course of the year, including disputes with an aide in the Behavioral Disability class as well as with a security officer. These matters never led to formal discipline, as Mr. Simon addressed them as verbal discussions. The account, however, provides a foundation or basis supporting Principal Simon's recollection that he frequently was needed in Respondent's classroom. Respondent has asserted that, as he was subject to a CAP, he should

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<sup>2</sup> Respondent also points out that a calculation error has been shown and acknowledged in the scoring of the evaluation conducted on November 24, 2014, in the category of substandard 3(c). That error, however, has not been shown to have an effect on the scores in the summative evaluation, which is what led to the charge of ineffectiveness.

have received at least eight walkthroughs in the year. Even assuming that the total informal involvements in his class did not constitute eight walk throughs, however, the Arbitrator cannot find that an omission of this nature rises to the level of a failure to adhere substantially to the evaluation process.

#### **H. Student Discipline at School 20**

Respondent has alleged that the District did not deal effectively with student discipline issues at School 20, making his potential to perform as an instructor even more challenging. Principal Simon testified credibly, however, that, as there was a wealth of new teachers and administrators in School 20 in year 2013-2014, there were many student suspensions and office conduct referrals from within the behavior disability classes, but that the “regular ed” classes did not have significant issues. The exception, he said, was Respondent’s classes. Mr. Simon said, however, that by the next school year the suspension rate and office conduct referral rate were “dramatically reduced.”

#### **I. Year-End at School 20: Grades, SGO Calculation, and Summative Evaluation**

The 2014-2015 school year ended with Respondent assigning a grade of A to every student in the building. This was highly unusual, according to Ms. Harden-Brown, and the administrators were aware that several students had been often out of Respondent’s class, which would make a legitimate A unlikely for them. Ms. Harden-Brown testified that, when Respondent was asked about the grades, he replied only that that “they all did well.” Respondent was instructed to review his records to be sure that he could provide evidence to support the grades.

Thereafter, an issue arose regarding completing the calculation of Respondent’s SGO for the year. Respondent did not convey the information that was required to have that calculation made. He professed to not understanding what was intended by the SGO, which he had developed with former Principal Young, as noted above, and had fully understood the year before when he learned of the 3% approach taken by another technology teacher. Principal

Simon testified that, as Ms. Young had moved to another school, he instructed Respondent to reach out to her to discuss any questions regarding the approach they had discussed. Respondent did not do this. Mr. Simon waited for Respondent to produce the SGO data so that the summative evaluation could be completed and, ultimately, a support person from the District was made available to Respondent to assist him in making the calculations. This data was submitted in July. While Respondent had been able at hearing to explain, simply and directly, what the 3% SGO formula had been, Principal Simon testified that, even after retaining assistance and submitting calculations, when he asked Respondent to explain the calculations, Respondent could not provide any information. Mr. Simon testified that no other teachers had encountered such difficulties in addressing SGOs. Mr. Simon noted, too, that Respondent's answers in this regard were emblematic of his response to most questions or requests for even the simplest of information; Respondent would reply that he did not know and that he needed to be "re-tooled."

After the delay in obtaining data from Respondent and after arranging assistance for him to calculate his SGO, it was determined that Respondent would receive the highest possible score on the SGO, which was a 4.0. Mr. Simon testified that Respondent's SGO goal of 3% was not at all rigorous and that a much higher level of achievement than a 3% increase in students' targeted skill levels would be expected over the course of a year. Nonetheless, this is the score that was applied and used.

Based upon the evaluations and the SGO score, Respondent's Annual Summative Score for 2014-2015 was 2.0 for Teacher Practice and 4.0 for SGO. These were weighted at 80% and 20%, respectively, thus giving rise to a total score of 2.40. In the summative rating scale, this placed Respondent again in the range of Partially Effective. While higher than the prior year, it includes the high SGO rating, which the Arbitrator finds questionable because of Respondent's charade of not understanding what a 3% increase in performance would be or how it would be measured and calculated. In addition, the agreement to the SGO by then-Principal Young was generous in this regard, and the puzzlement over calculation merely added to the questionable validity of that number. Respondent has raised various arguments to suggest that the Teacher Practice Score should have been higher or, because of a lack of clarity or information about the

calculation, may not be credited. The Arbitrator, however, finds that Respondent's own actions have cast substantial doubt on the reliability of the one number that reflects success on his part and actually resulted in a higher number than otherwise would have been achieved.

Mr. Simon also testified that he had several conversations with Respondent in which Respondent insisted that he did not know how to calculate the Teacher Practice Score. Mr. Simon explained it to him, using the manual and showing him the forms. At every turn, however, Respondent would reply that he did not understand and needed to be "retooled." Respondent argues that Mr. Simon himself was befuddled by the process and contradicted himself in the course of testimony. The Arbitrator finds, however, that, while there are aspects of the evaluation instrument and process that are difficult to understand and while some calculations are completed by software and thus cannot readily be determined from the face of an evaluation document, the overall process is one that, with a little study, can be readily understood, even using only the materials in the manual. In addition, each element of each evaluation over the course of the two years had specific commentary from numerous administrators on the shortcomings observed in Respondent's performance as well as suggestions, in the evaluation and the CAP, as to steps to be taken for improvement.

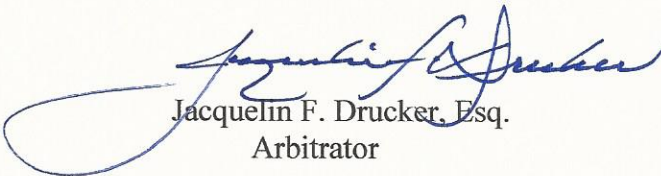
Moreover, any shortcoming in this aspect would not materially affect Respondent's evaluation, whether by alteration of the numbers or by providing a glimmer of additional insight into the required areas of improvement. The score that Respondent received for the 2013-14 school year placed him at the very bottom of the range of Partially Effective. Thus, variations in calculation or ratings would not have been sufficient to alter the score upwards into the Effective range. Similarly, while the summative rating in 2014-15 was higher than the preceding year, this number included the highest rating possible for the SGO, which the Arbitrator regards as having been artificially high because of the adoption of an unusually low bar and Respondent's pretense of confusion. Further, substantial guidance and input were provided to Respondent from numerous credible administrators regarding the need and potential for improvement. As a result,

even if the evaluation system were flawed or the process not properly conducted, there is no showing that these factors would have materially affected the outcome of the Respondent's evaluation.

### AWARD

For the reasons stated in this Decision and Award, the Arbitrator finds that the District has met the burden of proving that, for the two consecutive school years of 2013-2014 and 2014-2015, Respondent received summative evaluations that, being "Partially Effective," were less than "Effective" and that these evaluations were properly conducted under applicable New Jersey laws and regulations. Therefore, the charge of "Inefficiency" is sustained and the dismissal of Respondent is upheld.

Dated: April 30, 2016

  
Jacquelin F. Drucker, Esq.  
Arbitrator

State of New York    )  
                                  )    SS:  
County of New York )

On this 30<sup>th</sup> day of April, 2016, before me personally came and appeared Jacquelin F. Drucker, Esq., to me known and known to me to be the individual described herein, and who executed the foregoing instrument and acknowledged to me that she executed same.

  
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Notary Public

JOHN H. DRUCKER  
Notary Public, State of New York  
No. 02DR6018984  
Qualified in New York County  
Commission Expires February 1, 2019