

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of the Tenure Hearing of:

**JOSE MARTINEZ,
SCHOOL DISTRICT OF THE TOWNSHIP
OF MAHWAH, BERGEN COUNTY**

Agency Docket #167-7/14

Walt De Treux, Esq., Arbitrator

Hearing Dates: 10/6/14; 10/14/14

Brief Received: 11/3/14

Decision Date: 11/20/14

Appearances: For the School District – Marc H. Zitomer, Esq.; Joseph Roselle, Esq.,
SCHENCK PRICE SMITH & KING
For the Respondent – Jose Martinez, *pro se*

Introduction and Statement of Relevant Facts

Jose Martinez began employment as a Spanish teacher at Mahwah High School in September 2002. He earned tenure in September 2005. The District started having concerns about his teaching effectiveness in the 2006-07 school year. Classroom observations and annual evaluations of Martinez reflected the high school administration's concerns with several instructional issues, including "skeletal" lesson plans, inadequate use of visual aids, improper pacing of the lesson, and unsatisfactory interaction with students. Those concerns continued over the next several school years and resulted in Martinez being placed on a Professional Development Plan (PDP) for the 2011-12 school year.

The Administration noticed that Martinez' performance "significantly deteriorated" during the 2011-12 school year. The Administration responded by meeting with Martinez in December 2011 and jointly developing an action plan with

procedures, recommendations, and instructions for Martinez to follow daily in the classroom. In an end of the year evaluation, Martinez was found lacking ("Improvement Needed") in ten separate categories, including categories related to instructional performance and classroom management. Further, he was judged to have not successfully complied with his action plan and PDP. In response, the Board of Education withheld his salary increment for the 2012-13 school year.

The Administration revised Martinez' PDP for the 2012-13 school year, adding specific performance goals to increase his evaluation ratings. It also placed him on a Corrective Action Plan (CAP), which included specific suggestions for improvement. Again after classroom observations and meetings with supervisors and administrators, the Administration found that Martinez' performance did not improve and, in fact, declined during the school year. In addition to instructional and classroom management concerns and a failure to comply with his PDP and CAP, the Administration found Martinez "defensive, confrontational, and insubordinate" in response to administrative efforts to help him improve. His annual evaluation reflected these concerns; the Administration gave him the lowest possible rating in 19 out of 28 categories. The Board of Education again withheld his salary increment for the 2013-14 school year, and a new PDP and CAP were put in place.

Over the course of four classroom observations between October 2013 and February 2014, school administrators and supervisors noted that Martinez suffered from the same performance issues noted in previous years. His annual evaluation rated him "partially effective" overall, with many areas related to teaching

performance judged as "ineffective." Once again, the Board of Education withheld his increment for the 2014-15 school year.

The District concluded that Martinez "has demonstrated a pattern of performance deficiencies that evidence an inability to be an effective educator in the Mahwah School District." In June 2014, Mahwah High School Principal John Pascale filed tenure charges against Martinez, which were approved by the Board of Education and certified to the New Jersey State Commissioner of Education on July 10, 2014. The tenure filing included eight charges, some with multiple counts, of inefficiency, unbecoming conduct and other just cause for dismissal. On August 28, 2014, the Commissioner deemed the charges "sufficient, if true, to warrant dismissal or reduction in salary" and appointed the undersigned as Arbitrator.

On August 27, 2014, Counsel for the School District filed a motion with the Commissioner asking that the tenure charges be admitted and decided on a summary basis due to Martinez' alleged failure to file an Answer to the charges sufficient to comply with NJAC 6A:3-1.5(a) and 6A:3-5.3(a). On September 24, 2014, I denied the School District's motion, noting in relevant part,

The Department originally granted a request from Mr. Martinez' then-counsel to file an Answer by August 6, 2014. Counsel withdrew his representation on August 6, 2014, and Mr. Martinez was granted an additional 10 days to file an Answer. On August 13, 2014, Mr. Martinez sent a letter to the Department, declaring, *inter alia*, his intention to "fight these charges." On August 28, 2014, the Department referred the charges to this Arbitrator, stating in part, "...following receipt of respondent's answer on August 18, 2014, the above-captioned tenure charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary."

The School District alleges in its August 27, 2014 letter to the Department that the Answer "does not 'state in short and plain terms the defenses to each claim asserted' nor did it 'admit or deny the allegations of the petition'." It contends, "Mr. Martinez's letter is insufficient to constitute an Answer to the Charges."

Notwithstanding the School District's contentions, the Department accepted Mr. Martinez' letter as an Answer before referring the charges to arbitration. While it

appears that the Department did not receive the School District's challenge until after it referred the charges to arbitration, I am not inclined to now reject Mr. Martinez' letter that had been accepted by the Department as an Answer. I recognize that the letter does not admit or deny each individual allegation, but it does declare a general intention to contest the charges, thereby implying a general denial of the allegations. The letter also does not specifically assert defenses to the claims other than bias and a hostile working environment. Mr. Martinez' ability to raise further defenses at hearing can be addressed during the hearing.

For these reasons, I deny the School District's request to have the tenure charges deemed admitted and the case decided on a summary basis.

Following the denial of the District's motion, hearings were held on October 6 and 14, 2014 at the School District offices in Mahwah, New Jersey, during which time both parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their positions. Both parties were given the opportunity to file post-hearing briefs, but only the District did so. The matter was then submitted to the Arbitrator for a decision.

Issue

Has the Mahwah Township School District established the allegations of inefficiency, unbecoming conduct, and/or other just cause against Jose Martinez as set forth in the tenure charges? If so, do those charges warrant dismissal? To what remedies are the parties entitled?

Analysis and Decision

The School District has substantiated the charges of inefficiency and unbecoming conduct through voluminous documentary evidence and detailed witness testimony, all largely unrefuted by Respondent. The evidence reveals that the District raised concerns about Martinez' teaching performance as far back as the 2006-07 school year, and it made considerable, significant, and exhausting efforts to improve that performance. Unfortunately, Martinez was either unable to improve or resistant to the Administration's suggestions, recommendations, and instructions. When he did implement certain recommendations, he did so in an unsatisfactory manner. The withholding of salary increments for three consecutive school years and the implementation of several PDPs and CAPs had no positive effect on his performance. The evidence indicates that the District took all appropriate measures to correct his deficiencies and improve his performance, but those efforts were not successful. By the end of the 2013-14 school year, the District concluded that continuing efforts would not reverse the decline and deterioration of Martinez' teaching effectiveness, and it brought tenure charges to terminate his

employment. The District's decision is fully supported by the evidence, most of which was not challenged by the Respondent.

In his defense, Martinez notes that he generally had good observations and evaluations in the school years from 2007 through 2009. He blames the District's negative view of his performance and effectiveness on a disruptive student in his 7th period class during the 2011-12 school year. He admits that the student was beyond his control and contends that the Administration failed to adequately support him. When the student was eventually removed in January 2011, Martinez acknowledges that the rest of the class was "out of control" by that time.

Martinez' blame for his poor teaching performance on one student in one class during one year typifies his response to the many charges and counts leveled by the School District. He generally cites one or two anecdotes that reflect well upon or explain his performance while ignoring a trove of observations, evaluations, PDPs, CAPs, disciplinary notices, and other evidence that indicate wide-ranging teaching performance issues. Martinez denied that he was resistant to administration feedback, but he admits he disagreed with it. He did not decorate his classroom as suggested because he is not "an interior decorator." He did not grieve the withholding of his salary increments, but alleged that the Union failed to properly communicate with him. He did not properly or adequately implement the Administration's suggestion to incorporate technology because he is "not good with technology." He did not or was slow to explore additional resources for classroom management and other suggested aids to help him improve.

Martinez alleged that the Administration was biased toward him and created a hostile working environment because of his "heritage." Yet he offered no proof of bias or discrimination, and the District's persistent and continuing efforts to help him improve his performance directly contradict any allegation of a hostile working environment.

In short, Martinez did not offer any substantive defense to the charges filed against him. The detailed evidence offered by the District, outlined below, clearly establishes the charges of inefficiency and conduct unbecoming.

Unbecoming Conduct

The District issues Notifications of Concern, which are, in effect, disciplinary warnings when an employee engages in improper conduct. Martinez received 6 NOCs beginning in 2005. High School Principal John Pascale estimated that most teachers might receive only one or two, if any, in their entire career. In November 2005, he received a NOC for using poor judgment when discussing in class certain Spanish words that have a sexual meaning. In February 2005, he received another NOC for making inappropriate comments in class, including asking a male student, "Would you ever date a black girl?" In March 2009, he was cited for "abandonment of [his] teaching station," after leaving his classroom for 90 minutes to go out for drive and have lunch after feeling dizzy. In December 2011, he was again given a NOC for leaving his classroom unattended to make copies. In April 2013, he received a NOC after telling his supervisor that he would not use District-ordered Spanish magazines because he considered parts of Spain "very racist." In October 2013, he received a NOC for not complying with a student's IEP by failing to give her

handouts on blue paper, as needed to compensate for her visual-perceptual disorder.

In addition to the NOCs, Martinez received numerous memorandums from Administration for improper conduct, including being uncooperative and walking out of meeting with his supervisor regarding his CAP in November 2012; erroneously requesting a substitute teacher for a Saturday and Sunday in March 2013 when school was not in session and obligating the District to pay the substitute; acting unreceptive or uninterested in a May 2013 meeting with Principal Pascale to discuss a NOC; giving his school keys to a student and allowing the student to make copies in September 2013 contrary to School policy; failing to complete a peer observation in September 2013 as required in his CAP; being “extremely argumentative and disrespectful” during a October 2013 meeting regarding his classroom performance; failing to attend webinars and workshops in November 2013 and June 2014 as required by his CAP; curving grades contrary to District policy; and videotaping a student in class during a May 2014 presentation, causing her to leave, and making inappropriate comments and telling “weird” and “strange” stories to other students in the class.

The NOCs and corrective memos and emails all described conduct that is inappropriate in the classroom, unacceptable for a teacher, and unprofessional toward supervision and administration. These incidents, generally unrefuted by Respondent, overwhelmingly establish the allegations of unbecoming conduct outlined in Charges Three through Five and Charge Seven and Eight of the tenure charges. In and of themselves, the proven charges warrant dismissal as Respondent

has demonstrated that receipt of NOCs and other corrective memos, the withholding of salary increments, and the efforts of the District to address his inappropriate conduct through the years have not had a corrective effect.

Inefficiency

World Languages Supervisor Miriam Lezanski observed Martinez in his classroom on February 28, 2007. In her report, she encouraged him to prepare a Do Now lesson¹ before class as she had previously instructed him, questioned the “authoritative way” he called on students, directed him to incorporate New Jersey Core Curriculum Standards into his lesson plans and to engage students in the lesson, and expressed disappointment that he had not “taken time to seek my support and guidance with these instructional issues despite several invitations to meet with you.” She concluded that she was “extremely concerned with your performance in the classroom,” and she warned about a possible incremental withholding.

Later classroom observations and performance evaluations in the 2007-08 through 2010-11 school years show some similar concerns and suggestions for improvement. However, observations in the 2011-12 school year brought out more serious concerns.

In December 2011 and January 2012, Administration representatives met with Martinez and his Union representative to establish an action plan that focused primarily on the planning and creation of “highly structured, properly placed

¹ A Do Now activity is one that the students start as soon as they arrive in class.

lessons” and development of a detailed classroom discipline plan – in short, instructional and classroom management issues.

After her February 2, 2012 observation in Martinez’ classroom, Lezanski reported that Martinez started to implement several suggestions from the Action Plan and she emphasized several areas of focus. She observed him again on May 2, 2012, and she reported that he experienced some of the same instructional and classroom management difficulties witnessed in previous observations. A follow-up observation by Lezanski on May 15, 2012 showed some improvement. But a March 29, 2012 observation by Assistant Principal Linda Bohny found a lesson “riddled with mistakes and errors.” She noted that Martinez did not provide quality feedback to students, and she found some students working and others not.

In Martinez’ Annual Written Performance Report for the 2011-12 school year, the District found he “needed improvement” (the lowest possible rating) in 10 categories primarily grouped under “Professional Practices” and “Professional Growth and Development.” Lezanski testified that an “average teacher” usually receives zero to one “Improvement Needed” ratings. When she met with Martinez to review the evaluation, she found him “defensive” and “combative” and not receptive to her suggestions for improvement. She recommended a CAP and withholding of a salary increment, which was later adopted by the Board of Education.

In her first observation of Martinez in the 2012-13 school year, Lezanski observed continued problems with instruction and classroom management. She concluded that Martinez lacked organization and was defensive in their post-

observation conference, telling her, "I guess I will agree with everything you say, I can't argue anymore."

The Administration implemented a CAP for Martinez as part of his PDP for the 2012-13 school year. By mid-October, Lezanski and Assistant Principal Bohny met with Martinez regarding his failure to meet certain timelines by the due date. They expressed concern at his "insubordinate behavior as demonstrated by [his] lack of compliance with the administrative directives outlined in your annual evaluation."

In April 2013, Martinez made videos for his classroom. Lezanski and Bohny found the videos to be "inferior," "embarrassing," and "not authentic." They did not consider them "engaging and developmentally appropriate for high school students."

At the end of April 2013, Bohny found Martinez' performance lacking. She cited a passive Do Now activity and time-consuming and confusing directions to the class and the students individually. In the post-observation conference, she found Martinez defensive and agitated. She testified that he both hollered and laughed at her, claiming that she was criticizing him because he was Hispanic.

Martinez' 2012-13 Annual Written Performance Report reflected a decline in his performance. It gave him the lowest possible rating in 19 of 28 separate categories, found that he was not fulfilling the expectations of his CAP, and concluded that he "had difficulty managing typical professional responsibilities." It expressed that the Administration was "exceedingly concerned with [his] instructional performance and the lack of progress...with his corrective action plan."

It imposed a new PDP and CAP for the 2013-14 school year, and his salary increment was again withheld by the Board.

Lezanski conducted a classroom observation on October 15, 2013. She found him "partially effective" or "ineffective" in several categories, citing, *inter alia*, the lack of rigor in his lesson, his failure to address the educational diversity of his students, the lack of variety in his course material, his limited use of technology, and the passiveness of the students.

On December 19, 2013, Bohny conducted an unannounced classroom observation. She testified that she was appalled by the behavior in the classroom, noting in her report that Martinez used "inappropriate strategies for discipline." She found the high school lesson to be more appropriate for a first grade class, and she noted that he was disrespectful to students and students were disrespectful to each other. She described it as the worst observation she had ever seen or could imagine.

Principal Pascale observed Martinez on February 12, 2014. He reported that the students were not engaged in the lesson and that Martinez made content errors and was unaware of the different ability levels of the class. He rated Martinez ineffective or partially effective in many categories. Lezanski followed up with an observation that same day and generally rated him as partially effective.

On February 28, 2014, the District issued an Interim Written Performance Report that reflected no improvement in Martinez' teaching performance and effectiveness. Lezanski testified that the evaluators talked about the same issues

over and over with Martinez, and he was defensive and not receptive to their feedback. She thought he only gave minimum effort to improvement.

She conducted another observation on April 3, 2014, and she noted that Martinez "does not reach beyond the textbook" nor makes any effort to enhance his teaching by searching for additional resources, networking, or attending workshops. She described his lesson as "a mixture of low expectations and rigor," "boring," and "not well aligned to the instructional goals."

Martinez' 2013-14 Summative Evaluation Report included ineffective ratings in 8 categories and 11 partially effective ratings. Testifying as to the report, Lezanski noted that Martinez had a lack of progress on his CAP, did not invite supervision or feedback, showed minimum evidence of implementing the suggested strategies, was unwilling to cooperate in their efforts to improve his teaching, and had shown no signs of improvement after many hours of administrative and supervisory input. Soon after this report, the Board withheld a salary increment, and the Administration filed tenure charges approved by the Board.

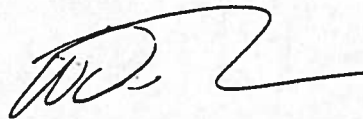
The evidence presented by the District, largely unrefuted by Respondent, regarding his teaching performance and lack of effectiveness overwhelmingly establishes the allegations of inefficiency outlined in each count of the tenure charges.

For all these reasons, I find that the District has established the charges of inefficiency and unbecoming conduct as set forth in the tenure charges. I further find that dismissal is appropriate due to the Respondent's consistent failure to

improve his performance and correct the cited deficiencies after salary increment withholding, NOCs and corrective memos, the considerable effort and expenditure of time and resources by the District to assist the Respondent, and Respondent's demonstrated resistance to those efforts.

Award

The District has established the allegations set forth in the tenure charges. Accordingly, the tenure charges are sustained, and dismissal for Respondent's misconduct is warranted.



WALT De TREUX

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Affirmation

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



WALT De TREUX