

IN THE MATTER OF THE TENURE HEARING OF  
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STATE-OPERATED SCHOOL DISTRICT OF THE :  
CITY OF CAMDEN, CAMDEN COUNTY :  
: "Petitioner" :  
and :  
GAY BROWN :  
"Respondent" :  
: Agency Docket No. 300-10/14 :  
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For Petitioner - Louis R. Lessig, Esquire; Benjamin S. Teris, Esquire

For Respondent - Robert M. Schwartz, Esquire; Andrew W. Schwartz, Esquire

Arbitrator - Scott E. Buchheit

PROCEDURAL HISTORY

The procedural history of this case is in large part set forth in the December 23, 2014 Opinion and Award of Arbitrator Walt DeTreuX ("DeTreuX Award"). The DeTreuX Award is attached to this Award as Appendix A, and is incorporated herein in its entirety.

On January 8, 2015, the Department of Education ("DOE") appointed the undersigned to replace Arbitrator DeTreux in this matter. DOE subsequently approved extension of the statutory time limitation for concluding this case until July 15, 2015.

The arbitration hearing took place on April 17, 2015, May 5, 2015, May 21, 2015 and June 1, 2015. On June 26, 2015, both parties submitted extensive post-hearing briefs.

#### FACTS<sup>1</sup>

In 1992, Respondent began her employment in the Camden School District as a Math Teacher. Respondent remained a Math Teacher until September 2009. While serving in this capacity, Respondent was assigned to the Camden High School and the Veterans Memorial Middle School.

In September 2009, Respondent became a Vice Principal at the Woodrow Wilson High School. She remained in that position until February 2013, when she was reassigned to the Pyne Point Middle School. Respondent was a Vice Principal at that school for the remainder of the 2012-2013 school year.

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<sup>1</sup> What follows is a basic statement of facts. The full recitation of facts, at least from the perspective of Petitioner and Respondent, is set forth in their briefs. Other facts of relevance are set forth in the DeTreux Award.

On May 1, 2013, Respondent received correspondence advising that she would not be renewed as a Vice Principal for the 2013-2014 school year for reasons of economy. Respondent anticipated that she would be reassigned as a Teacher.

Respondent applied for Unemployment Compensation benefits for the summer of 2013. She received at least one unemployment check.

On July 25, 2013, Respondent was notified that she was being reassigned to the Dudley Family School ("Dudley"), a K-8 school, as Vice Principal. This correspondence instructed Respondent to report to Dudley no later than August 2, 2013.

Peggy Nicolosi ("Nicolosi"), the interim Superintendent of Schools, had made the recommendation that Respondent be reassigned to Dudley. By then the State had already assumed operation of the District pursuant to the State Intervention Statute, with the takeover occurring on June 25, 2013.

On or about August 2, 2013, Respondent did report to Dudley. Respondent thereafter discovered that the Principal of the School, Joseph Ortiz ("Ortiz"), was on medical leave.

On August 21, 2013, Respondent attended a convocation for Principals and Vice Principals. Part of the discussion entailed the new rubrics used to evaluate Teachers, Principals and Vice Principals. Attendees were given a document titled "Attachment 1: Vice Principal Evaluation and Support in Camden City Public Schools, 2013-2014".

On August 26, 2013, Respondent met with Nicolosi. As a result of this meeting, Nicolosi offered assistance to Respondent to prepare Dudley for its opening. She assigned Diane Hathaway to assist Respondent, as well as the former Vice Principal at Dudley.

On September 2, 2013, Dudley Teachers reported for their first day of service. On September 10, 2013, Dudley students reported for their first day of school. At that time, Respondent was the administrator responsible for Dudley.

On or about September 19, 2013, Ortiz returned and assumed his Principal position at Dudley. Until that date, Respondent was the Administrator in charge of Dudley.

On October 9, 2013, Respondent commenced a medical leave for weight reduction surgery. She remained on leave from that surgery through December 5, 2013.

Respondent received three evaluations during the 2013-2014 school year. All had the same format.

The rubric used for Respondent's evaluations had four domains - Instructional Leadership, Internal Leadership, Organizational Leadership, and Effectiveness of Teacher Evaluations. Each domain had sub-domains. For each sub-domain, Respondent received one of four possible scores ("ineffective", "partially effective", "effective" or "highly effective"), followed by narratives titled "Evidence" and "Recommendations". The ratings for each sub-domain, which earned scores of 1 ("ineffective") to 4 ("highly effective") were averaged, leading to an overall score for each domain, and ultimately an overall score for the entire evaluation. At the conclusion of the evaluation form was a section titled "Evaluator's Summary Comments".

Respondent's first evaluation, dated January 10, 2014, was given by Dr. Victor Gilson ("Gilson"). Respondent's overall rating was 1.95 ("partially effective").

Respondent's second evaluation, dated March 31, 2014, was also given by Gilson. Respondent's overall rating was 1.85 ("partially effective").

Respondent's third evaluation, dated June 12, 2014, was given by Thomas Fleming ("Fleming"). Respondent's overall rating was 2.05 ("partially effective").

In late June 2014, Gilson completed an Annual Performance Report for Respondent. Respondent's average

overall score was 1.95 ("partially effective"). Gilson had a summative evaluation conference with Respondent on or about June 27, 2014, where he discussed the summative evaluation with Respondent.

On July 30, 2014, Petitioner served Respondent with tenure charges for inefficiency. On August 22, 2014, Respondent submitted an answer to the charges. On October 8, 2014, the District certified the charges to the Commissioner of Education. On October 24, 2014, Respondent submitted an answer to the certified charges.

Thereafter, the Commissioner referred the matter to Arbitrator DeTreuX. The procedural history of this matter before Arbitrator DeTreuX is set forth in the DeTreuX Award.

#### POSITION OF PETITIONER<sup>2</sup>

To ensure students are able to achieve their full potential, the Camden City School District needs effective school leaders with the ability and desire to implement high-level instructional practices. In the early stages of State intervention of a failing school district, broad powers are bestowed upon the State District Superintendent to effectuate swift and efficient reform. The law mandates

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<sup>2</sup> The following is taken from a Preliminary Statement set forth in Petitioner's 45-page brief.

the school district to conduct three (3) evaluations of building principals and vice principals within the first twelve (12) to eighteen (18) months of State intervention. If a school district deems a vice principal inefficient following those evaluations, the law permits the State District Superintendent to dismiss her/him. That is exactly the basis of the inefficiency charge against Respondent.

Those inefficiency charges must be sustained. Rather than accepting any responsibility for her performance deficiencies as a vice principal, Respondent blames others using half-baked excuses. She blames the District for assigning her to an elementary school, even though it was actually a family school, she has an elementary teacher certification, and her principal certification qualifies her to serve as a family school principal. She blames the District for not providing her any support to open her school, even though the District assigned an experienced principal coach, a former vice principal, and others to help. She blames her abysmal evaluation ratings on a lack of training, even though the District provided her with ample professional development sessions to help her succeed. She blames other performance deficiencies on a dispute with her principal, even though a reasonable

professional would have found ways to work both with him and around him. She blames her evaluators for not helping her, even though they provided her with numerous recommendations on how to improve and she never reached out to them for help. Respondent simply blames everyone but herself.

In short, Respondent has proven through her actions and inaction that she is not going to take part in the important changes the District is trying to effectuate. She can no longer be permitted to be a roadblock to student achievement. The tenure charges must be sustained and Respondent permanently dismissed from employment.

#### POSITION OF RESPONDENT<sup>3</sup>

The charges filed by Petitioner against Respondent are procedurally and substantively defective. The procedural defects are fatal and substantive defects render the charges arbitrary and capricious. Both warrant dismissal.

First, Petitioner failed to comply with the twelve-month assessment cycle required by the State Intervention Statute. The assessment cycle could not have begun until the assessment unit was in place, which did not occur until the fall of 2013. However, because Respondent was not

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<sup>3</sup> The following is taken from a Preliminary Statement set forth in Respondent's 55 page brief.



employed during the month of July 2013, and only began as the vice principal at Dudley effective August 2, 2013, even assuming that the assessment cycle began on the date of take-over as the Petitioner contends, the requirement that the "assessment cycle" be "not less than 12-months" still has not been met.

Additionally, the Petitioner failed to implement a CAP as required by its own process, and by TEACHNJ, and its implementing regulations. Arbitrator DeTreuX, in his decision that is the law in this case, said it governs this matter and must be read "in concert" with the State Intervention Statute.

Moreover, Petitioner failed to provide Respondent the "additional support" and "at least one additional observation" required by the explanatory document, the Petitioner's representatives drafted and disseminated at the convocation held for administrators during the week of August 19, 2013.

In addition, Petitioner paid only lip service to the training that was to occur on the evaluation rubrics as they applied to vice principals and principals. The applicable TEACHNJ regulation states in relevant part that Petitioner was required to provide "training, on and descriptions of each component of the evaluation

rubric...and provide more thorough training for any teaching staff member who is being evaluated in the school district for the first time." The only training that occurred on the evaluation instrument for principals and vice principals was on August 21, 2013, and that only lasted for at best a couple of hours and it only included training on the evaluation rubrics as they applied to teachers.

Petitioner has interpreted the Intervention Statute in such a way as to render as meaningless the procedures put into place by both that Statute and TEACHNJ. They are to be read in concert with each other and are intended to offer a measure of employee protections as a counterweight or balance to the Intervention Statute's otherwise expansive authority.

The case law, particularly the TEACHNJ arbitration decisions, hold that districts must adhere to the requisite procedures. There is no exception for a State Operated School District.

Substantively, Petitioner posits its entire case on the three evaluations. For Petitioner, nothing else mattered. As Petitioner did not pay any heed to procedures, either its own or those in statute and/or

regulation, it did not take into account at all material factual circumstances.

That Respondent made every effort to implement the recommendations made of her first evaluator, under what was acknowledged by him to be very difficult circumstances, and in fact implemented many of those recommendations, was of no moment. That the Petitioner's evaluators did not adhere to the inter-rater reliability between evaluators touted by Gilson also didn't matter. For Petitioner, only the evaluation scores mattered, even if the evaluations themselves were flawed.

The tenure charges against Respondent must be dismissed.

#### OPINION

As set forth above, the parties have placed before me numerous arguments. I, however, have neither the time<sup>4</sup> nor

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<sup>4</sup> TEACHNJ includes the following provision: "The arbitrator shall receive no more than \$1250 per day and no more than \$7500 per case". A simple mathematical calculation establishes that under this Statute an Arbitrator cannot work for the State more than six days on any case (less if she/he wishes to be reimbursed for travel expenses).

Suffice it to state that for this case - involving various administrative matters, four days of hearing resulting in a transcript of 882 pages, 76 exhibits (many lengthy), and 100 pages of post-hearing briefs (with accompanying material) - I have worked all of those six days.

need to analyze more than one of these arguments in order to decide properly this case.

More specifically, I agree with Respondent that Petitioner's actions towards her were arbitrary and capricious because Petitioner did not strictly adhere to its own "Evaluation and Support System" ("ESS") prior to bringing tenure charges against her. A detailed, six-page document<sup>5</sup> containing the ESS was distributed to all Principals and Vice Principals, including Respondent, at a

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I reject any suggestion that arbitrators must work beyond the allotted compensated days in order to afford the parties due process. What constitutes adequate due process is governed by what creates the dispute resolution system, in this case TEACHNJ.

Moreover, even if arbitrators were routinely willing to work uncompensated days on TEACHNJ cases, I respectfully suggest that this would not be effectuating the legislative intent. If the expectation is that arbitrators will work beyond the six day limitation, the inevitable result will be that TEACHNJ cases, particularly inefficiency cases that often involve fact intensive matters, will frequently turn into much more lengthy and resource depleting proceedings than apparently envisioned by the legislature when enacting TEACHNJ.

Thus, under TEACHNJ the parties and arbitrator must make difficult decisions about how to best use the six allotted days. Possibilities include not only limiting the arbitrator's Opinion, but also limiting the scope of the arbitration hearing itself. This could even include the exclusion of relevant evidence because its probative value is substantially outweighed by a danger of undue delay (See Fed. R. Evid. 403), as dictated by TEACHNJ.

<sup>5</sup> The document is titled "Vice Principal Evaluation and Support in Camden City Public Schools, 2013-2014".

gathering on August 21, 2013. Thereafter, the ESS remained in place for the entire 2013-2014 school year.

Although Respondent contends that Petitioner failed to adhere to the ESS in several different ways, my focus is on the fact that Respondent never received a Corrective Action Plan ("CAP"). In addition, as should have occurred once Respondent received a CAP, she never received at least one additional observation beyond the three that are required for all Vice Principals<sup>6</sup>.

I reject Petitioner's assertion that the ESS did not entitle Respondent to receive a CAP. While not a model of clarity in every respect, it is stated in more than one place in the ESS that a Vice Principal who, like Respondent, is rated as ineffective or partially effective "will" receive additional support through a CAP. For example, on page seven of the ESS is written the following:

Corrective Action Plan (CAP): Any teaching staff member who is rated Ineffective or Partially Effective on his or her evaluation will receive additional support through a CAP. The teaching staff member will work with his or her supervisor to create a plan of professional development that is designed to correct the needs identified in the evaluation. The CAP will include timelines for professional improvement and growth and clearly delineate responsibilities of the

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<sup>6</sup> It is stated in the ESS that among the "minimum requirements" is that "All Vice Principals are required to have at least three observations a year...Vice Principals on Corrective Action Plans...must have at least one additional observation per year".

teaching staff member in implementing the plan.  
(emphasis added)

I do not accept the testimony of Interim State Takeover Superintendent Nicolosi that Respondent was in fact placed on a CAP. According to Nicolosi, that CAP was set forth in all three evaluations Respondent received in the "Recommendation" section that was at the conclusion of each sub-domain. Nicolosi's opinion on this point is not persuasive, as there is a clear distinction between a CAP and Recommendations.

Presumably, Vice Principals routinely receive Recommendations in their evaluations. It does not follow, however, that all of these Vice Principals have received a CAP, as that term is used generally and in the ESS. As set forth above, under the ESS a CAP must adhere to a number of specific standards, few if any of which are included in Recommendations.

I further reject any argument by Petitioner that the "actionable feedback" contained in the Recommendations section of Respondent's evaluation was the functional equivalent of a CAP. Whatever the merits of this argument might be for other Vice Principals, it is not persuasive in the context of Respondent's individual situation.

In this regard, the conditions under which Respondent worked during the 2013-2014 school year were, to say the least, highly unusual. Those factors are fairly characterized by Respondent as including the following: (1) Respondent's late assignment to the Dudley Family School; (2) her lack of elementary experience; (3) that the principal was on leave until September 19, 2013; (4) that Respondent herself was on leave from October 9 through December 5, 2013;<sup>7</sup> or (5) that there was little, if any, meaningful communication, cooperation and/or collaboration from Principal Ortiz during the school year.

It is this final factor that in particular made Respondent's situation so unique. On direct examination, Evaluator Fleming candidly testified about this dysfunctional relationship between Ortiz and Respondent, and who was responsible for that dysfunction, as follows:

I don't think that there was any meaningful communication. And I have to say, that I don't think it was because of Ms. Gay Brown's action. I would more so attribute that to the Principal's actions or lack of actions.

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<sup>7</sup> During this leave Respondent underwent weight reduction surgery. Respondent testified that she was "morbidly obese", according to the medical definition of that term, and that she lost 100 pounds as a result of the surgery. Given this testimony, I cannot agree with Petitioner that this was elective surgery. Although Petitioner stresses that Respondent did not submit any medical documentation to support her contention about the need for the surgery, neither is there any evidence to refute it.

On cross-examination Fleming reaffirmed his previous testimony about this dysfunction and who was at fault.

Fleming then testified as follows:

I just did the final evaluation, and I think I mentioned it in my - my summary, the lack of cooperation between Miss Gay Brown and her principal, it was unheard of, it was unheard of. And as I stated earlier, I don't think that's because of Miss Gay Brown's actions. And I also evaluated the principal. And I would attribute most of that resistance to communication to the principal. So being evaluated by the rubric, she did not fare well. (emphasis added)

While Petitioner argues that Respondent should have found ways to work both with and around her Principal, notwithstanding the "unheard of" situation between them, that expectation was an undue burden for Respondent. This is particularly so because, according to Respondent's unrebutted testimony, Ortiz told her that if she went "over his head" then "I'm going to deem it insubordination and I'm going to write you up".

Petitioner chose to ignore all of these considerations when evaluating Respondent. All that mattered to Respondent's evaluators when rating her, as well as Petitioner itself when deciding to bring tenure charges against her, was how Respondent performed in each of the domains and sub-domains, without any serious consideration to the context in which that performance occurred.



While I in no way review, let alone take issue with, the determinations made by Respondent's evaluators as to the quality of Respondent's administrative performance, I do find that because of the strict accountability the evaluators and Petitioner demanded of her, Respondent likewise could demand strict accountability from Petitioner when applying to her the ESS. For the reasons set forth above, and perhaps others<sup>8</sup>, Petitioner failed to meet that standard. It follows that Petitioner's actions towards Respondent, a long-term employee about whom there is no indication that prior to the 2013-2014 school year she had ever been considered a roadblock to student achievement, were arbitrary and capricious.

Accordingly, notwithstanding Petitioner making every possible argument to the contrary, I must and will dismiss the tenure charges against Respondent in their entirety. I will also, as requested by Respondent, order that she be reinstated with all back pay and emoluments owed.

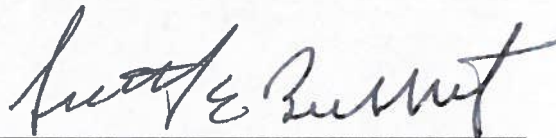
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<sup>8</sup> I make no judgments on the merits of the arguments that I have not analyzed in this Opinion.

**AWARD**

The tenure charges against Respondent are dismissed and she shall be reinstated with all back pay and emoluments owed.

Signed this 14<sup>th</sup> day of July 2015.



SCOTT E. BUCHHEIT, ARBITRATOR

State of New Jersey  
County of Camden



My Commission Expires  
February 5, 2019

STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION

*In the Matter of the Tenure Hearings of:*

LEON MASHORE, EDWARD BROWN,  
GAY S. BROWN, BRIAN MEDLEY,  
STATE OPERATED SCHOOL DISTRICT  
OF THE CITY OF CAMDEN

Agency Docket #303-10/14;  
290-9/14; 300-10/14;  
291-9/14

Walt De Treux, Esq., Arbitrator

Decision Date: 12/23/14

**Appearances:** For Respondents Mashore, E. Brown, G. Brown – Robert M. Schwartz, Esq.; Andrew W. Schwartz, Esq., *SCHWARTZ LAW GROUP LLC*;  
For Respondent Medley – Wayne Oppito, Esq., *NJ PRINCIPALS AND SUPERVISORS ASSOCIATION*  
For Petitioner School District – Louis R. Lessig, Esq.; Benjamin S. Teris, Esq.; Lauren E. Tedesco, Esq., *BROWN & CONNERY, LLP*

**Introduction and Statement of Relevant Facts**

On June 25, 2013, the State of New Jersey assumed operation of the Camden City School District pursuant to the State Intervention Statute, N.J.S.A. 18A:7A-45. As part of the takeover, the State District Superintendent directed an evaluation of each building principal and vice-principal during the 2013-14 school year. The State-appointed officials employed an evaluation instrument, approved by the New Jersey Commissioner of Education, that was intended to comply with the Teacher Effectiveness and Accountability for the Children of New Jersey Act (“TEACHNJ”) evaluation criteria, N.J.S.A. 18A:6-123, and its related regulations, N.J.A.C. 6A:10-1.1 et seq.

The principals and vice-principals were evaluated in four domains – instructional leadership, cultural leadership, organizational leadership; and effectiveness of teacher evaluation. In each area, the administrators were scored “ineffective,” “partially effective,” “effective,” or “highly effective.” The ratings earned a score of 1 (“ineffective”) to 4 (“highly effective”). The scores were averaged for a total score on the 1 to 4 scale with a corresponding rating.

During the 2013-14 school year, principals and vice-principals in the Camden City School District were evaluated three times. Respondents Mashore, E. Brown, G. Brown, and Medley received ratings of “ineffective” or “partially effective.” After the conclusion of the school year, the State District Superintendent brought tenure charges against Respondents, seeking their removal for inefficiency. The Commissioner of Education found that the charges, if proven, are sufficient to warrant dismissal and referred the case of each Respondent to an Arbitrator for a tenure hearing.<sup>1</sup>

On November 7, 2014, prior to receipt of the Commissioner’s assignment of the Mashore case to Arbitrator Edmund Gerber, Counsel for Respondent Mashore filed a Motion To Dismiss, arguing that the tenure charges “were defective and premature in that such charges were not based on a two-year evaluative cycle pursuant to N.J.S.A. 18A:6-17.3 and were not preceded by the issuance of a corrective action plan as required by N.J.A.C. 6A:10-2.5.” In short, Respondent

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<sup>1</sup> The tenure case of Brian Medley was referred to Arbitrator Joseph Licata; the case of Edward Brown to Arbitrator James Mastriani; the case of Leon Mashore to Arbitrator Edmund Gerber, and the case of Gay Brown to Arbitrator Walt De Treux.

asserted that the District did not comply with the legal requirements of TEACHNJ regarding evaluations.

The Commissioner's referral of the Mashore case to Arbitrator Gerber overlapped Respondent Mashore's motion. Counsel for Respondents Medley, E. Brown, and G. Brown indicated their intention to file similar motions in each Respondent's case, leading to several discussions between Counsel for Respondents and Petitioner, the four assigned Arbitrators, and the Commissioner's office.

For purposes of judicial economy and efficiency and to achieve uniformity regarding the resolution of what would be identical motions in four separate cases, Respondents and Petitioner agreed to treat the Mashore Motion To Dismiss as a consolidated motion, applicable to each of the four tenure cases, to be decided by one Arbitrator. The parties executed a consent order encompassing that agreement and submitted it to the Arbitrators and the Department of Education's Division of Disputes and Controversies.

The parties submitted written briefs in support and opposition to the Motion To Dismiss. Oral argument was heard on the motion on December 2, 2014, and Respondents filed a reply brief and Petitioner a sur-reply brief soon thereafter. The Motion was then submitted to the Arbitrator for a decision.

## **Issue**

*Should Respondent's Motion to Dismiss the tenure charges be granted or denied?*

## **Analysis and Decision**

### **Procedural Objection**

In its Brief In Opposition to Respondents' Motion To Dismiss, Petitioner raised several procedural objections. First, it argues that the motion is untimely in that the Mashore motion was not "filed with the time allotted for the filing of an Answer." (citing N.J.A.C. 6A:3-5.3(a)(1)) Second, it contends that a motion to dismiss cannot be filed after the Commissioner has referred the charges to an Arbitrator. Finally, it asserts that the American Arbitration Association Labor Arbitration Rules do not allow for submission and consideration of dispositive motions.

The four cases present a novel legal argument and complex procedural concerns in that each of the four cases had been referred to a different Arbitrator. As identical motions would have been filed in each case, there was the likelihood of four different outcomes, beginning with the question of whether each individual arbitrator would have entertained a Motion To Dismiss or would have addressed Respondents' legal argument only after a hearing on the merits. Depending on the Arbitrators' rulings on the motion or on the ultimate issue of whether the tenure charge should be sustained, the parties would have been faced with the decision to appeal each case individually or to consolidate the cases for appeal. The possibility

of different motion and hearing procedures and of different outcomes hardly presented a model of judicial economy and efficiency.

For that reason, the parties wisely agreed to consolidate the Motion To Dismiss before one Arbitrator. And for that reason, Petitioner's procedural objections to the Motion are misplaced. If the Motion To Dismiss is denied for procedural reasons, Respondents still have the opportunity to raise the substantive challenges asserted in the Motion at the tenure hearings before each Arbitrator. Respondents would argue to the Arbitrators that the tenure charges "were defective and premature in that such charges were not based on a two-year evaluative cycle pursuant to N.J.S.A. 18A:6-17.3 and were not preceded by the issuance of a corrective action plan as required by N.J.A.C. 6A:10-2.5." The parties would once again be faced with the possibility of four separate outcomes related to a common issue in each of the four cases - the very result they were trying to avoid by consolidating the Motion before one Arbitrator.

For that reason alone, I find that the Consent Order waives any procedural argument to the Motion To Dismiss.

Moreover, the Petitioner's procedural objections are without merit. Respondent Mashore's Motion To Dismiss was, in effect, a motion for summary decision since he had already filed an Answer. N.J.S.A. 18A:6-16 provides that the Commissioner may decide a motion for summary decision prior to referral of the case to an Arbitrator. Respondent Mashore filed his Motion on November 7, 2014, three calendar days before receiving notice of the Commissioner's referral of the case to Arbitrator Gerber. The Motion and referral may have "crossed in the mail,"

but at least at the time Mashore filed the Motion, he had not been advised that his case had been referred to an Arbitrator. Accordingly, his motion was not untimely.

As Petitioner has agreed to consolidate the remaining three cases with the Mashore case for purposes of deciding identical motions that would have been filed in each case, it cannot now argue that the Motion is untimely in those three cases.

Finally, the AAA Labor Arbitration Rules may not specifically provide for dispositive motions; but it is within the Arbitrator's discretion to allow such motions. In the present tenure cases, the four Arbitrators acknowledged and, in effect, affirmed the parties' agreement to allow the Mashore Motion to Dismiss to be applicable to all four cases.

For these reasons, the Petitioner's procedural objections are without merit.

#### **State Intervention Statute and TEACHNJ**

The State Intervention Statute, N.J.S.A. 18A:7A-45, first effective January 1988, allows the state to essentially take over a school district that is not providing a "thorough and efficient" education for its students. The state-appointed officials are charged with making sweeping changes to reverse the failed course of the district. To that end, the State District Superintendent is authorized to remove administrators and supervisors after s/he has the opportunity to evaluate their effectiveness or lack thereof.

N.J.S.A. 18A:7A-45(b) requires principals and vice-principals to be evaluated a minimum of three times within the first 18 months after the state-operated school district has been established. N.J.S.A. 18A:7A-45(c) provides, in relevant part,



**"Notwithstanding any other provision of law or contract, the State district superintendent, after the completion of an assessment cycle of not less than 12 months, may dismiss any tenured building principal or vice-principal for inefficiency, incapacity, unbecoming conduct or other just cause as defined by the criteria for principal or vice-principal performance in districts under full State intervention established by subsection a. of this section..."**

**Accordingly, principals and vice-principals in a state-operated school district can face tenure charges after a minimum of three evaluations in an assessment cycle of not less than 12 months. N.J.S.A. 18A:7A-45(a) requires that the evaluations be based on criteria adopted by the Commissioner of Education.**

**As Respondents note, neither the statute nor the current regulations provide defined criteria for the evaluation of principals and vice-principals in a state operated school district. In the present case, Timothy Matheney, Chief Intervention Officer for the New Jersey Department of Education, was tasked with approving an evaluation instrument and criteria for principals and vice-principals in the Camden City School District after it became subject to state intervention. The evaluation instrument developed under his supervision "was intended to comply" with the TEACHNJ evaluation criteria, i.e., the four cited domains - instructional leadership, cultural leadership, organizational leadership, and effectiveness of teacher evaluation - on a 1 to 4 scale from "ineffective" to "highly effective." The New Jersey Department of Education's Office of Evaluation approved the evaluation instrument and criteria.**

**Respondents seize upon the District's use of the TEACHNJ evaluation criteria to argue that evaluation of principals and vice-principals in a state-operated school district must be governed by TEACHNJ and its requirement for a two-year assessment cycle and a corrective action plan.**

TEACHNJ, N.J.S.A. 18A:6-117, *et seq.*, effective August 2012, revised the process for removing ineffective teachers from the classroom. Under TEACHNJ, districts could file tenure charges against ineffective teachers after a two-year evaluation period and a corrective action plan. In the case of *I/M/O Tenure Charge of Inefficiency of Sandra Cheatham and the School District of the City of Newark*, Agency Dkt. #226-8/14, Arbitrator Bluth held that the TEACHNJ evaluation criteria set forth in N.J.A.C. 6A:10-2.1 applied to teachers in all districts, including state-operated school districts. Respondents contend that the TEACHNJ evaluation process must be extended to principals and vice-principals in state-operated school districts.

TEACHNJ does not specifically reference the State Intervention Statutes as it applies to the evaluation of principals and vice-principals in state-operated school districts. By its terms, it does not supersede the State Intervention Statute. Respondents nonetheless argue that TEACHNJ replaces the evaluation process outlined in the intervention statute for principals and vice-principals in state-operated school districts.

The State Intervention Statute requires three evaluations and an assessment cycle of not less than 12 months for principals and vice-principals in state-operated school districts, "notwithstanding any other provision of law or contract." The legislature chose not to specifically override that provision of N.J.S.A. 18A:7A-45 when it passed TEACHNJ. Accordingly, the State Intervention Statute and TEACHNJ have to be read in concert.

One of the goals of the State Intervention Statute was to allow the State District Superintendent to remove ineffective administrators and supervisors early in the process of rebuilding and revitalizing the failing district. Extending the assessment cycle for principals and vice-principals from "no less than 12 months" to 2 years would be a significant departure from the goal of the intervention statute. It is unlikely the legislature would enact such significant change without clearly stating so in the TEACHNJ statute.

Arbitrator Bluth found that the 2-year TEACHNJ evaluation period applied to teachers in state-operated school districts. The State Intervention Statute does not address the evaluation of teachers, so the Arbitrator's ruling was not an affirmation that TEACHNJ supersedes the intervention statute. Further, TEACHNJ dramatically revised teacher evaluations in a way that the new criteria allowed for more effective removal of ineffective teachers. Applying the 2-year assessment cycle to principals and vice-principals in state-operated school districts would result in an arguably less effective removal process than currently permitted by the State Intervention Statute. Again, if the legislature so intended, it would be expected to specifically reference such a significant change in the evaluation process.

Absent specific language in TEACHNJ superseding N.J.S.A. 18A:7A-45, one must conclude that the legislature did not intend to change the evaluation process for principals and vice-principals in state-operated school districts.

Petitioner's utilization of an evaluation instrument intended to comply with the TEACHNJ criteria to evaluate principals and vice-principals does not mandate that Petitioner adopt all aspects of the TEACHNJ evaluation process, such as the 2-

year assessment cycle. The intervention statute instructs that the Commissioner adopt the evaluation criteria. In the present cases, the Commissioner adopted the criteria from TEACHNJ. The adoption of criteria developed pursuant to another statute does not remove the evaluation of principals and vice-principals in state-operated school districts from the State Intervention Statute, particularly when the legislature has not expressly overridden the provisions of the intervention statute.

For these reasons, I find that Petitioner properly brought tenure charges against Respondents for inefficiency pursuant to the provisions of the State Intervention Statute as it relates to the number of evaluations and the length of the assessment cycle.

#### **Corrective Action Plan and Alleged Non-Compliance with the 12-Month Assessment Cycle**

Respondents also argue, either in their brief and/or reply brief, that Respondents were not trained in the evaluation rubrics as required by N.J.A.C. 6A:10-2.2 and were never given a correction action plan as required by N.J.A.C. 6A:10-2.5. Petitioner counters that Respondents had notice of the criteria by which they were to be evaluated as early as June 25, 2013 and were provided feedback and the opportunity to improve.

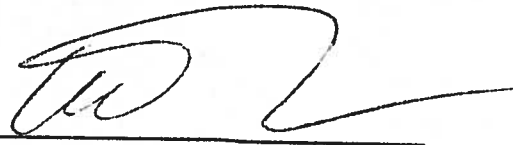
Additionally, at oral argument and in their reply brief, Respondents argue that Petitioner violated the requirement in N.J.S.A. 18A:7A-45 that tenure charges of inefficiency may only be filed after “not less that a 12 month assessment cycle.” Respondents assert that Petitioner filed charges before the 12-month period had

lapsed. Petitioner first objects to Respondents raising this matter for the first time in their reply brief, and it counters the argument by asserting that it has complied with the 12-month assessment cycle requirement.

These issues – notice of the evaluation criteria, the imposition of a corrective action plan, if required, and/or the opportunity for feedback and improvement, and compliance with the timeline for filing tenure charges after an assessment period – raise genuine issues of material fact that can only be resolved through an arbitration hearing on the merits of the charges. As the parties dispute the facts giving rise to their arguments, the arguments cannot be disposed of through the present Motion To Dismiss.

#### **Award**

Respondents' Motion To Dismiss tenure charges is denied. The cases shall proceed to hearing before the assigned Arbitrators. Pursuant to the parties' Consent Order, the undersigned hereby withdraws from the Gay S. Brown case, and the Department shall appoint a new arbitrator to hear the matter.



WALT De TREUX

**STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION**


***In the Matter of the Tenure Hearings of:***

**LEON MASHORE, EDWARD BROWN,  
GAY S. BROWN, BRIAN MEDLEY,  
STATE OPERATED SCHOOL DISTRICT  
OF THE CITY OF CAMDEN**

**Agency Docket #303-10/14;  
290-9/14; 300-10/14;  
291-9/14**

**Affirmation**

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

  
WALT De TREUX