

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

In the Matter of the Tenure Arbitration Between:

THE SCHOOL DISTRICT OF THE CITY OF NEWARK

“Petitioner

**OPINION
AND
AWARD**

and

EMMANUEL IKHELOA

“Respondent”

Agency Docket No. 213-8/18
[Emmanuel Ikheloa]

**BEFORE
ARNOLD H. ZUDICK
ARBITRATOR**

Appearances:

For the Petitioner
Stephanie D. Edelson, Esq.
Fiona Cousland, Esq.
Riker Danzig Scherer
Hyland Perretti, LLP

For the Respondent
Paul W. Tyshchenko, Esq.
Caruso Smith Picini, P.C.

PROCEDURAL HISTORY

On July 30, 2018, the School District of the City of Newark [District or Petitioner] served high school math teacher Emmanuel Ikheloa [Ikheloa or Respondent] with a Notice of Tenure Charges pursuant to *N.J.S.A.18A:6-11* and *18A:6-17.3*. The Charges alleged Inefficiency: that the Respondent had been rated partially effective in his 2016-2017 annual summative evaluation; and ineffective in his 2017-2018 annual summative evaluation.

In its Notice of Tenure Charges the District, through Superintendent Roger Leon, alleged that based upon Ikheloa's Annual Summative Ratings for the 2016-2017 and the 2017-2018 school years Ikheloa had failed to effectively perform the duties of a teacher. The Petitioner alleged, for example; that Respondent failed to: use individual standard-aligned lessons to build on previous lessons; clearly and accurately communicate content and instructions effectively; tailor instruction to move all students toward mastery; anticipate and respond to student reactions and misunderstandings; and more.

The Respondent apparently filed an initial response to the Charge on August 19, 2018 and filed an Answer on or about September 18, 2018 denying the Charges. Respondent argued, for example, that he was a successful mathematics teacher for the District with a sustained track record of effectiveness since he was hired in September 2004; that is, allegedly until the Petitioner compelled him-against his wishes-to teach in a field outside of his expertise and allegedly without adequate support from the District. The Respondent noted that beginning in the 2017-2018 school year he was assigned to teach special education math, but he indicated he only had a certificate of eligibility in special education, he did not hold a standard certification in special needs education.

On August 21, 2018, the Petitioner, having considered the Charge, supporting evidence and the Respondent's initial response, concluded that the Charge, if credited, was sufficient to warrant Respondent's dismissal or reduction of salary. The District, therefore, certified the Charge to the Commissioner of Education pursuant to *N.J.S.A.* 18A:6-17.3.

On September 25, 2018, the Department of Education, Bureau of Controversies and Disputes [Bureau] determined that the Charge, if true, was sufficient to warrant dismissal or reduction in salary and it referred the matter to me as the Arbitrator pursuant to *N.J.S.A.* 18A:6-16.

Based upon *N.J.S.A.* 18A:6-14, Ikheloa was suspended without pay effective August 28, 2018. The Respondent filed a Motion to Dismiss the Charges with me on October 22, 2018. The District filed its responsive brief to the Motion on November 5, 2018. On November 6, 2018 I issued a letter decision dismissing that Motion finding that there were several material facts in dispute that could only be resolved through a hearing.

A hearing was scheduled to commence on November 14, 2018, but the parties spent that day engaged in settlement discussions. Subsequently, when a resolution of the charges could not be reached, hearings were held on December 4, 2018; January 16 and 17; and March 1, 7 and 28, 2019 in Newark, New Jersey. The parties had the opportunity to examine and cross-examine witnesses, introduce documentary evidence and argue orally at the hearing. Testimony was received from Larry Ramkissoon, currently Special Assistant to the Superintendent but formerly Principal at West Side High School; Henry Ogele, Vice Principal at West Side High School; Yakima Johnson, Vice Principal at Malcolm Shabazz High School; Errol Douglas, Special Education Teacher; Emmanuel

Ikheloa, Respondent Grievant; and Yolanda Mendez, Acting Executive Director for Human Relations. After Ikheloa served a 120 day suspension as provided for by *N.J.S.A.* 18A:6-14, he was, at least temporarily, reemployed by the District. Both parties filed post-hearing briefs on May 6, 2019

ISSUE

Has the District established the inefficiency charges against the Respondent?

If so, do those charges warrant the Respondent's dismissal?

If not, what shall the remedy be?

RELEVANT STATUTORY PROVISIONS

N.J.S.A. 18A:6-17.2 Considerations for Arbitrator in Rendering Decision

23. a. In the event that the matter before the arbitrator pursuant to section 22 of this act is employee inefficiency pursuant to section 25 of this act, in rendering a decision the arbitrator shall only consider whether or not:
- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan.;
 - (2) there is a mistake of fact in the evaluation;
 - (3) the charges would not have been brought but for the considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
 - (4) the district's actions were arbitrary and capricious,
- b. In the event that the employee is able to demonstrate that any of the provisions of paragraphs (1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.
- c. The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.
- d. The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

N.J.S.A. 18A:6-17.3 Evaluation Process, Determination of Charges
[In pertinent part]

25. a. Notwithstanding the provisions of *N.J.S.A.* 18A:6-11 or any other section of law to the contrary, in the case of a teacher, principal, assistant principal, and vice-principal:
- (1) the Superintendent shall promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially ineffective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation.

In accordance with the above statutory provisions, in considering tenure charges in an inefficiency case, an arbitrator may only consider the four items enumerated in *N.J.S.A.* 18A:6-17.2 (23. a) above. In such cases an arbitrator may not consider the quality of a teacher's classroom performance, *N.J.S.A.* 18A:6-17.2 (23. c). The teacher (a Respondent to such tenure charges) may raise any or all of the four items in *N.J.S.A.* 18A:6-17.2 (23 a.) above as a defense(s) to the tenure charges.

If the teacher proves that any of the four provisions in subsection 23 a. above apply in his/her case, the arbitrator must then determine whether having proved such provision(s) it (they) materially affected the outcome of the evaluation. If the arbitrator determines that a teacher's evaluation was materially affected by having proved such a provision, the arbitrator will need to determine an appropriate remedy for the teacher/Respondent. But if the arbitrator finds that such a provision(s) - even if proved - did not materially affect the outcome of an evaluation, the charges must be sustained and the teacher dismissed: *N.J.S.A.* 18A:6-17.2 (23. b).

BACKGROUND

The District created a guidebook for teacher evaluations known as the "Framework for Effective Teaching" for 2016-2017 [Exhibit P-23] and for 2017-2018

[Exhibit P-24] [Framework]. Ramkissoon noted that there were no significant differences between P-23 and P24. He explained that the Framework contains teacher performance competencies. Competency 1 includes Lesson Design and Focus; Competency 2 includes Rigor and Inclusiveness; Competency 3 includes Culture of Achievement; Competency 4 includes Student Progress towards Mastery; and, Competency 5 includes Commitment to Personal and Collective Excellence. Those guidebooks are distributed to the teachers by the Newark Teachers Union.

Each Competency contains three to four indicators. Competency 1, for example, contains lesson sequence; lesson components; pacing and momentum; and, clarity. Competency 2 contains tailored instruction; questions and tasks; responsiveness; and, precision and evidence. Competency 3 contains enthusiasm for learning; persistence; community; and, attention. Competency 4 contains check for understanding; feedback; and, demonstration of learning. Competency 5 is not structured like other Competencies.

Although a teacher will be rated on each Competency during each observation evaluation he/she may not necessarily be rated on each indicator during each observation. Teacher Competency is rated as highly effective; effective; partially effective and ineffective with each rating receiving a point value. A teacher's overall point score for each observation or evaluation determines the teacher's rating for that observation/evaluation.

Based upon a teacher's preceding year performance each teacher participates in the creation of a professional development plan with their supervisor for the following new school year which contains the teacher's goals for the new year. Teachers who received a highly effective or effective rating for the previous year develop an

individualized professional development plan [IPDP] with their administrator that sets forth their goals for the new year. Teachers who received a partially effective or ineffective rating for the previous year must develop a corrective action plan [CAP] with their supervisor which includes the goals, extra support and other items the teacher needs to improve his/her competency in the new year. Based upon *N.J.S.A. 18A:6-17.3* (25.a(1)) a teacher receiving a partially ineffective or an ineffective annual evaluation and the following year receives an ineffective annual evaluation must be dismissed.

The record shows that Ikheloa taught math at Wes Side High School in Newark during the 2013-2014; 2014-2015; and, the 2015-2016 school years and was rated effective in 2013-2014, partially effective in 2014-2015; and effective in 2015-2016.¹ Based upon his 2015-2016 evaluation Ikheloa and West Side Vice Principle Ogele collaborated on the creation of Ikheloa's IPDP for 2016-2017 [Exhibit P-2]. That IPDP, P-2, identified certain Action Steps or strategies that Ikheloa needed to do. They included:

Teacher will utilize open-ended questions from Agile Mind (Constructed Response) to implement "Rich Task" in his lessons.

Teacher will script out high level questions involving application, analysis and synthesis prior to the lesson and use that during "Habits of Discussion"/Whole Group Session in the class.

Teacher will analyze data from Mid-Unit & End of Unit Assessment to plan Corrective Action Plan,

Teacher will submit End of Unit spreadsheet and Corrective Action Plan to Supervisor

Ramkissoon was the Principle of West Side High School in 2016-2017. He conducted an announced observation of Ikheloa on October 25, 2016 [Exhibit P-3].

¹ · There is some evidence that at the end of 2014-2015, despite apparently having originally received an effective rating for that year, Ikheloa said he was told he really received a partially effective rating for that year and he was required to be placed on a CAP for 2015-2016. Whether accurate or not, that information is irrelevant in this case.

Although that observation was rated effective overall, Ramkissoon rated Ikheloa partially effective in the factors for Pacing and Momentum; Responsiveness; Precision & Evidence; Attention; and, Feedback.

Ogele conducted a second formal observation of Ikheloa (for 2016-2017) on January 4, 2017 [Exhibit P-4]. Ikheloa received an overall partially effective rating for that observation because he received a partially effective rating for Competencies 1, 2 and 4 and an ineffective rating in Competency 3. Ogele found, for example, that only 5 of 18 students were able to complete the independent practice task; Ikheloa spent too much or too little time on some lesson components; he did not recognize or properly respond to student misunderstandings or reactions; few students demonstrated enthusiasm; and students did not demonstrate mastery of the lessons objectives.

Ogele conducted Ikheloa's mid-year summary evaluation on February 13, 2017 [Exhibit P-5] and gave Ikheloa an overall partially effective rating. Ogele testified that Ikheloa struggled with nearly all the indicators in Competency 2 and with all of the indicators in Competencies 3 and 4.

On May 1, 2017, Vice Principal Cook conducted a formal observation of Ikheloa and overall rated him ineffective [Exhibit P-7]. Cook found Ikheloa's pace either too slow or too fast; that students had no clear understanding what to do; that Ikheloa did not adjust his teaching strategies; and that there was little evidence of student progress.

Ogele conducted Ikheloa's annual summative evaluation on May 30, 2017 rating him partially effective for the 2016-2017 school year [Exhibit P-8]. Ogele testified that Ikheloa struggled with several factors in Competencies 2, 3 and 4 including tailored

instruction; questions and tasks; responsiveness; precision in evidence; depth of knowledge; enthusiasm; and persistence.

Ikheloa testified that when Ogele initially issued his (Ikheloa's) 2016-2017 end of year summative evaluation Ogele rated him ineffective. Ikheloa believed that Ogele had miscalculated that evaluation and that he (Ogele) had not properly considered Ikheloa's professionalism. After meeting with Ikheloa, Ogele changed Ikheloa's annual summative evaluation for 2016-2017 to partially effective. Ikheloa did not believe he received sufficient support from Ogele during the 2016-2017 school year and he (Ikheloa) accused Ogele of not being fair to him. Ikheloa said their relationship did not change or improve going into 2017-2018. He believed Ogele felt uncomfortable toward him (Ikheloa) because of the change in his 2016-2017 summative evaluation. Ogele denied any animosity or ill will toward Ikheloa over changing his 2016-2017 summative evaluation.

Ramkissoon testified that during 2016-2017 professional learning community supports and a math coach were available for Ikheloa, but Ramkissoon was not certain that Ikheloa took advantage of those supports that year.

In late May or early June 2017 Ikheloa was notified that his teaching position had been eliminated for 2017-2018. But on June 7, 2017 Ramkissoon notified Ikheloa of a vacancy for a Teacher of Special Education in math. Since Ramkissoon knew that Ikheloa was certified in math and physics and had a certificate of eligibility for special needs education he sought Ikheloa's interest in the position. Later that day (6/17/17) Ikheloa responded and accepted the position with the following email to Ramkissoon:

Mr. Ramkissoon,
I will be humbled and delighted to be given the opportunity to serve our children in the capacity of a special need teacher. Thank you for the offer or anticipated offer.

I will enroll with a college, at the earliest opportunity – most likely in September if it is still possible due to admissions deadlines, to complete the required courses in order to obtain the standard certificate.
Thank you again and God Bless
E. Ikheloa [Exhibit R-5]

The District had a need for a math teacher to teach two courses: Advanced Algebra with Financial Applications, and Geometry, and both courses included some special needs students with individualized education programs (IEP's). Ramkissoon noted that a certified math teacher could teach such classes with students with IEP's, without a special education certification, and knowing that Ikheloa was certified in math and had his certificate of eligibility in special needs education Ramkissoon thought Ikheloa was a good fit to teach those classes.

Although Ikheloa accepted that teaching assignment as evidenced by R-5 above, he believed that Ramkissoon's offer to accept that position was conditioned upon Ikheloa taking classes to obtain his special education certification. Ikheloa was willing to take such classes not just because he thought his acceptance of the position was conditioned on that, but also because he seemed to prefer having a special education certification if he was teaching special needs students.

Based upon the above Ikheloa applied for admission to Rutgers University to attend a program that would result in his obtaining a special education certification. As part of that application process Ikheloa asked Ramkissoon for a letter of recommendation which Ramkissoon provided [Exhibit R-10]. That letter states:

Mr. Ikheloa has accepted our school assignment in the fall to provide instruction to our special need students population based on his current Teachers of Special Education (COE – Certificate of Eligibility). Mr. Ikheloa has also agreed to take the required non-credit courses towards obtaining the standard NJ teacher of special education certificate. He has indicated his preference to take these courses with your University starting in the fall of 2017, I recommend

him to be accepted into this program. Please let me know if there are any additional requirements.

On or about August 16, 2017, Ikheloa sent an email letter to Ramkissoon [Exhibit R-11] informing him of his (Ikheloa's) acceptance to Rutgers and notifying Ramkissoon that the expected cost to complete the program was \$21,000. Although there is no evidence that Ramkissoon or anyone else offered to or promised Ikheloa that the District would pay Ikheloa's cost for the program, Ikheloa appeared to believe that the District would assume the tuition costs. After talking with the District's Human Resource Department Ikheloa was unsure of the District's willingness to assume those costs thus he included the following statements to Ramkissoon in R-11.

If you conclude, after consulting with the Human Resources that the burden of paying for this program will be on me, I will therefore request to excuse myself from the position you had offered me that was conditional on this SN standard certification.

Consequently, you would request returning me to the TWA pool to be deployed by the district to another school in need of my current certifications.

As you can recall, I am still entitled to a job with the district on my Mathematics and Physics standard certification the district had financed through the alternate route and PSI programs for me to obtain.

Ramkissoon acknowledged that Ikheloa had asked him (Ramkissoon) if the District would pay the tuition costs for the program and he (Ramkissoon) told Ikheloa the District would not assume that responsibility. Ikheloa acknowledged that Ramkissoon never promised the District would pay for his tuition.

As a result, Ikheloa told Ramkissoon he (Ikheloa) would prefer not to accept the position that was offered, and that he preferred to go into the EWPS – a pool of “employees without permanent site” – and be placed at a math opening at another school.

Ramkissoon responded that it was too late to make that change because the transfer period was over and he (Ikheloa) could not be moved into the EWPS. Ikheloa acknowledged that whether or not he began taking courses in the fall of 2017 to obtain his special education certification he would not have completed the program to obtain that certification during the 2017-2018 school year. Ikheloa acknowledged it would have taken him two or three years to obtain that certification.

For 2017-2018 Ikheloa was assigned to teach two classes of Algebra with Financial Applications with 10 students in each class [Exhibits R-2 and R-3], and one class of Geometry with 17 students [Exhibit R-4]. Ramkissoon explained that approximately 30% of the students at West Side High School were special needs students in 2017-2018. He explained that an inclusion class is one that includes some students with special needs who have IEP's, and some students without special needs; and a self-contained class is one with all special needs students who have IEP's. Ramkissoon noted that one of Ikheloa's Algebra classes was an inclusion class and that his Geometry class was also an inclusion class. Ramkissoon testified that there were no special education self contained math classes at West Side that year. Both Ramkissoon and Vice Principal Johnson testified that Ikheloa was not required to possess a special needs certification to teach a class that included special needs students.

Johnson noted that the "N" designation on the Geometry class roster, R-4, indicated that special needs students were included in that class, but she felt certain that general education students were also included in that class. Ikheloa testified that he believed his Geometry class was self-contained with all students having IEP's in part due to the "N" designation on R-4. But Ikheloa did not claim that his Algebra class listed in

R-2 was self-contained even though that roster also contained an “N” designation. The roster in Ikheloa’s other Algebra class, R-3, did not contain an “N” designation.

Ramkissoon noted that the District has many special education teachers that in the high schools will support math and English classes. But he emphasized that not every math class that includes students with IEP’s require the inclusion of a special education teacher. He said that such teachers are not required for inclusion in a math class unless that is a specific support requirement in a student’s IEP. Ramkissoon noted that special education teacher Errol Douglas, was assigned to co-teach with Ikheloa in the Geometry class.

Douglas testified that he co-taught with Ikheloa for his full Geometry class in 2017-2018, and co-taught with Ikheloa for half the time in his (Ikheloa’s) inclusion Algebra class listed in R-2. Douglas was not certain whether Ikheloa’s Geometry class was self-contained, but he indicated that nearly all the students had special needs.

The record shows that a special needs student’s IEP usually contains a grade scale adjustment which is intended to enable the student to score better despite his/her disability. Douglas said that Johnson told him that if an IEP did not contain such an adjustment - a 75% adjustment - should be used. Johnson denied telling any teacher to use a 75% *defacto* grade scale adjustment unless it was specifically contained within a student’s IEP.

Due to Ikheloa’s partially effective evaluation for the 2016-2017 school year, he needed a CAP for the 2017-2018 school year. The CAP and its content are intended to provide support for a teacher, and is developed through a collaborative process between the teacher and his/her supervisor.

Ogele held at least three meetings with Ikheloa to develop his CAP beginning on October 10, 2017. They talked about the standards Ikheloa wanted to focus on to move students towards mastery; the goals Ikheloa had for the students; the professional plan he had to achieve those goals; the action steps Ogele would implement to help Ikheloa achieve those goals; and the metrics to be used to make sure Ikheloa was progressing towards those goals. Ogele testified that Ikheloa identified the standards and set the goals for the students.

Ikheloa's CAP was completed and signed by him and Ogele on November 6, 2017 [Exhibit P-9]. The "Goal" section Ikheloa created included that at least 70% of the students would be proficient on the standards noted in the CAP. The "Action" steps required of Ogele to support Ikheloa included providing Ikheloa the opportunity to peer-observe the practices of an effective teacher; provide him the opportunity to engage in common planning time with a coach, ensure that he participates in Professional Learning Communities which were meetings with other math teachers to discuss how to achieve goals; provide feedback to Ikheloa after his observations; and other supports.

Subsequent to P-9, Ikheloa notified Ogele that he (Ikheloa) wanted to change his goal to state "that at least 100% of my students will score at least 80% on the standards". Ikheloa and Ogele signed Ikheloa's revised CAP on December 12, 2017 [Exhibit P-10].

In accordance with his CAP, Ikheloa was provided with many supports in order to achieve success in 2017-2018. The average teacher at West Side had 5 teaching blocks over every two days. Ikheloa, however, only had 4 blocks. In addition to special education teacher Douglas being assigned as a co-teacher to his Geometry classes, and Ikheloa's required attendance at the professional learning community meetings held

throughout the year [Exhibit P-18], and teacher aides assigned to certain students throughout the year, Ikheloa also received the following supports: Ikheloa was provided with a math coach, Priyank Bhatt, and a math interventionist, Jerome Hancock, both of whom assisted Ikheloa with co-planning lesson designs; co-modeling class presentations; peer coaching which included Bhatt or Hancock observing Ikheloa teaching then debriefing him, or Ikheloa observing Bhatt or Hancock teach his (Ikheloa's) class and then debriefing with Bhatt or Hancock.

Ikheloa was also taught about Pastore's Perch which is a teacher's most efficient physical placement in the classroom to get and hold student attention; he was given the opportunity to watch videos of effective teachers teaching classes; he received feedback from Ogele; he had support from Vice Principal Yakima Johnson, the Child Study Team Supervisor who worked with the special education students; and, he had access to his students IEP's through Mr. Douglas.

Ikheloa was observed four times during the 2017-2018 school year and received a mid-year and an annual evaluation. On October 18, 2017, Ogele conducted an unannounced observation of Ikheloa teaching his Geometry class and he received an ineffective rating [Exhibit P-11]. Ogele found Ikheloa ineffective in Competencies 2, 3 and 4 finding Ikheloa did not tailor strategies to lead students towards mastery; students did not demonstrate enthusiasm for the material; and, students scored low in lesson objectives.

On January 17, 2018, Vice Principal Yakima Johnson conducted an announced observation of Ikheloa teaching one of his Advanced Algebra classes and he received a partially effective rating [Exhibit R-12]. She found that Ikheloa did not give clear

instructions; classroom values were not consistently enforced; and students failed to master the objective.

On January 31, 2018 Ogele conducted Ikheloa's mid-year evaluation and rated him partially effective [Exhibit P-13]. Ogele noted that students were rarely mastering the lesson objectives; Ikheloa's communication with students was inconsistent; and, Ikheloa had failed to provide student assignments of the standards.

On March 13, 2018, Ogele conducted an unannounced observation of Ikheloa teaching one of his Algebra classes and he received a partially effective rating [Exhibit P-14]. Ogele noted that Ikheloa's instructions were sometimes unclear; he had spent too much time on one task; and, he did not require students justify their responses.

On April 17, 2018 both Ogele and Administrator Nadirah Mateen conducted unannounced observations of Ikheloa teaching one of his Algebra classes. Both Ogele and Mateen rated Ikheloa ineffective [Exhibits P-15 and P-16, respectively]. Ogele noted that Ikheloa's instructions were unclear; he did not move the students to mastery; students had no clear understanding of what to do in the beginning of the lesson; Ikheloa did not demand supporting evidence; few students demonstrated enthusiasm; and, there was no evidence the students mastered the objective. Mateen made many of the same findings.

On May 14, 2018 Ogele conducted Ikheloa's Annual Summative Evaluation and rated Ikheloa ineffective for the 2017-2018 school year [Exhibit P-17]. Ogele noted that Ikheloa's instructions to the students were sometimes unclear; classroom values and norms were inconsistently reinforced; students often were not on task throughout the

lessons; students rarely mastered the lesson objectives; and, that few students reached the goal Ikheloa set in his CAP.

Ogele testified about Ikheloa's rating in P-17, explaining that Ikheloa struggled with lesson sequence; clarity; and, twice made the same feedback error to students. Ogele also explained that Ikheloa failed to submit IEP planners for some students which made it difficult for the Child Study Team to provide enough services for those students; and he failed to submit all of the required student assessments. Ogele concluded that Ikheloa did not perform up to the required standards.

Student Growth Objectives or SGO's is a measurement of progress that is generated by students with IEP's which are used not only to measure the student's progress, but is also used to determine whether the teacher has met his/her set student goals. The grades of students with IEP's are modified based upon the child Study Team determination and that modification is used to determine the SGO's.

Since the SGO's were used to determine whether Ikheloa met the goal he established in his revised CAP, P-10, or rather, because the SGO's were used to determine he did not meet his goal; early in the hearing – and renewed at various times during the hearing – the Respondent questioned whether the SGO's were correctly calculated. The Respondent did not believe they were properly calculated and raised that as an issue in the case. The Respondent requested the opportunity to review the IEP's which contain information used to determine the SGO's to see if the District correctly calculated those SGO's.

The Board objected to that request raising the confidentiality of the information generally contained in an IEP. Ramkissoon also explained that the SGO's only

represented 15% of a teacher's overall rating. He noted that even if the Respondent could produce evidence that there was a mistake in the SGO's and more students achieved mastery, then in the best case scenario Ikheloa's end of year evaluation, P-17, would only move from an ineffective rating to a partially effective rating, which would still support the filing of tenure charges.

To resolve the issue over the accuracy of the SGO's I eventually performed an *in camera* inspection of the IEP's and required the District to provide grade modification information from the IEP's to the Respondent for his review. The Respondent did not subsequently present any evidence that the SGO's were improperly calculated.

Ogele testified that during 2017-2018 Ikheloa failed to timely submit student assessments and spreadsheets showing student progress for at least two quarters that were needed to be used to determine if the students were meeting expectations. Ogele noted that based upon the information he had, Ikheloa did not meet the goal of 100% of students would achieve 80% mastery which Ikheloa had set in P-10. Ogele said that only 69% of Ikheloa's students achieved 80% mastery.

Ogele also testified that at least in four cases (that is, regarding four students) Ikheloa used incorrect percentages to determine student grades. Ikheloa used higher percentages than included in those students' IEP's which would make it easier for those students – or at least make it appear – that those students achieved mastery. Ikheloa did not explain his failure to timely submit assessment information and the record supports Ogele's testimony that Ikheloa used incorrect information for four students.

In rebuttal to P-17 Ikheloa requested that Douglas submit a recommendation on his (Ikheloa's) behalf. In Exhibit R-7 Douglas defined Ikheloa as an outstanding teacher who cared about each student and was dedicated to his work.

As a result of P-17, on June 4, 2018 Ramkissoo sent Interim Superintendent Robert Gregory a memorandum [Exhibit P-1] recommending tenure charges against Ikheloa because he had a partially effective rating for 2016-2017, and an ineffective rating for 2017-2018. Ramkissoo noted that Ikheloa received substantial support throughout 2017-2018 but noted he struggled in all of the Framework Competencies. R-1 included information showing that students failed to meet the goal Ikheloa had established in his CAP.

As a result of the tenure charges and in accordance with *N.J.S.A.18A:6-14*, Ikheloa was suspended for 120 days. That time ran before the hearing in this case was completed. On January 25, 2019 the District – at least temporarily – offered Ikheloa reemployment when he was provided a letter by the District's Acting Executive Director, Yolanda Mendez, [Exhibit R-8] confirming his transfer to Central High School as a math teacher effective January 29, 2019. Ikheloa accepted that position and presumably worked for the District through the end of the 2018-2019 school year while awaiting the decision in this matter.

POSITIONS OF THE PARTIES

PETITIONER-DISTRICT

The Petitioner argued that it had no improper or unlawful motive for filing the tenure charge against Ikheloa. It denied the charges were filed due to any of Ikheloa's

affiliations or based upon any of Ikheloa's conduct, and it noted that the Respondent did not provide any such evidence.

The Petitioner also denied the Respondent's claim that its (the District's) filing of tenure charges was arbitrary and capricious. The District emphasized that Ikheloa was certified to teach both the Geometry and Algebra courses particularly with the co-teaching provided by Douglas and the other supports Ikheloa received. It highlighted the fact that even if teaching the Geometry class raised a certification problem, only one of Ikheloa's 2017-2018 observations occurred in that class, and there was no dispute that he was properly certified to teach the Algebra classes which were clearly not self-contained classes.

The District also argued that the Respondent failed to demonstrate that it (the District) did not comply with the requirements of TEACHNJ or its own Framework for Effective Teaching or any procedural requirement. It claimed there was no factual basis for any of the four statutory defenses and that the Respondent failed to produce evidence supporting those or any other defenses or claims.

The District noted that Ikheloa was observed eight times over two years by five different evaluators and only one of those observations resulted in an effective rating, and that in accordance with *N.J.S.A. 18A:6-17.(c)*, I am not authorized to review Ikheloa's classroom performance. The District maintains that Ikheloa's SGO's were properly calculated and that its witnesses were not effectively disputed.

Finally, the District explained that it reassigned Ikheloa to a classroom in 2019 because it was obligated to resume paying Ikheloa during the processing of this matter and therefore it could not also pay for a substitute teacher.

RESPONDENT-IKHELOA

The Respondent primarily argued that the District acted in an arbitrary and capricious manner by requiring Ikheloa to teach what it (the Respondent) claimed was a self-contained Geometry class of special needs students. According to the Respondent, that assignment materially affected the outcome of Ikheloa's observations and evaluations and violated both *N.J.S.A. 18A:26-2* and *N.J.A.C. 6A:14-4.7(g)* warranting dismissal of the tenure charge.

In its brief, the Respondent indicated that Ikheloa agreed to teach math classes with special needs students on the condition that the District would pay for him to obtain a standard special needs certification. According to the Respondent in its brief, Ikheloa was legally unqualified and ill prepared to be a special needs teacher, and when the District refused to pay for him to obtain a standard special needs certificate the District arbitrarily and capriciously, would not reassign him back to the District's pool of teachers. The Respondent claims that Ikheloa was "forced" or "compelled" to teach what it claimed was a self-contained special needs Geometry class making him a "*defacto*" teacher of special education.

The Respondent noted that Ikheloa had not received an ineffective rating prior to 2017-2018, and but for what it claimed was the District's "arbitrary, capricious and unreasonable" actions he would not have been rated inefficient in 2017-2018.

The Respondent acknowledged that Ikheloa took advantage of all of the training opportunities and supports that were made available to him but that those opportunities and supports were inadequate resulting in his inefficient ratings. According to the

Respondent, Ogele was biased towards Ikheloa because he (Ogele) was required to change Ikheloa's 2016-2017 end of year evaluation.

The Respondent criticized the District's decision reinstating Ikheloa to the classroom during the processing of this matter, but seeks a remedy here making Ikheloa whole for all lost wages and benefits. In the alternative, even if there is some basis for the tenure charge, the Respondent seeks a lesser penalty than termination.

DISCUSSION

As noted earlier in this Decision and in accordance with *N.J.S.A. 18A:6-17.2(23a)* a Respondent in an inefficiency case must prove: 1) that the employee's evaluation failed to substantially adhere to the evaluation process; or, 2) that there is a mistake of fact in the evaluation; or 3) the charges were brought based upon political affiliation, nepotism, union activity, or discrimination prohibited by State or Federal law; or 4) that the district's actions were arbitrary and capricious: in order to overcome inefficiency charges. Here, the Respondent did not present evidence that the District failed to adhere to the evaluation process; made a mistake of fact in any evaluation or brought the charge due to any unlawful or improper considerations. The Respondent's case is based primarily upon its argument that the District acted arbitrarily and capriciously in assigning – and allegedly compelling – Ikheloa to teach what it (the Respondent) claimed was a self-contained Geometry class of special needs students without him having a standard certificate to teach special education.

The Respondent's claims and arguments, however, were not persuasive. In the first instance I find that the Respondent did not conclusively prove that Ikheloa's Geometry class was self-contained. At best, it is unclear whether that class was self-

contained. Ramkissoon and Johnson testified it was not a self-contained class and I found them to be credible witnesses; and the mere “N” designation on R-4 did not conclusively establish that point. Johnson testified that an “N” designation means it’s an inclusion class, and the Respondent never argued that the “N” designation on R-2, the Algebra class, meant that it was a self-contained class. Based on the record before me I cannot conclude that Ikheloa’s Geometry class was self-contained. Therefore, the Respondent’s reliance on *N.J.S.A.* 18A:26-2 and *N.J.A.C.* 6A:14-4-7(a) to invalidate the charges is misplaced.

The Respondent’s claim that Ikheloa was forced or compelled to teach the Geometry class is also unpersuasive. Ikheloa acknowledged that Ramkissoon never offered or agreed that the District would pay for Ikheloa to take classes towards obtaining a full special education certification. In fact, Ikheloa accepted the opportunity to teach the special education inclusion classes in R-5 on June 7, 2017, and he did not therein condition his acceptance on the District paying for classes. Although he testified that – at least presumably in his mind – he conditioned his acceptance on the District paying for classes, by the time he told Ramkissoon of that in R-11 on August 16, 2017, and asked to be placed in the teacher pool for some other work, it was too late to make the change. But there is no evidence the District somehow “forced” Ikheloa to continue in the position. He clearly was able to refuse to teach the Geometry class and continue with the Algebra classes even if it meant he’d lose the whole teaching opportunity.

The Respondent’s position that the District acted arbitrarily and capriciously by refusing to move Ikheloa into the teacher pool in August also makes little sense given Ikheloa’s own statement that he only wanted to accept the position if the District paid for

the certification classes. By tying the certification tuition costs to teaching the math classes to his willingness to accept the position Ikheloa was really acknowledging that his willingness to accept the position had nothing to do with the fact that he would be teaching an inclusion class. I find Ikheloa's acknowledgement that even if he had enrolled in the special education classes he would not have had a full special education certification during the 2017-2018 school year or even by the following school year supports a finding that his lack of such a certification in 2017-2018 was not the primary basis upon which he wanted to be reassigned to the teacher pool after he had previously agreed to teach the inclusion classes. I believe he wanted to be assigned to the teacher pool primarily because the District would not pay for him to obtain the special education certification. No evidence was presented disputing Ramkissoo's testimony that by the time Ikheloa asked him (Ramkissoo) in August 2017 to reassign him (Ikheloa) to the teacher pool it was too late to effectuate such a move.

It is important to remember that this case is really only about what happened in 2017-2018. Although the evidence shows that after Ikheloa's complaint in the spring of 2017, Ogele changed the results of the 2016-2017 final evaluation, there was no evidence that there was a special education problem with Ikheloa's classes that year nor any evidence the District violated any of the provisions in *N.J.S.A. 18A:6-17.2 (23a)* for that year. I found Ogele to be a credible witness and do not infer that his change of Ikheloa's 2016-2017 final evaluation tainted his ability to honestly evaluate him in 2017-2018.

In recognition that Ikheloa was assigned to teach inclusion classes, and was working under CAP requirements, the District provided Ikheloa with a substantial level of support in 2017-2018, particularly the co-teaching by Douglas in Geometry, and the

coaching by Bhatt and Hancock. To suggest otherwise is a mischaracterization of the evidence. Ikheloa acknowledged that he took advantage of all of the supports, including the peer teaching, yet he struggled on a number of Competencies.

Ikheloa was not just observed by Ogele, he was observed by several different administrators – even by two different administrators on the same day – yet he was consistently rated ineffective or partially effective. To the extent he blames ineffective ratings on teaching the Geometry class, the record shows that in 2017-2018 only one of his many observations was in Geometry. Most of the results of his 2017-2018 final evaluation were based upon his performance in the Algebra classes which clearly were not self-contained classes.

Although the Respondent seems to argue that Ikheloa was not certified to teach the Algebra and Geometry classes, the record does not support that contention. Ramkissoon and Johnson testified that Ikheloa's math certification, particularly with his special education eligibility and the co-teaching support provided by Douglas, entitled Ikheloa to teach those classes. Nothing Ikheloa or Douglas said effectively disputed their (Ramkissoon and Johnson's) testimony.

Finally, the Respondent's suggestion that the District's decision to reassign Ikheloa to a classroom in 2019 pending the results of this case somehow weakens the District's inefficiency case lacks merit. I am unaware of any statute; regulation; court or arbitration decision finding that a school district's decision to reassign a teacher to a teaching position during the pendency of tenure hearings regarding a charge of inefficiency somehow negates such a charge.

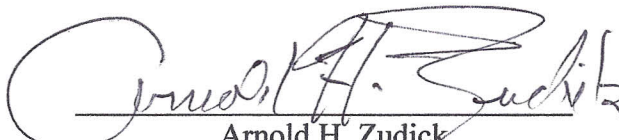
Having considered all of the testimony, documents, arguments and briefs related to this case I find that the District did not act arbitrarily or capriciously in assigning Ikheloa to teach inclusion classes without possessing a standard special education certification.

Based upon all of the above I issue the following:

AWARD

The District has established that the Respondent properly received a partially effective rating in his annual summative evaluation for 2016-2017, and an ineffective rating in his annual summative evaluation for 2017-2018. The Respondent has failed to prove the District violated any of the provisions in *N.J.S.A.* 18A:6-17.2 (23a).

Accordingly, the inefficiency charge is sustained, and in accordance with *N.J.S.A.* 18A:6-17.3, the Respondent's dismissal is upheld.

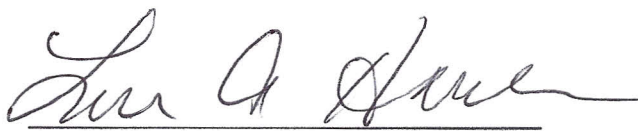


 Arnold H. Zudick
 Arbitrator

Dated: June 19, 2019
 Morrisville, Pennsylvania

Commonwealth of Pennsylvania }
 County of Bucks }

On this 19th day of June 2019, before me personally came and appeared Arnold H. Zudick to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



 Notary Public

Commonwealth of Pennsylvania-Notary Seal Lori A Hackman, Notary Public Bucks County My Commission Expires June 04, 2022 Commission Number 1332692
