

**STATE OF NEW JERSEY DEPARTMENT OF EDUCATION
Agency Docket No.: 216-8/18**

In the Matter of the TENURE Hearing between

**The BOARD OF EDUCATION OF THE CITY OF CAMDEN,
CAMDEN COUNTY, NEW JERSEY**

PETITIONER

and

ROXANNE JASTRZEMBSKI,

RESPONDENT

BEFORE: **Ira Cure, Esq.
Arbitrator**

APPEARANCES

For the Petitioner School District:
Joseph G. Antinori, Esq.
Brown & Connery, LLP

For the Respondent:
Cosmas P. Diamantis, Esq.
Zeller & Wieliczko, LLP

OPINION and AWARD

Pursuant to *N.J.S.A., 18A:6-16*, as amended by *P.L. 2012, c. 26 and P.L. 2015, c. 109* ("TEACHNJ"), the tenure charges alleging inefficiency brought by the Petitioner Board of Education of the City of Camden ("District") against Roxanne Jastrzembski ("Respondent") were referred to me for a hearing and decision. The charges were filed with the New Jersey Department of Education ("DOE") on August 30, 2018. An answer was filed by the Respondent with the DOE on September 11, 2018. On September 17,

2018 Samantha L. Price, the DOE's Director of the Office of Controversies and Disputes, appointed me to hear this dispute. I conducted hearings at the offices of the District's attorneys Brown & Connery, LLP 360 Haddon Avenue, Westmont, New Jersey on October 17, 19, 29, 31, November 2, 6 and December 3, 2018¹

Both parties were afforded a full opportunity to examine and cross-examine witnesses, submit evidence, and present arguments in support of their respective positions. The parties submitted briefs and the record was closed as of February 11, 2018. The evidence adduced and the positions and arguments set forth by the parties have been fully considered in the preparation and issuance of this Opinion and Award.

Joseph G. Antinori, of the firm of Brown & Connery, LLP represented the District. Cosmas P. Diamantis, Esq., of the firm of Zeller & Wieliczko, LLP represented the Respondent.

RELEVANT STATUTORY PROVISIONS

N.J.S.A. 18A:6-10. Dismissal and reduction in compensation of persons under tenure in public school system

No person shall be dismissed or reduced in compensation,

(a) if he is or shall be under tenure of office, position or employment during good behavior and efficiency in the public-school system of the state, or

(b) if he is or shall be under tenure of office, position or employment during good behavior and efficiency as a supervisor, teacher or in any other teaching capacity in the Marie H. Katzenbach school for the deaf, or in any other educational institution conducted under the supervision of the commissioner;

except for inefficiency, incapacity, unbecoming conduct,

¹ A hearing scheduled for November 27, 2018 was adjourned at the request of the parties.

or other just cause, and then only after a hearing held pursuant to this sub-article, by the commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of complaint, shall have been preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of a board of education, and filed and proceeded upon as in this subarticle provided.

Nothing in this section shall prevent the reduction of the number of any such persons holding such offices, positions or employments under the conditions and with the effect provided by law.

N.J.S.A. 1SA: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 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. The evaluator's determination as to the quality of an employee's classroom performance shall not be

subject to an arbitrator's review.

c. The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

d. The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case. The arbitrator shall render a written decision within 45 days of the start of the hearing.

N.J.S.A. 18A:6-17.3. Evaluation process, determination of charges.

25. a. Notwithstanding the provisions of N.J.S. 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 effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation;

(2) if the employee is rated partially effective in two consecutive annual summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective in the annual summative evaluation, the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency, except that the superintendent upon a written finding of exceptional circumstances may defer the filing of tenure charges until the next annual summative evaluation. If the employee is not rated effective or highly effective on this annual summative evaluation, the superintendent shall promptly file a charge of inefficiency.

b. Within 30 days of the filing, the board of education shall forward a written charge to the commissioner, unless the board determines that the evaluation process has not been followed.

c. Notwithstanding the provisions of N.J.S. 18A:6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a. of this section, the

commissioner shall examine the charge. The individual against whom the charges are filed shall have 10 days to submit a written response to the charges to the commissioner. The commissioner shall, within five days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to hear the case, unless he determines that the evaluation process has not been followed.

d. The only evaluations which may be used for purposes of this section are those evaluations conducted in accordance with a rubric adopted by the board and approved by the commissioner pursuant to P.L.2012, c.26 (C.I 8A:6-117 et al.).

THE CHARGE

TENURE CHARGE AGAINST ROXANNE JASTRZEMBSKI

I, Katrina T. McCombs, M. Ed., Acting State Superintendent of the Camden City School District (“the District”), charge that Roxanne Jastrzembski (“Jastrzembski”), a tenured teacher, should be dismissed from employment for inefficiency.

Background

1. The Camden City Board of Education entered into a Consent Order with the Commissioner of Education in March of 2013 to allow for full State intervention to begin on the last day of the school year in June 2013. The State of New Jersey began operating the Camden City School District (“the District”) on June 26, 2013. In accordance with the newly enacted “Teacher Effectiveness and Accountability for the Children of New Jersey Act” (“TEACHNJ”), one of the critical initiatives upon state intervention was a thorough assessment of all teachers within the District.

Charge: Inefficiency (TEACHNJ N.J.S.A. 18A:6-17.3)

2. The District brings this inefficiency charge against Jastrzembski pursuant to N.J.S.A. 18A:6-17.3 based on her two consecutive “partially effective” summative evaluations.

TEACHNJ Legislation

3. Beginning in the 2013-2014 academic year, the TEACHNJ legislation and accompanying regulations (AchieveNJ) were implemented statewide in New Jersey. In part, that law pertains to the evaluation process for tenured teachers and the subsequent process of removal for inefficiency.

4. On January 4, 2017, changes to the AchieveNJ requirements for the evaluation of tenured teachers were adopted for use in the 2016-2017 academic year.

Practical Portion: The Danielson Framework

5. The statute requires that only certain Department of Education approved practice evaluation rubrics be used in the evaluations of teachers. The Camden City School District has opted to use the Charlotte Danielson Framework for Teaching evaluation rubric which has been approved by the NJ State Department of Education.
6. The Charlotte Danielson Evaluation Rubric identifies four (4) domains which are to be evaluated: (1) planning and preparation; (2) classroom environment; (3) instruction; and (4) professional responsibilities. Each of these domains includes a number of subdomains. Under the rubric, employees are scored in each subdomain on a scale of 1 to 4, 1 being “ineffective,” 2 being “partially effective,” 3 being “effective,” and 4 being “highly effective.” All subdomain scores within a particular domain are then averaged, yielding the employee’s score for that domain. In turn, the scores from each domain are averaged, yielding the employee’s overall score for the practical portion of the summative evaluation score (Teacher Practice score). In the Camden City School District, the practical portion of the overall evaluation was weighted at 85% of the total summative rating for the 2016-2017 and 2017-2018 academic years.
7. Teachers and evaluators in the District received training and instruction with regard to the Danielson evaluation rubric.
8. During the 2016-2017 and 2017-2018 academic years, information regarding the evaluation process including observation information, pre- and post-conference information, summative ratings, etc. was recorded and stored in the TeachBoost software program.
9. All teachers and evaluators received training and instruction with regard to the TeachBoost program.

Student Growth Achievement Portion: Student Growth Objectives (SGOs) and Median Student Growth Percentile (mSGP)

10. In addition to the practical portion of the teacher’s summative rating, N.J.A.C. 6A:10-4.1(c) and N.J.A.C. 6A:10-4.2 require that each rating also include a measure of student achievement, including mSGP and/or student growth objective(s) (“SGO”) scores.
11. In the Camden City School District, the student growth achievement measure was weighted at 20% of the overall score for the 2015-2016 academic year and at 15% of the total rating for the 2016-2017 academic years.

Year 1: The 2016-2017 Evaluation Process and Requirements

Practical Portion

12. During the 2016-2017 academic year, N.J.A.C. 6A:10-4.4(c) required that tenured teachers be observed at least two (2) times in the first year with each observation lasting at least twenty (20) minutes.
13. Jastrzembski was observed two (2) times during the 2016-2017 academic year on the following dates by the following evaluators:
 - a. Short Observation #1: 11/29/16 by Jonathan Taylor
 - b. Short Observation #2: 5/17/17 by Jonathan Ogbonna
- See attached documents stamped CCSD RJ 000001 through CCSD RJ 0010.
14. Upon information and belief, each observation lasted for at least the required twenty minutes. Id.
15. N.J.A.C. 6A:10-4.4(b) requires that each evaluator conduct a post-observation conference not more than fifteen (15) teaching staff member working days after the observation.
16. It is the practice of District evaluators to conduct post-observation conferences within the timeframe required and, upon information and belief, each evaluator conducted post-observation conferences in accordance with the regulation. Id.
17. N.J.A.C. 6A:10-4.4(c) requires that at least one observation in an academic year be announced and preceded by a pre-observation conference.
18. Upon information and belief, in the 2016-2017 academic year, Jastrzembski participated in a pre-conference which was in compliance with the timing requirements set forth in the regulations.
19. N.J.A.C 6A:10-4.4(c) also requires that at least one teacher observation occur during the first half of the school year and that at least one occur during the second half of the school year.
20. At least one of Jastrzembski's observations occurred in the first half of the school year and at least one occurred in the second half.
21. All of Jastrzembski's evaluators electronically signed the observation reports they completed.
22. Finally, in addition to reviewing each of the observation reports at the post-observation conferences, all the teachers in the District, including Jastrzembski, had access to

them as soon as they were uploaded via Teachscape and continued to have such access throughout the remainder of the academic year.

23. Jastrzembski's summative calculation of the practical portion for the 2016-2017 academic year was a "2.36." See attached documents stamped CCSD RJ 0024.

Student Growth Achievement Portion

24. Pursuant to N.J.A.C. 6A:10-4.1(b)-(c) and N.J.A.C. 6A:10-4.2, each teacher shall have a measurement of student growth achievement, including MSGP and/or SGO scores.
25. Jastrzembski's summative calculation of SGO scores for the 2015-2016 academic year were a "3.27" and "2.35." See attached documents stamped CCSD RJ 0020 through 0024.

2016-2017 Summative Rating/Conference

26. After weighing each component of the evaluation, Jastrzembski's summative rating was calculated to be "2.52" which is only "partially effective." See attached documents stamped CCSD RJ 0024.
27. Pursuant to N.J.A.C 6A:10-2.4(f), a summative conference must be held and both the teacher and supervisor must sign the summative evaluation within five (5) days of such conference. In this case, a conference was held on June 20, 2017 and the summative form was signed by Jastrzembski's supervisor that same day.. See attached documents stamped CCSD RJ 0024-25.

Professional Development

28. During the 2016-2017 academic year, and in years prior thereto, all teachers were provided with professional development opportunities both generally and specific to the areas of improvement needed for each teacher individually.

Corrective Action Plan

29. A teacher rated "partially effective" or "ineffective" on his or her summative evaluation during an academic year is required to be placed on a corrective action plan ("CAP") pursuant to N.J.A.C 6A:10-2.5(a). During the 2016-2017 academic year, the CAP was required to be created prior to October 31st of the next academic year. Id.
30. Jastrzembski's CAP was created on June 20, 2017 and, upon information and belief, both the teacher and the supervisor participated in its creation. See attached documents stamped CCSD RJ 0026 through 0032.

Year 2: The 2017-2018 Evaluation Process and Requirements

Practical Portion

31. During the 2017-2018 academic year, N.J.A.C. 6A:10-2.5(h) required that teachers on a CAP be observed at least three (3) times with each observation lasting at least twenty (20) minutes. Additionally, multiple (more than one) evaluators must perform observations of a teacher on a CAP. N.J.A.C. 6A:10-2.5(i).

32. Jastrzembski's was observed three (3) times in the 2017-2018 academic year on the following dates by the following evaluators:

- a. Short Observation #1: 10/23/17 by Nichole Harrington
- b. Short Observation #2: 2/16/18 by Jonathan Taylor
- c. Short Observation #3: 4/11/18 by Lynn Price Jones

See attached documents stamped CCSD RJ 0033 through 0039-72.

33. Upon information and belief, each observation lasted at least the required twenty minutes and Jastrzembski's was evaluated by more than one evaluator during the 2017-2018 academic year. Id.

34. N.J.A.C. 6A:10-4.4(b) requires that each evaluator conduct a post-observation conference not more than fifteen (15) working days after the observation.

35. It is the practice of District evaluators to conduct post-observation conferences within the timeframe required and, upon information and belief, each evaluator conducted such post-observation conferences in accordance with the regulation. Id.

36. N.J.A.C. 6A:10-4.4(c) requires that at least one observation in an academic year be announced and preceded by a pre-observation conference.

37. Upon information and belief, in the 2017-2018 academic year, Jastrzembski's participated in a pre-conference, which was in compliance with the timing requirements set forth in the regulations. See attached documents Bates stamped CCSD RJ 0033 and 39-72.

38. N.J.A.C 6A:10-4.4(c) also requires that at least one teacher observation occur during the first half of the school year and that at least one occur during the second half of the school year.

39. Upon information and belief, at least one of Jastrzembski's observations occurred in the first half of the school year and at least one occurred in the second half.

40. All of Jastrzembski's evaluators electronically signed the observation reports they completed.

41. Finally, in addition to reviewing each of the observation reports at the post-observation conferences, all the teachers in the District, including Jastrzembki, had access to them as soon as they were uploaded via the TeachBoost program and continued to have such access throughout the remainder of the academic year.
42. Jastrzembki's summative calculation of the practical portion for the 2017-2018 academic year was a "2.24." See attached documents stamped CCSD RJ 0077-78.

Student Growth Achievement Portion

43. Pursuant to N.J.A.C. 6A:10-4.1(b)-(c) and N.J.A.C. 6A:10-4.2, each teacher shall have a measurement of student growth achievement, including mSGP and/or SGO scores.
44. Jastrzembki's summative calculation of SGO scores for the 2017-2018 academic year were a "1.87" and a "2.17." See attached documents stamped CCSD RJ 0077-78.

Corrective Action Plan

45. As previously indicated, a teacher who was rated "partially effective" or "ineffective" during an academic year is required to be placed on a corrective action plan ("CAP") pursuant to N.J.A.C. 6A:10-2.5(a) for the next academic year. During the year for which the CAP applies, the teacher and the supervisor are required to meet midway between the development of the CAP and the expected receipt of the annual summative rating in order to review the teacher's progress toward the goals outlined in the CAP. N.J.A.C. 6A:10-2.5(g).
46. Jastrzembki and her supervisor upon information and belief had a mid-year CAP conference.

Professional Development

47. During the 2016-2017 and 2017-2018 academic years, and in years prior thereto, all teachers were provided with professional development opportunities both generally and specific to the areas of improvement needed for each individual teacher.

2016-2017 Summative Rating/Conference

48. After weighing each component of the evaluation, Jastrzembki's summative rating was calculated to be "2.21," which is partially effective. See attached documents stamped CCSD RJ 0077-78.
49. Pursuant to N.J.A.C. 6A:10-2.4(f), a summative conference must be held and both the teacher and supervisor must sign the summative evaluation within five (5) days of such conference. In this case, a conference was held on 6/18/18 and the summative

form was signed by Jastrzembski and her supervisor on that same day. See attached documents stamped CCSD RJ 0077-90.

Conclusion: Inefficiency

50. The District has evaluated Jastrzembski in accordance with the law and provided her with the tools to be successful. Nonetheless, she has shown to be both unable or unwilling to improve.
51. Due to Jastrzembski's two consecutive "partially effective" rating for the 2016-2017 and 2017-2018 academic years, the District must bring this tenure charge against her. Accordingly, the District submits that Jastrzembski should be dismissed for inefficiency.

FACTS

A. Background

In 2012, the New Jersey State Legislature enacted TEACHNJ. *N.J.S.A. 18A:6-117*. The statute is designed to raise student achievement in part by requiring school districts to adopt evaluative techniques to provide feedback to teachers. *N.J.S.A. 18A:6-118(b)*. Under TEACHNJ the State Board of Education was directed to set standards for the evaluation of teachers and requires boards of education to adopt "evaluation rubrics," for analyzing teacher effectiveness. The statute requires that educators be rated as "ineffective," "partially effective," "effective," or "highly effective." *N.J.S.A. 18A:6-123(b)(1) & (c)*. The statute went into effect in the 2013-2014 school year. *N.J.S.A. 18A:6-123(e)*.

The District adopted the Danielson Framework for evaluating teachers. Under the Danielson Framework, teachers are evaluated in four separate domains, with each domain having sub-domains. (D Ex. 173).² The four domains are: Domain 1: Planning and Preparation; Domain 2: The Classroom Environment; Domain 3: Instruction; and

² District's exhibits are denoted as: (D Ex. #). Respondent's exhibits are denoted as (R Ex. #). However, the "#" sign for the Respondent's exhibits refers to the bate stamp page and not a tab.

Domain 4: Professional Responsibilities. Under the Danielson Framework, teachers are scored in each subdomain on a scale of 1 to 4, 1 being “ineffective,” 2 being “partially effective,” 3 being “effective,” and 4 being “highly effective.” All subdomain scores within a particular domain are then averaged, yielding the employee’s score for that domain. In turn, the scores from each domain are averaged, yielding the employee’s overall score for the practical portion of the summative evaluation score which is generally calculated at the end of the school year.

Nicholas Pillsbury (“Pillsbury”) is the District’s Implementation Manager for Evaluation. Mr. Pillsbury’s duties require him to manage the District’s evaluation procedures. (Tr. 11-12). Mr. Pillsbury trains principals and lead educators³ in the requirements of the Danielson Framework. (Tr. 64; P Ex. 9). There is also a document provided by the District entitled: “Camden City School District Teacher Evaluation Overview.” (District Ex. 50). In order to create a certain consistency in scoring under the Danielson Framework, principals and lead educators are required to do two co-observations a year so that they may “norm” their results. (Tr. 97). Observations may be announced or unannounced. Generally, at least one observation must be announced. (Tr. 315).

In addition to the Danielson Framework, teachers are also evaluated on how successful they are in meeting student growth objectives or “SGOs.” Teachers are required to create SGOs at the beginning of the school year, and they undergo training in creating the SGOs and in the Danielson Framework. (Tr. 19, 26-27, 62-63). SGOs are in part measured by how well students perform on quizzes (“District Office Quizlets” or

³ Lead educators are similar to vice-principals. (Tr. 203).

“DOQs”) and other examinations. (Tr. 17-19). In addition, the District utilizes web-based platforms to store and create evaluation documents. This proceeding concerns the 2016-2017 school year and the 2017-2018 school year. In 2016-2017, the District utilized a web-based platform called Teachscape and in the 2017-2018 school year the District utilized a web-based platform called TeachBoost. (Tr. 13, 24). These platforms were used to keep track of data for students and teachers.

B. The Respondent and the H.B. Wilson School

The Respondent has been employed by the District for 16 years. (Tr. 649). The Respondent has a bachelor’s degree in psychology and elementary education and a master’s degree in curriculum and instruction. (Tr. 647). The Respondent also holds an elementary education certificate, a middle school social studies certificate, a psychology certificate, and is highly qualified for middle school science. (Tr. 648). Since 2004, the Respondent has taught science to grades 6 through 8. (Tr. 650). Beginning in 2014, and at all times relevant to this proceeding, the Respondent was assigned to the H.B. Wilson School. (“H.B. Wilson”). (Tr. 651). H.B. Wilson is a family school that teaches students from pre-school to the eighth grade. (Tr. 651). H.B. Wilson occupies a two-story building with middle school students located on the second floor. (Tr. 674).

H.B. Wilson has 8 periods per day. There is no transition time between periods, and no bells signify the change of periods. (Tr. 654-655). Teachers are generally required to escort their students from one class to another. (Tr. 658).

During the period relevant to this proceeding, the following individuals had supervisory responsibility over the Respondent at H.B. Wilson: Janna Johnson (“Johnson”), Jonathan Taylor (“Taylor”), Jonathan Ogbonna (“Ogbonna”), Nicole Harrigan

("Harrigan"), and Lynne Price-Jones (Price-Jones). Mr. Taylor had been H.B. Wilson's Operations Manager and in January 2016, Mr. Taylor became a Lead Educator at H.B. Wilson. Mr Taylor observed the Respondent on November 29, 2016 and February 16, 2018. (Tr. 475-476, 488-489, 506). Ms. Harrigan is currently the Principal of H.B. Wilson. Ms. Harrigan observed the Respondent on October 23, 2017. (District Ex. 16). In the Spring of 2017, Ms. Johnson⁴ the Principal of H.B. Wilson was on leave and Dr. Ogbonna was temporarily assigned as the Principal of H.B. Wilson from April to June 2017. Dr. Ogbonna observed the Respondent on May 17, 2017. (Tr. 312). Ms. Price-Jones is employed by the District as a Senior Lead-Educator of Math and Science for grades K-8 who observed the Respondent on April 11, 2018. (Tr. 202, 237).

In March of 2016, the Respondent broke her wrist at a school event. This resulted in a successful claim for Worker's Compensation. (Tr. 681). That summer, the Respondent broke her ankle. As a result of this second injury, the Respondent missed the first six weeks of school and did not begin teaching in the 2016-2017 school year until October 10, 2016. (Tr. 662). Also, as a result of this second injury, the Respondent had problems with mobility, and required the use of a knee scooter. (Tr. 671). Because of her injuries and the need for physical accommodations, the Respondent had a "504 Plan" in effect⁵. The Respondent testified that her physical limitations had a negative impact on some of her observations. (Tr. 868, 870-871). These observations are discussed below.

The Respondent is also active in her union, the Camden Education Association ("CEA"). During the 2016-2017 school year, the Respondent was the middle school representative to the CEA'S Executive Council. (Tr. 891). The Respondent was on the

⁴ None of Ms. Johnson's observations of the Respondent are relevant to this proceeding.

⁵ A "504 Plan" is a reference to § 504 of the Rehabilitation Act of 1973.

CEA's negotiating committee, and she took part in a class-wide grievance alleging that the members of the bargaining unit were not getting proper step increases. (Tr. 903-904). Members of the H.B. Wilson administration were aware of the Respondent's union activities. (Tr. 904-905).

C. The 2016-2017 School Year

When the Respondent returned to work on October 10, 2016, she was given a permanent classroom, and she was assigned to teach two fifth grade and two sixth grade science classes. (Tr. 661). Mr. Taylor observed the Respondent on November 29, 2016. Pursuant to the Danielson Framework and as a result of his observation Mr. Taylor gave the Respondent the following scores:

Domain 1: Demonstrating Knowledge of Content and Pedagogy	3
Demonstrating Knowledge of Students	2
Selecting Instructional Outcomes	3
Demonstrating Knowledge of Resources	3
Designing Coherent Instruction	2
Domain 2: Creating an Environment of Respect and Rapport	3
Establishing a Culture for Learning	2
Managing Classroom Procedures	2
Managing Student Behavior	2
Domain 3: Communicating with Students	3
Using Questioning and Discussion Techniques	1
Engaging Students in Learning	3
Using Assessment in Instruction	2

(D Ex. 2). Domain 4 concerns Professional Responsibilities and permits teachers to upload evidence of continued professional development and training. Domain 4 is generally not scored at the time of the observation. (Tr. 761).

The Respondent testified that she thought that her scores were inappropriate, because there was a lack of specified evidence for some of her scores, and that Mr. Taylor

ignored the fact that some of the Respondent's students were getting settled when Mr. Taylor began his observation⁶. (Tr. 720, 727-728, 730-731).

On February 21, 2017, Mr. Taylor provided the Respondent with her Domain 4 ratings. Mr. Taylor gave the Respondent the following scores:

Domain 4: Reflecting on Teaching	3
Maintaining Accurate Records	2
Communicating with Families	2
Participating in a Professional Community	3
Growing and Developing Professionally	3

(D Ex. 5 p. CCSD RJ 0016). The Respondent disputes the veracity of the evidence underlying some of these scores and notes that at the time she had not yet been trained on the TeachBoost system, so some documents had not been finalized. (Tr. 761-764).

On May 17, 2017, Dr. Ogbonna observed the Respondent. Pursuant to the Danielson Framework and as a result of his observation, Mr. Ogbonna gave the Respondent the following scores:

Domain 1: Demonstrating Knowledge of Content and Pedagogy	3
Demonstrating Knowledge of Students	3
Selecting Instructional Outcomes	3
Demonstrating Knowledge of Resources	3
Designing Coherent Instruction	3
Domain 2: Creating an Environment of Respect and Rapport	2
Establishing a Culture for Learning	1
Managing Classroom Procedures	1
Managing Student Behavior	1
Domain 3: Communicating with Students	3
Using Questioning and Discussion Techniques	1
Engaging Students in Learning	1
Using Assessment in Instruction	1

(D Ex. 3)

⁶ I am aware that under TEACHNJ that I have only limited discretion in analyzing the content of any particular observation, unless there is evidence in support of the enumerated statutory defenses. *N.J.S.A. 18a:6-124(b)*.

The Respondent testified regarding numerous problems concerning Dr. Ogbonna's observation. The Respondent contends that the start of her class was delayed because the teacher in the prior class was occupying the classroom. In addition, a technician was in the classroom repairing one of the computers that was supposed to be used in the lesson. This required the Respondent to reassign seats for her students. Next the Respondent had to hand out materials to some students who had forgotten their binders. Then it became apparent that the materials which were prepared by the District, had been inverted in some of the binders. The Respondent testified that even though she checked that the material was complete, she stated that there was no way that she could have known that certain binders had inverted materials. Within fifteen minutes of the class commencing, a surprise announcement came over the loudspeaker directing honor roll students to attend a special assembly. At that point, one third of the class left the room. The Respondent was required to write a hall pass for each of the students attending the assembly. The Respondent notes that the more computer savvy students were leaving the classroom. Next, the Respondent had to pass out laptop computers to certain students. The laptop computers had to be checked to make sure they were functional. In addition, certain students had difficulty logging in and others who were able to log in had problems with pop-up blockers. The pop-up blockers prevented the students from accessing the material. At this point, the class was almost over, so the Respondent was required to collect the laptops. The Respondent admits that during the twenty minutes that Dr. Ogbonna observed her class, she was unable to effectively teach her lesson and was unable to engage with her students as she intended. (Tr. 736-754).

In her post-observation discussion with Dr. Ogbonna in which she pointed out the difficulties she had in teaching the class Dr. Ogbonna observed, the Respondent asked Dr. Ogbonna to refocus his scores or to provide her with an additional observation. (Tr. 752, 756-757). The Respondent also provided a written rebuttal to Dr. Ogbonna's observation. (D Ex. 4). The Respondent testified that Dr. Ogbonna said he was not permitted to accommodate the Respondent's requests.

In his testimony, Dr. Ogbonna stated that he concluded that, at the time of his May 17, 2017 observation, the Respondent's classroom was disorganized, and that she was essentially unprepared. (Tr. 323-325). Dr. Ogbonna stated that a new observation was inappropriate, and that the reasons for a new observation posited by the Respondent "did not carry weight." Although he acknowledged in his testimony that students did leave the class, and that there was a technician present, Dr. Ogbonna reasoned that the Respondent still should have been able to instruct her class. He concluded that there was no need to change the scores on the observation. (Tr. 330-331). In his testimony Dr. Ogbonna posited that if there is a fire drill or some other emergency, then a re-observation should be conducted. However, Dr. Ogbonna rejected the notion that the interruptions experienced by the Respondent merited a re-observation. (Tr. 354).

On June 13, 2017, Mr. Taylor provided the Respondent with her year ending Domain 4 scores. Mr. Taylor provided these scores instead of H.B. Wilson Principal Janna Johnson ("Johnson") who was on leave. (Tr. 499). The Respondent's Domain 4 scores were:

Domain 4: Reflecting on Teaching	3
Maintaining Accurate Records	3
Communicating with Families	3
Participating in a Professional Community	4
Growing and Developing Professionally	3

(D Ex. 5 p. CCSD RJ 0018).

Regarding the Respondent's SGO's for the 2016-2017 school year, the Respondent was given a weighted score of 3.45 for both her fifth and sixth grade students. (D Ex. 6). The Respondent's SGO scores and her scores under the Danielson Framework are listed in their data form. The form, in turn, indicates the weight given to each piece of data in the calculation of the final rating: 85% for the Teacher Practice scores under the Danielson Framework and 15% for the SGO. Both scores are then combined in a "Summative Report." On June 20, 2017, Mr. Taylor provided the Respondent with her Summative Report which gave the Respondent a score of 2.52. The Summative Report stated in pertinent part:

Student Growth Score		
Component	Weight	Score
SGO Scores	100%	3.45
	15% (of total)	3.45
Teacher Practice Score		
Component	Weight	Score
Planning and Preparation	30%	2.82
Classroom Environment	20%	1.75
Instruction	30%	1.88
Professional Responsibilities	20%	3.00
	85%	2.36
Final Score-Partially Effective		2.52

(D Ex. 7).

Under TEACHNJ, teachers who are found to be partially effective are placed on a Corrective Action Plan or “CAP.” *N.J.A.C. 6A: 10-2.5*. Had the Respondent scored a 2.65 or higher she would have been deemed effective, and not placed on a CAP. (Tr. 163).

D. The 2017-2018 School Year

The Respondent’s CAP was prepared by Mr. Taylor on June 20, 2017. (D Ex. 8). The CAP set forth a number of areas in which the Respondent was required to improve. Throughout the 2017-2018 school year, the Respondent was to be coached by Ms. Harrigan, H.B. Wilson’s new principal. In addition, the Respondent was expected to reduce disciplinary referrals. (Tr. 161). The Respondent testified that neither Ms. Harrigan nor Mr. Taylor complied with certain of the CAP requirements.

For example, the Respondent testified that her supervisors were supposed to check each of her lesson plans, and to make sure she provided exit tickets to her students⁷. The Respondent testified that she was supposed to receive a mid-year CAP review before February 15, 2018 in order to make any necessary adjustments in her teaching. She states however, that she did not receive the mid-year CAP review until April 9, 2018. (Tr. 781). The Respondent also testified that, although initially Ms. Harrigan provided weekly coaching sessions at the start of the 2017-2018 school year, these sessions soon stopped and were replaced by passing comments and emails. (Tr. 833-836). Ms. Harrigan testified that she communicated repeatedly with the Respondent, especially to address, the Respondent’s classroom management deficiencies. (Tr. 160-162). Ms. Harrigan also testified that she frequently walked through the Respondent’s classes. (Tr. 184). In addition, Ms. Harrigan stated that she provided additional

⁷ Exit tickets are questions for students to determine if they understand the material for a particular lesson. (Tr. 599).

professional development to the Respondent, and arranged for the Respondent to observe other teachers, or have other teachers observe the Respondent. (Tr. 172-173, 188-189, 962, 1059, 1066).

In the 2017-2018 school year, the Respondent only taught two classes of sixth grade students⁸. (Tr. 644). H.B. Wilson's other science teacher taught four or five classes. (Tr. 1119). Respondent and witnesses who testified on behalf of the Respondent stated that the sixth-grade students had behavioral issues, and that behavior problems were in part exacerbated by Ms. Harrigan's apparent intention not to suspend students. (Tr. 697, 1017-1019, 1037-1039, 1061-1062). The Respondent also testified that she was given limited resources and students were unable to effectively access material. (Tr. 864-865).

Supervisors are to observe teachers under a CAP at least three times during the school year. The Respondent's first observation, in the 2017-2018 school year, was conducted by Ms. Harrigan on October 23, 2017. The Respondent testified that her students were not properly equipped for this lesson because they lacked the necessary math skills. In addition, the Respondent testified that the science curriculum was designed for students in the eighth grade not for students in the sixth grade. (Tr. 793-794). The Respondent testified that she informed Ms. Harrigan, Ms. Price-Jones and Mr. Taylor about these issues, but the issues were not addressed. (Tr. 795). In addition, prior to her observation, the Respondent alerted Ms. Harrigan that materials from the District arrived late and that her class was behind as a result. (Tr. 798-799). Pursuant to the Danielson Framework, Ms. Harrigan gave the Respondent the following scores:

⁸ During the rest of the school day, Respondent assisted other teachers and ran the robotics club. (Tr. 665).

Domain 1: Demonstrating Knowledge of Content and Pedagogy	3
Demonstrating Knowledge of Students	3
Selecting Instructional Outcomes	3
Demonstrating Knowledge of Resources	3
Designing Coherent Instruction	2
Domain 2: Creating an Environment of Respect and Rapport	3
Establishing a Culture for Learning	2
Managing Classroom Procedures	2
Managing Student Behavior	2
Organizing Physical Space	3
Domain 3: Communicating with Students	2
Using Questioning and Discussion Techniques	2
Engaging Students in Learning	2
Using Assessment in Instruction	2
Demonstrating Flexibility and Responsiveness	2

(D Ex. 16).

Ms. Harrigan was critical of the Respondent's ability to control her class. Ms. Harrigan testified that the Respondent should have been able to correct the behavioral issues, and that the Respondent should have used the classroom strategies recommended by Ms. Harrigan in coaching sessions. (Tr. 409-412).

Mr. Taylor conducted the Respondent's next observation on February 16, 2018. (Tr. 801, D Ex. 18). This observation was unannounced. (Tr. 801). At the time the observation occurred, and as a result of her earlier injury, the Respondent was having difficulty walking up and down stairs. On that date, the Respondent's students had a gym class immediately before Respondent's class. Ms. Harrigan had previously instructed the gym teacher to escort the Respondent's students to the Respondent's classroom. However, on February 16th there was a substitute gym teacher who was apparently unable to or unaware that he was required to escort the students to the Respondent's classroom. After waiting some time for her students to arrive at her classroom, the

Respondent took the elevator down to the first floor to the gym where her students were playing. After some difficulty lining the students up, the students finally were transported to the Respondent's classroom. Thus, the class began twenty-two minutes late. Some students were already waiting for the Respondent in the classroom when she arrived with the students she had accompanied from the gym. (Tr. 807-809). The Respondent concedes that she was unable to properly instruct that day. (Tr. 810-811). Although the Respondent gave the class an exit ticket, the exit ticket had nothing to do with the aborted lesson but concerned behavior. (Tr. 811-813).

In response to questions posed during cross-examination, Mr. Taylor described why the class started twenty-two minutes late:

Q. Was the respondent supposed to escort her students to this class?

A. I have a question before I answer that. Was her 504 in effect during that this time?

Q. I'm not – I can't – answer questions.

A. Okay. So all right that's fine. Usually the gym teacher will walk the students up. So I know during this point in time Ms. J [the Respondent] wasn't picking students up.

Q. So your testimony is she did not pick students up on this day?

A. No in this lesson she did, but she wasn't directed to pick the students up.

Q. Someone else was to bring them to class?

A. Probably the gym [teacher] yes.

Q. Do you know why they didn't bring them to class?

A. I am not sure. I wasn't there.

Q. So the respondent had to go and get the students and bring them back to this class?

A. She went and got them. I don't know if she was directed to do that. But she went and got – she went and picked the students up.

Q. I guess my question is, why is the fact she had to go get her students and is now 20 minutes late to her class evidence of ineffective management procedures?

A. Because if you have students that are already inside the classroom without their teachers, students running in from the hallway, then when you come into the classroom, students not participating or on task, that is ineffective. That is classroom procedure. That's how your students.

Q. How is the fact that she is late to class with her students evidence of ineffectiveness?

A. Because a procedure, if she picked her students up, you have to be able to transport your students in the class. That's part of the procedure. So if its taking you 20 minutes to do that, then you're not, your procedures aren't clear.

Q. Even if it's not her responsibility to do that?

A. As I said, if she picked her students up, then she picked her students up. I can't go back and say I directed her to pick the students up, because that did not occur.

(Tr. 549-552).

Pursuant to the Danielson Framework, Mr. Taylor gave the Respondent the following scores:

Domain 1: Demonstrating Knowledge of Content and Pedagogy	3
Demonstrating Knowledge of Students	2
Selecting Instructional Outcomes	2
Designing Coherent Instruction	1
Designing Student Assessments	1
Domain 2: Creating an Environment of Respect and Rapport	1
Establishing a Culture for Learning	1
Managing Classroom Procedures	1

Managing Student Behavior	1
Organizing Physical Space	2
Domain 3: Communicating with Students	2
Using Questioning and Discussion Techniques	2
Engaging Students in Learning	2
Using Assessment in Instruction	1

(D Ex. 18).

In a post-observation report, Mr. Taylor was extremely critical of the Respondent's management of student behavior. (D Ex. 19). The Respondent testified that Mr. Taylor directed her to change her answers in her response to the post-observation report and threatened to give her an ineffective rating in Domain 4a. (Tr. 819-821; D Ex. 19). Mr. Taylor denies threatening the Respondent. (Tr. 563).

Ms. Price-Jones observed the Respondent on April 11, 2018. The observation was unannounced. At the time, the Respondent's class was split in two because it was easier to control behavior issues. The Respondent testified that on the day before the observation, Mr. Taylor asked her to change her lesson. The Respondent testified that this resulted in lower scores because Ms. Price-Jones determined that the Respondent failed to adhere to her lesson plan. (Tr. 821-824). The Respondent testified regarding certain mistakes of fact concerning complaints by parents that were purportedly contained in Ms. Price-Jones' Domain 4 scoring⁹.

Pursuant to the Danielson Framework, Ms. Price-Jones gave the Respondent the following scores:

⁹ The Respondent admitted that she had difficulty communicating with one parent. (Tr. 831).

Domain 1: Demonstrating Knowledge of Content and Pedagogy	2
Selecting Instructional Outcomes	2
Designing Coherent Instruction	2
Domain 2: Creating an Environment of Respect and Rapport	2
Establishing a Culture for Learning	2
Managing Classroom Procedures	3
Managing Student Behavior	2
Domain 3: Communicating with Students	3
Using Questioning and Discussion Techniques	2
Engaging Students in Learning	2
Using Assessment in Instruction	3

(D Ex. 20).

The Respondent also testified about the measurement of her SGOs for the 2017-2018 school year. The Respondent attended a Professional Development class in which she was instructed in new methods for developing SGOs. The Respondent stated that the calculation of the SGOs was changed to reflect student achievement rather than growth. The Respondent stated that this was inappropriate because students in science classes were not given a base test against which to measure achievement. (Tr. 846). As noted above, SGOs were partially made up of DOQs, which were issued every two to three weeks. The Respondent testified that her class materials arrived late, and that her first DOQ was not issued until October. (Tr. 850). At the beginning of the 2017-2018 school year, the Respondent designed six separate SGOs. The Respondent testified that SGOs should be approved by October 31st of the school year, but that the Respondent did not learn whether her SGOs had been approved until the end of the year. (Tr. 855). However, the District required one simple SGO for the Respondent's classes. Mr. Pillsbury testified that all science teachers were held to the same standard. (Tr. 1070-1078), and that the

Respondent refused to adhere to the District’s method for calculating SGOs. The District gave the Respondent an SGO score of 2.02. (D Ex. 25).

On June 18, 2018, Ms. Harrigan and Mr. Taylor provided the Respondent with her Summative Report and gave the Respondent a score of 2.21 or partially effective. The Summative Report stated in pertinent part:

Student Growth Score		
Component	Weight	Score
SGO Score	33.33%	1.87
SGO Score	33.33%	2.17
SGO Score	33.33%	
	15%	2.02
Teacher Practice Score		
Component	Weight	Score
Planning and Preparation	30%	2.21
Classroom Environment	20%	1.93
Instruction	30%	2.08
Professional Responsibilities	20%	2.85
	85%	2.24
Final Score	Partially Effective 100%	2.21

The Respondent did not agree with this evaluation and appealed. Nevertheless, because the Respondent was found to be only partially effective as a teacher for two consecutive years on August 16, 2018 the District as required by statute charged the Respondent with Inefficiency. *N.J.S.A. 18A: 17.2(a)(1) and (b)*. (Joint Ex. 1). Respondent timely contested the charge of Inefficiency (Joint Ex. 2). On August 28, 2018, the District filed a Certificate of Determination with the Commissioner of Education crediting the evidence in support of the charge of Inefficiency, and this arbitration followed.

POSITIONS OF THE PARTIES

A. The Respondent's Position

i. General Arguments

The Respondent notes that under TEACHNJ, a pedagogue may challenge inefficiency charges based on whether the:

(1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;

(2) there is a mistake of fact in the evaluation;

(3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or

(4) the district's actions were arbitrary and capricious.

N.J.S.A. 18A:6-17.2(A)(1)-(4). The Respondent also notes that in order to succeed under one or more of the statutory defenses, an arbitrator must find that the defenses materially affected the outcome of the evaluation. *N.J.S.A. 18A:6-17.2 (b)*. The standard of proof is a preponderance of the credible evidence. (Respondent's Brief at 56 *citing, Pugliese v. State-Operated School District of the City of Newark, Essex County, 2016 N.J. AGEN LEXIS 19*).

In her defense, the Respondent emphasizes the "arbitrary and capricious" standard, and notes that the phrase has been defined by the Courts as having no rational basis, evidencing willful and unreasoning action, without consideration and in disregard of the circumstances. (Respondent's Brief at 56 *citing, Bayshore Sewage Co. v. Dept. of Env'tl. Protection, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), aff'd 131 N.J. Super. 37*

(App. Div. 1974)).

In addition, the Respondent cites three arbitration awards in which arbitrators refused to sustain charges of inefficiency against pedagogues because the employer's actions were arbitrary and capricious. (Respondent's Brief at 56-60 *citing, In re Gay Brown v. City of Camden*, Agency Docket No. 300-10/14 (Bucheit Arb.) (District did not adhere to its evaluation and support system before bringing tenure charges and evaluators evaluated the teacher "without any serious consideration [of] the context in which the performance occurred."); *Patsy Cuntera v. Passaic County Vocational School District*, Agency Docket No. 223-8/15 (Gandel Arb.) (District's failure to consider the circumstances underlying a teacher's performance was arbitrary and capricious); *Joel Dawkins v. City of Newark*, Agency Docket No. 277-9-15 (Bluth, Arb.) (method of observing teacher did not provide the teacher with the opportunity to implement change and was arbitrary and capricious)).

ii. Observations during the 2016-2017 School year

The Respondent next analyzes each of the observations in the 2016-2017 school year. Concerning Mr. Taylor's November 29, 2016 observation of the Respondent, the Respondent contends that the observation was arbitrary and capricious and contained numerous mistakes of fact. In addition, the Respondent contends that Mr. Taylor failed to support certain of his conclusions with any evidence. The Respondent also argues that Mr. Taylor failed to consider the magnitude of behavioral issues that the Respondent faced. The Respondent also asserts that Mr. Taylor failed to participate in the required two co-observations, a process which is designed to promote accuracy in scoring. (Respondent's Brief at 63 *citing, N.J.A.C. 6A:10-2.2(B)(4)(i)*). As such, the Respondent

calls Mr. Taylor's skill as an evaluator into question. Accordingly, the Respondent maintains that she did not receive a fair, accurate or comprehensive evaluation.

Regarding Dr. Ogbonna's May 17, 2017 observation, the Respondent contends it too was arbitrary and capricious because it violated evaluation procedures and contained numerous mistakes of fact. In addition, the Respondent maintains that Dr. Ogbonna "failed to properly consider significant disruptions that were out of Respondent's control and significantly compromised her lesson." (Respondent's Brief at 63). The Respondent notes that she received all effective scores from Dr. Ogbonna in Domain 1 for Planning and Preparation. The Respondent goes on to argue that serious disruptions prevented her from teaching her lesson as planned. These disruptions included: 1) a late start to the class; 2) a technician repairing a computer at a student's desk; 3) students' failure to bring their binders to school; 4) the inversion of the material prepared by the District in the binders; 5) the departure of honor roll students after the class began; 6) difficulties in passing out the laptop computers; and 7) attendant problems with logging in and pop ups. The Respondent contends that Dr. Ogbonna should have taken these issues into account and that he did not, and he refused to give the Respondent another observation. The Respondent also contends that student behavioral issues should have been considered by Dr. Ogbonna. Regarding Domain 3 "Instruction," the Respondent notes that Dr. Ogbonna was critical of the fact that no instruction or discussion occurred in the classroom but contends that Dr. Ogbonna failed to give any consideration to the disruptions in the classroom. The Respondent maintains that Dr. Ogbonna's evaluation was arbitrary and capricious.

As to the Respondent's Domain 4 scores, the Respondent contends that she was

treated unfairly. The Respondent notes that, because of her injury, she started school late in the year and was unable to upload documents into TeachBoost. The Respondent disputes some of the factual findings in her 2016-2017 Domain 4 scores.

iii. Observations in the 2017-2018 School Year

The Respondent contends that Ms. Harrigan's October 23, 2017 observation was arbitrary and capricious, violated evaluation procedures and contains mistakes of fact. Respondent contends that Ms. Harrigan did not consider the fact that the students received their materials late, and that the curriculum required Respondent's students to have math skills which they did not possess. The Respondent also maintains that Ms. Harrigan failed to provide evidence for several of her entries in the Danielson Framework.

With respect to Mr. Taylor's February 18, 2018 observation, the Respondent contends that it was arbitrary and capricious. The Respondent contends that Mr. Taylor failed to consider the significant disruptions that occurred during that particular class, and the fact that the class started twenty-minutes late, because the substitute gym teacher failed to transfer the students to the Respondent's classroom. The Respondent notes that Mr. Taylor gave negative Domain scores to the Respondent resulting from the tardy start to the class, even though the late start was not the Respondent's fault. The Respondent maintains that the lateness was caused by the Respondent's inability to use the stairs (as evidenced by the Respondent's 504 Plan), and that Mr. Taylor should have taken that into account. The Respondent also contends that Mr. Taylor relied on several mistakes of fact in analyzing the various Domains under the Danielson Framework. Finally, the Respondent asserts that Mr. Taylor was not properly trained in the Danielson Framework, because he did not partake in two co-observations where he could norm scores with his

fellow evaluators.

The Respondent also contends that the observation by Ms. Price-Jones was arbitrary and capricious. The Respondent notes that Ms. Price-Jones' observation was unannounced and that the Respondent had been directed to change her lesson just days prior to Ms. Price-Jones observation. As such, the Respondent's lesson plan did not conform to her lesson and the Respondent contends that this affected her scores. The Respondent also asserts that Ms. Price-Jones should have considered the behavioral problems in the class that Ms. Price-Jones was observing.

Finally, the Respondent contends that her Domain 4 scores for the 2017-2018 school year were based on mistakes of fact regarding the Respondent's interaction with a parent.

iv. The CAP

The Respondent maintains that the CAP was ineffective and was not followed by the administration. The Respondent notes that in the 2016-2017 school year the Respondent was found to be effective in sub-Domains 1E and 1F, and contends that the District required her to improve on this aspect of her CAP. The Respondent also notes that her supervisors in the 2107- 2018 school year – Mr. Taylor and Ms. Harrigan – were required to check each of the lesson plans and to collect exit tickets but failed to do so.

The Respondent also contends that she did not receive the coaching sessions called for under the CAP, and that sometime after October 2016, Ms. Harrigan stopped meeting weekly with the Respondent. In addition, the Respondent notes that under the CAP, she should have undergone a mid-year CAP review by February 15, 2017 but did not receive this review until April 9, 2018. This was just two days before her final

observation of the year by Ms. Price-Jones.

The Respondent also notes that she was expected to reduce disciplinary referrals, however, the Respondent contends that her classes had well-documented disciplinary problems. The Respondent maintains that her obligation to reduce disciplinary referrals was an effort to set her up for failure.

Respondent contends that, had she been provided with a meaningful opportunity to improve, she would not have received a partially ineffective score on her 2017-2018 Summative Report. Therefore, the Respondent contends that the application of the CAP was arbitrary and capricious.

v. Lack of Student Discipline

The Respondent also contends that the administration generally, and Ms. Harrigan's policies specifically, undermined her ability to receive higher scores under the Danielson Framework. The Respondent points to the testimony of several witnesses who support her conclusion that the 2017-2018 sixth grade class contained numerous students with discipline problems, and that this contributed to her inability to be scored as effective.

vi. The SGOs in the 2017-2018 School Year

The Respondent maintains that the District's evaluation policy regarding the SGOs in the 2017-2018 school year violated applicable state regulations. The Respondent notes that under *N.J.A.C. 6A:10-4.2 (e) (3)-(4)*: "Each teacher shall develop in consultation with his or her supervisor or a principal's designee, each student growth objective [,] 'which shall be determined, recorded, and retained by the teacher and his or her supervisor by October 31 of each academic year.'" The Respondent contends that nothing limits the

teacher's discretion in formulating SGOs when the teacher is working on a CAP. (Respondent's Brief at 82). The Respondent notes that the *NJDOE SGO Guidebook* provides that multiple measures should be used to determine a student's starting points, and that assessments should be vetted so that students are not improperly advantaged or disadvantaged.

The Respondent contends that the District improperly predetermined the SGO for teachers regardless of grade or subject. The Respondent also contends that the SGOs should be customized to each student and should be adjusted over the course of a school year. The Respondent maintains that Mr. Taylor ignored the SGOs that the Respondent had created for her students and did not speak to the Respondent about the SGOs until the end of the school year.

The Respondent posits that had she been permitted to adopt her SGOs, she would have received higher scores in that category. The Respondent contends that because the District was not in compliance with the DOE guidance regarding SGOs that it acted arbitrarily and capriciously.

vii. Allegations that the Respondent was Terminated for Discriminatory Reasons

The Respondent contends that she was discriminated against because she: 1) successfully claimed Worker's Compensation Benefits; 2) worked under a 504 Plan; and 3) engaged in union activities.

The Respondent contends because of her physical restrictions she was placed on a 504 Plan, and that this directly affected her February 16, 2018 observation by Mr. Taylor. The Respondent contends that Mr. Taylor should have understood that Respondent's inability to escort her class resulted in her class starting twenty-two minutes

late. The Respondent also notes that Mr. Taylor was aware that the Respondent had filed a Worker's Compensation claim.

Finally, the Respondent vigorously argues that she is being penalized by Mr. Taylor and Ms. Harrigan for her active involvement in the CEA.

The Respondent contends that she should be reinstated to her position with full back-pay.

B. The District's Position

The District contends that it understood and applied the requirements of TEACHNJ when it made the determination to dismiss the Respondent. The District notes that the Respondent has the burden of proving both her statutory defenses and that any alleged deficiency "materially" affected the outcome of the evaluation process. The District contends that the Respondent is elevating form over substance by resorting to a rigid interpretation of TEACHNJ, that would not permit any deviation by the District. The District maintains that all the administrators who observed the Respondent came to the same conclusion that the Respondent could not manage her classroom and that students were regularly failing.

The District analyzed each of the Respondent's purported defenses.

i. Alleged Failure to Adhere to the Evaluation Process

The District maintains that the Respondent must demonstrate that the District substantially failed to adhere to the evaluation process. (District Brief at 10, *citing*, N.J.S.A 18a:17.2(b)). The District points to the testimony of each of its witnesses to argue that the District both understood the TEACHNJ evaluation process, and that it properly implemented the evaluation process. In addition, the District contends that it recognized

that the CAP is not a punishment for teachers but a tool to identify the support that a teacher requires.

As to the SGOs, the District notes that the Respondent contends that the SGOs: 1) were improperly prepared by the District; 2) were not finalized until the end of the school year; and 3) prohibited her from tiering her students for purposes of measurement. The District contends that the Respondent offered no evidence that the instructions that the District provided violated DOE regulations. The District contends that the Respondent refused to adhere to the instructions given to her at a Professional Development training in the fall of 2017 regarding the calculation of SGOs. Instead the Respondent created six different SGOs - none of which conformed to the instructions she received from the District. The District contends that a school principal has the final word on how SGO scores are calculated. The District notes that under the regulations:

(e) Student growth objectives shall be developed and measured according to the following procedures:

* * * * *

3. Each teacher shall develop, in consultation with his or her supervisor or a principal's designee, each student growth objective. If the teacher does not agree with the student growth objectives, the principal shall make the final determination.

N.J.A.C. 6A:10-4.2 (e)(3). The District also notes that all science teachers had the same growth objectives. The District relies on an arbitration award concerning this District. In the case cited by the District, a principal had approved a teacher's SGO. After the principal learned that the District had not approved this method for calculating the SGO, the principal began using the approved SGO. Use of the District's SGO resulted in the teacher

receiving a partially effective score¹⁰. The arbitrator found that even though the principal made a mistake in approving the original SGO, he nevertheless held that the District had the final say in determining how to calculate the SGO score. (District's brief at 17 *citing, In the Matter of the Proceeding Between Gerri A. Chapman and State Operated School District of the City of Camden*, Agency Docket No. 249-9/16 (Dec. 13, 2016) (Zirkel, Arb.)).

As to the CAP, the District contends that Ms. Harrigan in fact completed a mid-year CAP review with the Respondent. The District contends that Ms. Harrigan coached the Respondent both formally and informally. The District also points to certain inconsistencies in the Respondent's position. The District notes that the Respondent claimed that she was not getting enough support, but also complained that she received direction and coaching from Ms. Harrigan and others, and that she could not implement that advice because her students were so badly behaved. The District contends that the Respondent's assertion that she was not coached properly is a red herring.

The District posits that the discipline issues at H.B. Wilson were no more serious than at other Camden schools. The District maintains that it was the Respondent's classroom management that was the source of her problems. The District also notes that teachers who testified in support of the Respondent were able to manage their classes in an effective manner. (Tr. 1120-1122).

The District notes that the Respondent submitted rebuttals to her observations, and the Respondent contends that her rebuttals were not considered by the evaluators. The District contends, however, that this argument is a difference of opinion, and that evaluators took the Respondent's rebuttals seriously, and in fact Ms. Price-Jones

¹⁰ Had the teacher been permitted to use the SGO she selected, she would have received an effective score.

changed one of the Respondent's scores. (T. 275). The District maintains that evaluators are not required to agree with the Respondent. The District also notes that the evaluators each gave the Respondent scores of "1" and "2." The District cites TEACHNJ for the proposition that arbitrators are required to defer to the evaluator's opinion. (District's brief at 21 *citing*, N.J.S.A. 18A: 6-17.2 (c)).

The District also maintains that the Respondent received adequate training on TeachBoost. In addition, the District rejects the Respondent's contention that the CAP was insufficiently drafted, and notes that in answers to interrogatories that she submitted that the Respondent never actually identified the deficiencies in the CAP.

The District argues that it substantially adhered to the evaluation process.

ii. Allegations of Mistakes of Fact and Allegations of Arbitrary and Capricious Decision Making

The District denies that the evaluators made mistakes of fact or acted arbitrarily and capriciously. The District characterizes the Respondent's arguments as a kitchen sink approach. The District notes that the Respondent is particularly critical of the observations by Mr. Ogbonna and Mr. Taylor's observation dated February 16, 2018¹¹. While conceding that disruptions occurred during their observations, the District notes that both observers concluded that the Respondent did not adequately manage the situation.

The District contends that both observers properly exercised their discretion in refusing to change the Respondent's score or to give her another observation. The District characterizes this as a difference of opinion. The District maintains that under the

¹¹ Mr. Taylor also observed the Respondent on November 29, 2016.

statutory scheme I am not empowered to dispute the determinations reached by Mr. Ogbonna and Mr. Taylor. The District notes that both Ms. Harrigan and Ms. Price-Jones reached similar conclusions regarding the Respondent's teaching skills.

The District also rejects the Respondent's contention that the various observations lacked evidence to support its conclusions. The District contends that the collection of evidence in observation reports is not a statutory or regulatory requirement under TEACHNJ. The District also contends that there is no obligation to present evidence contained in observation reports in a particular format. (District's brief at 24 *citing*, *N.J.A.C. 6A:10-4.1* and *N.J.A.C. 6A:10-4.4*). The District also cites to testimony by Mr. Pillsbury, in which Mr. Pillsbury said that nothing in the "Camden City School District Teacher Evaluation Overview" for the period 2016-2017 requires the observer to write down evidence in an observation report. The District contends that if the Respondent's position is accepted, evaluators would be required to prepare lengthy evaluation reports, and arbitrators would have to sift through each report and determine if there is evidence to support each score.

The District also rejects the Respondent's argument that her evaluators had to engage in at least two co-observations per year. The District notes that the purpose of the co-observations is to "norm" the observers to prevent substantially different evaluation results and contends that the co-observation has nothing do with the scores of a particular teacher. The District concedes that Mr. Taylor mistakenly thought that he was required to have one co-observation but argues that all four of Respondent's observers came to similar conclusions about Respondent's classroom performance.

The District also notes that the Respondent raised issues concerning Mr.

Ogbonna's evaluation, and the fact that the honor roll students were removed from the class. The District cites testimony by Mr. Taylor who thought the removal of the students would have a positive effect because there were fewer students to teach. (District's brief at 25 *citing*, Tr. 566-567). The District also cites the testimony of Mr. Pillsbury who stated that the removal of the students midway through a lesson should have no effect on the scores since the Danielson Framework focuses on practice and delivery and not the quality of the student. (District's brief at 25 *citing*, Tr. 645-646).

iii. Alleged Union Activities and Discrimination

The District characterizes the Respondent's arguments that she was discriminated against because she received an accommodation for her physical condition, or because of her union activities as speculative and frivolous. Regarding her physical condition, the District notes that the Respondent only taught two classes in the 2017-2018 school year so that she could work on her CAP. In addition, the District notes that the Respondent was relieved of her lunchroom duties because of her injuries.

The District also contends that the evaluators were unaware of the Respondent's union activities or of her Worker's Compensation claim.

iv. The District's Conclusion

The District argues that the four evaluators all reached the same conclusion: that the Respondent was not effective in classroom management. The District also points out that the Respondent's students were receiving failing grades on tests and quizzes. The District notes that other teachers did not have the same degree of difficulty with these students. The District also contends that Ms. Harrigan provided the Respondent with support throughout the 2017-2018 school year when the Respondent was on the CAP.

The District maintains that it takes the TEACHNJ mandates seriously, and that it faithfully applied its mandate to the Respondent. Therefore, the District contends that the Respondent should be removed.

DISCUSSION

A. The Legal Standard

The burden in this case is on the District to prove by a preponderance of the evidence that the statutory criteria for the tenure charges have been met. The record evidence reveals that the District has met this burden. Where the District has met its burden, the burden then shifts to the Respondent to affirmatively prove that she has a defense to the Tenure charges brought against her. The Respondent must prove at least one of four defenses to successfully overcome a charge of Inefficiency.

The statute provides:

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 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.

N.J.S.A. 18A:6-17.2(A)(1)-(4).

This is a challenging burden for a Respondent. As the District has argued, an

arbitrator's role is limited, and he or she is not empowered to evaluate the quality of the evaluations. *Patsy Cuntera v. Passaic County Vocational School District*, Agency Docket No. 223-8/15 (Gandel Arb.). In reviewing the record evidence, I conclude that the Respondent has not met her burden and that she is not entitled to the benefit of any of the four statutory defenses. The Defenses raised by the Respondent will be discussed *seriatim*.

B. The Defense of Failing to Adhere to the Evaluation Plan

This defense fails because the District has convincingly established that it has adhered to the evaluation process mandated by TEACHNJ. The District has adopted the Danielson Framework for evaluating teachers. *N.J.S.A 18a:17.2* The District has also established that both teachers and supervisors are trained in the application of the Danielson Framework. In addition, the District has established that, when it placed the Respondent on the CAP, it took its responsibilities seriously and worked with the Respondent to provide coaching and assistance.

Despite the contentions of the Respondent, the District has shown that Ms. Harrigan coached the Respondent during the 2017-2018 school year. In addition, the Respondent was only assigned two classes, instead of the four or five classes that other science teachers were assigned to teach. Ms. Harrigan also arranged for the Respondent to observe other teachers, and have other teachers work with the Respondent to improve the Respondent's performance.

The Respondent also challenged the way SGOs were calculated during the 2017-2018 school year. The Respondent argues that she should have been given flexibility to create her SGOs. The Respondent not unreasonably argues that unlike other subjects

there is no base line for measuring student achievement in science. However, as the District has shown, the final decision regarding SGOs rests with the school principal pursuant to guidance from the District. There is no dispute that all of the District's science teachers were given identical guidance for calculating SGOs. Therefore, the Respondent cannot successfully argue that she should have the discretion to create her own SGO. This is especially true because Respondent was working pursuant to a CAP and was required to comply with the requirements imposed by the District.

C. The Defense of Mistake of Fact During the Evaluation

The Respondent argues that her evaluations in both the 2016-2017 and 2017-2018 school years contained mistakes of fact. The burden is on the Respondent to establish that the mistakes of fact had a material impact on the evaluation. *N.J.S.A. 18A:6-17.2 (b)*. Although the Respondent contends that her observers made mistakes of fact regarding her lessons, the Respondent has not shown that these purported mistakes had a material impact on any of her evaluations.

D. The Discrimination Defense

The burden is on the Respondent to show that the charges of Inefficiency would not have been brought but for discriminatory animus or for her union activities. In this case, the Respondent contends that she was discriminated against for: 1) successfully filing a Worker's Compensation claim; 2) exercising her right to seek accommodations and work under a 504 Plan; and 3) union activities.

Although the Respondent has established that she was a union member, and that at least some of her supervisors knew of her union activities, the Respondent has not shown that the District's knowledge of the Respondent's union activities motivated the

District to terminate the Respondent. Public sector employees are protected by the New Jersey Employer-Employee Relations Act. *N.J.S.A. 34:13A-1 et. seq.* Under the Act, it is illegal to discriminate against a public employee for union activities. However, if an employee is to successfully contend that his or termination was for Union activity, he or she must establish that the termination was substantially motivated by anti-union animus. *In re Bridgewater Tp.*, 95 N.J. 235 (1984). (Court adopts the *Wright Line* test applied under the National Labor Relations Act that employee must show that termination was made more likely than not by anti-union animus).

There is also no evidence that the District discriminated against the Respondent because she successfully brought a Worker's Compensation claim or because she was working under the 504 Plan. Indeed, the record shows a concerted effort by Ms. Harrigan and, to a lesser extent, by Mr. Taylor to accommodate the Respondent's physical limitations.

Accordingly, I conclude that the Respondent has not proved that she was discriminated against in violation of *N.J.S.A. 18A:6-17.2(3)*.

E. The Arbitrary and Capricious Defense

As the Respondent notes, in order to meet the arbitrary and capricious standard, the Respondent must prove that the actions of the Department constituted "willful and unreasoning action, without consideration and in disregard of the circumstances." *Bayshore Sewage Co. v. Dept. of Env'tl. Protection*, 122 N.J. Super. 184, 199-200 (Ch. Div. 1973), *aff'd* 131 N.J. Super 37 (App. Div. 1974). However, "[w]here there is room for two opinions, action is not arbitrary or capricious when exercised honestly and upon due consideration, even though it may be believed that an erroneous conclusion has been

reached.” *Id. citations omitted*. As noted above, by statute, I must defer to the conclusions of the evaluators, and I am precluded from substituting my judgment for that of the authors of the evaluations. The statute specifically states: “The evaluator’s determination as to the quality of an employee’s classroom performance shall not be subject to an arbitrator’s review.” *N.J.S.A. 18a:6-17.2(23) (c)*.

As the District argues, the purpose of TEACHNJ is “to streamline the cumbersome tenure charge process which previously made it so difficult for school districts to remove non-performing teachers.” (District Brief at 1). The District contends that it should not have to justify every decision nor should it have to defend every instance “where the ‘i’ was purportedly not dotted, or the ‘t’ was supposedly not crossed.” *Id.* The District is not required to create perfect laboratory conditions for each observation. The DOE makes it clear that in analyzing the arbitrary and capricious defense, arbitrators “may only consider . . . whether the **charge** is arbitrary and capricious.” State of New Jersey, Department of Education, *Summary of Legal Requirements for Teacher Evaluation and Tenure Cases*, (emphasis supplied).

Therefore, although the Respondent has raised concerns regarding her evaluations, especially those conducted by Dr. Ogbonna and the February 16, 2018 evaluation conducted by Mr. Taylor, I am precluded from challenging their conclusions. My analysis is limited to whether the District acted arbitrarily and capriciously, not whether Dr. Ogbonna or Mr. Taylor should have been more reasonable in evaluating the Respondent or in providing the Respondent with another evaluation.

In the arbitration awards cited by the Respondent in which arbitrators found that a district acted arbitrarily and capriciously, the arbitrators avoided discussing the substance

of an individual evaluation. Instead, the arbitrators found serious structural problems in the way that a CAP was administered or in the way that the evaluations were structured.

For example, in *Patsy Cuntera v. Passaic County Vocational School District*, Agency Docket No. 223-8/15 (Gandel Arb.), Arbitrator Gandel found that a district acted arbitrarily and capriciously when it violated procedures by: 1) not having a post-observation conference with the teacher; 2) observing the teacher on the first day back in class following a lengthy illness; 3) failing to accommodate the teacher's medical problems; and 4) observing the teacher on two consecutive days without providing an opportunity for the teacher to improve.

In *Joel Dawkins v. City of Newark*, Agency Docket No. 277-9-15 (Bluth, Arb.), Arbitrator Bluth found that a district acted arbitrarily and capriciously when in one year it observed a teacher on two consecutive days without giving the teacher the opportunity to absorb the lessons of the first evaluation. The arbitrator found that this arbitrary and capricious action was compounded in the second year. In the second year this seriously injured teacher, working under a CAP was supposed to have four evaluations. Arbitrator Bluth determined it was arbitrary and capricious to have two observers conduct the evaluations simultaneously in the same class in order to meet the requirements of the CAP. Arbitrator Bluth made other findings to support his determination that the district acted arbitrarily and capriciously. The district assigned the teacher to a middle school after a lengthy illness, even though the bulk of the teacher's experience was teaching high school. According to Arbitrator Bluth, once on the CAP and teaching in a high school, the district, purposefully assigned the teacher to the most difficult class in a school. Finally, although the teacher taught both ninth and twelfth graders, he was only observed

teaching the ninth-grade class which contained more challenging students. Similarly, Arbitrator Bucheit in *In re Gay Brown v. City of Camden*, Agency Docket No. 300-10/14 (Bucheit Arb.) found that a district was arbitrary and capricious when it did not adhere to its evaluation and support system before bringing tenure charges and evaluators evaluated the teacher “without any serious consideration [of] the context in which the performance occurred.”

None of the procedural problems or the hostility to the individual teachers that were analyzed by Arbitrators Bucheit, Gandel and Bluth are present in this proceeding. The District complied with its obligations to the Respondent. The District placed the Respondent on the CAP, and complied with the terms of the CAP. The District also accommodated the Respondent’s medical condition. Principal Harrigan worked with the Respondent while she was on the CAP. Accordingly, I must conclude that the Respondent has not established that the District acted arbitrarily and capriciously.

Based on the above, I render the following:

AWARD

The undersigned Arbitrator having been designated pursuant to *N.J.S.A., 18A:6-17.1(c), and AAA Labor Rule no. 27* hereby issues, and AWARDS as follows:

1. For the reasons set forth in this Decision and Award, the Arbitrator finds the District met its burden of proving that the Respondent receive “partially effective” annual summative evaluations for two consecutive school years: 2016-2017 and 2017-2018, and that the evaluations were properly conducted under the applicable laws and regulations. Therefore, the charge of “Inefficiency” is sustained, and the dismissal of the Respondent is upheld.

Dated: March 7, 2019

SS: Ira Cure /
Ira Cure

State Of New York)
County of Kings)

On this 7th day of March 2019 before me personally came and appeared Ira Cure, to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged that he executed the same.


Notary Public

ELIZABETH ORFAN
Notary Public, State of New York
No. 02OR4976601
Qualified in Kings County
Commission Expires April 23, 2019

