

**STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION**

In the Matter of Tenure Charges

**STATE-OPERATED SCHOOL
DISTRICT OF THE CITY OF
NEWARK, ESSEX COUNTY,**

Petitioner,

-and-

URSULA WHITEHURST,

Respondent.

AGENCY DOCKET
NO.: 263-9/16

OPINION AND AWARD

BEFORE: RUTH MOSCOVITCH, Arbitrator

Appearances:

For the Petitioner:

Christina Michelson Abreu
Scarinci Hollenbeck
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PO Box 790
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For the Respondent:

Jason Sokolowski
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This matter comes before me on tenure charges brought under N.J.S.A. 18A:6-10, 6-11, 6-16, 6-17.1, 6-17.2 AND N.J.A.C. 6A:3-5.1 by Petitioner State-Operated School District of the City of Newark (the "District") against Respondent Ursula Whitehurst. The tenure charges at issue here were filed with the Bureau of Controversies and Disputes on September 29, 2016. I was appointed the arbitrator to adjudicate this matter on October 27, 2016.

In this proceeding, I heard testimony from 9 witnesses over 8 days. The District presented the testimony of Principal John Weinstein, VPs Lori Ween and

Curtis Adair from Bard Early College High School (Bard), and Principal Larry Ramkissoon, VP Henry Ogele, and Edith Battle, a veteran teacher and “Academic Interventionist,” all from Westside High School (Westside), and Brad Haggerty, the District’s Chief Academic Officer, and Homere Breton from the office of the District’s General Counsel as well as two large binders containing a total of 66 exhibits. The Respondent testified in her own behalf and placed in evidence a single large binder with 64 exhibits. All witnesses were sworn and their testimony was recorded by a court reporter. The parties submitted post-hearing briefs on Monday, March 20, 2017, and the District requested and was granted leave to file a responsive brief by Thursday, March 13, 2017. No objection has been made to the fairness of this proceeding.

TENURE CHARGES

CHARGE ONE: INEFFICIENCY

During the period from September 2013 to the present, Respondent has demonstrated an inability to completely and responsibly execute her duties as a teacher in the following manner:

- a. The Respondent has failed to implement curricular goals and objective(s).
- b. The Respondent has failed to design coherent instruction.
- c. The Respondent has failed to assess student learning.
- d. The Respondent has failed to create an environment of respect and rapport.
- e. The Respondent has failed to manage student behavior.
- f. The Respondent has failed to manage classroom procedures.
- g. The Respondent has failed to establish a culture of learning.
- h. The Respondent has failed to communicate clearly and accurately.
- i. The Respondent has failed to use questioning and discussion techniques with flexibility and responsiveness.
- j. The Respondent has failed to engage students in learning.
- k. The Respondent has failed to provide feedback to students.
- l. The Respondent has failed to attain student achievement that meets or exceeds performance benchmarks.
- m. The Respondent has failed to reflect on teaching.
- n. The Respondent has failed to contribute to the School and District

- o. The Respondent has failed to grow and develop professionally
- p. The Respondent has failed to demonstrate promptness and attendance.
- q. The Respondent has received a Partially Effective Rating for the 2013-2014 School Year in an Annual Summative Evaluation.
- r. The Respondent has received a Partially Effective Rating for the 2014-2015 School Year in an Annual Summative Evaluation.
- s. The Respondent has received a Partially Effective Rating for the 2015-2016 School Year in an Annual Summative Evaluation.

CHARGE TWO: AND OTHER JUST CAUSE

1. The District restates the allegations contained in Charge One and re-alleges and incorporates them by reference as if fully set forth at length herein.
2. The Respondent has failed to properly adhere to the District's protocol for overseeing students and improving her teaching skills.
3. The Respondent has consistently failed to follow instructions and violated the District's policies and procedures.
4. The cumulative effect of Respondent's misconduct and inefficiency as set forth above constitutes other sufficient cause sufficient to warrant dismissal.

WHEREFORE, Respondent has shown that she is unfit to discharge the duties and functions of the position in which she holds tenure in the School District, and she should be dismissed.

FACTUAL BACKGROUND

Respondent is a tenured teacher of mathematics. She has been employed in that capacity in the District since September 1990. She holds certificates in elementary education and secondary mathematics. During her teaching years, she taught middle school math to 8th graders at Lewis Munoz Marin for 6 years; and high school mathematics at University High School for 4 years, Barringer High School for 10 years and Malcolm X/Shabazz for 2-3 years. She was released from Shabazz High School, because the school was eliminating staff positions. Starting the next year, 2011-2012, Respondent became EWPS (educator without placement site). For the 2012-13 she was placed at Westside High School. For the 2013-14 school year, Respondent remained EWPS and was assigned to Bard

Early College High School (Bard). At the end of that year, she was served with tenure charges for the preceding two years and temporarily suspended from teaching. Those charges were dismissed, and in the middle of the 2014-2015 school year she was returned to Bard, again as EWPS.¹ For the 2014-2015 school year, Respondent was assigned to a position teaching mathematics at Westside High School (Westside). The present tenure charges were served upon Respondent after the end of the 2015-2016 school year.

The District has adopted guidelines for teachers and administrators to be followed in evaluating teachers and improving instruction for Newark's students in compliance with the mandates of New Jersey education law, TEACH NJ. The guidelines for the years at issue are embodied in the Framework for Effective Teaching ("Framework"). (D. 50, 51, 53) This document is regularly updated and administrators receive training on it each August and throughout the school year. (See, e.g., Tr. 29-30) Administrators are required to review expectations with faculty as well. (Tr. 30) The document identifies four teaching "competencies" and multiple indicators within each competency. The competencies are: (1) Lesson sequence; (2) Rigor and inclusiveness; (3) Culture of achievement; and (4) Demonstration of Learning. A fifth competency, "Commitment to Personal and Collective Excellence" gets reviewed in the mid-year and year-end summary evaluations. Under the Framework, administrators must observe teachers at least three times each year, and at least four times for teachers who are under a Corrective Action Plan (CAP). The Framework specifies not only the number of

¹ The District refiled its tenure charges for the 2012-13 and 2013-14 school years under Section 8; those charges are stayed pending the outcome of an appeal in the Appellate Division about the reassignment of the charges to the same Arbitrator who heard the original case.

such observations, but the length of the observations, and that they should be a mix of long, short, announced and unannounced. The current set of charges are based upon administration's conclusion at the end of the 2015-2016 school year that Respondent had been repeatedly evaluated as only "partially effective and "failed to demonstrate adequate growth" within the Framework, even after receiving assistance through one-on-one coaching and participation in: Professional Learning Communities (PLC), school-wide professional development, and the school's improvement panel (SIP). (D. 1)

Specifically, the present tenure charges (Charge I) are based upon Respondent's teaching performance during three academic years, when she was assigned to two schools: Bard for the 2013-2014 and 2014-2015 years and Westside for the 2015-2016 year. The remaining tenure charges (Charge II) are based on "other" conduct during the same years.

2013-2014. Bard High School Early College. Respondent was notified on August 26, 2013 that she was assigned to Bard, effective September 3, 2013 as an "additional support staff member for the 2013-2014 school year." She arrived on the first day of school in time to attend the school's beginning-of-the-year faculty meetings. (Tr. 1088) While at Bard, Respondent remained in EWPS status. (R. 58) For the fall semester of that year, Respondent did not have an assignment for the first approximately two weeks. (Tr. 1093-4) She was then assigned, not to be the teacher of record for any class, but to assist and support two teachers: Ms. Nagarsheth, who taught two 10th grade algebra and geometry classes, and Dr. Schnidman, who taught one physics class. Principal Weinstein (Tr. 607-8) and VP Ween (Tr. 690, 724-5) described the assignment with Ms.

Nagarsheth as “co-teaching.” However, VP Ween was not sure that anyone at the school formally advised Respondent that she was team-teaching that fall. (Tr. 736) Respondent was not the teacher of record in PowerSchool, the District’s computer database, and she had no access to PowerSchool; she had no student roster; she provided no lesson plans or assessment tests; and she administered no grades. (Tr. 1105) When either teacher was absent, she did not substitute-teach the class; rather a sub was brought in. (Tr. 1101-2)

Respondent testified that her duties, as described by Principal Weinstein, consisted of supporting both teachers in the classroom and working with students. (Tr. 1095) Each of the teachers “would tell me to help certain students when they were in groups or they had independent work, then I would circulate around the class giving students some support, students that needed some reassurance on what they were doing.” (Tr. 1102) Respondent also sat in the library and tutored students, some of whom were in the classes she supported, as well as others who simply signed up for assistance. (Tr. 1099-1100) Principal Weinstein was aware of her tutoring activities, because his office was also in the library, and he saw her working with students (Id.), as did VP Ween (Tr. 728).

In the spring semester, Respondent was again assigned to support Ms. Nagarsheth teaching 10th grade students in algebra and geometry and Dr. Schnidman teaching physics, and she began supporting Dr. Beridze, who taught college algebra. She also attended district-wide Math Olympics meetings. Tr. 1107-114. Both Dr. Weinstein and Dr. Ween testified that Respondent taught 4 college algebra students and was the teacher of record. (Tr. 609; Tr. 703, 731-2, 748) However, Respondent testified that in the spring, just as in the fall, she had

no roster of students, was not the teacher of record for anyone. (Tr. 114) Dr. Weinstein, in his letter recommending tenure charges, appears to agree with Respondent, because he describes her spring assignment as working with 6 students “within a larger class,” only four of whom showed up. (D. 27, p. 416) One again, Respondent did not have access to PowerSchool to input grades. (Tr. 114) Dr. Ween testified that at some point Respondent did get access to PowerSchool, but could not say when that was. (Tr. 786-7) Dr. Beridze asked her to work particularly with four students, but for the most part she worked with them in Dr. Beridze’s classroom. (Tr. 1112) In addition she worked with a particular student in Ms. Nagarsheth’s class for one-on-one tutoring at least twice a week the whole semester. That student did pass the class. (Tr. 1109) As in the fall, Respondent did not substitute teach when the teachers she was supporting were absent. (Tr. 1117)

CAP. On October 15, 2013, Respondent met in the school library (Tr. 1121) with Dr. Dumaine Williams, one of the Vice Principals at Bard, and signed a Corrective Action Plan (CAP) (D. 31). The CAP contains no reference to any Student Growth Objectives (SGOs). Respondent testified:

- She did not prepare any part of the CAP (Tr. 1120, 1127);
- On its face, the CAP refers to a year-long “College Algebra” class (D. 31, p. 1), yet Respondent was never assigned to teach such a class; her only relationship to college algebra took place in the spring semester, when she supported Dr. Beridze, who assigned her to assist specific students. (Tr. 1163, 1112);

- The CAP was identical to the IPDPs that she worked on with other teachers in the math department (Tr. 1124, 1130);
- All of the text was drafted by the other two math teachers, based upon data provided from prior years (Tr. 1125, 1128-29);
- She never received coaching from any mentors or teachers, nor was she ever directed to observe a highly effective teacher (T. 1117-8).

Dr. Williams did not testify in this proceeding. Principal Weinstein testified:

- He does not know if Respondent wrote any part of her CAP (Tr. 835); some departments at BARD have written IPDPs and CAPs together – he does not know if that happened with the math department in 2013 (Tr. 835-7); he never met with Dr. Williams specifically about Respondent’s CAP (Tr. 830); he believed that Respondent worked with Dr. Beridze on the CAP that year, even though she did not teach with Dr. Beridze until the spring (Tr. 812);
- He regarded a faculty meeting on September 20, 2013 that Respondent attended as her training on creating a CAP. (Tr. 611)
- The CAP, which was drawn up and signed in October 2013, refers only to College Algebra, but Respondent did not teach that subject until the spring; he reviewed the CAP before he performed an observation of Respondent on May 8, 2014 (Tr. 831);
- He believed that Dr. Williams had one coaching session with Respondent in the 2013-2014 school year (Tr. 821);

- He relied upon the goals contained in Respondent’s CAP in his annual evaluation to rate her on Competency 4 (Student Growth) (Tr. 643); Respondent’s submissions to him in terms of a portfolio of student material did not provide enough information to evaluate whether the students were achieving the goals he believed she had set (Tr. 644).

Observations and Evaluations. During the 2013-2014 school year, Respondent was observed 4 times; she received midyear and end of year evaluations.²

First, Long Observation by VP Lori Ween on a date in November 2013, shortly before Thanksgiving. (Tr. 689) No formal pre-observation meeting; Post-observation conference on December 23, 2013. (Tr. 757-8) Rating: Partially effective.

The lesson observed was a jeopardy-type math game. Dr. Ween approved the lesson in advance: since Respondent was not instructing students Dr. Ween told her, “Okay, I’ll observe you doing that [the game] because I have to observe you” (Tr. 1149). Respondent planned the game with the two math teachers she supported. (Tr.1144) VP Ween was critical of: (a) how long it took to get the game started; (b) Respondent was late to class, and Ms. Nagarsheth had to start the class; (c) the game included both physics and math questions which confused the students; (d) Respondent did not know some of the answers and was unable to help the students recognize when the answers were correct; (e) instruction was not differentiated; and (f) not all students participated. (D. 32, Tr. 690-694) On

² In his recommendation for tenure charges, Dr. Weinstein states that Respondent was observed three times formally, and, in addition, was informally observed in a coaching session by the VP of Culture and Climate. (D. 27, p. 415) I cannot verify his statement.

the plus side, the students enjoyed and were engaged by the game. (D. 32, p.1589) Respondent filed a response to this observation, explaining that it was standard practice for Ms. Nagarsheth to open class by reviewing homework; and the game had been planned to use some math-related physics questions, both to challenge the students and fulfill the need for interdisciplinary teaching. (D. 32, p. 1594)

Mid-year Review by VP Ween, conference on February 14, 2014.

Rating: partially effective. VP Ween testified that Respondent failed to submit a portfolio until after the deadline and it was incomplete, which affected Dr. Ween's ability to assess progress on CAP goals in the midyear review. (Tr. 697) VP Ween, quoting extensively from her long observation in the fall, was critical of Respondent's failures to show coherent planning or understanding growth of her students. Although Dr. Ween testified that she based the midyear on informal observations of Respondent in addition to the one formal observation of the Jeopardy lesson, she was unable to identify a single date or class that she had observed and she took no notes of any such informal observations. (Tr. 702-3, 53)

VP Ween also noted that Respondent's attendance and punctuality were a problem. (D. 32, p. 1575) Respondent testified that she was often tardy due to the special needs of a teenage child who lived with her. (Tr. 1157) Dr. Ween did not give a specific student growth objective score in her midyear examination of Respondent, testifying that it was not part of the review process. (Tr. 768)

Second, short observation, by VP Ween, signed on February 27, 2014.

Unannounced. Rating: Effective.

VP Ween observed Respondent as she proctored an examination. She made no notations about evidence of strengths or growth. She does not remember how or why she chose to observe a proctoring session, although, as part of a teacher's duties, "it is up for evaluation." (Tr. 772) Respondent is the only teacher she has ever evaluated performing proctoring duties. Respondent testified that she was unaware she was being observed. VP Ween did not discuss the observation with her other than to inform her that it was rated "effective." (Tr. 1162-3)

Third, long Observation, by Principal Weinstein on May 8, 2014, signed May 23, 2014. (D. 39) Pre-observation conference May 7, 2014. (D. 39, p. 1519, Tr. 633-34) Rating: Partially effective.

This was an observation of Respondent teaching college algebra to the four students assigned to her for assistance. Principal Weinstein was critical of: (a) Respondent's unfamiliarity with some of her students' names; (b) the lesson could have been better connected to prior learning; (c) when students were confused, some of the adjustments she tried to make did not work; (d) not all of the students participated, indicating that some were not mastering the subject matter (Tr. 635-7); and she had the same lesson objective for three days in a row (D. 39, p. 1541).

Fourth, short observation, by VP Ween on May 12, 2014, unannounced, with the post-observation conference and signing on May 28, 2014. (D. 40) Rating: Partially effective.

VP Ween was critical of: (a) the pacing of the lesson; uneven participation by the students; not enough time for independent student work.

Annual Evaluation, by Principal Weinstein, conference with Respondent on May 14, 2014, signed May 23, 2014. Rating: Partially effective.

Principal Weinstein testified that he based the annual evaluation on “all of the observations that were done at that point.” (Tr. 639)

Other issues. Bard’s administration was concerned about aspects of Respondent’s performance other than her teaching competence. Only two of those issues, however, resulted in any form of reprimand or memo to Respondent’s file.

Attendance. In March, 2014, Respondent received a standard letter advising her that he had accumulated 5 absences. (D. 28) She received a second letter identified as a “Warning Letter” on June 3, 2014 advising her that she had by then accumulated 9 absences and that continued absenteeism could result in “further disciplinary action.” (D. 41, p. 1494) The District took no further action. In his recommendation for tenure charges, Principal Weinstein mentioned Respondent’s tardiness. (D. 27) However, there is no evidence that Respondent was warned or reprimanded during the year for tardiness.

Reprimands. VP Ween placed a letter in Respondent’s file for improperly proctoring the ACT Explore exam on April 23, 2014 and speaking in a disrespectful way to her co-proctor. (D. 35) Dr. Weinstein placed another letter in her file for being AWOL on April 24, 2014 (D. 36, p 1557) , although Respondent in fact was attending a Math Olympics event on that day in the district. (Tr. 1166-7)

Tenure Charges. At the close of the 2013-2014 academic year, Bard notified District administration that Respondent had received a rating of partially

effective for the year and recommended the filing of Tenure Charges. (D. 27)

Those charges were in fact brought in August 2014. (R. 59)

2014-2015. Bard High School Early College. Because of pending tenure charges, Respondent was put on leave before the fall semester of 2014-2015. After those charges were dismissed,³ Respondent was informed of her return assignment to Bard via email dated January 13, 2015. (R. 3) The administration of Bard was not initially notified that she had been reassigned and was surprised when she arrived at school. (Tr. 1246) Respondent sat in the library or in Dr. Morris' tenth grade geometry class until the start of the second semester (Tr. 1247), at which time she was assigned her own tenth grade geometry class. She was also assigned to assist Mr. Bonnett with his Algebra II class and she subbed for Dr. Silverman, a chemistry teacher. (Tr. 1249, 1253) That semester her supervisor was Dr. Adair, a new Vice Principal at Bard in charge of the math department. (Tr. 1255)

CAP. Bard administrators advised Respondent that she had to have a CAP for the 2014-2015 school year. On March 27, 2015, the day before spring break, VP Adair met with Respondent and presented her with a copy of a draft CAP that he had prepared. (D. 42, Tr. 1258, Tr. 1509) He prepared the draft because he had made more than one request of Respondent to draft the document, but "I was not getting the draft or getting the response" and "I wanted to make certain that I did not interfere with the process." (Tr. 1510) VP Adair

³ The charges covering the 2013-14 school year that were brought in 2014 are the subject of an appeal that is pending in the Appellate Court. (R. 60) In the meantime, those proceedings are stayed. (R. 62)

believed “I was helping her in a process that was already uncomfortable for her.”
(Id.)

At the meeting, VP Adair asked her to review and modify the document.
(Tr. 1261, TR. 1511) Respondent characterized the conversation as brief, perhaps
five minutes long; there was no collaboration between them. (Tr. 1263-4)
Respondent did write in one portion of the CAP after she returned from spring
break (Tr. 1261), namely, the students’ starting point that she obtained from their
teacher in the fall semester. (D. 42, p. 1490, Tr. 1262) On May 5, 2015
Respondent met with VP Adair again. At that time he presented her with a
version of the CAP that he subsequently claimed they had “drafted together;” he
also claimed she had refused to sign the CAP. (R. 8) Respondent rejected that
characterization of how the document had been developed, but said in an email
that she was “open to a discussion resolving this matter.” (Id., Tr. 1278)
Respondent also discussed the matter of a CAP with Principal Weinstein in a
meeting with her union representative that took place later in May. (Tr. 1271)

Sometime in April or early May Respondent sought guidance from the
state Department of Education as to whether she was supposed to be on a CAP;
she felt that since the previous charges against her had been dismissed, she was
starting over and therefore should just have an IPDP (Individual Professional
Development Plan). A Ms. Wright at the state department and her union both
told her that she should not have a CAP. (Tr. 1273-1275) She conveyed that
information to Principal Weinstein (Tr. 1276), but the guidance he got from the
District was that she did have to have a CAP. (Tr. 939-47) The matter was not
resolved, and Respondent never signed that or any other version of a CAP for the

2014-2015 academic year, although she testified that she would have signed the proposed CAP at the May meeting with Dr. Weinstein if she had been given an opportunity to do so. (Tr. 1280) Her annual evaluation took place three weeks after her meeting with Dr. Weinstein regarding the CAP. (Tr. 1280)

Observations and Evaluations. In the spring semester of 2015, the only semester that Respondent taught at Bard during that school year, she was observed three times, two short and one long observations, by two administrators and a fourth time by a peer evaluator. She received mid-year and end of year evaluations.

First, short observation, March 25, 2015 by Principal Weinstein, announced, with pre-observation conference also on March 25, 2015 and post-observation conference on April 14, 2015. Rating: Partially effective. (D. 43, R. 31) This was a 30 minute observation of her 10th grade math class. Principal Weinstein was critical of Respondent's difficulty using the SmartBoard, some unnecessary delays, tailoring instruction to meet some student needs, and joking about a student who spoke slowly. (Tr. 655-6) He referred to the CAP, although it was not completed at the time. (Tr. 658) Respondent filed a written response, objecting to comments about a CAP that had not yet been agreed upon, the short notice of a pre-conference only 35 minutes before the observation, and a post-conference so long after the observation as to be unhelpful. (R. 31, p. UW 40) Respondent also explained that she had a routine for the beginning of each class to help her students get focused; she had good rapport with her students and her students were all participating with the majority demonstrating enthusiasm toward learning. (Id.)

Second, long observation, May 5, 2015 by VP Adair, announced, pre-observation conference May 4, 2015, and post-observation conference on May 8, 2015. Rating: Effective. (R. 32) This was a lesson for her 10th grade geometry class on how to use the Inscribed Angle Theorem to develop relationships between circles, chords and arcs. It was a subject that the class had begun in a previous lesson. Adair found that most students were able to get correct answers and that the pacing and momentum seemed appropriate for most. He noted that there were opportunities to go deeper into the material. (R. 32, p. UW48)

Mid-year Review by VP Adair, dated May 15, 2015. Rating: Partially effective. (D. 45) Since Respondent only arrived and started teaching at Bard that academic year in February, the “mid-year” was actually a mid-semester review. VP Adair was critical of deficiencies in the inclusiveness and rigor of Respondent’s lesson planning (Tr. 1524-5), of failing to get all of her students involved (Tr. 1526), not correcting students when their answers were not completely accurate (Tr. 1527), and not using data to determine if students were progressing toward mastery (Tr. 1527-8). Respondent asked Adair to model a lesson for her, but that never occurred, according to Adair, because Respondent never gave him the lesson she wanted him to model. (Tr. 1530) Adair acknowledged that the time spent observing Respondent was “short,” but he attributed that to fact that even a draft CAP was not presented until late in the semester. (Tr. 1531)

Third, short observation, May 29, 2015 by VP Adair, unannounced, with post-observation conference on June 12, 2015. Rating: Effective. (D. 46, R. 34) This was a 25 minute observation of Respondent’s 10th grade geometry class.

Respondent had completed a “Do Now” activity, but the observation itself took place when the students had relocated to the computer lab for independent work. (R. 34, p. UW64) Adair noted that Respondent made herself available to students as they requested her assistance, and she was able to assist them, tailoring strategies that reflected her knowledge of her students and that would lead to mastery. The students were enthusiastic as they worked collaboratively to solve the problems. (Id., p. UW 65) The few comments that Adair seemed to have as “growth areas” had to do with the program the students were using, The Khan Academy, rather than deficiencies in Respondent’s assistance to students (Tr. 1533-36), although he observed that she was not moving around the room to see if students needed her help before they came to her. (Tr. 1538)

Peer Evaluation, June 1, 2015 by Amy Tepper. Long observation. Rating: Highly Effective. An outside teacher performed a long, peer observation of Respondent’s 10th grade geometry class. She found “nearly all students demonstrated enthusiasm;” Respondent tailored her instruction and that led to success; Respondent moved around the room, providing feedback on different groups of students. (R. 35, p. UW 71, 72)

Coaching. Respondent was provided some degree of coaching during this abbreviated academic year. VP Adair held back on offering coaching until the CAP was agreed upon, or at least a proposed CAP was presented to her. (Tr. 1531) Thereafter he coached her in the context of providing feedback on his observations. (Tr. 1632) At the mid-year review meeting, Respondent asked VP Adair if he would model a lesson for her; he never did that because the opportunity never came up: “she never gave me the lesson that she wanted me to

model.” (Tr. 1530) He testified that Respondent did not attend meetings of her colleagues where she could have collaborated on student growth and on her own development. (Tr. 1529)

Annual Evaluation, June 15, 2015 by VP Adair. Rating: Partially effective. On June 9, 2015, about one week after his short observation of Respondent, but before he had reviewed his findings with her, VP Adair completed an annual evaluation. (D. 47) In preparing this evaluation, he relied upon the other evaluations that had been conducted as well as any evidence that Respondent had shared with him or uploaded. (Tr. 1540) He was critical of Respondent in the areas of differentiating instruction (Tr. 1541), not modeling or demonstrating what she expected of her students (Tr. 1542), not discussing with students why they had picked correct or incorrect answers when they did so (Tr. 1543, 1544), not using data effectively to guide instruction during the semester (Tr. 1543), although he acknowledged that Respondent’s students in fact performed well on their final exam with a passing rate better than 80%, which indicated that in fact the students mastered the material. (Tr. 1545) Adair noted that during both of his observations, “the lessons were standards-based and grade-level appropriate,” but he faulted that there was no written lesson plan, even though he acknowledged that written lesson plans were not required at Bard. (Tr. 1626) Mr. Adair placed emphasis on Respondent’s failure to draft a CAP or IPDP, although he acknowledged that she uploaded a document in which she set goals for herself. (D. 47, p. 1421) He also faulted her for not attending weekly department meetings more than once per month. (Id., Tr. 1422) He found no fault with her attendance or punctuality. (Id.)

As to his findings with regard to the portions of Competency 4 where objective, quantifiable student growth should be reported, Mr. Adair wrote the following, in relevant part:

“(4d) There is still no evidence [Respondent] is using data to help her plan instruction. ***

(4e) [Respondent] is confident she understands her students and their abilities. However, she has not been able to provide evidence to support her claims***

((4f) ***[Respondent gave her students multiple assessments that she has been using to help determine progress. She administered a district Geometry final consisting of 25 questions where the class mean was better than 80%. The challenge with data occurred throughout the semester when data was not being used to track and assess student progress. It was difficult to determine if students were mastering objectives because there was no data available that measured student progress as the data that has been shared at the end of the course.***”

Other issues. The District presented evidence that the Bard administration was concerned about aspects of Respondent’s performance other than her teaching competence. None of those issues, however, resulted in any form of reprimand or memo to Respondent’s file.

Failure to cooperate. According to VP Adair, Respondent did not cooperate with him in their discussions about her CAP or other matters, refusing to meet with him unless she could have a union representative present. (Tr. 1519-20) She was “not receptive” to VP Adair’s coaching or comments, “she received it as my criticizing her performance, as opposed to an opportunity for us to work together to grow in her performance.” (Tr. 1531) She did not upload data or provide portfolio materials to demonstrate her students’ progress. (Tr. 1543-4) In addition, she did not participate in the school’s professional learning community:

[Respondent] did not involve herself in the collaboration that took place with the other employees in the department. And that was based primarily on the fact that [Respondent] was not present whenever her colleagues would meet, and that I was not aware of her meeting with any of the colleagues at any time that might have been convenient for her to collaborate on student growth and development.

(Tr. 1529)

Aftermath of 2014-2015 school year. No tenure charges were filed against Respondent at the conclusion of the 2014-2015 school year.

2015-2016. West Side High School. Over the summer of 2015, Respondent assumed she would be returning to Bard, and reported there on September 2, 2015. The administration was surprised to see her, because she wasn't on the school's budget. Later in the day, VP Ween handed Respondent a letter from the District, directing her to report on September 8, 2015 to Newark Vocational, one of the schools on the Westside campus. (R. 9, Tr. 1337-9) Respondent's principal for the 2015-2016 school year was Larry Ramkissoon; her VP and immediate supervisor was Henry Ogele.

Respondent's status at Westside was no longer that of a teacher without position (EWPS); instead she was in a regular budgeted position. (Tr. 1346) On September 10, she was given a schedule to teach three classes: two twelfth grade pre-calculus and one ninth grade Algebra 1. (TR. 1341-5) She also volunteered before and after school to tutor students, putting out a sign-up sheet. Students from her own and other classes came to her for help. (Tr. 1358-60)

The school's schedule provided for blocks of 80 minutes instruction. Respondent told VP Ogele via email dated September 13, 2015 (D. 3, p. 1405) that she had never taught an 80-minute block before, and asked for his guidance.

He met with her (Tr. 318) and arranged for her to observe a class taught by the lead math teacher, Mr. Bhatt. (Tr. 316)

Respondent initially had about 30 students in each of her pre-calculus classes and over 40 in the Algebra 1 class. (Tr. 1348) All of the students she was assigned to teach were enrolled in Newark Early College, another of the schools on the Westside campus. (Tr. 1344) In the spring, she continued to teach the same pre-calculus classes, although the number of enrolled students dropped to around 20 in each (Tr. 1354-6); she did not teach the Algebra I class in the spring. (Tr. 1352)

Respondent testified in this proceeding, and complained to the administration, of the difficulty in managing her students, particularly in the Algebra I class. Some of the students were not listed in PowerSchool, the District's computer database. (Tr. 1350) Three of the Algebra students had IEPs that required extra in-class support in the form of another teacher or an inclusion teacher (Tr. 1353). In November the administration assigned a second teacher, Mr. Douglas, to her class (Tr. 1353); he was certified in special education but not in math. (Tr. 1372) Three of the pre-calculus students in her afternoon class were also special needs students, and Mr. Douglas helped with these as well, including throughout the spring semester. (Tr. 1372-3) In addition, she had significant problems with disruptions to her class. These are discussed below.

CAP. For the academic year 2015-2016, Respondent was on a CAP. She participated in a "goal-setting conference" on October 14, 2015 with both her principal, Larry Ramkissoon, and her VP, Henry Ogele. She and Principal Ramkissoon signed the CAP on October 15, 2015. (D. 4) Principal Ramkissoon

testified that there were other meetings regarding the CAP in addition to the one on October 14, although he didn't remember how many. (Tr. 103) VP Ogele testified that the CAP was created "in collaboration with the teacher and immediate supervisor, principal" (Tr. 326); Principal Ramkissoon characterized the process as "Absolutely" collaborative (Tr. 107); and Respondent agreed that the process was collaborative (Tr. 1390).

During the goal-setting conference, her supervisors agreed with Respondent's assessment of where her students were in terms of readiness to learn the prescribed materials. They then agreed upon goals for the two pre-calculus classes Respondent was assigned to teach. Although Respondent was also assigned to teach an algebra class, the CAP was limited to the two pre-calculus classes, because, according to Principal Ramkissoon, the administration's goal "is not to make the Corrective Action Plan burdensome so it's unattainable. Quite the opposite, it tried to provide an opportunity to verify that the teacher has grown in this." (Tr. 43)

For the students in one pre-calculus class, they agreed upon the goal "By the midyear, at least 10/30 students would be able to factor polynomials where $a > 1$ and find the root of a polynomial using the quadratic formula." (D. 4, p. 1398, Tr. 37) For the other class, they agreed upon the goal "By the midyear, at least 15/30 students would be able to factor polynomials where $a > 1$ and find the root of a polynomial using the quadratic formula." (Id, p. 1400, Tr. 38) Principal Ramkissoon identified the goals in the CAP as the Student Growth Objectives required by Achieve NJ. (Tr. 96) Both VP Ogele and Respondent also equated student learning goals with the SGO required of a teacher. (Tr. 447, 1390)

The CAP identified specific action steps for Respondent (using assessment data to identify students needing additional support; analyzing the assessment data to develop action plans; designing lessons with a co-teacher; developing plans to work with individual students and small groups; consistently submitting planning documents) and for the administration (coaching Respondent, scheduling a teacher coach to support and co-plan with her; providing her with feedback on her planning documents). (D. 4, p. 1401)

At the mid-term evaluation, Principal Ramkissoon testified that VP Ogele determined Respondent did not meet either goal. (Tr. 111, 115, 449) VP Ogele testified, with respect to the first goal, that he based his conclusion on his January 28 observation of the class, and on student work Respondent provided to him after the class was completed, which showed that 3/13 students met the objective, rather than 10/30. (Tr. 449-51) VP Ogele was unsure whether there were still 30 students in the class at that point. (Tr. 449) With respect to the second goal, VP Ogele did not recall whether Respondent reached that goal. (Tr. 453) Respondent testified that in fact she did meet the first goal. She placed in evidence student work (R. 52, 53), including student scores on mid-term examinations on quadratic equations and trinomials, showing her students successfully passed these examinations. (R. 52, p. UW213, 214) The test scores were available to VP Ogele because they were in PowerSchool and Agile Mind. (Tr. 1715-17) Respondent also presented the documents to VP Ogele during a meeting with him, and he “kind of looked through them and then he pushed them aside.” (Tr. 1713-14)

The charges drafted by Principal Ramkissoon include findings that Respondent was “not successful in getting the majority of her Algebra or Pre-Calculus students to demonstrate mastery of the Common Core Standards for Mathematics.” He goes on to cite the PowerSchool records of end-of-year testing as showing only 76% of Algebra students earned an “F” or “D,” while 58% of Pre-Calculus students earned an “F” or “D”. (D. 1, p. 1154)

Coaching. Respondent was provided with extensive coaching during the school year to help her improvement. Her primary coach was VP Ogele, who met with her in one-on-one sessions in September, October, January, February, March, April and May. (D. 1, p. 1152) She also received personal coaching from Edith Battle, a member of the school’s SIP (School Improvement Panel) and “academic interventionist” at Westside, who, though not a math teacher, has won accolades for her teaching and is used by the school to assist teachers on such issues as planning, lesson design and sequence. (Tr. 191, 193) Ms. Battle was assigned to work with Respondent beginning in January 2016, (D. 11) as was Mr. Bhatt, the Lead Math Teacher. (D. 13, p. 1313) Ms. Battle had an initial session with Respondent, which VP Ogele also attended on January 11, 2016. She then accompanied Respondent as they observed another teacher’s algebra class on January 15, 2016, after which she “debriefed” Respondent on January 19, 2016. She also observed Respondent teach an Algebra class in March; she found Respondent executed every component of the entire lesson design and focus, within the suggested time frame (Tr. 197); it was an effective lesson (Tr. 200). Although Respondent asked Ms. Battle to meet again, at the scheduled time Ms. Battle found Respondent was absent. (Tr. 202-3)

Another master teacher, Ms. Ragoo, was assigned by VP Ogele to assist Respondent, particularly with classroom management issues. This occurred in September of 2015 after Respondent reported problems with student behavior, and VP Ogele and Ms. Ragoo visited her classroom and intervened. (D. 5, p. 1379) Respondent testified that Ms. Ragoo never coached her (TR. 1402); however Respondent acknowledged turning to Ms. Ragoo for guidance after a classroom incident in February 2016. (R. 19, Tr. 1702) Respondent also went with Ms. Ragoo to observe a class taught by Mr. Bhatt on September 17, 2015, after Respondent asked VP Ogele for assistance since she had never taught an 80 minute block. (D 3, p. 1405-7) In addition, Respondent worked with Mr. Bhatt in January and attended a workshop he gave on instruction. (Tr. 1412-3)

All of these coaching activities were coordinated through the formal work of the School Improvement Panel (SIP), whose members (Ogele, Battle) met with Respondent three times in January 2016. (D. 11)

Observations and Evaluations. In the 2015-2016 school year, Respondent was observed five times, three short and two long observations, by two administrators. Only one of the five, in the fall semester, was announced, and preceded by a pre-conference. She received mid-year and end of year evaluations. Feedback for her last two observations took place the day before and the same day as her year-end evaluation.

First Short Observation, November 13, 2015 by VP Ogele, unannounced, post observation conference on November 12 or 13, 2015. (Tr. 1426, cf. 506) Both parties signed the document on November 13, 2015. (D. 7, p. 1360) Rating: partially effective. This was an hour and 19-minute observation of

Respondent's morning pre-calculus class. VP Ogele was critical of Respondent's organization of the lesson, its pacing and momentum, lack of tailored instruction; several times the students were confused about what she expected of them. (D. 7)

Second, Long Observation, January 28, 2016 by VP Ogele, announced, with pre-conferences on January 20 and 27, 2016, and post-conference on February 2, 2016. (D. 15) Both parties signed the document on February 4, 2016. (D. 15, p. 1276) Rating: Partially effective. This was an hour and a half observation of Respondent's twelfth grade morning pre-calculus class. VP Ogele praised Respondent for the clarity of her instruction, her positive interactions with her students and the enthusiasm her students demonstrated, but was critical of the lesson sequence, her modeling of the methodology, the pacing and momentum of the lesson, insufficient tailoring of instruction, insufficient checking to be sure her students, most of whom were somewhat confused, understood the material. (D. 15)

Respondent submitted a detailed six-page response to this observation. (R. 40) She countered specific observations with a detailed explanation of how she had in fact demonstrated the competencies questioned. Rather than post the rebuttal on BloomBoard, because it was too long to fit in that format, she informed her principal that she was submitting a rebuttal and sent it to the Evaluation Committee. (Tr. 1435-6)

Mid-Year Review, February 9, 2016 by VP Ogele. Rating: Ineffective. (D. 16) Although VP Ogele had rated Respondent "partially effective" on each of his two observations of her work in the classroom, in this review, he rated her as "ineffective." He noted only one strength: communicating content more

effectively. (D. 16, p. 1255) He reported on actions she had taken to respond to her CAP, steps she would need to continue to take, and the steps taken by administration. (Id., p. 1259) In the review, he criticized her, inter alia, for not consistently submitting planning documents, for the pacing and momentum of her lessons, for not collaborating sufficiently with her colleagues, for insufficiently tailoring instruction, for lack of precision in what she required from students, for not having high enough expectations from her students and not submitting sufficient assessment data.

With respect to the section on Competency 4, where the administration is supposed to enter its findings on Student Growth Objectives, VP Ogele entered the following comments, among others:

4c. “Demonstration of learning: There is inconsistent or no evidence that students master the objective as evidenced from formal observations on 11/9 and 1/28. The most recent observation indicates that students were helping each other during independent practice which compromised the integrity of the artifacts. As a result, there is no evidence to support if students mastered lesson objective.”

4d. “Teacher has not submitted any assessment data or corrective action plan as requested; that help provide insight as to each student’s progress toward mastery as evidenced from write-up on 10/20 and 1/5. As a result, teacher does not have any baseline data to help guide planning an instruction.”

4e. “Understanding of Growth: Teacher’s failure to create assessment data results in her inability to articulate whether students has internalized grade-level standards. As a result, teacher is unable to provide differentiated assignments that will move each students [sic] toward grade-level standards.”

4f. “Progress Toward Goals: There is no assessment data created by teacher. As a result, there is no evidence that students are progressing towards goals.”

(Ex. 16, p. 1257)

In answer to the question whether the teacher is on track to meet the goals that were set, VP Ogele wrote

The teacher is not on track.
The teacher must submit planning documents on time.
Create assessment data and corrective action plan for each unit and use it to guide instruction.
Regularly attend weekly coaching session.
Continue working with SIP Panel.

In response, Respondent gathered together a large number of documents that she felt refuted his conclusions. She offered the documents (R. 53) to VP Ogele at a meeting in the principal's office, but he "ignored it." (Tr. 1442) She also made sure VP Ogele saw documents in the nature of journaling that she had her students prepare to track their progress. (R. 52, Tr. 1444)

Third Short Observation, March 30, 2016 by VP Ogele, unannounced, with post-observation conference on April 1, 2016. Rating: Partially effective. (D. 19) This was a 32 minute observation of one of Respondent's twelfth grade pre-calculus classes. VP Ogele noted as positives that Respondent connected the lesson to previous learning, unit objectives and long-term goals, so that the students understood why the skill they were learning was beneficial. He also noted that she required her students to provide a well-structured rationale for their responses, and most students read mathematical terms fluently and accurately. On the negative side, VP Ogele was critical of the pacing and momentum of the lesson, lack of preparation, inadequate planning and tailoring

instruction, inadequate feedback, leading to student confusion. He noted that only 5 students out of 12 were able to complete assigned work.⁴

Respondent prepared a detailed rebuttal to this observation. (R. 42) Noting that even VP Ogele had observed the connection of the lesson to prior learning, unit objectives and long-term goals, Respondent stated she should have been given a highly effective rating since that she had met the framework's requirements. (Id., p. UW 115) She noted in other sections that she was moving her students toward mastery, actively circulating through the class, and celebrating with students who mastered difficult challenges. To Ogele's criticism that a student did not have a calculator, she answered that no calculator was needed for the given activity. (Id, p. UW 116) As before, she did not give VP Ogele a copy of the rebuttal, but sent it to the Evaluation Committee as specified in the Framework. (Tr. 1460)

Fourth Short Observation, May 5, 2016, unannounced, by Principal Ramkissoon. There was a post-observation conference that is recorded on the District form as taking place on May 11, 2016, but which Respondent testified took place on May 12, 2016 (Tr. 1486), the day they both signed the form. (D. 23, p. 1180) Rating: Partially effective. This was a thirty-five minute observation of one of Respondent's pre-calculus classes. On the positive side, Principal Ramkissoon observed that the lesson was organized and students were working productively, participating in the "we do" part of the lesson, some in collaboration with their peers. He also noted that Respondent had appropriately

⁴ In another section of the observation write-up, VP Ogele noted that 5 out of 17 students were able to successfully solve logarithmic functions. There is no explanation for this discrepancy.

tailored strategies to help her students move to mastery, and the students were enthusiastic about learning, with an overall positive atmosphere in the classroom. Nonetheless he found that sometimes her instructions were unclear; she did not challenge students to explain their solutions, be precise, or present supporting evidence; she did not verify student understanding or give adequate feedback to her students. (D. 23)

Respondent prepared a detailed rebuttal to this observation (R. 44), which she sent to the Evaluation Committee. (Tr. 1487) Respondent testified that she asked Principal Ramkissoon to reevaluate her, and that he said he would come and observe her once more, but that never happened. (Id.)

Fifth Long Observation, May 10, 2016 by VP Ogele, unannounced, with post-observation conference on May 11, 2016. Rating: Partially effective. (D. 22) This was an observation of one of Respondent's twelfth grade pre-calculus classes; it lasted an hour and 14 minutes. VP Ogele praised Respondent's lesson for her pacing, spending an appropriate length of time on each lesson component. He also praised the fact that she challenged her students and they showed enthusiasm for learning and supported community values and norms. He observed that she could have done a better job of using questions to guide the students toward mastery and to avoid confusion, and he criticized her for not adequately addressing student questions so they left class without adequate knowledge, and she had difficulty keeping students on task. (D. 22)

Respondent did not agree with VP Ogele's conclusions and prepared a lengthy and detailed rebuttal (R. 46), which she provided to the Evaluation Committee (Tr. 1488-9).

Annual Evaluation, May 12, 2016. (D. 24) This evaluation was prepared by VP Ogele and delivered to Respondent on the afternoon of May 12, 2016, the same day that Principal Ramkissoon held a post-observation conference with her for the observation he conducted on May 5, 2012 and the day after VP Ogele held a post-observation conference with her for the observation he conducted on May 10, 2016 (Tr. 1490-1) Rating: Partially effective.

VP Ogele recorded positive comments in only two areas: competency 5, where he noted Respondent collaborated with her peers and met expectations for attendance and competency 3 (D. 24, p. 1165), for fostering enthusiasm for learning and a positive learning community (Id., p. 1164). He was critical of her performance in connecting lessons to objectives (Id., p. 1162); in pacing, momentum, clarity of instruction, tailoring instruction, demanding precision from her students (Id., p. 1163); in guiding her students to be persistent and strive to meet high expectations, in using data to assess and adjust her lesson planning (Id., p. 1164); and for failing to submit diagnostic assessment data to the administration and inconsistently reporting on student progress (Id., Tr. 1165).

In the sections devoted to assessing student growth, VP Ogele, made the following comments:

4.c. “Demonstration of learning: Evidence from formal observations on 11/9, 1/28, 3/30, 5/5 & 5/10 indicates that over the course of the year, there is inconsistent or no evidence that students master lesson objective. As a result, most students are not moved to grade-level standards.”

4.d. “Using data: Teacher sometimes submits ‘End of Unit’ assessment analysis spreadsheet and corrective action plan as required; as evidenced from write-up on 10/20 & 1/15. As a result, teacher is unable to track each student’s progress toward mastery and to adjust planning and instruction

- Teacher did not submit correction action plan/intervention plan for Unit 3: Rational Functions as requested from email sent to all math teachers on November 9th 2015.
- Teacher submitted analysis sheet (Unit 4) on 4/11. However, teacher did not submit corrective action plan for Unit 4.

As a result of inconsistent submission of assessment analysis spreadsheet and corrective action plan, there is no evidence of teacher using data to guide planning and instruction.”

4e. “Understanding of Growth: Teacher can sometimes articulate whether or not each student has internalized grade-level standards. As a result of teacher’s inconsistent submission of end of unit assessment analysis spreadsheet, there is little evidence to demonstrate student growth.”

4f. “Progress Toward Goals: Data reflect that sometimes students are mastering the objectives of the focus areas.

- Evidence from End of Unit assessment (Unit 3-Rational Functions) indicates that most students did not master grade-level standards. Class mean indicates that 37% mastered grade-level standards.
- Evidence from End of Unit assessment, Block 1, (Unit 4 – Exponential/log functions indicates that 45% mastered grade-level standards.
- Evidence from end of Unit assessment, Block 3, (Unit 4 – Exponential/log functions) indicates that 57% mastered grade-level standards.”

(Ex. 24, p. 1164)

In a later section, VP Ogele repeated one of the two goals Respondent had set in her CAP, namely that at least 10/30 students would be able to factor polynomials where $a > 1$ and find the root of a polynomial using the quadratic formula. In response to the question of what progress students demonstrated around these learning goals, he wrote:

“Observation conducted on 1/28 indicates that most students were not able to factor polynomials/factor trinomials; and as a result could not complete assigned task of finding the vertical asymptote of a function.”

(Ex. 24, p. 1165)

Other Issues. Throughout the school year, Principal Ramkissoon was made aware of complaints from students about Respondent’s teaching and conduct in the classroom. Sometimes complaints came directly to him, while

others were brought to his attention by guidance counselors, parents, and other school personnel. In early October, for example he received a complaint from a senior in Respondent's pre-calculus class, written ostensibly on behalf of other classmates, complaining that Respondent is always late for class; was "holding us back from our learning in various ways;" jumps from one subject to another before the students can understanding the previous topic; lacks control of the class; and does not treat the class with respect." (D. 6, p. 1366) This complaint was followed by six others that same month, complaining variously about Respondent ignoring some of the students, while focusing all her attention on a small group (D. 6, p. 1371) ; yelling at and arguing with students (D. 6, p. 1367-8, 1374); and continuing to jump from one topic to another without helping her students reach understanding (D. 6, p. 1376, 1375, 1373). Principal Ramkissoon met with some of the students and their guidance counselors, and had VP Ogele to follow up with visits to the classroom. (Tr. 57) He told the students that he was not going to replace their teacher, and that they needed sometimes to work out answers to math problems by themselves. (Tr. 56)

In December 2015, Principal Ramkissoon received more student complaints, this time from Respondent's algebra class as well as her pre-calculus class. The gist of these complaints was that Respondent ignored students and did not help them learn (D. 9, p. 1335, 1336, 1339), or wastes student time by teaching below the level of the class (D. 9, p. 1342). (Tr. 58) Principal Ramkissoon and VP Ogele met with Respondent about these student concerns. (D. 10, p. 1332)

In January 2016, the administration received yet another complaint about Respondent, this time from a parent whom respondent had informed that her son was failing math. The parent wrote to the Principal, after she found Respondent to be unprepared for their meeting together, unresponsive to the mother's concerns, and unable to justify the student's poor grade. (D. 12, p. 1320-1 Tr. 59-60)

Finally, on May 5, 2016, Respondent had a confrontation with a student who walked into her classroom without permission and took a friend's phone. Respondent told the student, in effect, "You don't just walk into my classroom." There is dispute about exactly what was said next, but four students wrote statements about the incident. (D. 20) At least three students reported that Respondent told the student, "I'll break your face;" (D. 20, p. 1203, 1205,1206) while another said Respondent exchanged "fighting words" with the student. (D. 20, p. 1204) Principal Ramkissoon had a social worker investigate the incident and interview students. (Tr. 63) He did not necessarily believe the students who complained, since they were friends with one another. (Tr. 66) He suspended the student, because he believed she had been wrong to walk into the classroom and had used disrespectful language to Respondent. He imposed no formal discipline upon Respondent (Tr. 63-64), although VP Ogele sent her an admonishing email referring to her having used "fighting words" about "breaking" the student's face. (D. 25, Tr. 402)

Recommendation for tenure charges. Toward the end of the academic year, on June 3, 2016, Principal Ramkissoon wrote a memorandum to the District Superintendent recommending that tenure charges be brought

against Respondent. He discussed at some length Respondent's deficits in teaching, and her failure to make improvements in the areas identified in Respondent's CAP, noting these same areas had been identified by administrators during the immediate two prior teaching years. Principal Ramkissoon made no recommendation based upon any of the other issues referred to above.

POSITIONS OF THE PARTIES

The District argues that it has met its burden to prove the charges against the Respondent warranting dismissal, in that:

1. The role of the arbitrator in this tenure proceeding is limited by law to determining whether: the District's evaluation failed to adhere substantially to the evaluation process, including by providing a corrective action plan; or if there is a mistake of fact in the evaluation; or the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination or other prohibited conduct; or if the District's actions were arbitrary and capricious.

2. The evidence proves that during each of the three years in question, Respondent was provided with a Corrective Action Plan, the proper number of observations by appropriate administrators, mid-year and annual summative evaluations, and extensive professional development and personal coaching, both on a one-on-one basis and in a group or collaborative setting. Nevertheless, she failed to make any significant improvement. The District properly determined that Respondent had not met her established Student Growth Objectives in mid-year and end of year evaluations of Competency 4, using the method approved by

the Department of Education through the granting of the District's application for waivers.

3. Respondent has offered no evidence of any kind, of any of the defenses provided by law, such as discrimination or bias. Accordingly, the arbitrator must uphold the educational decision made by Respondent's supervisors as to her inefficiency as a teacher.

4. The District has also proven the charges in Charge II of other just cause, having produced credible evidence that Respondent neglected her duty as a tenured teacher and had a pattern of poor classroom management and insubordination toward her supervisors. Over the past three years, she was reprimanded several times for failing to abide by District policies when she was insubordinate to her VP during the proctoring of an exam; when she was AWOL to attend a Math Olympics event; for failing to collaborate with her departmental colleagues; for her frequent tardiness; for ignoring students, improperly grading them, and displaying temper and insulting comments toward them.

For these reasons, the District's decision to revoke Respondent's tenure and terminate her employment within the District should be upheld.

The Respondent, on the other hand, argues that the charges against the Respondent must be dismissed and Respondent must be restored to her teaching position with full benefits and seniority, for the following reasons:

1. The evaluations in each of the three years at issue failed to include statutorily mandated Student Growth Objectives (SGO); SGOs form the core of the new data-driven approach to evaluating teachers on student progress; by ignoring the need for SGOs and substituting subjective criteria for objective data,

the District has failed to adhere substantially to the evaluation process and acted arbitrarily and capriciously;

2. No growth objectives were identified at all in year 2013-14 or 2014-15 and the administrators responsible for evaluating Respondent appeared to have no understanding of that component of the evaluation process; the next year, there were two growth objectives identified by Respondent and the District, but the mid-year evaluation made reference to only one of those, and that reference was factually erroneous; the annual evaluation made no reference to objectives at all; for those reasons, all of the annual evaluations of Respondent are void substantively as well as procedurally;

3. To the extent that Respondent had what may be considered goals in 2015-2016, her supervisors ignored evidence that Respondent, in fact met those goals;

4. The District's evaluations of Respondent failed to adhere substantially to the evaluation process in other ways, notably, (a) each of the three years, administrators conducted observations late in the school year, often just before the final evaluation, with post-observation feedback in some cases the same day as the final evaluation, so that Respondent had no meaningful opportunity to digest the feedback and improve, which is, after all, the purpose of observations; (b) a CAP was imposed on Respondent for 2013-2014 for which she had no input, and referenced a class she did not teach; a proposed CAP was imposed on Respondent for 2014-2015 long after the deadline for developing CAPs, and despite advice she received from the Department of Education that she should not have been on a CAP at all; Respondent understandably resisted signing the CAP;

5. All charges related to the 2013-2014 school year were disposed of in a prior decision by Arbitrator Simmelkjaer in an order dated January 5, 2015, which is the law of the case; the District refiled those charges and they are currently being held in abeyance by Arbitrator Simmelkjaer pending the outcome of an appeal; accordingly all charges regarding that year should be held in abeyance until the appellate division and Arbitrator Simmelkjaer can consider the matter.

6. The “catch all” pleading in Charge Two of “Other Just Cause” should be dismissed, as Respondent requested at this hearing, because (a) it is vague and unspecific; (b) to the extent it repeats allegations about inefficiency in teaching, it is duplicative of Charge One; and (c) the few incidents raised by the District were either factually refuted, or had been handled at the time with either no discipline or in one case, a note to file; certainly these incidents do not amount to cause for removal of tenure.

DISCUSSION

Both parties were represented by counsel in this proceeding and had full opportunity to present evidence and make arguments in support of their respective positions. In the preparation of this Opinion and Award, I have given careful consideration to the testimonial and documentary evidence, the legal authorities cited, and the positions and arguments set forth by the parties. I find the District has proven Charge I of inefficiency against the Respondent for the years 2014-2015 and 2015-2016 for the reasons set forth below. I find the District has failed to prove Charge I of inefficiency for the year 2013-2014. With respect to Charge II, I find the charges must be dismissed.

My authority in this matter is limited. As set forth by statute, my purview is to determine whether the District has substantially followed the legal framework for evaluating a tenured teacher. I must also consider whether the District was motivated to bring these charges due to considerations of political affiliation, nepotism, union activity, unlawful discrimination or any other unlawful conduct. Finally, I must consider whether the District's actions were arbitrary and capricious.

PROCEDURAL ISSUES

Both sides, at different times and for different reasons, have requested me to stay the issuance of my decision and order in this matter.

Charges for the 2013-2014 academic year were dismissed by Arbitrator Simmelkjaer on January 5, 2015. (R. 60) The District refiled, and the case was reassigned to Arbitrator Simmelkjaer. Respondent has appealed the assignment of the case to the same arbitrator who heard it earlier, and it is that issue that is the subject of an appeal pending in the appellate court. In the meantime, Arbitrator Simmelkjaer has stayed the proceedings before him. Respondent urges me to regard Arbitrator Simmelkjaer's decision as *res judicata* and dismiss these charges. In the alternative, Respondent urges me to stay my findings for that year until the pending proceedings in the appellate court and before Arbitrator Simmelkjaer are resolved.

On Friday, March 24, 2017, the District filed a request for stay because it had learned of a pending court challenge to one of the arbitral decisions relied upon by the Respondent that deals with the issue of the District's obligations

under statute to evaluate teachers on Student Growth Objectives. No date is currently set for the disposition of that court case.

For reasons of judicial economy, I decline to grant either request. The parties expended considerable time and resources to place the facts before me and make legal arguments based upon them. And I have used considerable time to review and reflect upon the record. It seems expedient to me to share my findings and conclusions with the parties at this time. To the extent that my decision touches on either of the issues noted above, I discuss those in the appropriate sections of my Discussion. Naturally, the parties are entitled to pursue whatever appeals or stays of my decision they deem appropriate after it has been issued.

GENERAL OBSERVATIONS

As a preliminary matter, I note that there was absolutely no evidence presented, nor argument made by Respondent that these charges were due to any prohibited motivation. Indeed, throughout these proceedings, I observed polite, even at times cordial, relations between the administrators and the Respondent. I therefore limit my review of the evidence to issues of process – whether the administrators in each charged year substantially followed the District’s mandated evaluation system. My review, however, necessarily includes not only what administrators did each year, but what Respondent did as well. Respondent has been on notice for the past four years that her supervisors found her only partially effective as a teacher. The District had the obligation to offer her professional development, mentoring, guidance, and fair and timely observations

and evaluations; she, in turn, had the obligation to work with her appointed supervisors and mentors and try to improve her teaching.

In the first year I am asked to review, 2013-2014, I find, as set forth in detail below, that the District did not substantially adhere to the required protocol for observing and evaluating a tenured teacher. Its actions that year were arbitrary and capricious and cannot be the basis for any adverse ruling on tenure. During the two subsequent years, however, the administrators supervising Respondent did substantially follow protocols. As set forth below, they met the requirements for observing, mentoring and evaluating a teacher in danger of losing tenure due to multiple “partially-effective” ratings. Respondent, however, did not cooperate with her supervisors: she did not do her part. Among other failings, she resisted and ultimately declined to sign a corrective action plan during 2014-2015; she resisted meeting with her supervisors; and she failed to submit data and artifacts both years to show that her students might be progressing to meet the growth objectives established in one year by the administrators alone and the final year by Respondent in collaboration with her supervisors.

CHARGE ONE: INEFFICIENCY

2013-2014 School Year. Bard High School Early College. The District failed to comply substantially with its own established evaluation framework. I find the following irregularities nullify Charge I for that year:

Teaching assignment. Respondent was never assigned a class to teach during the entire academic year. She was, instead, assigned to assist other teachers in various classes, and to mentor and tutor students both in the

classroom and in the library. Although school administrators testified that Respondent was assigned to “co-teach” that year, I find otherwise. There is simply no evidence that she was in any way a partner with the classroom teachers of record. Yet she was evaluated and rated as if she were.

CAP. On October 15, 2013, the day established in the Framework for completing a CAP (D. 50, p. 246), Bard’s VP Williams met with her and presented her with a draft CAP, which she signed the same day. This CAP was fatally defective because it was built around a class that Respondent never taught, namely, college algebra. Respondent was never the teacher of record for such a class. In fact, Respondent had nothing to do, either in a teaching or supportive role, with college algebra for the entire fall semester. It was only in the spring that she met with some college algebra students and that was solely for tutoring/support purposes. Additionally, it is undisputed that Respondent had nothing to do with drafting any portion of the CAP.

Observations. Bard’s administrators conducted the necessary number of observations for a teacher on a CAP – namely, four – and two different administrators observed her, as required. Nevertheless, the observations were fatally defective both in timing and in the choice of lessons to observe. The only observation before the mid-year review was of the game of “Math Jeopardy” on the day before Thanksgiving. While Respondent participated in the planning of this game and led the game during the observation, the activity was planned as well, by the class teachers; it was not a normal instructional period; and Respondent was not the teacher for those students. The post-observation

conference took place on December 23rd, a month after the observation, rather than within 10 days as required in the Framework.

Of the three observations after the mid-year, one was of Respondent proctoring an exam – not teaching. The other two – the only two that can be considered observations of Respondent instructing students – took place on May 8 and May 12, at the end of the second semester and far too late in the term to have any benefit to Respondent as guides for improvement. Indeed, the post-observation conferences for those conferences took place *after* her annual evaluation, which was held on May 14. The point of observations and post-observation conferences, obviously, is to give the struggling teacher feedback on what she is doing well, what needs to be improved, and to give suggestions in time for the teacher to work on improving her instruction. Clearly, the timing of these observations was such that the District gave no meaningful guidance to Respondent throughout the entire year.

Mentoring and Coaching. The only evidence that Respondent received one-on-one mentoring and coaching was Principal Weinstein’s testimony that he thought VP Williams had one coaching session with her that year. Principal Weinstein also testified to group sessions held by the School Improvement Panel, weekly faculty meetings and professional development. None of these group sessions comes close to satisfying the District’s obligation to provide “specific support and periodic feedback.” (C. 26, 18A-6-119 (3))

2014-2015 School Year. Bard High School and Early College. As Respondent points out, this year was shortened: Respondent was suspended from teaching for the entire fall semester because of the tenure charges referred

to above that were ultimately dismissed. However, Respondent was returned to Bard in time to teach the entire spring semester and at that time, unlike the prior year, she was given her own class. She also had a new supervisor, VP Adair, who not only supervised her, but also offered her support, as mandated by the Framework.

The law and regulations clearly anticipate that in some circumstances a teacher may not be in the classroom for the entire year; nevertheless, the evaluation and other protocols apply, on a *pro-rated* basis. See, for example, N.J.A.C. 6A: 10- 4.4 (e) l, which provides:

If a teacher is present for less than 40 percent of the total student school days in an academic year, he or she shall receive at least two observations to earn a teacher practice score.

See also, Framework (D. 50, p. D. 243):

If a teacher hasn't been in your school for the entire year, the number of evaluations can be reduced proportionally based on the amount of time the teacher has been in your school. This is true for teachers new to the district and/or new to the school, as well as teachers who have been out on an extended leave.

I find that the District did effectively and substantially meet the requirements for evaluating Respondent during the spring semester. To be sure, there were aspects of the evaluation process that were not completed. However, I find Respondent, rather than the District, responsible for those failings. The evaluation and review process requires input and work on the part of the teacher as well as her supervisors. Where a teacher fails to cooperate, for example, in the drafting of a CAP or the submission of evidence of student progress, as I review below, she cannot fault the District.

CAP. Relatively early in the spring semester, VP Adair requested, more than once, that Respondent draft a CAP, but she did not respond. So he drafted a proposed CAP and discussed it with her on March 26. Eventually, Respondent did write in one portion of the document (D. 1489), but despite many meetings, emails, and cautions from Principal Weinstein and VP Adair, Respondent never signed the document. She testified that she relied on advice she obtained from the Department of Education in April or early May that she was not required to be on a CAP, and said in this proceeding that she would have signed the CAP in May when she met with Principal Weinstein, but was not given that opportunity. This dispute about the CAP, then, consumed at least two months out of the spring semester.

Notwithstanding Respondent's resistance to the CAP, VP Adair did his best to work with Respondent throughout the year, offering her coaching and being sensitive, for example, by approaching her when she was by herself, not in front of students or colleagues, in the hope that she would not feel he was being antagonistic. (Tr. 1519) Her supervisors ended up treating the proposed CAP that Adair had drafted as Respondent's CAP for the year.

Respondent argues forcefully that because she did not sign the CAP, and should not have been required to do so, the entire evaluation process for the academic year should be void. I cannot agree. She knew that she was obligated to cooperate in the preparation of some kind of action plan for the year, whether an IPDP or a CAP. Instead, she spent months resisting the finalization of any kind of action plan. I cannot fault the administration for proceeding, as best it

could, on the basis of a CAP that it proposed to Respondent, especially when it gave her two months in which to engage and make modifications.

Observations. Respondent has challenged the schedule of observations in this, as in the other years at issue. In this year, the observations took place in the compressed time frame of a single semester, but they were, nevertheless, spaced to provide Respondent with feedback in time for her to make improvements, if she chose to do so. There were three observations by two administrators within the shortened time available, more than sufficient, since the Framework mandates only two if a teacher teaches for less than 40% of the school year.

Before the mid-year (which in this case was a mid-term) review, which took place on May 15th, there were two observations of Respondent teaching her 10th grade math class. The first, on March 25th, was a short, 30-minute observation, conducted by Principal Weinstein, with pre-observation and post-observation conferences; the second, on May 5th, was a long observation by VP Adair, also announced, with pre and post observation conferences. Respondent objected to the first because the pre-observation conference was immediately prior to the observation itself, and because the post-observation conference was 17 calendar days after the observation. Under the Framework, however, those dates are not necessarily non-compliant: a pre-observation conference “should occur within the seven days before the observation” (D. 51, p. 1060), which this did; the post-observation conference “must” follow an observation “within 10 calendar days;” however the 10 days may be extended by the number of days that either party is absent. (D. 51, p. 1061) The record is unclear about whether either

party was absent due to a school break or other cause. In any event, I find the timing of those conferences to be substantially compliant with the Framework and spaced in a fair way to give Respondent time to reflect upon the observations and make adjustments in her teaching. And, it is clear that these observations were thoughtful, and fair. Indeed, VP Adair gave Respondent a rating of “Effective” on his evaluation of the lesson on May 5th.

Before the final evaluation, which took place on June 15th, there was one more observation by VP Adair that was unannounced on May 29, with a post-observation conference on June 12. This, too, resulted in a rating of “effective.” In addition, there was a peer evaluation by an outsider on June 1, 2015 that was rated highly effective.

In sum, I find no basis to fault the number or timing of the observations during the academic term. I note that the District did not press tenure charges after the conclusion of the 2014-2015 school year, but gave Respondent a fresh chance, at a new school, with a real teaching assignment the following year, to continue work on improving her performance.

Evaluations. Respondent has challenged the year-end rating of partially effective that she received for the 2014-2015 school year. In addition to the objections noted above, she objected to the scoring of the ratings. The crux of her objection appears to be that she should not have received a partially effective overall rating when she had received two effective observations out of three in the spring term: she is being unfairly penalized for her failure to execute a CAP.

I find that the administration properly considered Respondent’s lack of cooperation – on the CAP and in other respects – in rendering a final evaluation

for the academic year. VP Adair included in his year-end comments on Competency 5 that Respondent “has not seemed comfortable receiving constructive feedback during evaluation conferences. This has made it difficult to assist her as desired with her professional development.” Further, he noted that she does not attend math department meetings more often than once a month, although the meetings are held weekly, and there was no evidence that she was collaborating with her colleagues. (D. 47, p. 1422) These, too, are valid considerations supporting a rating of “partially effective.”

2015-2016 School Year. Westside High School. I find that throughout this academic year, the administration was in substantial compliance with the District’s evaluation protocol.

CAP. In this year, Respondent was placed in a budgeted position and assigned her own classes to teach. She collaborated with her supervisors, VP Ogele and Principal Ramkissoon, to draft a CAP that included two specific and quantifiable student growth objectives, after she obtained baseline assessment data on her students. The CAP included specific action steps for Respondent to take and for the administration to support her. It was signed on October 15, 2015, the last day set aside for completing CAPs in the Framework. In short, the CAP contained all required elements.

Observations. During the year, Respondent was observed five times by two administrators. The observations were spaced throughout the year, with two occurring before the mid-year review, and three before the year-end evaluation. The last two observations took place shortly before the year-end summative evaluation, with the fourth post-observation conference taking place the day

before and the last post-observation conference on the same day as the annual evaluation. While the timing of feedback for the last observation, in particular, was less than ideal, it also represented the fifth observation of the year: by that time, the administration had given Respondent a great deal of timely feedback so that she knew where she was falling short and what she had to do to improve.

Coaching. During this academic year, Respondent received extensive personal coaching. VP Ogele, a careful and conscientious supervisor, met with her one-on-one every month and the school's "academic interventionist," Edith Battle, an award-winning educator, worked with her beginning in January. Respondent also worked with both Ms. Ragoo, a teacher coach on issues of classroom management, and Mr. Bhatt, the Lead Mathematics teacher. Her development was overseen by the School Improvement Panel, as required by the Framework. In short the District met its obligation to provide "specific support and periodic feedback." (C. 26, 18A-6-119 (3))

Evaluations. Respondent has urged me to find the entire evaluation process defective for the academic year 2015-2016 because the District failed to calculate an SGO score and include that in the mid-year review or year-end summative evaluation. She cites other arbitrators who found evaluations fatally deficient for lack of a quantitative SGO score. I cannot agree with Respondent for several reasons.

I have reviewed the decisions by Arbitrator Simmelkjaer in the *Carroll* case and Arbitrator Bluth in the *Dawkins* case. Both of those cases are factually inapposite in a number of ways. Both concern teachers of the elementary grades

where the rules require calculation of a Student Growth Percentile (SGP) rather than the SGO required in high schools. But that is not the only difference.

In *Dawkins*, there were many deficiencies in the evaluation process, not only the lack of SGOs. To name a few of those deficiencies: much of one year Mr. Dawkins was out due to injuries; he had only 3 months of teaching; all observations and few evaluations were compressed into a two-month period, with two observations occurring on consecutive days, and another year, twice on the same day, so that he had no opportunity to learn from whatever feedback the administration had to give him. In addition, the goal that was set was not a “growth” goal – there was no attempt to obtain base-line data against which to measure achievement – but a “mastery goal.” In other words, the administration did not attempt to measure “growth” or progress.

In *Carroll*, the administration made a “terse statement” that the teacher had not met student learning goals; there was no effort to review metrics as against the baseline data she and the administration had agreed upon. In one of the years at issue, the administration made its annual summative evaluation in April – at least one month earlier than the Framework recommends.

In other words, there were multiple errors in both cases that led the Arbitrators to conclude the District had not followed mandated protocols for teacher evaluation.

The other concern is *how* the District must include quantitative student progress data in the evaluation. The District applied for and was granted a waiver for the years 2014-2015, 2015-2016 and 2016-2017 to “combine the CAP setting conference with the process for developing student growth objectives.”

(D. 52, p. D. 1093) The District's approved application for that waiver specifically considered SGOs and SGP as "additional evidence while calculating the rating for Competency 4 (Student Progress toward Mastery)." (Id., p. 1095) Progress on goals, then, is to be included in the scoring of Competency 4. And, as the District explained to the State, Competency 4 counts for 6 out of 19 points or 32% of the rating, and thus is in compliance with TEACH NJ's requirement that growth be 20% of a teacher's evaluation score. (Id., p. 1096)

Since the State has granted the District a waiver to consider SGOs within the context of observing and evaluating Competency 4, I do not find the failure to separately calculate and score SGO to be a fatal defect in the evaluation process. The District may not ignore student growth measurements, however: the State and District have mandated inclusion of quantitative information about student progress on specific growth objectives chosen by the Respondent in collaboration with her supervisors. That information must be included in Competency 4. The question remains whether the analysis undertaken by the District in 2015-2016 regarding Respondent's work with her students was substantially compliant with that mandate.

In the fall of 2015, Respondent developed two specific and quantifiable growth objectives for two classes, building on base-line data concerning those students. In the mid-term review, VP Ogele noted that Respondent had not provided assessment data. "As a result, there is no evidence that students are progressing toward goals." In the year-end VP Ogele made reference to only one of the two goals. He also noted, in pertinent part:

- “...over the course of the year, there is inconsistent or no evidence that students master lesson objective.” (4c)
- “...over the course of the year, there is inconsistent or no evidence that students master lesson objective. As a result, most students are not moved to grade-level standards.” (4.c.)
- “As a result of teacher’s inconsistent submission of end of unit assessment analysis spreadsheet, there is little evidence to demonstrate student growth.” (4.e.)
- “Evidence from End of Unit assessment...indicates that most students did not master grade-level standards. (4f)

In other words, Respondent did not provide the data necessary for the administration to calculate progress on CAP goals. This conclusion was repeated in a number of places in the documents and in the testimony.

Yes, the District must set goals and objectively and fairly observe and evaluate Respondent and calculate student progress. The District must also offer Respondent meaningful, one-on-one support. But, as I noted above with respect to the prior year, Respondent also must cooperate and submit data to prove her students are meeting the goals set in her CAP. Respondent presented testimony and documents in the form of sheaves of paper to show that her students were doing well, and she presented evidence that over 80% passed her final exam. I am not an educator; I cannot look at those test sheets or scores and conclude that the students did meet the CAP goals. Nor is that my role. The educators entrusted with that role were Principal Ramkissoo and VP Ogele. They looked at the data presented and the data that was absent and concluded that

Respondent had not demonstrated progress toward the SGOs. Their conclusions were reflected in their assignment of numerical values to Competency 4. In so rating the Respondent, they met their obligation to incorporate an objective, quantitative measurement into their evaluation of her efficiency as a teacher.

Conclusion. I find the District has proven the charge of inefficiency against Respondent for the school years 2014-2015 and 2015-2016. I decline to make findings with regard to each and every subparagraph (a) through (s). Instead, I have reviewed the evidence as weighed against the key components of the state’s mandated protocols for reviewing tenured teachers. The District met its responsibility with respect to those protocols and has proven the charges. As to the charge of inefficiency for the year 2013-2014, that charge is not proven and is dismissed for the reasons set forth above.

CHARGE TWO: AND OTHER JUST CAUSE

To the extent that Charge Two, Paragraph 1 “restates” and “re-alleges” the allegations in Charge One, those allegations have been addressed. Paragraph 2, which alleges Respondent has failed to adhere properly to District protocols for “overseeing students and improving her teaching skills,” similarly is a restatement of matters covered in Charge One. Accordingly, both Paragraphs 1 and 2 of Charge Two are stricken as duplicative.

As to the charges in Paragraph 3 of failure to “follow instructions” and violation of District policies and procedures, the District has not pled with any specificity what conduct it considers as under that umbrella. During the course of this lengthy proceeding, the Department introduced testimonial and documentary evidence regarding such matters as unprofessional conduct toward

students, tardiness and absence on one occasion without leave. It is not up to the arbitrator to parse the evidence and tease out what particular actions the District regards as failing to follow instructions or violating policies and procedures; that is the District's duty in its pleadings. Paragraph 3 is dismissed as vague.

Finally, Paragraph 4 charges "The cumulative effect of Respondent's misconduct and inefficiency as set forth above constitutes other sufficient cause sufficient [sic] to warrant dismissal." This is nothing more than an effort to sweep up an unidentified quantity of evidence to fill the bucket of "sufficient cause to warrant dismissal." The reference to "inefficiency," as noted above, is duplicative of Charge One, while the District has not identified what it considers "misconduct." Such vague pleadings are manifestly unfair to the Respondent and must be stricken.

In sum, the entirety of Charge Two is dismissed.

AWARD

The District has established Charge I with respect to academic years 2014-2015 and 2015-2016. Accordingly, Respondent's dismissal for inefficiency is upheld. The remaining charges are dismissed.



Ruth Moscovitch, Arbitrator

Date: March³⁰, 2017

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On March³⁰ 2017, RUTH MOSCOVITCH, whom I know, came before me and acknowledged that she executed the foregoing as and for her Opinion and Award in the above-captioned matter.

John P. Anderson

Notary Public
My Commission expires 11/7/20

JOHN P. ANDERSON
Notary Public, State of New York
No. 01AN6180053
Qualified in New York County
Commission Expires January 7, 2020