

STATE OF NEW JERSEY DEPARTMENT OF EDUCATION  
BUREAU OF CONTROVERSIES AND DISPUTES  
TENURE HEARING

In the Matter of the Arbitration Between  
STATE-OPERATED SCHOOL DISTRICT OF  
THE CITY OF NEWARK

**Claimant**

AND

DARRIN HAWTHORNE

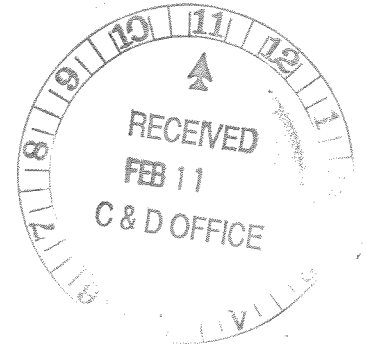
**Respondent**

Agency Docket 266-9/12

**OPINION**

**AND**

**AWARD**



ARBITRATOR: GERARD RESTAINO, ASSIGNED BY THE NEW JERSEY  
DEPARTMENT OF EDUCATION IN ACCORDANCE WITH CHAPTER 26, P.L.  
2012, AND C. 18A:6-17.1

APPEARANCES:

FOR THE CLAIMANT:

BERNARD MERCADO, ESQ.  
TONY MOTLEY  
PAUL OLIVEIRA  
SHAKIRAH MILLER-HARRINGTON  
JAMES CARLO  
LORI TREMARI

COUNSEL FOR CLAIMANT  
PRINCIPAL BRAGAW AVENUE SCHOOL  
MATH SUPERVISOR  
PRINCIPAL MILLER STREET SCHOOL  
PRINCIPAL  
MATH DEPT CHAIRPERSON TECHNOLOGY HS

FOR THE RESPONDENT:

CHARLES AUFFANT, ESQ.  
DARRIN HAWTHORNE  
SHERVEL JOHNSON  
MTIMA FULLER  
MICHAEL DIXON

COUNSEL FOR RESPONDENT  
RESPONDENT  
MATH TEACHER  
MATH TEACHER  
MATH COACH AND RESOURCE TEACHER

## **PROCEDURAL BACKGROUND**

This proceeding takes place pursuant to P.L. 2012, CHAPTER 26 and Title 18, 28 of the laws of the State of New Jersey. The Respondent, Darrin Hawthorne, hereinafter referred to as Mr. Hawthorne/Respondent, is a tenured teaching staff member in the State-Operated School District of the City of Newark, hereinafter referred to as the District. He was a 6<sup>th</sup> grade math teacher assigned to Bragaw Avenue School. The following is a chronological listing of the administrative measures taken that led to the filing of tenure charges against the Respondent.

On or about March 1, 2012, Mr. Tony Motley, Principal of the Bragaw Avenue School, filed tenure charges against the Respondent. On March 1, 2012, a Modified Individual Professional Development Plan (PIP) was developed by Mr. Motley. The Respondent challenges any assertion that he was actively involved in the development of said PIP. On June 29, 2012, Mr. Motley sent a memorandum to Homere Breton, Interim Director of Human Resources, requesting that tenure charges be filed against Mr. Hawthorne.

On July 10, 2012, Mr. Motley submitted a Statement of Evidence enumerating eighty two (82) incidents in support of the tenure charges. On that same day, he also submitted a Notice of Inefficiency Charges. On July 13, 2012, the Respondent was served with tenure charges claiming he was an inefficient teacher. On July 18, 2012, the Respondent's counsel, Charles Auffant sent a letter to Bernard Mercado, Counsel for the District wherein he requested, due to vacation schedules, an extension of time to file a response to the tenure charges. It was agreed that the response was due on August 14, 2012.

September 7, 2012, Cami Anderson, the Superintendent of State-Operated School District, submitted a Certificate of Determination in support of the tenure charges. On that same day, the District approved a resolution authorizing the filing of inefficiency tenure charges against the Respondent, as well as suspending the Respondent for one hundred-twenty (120) days without pay.

On September 12, 2012, Ms. Anderson sent a letter to the Respondent informing him that tenure charges were filed against him. On that same day, Bernard Mercado filed the tenure charges with the Commissioner of Education's office.

On September 13, 2012, Kathleen Duncan, Director of the NJ Department of Education, Bureau of Controversies and Disputes, sent a notice to the Respondent, indicating that he had fifteen (15) days to respond to the charges. That notice was copied to Mr. Mercado and Mr. Charles Auffant, counsel for Mr. Hawthorne.

On September 27, 2012, Mr. Auffant sent a letter to Christopher Cerf, Commissioner of Education, requesting an extension of time due to medical reasons, to submit the Respondent's answer. That extension was granted and on October 5, 2012, Mr. Auffant submitted an answer to the tenure charges.

On October 15, 2012, the undersigned was assigned to be the neutral arbitrator in the matter at bar. Hearings were held on November 26 and December 6, 2012, January 3 and January 11, 2013, at the offices of the District, 2 Cedar Street, Newark, NJ.

On November 21, 2012, the Arbitrator requested of Kathleen Duncan, an extension of time to submit the Award, because the Respondent's attorney's office had been flooded due to Hurricane Sandy. That extension was granted and the Award was

due on January 25, 2013. Due to the limitation in time because of the language in the collective negotiations agreement concerning length of employee work day, the Arbitrator granted additional hearing days and gave the parties an opportunity to submit post-hearing briefs. The briefs were due to the Arbitrator on January 18, 2013. The Arbitrator requested of Ms. Duncan an extension of time due to the additional hearing days and not being able to accommodate all witnesses based upon contractual language. That second request was also granted the Award is now due to Ms. Duncan and the parties no later than February 8, 2013.

**ISSUE**

The parties stipulated to the following issue:

Has the State-Operated School District of the City of Newark met its burden under Chapter 26, P.L. 2012 of sustaining tenure charges of inefficiency against Mr. Darren Hawthorne? If not, what shall be the remedy?

**RELEVANT STATUTORY LANGUAGE**

CHAPTER 26

**AN ACT** concerning school employees, revising various parts of the statutory law, and supplementing chapters 6 and 28 of Title 18A of the New Jersey Statutes.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.18A:6-117 Short title:

1. This act shall be known and may be cited as the “Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act.”

C.18A:6-119 Definitions relative to the TEACHNJ Act.

3. As used in sections 12 through 17, 19 through 21 and 24 of P.L. 2012, c.26 (C.18A:6-117, et al.):

“Corrective action plan” means a written plan developed by a teaching staff member serving in a supervisory capacity in collaboration with the teaching staff member to address deficiencies as outlined in an evaluation. The corrective action plan shall include timeliness for corrective action, responsibilities of the individual

teaching staff member and the school district for implementing the plan, and specific support that the district shall provide.

“Evaluation” means a process based on the individual’s job description, professional standards and Statewide evaluation criteria that incorporates analysis of multiple measures of student progress and multiple data sources. Such evaluation shall include formal observations, as well as post conferences, conducted and prepared by an individual employed in the district in a supervisory role and capacity and possessing a school administrator certificate, principal certificate or supervisor certificate.

“Individual professional development plan” means a written statement of goals developed by a teaching staff member serving in a supervisory capacity in collaboration with a teaching staff member, that: aligns with professional standards for teachers set forth in N.J.A.C. 6A:9-3.3 and the New Jersey Professional Development Standards; derives from the annual evaluation process; identifies professional goals that address specific individual, district or school needs, or both; and grounds professional development activities in objectives related to improving teaching, learning and student achievement. The individual professional development plan shall include timeliness for implementation, responsibilities of the employee and the school district for implementing the plan, and specific support and periodic feedback that the district shall provide.

“Ineffectiveness” or “partially effective” means the employee receives an annual summative evaluation rating of “ineffective” or “partially effective” based on the performance standards for his position established through the evaluation rubric adopted by the board of education and approved by the commissioner.

“Multiple objective measures of student learning” means the result of formal and informal assessments of students. Such measures may include a combination of, but are not limited to: teacher-set goals for student learning; student performance assessments, including portfolio projects, problem-solving protocols, and internships; teacher-developed assessments; standardized assessments; and district-established assessments.

“Professional standards” means the New Jersey Professional Standards for Teachers and the New Jersey Professional Standards for School Leaders recommended by the commissioner and adopted by the State Board of Education.

“Teaching staff member” means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer.

4. N.J.S. 18A:6-9 is amended to read as follows:

Controversies, disputes arising under school laws; jurisdiction.

18A:6-9. The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of

the commissioner. For the purposes of this Title, controversies and disputes concerning the conduct of school elections shall not be deemed to arise under the school laws.

Notwithstanding the provisions of this section to the contrary, an arbitrator shall hear and make a final determination on a controversy and dispute arising under subarticle B of article 2 of chapter 6 of Title 18A of the New Jersey Statutes (c.18A:6-10 et seq.).

5. N.J.S. 18A:6-11 is amended to read as follows:

Written charges, statement of evidence; filing; statement of position by employee; certification of determination; notice.

18A:6-11. Any charge made against any employee of a board of education under tenure during good behavior and efficiency shall be filed with the secretary of the board in writing, and a written statement of evidence under oath to support such charge shall be presented to the board. The board of education shall forthwith provide such employee with a copy of the charge, a copy of the statement of the evidence and an opportunity to submit a written statement of position and a written statement of evidence under oath with respect thereto. After consideration of the charge, statement of position and statement of evidence presented to it, the board shall determine by majority vote of its full membership whether there is probably cause to credit the evidence in support of the charge and whether such charge, if credited, is sufficient to warrant a dismissal or reduction of salary. The board of education shall forthwith notify the employee against whom the charge has been made of its determination, personally or by certified mail directed to his last known address. In the event the board finds that such probable cause exists and that the charge, if credited, is sufficient to warrant a dismissal or reduction of salary, then it shall forward such written charge to the commissioner for a hearing pursuant to N.J.S. 18A:6-16, together with a certificate of such determination. The consideration and actions of the board as to any charge shall not take place at a public meeting.

6. N.J.S. 18A:6-13 is amended to read as follows:

Dismissal of charge for failure of determination by board.

18A:6-13. If the board does not make such a determination within 45 days after receipt of the written charge, the charge shall be deemed to be dismissed and no further proceeding or action shall be taken thereon.

7. N.J.S. 18A:6-14 is amended to read as follows:

Suspension upon certification of charge; compensation; reinstatement.

18A:6-14. Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the arbitrator is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such determination is made. Should

the charge be dismissed at any stage of the process, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed at any stage of the process and the suspension be continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal. However, the board of education shall deduct from said full pay or salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension. Should the charge be sustained on the original hearing or an appeal therefrom, and should such person appeal from the same, then the suspension may be continued unless and until such determination is reversed, in which event he shall be reinstated immediately with full pay as of the time of such suspension.

8. N.J.S. 18A:6-16 is amended to read as follows:

Proceedings before commissioner; written response; determination.

18A:6-16. Upon receipt of such a charge and certification, or of a charge lawfully made to the commissioner, the commissioner or the person appointed to act in the commissioner's behalf in the proceedings shall examine the charges and certification. The individual against whom the charges are certified shall have 15 days to submit a written response to the charges to the commissioner. Upon a showing of good cause, the commissioner may grant an extension of time. The commissioner shall render a determination on the sufficiency of charges as set forth below within 10 days immediately following the period provided for a written response to the charges.

If, following receipt of the written response to the charges, the commissioner is of the opinion that they are not sufficient to warrant dismissal or reduction in salary of the person charged, he shall dismiss the same and notify said person accordingly. If, however, he shall determine that such charge is sufficient to warrant dismissal or reduction in salary of the person charged, he shall refer the case to an arbitrator pursuant to section 22 of P.L. 2012, c.26 (C.18A:6-17.1) for further proceedings, except that when a motion for summary decision has been made prior to that time, the commissioner may retain the matter for purposes of deciding the motion.

C.18A:6-120. School improvement panel.

12. a. In order to ensure the effectiveness of its teachers, each school shall convene a school improvement panel. A panel shall include the principal, or his designee, an assistant or vice principal and a teacher. The principal's designee shall be an individual employed in the district in a supervisory role and capacity who possesses a school administrator certificate, principal certificate, or supervisor certificate. The teacher shall be a person with a demonstrated record of success in the classroom who shall be selected in consultation with the majority representative. An individual teacher shall not serve more than three consecutive years on any one school improvement panel. In the event that an assistant or vice-principal is not available to serve on the panel, the principal shall appoint an additional member to the panel who is employed in the district in a supervisory role and capacity and who possesses a school administrator certificate, principal certificate, or supervisor certificate.

Nothing in this section shall prevent a district that has entered a shared services agreement for the functions of the school improvement panel from providing services under that shared services agreement.

b. The panel shall oversee the mentoring of teachers and conduct evaluations of teachers, including an annual summative evaluation, provided that the teachers on the school improvement panel shall not be included in the evaluation process, except in those instances in which the majority representative has agreed to the contrary. The panel shall also identify professional development opportunities for all instructional staff members that are tailored to meet the unique needs of the students and staff of the school.

c. The panel shall conduct a mid-year evaluation of any employee in the position of teacher who is evaluated as ineffective or partially effective in his most recent annual summative evaluations, provided that the teacher on the school improvement panel shall not be included in the mid-year evaluation process, except in those instances in which the majority representative has agreed to the contrary.

d. Information related to the evaluation of a particular employee shall be maintained by the school district, shall be confidential and shall not be accessible to the public pursuant to P.L. 1963, c.73 (C.47:1A-1, et seq.), as amended and supplemented.

C.18A:6-122. Annual submission of evaluation rubrics.

16. a. A school district shall annually submit to the Commissioner of Education, for review and approval, the evaluation rubrics that the district will use to assess the effectiveness of its teachers, principals, assistant principals and vice-principals and all other teaching staff members. The board shall ensure that an approved rubric meets the minimum standards established by the State Board of Education.

b. Notwithstanding the provisions of subsection a. of this section, a school district may choose to use the model evaluation rubric established by the commissioner pursuant to subsection f. of section 17 of P.L. 2012, c.26 (C.18A:6-123) to assess the effectiveness of its teachers, principals, assistant principals, and vice-principals and all other teaching staff members. In the case in which the district fails to submit a rubric for review and approval, the model rubric shall be used by the district to assess the effectiveness of its teachers, principals, assistant principals and vice-principals and all other teaching staff members.

C.18A:6-123. Review, approval of evaluation rubrics.

17. a. The Commissioner of Education shall review and approve evaluation rubrics submitted by school districts pursuant to section 16 of P.L. 2012, c.26 (C.18A:6-122). The board of education shall adopt a rubric approved by the commissioner.

b. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), to set standards for the approval of evaluation rubrics for teachers, principals, assistant principals and vice-principals. The standards at a minimum shall include:

(1) four defined annual rating categories for teachers, principals, assistant principals and vice-principals, ineffective, partially effective, effective and highly effective;



(2) a provision requiring that the rubric be partially based on multiple objective measures of student learning that use student growth from one year's measure to the next year's measure;

(9) an opportunity for the employee to improve his effectiveness from evaluation feedback;

c. A board of education shall adopt a rubric approved by the commissioner by December 31, 2012.

d. Beginning no later than January 31, 2013, a board of education shall implement a pilot program to test and refine the evaluation rubric.

e. Beginning with the 2013-2014 school year, a board of education shall ensure implementation of the approved, adopted evaluation rubric for all educators in all elementary, middle and high schools in the district. Results of evaluations shall be used to identify and provide professional development to teaching staff members. Results of evaluations shall be provided to the commissioner, as requested, on a regular basis.

#### C.18A:6-17.4. Determination of certain tenure charge.

18. Any tenure charge transmitted to the Office of Administrative Law pursuant to N.J.S. 18A:6-16 prior to the effective date of P.L. 2012, c.26 (C.18A:6-117 et al.) shall be determined in accordance with the provisions of subarticle B of Article 2 of chapter 6 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10, et seq. as the same read prior to the effective date of P.L. 2012, c.26 (C.18A:6-117 et al.).

#### C.18A:6-129. Funds provided.

20. The Department of Education shall provide the funds necessary to effectuate the provisions of this act.

#### C.18A:6-17.1. Panel of arbitrators.

22. a. The Commissioner of Education shall maintain a panel of 25 permanent arbitrators to hear matters pursuant to N.J.S. 18A:6-16. Of the 25 arbitrators, eight arbitrators shall be designated by the New Jersey Education Association, three arbitrators shall be designated by the American Federation of Teachers, nine arbitrators shall be designated by the New Jersey School Boards Association, and five arbitrators shall be designated by the New Jersey Principals and Supervisors Association. The commissioner shall inform the appropriate designating entity when a vacancy exists. If the appropriate entity does not designate an arbitrator within 30 days, the commissioner shall designate an arbitrator to fill that vacancy.

All arbitrators designated pursuant to this section shall serve on the American Arbitration Association panel of labor arbitrators and shall be members of the National Academy of Arbitrators. The arbitrators shall have knowledge and experience in the school employment sector. Arbitrators on the permanent panel shall be assigned by the commissioner randomly to hear cases.

b. The following provisions shall apply to a hearing conducted by an arbitrator pursuant to N.J.S. 18A:6-16, except as otherwise provided pursuant to P.L. 2012, c.26 (C.18A:6-117 et al.):

(1) The hearing shall be held before the arbitrator within 45 days of the assignment of the arbitrator to the case;

(2) The arbitrator shall receive no more than \$1250 per day and no more than \$7500 per case. The costs and expenses of the arbitrator shall be borne by the State of New Jersey;

(3) Upon referral of the case for arbitration, the employing board of education shall provide all evidence, including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. At least 10 days prior to the hearing, the employee shall provide all evidence upon which he will rely including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employing board of education or its representative. The employee shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses.

Discovery shall not include depositions, and interrogatories shall be limited to 25 without subparts.

c. The arbitrator shall determine the case under the American Arbitration Association labor arbitration rules. In the event of a conflict between the American Arbitration Association labor arbitration rules and the procedures established pursuant to this section, the procedures established pursuant to this section shall govern.

d. Notwithstanding the provisions of N.J.S. 18A:6-15, or any other section of law to the contrary, the arbitrator shall render a written decision within 45 days of the start of the hearing.

e. The arbitrators' determination shall be final and binding and may not be appealable to the commissioner or the State Board of Education. The determination shall be subject to judicial review and enforcement as provided pursuant to N.J.S. 2A:24-7 through N.J.S. 2A:24-10.

f. Timelines set forth herein shall be strictly follows: the arbitrator or any involved party shall inform the commissioner or any timeline that is not adhered to.

g. An arbitrator may not extend the timeline of holding a hearing beyond 45 days of the assignment of the arbitrator to the case without approval from the commissioner. An arbitrator may not extend the timeline for rendering a written decision within 45 days of the start of the hearing without approval from the commissioner. Extension requests shall occur before the 41<sup>st</sup> day of the respective timelines set forth herein. The commissioner shall approve or disapprove extension requests within five days of receipt.

h. The commissioner may remove any arbitrator from an arbitration case or an arbitration panel if an arbitrator does not adhere to the timelines set forth herein without approval from the commissioner. If the commissioner removes an arbitrator from an arbitration case, the commissioner shall refer the case to a new arbitrator within five days. The newly-assigned arbitrator shall convene a new hearing and then render a written decision within 45 days of being referred the case.

C.18A:6-17.2. Considerations for arbitrator in rendering decision.

23. a. In the event that the matter before the arbitrator pursuant to section 22 of this act is employee inefficiency pursuant to section 25 of this act, in rendering a decision the arbitrator shall only consider whether or not:

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

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

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

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

b. In the event that the employee is able to demonstrate that any of the provisions of paragraphs(1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.

c. The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.

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

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

#### C.18A:6-124. Regulations.

24. The State Board of Education shall promulgate regulations pursuant to the "Administrative Procedure Act," P.L. 1968, c.410 (C.52:14B-1 et seq.) in accordance with an expeditious time frame, to set standards for the approval of evaluation rubrics for all teaching staff members, other than those included under the provisions of subsection b. of section 17 of P.L. 2012, c.26 (C.18A:6-123). The standards at a minimum shall include: four defined annual rating categories: ineffective, partially effective, and highly effective.

#### C.18A:6-17.3. Evaluation process, determination of charges.

25. a. Notwithstanding the provisions of N.J.S. 18A:6-11 or any other section of law to the contrary, in the case of a teacher, principal, assistant principal and vice-principal:

(1) the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency whenever the employee is rated ineffective or partially effective in an annual summative evaluation and the following year is rated ineffective in the annual summative evaluation;

(2) if the employee is rated partially effective in two consecutive annual summative evaluations or is rated ineffective in an annual summative evaluation and the following year is rated partially effective in the annual summative evaluation, the superintendent shall promptly file with the secretary of the board of education a charge of inefficiency, except that the superintendent upon a written finding of exceptional

circumstances may defer the filing of tenure charges until after the next annual summative evaluation, the superintendent shall promptly file a charge of inefficiency.

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

c. Notwithstanding the provisions of N.J.S. 18A:6-16 or any other section of law to the contrary, upon receipt of a charge pursuant to subsection a. of this section, the commissioner shall examine the charge. The individual against whom the charges are filed shall have 10 days to submit a written response to the charges to the commissioner. The commissioner shall, within five days immediately following the period provided for a written response to the charges, refer the case to an arbitrator and appoint an arbitrator to hear the case, unless he determines that the evaluation process has not been followed.

d. The only evaluations which may be used for purposes of this section are those evaluations conducted in accordance with a rubric adopted by the board and approved by the commissioner pursuant to P.L. 2012, c.26 (C.18A:6-117 et al).

C.18A:6-17.4. Commissioner's authority.

26. The commissioner shall have the authority to extend the timelines in the tenure charge process upon a showing of exceptional circumstances.

Repealer.

27. The following section is repealed:  
Section 1 of P.L. 1998, c.42 (C.52:14B-10.1).

28. This act shall take effect in the 2012-2013 school year, except that section 17 of this act shall take effect immediately. The Department of Education shall take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved August 6, 2012.

## **SUMMARY OF FACTS**

The Respondent has been employed by the District as a mathematics teacher for nine (9) years. He began his employment in 2001 and was assigned to Camden Middle School. During the 2006-2007 and 2007-2008 school years he was also a Math Coach. During the 2007-2008 school year he received an unsatisfactory evaluation. At that time a student filed a complaint against him to the New Jersey Division of Youth and

Family Services (DYFS). After a DYFS investigation he was cleared of all charges and the complaint was dismissed.

At the end of the 2007-2008 School year, Mr. Hawthorne requested a transfer, which was granted and he was assigned as a math teacher to Bragaw Avenue School. He was assigned to the Bragaw Avenue School. The School District has two classroom teacher observation forms: Informal and Formal. On the Formal observation form are areas to be marked: announced and unannounced. An announced observation means that the teacher and the observer will have a pre-observation conference. That conference can be face-to-face, email, or via telephone. After that formal observation, there is a post-observation conference. The unannounced conference does not have a pre-observation conference but does have a post-observation conference following the observation.

The Formal observation form has four domains: (1) planning and preparation; (2) classroom environment; (3) instruction; and (4) professional responsibilities. Those four domains are also found on the annual evaluation form. Listed below are the dates of the observations/evaluations that led to the filing of tenure charges:

Assessment:	Unsatisfactory (0-62%)	Basic (63-75%)
	Proficient (78-89%)	Distinguished (90-100%)

C references Complainant's exhibits

R references Respondent's exhibits

<u>DATE</u>	<u>OBSERVATION/EVALUATION</u>	<u>EXHIBIT NUMBER</u>
June 13, 2008	Annual Evaluation (Unsatisfactory)	C-1

October 22, 2009	Observation (Unsatisfactory)	C-2
May 28, 2010	Observation (Proficient)	C-5
June 30, 2010	Annual Evaluation (Basic)	C-6
September 30, 2010	Observation (Unsatisfactory)	C-11
November 17, 2010	Observation (Unsatisfactory)	C-28
June 27, 2011	Annual Evaluation (Unsatisfactory)	C-34
September 22, 2011	Observation (Unsatisfactory)	C-40
December 22, 2011	Observation (Unsatisfactory)	C-48
January 26, 2012	Observation (Unsatisfactory)	C-54
March 12, 2012	Email thread from Mr. Motley requesting additional administrative assistance for classroom observation	R-21
March 19, 2012	Observation (Unsatisfactory)	C-64
May 9, 2012	Observation (Unsatisfactory)	C-70
June 5, 2012	Observation (Unsatisfactory)	C-76
June 11, 2012	Observation (Unsatisfactory)	C-78
June 21, 2012	Annual Evaluation (Unsatisfactory)	C-81
August 6, 2012	Summer School Evaluation (Proficient)	R-27
2010-2011	District's Observation and Evaluation Guidebook	R-28

#### ADDITIONAL CONCERNS

October 5, 2010	Intervention Plan	C-13
November 20, 2010	Genesis of Cheerleading Issue	R-6
November 22, 2010	Neglect of Duty	C-29
January 13, 2011	2 day suspension	C-32

August 19, 2011	Increment Withholding (Employment and Adjustment)	C-36
August 25, 2011	Respondent placed of Tier 1 for 2011-2012 school year	
December 1, 2011	Letter of Warning  (Inappropriate Conduct)	C-44
December 1, 2011	Letter of Reprimand (Insubordination)	C-46
March 1, 2012	Modified Individual Professional	C-57
March 13, 2012	Letter of Warning (Conduct Unbecoming)	C-49

## **POSITIONS OF THE PARTIES**

### **For the Claimant**

The school District argues that the evidence in the record clearly and without equivocation supports its position to have the tenure charges against Mr. Hawthorne sustained. The District argues that the testimony of Principal Motley, Principal Shakirah Miller-Harrington (see Exhs. 39-40), Principal James Carlo (see Exh. C-70) and Math Supervisor, Paul Oliveira (see Exhs. 48-78) grant the support for the District's position to be sustained.

The testimony in the record of Principal Tony Motley shows the commitment the District presented concerning assistance for the Respondent. Beginning in the 2010-2011 school year and in particular with Exh. C-11, Mr. Motley documented what he observed as an unsatisfactory performance by the Respondent. There was a second unsatisfactory classroom observation on November 17, 2010 (see Exh. C-28). During

that school year, Mr. Motley submitted intervention sheets to the Respondent which are designed to assist a teacher in becoming more proficient in the classroom. Exhibits. C-12, C-13, C-14, C-15, C-15, C-20, C-21, C-23 are the intervention sheets utilized for the 2010-2011 school year.

During the 2010-2011 school year, the Respondent was charged with violating his contractual obligations to remain at his assigned school location after regular school hours for parental conferences. November 18, 2010 was the date of the parental conference. As a result of his lack of attendance at that parental conference, a disciplinary hearing was scheduled for January 31, 2011, at the Administration Building of the District. As a result of that disciplinary hearing, the Respondent was suspended for two days (February 11, 2011 and February 21, 2011) for not attending a parental conference.

During the 2010-2011 school year, Carole Morris, the South Regional Superintendent submitted a letter to the Administrative Offices requesting that the Respondent's increments be withheld for the 2011-2012 school year for unsatisfactory performance.

On August 19, 2011, the Respondent received a letter from Joseph Blunda, Interim Executive Director, indicating that his employment and adjustment increments for the 2011-2012 school year would be withheld for unsatisfactory performance within the four domains set forth on the observation and evaluation forms.

On August 25, 2011, Mr. Motley sent a letter to the Respondent indicating that

*"Based on your overall unsatisfactory performance during the 2010-2011 school year, you are being placed in Tier 1 for the 2011-2012 school year.*



*In addition to being offered the support of the Teacher Assistance Program (TAP), the Tier Process requires that you receive three (3) formal observations by October 15, December 1 and January 15 of the next school year. The outcome of those formal observations may result in the recommendation that tenure charges be filed against you.” (see Exh. C-37)*

The record reflects that Principal Motley reached out to additional administrative staff to offer assistance to Mr. Motley in the form of classroom observations.

On September 22, 2011, Principal Shakirah Miller-Harrington, observed the Respondent. The pre-observation conference occurred on September 21, 2011, and was via telephone. As a result of that observation, (see Ex. C-40) Ms. Miller-Harrington determined that the Respondent was insensitive toward students, had no proper planning, and his tone and demeanor were unprofessional. She also indicated,

*“The teacher has minimal knowledge of the subject area, as well as the curriculum. The teacher also has minimal knowledge of the students and their background as planning for the whole class and not for the diverse student body.”*

Additionally, Ms. Miller-Harrington determined that,

*“The classroom environment reflects modest expectations for student learning. The teacher expresses disappointment in the students’ inability to be proficient on the questions assigned. The assignment that was given to the students was also completed the previous day, resulting in the students copying their work and not creating authentic work for a new class.”*

Ms. Miller-Harrington also observed that the Respondent utilized the entire social studies period to work on the lesson and the objective was not fully implemented.

Ms. Miller-Harrington also determined that while the teacher offered opportunities to the students to present responses to the questions posed to them from the math book, the questioning and discussion techniques were uneven with some high and low level questioning, as evidenced by the responses from the students. She offered

various recommendations to the Respondent as to how he could improve his teaching performance.

The pre-observation planning conference form (introduced as Exh. C-39) presented five different expectations for that particular lesson. The District argues the Respondent knew what was expected of him in the observation for the next day and yet he was unprepared for that lesson.

Ms. Miller-Harrington's assessment was 63/100 possible points times 100 equals 58%. Therefore, he was rated unsatisfactory, because the unsatisfactory percentages are 0-62%.

Principal James Carlo conducted an announced classroom observation of the respondent on May 9, 2012. (see Exh C-70) The pre-observation conference was also held on the same day prior to the start of class. The post-observation conference was via telephone. At the time of the observation Mr. Carlo was the principal of Newton Street School. At the time of the hearings he is currently not assigned to any specific school.

Mr. Carlo rated the respondent as unsatisfactory with a score of 54%. At the pre-conference meeting Mr. Hawthorne told him that the lesson would be Investigation 1.3 but almost the entire lesson consisted of a review of one homework problem. He also found that students were not involved in meaningful learning during the lesson. The post-observation telephone call was scheduled by Mr. Motley, but Mr. Carlo did not remember if Mr. Motley participated in the entire telephone conference.

District Math Supervisor, Paul Oliveira, performed two classroom observations of the Respondent. The observation for December 22, 2011, was announced and the pre-

observation conference was held on December 21, 2011. See Exh. C-48) The second observation was on June 11, 2012, and that was unannounced. (see Exh. C-78) While there is a debate as to the actual score that the Respondent received for the observation of December 22, 2011, on the various domains within the observation form, the fact remains that whether you use the first observation or the amended observation, he was still rated unsatisfactory. Mr. Oliveira determined that the Respondent was unprepared for the lesson because he was not able to articulate the design or structure of the lesson, nor did he mention any materials needed for the lesson other than manipulative counters.

Mr. Oliveira also discovered,

*“There was an observable disconnect between the pacing guide from the office of mathematics and the textbook the teacher was using with the students. The teacher was using Accentuating the Negative, a 7<sup>th</sup> grade book that is to be taught at the end of the 7<sup>th</sup> grade year with his 6<sup>th</sup> grade students.”*

Mr. Oliveira also observed that the Respondent attempted to create an environment of respect and rapport with the students and that he also established an environment where students interacted with each other, but had a difficult time agreeing on a solution as evidenced by the teacher stating to numerous groups, *“You have to come to an agreement, vote on it, put whatever answer you want.”*

Additionally, Mr. Oliveira observed that the Respondent did not have classroom procedures as evidenced by not having chart paper for students to share responsibly with the rest of the classroom. Moreover, the Respondent did not establish a culture of learning as evidenced by not connecting the mathematical concepts to real world applications.

Mr. Oliveira also determined the Respondent's oral communications with the students contained syntactical and grammatical errors, which were inappropriate for students. The Respondent did not demonstrate effective use of questioning and discussion techniques with students and he did not demonstrate an effective engagement of student learning as evidenced by not providing a structured lesson that was paced according to the students' needs.

The June 11, 2012, unannounced observation completed by Mr. Oliveira was unsatisfactory and rated the Respondent 19.44%, based upon what was observed on that particular day. Mr. Oliveira recommended that Mr. Hawthorne review the resources and materials provided by the mathematics board to aid him in planning, preparing, and executing an effective CMP-2 lesson.

The record reflects that the Respondent submitted rebuttals to classroom observations and evaluations.

On June 21, 2012, Mr. Motley completed the annual evaluation of the Respondent for the 2011-2012 school year. Mr. Motley rated the Respondent unsatisfactory with a score of 37. As a result of that, on July 10, 2012, Mr. Motley recommended that tenure charges be filed against the Respondent.

The District strongly contends that under both the Teacher Effectiveness and Accountability for the Children of New Jersey Act, N.J.S.A. 6-117, et seq. (c.26 or TEACHNJ) and even under the preceding tenure law, proof was established that the Respondent was an inefficient teacher. Virtually all of the Respondent's *"defenses to the charges consisted of uncorroborated, unsubstantiated testimony and speculative*

*proofs, none of which served to overcome the objective and substantiated proof submitted by the District.”*

The District argues that they were able to satisfy their initial burden of proof by demonstrating that the statutory criteria for tenure charging has been met: namely that Mr. Hawthorne’s performance is unsatisfactory and that he is inefficient, by the testimony and multitude of documents in evidence for the past three years. Moreover, Principal Motley went so far as to remove himself from the observation process and rely upon the professional opinion and evaluation of outside independent observers, as per the Respondent’s request.

Most importantly, *“Given that Respondent’s observations and evaluations are not subject to arbitration review, Respondent’s unsatisfactory ratings stand as they are.”*

The record establishes that even before Mr. Hawthorne entered into his ninety (90) day improvement period (PIP), he was provided with substantive professional development in the form of observations of other classrooms, intervention meetings for lesson plans and staff development, as well as being placed in the Teacher Assistance Program, all before he was recommended for tenure charges. (See Exhs. C-12, 14, 15, 16, 17, 18, 19, 20, 21, 23, and 24).

Mr. Hawthorne failed to demonstrate that any of the four factors established within C.18A:6-17.2 (section 23, 1-4), existed to materially affect the outcome of his evaluations. All of the Respondent’s witnesses *“were merely character witnesses who were fellow members of the same union and who superficially testified that, in their professional opinion, the Respondent was a nice individual and a good teacher.”* None of those individuals were certified to do formal observations or were in a position to

rebut the District's professional observations by independent teachers. Additionally, Mr. Fuller and Ms. Johnson were not even assigned to the same school as the Respondent during the relevant time period and likewise had no first-hand knowledge of any activity. Mr. Dickson simply admitted that although he was only assigned to the same school for part of the relevant time period, he could not speak to what occurred during the last year when the charges were brought.

Mr. Hawthorne also alleged that the District did not follow proper procedures when implementing the PIP. However, *"the District is not legally required to provide a PIP under TEACHNJ. Under its substantive provisions, TEACHNJ specifically excised the repeal to the provision of the old law which had previously required that inefficient teachers be provided with a ninety (90) day modified improvement period prior to serving charges of inefficiency."* (See N.J.S.A. 18A:6-11).

The District contends that even if the Respondent's claims that the PIP was defective because he did not take part in its drafting, the PIP itself plainly shows that the Respondent was given the opportunity to provide input, but the Respondent chose instead to provide a rebuttal in the form of notation stating "see attached". The notations were nothing more than the Respondent's disdain for his administrator rather than presenting any constructive input. (See Exh. C-57).

The only proof that the Respondent has is his own improbable and uncorroborated testimony. Although he claimed that he never met with Mr. Motley or anyone else who provided him assistance during the PIP despite several documents signed by the Respondent himself concerning that meetings did take place, his own admissions during the testimony he provided confirmed that the Respondent did visit

other schools to observe model classes, that he was enrolled in the Teacher Assistance Program, and that he did meet with Principal Motley to discuss several conduct unbecoming memos that he received, all of which undermine the credibility of the Respondent's testimony that additional meetings never happened.

By his own testimony, Mr. Hawthorne could not identify what the genesis of the improper motive or the incident by which he claims was the real reason for the charges filed against him. He cannot overcome his burden by vaguely asserting in the abstract that something occurred during the middle of the 2009-2010 school year, which caused this disconnect. Furthermore, the Respondent admitted that the cheerleading controversy itself was not the reason for the charges. Moreover, Mr. Hawthorne's testimony confirming that no document explicitly states that the alleged complaint or grievance was the sole reason for his unsatisfactory ratings or charges; he confirmed on cross-examination that it was his speculation that his ratings were as a result of the alleged grievance.

The District argues that, *"Conspicuously absent from many of the Respondent's proofs is any contemporaneously generated documentation whatsoever which would document or corroborate that he took issue with any unsatisfactory observations or evaluations at the time they occurred as a result of the grievance or otherwise."* The record reflects that no similar complaint, grievance or rebuttal was ever submitted again by the Respondent at any time going forward to demonstrate that he took issue with either the minor procedural issues he argues or regarding the alleged unfair treatment he claims he received from Principal Motley as a result of the unidentified incident from the 2009-2010 school year.

During the proceedings, the Respondent focused on only two documents to try to corroborate his theory of an agenda against him: R-6 and R-21, two emails, the first of which does not mention performance or tenure charges and the second one arranging for an observation for a female teacher, not a male teacher like Respondent. The District contends that while R-6 could have been worded in a more efficient manner, it never references Respondent's performance or the threat of tenure charges so that Respondent's cooperation has to be extrapolated and inferred from the email. Since Mr. Hawthorne could not produce any documentation to support his theory that the cheerleading incident led to the action against him, the only thing left is his circular, unsubstantiated and credulous testimony. His testimony does not serve to meet his burden under TEACHNJ or to overcome the documents that were kept which recorded Respondent's inefficiencies.

The District argues that the timeliness argument raised by the Respondent is without merit based on the fact pattern in evidence. Mr. Motley's charges were dated July 10, 2012, and, before the matter could be given to the Board of Education, Mr. Hawthorne had to have an opportunity to respond to the charges. The record reflects that Mr. Hawthorne requested an extension and received the extension from Mr. Mercado and the Respondent's brief was now due August 14, 2012. From that point forward, the District, without hesitation, complied with statutory timeline requirements to process this matter to the Commissioner of Education.

The Respondent's argument that the forty-five (45) day period that the Board had to use should begin to run from July 10, 2012, is misplaced. There was no response in



the record from the Respondent so; therefore, the forty-five (45) day period could only run when Mr. Hawthorne's response is submitted.

The District also argues that, *"Given that the Commissioner has already deemed the procedures followed to be adequate, and because it would be virtually impossible for a locally controlled school district to certify within the time required under the statute if an extension is requested, the administrative code and controlling case law all indicate that the 45 day time period is tolled until a teacher provides his response to the charges so that Respondent's arguments in this regard are without basis."*

For all of the foregoing reasons, and for the reasons set forth in the District's papers, it is respectfully submitted that an award should be made in favor of the District to uphold the tenure charges so that Respondent shall be dismissed from employment as a teacher in the State-Operated School district of the City of Newark.

#### **For the Respondent**

At the end of the 2007-2008 academic year, Mr. Hawthorne requested a transfer from Camden Middle School, which was granted. He was assigned to Bragaw Avenue School as a math teacher for the 2008-2009 academic year. His annual evaluation conducted by Mr. Motley shows that he was rated proficient for the 2008-2009 academic year. (see Exh. R-3)

The Respondent denies all of the allegations set forth against him in the tenure charges filed with the Commissioner of Education by the State-Operated School District of the City of Newark. The Respondent argues that he was not and is not an ineffective teacher and most importantly he had demonstrated significant improvement in his

teaching. The District failed to provide Mr. Hawthorne with reasonable assistance in satisfying the requirements of his performance improvement plan.

Mr. Hawthorne is committed to his profession, has a Master's Degree and is enrolled in a Doctorate program. He is a stern task-master for his students and his students have respected him for that. His colleagues and, in particular, Mr. Dixon, who was a math coach at Bragaw Avenue School while Mr. Hawthorne was a member of the teaching staff, complimented Mr. Hawthorne on his teaching abilities. Most importantly, Mr. Dixon indicated that if you don't know the content of the subject matter, you can't be an effective teacher and for that matter, you can't teach.

Mr. Dixon stated, unequivocally and without contradiction, that Mr. Hawthorne does in fact know content. He referenced that the best practice rule was utilized by Mr. Hawthorne in his classroom. He further indicated that Mr. Hawthorne accepted constructive criticism. It should be noted that while Mr. Dixon was a math coach, that position at Bragaw Avenue has been eliminated. He does not formally observe and/or evaluate teachers. His role is to assist and facilitate math teachers in the performance of their classroom duties. He also indicated that Mr. Dixon had a very good rapport with his fellow teachers and a very good relationship with students and their parents.

Mr. Hawthorne testified that there were times when he would visit the parents at home so they would have a better understanding of what was occurring with the students in his classroom. Mr. Dixon also testified that besides knowing the content, Mr. Hawthorne knows math for all the grade levels. The issues that Mr. Dixon would work with Mr. Hawthorne on are in the areas of process, timing, and pedagogical teaching. He also believed that Mr. Hawthorne was an effective teacher.

Mr. Dixon testified that *“After the cheerleading position incident, in his opinion, Mr. Hawthorne’s relationship with Mr. Motley began to fall apart.”*

Mr. Dixon also testified that the test scores of Mr. Hawthorne’s students increased by at least 8% and that if his test scores were graded separately from a whole group, the test scores would have been higher. He has great respect for Mr. Hawthorne and was surprised that tenure charges had been filed against Mr. Hawthorne.

Respondent argues that when he was presented with issues and concerns of administration, he took the corrective actions presented and has continually improved. The problems presented are small and eminently solvable, but the administration never took the opportunity to offer assistance to Mr. Hawthorne.

The Respondent strongly argues that the District never offered any reasonable assistance in their observation and evaluation of Mr. Hawthorne’s teaching performance. Evidence for that can be found in Exh. C-37, which is the notification dated August 25, 2011 from Mr. Motley to Mr. Hawthorne that he was being placed on Tier 1 for the 2011-2012 school year. Mr. Hawthorne testified, uncontradicted, that Mr. Motley never met with him about Exh. 37, never explained to him what Tier 1 is, and never explained what the Teacher Assistance Program was.

The Respondent further argues that Exh. R-21 is another example of an inability of the District to offer any assistance to him. That exhibit is an email thread starting with Mr. Motley to Principal Mona Dana and ending up with Lori Tremari, the Mathematics/Arts Department Chairperson at Technology High School. The Respondent strenuously argues that the beginning email from Mr. Motley to Ms. Dana establishes that administrators being asked to observe him were informed that he was

in the final process of being dismissed and, therefore, any observations that they conducted were biased in their very nature.

Mr. Hawthorne argues that the observations of outside observers, Principals Carlo, Miller-Harrington, Supervisor Oliveira, and Department Chairperson Tremari, were deliberately designed to be negative in nature. More importantly, they did not offer him any assistance to correct any alleged deficiencies that they observed or suggestions as to how he could correct the allegedly noted deficiencies.

Mr. Dixon testified that Mr. Hawthorne's students had test scores that improved dramatically as evidenced by Exh. R-26. Not only did those test scores improve, but for the 2010-2011, 2011-2012 school years, 23 of Mr. Hawthorne's students were accepted into the Magnet High Schools: art, science, technology. That clearly establishes that Mr. Hawthorne knows the content of the subject matter and knows how to impart that content to his students.

The Respondent argues that the action of the District clearly shows that they failed to present any information to him to correct any alleged deficiencies.

Mr. Hawthorne testified that Exh. C-57, which is the modified individual professional improvement plan, is a clear example of the bias Mr. Motley showed toward him. The professional development plan requires the administrator to complete the first section and for the teacher to complete the rest of the document. However, the District's evaluation guidelines (see Exh. R-28 at pg. 30) define a modified professional development plan as "*A plan of improvement developed by both the administrator and a struggling teacher who has been placed on a Tier.*" Again, the uncontradicted testimony of Mr. Hawthorne is that he never had a conversation and/or meeting with Mr. Motley

about the modified professional development plan. Communication between the two of them was via email. In fact, the last page of Exh. C-57 was Mr. Hawthorne's responses to questions posed by Mr. Motley. Those responses also posed some questions but were never answered by Mr. Motley. Mr. Hawthorne's responses were done via email and attached to the document by Mr. Motley. The PIP was a perfect opportunity for Mr. Motley to discuss the Respondent's concerns about the PIP but alas he chose not to do so.

Moreover, Exh. C-57 has some specific steps Mr. Motley was presenting for Mr. Hawthorne to improve. In particular, he was to meet with fellow teacher Michelle Clanton on a weekly basis. However, the record noticeably establishes, based on the uncontradicted testimony of Mr. Hawthorne, that he never met with Ms. Clanton on a weekly basis as required by Exh. C-57. Exh. C-62 required Mr. Hawthorne and Ms. Clanton to meet and create an action plan to map out details of executing an integration of technology into the development of lesson plans. Respondent testified uncontradicted that did not occur.

The Respondent contends that if Mr. Motley believed in this modified professional development plan and presented specifics for Mr. Hawthorne to implement, why is it that he never followed through on the implementation of this modified professional development plan?

The observations of the outside observers have been called into question by the Respondent because he believes they were biased in nature and they were informed that Mr. Hawthorne was Tier 1 and they should evaluate him accordingly. The testimony of Supervisor Oliveira shows that he changed an observation when additional

information was presented to him by Mr. Dixon and Mr. Hawthorne. (See Exh. R-23-24).

Mr. Hawthorne testified, again uncontradicted, that for two years he asked Mr. Motley for desks for his students instead of tables and for computers that worked. For a two year period Mr. Motley ignored those requests and never gave Mr. Hawthorne the assistance that he needed for his classroom. The Respondent contends that if Mr. Motley was contending that the classroom environment was not proper, desks instead of tables would have made it more conducive for a classroom environment, and yet this request was denied without any explanation from Mr. Motley.

On May 5, 2010, months before the November 20, 2012, cheerleading incident, Mr. Hawthorne sent an email (see Exh. R-11) to Mr. Motley requesting a transfer from the school. He never received a response to that transfer request. It should be noted that Mr. Dixon suggested that he transfer to another building. Mr. Dixon also testified that he told Mr. Hawthorne, *"Since you live in Pennsylvania, why don't you find a teaching position closer to home?"*

At the hearing, Mr. Motley testified that when a teacher is facing tenure charges, the District does not allow that teacher to be transferred. The Respondent challenges that assertion of Mr. Motley because there were no tenure charges filed against him or even being contemplated to be filed against him during that period of time.

The issue with the cheerleading advisor has taken on a life unto itself. Mr. Hawthorne in invoking the Union contract, which requires an extra-curricular position to be given to a teacher before a substitute, challenged Mr. Motley's position as the building Principal. Exh. R-6, which is dated November 20, 2010, clearly establishes that

Mr. Motley was out to get Mr. Hawthorne. Mr. Hawthorne discussed the issue with Mr. Motley concerning the cheerleading position and even filed a grievance over the matter, which he then referred to the Union. The response Mr. Hawthorne received was Exh. R-6, which was sent to the entire Bragaw Avenue School staff at 1:08 a.m. on November 20, 2010. Mr. Hawthorne testified that from that point forward his relationship with Mr. Motley began to deteriorate. In fact, he asked for the same type of professional assistance and courtesy that was afforded to the prior cheerleading coach but he never received that from Mr. Motley, as evidenced by Exh. R-8.

Mr. Hawthorne contends, without equivocation, that the issue of the cheerleading advisor, coupled with some issues in the prior school year, led to his downfall as a teacher at Bragaw Avenue School and led Mr. Motley to file improper and unsubstantiated tenure charges against him.

The email Mr. Motley sent (see Exh. R-6) to the staff on November 20, 2010, is full of sarcasm and was an attempt to ridicule and undermine Mr. Hawthorne. Mr. Dixon testified that the effect of this email was very clear. The email caused the rest of the teaching staff to castigate and isolate Mr. Hawthorne and he in fact said that he felt ostracized from the staff because some staff members asked him why he challenged the cheerleader appointment.

Nevertheless, Mr. Hawthorne accepted the position and began to work as the cheerleader advisor, but Mr. Motley undermined him at every step. It reached a point where Mr. Hawthorne stepped down as the cheerleader advisor because Mr. Motley would not give him the support that he given the prior cheerleader advisor.

In asserting his contractual rights concerning the cheerleader advisor position, Mr. Hawthorne questioned and challenged Mr. Motley's administrative position. The Respondent strenuously contends that Mr. Motley viewed his assertion of a contractual right to be a personal affront. Shortly thereafter Mr. Motley observed the Respondent's class and rated him unsatisfactory.

Mr. Hawthorne also argues that the District did not follow the requirements of N.J.S.A. 18A:6-10, et seq. The District did not follow the requirement to certify tenure charged within forty-five (45) days after the expiration of the time for correction of inefficiencies. The notice to Mr. Hawthorne about inefficiencies is dated March 1, 2012 and the time from is through June 15, 2012. Therefore, the District had forty-five (45) days in which to certify the tenure charges. However, tenure charges were not certified by the Superintendent until September 7, 2012, far in excess of the forty-five (45) day period. Additionally, the Respondent argues that the Commissioner of Education's office failed to address the time lines required under Chapter 26 concerning the processing of a claim of a petitioner.

Exhibit R-27 is an evaluation of Mr. Hawthorne's teaching performance at the Dr. E. Alma Flagg in mathematics grade 7 and 8 by Principal Gary Westberry and dated August 6, 2012, is another example of the ability and efficiency of Mr. Hawthorne's teaching. Mr. Westberry stated,

*"Mr. Darren Hawthorne has taken over the 7<sup>th</sup> and 8<sup>th</sup> grade overflow learners on July 16, 2012, and has a tremendous job inspiring and motivating the learners to perform at the best of their abilities. Mr. Hawthorne demonstrated knowledge of the subject and was able to deliver the concepts appropriate to the learner's ability to comprehend. The selection of instructional goals was clear and suitable for the diversity in the learner's ability. The learning activities and instructional materials were congruent to the goals and objectives of the curriculum."*



Mr. Westberry also indicated that as he observed, both formal and informal, “there existed an interaction between Mr. Hawthorne and the learners, as well as learners to learners and the classroom was conducive for learning mathematics. Mr. Hawthorne also demonstrated complete control during the entire observation period and his level of communication was commanding and effective. The concepts taught were presented with clear and concise definition and concrete examples for further understanding.”

That evaluation was labeled as proficient.

Mr. Hawthorne was adamant in his belief that Mr. Motley’s plan to file tenure charges and to have him dismissed as a teacher in the District is underscored by Mr. Motley’s insistence that he never told any of the observers that Mr. Hawthorne was a Tier 1 teacher or a teacher in the final process of being dismissed. Yet, R-21 completely shows that not to be true.

The Respondent contends that the limitations set forth in N.J.S.A. 18A:6-17.1 are not applicable in the matter at bar. Mr. Hawthorne argues that the limitations specified do not apply because the action alleging an inefficiency against him was not brought pursuant to N.J.S.A. 18A:6-17.3. Section 25 mandates the filing of inefficiency charges in instances where a teacher is rated ineffective or partially ineffective in an annual summative evaluation for at least two years. Where that pre-requisite is met, section 25 removes the superintendents of any discretion in the matter by mandating that an inefficiency charge must be filed. Section 25 further provides that the only evaluation that may be used for the purposes of this section are those evaluations conducted in accordance with the rubric adopted by the board and approved by the Commissioner of Education.

Section 25 creates a new type of inefficiency charge – one that is mandatory if a teacher is rated sufficiently poor under the new evaluation rubric established by section

16 of TEACHNJ. The record reflects that the District did not utilize the new rubrics or procedures as required under the statute, and the evaluations were conducted before the rubrics and procedures existed and before c.26 was enacted. Consequently, *“the inefficiency charges brought against Mr. Hawthorne are not – and by the statute’s own terms cannot be – the new type of mandatory inefficiency charges contemplated by section 25 of the Act. Instead, at most, they are standard inefficiency charges brought pursuant to N.J.S.A. 18A:6-11 and because the pending charges are not inefficiency charges brought pursuant to section 25 of the statute, section 23 is clearly inapplicable and arbitrable review of this matter is not limited to the issues enumerated therein.”*

Mr. Hawthorne contends that the statutory language is clear and unambiguous, and section 23 simply cannot limit the scope of arbitration of this matter because charges were not brought pursuant to section 25 of the Act, and the Respondent requests a ruling to that effect.

Even if the new statute were to be applied here, the District is not entitled to judgment. *“N.J.S.A. 18A:6-17.2(a) delineates four avenues by which Mr. Hawthorne can challenge the charges. He has clearly presented evidence consistent with each area (1-4) set forth in that statute. Mr. Hawthorne contends that the evaluations conducted fail to adhere substantially to the evaluation process, including, but not limited to providing any action plan. The facts set forth show that not one of the observations forming the basis for Mr. Hawthorne’s evaluation complied with the contract or law regarding post-observation conference time frames.”*

The charge of inefficiency must be dismissed because it is based on retaliation for protected union activity. Mr. Hawthorne argues that Mr. Motley’s retaliation became

more pronounced and severe when he filed the complaint/grievance regarding appointment of substitute teachers to extra-curricular jobs. *“Mr. Motley exhibited his furor at having to overturn his decision in the memo to all staff (see R-6), which he wrote at 1:08 a.m. on November 20, 2010.”* An independent review of the action of Mr. Motley was made by Mr. Dixon who corroborated the fact that the relationship between Mr. Motley and Mr. Hawthorne deteriorated as a result of Mr. Hawthorne’s filing of the complaint/grievance against Mr. Motley.

The Respondent argues, *“Tenure charges must be dismissed because the District failed to make reasonable efforts to provide assistance to Mr. Hawthorne to overcome the alleged inefficiencies.”* Mr. Hawthorne asserts that, *“a teacher must be told precisely about the alleged inefficiencies so that he/she has a reasonable opportunity to correct them by the end of the improvement period.”* It is obvious that the requirement for this is that the teacher be afforded an opportunity to demonstrate that he is capable of effective teaching. He can only do so if offered specific criticism and constructive advice. The process utilized by the outside evaluators was clearly repugnant to Exh. R-28, the District’s own observation evaluation guidelines.

The tenure charges should be dismissed in their entirety due to the District’s failure to prove by a preponderance of evidence the charges against Mr. Hawthorne. Contrary to the District’s posturing, *“Mr. Hawthorne reasonably and effectively performed his teaching duties as reflected in the testimony and evidence presented at the hearing.”* Mr. Dixon’s testimony of his analysis of Mr. Hawthorne’s students’ test scores provided clear proof of Mr. Hawthorne’s ability as a teacher. (See Exh. R-26).

For the foregoing reasons, Darrin Hawthorne respectfully requests that the charges of inefficiency pending against him be dismissed in their entirety and that he be reinstated to his employment as a teacher within the District, along with full back pay and all applicable benefits and emoluments.

## **DISCUSSION AND OPINION**

### **PROCEDURAL ARBITRABILITY**

The timeliness question raised by counsel for Mr. Hawthorne is set aside. Mr. Motley's charges were dated July 10, 2012, and Mr. Hawthorne answered those charged on August 14, 2012. The forty-five (45) day time limit begins to toll at that point, not on July 10, 2012. There is no possible way for the forty-five (45) day limit to begin on July 10, 2012, because there was no response from Mr. Hawthorne. If, however, Mr. Hawthorne sent a letter and said he was not responding to the charges, which is not the case here, then at that point the charges would be submitted to the District. Nevertheless, the District adhered to the time frames when they pursued the charges on September 7, 2012. The charges were presented to the Commissioner's office on September 12, 2012. Mr. Hawthorne requested an extension of time due to medical reasons and that was granted and his response was due no later than October 5, 2012.

On October 15, 2012, I was appointed arbitrator in the instant matter. The time frame October 5, 2012 to October 15, 2012, is 10 days, which is in compliance with Chapter 26. There is no timeliness question in the matter before me. While Mr. Hawthorne and his counsel would continually argue that July 10, 2012 should have been the effective date of moving forward, I rejected that because there was nothing in

the record at that moment from Mr. Hawthorne in response to the charges of inefficiency. More importantly, during that period of time, Mr. Hawthorne's counsel requested an extension of time which Mr. Mercado granted.

No matter how the math is done, the District complied with the statutory time frame in Chapter 26.

### **SUBSTANTIVE ARBITRABILITY**

Chapter 26, and in particular, 18A:6-17.1, section 22(a) and (b), establishes without reservation that the Commissioner of Education and Administrative Law Judges do not hear tenure charges. Chapter 26 establishes a panel of 25 arbitrators appointed by the Commissioner's office to hear those cases and render an impartial binding decision. Additionally, 18A:6-17.3, section 25(2), (c), is further support that tenure cases are assigned to arbitrators and not the Commissioner of Education and/or an Administrative Law Judge.

Chapter 26 became effective August 6, 2012. Yet, Mr. Motley's charges of inefficiency and supporting documentation were dated July 10, 2012, almost a month before Chapter 26 was signed into law. Moreover, Exhs. R-28 and C-83 establish observation and evaluation guidelines for the District. Those are for the 2010-2011 and 2011-2012 school years respectively. A school year for example is July 1, 2010, through June 30, 2011. The academic year is September 2010 through June 30, 2011. In any event, section 28 of Chapter 26 establishes that the Act shall take effect in the 2012-2013 school year, except that section 17 of the Act shall take effect immediately. N.J.S.A. 18A:6-7.3, section 25(a)(1) and (2) establishes that if a teacher is ineffective or partially effective in an annual summative evaluation and in the following is year is rated

ineffective in the annual summative evaluation, the Superintendent shall promptly file a charge of inefficiency. That simply means that for the District to follow Chapter 26, Mr. Hawthorne would have to be rated ineffective in the 2012-2013 school year and ineffective in the 2013-2014 school year for charges of inefficiency to be filed.

Moreover, the evaluation rubric that the District was using certainly was not approved by the Commissioner of Education under Chapter 26 because Exh. R-28 shows that it was for the 2010-2011 school year. More importantly, that is the document that was utilized throughout the four days of hearings.

If I were to dismiss the charges against Mr. Hawthorne because the District did not comply with Chapter 26, that would lead to an interesting situation where, in my opinion, Mr. Hawthorne would be in professional purgatory until somebody decided what type of action they would take against him. Would Mr. Hawthorne continue to receive his salary for a two year period but not teach? I certainly don't think the District and/or the Commissioner's office would condone that type of action by the Arbitrator. I think we all would agree that there are some school systems in this country where teachers are suspended, receive full pay, report to a central office, but don't perform any professional services. In New Jersey the statute requires suspension of salary for one hundred-twenty (120) days, while charges are being filed against an individual teacher. Here, on September 7, 2012, the board also suspended Mr. Hawthorne without pay for the one hundred-twenty (120) days.

There certainly appears to be a disconnect from the ACT according to the stipulated issue. However, two recent District tenure hearing arbitration decisions may offer some guidance to the matter at bar. In the Matter of Tenure Hearing of Thomas

Williams and the State-Operated School District of the City of Newark, Agency Docket 264-9/12, was decided by arbitrator David Gregory on December 8, 2012. The arbitrator cogently determined that he would resolve that case *“working entirely within the four factor framework of the TEACHNJ statutory structure and, assuming arguendo that the entire law became effective August 6, 2012, as urged by the Board.”* Arbitrator Gregory also determined that the action of the District was arbitrary and capricious and dismissed the charges and Mr. Williams was returned to work and made whole.

In the Matter of Tenure Hearing of Owen Newson and the State-Operated School District of the City of Newark Agency Docket 267-9/12, was decided by arbitrator Michael Pecklers on January 10, 2013. In that case the arbitrator recognized the tension between N.J.S.A. 18A:6-10 and the ACT. He determined that *“since the ACT was approved on August 6, 2012, the evaluations that took place before that date and underpin the inefficiency charges would not apply.”* Furthermore, *“the old standard of review of a preponderance of credible evidence would therefore apply.”* Arbitrator Pecklers converted the inefficiency charges to Increment Withholding

Unfortunately, I cannot take that same type of action here because the Respondent’s employment and adjustment increments were denied for the 2011-2012 school year. His 2010-2011 annual salary was frozen. I cannot continue to plateau the Respondent’s annual salary. I must render a decision on the inefficiency charges by either sustaining or rejecting them.

I discussed this issue with Kathleen Duncan, Director of Bureau of Controversies and Disputes of the NJ State Department of Education. There can be no doubt that in accordance with N.J.S.A. 18A:6-10 I am authorized to render a decision in the instant

matter. Accordingly, the clear and convincing credible evidence standard shall be utilized.

The lack of communication between Mr. Motley and Mr. Hawthorne is deplorable at best. In any employer/employee relationship, someone is in charge and someone has to follow the lead on the person in charge. In this case, Mr. Motley is the representative of the District, and Mr. Hawthorne is the employee. Yet their relationship was so bad that a mediator had to be employed to attempt to bring them together to work cooperatively at Bragaw Avenue School. A MEDIATOR !! The parties cannot be serious. We are talking about an educational institution, and a mediator was utilized in an attempt to bring two (2) individuals together in an employer/employee setting. That certainly is not the definition of an enlightened employer/employee relationship that we all would like to believe is occurring in our modern technological society. This is not contract negotiations where sometimes tempers flare and the point of brinkmanship is almost reached.

A critical aspect of this case is the fact that Mr. Hawthorne requested a transfer in May of 2010. (see Exh. R-11) The Respondent's transfer request stated: "*I am requesting a transfer from Bragaw Avenue School. I feel my growth has been stifled. Please attend to matter at your earliest convenience.*" Mr. Motley testified that an individual cannot be transferred if there may be tenure charges brought against that individual. However, Exh. C-37, dated August 25, 2011, which placed Mr. Hawthorne on Tier 1 was for the 2011-2012 school year. His transfer request was dated in May of 2010, which was part of the 2009-2010 school year. Mr. Hawthorne was requesting a transfer two school years before Exh. C-37 was created. There was absolutely no



reason for Mr. Motley to remove himself from the transfer request. Obviously Mr. Motley was not the person who had the final decision on the transfer, but I'm sure with a school system the size of the District (which is the largest school system in the State of New Jersey), a spot could have been found for Mr. Hawthorne in another building. I am not suggesting that Mr. Motley should pass off an alleged problem teacher to another administrator, because at that time in 2010, while his evaluations were questionable, he was not an ineffective teacher.

More importantly, Mr. Dixon testified that when he was assigned to Peshine Avenue School, he talked to the building Principal about a math opening in that school and suggested that Mr. Hawthorne would be a good candidate. At a subsequent conversation with his building Principal she indicated that the transfer would not occur, and she could discuss it because it was a discussion between two administrators. Nevertheless, Mr. Motley had an opportunity in 2010 to avoid this unpleasantness by agreeing to transfer Mr. Hawthorne to a different building. Most importantly Mr. Motley's silence is deafening.

The modified Professional Improvement Plan Mr. Hawthorne received (see Exhs. R-19/C-57) from Mr. Motley is a major source of contention for Mr. Hawthorne. Mr. Hawthorne testified that while the District requirement is that the plan be developed jointly, he never met with Mr. Motley to go over the details of that plan. Mr. Hawthorne agrees that part 1 of that plan must be completed by the Principal, but he had no idea what the rest of the plan was because Mr. Motley and he never talked about the PIP. Additionally, the existence of Exh. R-21 clearly establishes that Mr. Motley was utilizing the assistance of administrators from other buildings or from the central office to

observe and evaluate the Respondent, but the beginning thread of that email clearly establishes that it was negative in nature when Mr. Motley's email to Mona Dana states, *"I need someone to observe a teacher who is in the final process of being dismissed. Legal says I need a wide array of different types of administrators to observe her (but the parties acknowledge that the word her should have been him)."*

Why was it necessary for Mr. Motley to state *"to observe a teacher who is in the final process of being dismissed"*? It certainly stands to reason that an objective evaluation by another administrator might have produced a positive evaluation. That is exactly what occurred with Mr. Westberry's evaluation. Ms. Tremari testified that she did not know that Mr. Hawthorne was placed on Tier 1, but after reviewing Exh. R-21, she admitted that she did know it.

There is nothing in the record to show what Mr. Motley presented to Mr. Hawthorne to correct any deficiencies that were being observed by other administrators. Of course, if you need a MEDIATOR and talk only if a grievance is filed, then you don't have any opportunity to offer face-to-face professional assistance.

Simply sending memos and simply communicating via email does not begin to solve the problem. What it does is build a paper trail. Building a paper trail does not offer assistance to a teacher; it simply says that on such and such a date I sent an email to Mr. Hawthorne for him to do the following. Can you imagine working in a school building for an entire year and talking to the Principal, as testified to by Mr. Motley, only if a grievance had been filed?

More importantly, it is basic common sense that, as an outside observer, you should get to know the individual teacher. The easiest way to do that is to meet with the

teacher a day or two before the agreed upon date for the observation. Talk to the teacher about what the teacher is looking for, what the teacher is doing with the students, what the teacher is doing with the curriculum, how the teacher motivates the children, what the teacher does when students become unruly and how the teacher controls that situation. Doing it by the telephone or doing it five (5) to ten (10) minutes before the observation is inappropriate and not in compliance with the District's evaluation/observation guidelines. (See Exh. R-28). A pre-observation conference in that short period is repugnant and offensive to the requirements of Exhs. R-28/ C-83. So is a pre-observation telephone conference. You are simply going through a mechanical application and the end result is the teacher receives something in writing which does not do anything to assist the teacher because there is no follow-up.

The record clearly establishes that the observations and evaluations conducted by Principals Miller-Harrington and Carlo, Supervisor Oliveira and Department Chairperson Tremari were nothing more than a mechanical application of the District's observation/evaluation guidelines. (See Exh. R-28). However, Exh. C-57, the PIP, was established to offer assistance to Mr. Hawthorne for a ninety (90) day period. During that ninety (90) day period, Mr. Hawthorne was to receive assistance, suggestions, comments, as well as observing other teachers who were teaching math. Yet, during that entire ninety (90) day period of time, there is nothing in the record to show that Mr. Motley met with Mr. Hawthorne after each observation of the outside observers and after each classroom visit. Moreover, the record is barren that Mr. Motley offered any suggestions, comments, assistance to the Respondent after each classroom visitation he went to.

Mr. Motley did participate in the post-observation telephone conference with Mr. Carlo and the Respondent. However, the record is not clear if Mr. Motley participated in the entire post-observation conference. Mr. Motley's job is to offer assistance to Mr. Hawthorne. If it were to simply use the various domains that appear on the observation/evaluation forms and not offer anything beyond verbiage and numbers, the evaluation process then becomes absurd.

As the chief school administrator of the Bragaw Avenue School, Mr. Motley directs the educational program for the District. Why would he not sit and meet with Mr. Hawthorne? If Mr. Hawthorne was such an unreasonable individual who was very difficult to get along with and an inefficient teacher then how did Mr. Westberry rate him as proficient? That evaluation was dated August 6, 2012, almost one month after Mr. Motley's Charges of Inefficiency were filed.

Even though the summer evaluation time frame is obviously shorter than a normal school year, the evaluation of Mr. Hawthorne by Mr. Westberry is the same as the observations of the other administrators; it is a snapshot of what was observed during a specific time frame. It is the same type of snapshot that can be gleaned from the student taking a standardized test on a given day at a given time in a given location. It does not necessarily mean that that snapshot of that student will follow that student forever.

To believe that Mr. Hawthorne is such an inefficient teacher belies the clear, irrefutable fact that twenty-three (23) of his students over a two (2) year period went to the Magnet High Schools in the District. Moreover, Exh. R-26, an email from Mr. Dixon to a variety of math teachers, clearly establishes that Mr. Hawthorne's test scores rose.

In fact, Mr. Dixon testified that if Mr. Hawthorne's students were not grouped with other students, his test scores would have been higher. He testified that Mr. Hawthorne's test scores went up over 8% from one year to the next. How is that possible if you are inefficient?

Mr. Dixon, who was previously a math coach at Bragaw Avenue School, and went into Mr. Hawthorne's classroom on a daily basis, observed proficiencies and also made suggestive criticism as to what should be done to eliminate certain situations as they arose. He testified that initially Mr. Hawthorne did not accept his suggestive criticism but ultimately embraced and implemented them. He felt comfortable with Mr. Hawthorne being a math teacher at Bragaw Avenue School. If he was an ineffective teacher, then his students would not have been accepted into the Magnet High Schools. The testimony of a math coach, who is also a highly respected individual and knows Mr. Motley and gets along with Mr. Motley, establishes without reservation that Mr. Hawthorne was an effective teacher and knew the content very well.

I agree that Mr. Dixon is not an evaluator, but while at Bragaw Avenue School his job on a daily basis, was to assist math teachers. The District assigned him to be a Math Coach; therefore, why would you reject his professional opinions about Mr. Hawthorne? As Mr. Hawthorne testified, *"I believe I am an excellent teacher and probably one of the best teachers in the City of Newark, but we all can improve."* He was not testifying that he knows more than Mr. Motley and, therefore, if he said I'm not going to do something, Mr. Motley had to agree to it. That is not the case at all. What I am addressing is an inability of two professional adults to communicate. Resorting to

the use of emails is interesting, but it avoids an opportunity to sit and talk about real problems.

The District cannot avoid, set aside, and ignore the test score results of the Respondent's students and some of them being enrolled in the Magnet High Schools.

The implementation of the PIP was also mechanical and shows that Mr. Motley did not address the plan that he created. Four (4) pages from the back of Exh. C-57 is 7 steps that Mr. Hawthorne is to be involved with to improve his teaching. Number 2 is that Mr. Hawthorne will receive one-on-one instructional support from Ms. Michelle Clanton on a weekly basis. Mr. Hawthorne testified, uncontradicted, that never occurred. He never met with Ms. Clanton on a weekly basis or for that matter at any time in accordance with the PIP. The Respondent did in fact meet with Ms. Corley, the school's PD 360 Coordinator. The last page of the PIP is questions and concerns from Mr. Hawthorne. Mr. Motley testified he received that page via email from Mr. Hawthorne and attached it to the PIP.

Without a doubt that is a contorted definition "*of the Modified Improvement Plan*" found on page 30 of Exh. R-28. The Respondent testified uncontradicted that he never met with Mr. Motley to discuss any aspects of the PIP and then at the end of the period of time, which was June 15, 2012, it was determined that tenure charges would be filed against Mr. Hawthorne.

I consider the action of the District in the instant matter and, more importantly, the action of Mr. Motley, to be arbitrary and capricious. Support for this can be found in the document introduced as R-6, the infamous November 20, 2010, email sent at 1:08 a.m. in the morning from Mr. Motley to the entire staff. Mr. Motley was very glib at the

hearing about why he sent that, and there was a gap in his testimony as it related to that exhibit. I questioned him on the last paragraph which states, *“That they couldn’t stop crying in my office. I know they couldn’t wait to go home and share this exciting news with their parents. I’m sure they were just foreseeing the future and a chance at another first place win!”* He ultimately admitted that the reason the students were crying was because the person who was their Cheerleader Advisor was not going to continue in that position. They had bonded with that individual while they were involved with the cheerleading program. They were not crying because they were so excited about Mr. Hawthorne being the new Advisor. They were crying because they lost their current advisor and had no idea why that had occurred. Mr. Motley’s original response did not do justice to Exh. R-6 until I asked him some questions.

The issue of the cheerleading coach position is interesting to look at because Mr. Hawthorne was only in that position for one month and resigned from the position because he could not get the support from Mr. Motley that was granted to the prior cheerleader advisor and other advisors. Mr. Motley did not offer any reason as to why he would not give Mr. Hawthorne the support that he gave to the prior individuals. That certainly does not bode well for Mr. Motley. It certainly appears that avoidance was Mr. Motley’s approach to the Respondent.

I am not accusing the other administrators of deliberately going into the building and creating an atmosphere where there would be something uncomfortable for Mr. Hawthorne. I am challenging the process they decided to use concerning the classroom observations. I part company from the outside evaluators because they did not comply with the District’s evaluation/observation guidelines set forth below:

Exh. R-28, page 18, pre-observation conference states: *“This conference should occur a day or two before the lesson observation. This provides sufficient time for the teacher to make any modifications that were agreed upon from the planning conference.*

Exh, C-83, the 2011-2012 teacher observation and evaluation guidebook states at page 7, *“Planning Conference (not required, but strongly recommended)”*

*Bullet 1 The teaching observation process often starts with a Planning conference (pre-conference). During this conference, the teacher and observer discuss the planned lesson including objectives, student engagement, instructional strategies, outcomes, assessment, resources, unique class characteristics, etc.*

*Bullet 2 During this planning conference, the observer can ask guiding questions to cause the teacher to consider the planned learning experience or suggest possible alternatives to enhance the lesson before it is delivered.*

*Bullet 5 It is recommended that the conference occur a day or two before the lesson observation so the teacher can make any necessary modifications to the lesson plan.*

*Bullet 6 Planning conferences are especially recommended for:*

- Novice or non-tenured teachers to support their development*
- Struggling teachers to focus on particular areas of growth*
- Teachers who the evaluator is visiting for the first time to better understand the class content.*

Not one of the evaluators including Mr. Motley adhered to either planning conference guidelines. Exh. C-83 is a 53 page document and R-28 is a 115 page documents. They were created by administrators and teachers and are designed to offer guidance to administrators and assistance to teachers.

The above guidelines are not set in stone but they clearly infer teachers and evaluators must meet and discuss what was observed, and how to correct problems.



While the guidelines do not reference a telephone conference, common sense dictates that avenue of communication is clearly inappropriate when helping a teacher who may be struggling.

While the statute does not give me authority to talk about the evaluators' "determination of an employee's classroom performance," there is enough in the record to establish that Mr. Motley did not offer the assistance to Mr. Hawthorne that he had requested, such as computers that worked and the elimination of the large tables to be replaced with desks. If you are going to say something about a classroom environment, then you look at the full record and see what could occur if those things that Mr. Hawthorne was asking for could be placed into the room.

I fully recognize that there is probably a budgetary issue with respect to the desks and chairs and working computers. Nevertheless, there is nothing in the record from Mr. Motley to say why that could not be done. He simply ignored it just as he ignored the May 2010 transfer request of the Respondent.

Again, you can go into anyone's classroom and find fault with something. If you find fault with something, you are obligated to offer suggestions to correct that noted deficiency. That did not happen here. What happened here, as previously indicated, was a mechanical application of the District's guidelines, and the end result is Mr. Hawthorne was rated as an ineffective teacher.

For the foregoing reasons, and having duly heard the proofs and allegations of the parties, I Award the following:

**AWARD**

The charges of inefficiency against the Respondent, Darrin Hawthorne, are dismissed because I have determined the action of the District was arbitrary and capricious. Mr. Hawthorne is to be returned to work with full back pay (2011-2012 salary) from September 7, 2012, to the date of this Award. If applicable the District shall be responsible for any medical costs for the Respondent from September 7, 2012, to the date of this Award. It is also highly recommended that Mr. Hawthorne be transferred to a different school.

Dated: February 6, 2013

  
Gerard G. Restaino, Arbitrator

State of Pennsylvania)

County of Wayne) ss:

On this 6<sup>th</sup> day of February, 2013, before me personally came and appeared GERARD G. RESTAINO to me known to be the person who executed the foregoing document and he duly acknowledged to me that he executed the same.

  
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