

367-16

In the matter of Tenure Charge of

JOEL DAWKINS

Docket No. 277-9/15

-and-

**State-Operated School
District of the City of Newark
County of Essex**

APPEARANCES

For the District

Theresa L. Moore, Esq.

For the Respondent

Stuart Ball, Esq.

BEFORE: ARBITRATOR STEPHEN M. BLUTH

BACKGROUND

The School District of the City of Newark (hereinafter "District") submitted a tenure charge of inefficiency against Joel Dawkins (hereinafter "Respondent") on or about September 17, 2015, alleging teacher inefficiency for the 2013-2014 and 2014-2015 school years. Subsequently, on or about October 2, 2015, Respondent filed an answer to the District's charges. Efforts to resolve the matter were not successful. Consequently, I was appointed arbitrator to hear and decide the matter, and the parties were so informed by M. Kathleen Duncan, Director of Controversies and Disputes, on or about October 13, 2015.

Hearings were held on May 17, May 19, and August 29, 2016. At these hearings both parties were afforded full opportunity to present evidence, make oral argument, and otherwise support their respective positions. Both submitted post-hearing briefs. Upon receipt of same, I closed the record. This Opinion and award follows.

POSITIONS OF THE PARTIES

Joel Dawkins has been a high school mathematics teacher for approximately twenty years. In the 2013-2014

school year he was assigned to Sussex Avenue Renew School, a pre-kindergarten through grade 8 school. Early that year, the District advises, he and his principal, Ms. Darlene Gearheart, developed a Corrective Action Plan (hereinafter "CAP") to address areas of performance in need of improvement. According to the District, the CAP was implemented and resources were made available. Further, the District stresses, he was given support, coaching and assistance. In January 2014, Respondent sustained an injury at Sussex Renew and took a leave of absence. The District relates when Respondent returned to work, he requested his assignment be changed to teacher of mathematics at Weequahic High School, where he also had a CAP, was observed, and was provided with assistance and resources to improve his performance. However, the District relates, in spite of the assistance given Respondent, he received a rating of "partially effective" in his 2013-2014 annual evaluation.

In the beginning of the 2014-2015 school year Respondent took a three-month medical leave of absence. Upon his return to work he was assigned to teach mathematics at Girls' Academy of Newark, a middle school located at Weequahic High School. At Girls' Academy, he

and Vice Principal Westberry developed another CAP and he was again given substantial support and assistance. Nevertheless, for the second consecutive chargeable year he received a rating of "partially effective" in his annual evaluation. As a result, the tenure charge of inefficiency followed.

The District maintains the evidence presented at hearing demonstrated the exercise of informed professional judgment by qualified school administrators who evaluated Respondent's performance in accordance with the District's approved evaluation rubric, with the goal of achieving high quality teaching and improving student learning. It also avers, the arbitrator in this matter is not permitted to second-guess that judgment. In short, the evidence presented compels a conclusion that the charges be upheld and Respondent should be dismissed from his employment, the District argues.

Further, the District avers, it implemented a teacher performance evaluation system approved by the New Jersey Commissioner of Education called the "Newark Public Schools Framework for Effective Teaching." The Framework, it declares, contains five categories of teacher performance (Competencies), each comprised of several performance indicators rated as: highly

effective, effective, partially effective, and ineffective. The ratings for each indicator are combined and result in an overall rating for each competency. The District explains a similar system is used for mid-year and year-end summative evaluations, which also includes ratings of additional indicators not scored in observations during the years Respondent was observed and his teaching performance was evaluated in accordance with the Framework.

Also, the District explains, Respondent is certified as an elementary teacher as well as a teacher of mathematics. In the 2013-2014 school year, when Respondent was assigned to Sussex Avenue Renew School, he taught eighth grade students whose display of disruptive behavior in regular classes caused them to be placed a classroom where they remained the entire school day. He and his principal, Darlene Gearhart, developed a CAP that set professional improvement goals in several areas. Respondent also set student learning goals for the year. Principal Gearhart observed his teaching performance twice, after which they met within seven days of each observation to discuss each observation. As a result, the principal rated Respondent's performance as "partially effective" both times.

Further, the District informs, in January 2014 Respondent sustained an injury which led to a leave of absence of approximately one month. He returned to work in February 2014. However, at his request, Respondent did not return to Sussex Avenue because he preferred to teach at a high school. Therefore, he was assigned to Weequahic High School for the balance of the school year. At that high school, Respondent and his principal developed another CAP specific to the high school. During his stay, Respondent was observed by two different administrators on three separate occasions. In all three observations he was rated "partially effective." Also, the District stresses, Mr. Westberry, conducted a mid-year evaluation after he had observed Respondent at least a couple of times. That evaluation included more information than the three classroom observation reports, it informs. The District advises Respondent received "less than effective" ratings on most indicators, including measuring student progress towards goals. As a result, he received a mid-year rating of "partially effective." This rating demonstrated Respondent had only partially met the student learning goals he set for himself at the high school. Based on formal observations, informal walk-throughs and his

partial success in reaching students learning goals, Respondent received an annual summative rating of "partially effective" on May 15, 2014.

During the 2014-2015 school year, Respondent took a medical leave of absence from September to December 2014. When he returned to work in December or January, the District relates, he was assigned to Girls' Academy of Newark which served approximately 80 girls in grades 6-9. Respondent was assigned to teach mathematics to two sixth grade classes. There the principal, Tanishia Williams, and Respondent set out to develop a CAP. In that CAP he identified growth areas of pacing, momentum and continuity, the same growth areas he had identified for himself when he was at Sussex Avenue. Once assigned to a classroom, Respondent was observed four times: a long un-announced observation on March 18, 2015 by Ms. Williams, another unannounced observation on March 18, 2015, by Veronica Gerald, a long announced observation on May 1, 2015 and a short un-announced observation on May 11, 2015, also by Veronica Gerald. In three of the observations, Respondent was rated "partially effective" and in the final observation of the year's performance was rated "ineffective."

The District reports Respondent received a mid-year evaluation and an Annual Summative Evaluation. The ratings he received on the 2014-15 mid-year and summative evaluation were "partially effective." The District avers this was so because Respondent's students had only partially met the limited student learning goals in geometry and statistics he had set for them in March 2015.

The District advises that, based on Respondent's Annual Summative Evaluations of "partially effective" for at least two consecutive years, the principal of Girls' Academy recommended to the State District Superintendent a tenure charge of inefficiency be filed against Respondent. Thereafter, the State District Superintendent reviewed the charge and Respondent's answer and determined the District had complied with the evaluation process in all respects in both the 2013-14 and 2014-15 school years. The District Superintendent also determined there was probable cause to warrant dismissal or reduction in salary. Accordingly, the State District Superintendent certified the charge to the Commissioner of Education. As a result, Respondent was suspended without pay for 120 days. However, Respondent filed an answer with the Commissioner denying the charge

and asserting 14 different defenses. By letter dated October 13, 2015, the Commissioner of Education referred the matter to arbitration. Thereafter hearings were held on May 17, May 19 and August 29, 2016.

The District stresses, with regard to the arbitration process under TEACHNJ, the arbitrator is prohibited from second-guessing the evaluation determinations of the quality of a teacher's classroom performance. In addition, the legislation also permits the arbitrator to consider only certain limited defenses when reviewing charges of inefficiency. The Act requires the arbitrator to conduct a two-step analysis in any case involving a charge of inefficiency. First the arbitrator must only consider whether or not the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to, providing a Corrective Action Plan and determining there is a mistake of fact in evaluation. Also, the arbitrator must determine if the charges would not have been brought but for the considerations of political affiliation, nepotism, union activity, or discrimination as prohibited by state or federal law, and finally if the District's actions were arbitrary and capricious. Then, if the employee demonstrates the existence of any of

these four factors, the act requires the arbitrator to determine whether the employee can demonstrate these facts materially affected the outcome of the evaluations. If the arbitrator determines the facts had no such material effect, the arbitrator is required to render a decision in favor of the School District, and the employee must be dismissed. In the instant matter, the District maintains, the evidence does not show any facts that materially affected the outcome of respondent's performance evaluations.

Also, the District asserts, Respondent received proper pre- and post-observation conferences in the two school years at issue. For example, in 2013-14 Respondent had three announced observations at Weequahic High School and received pre-observation conferences from Mr. Westberry and Mr. Long. The evidence also shows in 2014-15 Respondent had one announced observation and received a pre-observation conference prior to it. Therefore, any criticism Respondent might have concerning the observations is unfounded, it argues. Even if the observations are found to have been defective in some way, there is no evidence they had a material effect on the outcome of his evaluations, the District maintains.

Further, the District rejects any notion that two evaluations that occurred the same-day should be counted only as one. It points out on March 18, 2015, Respondent received a long and short observation by two different observers for part of the same class. One observation was long, for a 45-minute period, and the other was short. The District argues nothing in the law prohibits overlapping long and short observations. Furthermore, the two observers purposely conducted observations that day in order to "norm" with each other because the principal was new to the District and the Framework.

Moreover, the District denies it failed to collaborate with Respondent with respect to the CAPs. It stresses each CAP was completed collaboratively between Respondent and his administrators, and that each set forth student learning goals and professional improvement goals Respondent himself chose. In like manner, the District maintains, contrary to Respondent's assertion, the School District incorporated student achievement in each of Respondent's summative evaluations. It relates Mr. Westberry and Ms. Williams confirmed they considered student achievement when preparing his Annual Summative Evaluations. It maintains Respondent's mid-year evaluations and summative

evaluations met the criteria. Also, the District emphasizes, the evidence presented demonstrated at all times Respondent taught subjects within the scope of his certifications as an elementary school teacher and a mathematics teacher.

Moreover, the District asserts, Respondent's 2013-2014 evaluations were legitimate even though they were based on his teaching at Weequahic High School and not at the Sussex Avenue school earlier in the year. To support this claim, it emphasizes the TEACHNJ regulations acknowledge there may be situations when a teacher on a CAP may be rated on fewer than four observations in a school year. Those regulations provide if a teacher is present for less than 40% of the total student schooldays in an academic year, he or she shall receive at least two observations. For that reason, the District argues, I should find the three observations done over a two-month period at the high school are consistent with the regulations, and did not materially affect the outcome of the evaluation.

Additionally, the District rejects Respondent's claim that he did not receive adequate support from the School Improvement Panel at the schools to which he was assigned. It reports both schools at which Respondent

taught had such panels when Respondent taught there. The District also avers the evidence does not support the claim it failed to substantially adhere to the evaluation process. Moreover, it also points out any such failure did not materially affect the outcome of Respondent's evaluations. It declares the evidence demonstrated Respondent's summative evaluations were based on formal observations of his teaching and were scored in accordance with the School District Framework for Effective Teaching. In both school years with which this proceeding is concerned, Respondent was observed in three different schools by five different administrators, all of whom had similar comments about his teaching skills and rated him similarly. The District concludes the evidence does not show any mistakes of fact that materially affected the outcome of Respondent's summative evaluations and should not be a consideration.

Also, the District insists its actions were not arbitrary and capricious. It rejects Respondent's claim his observations and evaluations were improperly done and scored, and that his evaluations and observations were discriminatory and retaliatory. It rejects, as well, Respondent's claim he was not provided with the

support required by the statute including CAP's, SIP reviews, classroom supports, and placement. Also, there is no basis for his claim his observations and evaluations did not properly include consideration of student achievement, it reports. The District explains Respondent was provided with support in the schools to which he was assigned, received CAPS in both 2013-14 and 2014-15, was observed in accordance with regulatory requirements, participated in pre- and post-observation conferences in which administrators coached him, and provided feedback on his professional development. Accordingly, the District maintains, Respondent has failed to show any arbitrary and capricious action by the School District.

Finally, the District posits, if the charge against Respondent is not upheld under N.J.S.A.18A:6-17.3c, the charge should be considered and upheld pursuant to N.J.S.A.18A:6-17.2 by using the preponderance of evidence rule. This would lead to the inevitable conclusion the District successfully demonstrated the charge of the efficiency against Respondent. It points out Respondent was unable to show, by a preponderance of the evidence, his ratings were anything but the result of a legitimate, good-faith exercise of professional

judgment by school administrators on the basis of their evaluation of Respondent's performance. The District concludes the evidence presented at hearing does not support any of the defenses available to Respondent. It insists Respondent has not demonstrated a statutory defense to the tenure charge of inefficiency. Accordingly, based on the evidence presented, the tenure charge of inefficiency against Respondent should be upheld, and he should be dismissed from his employment with the District, it maintains.

Respondent contends the charge of inefficiency against him does not stand up to scrutiny. He claims, after successfully teaching high school math for 21 years, he was assigned to the Sussex Avenue Renew School which was a K-8 school. However, Respondent reports, as such he spent the first several weeks doing lunch duty and painting lines on the playground. When he received a teaching assignment, he relates, it was as an assistant gym teacher which was outside his certification. Respondent relates when he was finally given a regular class, it was one that was formed by selecting the most difficult, problematic students from existing classes. Also he reports, the students in this class did not have an IEP. That this is so is clear from the testimony of

Ms. Gearhart, who testified she was aware that, until she became principal at the school, the students in Respondent's class had not been evaluated by a child study team. Further, there was no effort on the part of the administration that preceded her to classify students. Therefore, Respondent argues, the students had not been evaluated by a child study team because of the failures of the previous administration. Respondent also avers, he had responsibility for the students all day. He also had to teach them subjects other than math, and had mentoring and counseling responsibilities as well, he claims.

Respondent also insists during the early stages at the Sussex Avenue Renew School, he and the principal developed a Corrective Action Plan known as a CAP. However, he relates, during his assignment to Sussex Avenue, he suffered serious injuries which caused a lengthy absence. When he was able to work again, Respondent was assigned to high school at his request. Therefore, this reassignment rendered the development of his annual summative evaluation inapplicable in regard to this CAP, he argues. Additionally, Respondent reports, during the one observation Ms. Gearhart conducted, he was rated "partially effective." However,

a closer look at the report of the observation itself shows he was evaluated and rated on 15 separate indicators, of which he was rated "effective" on 10 of the 15 and "partially effective" on only five. Respondent disputes the principal's explanation there was some type of rule or directive requiring an evaluator always to round down when the indicators are split evenly between "effective" and "partially effective." He points out this principal was unable to cite any document that reflects such a requirement. Moreover, the indicators were not split evenly, he stresses. Respondent further emphasizes Ms. Gearhart did not conduct a mid-year evaluation or an Annual Summative Evaluation. Also, he points out, she conceded she had no recollection of communicating with the Vice Principal of Weequahic High School, Mr. Gary Westberry, with regard to these matters. In fact, Respondent stresses, Mr. Westberry confirmed there was no communication between Ms. Gearhart and her staff and him and his staff. Accordingly, the CAP developed at Sussex Avenue School became inoperative, Respondent contends, because Sussex Avenue was an elementary school and Weequahic was a high school. Respondent underlines the fact Mr. Westberry acknowledged he did not take into account any of the

observations Respondent had before he got to the high school.

Respondent also explains, his serious injuries of January 2014 occurred as a result of breaking up a fight in school. In spite of the multiple injuries that caused him significant pain and emotional distress, the District required him to return to work in late February 2014. Respondent relates as well, because of his disability and problems getting assignments, his annual evaluation was done approximately 3 months after he began teaching at Weequahic. Also, he points out, all of his observations and evaluations were done over the course of approximately 2 months. Further too, these observations were on consecutive days and the third was approximately 2 weeks later, Respondent declares. Therefore, he had almost no chance to take advantage of the observations and resulting feedback to make whatever adjustments the administration thought were in order. In fact, Respondent reports, Mr. Westberry testified the timing of the observations was hasty and did not allow for any meaningful growth on Respondent's part from one observation to the next. Since a primary purpose of observations and post-observation conferences is to support teachers and provide an opportunity to improve,

that concept was not embraced, especially with two observations occurring on consecutive days in the same grade. Accordingly, there was no reasonable time to show improvement between the evaluations, he maintains. Additionally, while his mid-year evaluation was conducted by Mr. Westberry on April 11, 2014, Respondent reports he was not observed for the balance of the year between his mid-year evaluation and his annual evaluation which occurred on May 15, 2014. Consequently, he argues, the entire purpose of the mid-year evaluation was defeated and he was denied the opportunity to show the improvement being asked of him.

Furthermore, according to Respondent, for the first indicator under Competency Four (Student Progress Toward Mastery; Checks for Understanding), he was rated "effective" by Ms. Gearhart in her long observation which was the only time she looked at Competency Four. Then, for the three observations conducted as required in high school, and in the mid-year evaluation by Mr. Westberry, he was also rated "effective." Nevertheless, Respondent stresses, in his annual evaluation he received a "partially effective" rating for that indicator in spite of having been observed and rated "effective" by the principal. In Respondent's view, this

is a clear and obvious example of an arbitrary and capricious evaluation.

Moreover, the District failed in its responsibility to have a functioning School Improvement Panel (SIP) in place, he maintains. The School Improvement Panel is supposed to ensure the observation evaluation process takes place as TEACHNJ and Achieve New Jersey meant it to, Respondent explains. The SIP insures a mid-year evaluation takes place and a teacher on a CAP must receive an additional observation and post-observation conference. Beyond that, the SIP takes overall responsibility for mentoring teachers, overseeing the observation process and making sure a working CAP is in place and operating effectively for every teacher who needs one. Not only did Weequahic High School fail to have a functioning SIP, Mr. Westberry did not know what it was doing and did not see to it its members dealt directly with Respondent. As his testimony demonstrated, Mr. Westberry knew virtually nothing about a SIP at his school, Respondent asserts. Also, Respondent relates, the District could not produce any records showing what it did or even who was on it. In fact, Respondent reports, Mr. Westberry testified neither the principal at Sussex Avenue nor at his school developed an

independent evaluation score for Respondent that took growth and development of the students into account as required by Student Growth Objectives (SGO). In fact, Mr. Westberry conceded he did not know what Respondent's SGO score was for his school. He also acknowledged he did not remember if Respondent even had an SGO score, nor could he understand the SGO score accounted for 15% of the overall Annual Summative Evaluation. In fact, during his testimony, Mr. Westberry acknowledged he was not familiar with the 15% rule. In the instant matter, Respondent reports, his students' grades were up-to-date, and had portfolio type documents and grade books available for the principal. However, there is nothing in the record to indicate that any actual SGO scores were produced for Respondent. He refers to Mr. Westberry's testimony he did not remember what Respondent's SGO score was or whether he even had one. The law is clear, Respondent declares, the District has the burden to show a CAP teacher had two distinct SGO's and had numerical scores that were computed based on those scores. Respondent emphasizes no Annual Summative Evaluation can be done unless, and until, this process is followed. Therefore, what has been identified as Respondent's Annual Summative Evaluation is void, he

argues, and that failure, negates the Annual Summative Evaluation. As such, contrary to the District's claim, that failure is "material," he concludes.

Moreover, the evaluation has no legal force or effect, Respondent declares, because any "inefficiency" rating based on the Annual Summative Evaluation in the instant charges lacks a legal basis. It also fails the evaluation rubrics for all teachers required by NJSA 18A:6 - 17.3(2) including, but not limited to, measures of student achievement. Therefore, based on the foregoing, Respondent insists the district failed to prove it followed the requirements for student achievement goals. Consequently, the Annual Summative Evaluation for 2013-2014 is both invalid and material because the District did not follow the requirements for measuring student growth objectives in Respondent's Annual Summative Evaluation.

Respondent summarizes the 2013-2014 school year as follows: first, the long observation he received at Sussex Avenue School was scored in an arbitrary and capricious manner. Also, his only observations during the spring semester occurred over the period of approximately 2 weeks and included two observations conducted on consecutive days. Such an action

effectively negated his ability to learn, change, or improve, based on these observations as required by the regulations. Additionally, since nothing from the semester at Sussex Avenue Renew School was carried forward, his effective school year was only approximately 2 months during which he received only three observations. Moreover, Respondent points out, he was not observed between the time of his mid-year evaluation and his annual evaluation; that he had no opportunity to benefit from the mid-year evaluation and to get credit for improvement in his Annual Summative Evaluation. For that reason, his Annual Summative Evaluation reflects an arbitrary and capricious process, he argues. Further, there was no School Improvement Panel (SIP) in place and doing its job during this school year. Respondent stresses, too, he did not receive a score based on student growth, a crucial component required by the regulatory process. As a result, no score for student growth was factored into his annual evaluation. Therefore, he could not receive a summative evaluation rating because the minimum observation requirements were not met, he declares.

Also, Respondent cites the Cuntrera case that made it clear arbitrary and capricious timing alone could

result in the statutory dismissal of charges against a teacher. Additionally, he cites a decision from Arbitrator Daniel Brent, who held in that matter the respondent's performance for the year was fatally tainted by arbitrary and capricious action that materially impaired the respondent's right to be judged and rated on the basis of valid observations and evaluations as required under the TEACHNJ statute. Accordingly, based on the foregoing, the charges based on the 2013-2014 school year are unfair, arbitrary, capricious and violate the law. For these reasons, these charges against him must be dismissed, Respondent maintains.

During the 2014-2015 school year, the pattern established in the previous year continued, Respondent explains. For that year, he was reassigned prior to the beginning of the school year to the Girls' Academy of Newark, a relatively new middle school. Once again, he was required to change the focus of his teaching, he explains. Further, as a result of the injuries and disability he sustained while breaking up the fight Sussex Avenue School, he applied for, and was granted, a leave of absence. This disability kept him away from the classroom from the beginning of the 2014 school year

until December 2014 or January 2015. When he returned to Girls' Academy, Respondent relates, he did not receive a regular class assignment but was asked to "push in" and assist other teachers in existing classes. He emphasizes he finally received a regular class assignment in mid-March, 2015, and his annual evaluation was done on May 12, 2015. Therefore, the period of time during which he could be evaluated was only two months, he relates. However, the observation/evaluation system anticipates teachers will be observed and evaluated over the course of a full school year. This is so because, if done correctly, a teacher can be observed and evaluated over the course of a full-year, receiving feedback and support to maximize chances of success. Respondent stresses the manner in which he was observed/evaluated was both arbitrary and capricious.

Moreover, the evaluation and regulatory scheme given Respondent required him to be observed on four occasions, with feedback, guidance and support after each observation so that he could improve and become a more effective educator. That did not happen, Respondent relates. In the 2013-2014 school year he was evaluated on two consecutive days with no opportunity to learn and improve. In the 2014-2015 school year, he relates, he

was evaluated twice on the same day at the same time in the same classroom. Clearly, then, there was no opportunity for feedback, guidance or support between these two evaluations. Respondent argues this process was conducted essentially as an exercise to benefit a new principal and vice-principal to "coordinate" and "norm" their efforts. This completely negated the ability of the administration to fulfill its duty to provide support, Respondent claims. Indeed, the process of completing two observations on the same day at the same time in the same class means that he received only three observations instead of the legally required four, he claims.

Additionally, the last of Respondent's observations was conducted on May 11, 2015 the day before his annual evaluation. Clearly then, he emphasizes, he had no opportunity whatsoever to benefit from the May 11, 2015 observation. Once again, Respondent insists, a primary purpose of the observation/evaluation process was again negated and the entire process was completely arbitrary and capricious.

During this same year, Respondent and his principal, Ms. Tanishia Williams, developed a CAP as part of the process for measuring student growth.

Respondent claims, although a CAP is supposed to address and encompass an entire school year, this one could only address the time during which his student growth was to be assessed, which in this case was four months. However, Respondent reminds, this CAP was signed on March 25, 2015 and the Annual Summative Evaluation was done on May 12, 2015. That, in itself, demonstrates the time frame for student growth was both arbitrary and capricious. Respondent relates the teacher evaluation rubric requires the inclusion of student achievement. These student growth objectives are required to be specific, measurable, and based on available student learning data. To implement these requirements, there must be a starting point that is measured and identified, Respondent relates. Further, he advises, the principal and he determined the goal of each of the achievement network assessments was that 45 - 57% of the students would reach a score of 75% on district performance based assessments from "Math in Focus" and teacher assessments. However, it is not clear how much growth would be reflected by obtaining such a result, as the number of students who were at certain percentages at the outset was not known. Respondent argues there was no way from reading the CAP to see if a process for actually

measuring or assessing student growth over the approximately 6-week period of time available to do any measuring was ever established. Moreover, the CAP sections that address the second student learning goal are also deficient in much the same way, Respondent stresses. He relates Principal Williams admitted it was not a growth goal, but rather a mastery goal. As such, it did not qualify as an SGO according to the statute, he claims. Respondent emphasizes the statutory scheme also requires him to be rated on his progress, and to have this rating converted to a numerical score. However, in his case there was no such score computed, he points out. To support this claim, Respondent reports, at the hearing, Principal Williams evaded answering a direct question on this matter. Ultimately, however, she never identified a numerical score for student growth, nor did she provide any evidence of such a score being factored into his evaluation, Respondent emphasizes. Further, the principal admitted she did not do the numerical calculations to ensure that the SGO accounted for the 20% for the 2014-15 school year. Here he refers to her testimony that, although student achievement scores count for 20% of a teacher's overall evaluation, she did not compute such a number for

Respondent as required by the regulations. Further, he reports, she conceded she rated Respondent's performance as "Partially Met" only from the summative data of all observations. Consequently, he argues, there was no way to implement his CAP to assess or measure the growth of his students from the end of March to May. Therefore, the administration in that school year failed to compute a separate score based on student growth and factor this score into Respondent's overall evaluation as required by the regulatory scheme. Thus, as in 2013-2014, this failure renders the Annual Summative Evaluation legally null and void.

Accordingly, for both school years, it is clear he was not treated fairly, Respondent reports. This is so because he was subjected to an arbitrary and capricious observation and evaluation process and the District completely failed to follow the legally required process in observing and evaluating him. Therefore, both Annual Summative Evaluations were invalid, Respondent repeats. Additionally, the Annual Summative Evaluation for both years in question did not include the required computation and inclusion of numerical scores measuring his students' growth pursuant to the law, Respondent maintains. He points out there is no discretion or

flexibility in this regard. Respondent avers tenure charges, in fact, are highly dependent on two consecutive Annual Summative Evaluations that follow this standard. However, in his case, there were no valid evaluations at all, Respondent claims. He points out if even one of the ASE's is negated, the charges fail as a matter of law. However, in this case both evaluations are invalid, he insists.

As for the issue of materiality, which provides that in reviewing various failures of the District to properly observe, support and evaluate a teacher, the arbitrator determines if the fact materially affected the outcome of the evaluation. Respondent points out there can be no doubt the District's glaring multiple errors are material and completely undermine the validity of the case against him. He declares the District's total failure in both years to adhere to the requirements for setting student growth objectives, measuring student growth, scoring Respondent on the basis of student growth and including such scoring in his ASE negates both of them. Further, without valid ASE's there is no statutory basis for any of the charges herein. Clearly he argues, the lack of the statutory basis for charges can never be immaterial.

Finally, although the District may claim the minor problems in its efforts should be considered less than determinative, the errors are not minor, Respondent maintains. Rather, they are significant in every area herein discussed. Moreover, the cumulative effect of the astounding number of failures on the part of administration clearly establishes the process was fatally flawed. Respondent insists the District cannot prove he had been given the process he was due and the support to which he was entitled. For the reasons set forth above, Respondent concludes he was treated unfairly, was not supported as he should have been by law and regulation, and was victimized by the complete breakdown of the legal process in place to properly observe and evaluate teachers. Accordingly, Respondent emphasizes, the charges must be dismissed.

DISCUSSION AND FINDINGS

I have carefully examined the testimony and other evidence in this matter. Based on my examination I find the District did not have just cause to discharge Respondent. I so find for several reasons. First, during the 2013-2014 school year Respondent was transferred from a high school to Sussex Avenue Renew School, a

middle school, although his extensive experience was at the high school level. Further, upon his arrival, he was assigned lunch and playground duty, and painting lines on the playground. This was hardly appropriate for a teacher with more than twenty years teaching experience, I find. Additionally, subsequent to those assignments, he was given the position of assistant gym teacher. Not only was this outside his certification, in my view this was a waste of a valuable resource by the District.

Moreover, I observe, Respondent was assigned to a class in October 2013 comprised of the most difficult students from existing classes. I note Principal Gearhart acknowledged these students did not receive IEP's although, had they been classified, they would have been given such a program. Also, she testified these children had not been evaluated by the previous school administration. Thus, in my opinion, Respondent was given a class that was designed to produce failure. Moreover, I find merit in Respondent's claim the CAP he developed at Sussex Avenue became inapplicable to the development of his Annual Summative Evaluation upon his reassignment to Weequahic High School. I observe as well, at Sussex Avenue School, Respondent was seriously injured in January 2014 when breaking up a fight in his

classroom. Thus, the high school vice principal, Mr. Westberry, evaluated Respondent without any thought to his time at Sussex Avenue School. Therefore, his ASE was incomplete at best. As a result, I determine, this fact negated whatever was included in Respondent's CAP because it could not be measured by anything that occurred at the high school.

Additionally, I observe, upon his arrival at Weequahic High School, he was assigned to teach math to both ninth and twelfth grade classes. The ninth grade class was "challenging and difficult," while the other classes was more successful, according to Vice Principal Westberry. Nonetheless, Mr. Westberry observed Respondent teaching only grade nine students. I find Westberry's failure to observe Respondent in the grade twelve class constitutes a serious error on his part. How does one observe only one grade level and ignore the other when evaluating a teacher? The clear answer, in my view, is that the situation should not have occurred, as it violates educational principles as well as any semblance of fairness. Thus, Westberry's failure to evaluate Respondent in his grade twelve class constitutes an incomplete evaluation and should be accorded little weight, I determine.

Further, given his serious injuries and disability, I note Respondent had approximately only three months of teaching, from late-March to mid-June, and his annual evaluation was done on May 15, 2014. Therefore, all his observations and evaluations were done within an approximately two-month period. I believe it is difficult, if possible at all, to compress all evaluation procedures in this short time span.

Additionally, I note, two observations occurred on consecutive days in the same grade. Thus, Respondent had no opportunity to implement any changes suggested by his evaluators. Also, I find, Westberry's explanation for this anomaly was that "it wouldn't have made no difference because Mr. Dawkins was an experienced teacher." This, in my opinion, lacks any reasonable educational basis and renders these evaluations meaningless. This is so because, as Arbitrator Mattye M. Gandel noted, the requirements to observe a teacher are designed to assist him to improve on his weaknesses, and provide guidance for him to improve. Therefore, there has to be a reasonable time period between evaluations to show improvement for the balance of the year.¹

¹ Patsy Cuntrera and Passaic County Vocational School District. Agency Docket No.2283-8/15; R4).

However, Respondent was not observed for the balance of the year during the time between the mid-year and annual evaluation on May 15, 2014. This demonstrates to me the District was more interested in discharging Respondent rather than assisting him to be a more effective teacher. Any teacher with twenty plus years in a district deserves at least that consideration, I believe.

Further, the District failed to properly implement the evaluation system when Mr. Westberry conducted an evaluation on April 11, 2014, but did not observe Respondent for the remainder of the year between Respondent's mid-year and his evaluation on May 15, 2014. This undermined a major purpose of a mid-year evaluation, which was designed to set goals for improvement and adjustment for the balance of the year. Clearly, Mr. Westberry's failure to do this contributed to Respondent's problems, I determine.

Additionally, I am taken aback by the fact Ms. Gearhart rated Respondent "effective", the only time she reviewed Competency Four. Also, Mr. Westberry observed Respondent three times and rated him "effective" in Competency Four, as he did in Respondent's mid-year evaluation. Yet, to my chagrin, I see, after being rated effective by two principals for that category, he

received only a "partially effective" rating for that indicator. An action such as this leads me to consider the possibility there is more than meets the eye in this matter. To me, a teacher rated "effective" four times in several months should obviously be rated "effective" in that category. The District's failure to do so seriously undermines the "inefficiency" finding on Respondent's evaluations, and, frankly, District officials should consider investigating this anomaly, in my opinion.

As for the School Improvement Panel, I note the District either did not have such a panel or, while one may have existed on paper, it certainly did not function as required. A simple reading of Mr. Westberry's testimony demonstrates he had no knowledge of the Panel and certainly had no idea what it was supposed to achieve. For these reasons, I find, the charges against him for 2013-2014 are arbitrary, capricious, and contrary to N.J.S.A. 18A:6-17.2

Moreover, I determine, as well, the District has not sustained its burden for the 2014-2015 school year. As a result of the injuries he had sustained while breaking up a fight in January 2014, he was again granted a leave of absence which extended from the beginning of the school year to December 2014 or January 2015. When

he returned, he was reassigned to a different school, this one being a newly created middle school called Girls' Academy of Newark. Since he had taught high school the previous year, he again had to make adjustments required to teach middle school mathematics. However, I observe, once again he was not assigned to teach a regular class, but was assigned to assist other teachers in existing classes. Also, I note, he did not receive a regular class assignment of his own until mid-March 2015. However, his annual evaluation was done on May 12, 2015, resulting in an approximate two-month period of time. This, I find disturbing. It appears to me it is virtually impossible for a teacher to have an annual evaluation based on his performance over only a two-month time period. This act, in and of itself, was arbitrary and capricious, I determine.

Further, I note, in the 2014-2015 school year, the district's behavior was thoughtless. While Respondent was observed on two consecutive days in the previous year, in this situation he was evaluated twice in the same day, at the same time, in the same classroom. The District's excuse during the hearings was that it was attempting to coordinate and "norm" the observations of the new Principal and her Vice-Principal. However, in my

opinion, it was done so the two observers would come up with similar, if not exact evaluations. This is not why evaluation systems were developed. The goal of these evaluations is to assist a teacher in improving performance. However, with two evaluations on the same day, such an opportunity does not exist. Additionally, Respondent's last observation occurred on May 11, 2015 one day before his annual evaluation. Such an act completely obliterates the purpose of observation/evaluation which is to improve instruction. In this, I agree with Respondent's claim the process of observing and evaluating him was arbitrary and capricious. This term is a serious one which I do not take lightly. However, I am surprised and dismayed any district would engage in such actions, as did the administration of Girls' Academy.

Moreover, I determine, the District's actions in the matter of Respondent's CAP was also improperly implemented. Due to his extended absence, Respondent's CAP was signed on March 25, 2015 and his Annual Summative Evaluation was done approximately one and one-half months later. This was so even though the CAP stated the time to assess student growth was four months.

Therefore, the timing of this evaluation was, once again, in my view, arbitrary and capricious.

As for the CAP itself, I see it did not provide a process for assessing student growth. The requirement for this area requires the evaluator to consider the SGO based on available student data and on growth and/or achievement. However, in this instance I find Principal Williams' testimony was unconvincing, as she failed to provide a numerical score for the SGO and did not provide any evidence she factored the SGO into Respondent's score. Accordingly, I determine, during the school year 2014-2015, the District committed the same error as did the administration in a different building the previous year; that is, it failed to properly compute a separate score for Respondent based on student growth and, therefore, could not have factored this into his Annual Summative Evaluation. Accordingly, I find, that evaluation bears no weight in Respondent's evaluation process. It also constitutes a material error, I determine

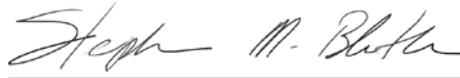
Finally, I find, the District's reliance on the doctrine of materiality is misplaced. The fact is, there were multiple observation/evaluation errors in both years at issue here. As discussed herein, both the timing

and content of these factors were insufficient to establish anything except certain administrators were asleep at the switch when it came to observation/evaluation and, especially, when it came to SGO's. Accordingly, I find the observations/evaluations and Annual Summative Evaluations were material because without valid SGO's and Annual Summative Evaluations there can be no statutory basis for charges against Respondent. For the reasons delineated herein. I find the District did not have cause to discharge Respondent. The appropriate remedy is reinstatement with full back pay. It is so ordered.

AWARD

The District did not have cause to discharge Respondent Joel Dawkins. The appropriate remedy is reinstatement with full back pay.

10/21/15



STEPHEN M. BLUTH, ARBITRATOR

State of New York)

)ss:

County of Nassau)

On this, the 21 day of October, 2016, before me a notary public, the undersigned officer, personally appeared Stephen M. Bluth, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Cherie L Bluth

Notary Public No. 01BL6253737