

NEW JERSEY DEPARTMENT OF EDUCATION		
- - - - -		X
In the Matter of The Tenure		
Charges Proffered by		X
THE SUSSEX COUNTY EDUCATIONAL		X
SERVICES COMMISSION		X
		Agency Docket No.
		217-9/17
"Petitioner"		X
		X
-against-		X
		X
CHRISTINE RUDINSKY		X
		X
"Respondent"		X
		X
Pursuant to the TEACHNJ Act		
- - - - -		X

**APPEARANCES**

**FOR PETITIONER**

SCHENCK, PRICE, SMITH & KING, LLP  
Mark H. Zitomer, Esq.  
Matthew J. Donohue, Esq.

**FOR RESPONDENT**

OXFELD COHEN, PC  
Sanford R. Oxfeld, Esq.

**BEFORE:** Earl R. Pfeffer, Arbitrator

## BACKGROUND

In Tenure Charges and a Written Statement of Evidence ("Charges"), sworn on August 20, 2017, Andrea Romano, Superintendent of the Sussex County Educational Services Commission ("the ESC" or "the District"), made allegations against Respondent, Christine Rudinsky, of employee inefficiency mandating her dismissal, and conduct unbecoming a teaching staff member, upon which the District asserts dismissal is warranted for just cause. The Commission, following its receipt from Respondent's counsel of her written Response to the Charges, certified the Charges on September 11, 2017, and suspended Respondent without pay for 120 days under N.J.S.A. 18A:6-14.

The Charges thereafter were submitted to the Commissioner of Education through the Bureau of Controversies and Disputes, on September 19, 2017, and the Commissioner, following receipt on October 11, 2017, of Respondent's Answer, found the Charges are subject to determination by an arbitrator, and on October 23, 2017, referred same to me for a hearing and decision.

Respondent, in her answer, disputes the Charges, alleging that the allegations of inefficiency were brought against her because of her union activity, and that the alleged conduct unbecoming falls far short of just cause for her termination.

Following a Pre-Hearing Conference on November 7, 2017, hearings were scheduled for December 15, 2017, February 2, 2018,

and February 12, 2018. The December 15, 2017, hearing, by consent of the parties, was converted into a settlement conference, and when same did not result in a resolution of the dispute, hearings were convened on the other two scheduled dates. At the hearings, which were transcribed, the parties each presented evidence and argument in support of their respective positions.<sup>1</sup> Following completion of the proceedings, the parties on March 19, 2018, submitted post-hearing briefs. Following my receipt of same, the arbitration record was closed.

Many of the background facts are not in dispute. Respondent has been employed by the District since 1998, and commencing in 1999, as a Special Education Teacher, first at the Special Children's School, and since 2012 at Northern Hills Academy, in its pre-school program. From the 1998-1999 school year, through the 2006-2007 school year, Respondent was regularly deemed by her evaluators to be "very good," in both classroom observation reports and her yearly reviews. Respondent Exhibit 4. In fact, her performance reviews up through the 2012-2013 school year were routinely laudatory. Id.

Thereafter, although the teacher evaluation rubric changed following the School's adoption, under the TEACHNJ Act ("the Act"), of the Teacher Effectiveness Performance Evaluation System

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<sup>1</sup>Citations herein to the February 2, 2018, and February 12, 2018, hearing transcripts are denoted, respectively, as "2/2 at \_\_\_," and "2/12 at \_\_\_."

("TEPES") rubric, Respondent's commendatory observation reports and year-end Summative Performance Reports continued to reflect highly positive assessments from her supervisors.<sup>2</sup>

Thus, for example, the first time she was evaluated under TEPES in the 2013-2014 school year, as required under the Act, a January 23, 2014, Formal Observation praised her for meeting the goals and objectives with each student's IEP, differentiating instruction and student materials, maintaining appropriate pacing, questioning students for understanding, reinforcing student responses and aligning goals and objectives with common core standards, and establishing effective routines. Respondent Exhibit 4 at CR 72-74. Consistent with that evaluation, she was rated effective in her 2013-2014 Summative Performance Report submitted and finalized by new District Superintendent Andrea Romano. Id. at CR 75-78. Respondent's positive assessments continued through the end of the 2015 calendar year.

Romano, who previously had been Director of Education at the Hunterdon County Educational Services Commission, and who also is

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<sup>2</sup>The Act mandates each school district either to submit to the Commissioner of Education, for review and approval, the evaluation rubrics the district will use to assess the effectiveness of its teaching staff members, or, alternatively, use the model evaluation rubric established by the Commissioner. Evaluation rubrics are governed by standards promulgated through duly adopted regulations which minimally must include provisions and processes outlined in the Act. See N.J.S.A. 18A:6-123. Each board of education was required, beginning with the 2013-2014 school year, to adopt and implement an approved evaluation rubric.



an adjunct professor in the Special Education Department of William Paterson University, and in the undergraduate Humanities program at Raritan Valley Community College, testified that TEACHNJ required a more rigorous evaluation system. That assessment of the new law cannot be disputed, and is easily observed from the Act itself, in particular its detailed mandate for each school district's "adoption of evaluations that provide specific feedback to educators, inform the provision of aligned professional development, and inform personnel decisions," N.J.S.A. 18A:6-118(2)(a), and its establishment of precise minimum requirements for observing, evaluating and rating teaching staff. N.J.S.A. 18A:6-123.

The Act also requires each school shall convene a school improvement panel which, among other things, "shall oversee the mentoring of teachers and conduct evaluations of teachers, including an annual summative evaluation [and] 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." N.J.S.A. 18A:6-120. So, too, it requires that teaching staff members be provided "with ongoing professional development that supports student achievement and with an individual professional development plan." N.J.S.A. 18A:6-128.

The Act mandates that "additional professional development"

shall be provided to "any teaching staff member who fails or is struggling to meet the performance standards established by the board, as documented in the teaching staff member's annual summative evaluation." N.J.S.A. 18A:6-128. In the event a teacher is rated "ineffective" or "partially effective" on his or her annual summative evaluation, the teacher together with a supervisor must develop a corrective action plan ("CAP") that includes "timelines for corrective action and responsibilities of the teaching staff member and the school district for implementation of the school district for implementation of the plan." Id.

In the event a teacher who had been placed on a CAP following a rating of "ineffective or "partially ineffective" on an annual summative evaluation is rated "ineffective" in the CAP-year annual summative evaluation, the superintendent of the district is required to file with the secretary of the board of education a charge of inefficiency. N.J.S.A. 18A:6-17.3. If the board, following proper review, forwards the written charge of inefficiency to the Commissioner of Education, and if the Commissioner, upon review of the charge and the teacher's written response, if any, cannot determine the evaluation process was not followed, the Commissioner shall refer the case to arbitration and appoint an arbitrator to hear and decide the matter.

As noted above, Respondent's observations and evaluations in

calendar year 2015 were positive. The TEPES Classroom Observation Form documenting a classroom observation by Principal Jennifer Kaufman on April 17, 2005, states that Respondent "demonstrate[d] a clear understanding of the needs of the pre-school students she teaches," and that her "[i]nstruction was differentiated to student ability." Respondent Exhibit 4 at CR 84.

In the TEPES Teacher Summative Performance Report evaluating and rating Respondent for the 2014-2015 school year, Kaufman rated her "effective," based on a rubric score of 3 (out of 4) in all performance categories. The Report noted that she "has a strong understanding of the developmental stages of students." Id. at CR 86. It indicates Respondent's instruction was "well planned" and "differentiated to student ability." Id. at CR 87. It states that she "engage[d] students in age appropriate and developmentally appropriate activities," and "use[d] a variety of learning styles and modalities to meet student needs." Id. At 88. It was noted by Kaufman that Respondent "provide[d] students with ongoing questioning and feedback," and "use[d] positive reinforcement to encourage student learning." Id. at 89. Kaufman stated that Respondent's classroom was "caring" and "welcoming," and that it celebrated student diversity. Id. at CR 90. Her lesson plans were "aligned with Creative Curriculum." Id. at CR 91.

Thereafter, Respondent was observed by Kaufman on October 2, 2015. Once again, the formal TEPES observation report was positive. Joint Exhibit 2. Kaufman noted that she "provide[d] age and developmentally appropriate activities for her pre-school students in this integrated classroom." Id. She appropriately differentiated instruction, maintained her classroom in a manner conducive to a variety of learning modalities and provided positive feedback to her students. Respondent's lesson plans were submitted regularly and on time. Kaufman wrote, "The warm and nurturing atmosphere created by Ms. Respondent's tone and demeanor throughout the lesson created an environment conducive to learning for her pre-school students." Id.

Another TEPES Formal Observation of Respondent was conducted on January 5, 2016. The Report, Joint Exhibit 3, was submitted by Pamela Brillante, the District's newly hired Supervisor of Special Education, who also is Assistant Professor of Special Education at William Paterson University. 2/2 at 206-7. Dr. Brillante holds a Masters Degree in early childhood education from William Paterson University, and a Ph.D. in educational leadership and school administration from Rowan University. She previously worked for the State Department of Education as the Early Childhood Specialist in the Office of Special Education for twelve (12) years. 2/2 at 207. In that capacity, she provided training and technical assistance to school districts and their

classroom teachers about developing inclusive, high quality, early childhood programs. 2/2 at 208. She recently authored two books: The Essentials: Supporting Young Children with Disabilities in the Classroom (NAEYC 2017), and Universal Design for Learning in the Early Childhood Classroom (Routledge 2017).

Dr. Brillante commenced her work as the District's Supervisor of Special Education in the Fall of 2016. 2/2 at 206. That is when she conducted her initial observation of Respondent, one which did not go well for the Respondent. 2/2 at 210. Dr. Brillante recalls that "there was a disconnect between what I was expecting and what she was, you know, how she performed." Id. She told Respondent there was "nothing positive" she could say about the lesson. Id. However, rather than write the lesson up as ineffective, Dr. Brillante determined to review with Respondent what she observed, and how that departed from what she had expected. She offered Respondent a "do-over" and gave her a specific math standard to work on, and told her "[d]o something with your children." 2/2 at 210-211.

The "do-over" took place on January 5, 2016. Joint Exhibit 3. According to Dr. Brillante, Respondent did not teach to the math standard she had given the teacher. 2/2 at 212. The lesson was ineffective. She explained her assessment to Respondent in a post-observation meeting. 2/2 at 212-13. In her TEPES Formal Observation Report prepared by her and finalized by Kaufman,

Joint Exhibit 3, Dr. Brillante noted that the standard identified in the lesson plan was NJPTLS 4.1, which is to demonstrate an understanding of numbers and counting, but the activity covered by the lesson was more closely aligned with NJPTLS 4.1.1, which is count to 20 with minimal prompting. She observed that Respondent did not review concepts of counting and numbers prior to the start of the lesson, did not link the content with past and future learning experiences, and actually did not signal an end to the previous activity (snack) and the start of the math lesson. Joint Exhibit 3.

Further, according to Dr. Brillante's written report, there was no evidence of implementation of the curriculum, no plan for differentiated instruction, and no demonstration of lesson objectives. Learning goals were not reinforced, and there was no formal checking for understanding, except for the typically developing peer in the class.

Dr. Brillante observed that the physical environment was unstructured, and there was no evidence of formative or summative assessment, or of a formal system to collect data towards IEP goals. She determined the lesson was not up to acceptable standards. Joint Exhibit 3. She testified, "I specifically asked her to teach to a specific standard, and what she did wasn't to that standard. So it just wasn't up to any - it just wasn't logical. It wasn't developed correctly." Id.



Dr. Brillante rated Respondent's January 5, 2016, performance ineffective, and communicated that assessment in a post-observation review. Id. She counseled Respondent to review the NJ preschool mathematics and language arts standards, as well as the Creative Curriculum, and to "develop a plan to embed the standards throughout the rest of the year." Id. She advised Respondent to pick two math and two language arts standards to teach to and assess every day. She instructed her to teach the aides how to embed the standards into their play with the children. She told her to develop and implement a system for the formal collection of data.

Dr. Brillante thereafter performed a walkthrough observation of Respondent's classroom on May 31, 2016. Joint Exhibit 4. The performance she observed during that informal observation was ineffective, she recalls. 2/2 at 214. She testified, "[t]he children weren't engaged. They were watching other children do a developmentally inappropriate computer game." Id. In the TEPES Classroom Observation Report, Dr. Brillante observed that typically developing peers in the class were taking time away from the children with disabilities. Joint Exhibit 4.

Thereafter, Romano prepared and finalized Respondent's TEPES Teacher Summative Performance Report for the 2015-2016 school year. Joint Exhibit 5. Based on her review of Respondent's Teacher Documentation Log, the TEPES Observation Forms, the



Student Growth Objective ("SGO") Progress Forms, Respondent's lesson plans, the IEPs of her students and relevant progress reports, Romano gave Respondent an overall rating of "partially effective." Id. In the "Commendations" section of the 2015-2016 Summative Report, Romano wrote:

Mrs. Respondent has a significant number of years teaching and is seen as a veteran teacher within a young staff. She is in a leadership role as Union President and is often looked to for support by staff. This places her in a challenging role frequently, however she has been able to be supportive of staff and supportive of programming options that create dynamic programming. She has shared that this school year has been significantly challenging as revamping to the preschool program has begun. Mrs. Respondent has shared her frustrations yet maintains a professional attitude. She has not let the challenges impact the student learning process.

As the district continues to program differently for preschool, Mrs. Respondent understands she plays a key role in the progress. Her willingness to see the change, play a part in the change and assume ownership of a revised curriculum/program will be essential to the success of this endeavor. A team player attitude will be needed to work with administration in making effective change. Mrs. Respondent can be that team player if she wants to. She saw significant growth in many students this year. Staying the line, focusing on both developmental and age appropriate tasks has supported students with significant needs.

Joint Exhibit 5.<sup>3</sup>

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<sup>3</sup>Under Performance Standard 6, "Professionalism," Romano in the 2015-2016 Summative Performance Report gave Respondent a rating of "Effective" (rubric score 3 out of 4). For improvement, she identified "communication with administration" as an area for focus. Romano wrote: "As Union President and a Veteran Teacher, lack of communication with administration is

Following finalization of the 2015-2016 Summative Report on July 5, 2016, Romano met with Respondent for an Annual Summary Conference on July 21, 2016, and placed Respondent on a Corrective Action Plan, as required under TEACHNJ when an employee has been rated "ineffective" or "partially effective." N.J.S.A. 18A:6-128; 2/2 at 53-55. See Joint Exhibit 5 (Annual Summary Conference Form). Thereafter, on September 15, 2016, Respondent, together with Romano, Dr. Brillante and Jennifer Cook, the school's Principal, collaboratively created a CAP which identified Respondent's deficiencies, her goals for improvement, her responsibilities for achieving same, and the support and resources the District will offer to help her to meet those goals. 2/2 at 55-56. See N.J.S.A. 18A:6-119; 18A:6-128.

An interim CAP conference was convened on October 12, 2016. 2/2 at 60-61. See Joint Exhibit 6. The meeting generally reviewed with Respondent her expected CAP progress, following a list of agenda items previously identified by Romano in an October 5, 2016, email. 2/2 at 62-64; Petitioner's Exhibit 1.

On October 27, 2016, Respondent was observed by Cook and Dr.

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concerning. Although Mrs. Respondent always is willing to meet to discuss and participate in Union issues - communication about membership, communication about roles, and communication regarding Union issues remain a challenge. . . Several meetings have occurred where Mrs. Respondent has taken responsibility for communication issues and academic structure concerns. Communication issues have always led to an agreed upon approach." Joint Exhibit 5.

Brillante. 2/2 at 178. Dr. Brillante and Cook convened a pre-observation meeting, and Dr. Brillante and Romano met with her after the observation. Dr. Brillante characterized the observation as "ineffective." 2/2 at 218. She recalls Respondent did not demonstrate significant progress. Id. Dr. Brillante, in consultation with Cook, wrote the TEPES Observation Report, which was finalized on January 17, 2017. Joint Exhibit 7. Among its many observations, the Report stressed that "[i]ntentionality is key in planning for and executing high quality early childhood experiences and instruction." Id.

The Report recites, for example, that Respondent's lesson plan for October 27, 2016, stated that the current investigation was pumpkins, but there were no pumpkins, pumpkin seeds, gourds or any other pumpkin related REAL things in the classroom for the children to explore, especially in the science area. Id. Once again, as related in the Report, Respondent's lessons lacked intentionality. Under "instructional delivery evidence," the Report recalls that the lesson plan had stated the teacher was going to model putting the letters of the student's name in correct left to write order. And yet, Respondent neither reviewed previous knowledge nor taught any specific skills that were intended to model the instruction she wanted to reach that day.

One student, according to the Report, took his printed name

tag out and started putting the magnet letters onto the nametag in random order. The concept of lining up the letters in the left to right order in which they would be read was lost. There was no specific teaching of a skill or concept, nor was there modeling of the intentional instruction that had been planned. Joint Exhibit 7.

A post-observation meeting with Respondent was convened by Romano on November 7, 2016, to discuss the October 27, 2016, observation, Respondent's CAP and "administrative concerns." In a memorandum to Respondent dated November 14, 2016, Joint Exhibit 8, Romano summarized the November 7, 2016, meeting, highlighting several areas of concern: (1) Respondent's use and expectations of paraprofessionals in her classroom; (2) her failure to teach content areas in her schedule; (3) the continued absence of open-ended and student-centered materials in her classroom; (4) her need to develop professional knowledge on how children learn specific skills and on the instructional standards within the Creative Curriculum; (5) the lack of intentionality in her work with her preschoolers, and (6) the absence of connectedness in her curriculum. Joint Exhibit 8.

The meeting addressed Respondent's stated request she be given more assistance, with Romano reminding her of the substantial assistance Cook already had provided in modeling lessons, assisting in classroom setup, working with schedule and

labeling areas. Respondent was further reminded that she had been approved by Cook to attend a 10-workshop series on "High Quality Pre-Schools," taught by Dr Brillante, who also had worked directly with Respondent in her classroom. Romano reminded Respondent that Dr Brillante had shared resources in Creative Curriculum and GOLD Standard Assessment information. Romano and Dr. Brillante offered that they, as well as Cook, were available to "brainstorm." Joint Exhibit 8.

Thereafter, a meeting was convened with Romano, Cook and Respondent on November 29, 2016, to review Respondent's CAP performance. Joint Exhibit 14. Among the subjects discussed were (1) Respondent's continuing failure to complete the labeling areas of her room; (2) strategies for controlling student behavior to allow closer adherence to her daily schedule; (3) improving classroom management skills; (4) aligning the lessons to preschool standards; (5) how to collect and analyze data; (6) more support and education on the Gold Assessment, and SGOs more reflective of Gold Assessment Baselines. In short, the review stressed that while some areas of the CAP had been met, many other areas had not moved forward. It was noted that Cook had spend significant time in Respondent's classroom to model lessons, schedules and other components of the Creative Curriculum.

On January 6, 2017, Cook conducted a TEPES Formal

Observation in Respondent's classroom. It was a "poor lesson," she recalls. 2/2 at 181. There was no direct instruction. Lesson plans were not observed. Id. Respondent knew Cook would be coming in to conduct a TEPES Formal Observation, and yet the only activity during the planned observation period was snack. Id. And, even then, instead of using the snack time as an opportunity to work with her students on social skills, Respondent spent most of the 22 minutes chatting with her aides. Joint Exhibit 21. When questioned by Cook on why she was not following her lesson plan, Respondent merely said she was "off schedule." 2/2 at 182.

In the Formal Observation Report for the January 6, 2017, lesson, Cook stressed the absence of a purposeful planning of instruction. Joint Exhibit 21. The "letter of the week" pocket chart had the same letters, Tt and Nn, as it did the previous November. The Art Center was not displaying any current student work. There was no observable consistency in the daily routine. Her students' instruction goals remained unchanged even after they had been mastered. Respondent's planning instruction and assessments did not reflect any understanding of her curriculum or her students' specific needs. Id. Thus, for example, the objective that day for ELA was to identify and name letters, and to demonstrate knowledge of the alphabet. The assessment for that objective was to trace the letters.



Thus, there was no alignment of the objectives/standards, the instructional activity and the assessment during the January 6, 2017, lesson, according to Cook. Joint Exhibit 21. The classroom remained cluttered, and instruction materials were not academically appropriate, motivating or interesting. Id. Cook noted the absence of evidence that the professional feedback that was being given to Respondent was being incorporated into instructional practices and plans. Joint Exhibit 21. She advised her to be "proactive with changes," and "to study your curriculum and your assessment tools." Id. On that day, Cook observed, "there was no evidence of student progress." Id.

Four days after the January 6, 2017, observation, Cook, Dr. Brillante and Romano on January 10, 2018, met with Respondent for a mid-year CAP review. 2/2 at 65. Respondent's progress under the CAP was discussed, in particular the fact lesson plans consistently were either missing, incomplete or inappropriate. It was noted that Respondent had not sought assistance, despite the offers of support from the supervisory team. It was made clear to Respondent that such assistance continued to be available, including after-school work sessions.

At the mid-year CAP review, the supervisory team further noted the absence of direct instruction during formal observations and walk-throughs, because Respondent was not following her schedules. Cook repeated her previous offers to



meet with and assist Respondent in writing lessons, data collection and setting up investigations, although Respondent had not yet taken advantage of those offers. Respondent was reminded of the ongoing offers from Dr. Brillante to help her with the standards and from Cook regarding the Creative Curriculum. She was cautioned she must make progress to avoid an ineffective or partially effective rating for the school year, and the charges that would necessarily follow.

A month later, on February 10, 2017, after Cook received from Respondent her lesson plans for the week of February 13-17, 2017, she indicated her eagerness to come into the classroom and see any activities or particular lessons Respondent would like her to observe. Joint Exhibit 27. Respondent's response ignored Cook's offer. Id.

Subsequently, an observation was scheduled for March 30, 2017. This being the third observation of Respondent during the 2016-2017 school year, a pre-observation conference was not required. Nevertheless, because Respondent was on a CAP, and because Romano determined such a conference would benefit Respondent's preparation for the scheduled observation, a pre-observation conference was convened on March 22, 2017. 2/2 at 101-102.

On March 27, Romano sent Respondent a memorandum summarizing the conference. Petitioner Exhibit 2. It reflects discussion

regarding the activity that would be observed, the standards that would be applied, and in particular, the alignment of objectives, lesson plans and standards to assessments. Id. Romano encouraged Respondent to seek to showcase areas in the CAP in which she had improved, and to let her know in advance of the March 30<sup>th</sup> observation what she would like the supervisory team to observe. Id.; 2/2 at 103.<sup>4</sup>

The March 30, 2017, observation was "absolutely ineffective," according to Dr. Brillante. 2/2 at 220. "Nothing was being implemented," she recalled. Dr. Brillante recounted that Respondent had stated at the March 22, 2017, pre-observation conference she would be instructing two pre-school students. It was decided that the emphasis would be on math and on literacy. Petitioner Exhibit 2. Dr. Brillante testified that one of the students was absent on March 30, and that Respondent gave the one child who was present a math lesson, but skipped the English lesson. 2/2 at 220. In lieu of the English lesson, Respondent gave a science lesson that was not on her lesson plan. Id. at 220-21.

In her very detailed TEPES Classroom Observation Report on the March 30, 2017, lesson, Dr. Brillante noted the continuing

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<sup>4</sup>Romano explained that a pre-conference is an opportunity for a teacher to let the evaluators know what she wants them to notice, as well as for the evaluators to let the teacher know what they will be looking for. 2/2 at 100.

absence in Respondent's instruction of purposeful planning. She noted Respondent's failure to incorporate into her lesson preschool investigations, as opposed to preschool themes. Dr. Brillante explained that under the Creative Curriculum, investigations focus on giving children a chance to explore and make sense of experiences with concrete objects wherein they learn about properties of objects and how to interact with them and manipulate them in ways that are meaningful. Dr. Brillante concluded Respondent continued to lack the professional knowledge of what encompasses high quality early childhood education, and listed for her the Preschool Science Standards that are based on giving children instructional activities based on observations and investigations which are developmentally appropriate. Joint Exhibit 29.

Dr. Brillante further observed, with reference to specific examples drawn from the lesson, that Respondent continued to lack understanding of basic lesson design and preschool standards, even though Respondent claimed in her CAP documentation that she had taught them throughout the school year. The Report notes Respondent's ongoing failure to incorporate professional feedback into her lesson plans, or even to follow the plans as written. Dr. Brillante documented continuing weakness in the area of assessment and data collection, in particular Respondent's failure properly to align her assessments to the lesson

objectives. See generally Joint Exhibit 29.

Thereafter, following a three-hour observation of Respondent on April 25, 2017, utilizing the New Jersey Early Childhood Environmental Rating Scale ("ECERS"), Dr. Brillante prepared a Report rating Respondent a 1.82, which fell into the "inadequate range," on the ECERS scale. Joint Exhibit 30. Dr. Brilliant testified she is one of the few evaluators licensed by the publishers of the ECERS tool to conduct the ECERS evaluations, and she is one of only three (3) people in New Jersey who is qualified to train other evaluators on the tool. 2/2 at 221-222. She summed up the lesson as being "ineffective." Id. at 222.

Consistent with the TEPES observations performed under TEACHNJ, and summarized in detail above, the ECERS observation revealed that intentionality in planning for and in executing high quality instructions was undeveloped and a concern, particularly given the amount of professional support that had been provided to Respondent. Dr. Brillante documented the isolation of one of Respondent's disabled students, An, from classroom routines, which denied her an opportunity to play with her peers. There was no evidence of a planned effort to make play centers and materials accessible to her. Joint Exhibit 30.

Dr. Brillante noted Respondent's ongoing failure to follow her written lesson plans, and observed the absence of individualized adaptations or modifications to the lesson plans

for the two disabled students in her classroom. Further, notwithstanding previous observations and meetings, Respondent again failed to match the lesson's activity to its objective. She did not engage in data collection, nor did she demonstrate the use of a data collection system. Id.

Dr. Brillante noted the disorganization of the classroom, and while she observed the presence of some high quality materials in the science area, the materials (a collection of rocks and some tools) were still unopened in their sealed plastic bags. Dr. Brillante wrote, "[t]here has been minimal evidence that the specific feedback given to you over this school year has been incorporated into instructional practices or plans." Id. According to Dr. Brillante, student progress could not be measured, since Respondent had failed to align her lesson plans with NJ Preschool Teaching and Learning Standards and with Creative Curriculum objectives, despite the mandate of her CAP to do so. Id.

On June 23, 2017, Romano submitted Respondent's 2016-2017 TEPES Teacher Summative Performance Report. The Report was finalized by Cook on July 26, 2017. Joint Exhibit 31. Respondent was rated "ineffective" on three of the seven Performance Standards (professional knowledge, instructional delivery and assessment of/for student learning), and "partially effective" in the other four (instructional planning, learning

environment, professionalism and student progress). Id. The overall evaluation was "ineffective." Id. The Report, which recites in detail the issues and problems recorded in the Observation reports and in memos and letters sent to Respondent during the school year, recommended her for dismissal/non-renewal. Id.

Romano explained that the ineffective score for professional knowledge was based on Respondent's failure to implement the goals of the Creative Curriculum, and on the fact she had not met CAP time frames and activities. 2/2 at 78-79. Respondent did not take advantage of the Creative Curriculum resources made available to her under the CAP, and did not develop in her classroom a high quality inclusive preschool program. 2/2 at 79.

Concerning instructional planning, Romano testified Respondent was inconsistent with her materials and mode of instruction, and for that reason was only partially effective. Id. at 80. Romano stressed the ongoing problem of Respondent recycling old lesson plans. Id. at 81.

Concerning instructional delivery, Romano testified Respondent was rated ineffective because of her continuing failure to differentiate instruction and utilize the GOLD assessment tool. Id. at 82. Accordingly, she was also rated ineffective in assessment of and for student learning. Romano explained that Respondent failed to demonstrate her use of

assessment tools in her goals and objectives, or in a data system aligned to the curriculum or the standards. 2/2 at 83.

Regarding the learning environment in Respondent's classroom, Romano testified there were positives, like the fact she had upgraded three of her five learning centers, and her positive relationships with students and parents. However, according to Romano, Respondent failed to establish a classroom routine, or to follow her daily schedules. Romano testified Respondent should have planned and implemented more group work, and play should have been deliberate and intentional. Likewise, she noted, transitions were poor, and Respondent did not take advantage of her opportunities to order materials or curriculum supplies. 2/2 at 84-85. For those reasons, she was scored only partially effective for learning environment. Joint Exhibit 31.

For performance standard 6, Professionalism, Respondent was rated partially effective. Id. Romano explained Respondent was not supportive of the professional development Dr. Brillante designed for and provided to her. In particular, Romano noted the flippant remarks Respondent made to other staff enrolled in the ten-workshop series on highly effective preschool programs. 2/2 at 85-86. When Respondent commented to the attendees that the workshops had been created for her because she was on a CAP, it minimized the value of the workshops for the many teachers who were taking the courses as part of their normal professional



development. Id. At 87. Romano testified that Respondent failed to appreciate the effort by supervisory staff to help her become a better teacher and to succeed. Id.

Romano highlighted the evaluation summary in Respondent's 2016-2017 Summative Performance Report:

**The teacher has failed to make progress on a Performance Improvement Plan, or the teacher consistently performs below the established standards, or in a manner that is inconsistent with the school's mission and goals.**

Joint Exhibit 31. Respondent's 2016-2017 Teacher Composite Score Report (SGP & Non-SGP)- SGO Rubric Score Report came to 1.57, which is "Ineffective," under the Composite Summative Rating. Joint Exhibit 31.

Thereafter, under the mandate of N.J.S.A. 18C:6-17.3, Romano filed with the Secretary of the Board of Education the instant charges of inefficiency against Respondent.

## DISCUSSION

### Positions of the Parties

The District asserts it has clearly established, by a preponderance of the evidence, the allegations supporting the charges against Respondent. Further, the District adds, since Respondent cannot and has not established that it acted with anti-union animus or that it failed to follow required procedures, I must sustain the charges and uphold her dismissal. According to the District, its rating of Respondent as partially effective in the 2015-2016 school year, and as ineffective the next school year, having been made through adherence to all protocols governing observations and evaluations, including "countless efforts" to assist Respondent, as mandated under the rigorous requirements of TEACHNJ, required that the instant charges be brought. It argues that its proofs it adhered to the teacher evaluation process, together with Respondent's failure to prove anti-union animus that materially affected the outcome of any evaluations, require a determination here in its favor.

The District points out that my review of this case is narrowly confined to whether a failure on its part to adhere substantially to the evaluation process or proved anti-union animus against Respondent had a material effect on the outcome of her evaluations. It contends that its proofs establish that Respondent's poor evaluations resulted from her failures to

incorporate into lesson plans and instruction the mandated curriculum, her failure to prepare and maintain student records necessary to measure student progress and her failure on many occasions to act professionally.

So, too, the District maintains Respondent in this proceeding failed to present any credible evidence her poor evaluations or the resulting charges of inefficiency were based on her union activity. Accordingly, the District argues, its actions were neither arbitrary, capricious nor unreasonable, and the charges must be upheld.

The District argues that Respondent exhibited abundant deficiencies in her classroom performance, which was documented over the course of two school years in substantial detail in both her observation reports and her year-end summative performance reports. The District contends it appropriately offered extensive opportunities for her to improve her teaching, not the least of which was a CAP. It asserts its administrators spent countless hours with Respondent, in meetings, conferences and professional development, to help Respondent with curriculum, planning and instruction. It specifically constructed a workshop designed around her difficulties and worked collaboratively with her in developing a CAP which set reasonable benchmarks and the means to reach them. In fact, the District argues, Respondent has not disputed that ample assistance was provided to help her

become an effective teacher.

Moreover, the fact she did not achieve the benchmarks and become an effective teacher, in the wake of the substantial assistance given to her, is not from any deficiency in the District's efforts on her behalf. Rather, it argues, Respondent simply did not fully avail herself of the professional opportunities presented to her. Further, the District adds, she simply refused to implement the directives and suggestions she had been given to improve her teaching, such as tracking student progress, using GOLD standard item in the curriculum, and adhering to a schedule.

The District, in addition, consistently communicated with Respondent regarding the problem areas in her teaching. It stresses that it did so through its supervisors' written reports, but also through meetings, memoranda and emails. It argues, therefore, that the administrative staff went above and beyond what is minimally required to help a teacher improve her effectiveness. According to the District, the totality of its actions served to place Respondent on notice her performance was unacceptable and her failure to improve might lead to the filing of tenure charges. And yet, despite the District's efforts on Respondent's behalf, and its warnings of the severe consequences of an inefficient rating, her classroom performance continued to deteriorate.

Against this history of effective counseling and opportunities for remediation, the District argues there is no validity to Respondent's allegation her negative observations and ratings are due to her actions as Union President. Because Respondent is unable or unwilling to accept responsibility for her poor evaluations, she has pointed her finger in every direction except inward in her effort to assign blame to someone other than herself. Such blame shifting must fail, the District argues, because the raw truth is that she was provided consistent and varied support to help her succeed as a teacher.

Nor, the District argues, is there an evidentiary basis to conclude that Respondent's ineffective ratings were on account of her position and actions as Union President. The District points out that the only mention in any report of Respondent's position as Union President was in fact a commendation that recognized her leadership role among her peers.

So, too, the District argues, Respondent has failed entirely to show a nexus between the grievance and/or the Unfair Practice filed in February 2018, and her subsequent ratings a year (and more) later. She was even given an opportunity to "re-do" a negative observation. Thus, according to the District, the record strongly demonstrates its commitment to Respondent's success as a teacher, rather than a campaign to get rid of her, as she alleges.

The District asserts the arbitration record supports a finding it followed proper teacher evaluation protocols in its observations and ratings of Respondents classroom performance. In order to assist her development of the knowledge and skills to succeed under the TEACHNJ standards, if offered her substantial support, including a CAP designed collaboratively to help her improve her teaching in the areas of weakness identified in her performance reviews. According to the District, there is not one iota of credible evidence any supervisor charged with evaluating Respondent ever purposely lowered her evaluations or ratings at the behest of Moscatello, or to curry favor with the Board in order to receive a favorable tenure recommendation. On the contrary, according to the District, it was Respondent's deficiencies alone that caused her partially effective overall rating for the 2015-2016 school year, and her ineffective rating for the 2016-2017 school year. If anything, the District argues, Respondent's role as Union President was consistently treated by supervision as a positive factor.

In short, the District argues Respondent's inefficient and incompetent performance as a teacher, standing alone, is sufficient to warrant her dismissal, which should be upheld regardless of my ruling on the conduct unbecoming charges.

Regarding the foregoing, however, the District asserts Respondent's unbecoming conduct, standing alone, is sufficiently

serious to warrant her dismissal. It argues that Respondent, as a teacher to whom people have entrusted the care and custody of school children, is required to demonstrate a degree of self restraint and controlled behavior rarely necessary in other industries. According to the District, behaviors by Respondent that are documented in the hearing record, betrayed levels of insubordination and conduct unbecoming that mandates her dismissal.

The District argues that Respondent was insubordinate in her repeated failures to follow administrative directives and Commission procedures. It asserts she consistently failed to follow directives when she refused to implement curriculum, follow her own lesson plans, provide direct instruction, measure and record student progress, or to achieve the benchmarks of her CAP. This all constituted insubordination, according to the District.

It additionally asserts that several occurrences of unprofessional behavior by Respondent constitute conduct unbecoming which independently constitute grounds for her dismissal. It highlights Respondent's rude and uncooperative interactions with therapists and other support personnel; her interference with the in-class therapy sessions, her comments comparing ESC to a daycare center, her referral to Principal Cook as an "asshole" because the Principal would not authorize her to



attend a Northern Hills Academy talent show, and her comment on a public social media site, "I am surrounded by assholes." Joint Exhibit 35.

Her behavior "does not portend" a harmonious, working relationship with her supervisors. The District argues that if each of these incidents is not by itself conduct unbecoming that is grounds for termination, then the totality of Respondent's actions, must be. It contends Respondent has not adhered to standards of conduct fairly required in a profession that is inextricably linked to the shaping and teaching of young minds. Accordingly, the District argues, there is just cause for her dismissal.

Respondent, on the other hand, asserts the tenure charges against her must be dismissed and she should be awarded back pay and reinstatement to her tenured teaching position. According to Respondent, this is not a complicated case, as demonstrated by two undisputed facts which require a ruling in her favor. The first, she argues, is the plain truth that her observations and evaluations before she became President of her local Education Association were uniformly "outstanding." The second is the obvious fact that it was only after Respondent's run-in with Moscatello that she received for the first time in her long career, any negative observations or evaluations.

According to Respondent, her run-in with Moscatello at the

February 23, 2014, negotiation session "caused a dramatic shift in the way the District viewed [her] performance." Respondent Brief at 3. Yet, she argues, it is not possible that shift had anything to do with her actual performance, since her approach to her work and the quality of her instruction did not suddenly change, as is reflected in the fact that previously, for more than two years under the new TEACHNJ protocols and rubrics, she had been deemed efficient. The only thing that changed before the onset of her negative observations and evaluations was that she assumed the presidency of her local union, and in that capacity took a position in bargaining that offended Moscatello.

Respondent acknowledges my analysis of this dispute does not end upon a finding the charges against her would not have been brought but for considerations of her union activity. I still must consider and decide if the anti-union animus affected the outcome of the evaluation process. According to Respondent, because of the clear impact her run-in with Moscatello had on her subsequent evaluations and ratings, I must conclude the charges against her have nothing to do with actual performance.

She asserts that Moscatello's hostility towards her on account of her union activity was on full display during the February 23, 2014, negotiations session. She recalls vividly that he yelled at her about the fact the Union had just filed an unfair practice charge against the District on account of its

negotiations tactics. Moscatello made his frustration with the progress of negotiations clear to everyone in attendance, according to Respondent, a fact that was confirmed by Romano, who also was in attendance at the negotiations session.

It is significant, Respondent argues, that she never was found to be anything less than an effective/satisfactory teacher until after her run-in with Moscatello. The 2015-2016 school year was the first time her teaching was deemed to be less than acceptable. She argues that the District cannot credibly argue that her lower ratings are due to the rigors of the TEACHNJ evaluation and rating system. Indeed, for the 2014-2015 school year, after TEACHNJ came into effect and after the District had adopted the STRONGE Evaluation System, she had been deemed under the more rigorous protocols to be an effective teacher. In fact, Respondent points out, she did not have a single negative observation during the 2014-2015 school year.

So, too, in an observation of Respondent on October 2, 2015, by then-principal Kaufman, everything was appropriate, she argues. There were no problems in connection with her meeting any of the TEPES standards. With respect to professional knowledge, Respondent points out there is not so much as one negative comment about her performance during the October 2, 2015, observation. See Joint Exhibit 2. And yet, she points out, in her year end Summative Performance Report, Romano found

her only partially effective in that category.

Similarly during the October 2, 2015, lesson, Kaufman determined Respondent had differentiated her instruction according to the level of the students. Joint Exhibit 2. Yet, just three months later, Dr. Brillante and Kaufman claimed she had no plans for differentiated instruction. Joint Exhibit 3. In the Summative Review, she was rated only partially effective for the standard of instructional delivery. Respondent insists "there is no logical way" her achievement of the standards could have deteriorated suddenly, as reflected in the conflicting observations. Respondent argues it is "simply impossible" she could "have been such a wonderful teacher and then become such a lousy teacher in the space of [a few] months." Respondent Brief at 15.

Noting that her "partially effective" rating for the 2015-2016 school year contributed to the filing of the instant tenure charges, Respondent argues that the tie-in which explains the inconsistency is her union activity. She argues that the fact Romano made comments about her Union leadership activities in the comments section of the 2015-2016 Summative Performance Report confirms her role with the Union was a factor which was on Romano's mind when she rated her. Respondent adds that the mere mention of Respondent's Union activity in her year-end review "is so odd and unique as to be bewildering." Respondent Brief at 8.

Respondent points out that until her second observation of the 2015-2016 school year, on January 5, 2016, she had never been found less than effective - ever - in every category of review in every observation and evaluation. She asserts there previously was never any indication whatsoever any aspect of her classroom performance was substandard or unacceptable, even in reviews performed under the STRONGE System. She now asks, how is it possible she went from being a stellar teacher to "a pariah to the educational community?" Respondent Brief at 9. Is it not more likely, she asks, that it was not she who changed, but that the supervisors who reviewed her under the direction of Board President Moscatello did an about face and suddenly found what previously was excellent to be less than effective?

Respondent adds that it is within the context of the District's retaliation against her that the charges of conduct unbecoming must be scrutinized. She admits she made the "asshole" comment to Building Secretary Marion Doyle. However, she argues, it was not grounds for disciplinary charges, and certainly not grounds for her dismissal. She made the comment over the phone, and no one other than Doyle heard it. No students or parents were in the area. She contends it was, at worst, a one-time misstep by a teacher with no prior disciplinary record.

She points out she made the comment in the wake of learning she would not be hired for summer session, nor be given tickets to a talent show in which her students would be performing. Looked at through the lens of her frustration, the singular misstep she made with Doyle falls profoundly short of the kind of record and/or misconduct that might justify her termination.

Concerning the allegation she posted to a Facebook chat the comment, "I'm surrounded by assholes!!", Respondent argues the statement had nothing to do with the school or with persons at the school with whom she worked. Rather, she testified, the posted comment relating only to her divorce and the state of her marriage.

In sum, Respondent asks,

**How can a person who is at the top of the list, even among special education teachers, who received only uniformly fine evaluations for her entire tenure in the District, all of a sudden become a horrible teacher? And can it be mere coincidence that this turning of the screw occurred only subsequent to her assuming the presidency of the Education Association and having a blow-up with the President of the Board of Education about an unfair labor practice charge that she caused to be filed against the School District?**

Respondent Brief at 20.

Finally, Respondent raises the issue of the propriety in this proceeding of the District ignoring the skills, understanding and empathy she has acquired over her thirty-five (35) years of teaching, especially with respect to preschool

children with disabilities. She asserts that social and emotional skills are far more important to a child at age three or four than math or language arts. She acknowledges lesson plans are important, but she contends learning oftentimes occurs outside them. She observes,

**[a]ll children learn lessons by a moment of discovery that is not written in a plan. Science, for instance, may be learned outside on the playground during playtime. When a child asks a question about something he sees in nature, the answer given by the teacher is a teaching moment for that child. Just because the lesson is not written in a lesson plan does not make it any less important. Good activities can and do meet more than one standard. . . Sometimes the thing your students need most has nothing to do with what's on your lesson plan!!**

Respondent Brief at 22.

In sum, Respondent asks that the tenure charges against her be dismissed and that she be returned to service with full back pay.

### **Opinion**

As arbitrator of this dispute, I have a very restricted scope of review. My jurisdiction is expressly circumscribed by Section 23(a) of the Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ"), N.J.S.A. 18A:6-17.2(a), which states, in pertinent part:

- 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.

Further, under Section 23(b) of the Act,

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.

N.J.S.A. 18A:6-17.2(b). Section 23(c) of the Act additionally provides:

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

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

These restrictive terms are plain and not subject to alternative constructions. They squarely provide that with respect to the instant charges of inefficiency against Respondent, I am allowed initially only to determine whether

Respondent has demonstrated the applicability of any of the four considerations listed in Section 23(a), N.J.S.A. 18A:6-17.2(a). If none of them are applicable, I must uphold the inefficiency charges and sustain Respondent's dismissal under Section 9 of the Act, N.J.S.A. 18A:28-5.

If, however, Respondent can demonstrate that any one of the statutory considerations applies here, I still am required to uphold the charges if I determine its presence (in this case, anti-union animus) did not materially affect the outcome of the evaluation.

Moreover, in conducting this analysis, I am precluded from reviewing any evaluator's determination of the quality of Respondent's classroom performance, including the findings and conclusions in the observation reports and the annual summative performance reports upon which the District has based its charge of inefficiency against her. As previously noted, if I sustain the charges, I also must sustain Respondent's dismissal.

With respect to the four considerations within my purview, Respondent asserts that the charges would not have been brought but for her union activity. She alleges "that the motivating factor for the substandard observations and evaluations subsequent to [her] assuming the presidency of her Education Association was the shouting match (really not a match, only the Board President yelled) that she had with the Board President

immediately before her evaluations became unacceptable.”

Respondent Brief at 19.

Respondent asserts that the nexus between her “run-in” with Board President Moscatello, Respondent Brief at 3, and her negative observations and evaluations is demonstrated through the immediacy of the change in her performance reviews after the incident with Moscatello, by the fact that prior to the run-in, she never previously received a negative review, and by the fact the District’s assessment of her value and performance as a teacher shifted dramatically after the Moscatello incident.

Indeed, it is undisputed that prior to the 2015-2016 school year, Respondent had never previously been deemed less than efficient, and for most of her career under an earlier set of teacher evaluation rubrics, she was found to be a “very good” teacher. She argues, therefore, that her negative performance reviews and summative evaluations for the 2015-2016 and the 2016-2017 school years are tainted by the Board’s negative response to her actions as President of the Union on behalf of its members, and the findings and conclusions in her observation reports and year-end evaluations are unreliable and not credible. She insists, therefore, the District’s bias against her union activity did materially affect her evaluations.

I have carefully considered the evidence and argument presented by Respondent in support of her contention the instant

charges have nothing to do with her performance and everything to do with her actions as Union President, and I find the hearing record does not support that claim. Starting with her description of what she calls her "run-in" with Board President Moscatello, I do not find in that interaction any indicia of anti-union animus, or bias against Respondent because of actions she took as Union President.

My careful review of the hearing record reveals that Union counsel, on February 9, 2015, filed an Unfair Practice Charge with the Public Employment Relations Commission which alleged that the District violated the New Jersey Employer-Employee Relations Act on or about February 1, 2015, by unilaterally changing health insurance carriers, in violation of its contractual obligation to continue to provide health and dental insurance, and its contractual promise to maintain health benefits "substantially equivalent to those in place on December 17, 1992." Respondent Exhibit 6 at CR 113-14. The charge alleged that the new plan did not provide District employees with no-cost dental insurance, and had diminished coverage that was not equal to or better than the previously provided. Id. at CR 114. The charge stated that the parties were in negotiations for a successor agreement, and the next contract negotiations session was scheduled for February 23, 2015. Id.

Thereafter, on or about February 13, 2014, Respondent, on

behalf of the Union, filed an "informal" grievance that claimed a contract violation by the District in connection with the change of health insurance carriers. Respondent Exhibit 6 at CR 97. As in the unfair practice charge, the Union asserted in the grievance that the new insurance was not substantially equivalent to the existing insurance. The grievance stated that some staff had indicated their doctors did not participate in the new plan, and their out of pocket costs went up. In addition, according to the grievance, staff had to pay a portion of their dental coverage, while previously they did not. Id.

The Union and the District subsequently convened a bargaining session on February 23, 2015. 2/12 at 91. Board President Moscatello was spokesperson for the District's negotiations team. Respondent, as the newly chosen Union President, was attending her first negotiations session. She was joined by Nancy Richeda, the NJEA Representative. According to Respondent, following the flag salute, Moscatello "stood up and looked right directly at me and he yelled very loudly, 'are you going to drop the ULP?'" 2/12 at 90.

Respondent recalls she was "very shocked," and after looking at Richeda, told Moscatello "no." Id. Respondent testified that he then explained how "passionate" he was about the new insurance because the District had looked into a lot of other options and the new insurance was "the best," and was going to save them

money. 2/12 at 90-91. According to Respondent, Moscatello continued to yell, even as she tried to explain to him that some members had complained their doctors were not in network, and their co-pays had gone up. She contends Moscatello did not care, and "just kept yelling." Id. at 91.

Although initially insisting that Moscatello's yelling had been directed at her, Respondent conceded that when the Board President said, "are you going to drop the ULP?" he might have been addressing the Union's entire "team." 2/12 at 91 (emph. supp.). Moreover, on this record, I find it is most likely true, that Moscatello was "passionate" about the insurance, just as he claimed, and was not inflamed about Respondent's Union activity. It is true that after the Union submitted a formal grievance on February 25, 2015, Respondent Exhibit 6 at CR 100, the parties staked out positions. Id. at CR 98-99; Respondent Exhibit 4 at CR 98-99. That is commonplace labor relations. However, what is more significant is the fact they rather quickly, in late March or early April, settled both the unfair practice charge and the grievance. 2/12 at 95; Respondent Exhibit 6 at CR 115. There is no record evidence the dispute in any manner festered, or that bad feelings between the parties lingered after the dispute amicably was resolved. There is no evidence Moscatello had any further involvement with the unfair practice, the Union's grievance or the settlement agreement.

Respondent nevertheless insists that the filing of the February 9, 2015, Unfair Practice by Union counsel caused the District, on Moscatello's insistence, to mount a years-long campaign to vilify her abilities as a teacher, and ultimately, through a persistent barrage of false, negative observations and evaluations, to fabricate a record of ineffective teaching and give the District a pretextual foundation to dismiss her from her teaching position. According to Respondent, this disparagement of her professional abilities was all simply because the Union brought a routine unfair practice charge and a related grievance that were settled through compromise approximately six weeks after being filed.

In support of this claim, Respondent asserts one need only look at the timing of her first negative performance review to know there was a nexus between her February 23, 2015, "run-in" with Moscatello and the negative performance reviews between January 2016 and June 2017 which led to these charges seeking her dismissal. She contends that following the "run-in," her observations and evaluations "all of a sudden" began to be unacceptable. It turns out, however, Respondent's negative performance reviews were not "all of a sudden," as she contends.

Indeed, following the negotiations incident on February 23, 2015, Respondent was observed by Kaufman on April 17, 2015, and given a positive review. Respondent Exhibit 4 at CR 84.



According to Kaufman, "Ms. Respondent is an experienced high school teacher who demonstrates a clear understanding of the needs of the pre-school students she teaches." Kaufman subsequently, in July 2015, submitted Respondent's TEPES Teacher Summative Performance Report for the 2014-2015 school year, and found that she was "efficient" in all seven performance categories. Respondent Exhibit 4 at CR 86.

Thus, for the balance of the 2014-2015 school year, through the spring and summer, Respondent continued to receive positive evaluations from her supervisors, despite her "run-in" with Moscatello the previous February. Thereafter, her positive reviews continued, even extending into the Fall. A TEPES Formal Observation of Respondent was performed by Romano and Kaufman on October 2, 2015, and written up by them on December 3, 2015. The TEPES Observation Report contains an overall positive assessment of Respondent's teaching.

According to Respondent, the first negative findings regarding her instruction, were made during an Observation by Dr. Brillante on November 15, 2015. In her hearing testimony, Dr. Brillante stated Respondent's performance had no positives. 2/2 at 210-11. Yet, rather than start to build a case against her, in further retaliation for her having filed an unfair practice some nine (9) months earlier, Dr. Brillante noted Respondent's lack of experience under the new rubric, and determined to give

her a "do-over." 2/2 at 211. In reality, therefore, Respondent did not receive her first negative observation until January 5, 2016. Joint Exhibit 3. This was nearly eleven (11) months after her conversation with Moscatello on February 23, 2015.

This timeline hardly demonstrates a "sudden" and "dramatic" shift which might allow an inference the District's reassessment of Respondent's teaching performance was driven by Moscatello, who had nothing to do with her ratings and who, in any case, has no demonstrated bias against unions or their role in negotiating contracts with employers.

Respondent argues that I should not give weight to the positive reports and evaluations prepared and/or finalized by Kaufman. She suggests, by innuendo, that Kaufman insisted on being fair in her evaluations of Respondent, and paid for that with her own subsequent dismissal. Respondent Brief at 9. In making this argument, Respondent has missed or ignored the fact that Kaufman was the supervisor who finalized Respondent's first negative performance report, following the January 5, 2016, observation. Joint Exhibit 3.

Nor, do I find anything suspicious in the fact Respondent's negative assessments start in January 2016, after a 18-year period in which she received constant positive feedback and laudatory reviews from her supervisors. See generally, Respondent Exhibit 4. The rollout of the TEACHNJ rubrics for

evaluating teachers was not immediate. The Stronge System was first introduced in the 2013-2014 school year as a "pilot" program. 2/2 at 22. It did not officially "kick in" until the 2014-2015 school year. Id. The Act and the corresponding regulations indicate there are detailed legal and regulatory requirements for the introduction of approved evaluation rubrics. See Section 17 of the Act, N.J.S.A. 18A:6-123. The requirements in the law and the regulations for ongoing training of evaluators, and the monitoring and calibration of their observations to ensure observation protocols are being implemented correctly and consistently, see, e.g., Section 17 of the Act, N.J.S.A. 18A:6-123, demonstrates the recognition that the successful adoption and implementation of the evaluation rubrics mandated under TEACHNJ is a process over time. It simply is not surprising that the District's review of Respondent's classroom performance became more rigorous during the three-year period after the TEPES System was introduced.

It must be noted, moreover, that Dr. Brillante joined the District staff as Supervisor of Special Education in the fall of 2015, for the 2015-2016 school year. 2/2 at 206. She brought expertise and rigor to the District's utilization of evaluation tools and adherence to observation protocols. Indeed, her academic credentials and her 12 years as the Early Childhood Specialist in NJ Department of Education cannot be minimized in

assessing the impact of her arrival to the District. The change in the school's assessments of Respondent's classroom performance coincides with that arrival.

Dr. Brillante initially observed Respondent on November 15, 2015, and found "nothing positive" about the lesson. 2/2 at 210. Although Dr. Brillante had not worked for the District the previous school year, Respondent argues that negative assessment was at the bidding of Moscatello and supervisors he deputized to carry on his anti-union campaign at Respondent's expense. Yet, despite the poor quality of Respondent's performance on November 15, 2015, Dr. Brillante decided against writing up a report to document the failed lesson. She instead gave Respondent another chance, a "do-over." There was no hint of animus in her conduct.

When Dr. Brillante performed the replacement observation on January 5, 2016, Joint Exhibit 3, she again determined that Respondent's performance was ineffective. 2/2 at 212; Joint Exhibit 3. She conducted a walkthrough observation of Respondent on May 31, 2016, which similarly was ineffective. 2/2 at 214. This record persuades me that the precipitous decline in Respondent's performance evaluations and ratings eleven months after her "run-in" with Moscatello was not due to anti-union animus resulting from an unfair practice and a grievance long-since settled, but most likely was due to Dr. Brillante's presence in the District, starting in the Fall of 2016, and the

rigor she introduced to the District's adoption of the TEACHNJ standards. This record simply does not persuade me there is any connection between Respondent's union activity and her negative performance evaluations starting in late 2015.

I have considered Respondent's claim that written comments by Romano in the 2015-2016 Summative Performance Report, Joint Exhibit 5, betray anti-union animus, or support a finding Respondent's union activity, in particular her activities as local union President, influenced negatively the Report, or the evaluations and ratings contained therein. I do not find that nexus. On the contrary, I find Romano's comments were (1) a good faith and reasonable request on her part for more open and fluid communication with Respondent; and (2) a "commendation" signifying Romano's recognition of the respect and admiration Respondent received from her colleagues, and her acknowledgment that the high regard in which Respondent, a veteran teacher, was held by the teaching staff put her in a role wherein she could be helpful in encouraging and supporting the curriculum and program changes facing the school and its "young" staff. Joint Exhibit 5.

There is no hint of any hostility in what Romano wrote, and her comments do not support even an inference Respondent's rating had anything to do with her union activities. I further find there is no record evidence of any connection between the events

at the February 23, 2015, negotiations session sixteen (16) months earlier and the comments Romano made in the 2015-2016 year-end Report. There is no record evidence Respondent, at the time, read Romano's comments as related to her union activity, except in the constructive and commendatory tone in which they are written. There is no record basis to conclude the comments had any material effect on the outcome of the Report, the findings and conclusions of which are squarely grounded in the details of classroom observations conducted during the covered school year.

Nor do I find in this case the presence of any of the other three factors under Section 23(a) of the Act that are subject to my scrutiny. Under the statutory limits on my authority to review Respondent's observations and evaluations, I have conducted a thorough review of the evaluation process applied to Respondent through the date of the instant charges, as well as her CAP, see discussion, above, at pp. 7-26, and I find no substantial departure from the statutory and regulatory requirements. Likewise, this record does not present for my proper review any mistakes of fact in Respondent's evaluations. The District's actions, I find, were grounded in its careful and painstaking observations and written assessments of Respondent's performance under the adopted rubric, and I find no persuasive demonstration by Respondent that the District was arbitrary and

capricious. On the contrary, the record in this proceeding shows that Respondent received and was evaluated under multiple observations conducted over the course of the 2015-2016 and 2016-2017 school years; and she was provided more than ample opportunity (much of which she did not take) to improve her effectiveness based on evaluation feedback.

By law, this must be the end of my analysis. As I do not find evidence of any of the considerations listed in Section 23(a) of the Act, N.J.S.A. 18A:6-17.2(a), I am precluded from conducting any additional inquiry into the District's evaluations of Respondent's classroom performance. I am required to render a decision in favor of the District, which through its extensive documentation and the truthful testimony of its witnesses, has demonstrated that the statutory criteria for tenure charges have been met.

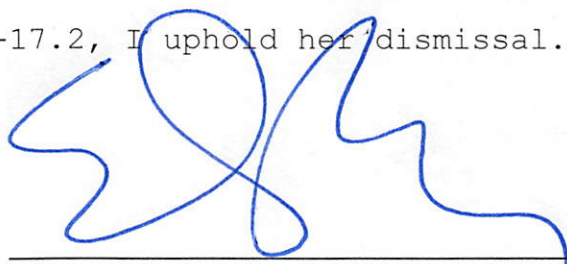
I note that the charges against Respondent contain additional allegations of conduct unbecoming a teaching staff member. Because I am required, having sustained the inefficiency charges, to uphold Respondent's dismissal, the conduct unbecoming charges against her are moot.



**AWARD**

1. The charges of inefficiency against Respondent, Christine Rudinsky, are sustained.
2. Pursuant to the requirements under Section 23 of the Act, N.J.S.A. 18A:6-17.2, I uphold her dismissal.

April 12, 2018.

  
\_\_\_\_\_  
Earl R. Pfeffer, Arbitrator

STATE OF NEW JERSEY        )  
  ) ss.:  
COUNTY OF ESSEX            )

On this \_\_\_\_\_th day of April 2018, before me personally came and appeared EARL R. PFEFFER, Arbitrator, to me known and known by me to be the individual described herein, and who executed the foregoing instrument and who acknowledged to me that he executed the same.

Sworn to and subscribed  
before me this 12 day  
of April 2018.

  
\_\_\_\_\_  
Notary Public