

Pursuant to Referral By the Commissioner of Education  
State of New Jersey

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<u>IN THE MATTER OF THE TENURE</u>	:	BEFORE ARBITRATOR
<u>CHARGES AGAINST VICE PRINCIPAL</u>	:	CAROL F. LASKIN, ESQUIRE
<u>LAWRENCE E. HAWKINS BY THE STATE</u>	:	
<u>OPERATED SCHOOL DISTRICT OF THE</u>	:	
<u>CITY OF NEWARK, ESSEX COUNTY, NEW</u>	:	AGENCY DCKT. NO.: 243-10/13
<u>JERSEY</u>	:	
	:	OPINION AND AWARD

**APPEARANCES:**

**On behalf of State Operated School District  
Of the City of Newark, Essex County**

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**On behalf of Lawrence E. Hawkins**

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**BACKGROUND INFORMATION AND ISSUE PRESENTED**

Lawrence E. Hawkins ("Respondent" or "Hawkins" is a Vice-Principal in the State-Operated School District of Newark ("School District"). Respondent was first employed in the Newark Public Schools in the 2000-01 school year, first as a teacher, and since 2004 as a Vice-Principal. At the commencement of the 2007-08 school year he was assigned to Oliver Street School;

first under Principal Marianna Golden, and, beginning in the 2010-11 school year, under Principal Havier Nazario ("Nazario"). Nazario was Principal of Oliver Street School until June 2013, when he was promoted to serve as Special Assistant to an Assistant Superintendent. Nazario has been employed by the School District, as teacher, Vice-Principal, Principal, and Special Assistant.

On August 1, 2013, the School District served a Notice of Tenure Charges on Respondent, charging him with inefficiency, unbecoming conduct and other just cause.

Respondent submitted opposition to the charges on September 13, 2013. On October 4, 2013, after reviewing the charges and Respondent's opposition, State District Superintendent Cami Anderson found probable cause to support the charges, and certified the charges to the Commissioner. Respondent thereupon was suspended without pay for 120 days pursuant to *N.J.S.A. 18A:7A-39 and N.J.S.A. 18A:6-14*.

On October 18, 2013, Respondent filed a response to the Commissioner. Therein, Respondent raised separate defenses and denied every allegation to the charges of inefficiency, unbecoming conduct, and other just cause.<sup>1</sup> On October 31, 2013,

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<sup>1</sup> Respondent waived two of these defenses in a Tolling Agreement. The remaining three, "failure to state a claim upon which relief can be granted", the charges are "procedurally deficient" and that "TEACHNJ does not apply", were decided by the Commissioner with his determination the charges were sufficient, if true, to warrant dismissal or a reduction in salary.

the Commissioner, having reviewed the charges, statement of evidence and Respondent's opposition determined the charges were sufficient, if true, to warrant dismissal or reduction in salary. Thereupon, the tenure charges were referred to the undersigned by the New Jersey Department of Education, Bureau of Controversies and Disputes, pursuant to *N.J.S.A. 18A:6-16* as amended by the *Teacher Effectiveness and Accountability for the Children of New Jersey Act ("TEACHNJ") P.L. 2112, c.26*.

**REFERRED TENURE CHARGES**

**CHARGE ONE: INEFFICIENCY**

Respondent has demonstrated an inability to completely, responsibly, and satisfactorily execute his duties as a vice-principal. Specifically, Respondent has failed to perform satisfactorily his duties in the following components of performance:

- a. The Respondent has failed to satisfactorily gather data and provide timely, actionable feedback to teachers in the grades and subjects supervised.
- b. The Respondent has failed to satisfactorily synthesize evidence to give comprehensive and accurate assessment of performance to teachers in the grades or subjects supervised.
- c. The Respondent has failed to satisfactorily support efforts to strategically retain effective teachers, anticipate openings, and implement a rigorous selection and hiring process for teachers in the grades or subjects supervised.
- d. The Respondent has failed to satisfactorily ensure specific and rigorous curricular materials, assessments, and instructional strategies are aligned with Common Core and

with each other in the grades or subjects supervised.

e. The Respondent has failed to satisfactorily gather, analyze, and respond to multiple forms of student-level data to assess and adjust instructional strategies in the grades or subjects supervised.

f. The Respondent has failed to satisfactorily design and implement differentiated academic interventions in the grades or subjects supervised.

g. The Respondent has failed to satisfactorily promote a shared vision to inspire collective urgency to achieve college readiness for every student through inspirational school-wide goal.

h. The Respondent has failed to satisfactorily help to create and monitor specific expectations for adults and students aligned to school vision.

i. The Respondent has failed to satisfactorily partner with families to ensure college readiness for their children.

j. The Respondent has failed to satisfactorily demonstrate resiliency in the face of obstacles and results orientation in improving student outcomes.

k. The Respondent has failed to satisfactorily demonstrate self-awareness and seek and act on feedback.

l. The Respondent has failed to satisfactorily implement systems to track priorities with measurable targets and participate in efforts to support priorities.

m. The Respondent has failed to satisfactorily demonstrate an understanding of change processes and support efforts to manage change effectively.

n. The Respondent has failed to satisfactorily listen and communicate effectively and strategically based on the situation, audience, and needs.

**CHARGE TWO: UNBECOMING CONDUCT**

Respondent has engaged in conduct unbecoming a professional teaching staff member. Specifically,

Respondent has committed the following acts, each and all of which constitute unbecoming conduct:

a. On March 3, 2011, Respondent was insubordinate in refusing to report to his duty and refusing to address a payroll matter privately with the Office of Payroll rather than school staff, and behaved in a threatening, intimidating and unprofessional manner in the school office.

b. On May 5, 2011, Respondent was insubordinate in refusing to discuss a personnel matter involving a teaching staff member in my office, refusing or neglecting to provide me with time-sensitive information, failing to follow a clear directive and obstructing official school business, all in clear disregard of the school chain of command.

c. On November 21, 2011, Respondent addressed me in a rude, disrespectful, threatening and unprofessional manner, at the threshold of my office door and the main corridor of the school.

d. On December 1, 2011, Respondent was insubordinate in refusing to lead students and faculty to a safe zone during a fire drill, as directed.

e. On May 14, 2013, Respondent inflicted or caused to be inflicted corporal punishment upon a pupil.

f. On May 14, 2013, Respondent failed to arrive on time at his post to supervise NJASK test administration, causing the test administration to be unsupervised by a school administrator.

**CHARGE THREE: OTHER JUST CAUSE**

Despite repeated reminders and warnings, Respondent has been excessively tardy in his arrival at school, resulting in his failure to perform administrative and supervisory duties as required, reflecting his failure to focus on students' learning as a priority, and causing a detrimental impact on the educational program of the school to which he

has been assigned.

**ISSUE PRESENTED**

*Whether the School District has established by a preponderance of the credible evidence the charges of inefficiency, unbecoming conduct and/or other just cause against Respondent?*

*If so, do the tenure charges warrant dismissal or a reduction of salary?*

**EVIDENCE PRESENTED AND FACTUAL FINDINGS**

Over nine days of hearing, the School District offered 147 exhibits<sup>2</sup> and presented the testimony of three witnesses: Havier Nazario, Principal; Wanda Brooks-Long, Special Assistant for Teacher Quality; and Mitchell Center, Assistant Superintendent. Respondent offered 45 exhibits and seven witnesses: Monique Cumberbatch-Jenkins, union representative; Lisa Bravoco, retired teacher; Donald Rolle, teacher; Annie Caswell, retired teacher; Marilyn Hromoko, clerk; Elisa Quinones, school counselor; and Respondent, Lawrence E. Hawkins.

With the exception of Respondent, all of the above witnesses were identified on the Statement of Witness Lists, exchanged by the parties, at least ten days prior to hearing pursuant to *N.J.S.A. 18A:6-17.1(b)(3)*. On the first day of the Arbitration hearing, Hawkins's counsel identified Respondent as an intended witness. Over the objection of the School District, Hawkins was

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<sup>2</sup>Exhibits shall be referenced as follows: D-School District and RH-Respondent, Lawrence E. Hawkins.

permitted to establish a record. In its post hearing submission, the School District respectfully asserted this ruling,

"was erroneous and the objection should have been sustained. Now, having allowed the testimony, the arbitrator should refuse to rely on Respondent's testimony or refer to it for any purpose, given the clear violation and the clear legislative consequences of such violation." (Brief at 25)

Relying upon Kronmiller v. Caruso, 57 N.J. Super. 331, 333-34 (App. Div. 1959) as revisited in Reilly v. Spiegelhalter, 100 N.J. Super. 276 (App. Div. 1968), the School District argues Mr. Hawkins did not have an "inherent right" to testify. And, as the purpose of the rule is to prevent surprise and concealment, this Arbitrator should apply the statutory prohibition and disregard Respondent's testimony.

The undersigned reaffirms the ruling based upon principles of procedural due process integral to the *American Arbitration Association Labor Arbitration Rules* governing the instant Arbitration. These *Rules* support permitting Respondent to answer the charges.<sup>3</sup> Indeed, in this matter any surprise factor was diminished as the School District was informed on the first day of hearing, December 11, 2013. Mr. Hawkins did not testify until the fifth day of hearing, January 6, 2014. Moreover, both parties, during nine days of hearing, were provided significant

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<sup>3</sup> Pursuant to *The Labor Arbitration Rules (Including Expedited Labor Arbitration Rules) Amended and Effective July 1, 2013, Rule 25. Order of Proceedings*, "The arbitrator may vary the normal procedure under which the initiating party first presents its claim, but in any case shall afford full and equal opportunity to all parties for the presentation of relevant proofs."

leeway to present their cases, defenses, and rebuttal witnesses. Accordingly, the testimony of Mr. Hawkins is essential to this Opinion and Award.

#### **EVIDENTIARY FINDINGS**

The parties were represented by zealous counsel. Each was given a full opportunity to present testimony, documentary evidence, cross-examine witnesses and proffer argument. A review of the record reveals much of the evidence is undisputed (no contrary evidence presented) acknowledged, admitted, or stipulated to by the parties. Significant portions of the testimony revealed contradictory perceptions of Mr. Hawkins's conduct.<sup>4</sup> In light of these determinations and upon review of the witnesses' overall testimony and demeanor, I **find** the following as **fact**:

In the position of Vice-Principal, Hawkins was a member of the Oliver Street School Administrative team. The primary duties of a Vice-Principal on an administrative team consists of observing and evaluating teachers, providing feedback and support based upon the data, and hosting grade and vertical level meetings. Vice-Principals, at times, perform in the role of acting Principal. Moreover, Vice-Principals have additional duties such as monitoring morning ingress, afternoon egress,

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<sup>4</sup>These representations will be highlighted in *Positions of the Parties* below.

lunch periods, recess, and parental meetings. Observations of Vice-Principals are based upon these duties, as unlike teachers, these administrators do not engage in classroom instruction, subjects of a traditional "observation."

**Vice-Principal under Principal Mariana Golden**

Concerns regarding Mr. Hawkins' performance at Oliver Street School were first raised in September 2007. From September 2007 to August 2010, Respondent reported to Principal Mariana Golden. Observations offered by Principal Golden identified similar concerns raised by Principal Nazario during the years 2010 through 2013.

In the 2007-08 school year, Principal Golden rated Respondent's performance "basic", the second-lowest rating on the scale of distinguished-proficient-basic-unsatisfactory. His annual evaluation listed (among others) the following "areas in need of improvement":

\*Submit observations in a timely manner so that administrative team can be in compliance.

\*Attend grade level meetings ... once per week ....

\*Improve on promptness. Kronos in by 8:20 on a daily basis. Arriving at school earlier would be of great assistance to the administrative team, especially in 2008-09 with no aides. (D-118)

For the 2008-09 school year, Principal Golden rated Hawkins "unsatisfactory." This annual evaluation similarly listed (among others) the following "areas in need of improvement":

\*Timely submission of observations and other documents, reports, etc. so that the administrative team can be in compliance.

\*Attend grade level meetings . . . at least once per week . . . .

\*Contractual start time is 8:20, however, arriving a few minutes earlier would be of great assistance to the administrative team in monitoring student ingress especially since we are short staffed after losing 7 aides. This would greatly ensure the safety and security of our students. Sign out time is 3:05 p.m.

The evaluation included the following "recommendations":

. . . [M]ajor improvement is needed in conducting administrative duties and responsibilities.... Other areas of concern include but are not limited to: promptness as per CASA contractual start time of 8:20, consistent/daily use of the KRONOS system to punch in and out when arriving and/or leaving the building at any time, monitoring of instruction and behavior particularly in grades 6-8, daily communication with administrative team..., attendance at [grade level meetings], submission of 16 overdue observations, etc. Further failure to comply with administrative and SLT requests may lead to disciplinary action and/or denial of increment. (D-119)

In the 2009-10 school year, Summative Evaluation, Hawkins was rated "basic," and the "areas in need of improvement" included (among others):

\*Arriving to work on time, 8:20 as per contract

\*Timely submission of all reports, paperwork, requests from Principal, regional superintendent, & district

\*Enhance quality of teacher observations/evaluations to provide constructive feedback for improvement of teaching and learning

\*Follow through & support for staff & administrative team

\*Regular communication with the administrative team

(D-120)

Respondent did not submit written rebuttal to any of these evaluations.

**Vice-Principal under Principal Nazario**

The 2010-11 school year was the first school year in which Nazario served as a Principal. Testimony revealed, the perception of the staff, was that Nazario was a "strict" Principal running a "tight ship." Initially, the relationship between Nazario and Hawkins was cordial. Hawkins, Nazario, and Vice-Principal Peynado formed the administrative team for the school years 2010-2011 and 2011-2012. Therein, Ms. Peynado was responsible for supervision and observation of grades P-three through two, Mr. Hawkins grade three through five, and Mr. Nazario grades six through eight. Mr. Hawkins was also responsible for special education. Ms. Peynado had the additional responsibility for bilingual ESL. The special activity teachers were divided between Mr. Hawkins and Ms. Peynado.

Nazario viewed Mr. Hawkins's performance as deteriorating during the fall of the 2010 school year for he failed to observe teachers and arrived at school, as evidence by the Kronos timing system, at 8:19 a.m., or thereafter. The first memorandum Nazario issued to Hawkins asserting "insubordination" occurred on March 3, 2011. Clerk Marilyn Hromoko testified that the

memorandum, as follows, is an accurate description of what occurred in the Oliver Street School office:

"Re: Insubordination

On March 3, 2011, at 10:57 am you entered my office and informed Ms. Hromoko that you received a call from the Office of Payroll with notification that you would be deducted \$1,700.00. You asked Ms. Hromoko what was wrong with your payroll. I intervened and shared with you that you neglected to respond to my email and my request for a meeting March 2, 2011, at 2:15 pm to address your missed Kronos and the personal day you called in after your scheduled arrival time. The email regarding the missed Kronos was sent by Geri Hawkins March 2, 2011, at 11:14 am and forwarded to you by me March 2, 2011, 11:25 am.

I asked you to leave my office because your tone was inappropriate and that the matter you wanted to resolve needed to be resolved with the Office of Payroll after you respond to correspondences sent to you regarding the missed Kronos. You took a step back and indicated to me that you were not in my office, but proceed to demand an explanation from the school's clerk who was in my office. I asked you to report to your duty and to address this matter privately with the Office of Payroll or with me as initially requested, (see attached email).

You proceeded to exclaim that administrators cannot be deducted. Let me take this opportunity to share with you that you have a responsibility like all Newark Public Schools employees to Kronos and call Sub-finder when you will be absent. Your job title of administrator requires you to lead and be an example for teachers and staff alike. Your display was poor and your refusal to cease the questioning of the school's clerk after I directed you to return to your post is evidence of your outright insubordination.

You proceeded to shout that you were calling Ms. Terrell and CASA because administrators cannot be deducted and that if this problem is not resolved, that we are going to have a problem. Let me make it very clear that open threats and the use of intimidation will not be tolerated. As a school leader, you have the responsibility to carry yourself in a professional manner and resolve your problems by reflecting on your own behavior.

You can begin by reporting to my office when requested, responding to the email sent by the Office of Payroll and myself regarding your missed Kronos, and reporting to work on-time." (D-11)

Nazario copied these communications to the following:

- a. Deborah Terrell, Interim Superintendent
- b. Roger Leon, Chief Academic Officer
- c. Anita Ziyad, Special Assistant
- d. Labor Relations
- e. CASA
- f. File

Thereafter, memorandums issued by Nazario were also carbon copied to district personnel.

On April 8, 2011, Nazario issued Hawkins a memorandum, re: Neglect of duty - failure to conduct and submit non-tenured observations according to the observation schedule, D-19.

On April 28, 2011, Nazario requested Respondent submit a schedule for how he planned to complete 18 outstanding observations. Respondent failed to do so, resulting in another memorandum, entitled "Neglect of Duty." (D-20).

According to the School District's "Vice-Principal Performance Evaluation Instrument, RH-45, Vice-Principals are required to submit a self-assessment and collect data for same. Despite repeated requests, Mr. Hawkins failed to do so. On April 28, 2011, Nazario issued a second memorandum entitled "Neglect of Duty - Failure to Complete Vice-Principal's Self-Assessment," as follows:

"On April 28, 2011, I requested to meet with you regarding your neglect to submit to me the Vice-Principal's

Self Assessment. You shared with me that you would like to review the instrument. I reminded you that an orientation was afforded to you in August, but that I would proceed with a review of the document. The following components were reviewed: 1. Standards, 2. Rubric, 3. Timeline. You indicated that I did not follow the process; therefore, the goals and timeline for improvement on the standards you select would be flawed.

First, let me remind you that according to the instrument, "The Vice-Principal [takes] the lead in conducting the evaluation process through the use of self-assessment and reflection." This self assessment is intended to offer you the opportunity to personally reflect on the areas you plan to develop. You have obstructed the Vice-Principal's evaluation process by not taking the lead in conducting your own self-assessment. I shared with you that any self-assessment you submit would be dated accurately and treated fairly; providing you with ample opportunity to meet any goals you identify.

You disagreed with the above and requested that any discussion regarding the self-assessment be conducted in the presence of a CASA representative. You may contact CASA and request representation, as that is your right; however, you are required to submit your self-assessment so that we can proceed with a proper review no later than May 2, 2011.  
(D-18)

On May 5, 2011, Nazario emailed Respondent to come to the office to discuss a personnel matter involving two teachers. Respondent refused to meet, speaking to Nazario only through the office staff. This resulted in yet another memorandum, stating, in part:

You failed to follow a clear directive, and as a result obstructed . . . official school business.

Your poor display in the presence of the main office staff was reckless and a complete disregard [of] the chain of command of this school and your responsibility to report to me. (D-13)

Respondent submitted the required self-assessment on May 21, 2011. As permitted, Hawkins identified two of the standards with accompanying goals for his professional development plan. (D11-17)

Standard	Goal(s)
1. Strategic Leadership for Vision, Mission and Goals	1. Improve school performance/culture with a focus on data. 2. Collect and analyze data with all stakeholders.
2. Instructional Leadership	1. Facilitate and ensure the instructional program effectiveness. 2. Encourage the use of H.O.T.S (Blooms) and rigor

On June 30, 2011, Hawkins met with Nazario regarding his summary evaluation rating. Nazario granted Hawkins a "proficient" rating for the year 2010-2011. Nazario proffered the positive rating was required because he failed to obtain from Respondent the data and self-assessment in a timely manner. During this communication, on June 30, 2011, Nazario and Hawkins reflected the rating would assist the administrative team with a "clean slate" for the 2011-2012 school year.

**2011-2012 School Year**

On October 11, 2011, Hawkins and Nazario executed the Vice-Principal's evaluation self-assessment plan for the school year 2011-2012. While the key activities, strategies, outcomes and time lines were not indicated, the two standards were

identical to the standards chosen on the May 2011 plan,  
(D-21 and D-17).

In the Fall of 2011, Nazario requested Hawkins register at a training session "in the use of the Danielson Framework when observing and evaluating instruction." (D-22) While responding on October 27 that he had attended multiple training sessions, upon further request of Nazario, Hawkins attended a session in November 2011.

On November 29, 2011, Nazario reviewed observations conducted by Mr. Hawkins and issued a "Neglect of Duty" Memorandum, which was copied to, *inter alia*, Labor Relations, Legal and Office of the Superintendent. (D-14) Upon receipt thereof, Mr. Hawkins communicated with Nazario resulting in the memorandum "Conduct Unbecoming" as follows:

On November 29, 2011 you entered my office and asked me if you and I could discuss the Neglect of Duty letter issued to you November 29, 2011. I expressed to you that you should contact CASA and request representation before we proceed. You responded by stating that there would be no debate because you did not read the entire letter. I advised you to read it and then contact CASA so we can discuss the contents of the reprimand. I also expressed to you that you can respond to the reprimand in writing. You proceeded by making the following statements:

"You haven't done your observations! You don't think I know this, I ask around. I'm not going to write back, I know how I'm going to handle this. Who is watching you? We all know how many observations you've canceled. Who has time to do this? I'm not writing back."

Your conduct and display was inappropriate. As a school leader you are held to a high standard of civility and a decorum that is mindful of its implication on school

aged-children. You openly made these statements while at the threshold of my office door and main corridor. This behavior is indicative of your disregard for the chain of command of this organization and is conduct unbecoming of a school leader. You were advised to first read the letter and then follow the professional course of action. In this case, write back or seek representation if you are unable or unwilling to conduct yourself in a professional manner.

Further inappropriate displays will result in immediate disciplinary action taken against you. (D-14)

Two days later, on December 1, 2011, Respondent arrived to school close to 8:20 a.m., to discover that someone had parked in "his spot." Thereupon, he parked his car close to the school door and proceeded to the office to determine who parked in his space. While doing so, a steam pipe in the school basement ruptured and set off an alarm, requiring the school to evacuate during morning ingress. Nazario, believing the car created a hazard obstructing the evacuation path, took photographs of the vehicle. The Principal issued Respondent a memorandum,

Insubordination and Neglect of Duty, for:

1. Failure to Lead Students and Faculty to the Safe Zone During Fire Drill.
2. Failure to Respond Affirmatively to the Directive to Lead Students and Faculty to the Safe Zone During Fire Drill.
2. Failure to Provide a Safe Learning Environment (Obstructing Fire Evacuation Path for Students and Faculty)

Again, this memorandum was copied to all district personnel. Respondent did not respond to the memorandum at the time of the incident. (D-15)

The midyear evaluation in 2011-2012, D-36, was issued at a meeting on February 23, 2012 with Hawkins, Nazario and CASA representative Monique Cumberbatch-Jenkins. The evaluation indicated Mr. Hawkins earned NP (no progress) on Standard 1: strategic leadership for vision, mission and goals or Standard 2: instructional leadership. (D-36)

Between the issuance of the midyear evaluation and the annual evaluation, Nazario authored three Neglect of Duty memorandums to Mr. Hawkins regarding failure to properly rate faculty with Danielson observation instrument and failure to monitor and supervise faculty and students during the annual Spring concert (D-40, D-41 and D-42). Again each of these memorandums was copied to School District personnel, including the Office of the Superintendent and Labor Relations.

For the 2011 and 2012 annual evaluation, Nazario utilized Respondent's self-assessment submitted in May 2011. In the Summary Evaluation Rating form, Nazario rated Respondent "unsatisfactory," D-43. The Union filed a grievance challenging the evaluation on procedural grounds.

Of the 70 indicators included in the evaluation rubric, Respondent was rated "unsatisfactory" on 50, "basic" on 13, and "proficient" on seven. He was not rated "distinguished" on any indicator. The numerical rating was 35.37 out of a possible 100 points, overall "unsatisfactory." Among the comments Nazario

asserted that Hawkins:

"\*rarely supports and implements[] collaborative processes to collect and analyze data about the school's progress for periodic review and improvement of the school's vision, and strategic goals.

\*rarely creates programs utilizing data to increase student achievement.

\*rarely creates and assesses systems of monitoring and evaluating the instructional program through the use of a variety of data, as evidence[d] in the faculty written observation reports (November 29, 2011), failure to provide written observation reports to the faculty according to prescribed 10-day threshold (November 29, 2011), failure to indicate post observation conference date on 24/24 written observation reports (November 29, 2011), and failure to secure teacher or witness signatures on three observation reports (November 29, 2011).

\*rarely evaluates and assesses that professional development within the school is aligned with curricular and instructional needs of the faculty.

\*rarely serves as a role model for values, beliefs and attitudes that inspire higher levels of performance in staff and students, as evidenced by the records 31 tardies since June 5, 2012.

\*rarely analyzes teacher and staff evaluations to make recommendations for professional development." (D-43)

Nazario met with Respondent to discuss the evaluation on June 12, 2012. At the conclusion of the conference, Nazario informed Respondent of his decision to recommend tenure charges.

By letter dated June 19, 2012 from the Superintendent, Respondent was served with the Notice of Inefficiency Charges. D-44, D-45. The notice identified 13 items of inefficiency, taken directly from the areas rated unsatisfactory in the 2011-12 annual evaluation.

## **2012-2013 School Year**

In the prior two school years, the Administration Team consisted of Principal Nazario, Vice-Principal Hawkins and Vice-Principal Peynado. At the commencement of the 2012-2013 school year, a third Vice-Principal, Douglas Petty, joined the team.

Mr. Hawkins retained the responsibility for supervision and observation of grades three through five and certain special education and activity teachers. Vice-Principal Petty was assigned the responsibility for grades six through eight, previously conducted by Nazario.

The District determined to provide Hawkins with a individual Performance Improvement Plan ("PIP"), to address the identified inefficiencies from the 2011-2012 annual evaluation. On August 13, 2012, Nazario met with Respondent and CASA representative Monique Cumberbatch-Jenkins to review the plan. (D-46, D-47)

The PIP created listed areas in need of improvement, action steps, time frames and standards for success as to each item, along with resources available to assist Respondent. D-47. Among other requirements, the "action steps" included three informal observations for each of the teachers assigned to Respondent and one formal observation of each teacher. Nazario claimed Respondent could conduct informal observations (12

minutes each) of all his teachers in one school day.<sup>5</sup> This required a total of only 12.6 hours of work, spread over more than 90 days. Vice-Principals Peynado and Petty performed more observations than were required.

The individual PIP period, executed by Hawkins and Nazario was listed as August 13 to November 16, 2012 with an asterisk declaring,

“\*individual Professional Improvement Plan may be extended and timeframes may be adjusted to coincide with the district’s deadlines of mandatory reports. Formative Observation requirements may also be adjusted to reflect the District’s New Teacher Evaluation Framework.”

The plan was extended to November 21, 2012, due to school closures caused by Super Storm Sandy. (D-63, D-64) In addition to numerous meetings and memoranda relating to the PIP benchmarks, D-70, Nazario and Respondent met specifically to discuss his progress on three occasions: September 21, October 17, and November 16. (See D-49, D-58, D-64) On four days in September, they conducted five joint partial period observations and discussed their findings.

At a joint meeting, evidenced by the Phase I feedback, D-49, Hawkins appears to have been working to complete the requirements of the PIP. Therein, it was noted Hawkins had “no tardies or absences on Kronos time reports.” Respondent also submitted

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<sup>5</sup>Nazzaro’s articulation of the informal observation was confirmed by both Assistant Superintendent Mitchell Center and Special Assistant for Teacher Quality Wanda Brooks-Long.

memorandum evidencing grade/vertical level meeting agendas, roster of target students and one informal visit.

Nazario provided several memoranda to Respondent with feedback on the observations submitted, focusing mainly on the quality of the evidence required to support performance ratings and the failure of Respondent's evidence to support inflated ratings. See D-51, D-52, D-53, D-55. At their October meeting, Nazario and Respondent updated the PIP based upon their discussion. Therein, Nazario recommended Respondent submit his observation reports prior to their due dates for review and comment. See D-58.

On November 15, 2012, Hawkins submitted a written request to Nazario for a transfer from the Oliver Street school, with copies to the Superintendent and other administrators.

Between October 17 and November 16, Respondent failed to complete any formal or informal observations. The third feedback meeting was held on November 16, 2012. (D-64) Therein, Respondent, along with his CASA representative, challenged the plan requirements. (D-65, D-66) Nazario disagreed. Neither Respondent nor his union representative had objected previously to the benchmarks in the plan.

The PIP concluded on November 21, 2012. Nazario requested Respondent submit his "outstanding formal/informal observation reports, grade level meeting agendas/attendance/notes, and

quality of student work reviews." D-67. Nazario issued a Submission of Final Reports, listing 13 formal observations and 48 informal observations Hawkins failed to submit, D-69. Respondent did not reply.

By memorandum on November 28, 2012 to the Superintendent and Assistant Superintendent, Nazario noted six "areas in need of improvement" listed in the PIP on which Respondent had failed to improve, and recommended certification of tenure charges, D-70. By letter December 17, 2012 from the Superintendent, Respondent was served with a Post-Improvement Period Notice of Inefficiency Charges. (D-73, D-74)

Hawkins's counsel responded to the charges, on January 13, 2013, asserting, *inter alia*, Respondent was a "valuable educator, essential to the success of Oliver Street School"; that the "areas of concern and alleged deficiencies contained in the [PIP] were arbitrary and capricious," and that "the Plan was written and administered with the intent to have [Respondent] fail." (RH-40)

Hawkins also filed a complaint with the School District's affirmative action officer, claiming Nazario discriminated against him on the basis of gender and race. Respondent submitted a second affirmative action complaint, on February 13, 2013, claiming retaliation for his having filed the first one, RH-27.

On March 18, 2013, Respondent received a midyear evaluation

rating him "Ineffective," D-97. Nazario again detailed concerns pertaining to Respondent's failure to complete observations:

Mr. Hawkins rarely gives feedback and avoids giving negative feedback when appropriate. Since September 2012, Mr. Hawkins has completed and submitted 12 of the required 25 observations of the faculty under his supervision. Also, since September 2012, Mr. Hawkins completely and submitted only 5 informal observations, evidencing limited instructional supervision and support. Moreover, in 14 instances Mr. Hawkins improperly rated faculty; therefore, avoiding giving negative feedback. As a result, the faculty in his grade span and departments received inadequate direction and support as it relates to their delivery of instruction and professional growth.

On March 25, 2013, 45 days past the deadline, Mr. Hawkins only submitted 9 of the required 23 Mid-year evaluations. In every Mid-year, the analysis provided for each indicator was a direct copy of the formative observations submitted. There were no additional analyses provided that would evidence ongoing formal/informal observation. Furthermore, the "In the Course of the Year" indicators, (unique to the mid-year and annual) Mr. Hawkins' ratings were inconsistent. In almost every case, the faculty received a rating of "Frequently," but the narrative was preceded with the rating "Always"; making it unclear if the rating was "Frequently" or "Always." Additionally, in two cases Mr. Hawkins copied and pasted the analysis from other faculty members' mid-years and even refers to those faculty by the incorrect name [examples omitted]. Finally, in 6 of the 9 mid-years you rated the faculty "Exceeds Expectations," the remaining three received a "Meets Expectations" for the same reasons the six received "Exceeds Expectations." In these cases you provided the faculty different ratings for the same performance. As a result, your rater reliability significantly decreased; and more importantly, your use of the rubric is unfair. (D-97)

Nazario also commented on the impact of Hawkins's deficiencies and his refusal to take responsibility for correcting them, forcing other members of the administrative team

to pick up Respondent's slack:

Mr. Hawkins has allowed disappointments and failures in his professional progress to take focus away from student outcomes. Since the outcome of the 90-Day Improvement Plan, Mr. Hawkins has neglected to execute with the normal day-to-day supervisory responsibility of providing the faculty documented feedback and support that promote their professional growth. Since the conclusion of the 90-Day Improvement Plan, Mr. Hawkins has failed to accept personal responsibility and get the job done. As a result, the administrative team has had to assume the added burden of completing Mr. Hawkins' observation report[s] for tenured and non-tenured faculty.

Moreover, Mr. Hawkins neglected to complete all of the assigned Mid-Year Evaluations that were due no later than February 8, 2013; they were submitted 45 days later. Mr. Hawkins was resistant to providing the Principal with definitive dates and the exact status of the Mid-Year Evaluations. Consequently, the administrative team has had to plan for their evaluative responsibilities along with the possibility that the remaining Mid-Years will be completed and submitted.... In this case, Mr. Hawkins failed to accept responsibility for his primary function as a school leader and outright obstruct[ed] a process that NJ Title 18A requires for every teacher.... In this case, Mr. Hawkins failed to accept responsibility and correct this deficiency by not observing over half of his assigned instructional faculty.  
D-97; see also D-80, D-81.

### **Corrective Action Plan**

In response to the Respondent's counsel's persuasive submission, State District Superintendent Cami Anderson, on March 20, 2013, determined not to certify charges, declaring,

"Dear Mr. Hawkins:

As you are aware, your improvement period commenced in August 2012 and concluded in December 2012. In an effort to afford you the further opportunity to improve your performance, please consider this formal notice that your

improvement period will be extended and that you will be provided with a Mid Year Evaluation and a Corrective Action Plan.

At the conclusion of your improvement period, I shall, pursuant to statute, consider any Charges along with any statement of position you submit and make a determination as to whether there is probable cause to credit the evidence in support of the Charges, and if such Charges are credited, determine whether they are sufficient to warrant dismissal or reduction in salary. In the event of a determination of probable cause, I will certify the matter to the Commissioner of Education of the State of New Jersey for hearing, pursuant to N.J.S.A. 18A:6-16." (D-92)

Nazario, Hawkins, Union Representative Monique Cumberbatch-Jenkins, and a Special Assistant Anita Ziyad, met on April 4, 2013 to review the Corrective Action Plan ("CAP") D-100; see also D-98, D-99. Similar to the PIP, the CAP outlined action steps, standards for success and time frames for completion, along with support to be provided by the principal and the District. It listed "performance indicators" (*i.e.*, areas of improvement) in the language of the School District's recently adopted evaluation rubric. It also included references to the standards for success listed in the PIP, thus providing a "crosswalk" between the PIP and CAP.

The CAP was designed to run from April 1 through the end of the school year. The CAP required the principal to provide an Outlook calendar for Respondent's observations, evaluations, and principal support meetings (which Nazario provided at the initial meeting and again, revised, on April 10, see D-102). It noted weekly meetings with the Principal and additional support from

Special Assistant for Teacher Quality, Dr. Wanda Brooks-Long. Accordingly, Nazario met with Respondent on April 5, April 12, and April 19, 2013. (see D-101, D-104, D-105)

On April 30, Respondent informed Nazario of his determination not to meet without union representation. D-108. Nazario agreed to reschedule the meeting until May 3, reminding Respondent of his responsibility to arrange for representation. Hawkins cancelled the previously scheduled meetings of May 3 and May 10, 2013. (See D-110, D-113)

Special Assistant Brooks-Long<sup>6</sup> met with Respondent, for the first time in connection with the CAP, briefly on April 1. They reviewed the proposed CAP and opportunities for assistance. They discussed conducting norming sessions, reviewing Respondent's observation reports, and monitoring his completion rate with feedback. Brooks-Long testified Respondent expressed no concerns about the CAP at this meeting. Brooks-Long was looking forward

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<sup>6</sup>Special Assistant Dr. Wanda Brooks-Long is a former principal now assigned to the office of Assistant Superintendent Mitchell Center. Her duties include providing principals and vice-principals with training and one-on-one coaching to improve teaching. According to her undisputed testimony, prior to being assigned to assist Respondent, Brooks-Long had visited Oliver Street School on 12 occasions in the 2012-13 school year to provide training to the administrative team and participate in the CAP process for two teachers. She also provided training on the new teacher evaluation framework to school administrators, including the Oliver Street School administrators, for three days in August 2011, and met with the Oliver Street School administrators again in February 2012 to provide training. She also conducted Vice-Principal Leadership Institutes, with further training on teacher observation and evaluation, most of which Respondent attended.

to helping Hawkins succeed, and confident he could meet all time lines and goals.

On April 15, 2012, Brooks-Long met with Respondent and Vice-Principal Douglas Petty to demonstrate norming, provide mentoring and coaching. The meeting consisted of a joint observation, then a private session with Respondent to discuss what he observed and how to properly catalog the evidence he should collect. Hawkins's observation completion rate was also addressed. Ms. Brooks-Long knew the School District's database indicated Respondent was an "outlier" as an observer for his low completion rate and consistently high ratings. In her testimony, Brooks-Long noted that during the joint observation Respondent seemed "disengaged," staring out the window.

On April 29, their next scheduled meeting date, Respondent informed Brooks-Long that he would not meet without CASA representation. She agreed to reschedule per his request. Brooks-Long continued to email and notified Hawkins of her schedule at Oliver Street School. Hawkins did not respond.

At hearing, Brooks-Long opined that Hawkins "didn't want the support." Adding, she had "no doubt" Hawkins possessed the skills necessary to perform his duties; he only needed to be "tweaked," such as by correcting his habit of copying-and-pasting observations and organizing his schedule to perform and complete observations in a timely manner.

Respondent was on administrative leave from May 15, 2013 through the end of the school year.<sup>7</sup> During his leave, Respondent made no attempt to meet the requirements of his CAP.

According to Center and Nazario, Respondent could have uploaded the observations he performed to complete the outstanding midyear and annual teacher evaluations, along with recommendations for professional development. Access to the observation data management system, Zoho, could be obtained remotely.

At hearing, Hawkins asserted he did not have access to a computer. By letter dated June 11, 2013, the School District reminded Respondent that while on leave he was to continue to perform his duties. (D-147) In a memorandum of the same date, Corrective Action Plan Outstanding Tasks and Responsibilities, Nazario listed the outstanding evaluations, directing Respondent to deliver them to Center's office by June 26, 2013.

The memorandum concluded,

"Finally, your annual evaluation conference meeting is scheduled for June 27, 2013, at 11:30 am in Mitch Center's office at the Newark Public Schools. Please contact CASA if you will require representation." (D-115)

Respondent testified he did not receive the letter or the memorandum.

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<sup>7</sup>Due to the incident of May 14, 2013, discussed below.

Respondent received an "ineffective" rating on his 2012-13 annual evaluation.(D-11). He did not appear for the June 27 conference. Nazario testified he mailed the evaluation document to Respondent; Hawkins testified he did not receive the evaluation in the mail.

In the 2012-13 school year (through May 15, 2013), Hawkins was tardy 15 times. In addition, he arrived to work one minute before 8:20 a.m. 35 times, and arrived *exactly* at the bell 46 times. (D-141, D-143)

#### **Incident of May 14, 2013**

On May 14, 2013, Hawkins was assigned playground supervision duty. At the end of a lunch period, Hawkins appeared at the Principal's office holding M.K., a nine-year old third-grader, with a grip on the front collar of his shirt, requesting M.K.'s mother be contacted.

Seeing his grip, Nazario first told Respondent to "let go of [M.K.]," and then listened to what had happened. Respondent advised M.K. had been fighting with other students. Nazario directed Hawkins to leave him with the student. M.K. informed Nazario grabbed him, held him tightly by the front of his shirt, and punched him repeatedly in the chest while dragging him across the playground to the office.

In accordance with established protocol, Nazario sent M.K. to the school nurse to be examined. Nazario directed Hawkins to

author an incident report. He also directed the school counselor, Elisa Guinones, to meet with M.K and prepare a report to submit to the Division of Child Protection and Permanency ("DCPP").

See D-2.

Respondent visited the nurse to seek treatment for a scratch on his hand and prepared the incident report, D-3. He also requested reports from the security guard and other staff members present at the playground. See D-4.

The next morning, a NJASK testing day, Respondent called the Newark Police requesting the officer assigned to Oliver Street School report a complaint against M.K., apparently claiming the scratch constituted an assault. D-7. When that officer declined to do so, Respondent contacted the police again later that day to submit a complaint.

Nazario arranged to view the school's surveillance tape of the playground. See D-1.

The security tape, a copy of which was presented at the arbitration hearing, D-1, does not show the fight or Respondent's first contact with M.K. because a large canopy obstructs the camera's field of vision. It shows M.K. approaching Respondent and saying something to him, then walking away, D-1 at 12:34:45 to 12:35:11. Hawkins's hand was in his pocket. Nineteen seconds later, it shows Respondent walking at a moderate pace, without apparent urgency or alarm, toward the area where M.K. had gone,

at 12:35:30. Twenty-one seconds later, it shows Respondent and M.K. emerging from under the canopy with Respondent dragging M.K. across the playground, D-1 at 12:35:51. Respondent utilized a one-handed fist-grip on the front of M.K.'s shirt (with his iPad carried by the other hand), for seventeen seconds, until they were out of camera range. (D-1 at 12:35:51 to 12:36:08) As they made their way across the playground, M.K. tried to break away and Respondent continued to hold tightly.

Assistant Superintendent Mitchell Center also reviewed the tape and consulted with Nazario. Thereafter, on May 15, 2013, Respondent was placed on administrative leave pending the DCCP investigation. The letter informing of the leave articulated,

"Please be informed that the Newark Public School (the "District") has been notified of an allegation that was made against you. With this knowledge, please be advised that in accordance with administrative directive you are to remain at home pending DYFS investigation. Your employment status will be identified as "administrative leave with pay" and your check will be mailed to your home. (D-8)

Despite this directive, two days later, Respondent went to the School District's payroll office, where M.K.'s mother worked. At hearing, Respondent admitted he knew she worked there, but claimed he had gone there because of a "problem" with his paycheck. (See D-8) Respondent yelled out to M.K.'s mother at payroll office, upsetting her. She called Nazario and emailed Special Assistant Keith Barton to report Respondent's actions,

"VP Mr. L Hawkins is now suspended pending a DYFS investigation involving my son [M.K.] of Oliver St. School.

While visiting central office today, Mr. Hawkins came into my office, the Office of Payroll, smiled and addressed me by yelling out to me "Hello Ms. [REDACTED]." Due to the sensitive matter, I feel as though Mr. Hawkins addressing me was very sarcastic and I felt uncomfortable and intimidated by it. I started shaking and became very upset with this to the point where my coworkers had to calm me down and close the door to our office so I could not see or hear him. (D-146)

By letter dated July 18, 2013, DCCP informed the School District the results of its investigation. DCCP found abuse was "not established," but that the student "was placed at some risk of harm by virtue of the incident." See D-9A.

#### POSITION OF THE PARTIES

The parties presented extensive argument at hearing and through post hearing submissions. As a recitation would overburden this Decision and Award, the essence of each is as follows:

#### **LAWRENCE E. HAWKINS**

Respondent maintains he is a valuable educator who has contributed to the success of the Oliver Street School. This is the only fact, reasons Hawkins, that should be considered when determining the effectiveness of an administrator.

Respondent contends the District failed to follow the evaluation process for Vice-Principals, including not allowing the CAP to be completed. Moreover, it made multiple mistakes of fact in the 2012-2013 evaluation.

Hawkins particularly asserts Nazario's actions toward him were arbitrary and capricious, evidenced by the issuance of

numerous memorandums. And, the specific allegations of inefficiency have not been established by a preponderance of the credible evidence. Nor has the District established Hawkins engaged in conduct unbecoming, warranting a dismissal. Likewise, the District failed to demonstrate Mr. Hawkins's attendance record had any impact on the continuity of instruction.

Counsel presented an overview of Respondent's argument in a cogent and comprehensive manner, as follows:

"Mr. Hawkins' career changed after Mr. Havier Nazario ("Mr. Nazario") was appointed principal of Oliver Street School for the 2010-11 school year. This was Mr. Nazario's first year as a principal in his career. At the end of the 2010-11 school year, Mr. Nazario rated Mr. Hawkins proficient in all areas.

Thereafter, in the 2011-12 school year, Mr. Nazario engaged in conduct that was arbitrary and capricious with respect to Mr. Hawkins. Mr. Nazario constantly issued memoranda to Mr. Hawkins regarding his conduct and perceived job failures. Yet, over the course of this school year, Mr. Nazario failed to adhere to the vice-principal evaluation model.

In June 2012, based on no known or introduced standard or protocol, Mr. Nazario determined that Mr. Hawkins performed unsatisfactorily. Upon receiving the unsatisfactory evaluation, Mr. Hawkins filed a grievance citing procedural failures on the part of Mr. Nazario. Thereafter, Mr. Hawkins was placed on a Corrective Action Plan ("CAP").

With respect to this original CAP, the District failed to provide Mr. Hawkins adequate time to address alleged inefficiencies. The CAP began three weeks prior to the arrival of students and staff, was cut short by Hurricane Sandy and the District had not yet provided the new framework for effective teaching. Notwithstanding such a brief period, Mr. Hawkins completed the majority of the CAP's required tasks. The only components to the CAP that were not completed, observations and evaluations of teachers, were overly burdensome and inconsistent with the

required number of observations and evaluations that other administrators were expected to complete.

Rather than proceed with tenure charges in the winter of 2013, the District issued a Revised CAP which was agreed to on April 8, 2013. The Revised CAP was intended to allow Mr. Hawkins to address the outstanding deficiencies. During the period of time for the Revised CAP, the District (1) had two weeks of standardized testing which precluded completion of certain elements of the CAP, and (2) placed Mr. Hawkins on administrative leave for a student-related incident. The actual time that the District was able to judge Mr. Hawkins' completion of the Revised CAP was reduced from twelve (12) weeks to four (4) weeks (Two weeks reduced because of testing; 6 weeks reduced because of the administrative leave).

It is also critical to note that the original CAP and the Revised CAP contain different benchmarks. The Revised CAP appears to be aligned with new evaluation criteria that were not previously presented to Mr. Hawkins. Mr. Nazario and State District Superintendent Cami Anderson ("Ms. Anderson") indicated that the Revised CAP was "intended to address outstanding deficiencies in your performance." However, a side-by-side analysis of the two plans shows that the Revised CAP introduces entirely new criteria to evaluate Mr. Hawkins, contrary to the correspondence from Ms. Anderson and Mr. Hawkins.

The District's claim of Unbecoming Conduct is similarly unsupported. The District includes four (4) allegations of Unbecoming Conduct from two years ago and two (2) claims of Unbecoming Conduct from the 2012-2013 school year. "With respect to this year, and the claim that Mr. Hawkins inflicted corporal punishment on a student, the District has failed to provide any evidence of such an action. With respect to the charge that Mr. Hawkins was late reporting to his post during NJASK testing, Mr. Nazario concedes in his memorandum that testing had not yet begun.

With respect to claims for "Other Just Cause," the District alleges that Mr. Hawkins was excessively tardy. However, a review of District exhibits demonstrates that Mr. Hawkins was late, over two academic years, a total of one hour and twenty-five minutes; but reported early or stayed late for over twenty-four hours. The District's claims should be

rejected outright as the evidence the District relies upon shows the dedication and hard work of one of the it's finest administrators.

Significantly, Mr. Hawkins filed an Affirmative Action complaint against Mr. Nazario alleging numerous violations of the Law Against Discrimination. Mr. Hawkins also sought a transfer from the Oliver Street School so that he could "continue to grow as a leader in the District." Upon review of the numerous memoranda and e-mails sent by Mr. Nazario against Mr. Hawkins, it is clear that the CAP and Revised CAP were retaliatory in nature meant to punish and harass Mr. Hawkins, rather than support and educate. (Brief at 2 and 3)

Accordingly, Respondent requests the charges of inefficiency, unbecoming conduct, and other just cause, be dismissed, in their entirety and Respondent be permitted to return as a Vice-Principal in the State-Operated District of the City of Newark.

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

The District avers this arbitrator is charged to determine whether the tenure charges are supported by a preponderance of the evidence. In each of the three charges, inefficiency, unbecoming conduct, and other just cause, the District maintains it has met its burden.

**Unbecoming Conduct, Unauthorized Corporal Punishment, Insubordination**

The District argues Respondent's use of force was unjustified - dragging M.K. by his shirt from the playground through the school, and into the Principal's office. While there are statutory provisions that allow school employees to use

reasonable and necessary force to "quell a disturbance, threatening physical injury to others." N.J.S.A. 18A:6-1(1), there was no threat here once Respondent interceded to stop the confrontation between M.K. and other students. The security tape supports this determination.

Compounding his initial actions, Assistant Superintendent Center opines that reporting the scratch to the Newark police is an attempt to criminalize the conduct of a nine-year-old. Along with failing to perform as the hall monitor for the NJASK testing and communication with M.K.'s mother, the only appropriate consequence for Respondent's conduct, argues the District, is dismissal.

Likewise, Respondent's insubordination and disrespectful behavior constituted unbecoming conduct as indicated by this record. A review thereof establishes Respondent's insubordination and disrespectful behavior is sufficiently flagrant to warrant dismissal.

### **Inefficiency**

The District maintains Mr. Hawkins was inefficient. Counsel exclaims,

"The Notice of Tenure Charges identifies fourteen specific ways in which Respondent has failed to adequately perform his job, despite the ability to do so, despite numerous opportunities to improve, and despite the substantial support and assistance provided by the School District. The gist of the inefficiency charge against him is that he failed to satisfactorily gather data on teaching staff members, synthesize that evidence to give accurate

assessments, and provide feedback to those teachers to help them improve and excel. He also consistently failed to promote the shared vision of the Oliver Street School and the Newark Public Schools as a whole, as required of a school leader and key member of an administrative team charged with ensuring the success of Newark's students." (Brief at 49-50)

The District notes Hawkins did not contend his performance was adequate, rather, that as the students were successful, inefficiency charges were inappropriate. Likewise, the District views Mr. Hawkins' claim of sabotage from Nazario and other administrators as "too outlandish to be credited." (Brief at 52) The record is clear, argues the District,

"this is a classic case of inefficiency: Respondent performed poorly and, even with support, failed to improve. As a result, the tenure charges against him should be upheld and he should be dismissed." (Brief at 54)

#### **Other Just Cause - Chronic and Excessive Tardiness**

The District contends the evidence established Respondent was tardy 118 times over a period of less than three school years. During the 2012-school year alone, Hawkins arrived only one minute before his contractual time on 35 days; exactly on the contractual time 46 other days. Respondent's conduct, asserts the District, raises to a level of tardiness that is "clearly excessive" supporting the charge.

Accordingly, the School District maintains each of the three proven charges alone, or in combination, warrants dismissal of Respondent.

### ANALYSIS

*Did the School District establish by a preponderance of the credible evidence the charges of inefficiency, unbecoming conduct and/or other just cause against Respondent?*

*If so, do the tenure charges warrant dismissal or a reduction of salary?*

#### **Charge One: Inefficiency**

Upon review of this record in its entirety, I **find** the School District has met its burden to establish by a preponderance of the credible evidence the charge of inefficiency.

Over nine days of hearing, this record revealed Lawrence E. Hawkins has the capacity to perform the primary functions of a Vice-Principal, conducting timely classroom observations, providing meaningful feedback to the teaching staff and being an effective member of the school leadership. Throughout his years at Oliver Street School, and immediately prior thereto, the record disclosed that instead of assuming the responsibilities of a Vice-Principal, Hawkins blamed others for their perceptions of his unsatisfactory performance.

Respondent's testimony indicated his mistaken belief that upon submission of outstanding observations and paper work to his Principal at the end of each school year, he was performing to the expectation of the School District. Rather than assume any responsibility, this record is replete with Mr. Hawkins's skill

in "gaming the system" and blaming others for his inefficiency.

Prior to his transfer to the Oliver Street School, Respondent claims Principal Motley treated him disparagingly because of Respondent's romantic relationship with a School District employee. Upon his transfer to Oliver Street School, under Principal Golden, Respondent asserts his "basic" evaluation for the year 2007-2008 was "fabricated." (D-118) The January 2009 "unsatisfactory" rating, he claimed, was predicated upon Principal Golden's failure to support his school assembly for students to listen to the inauguration of President Obama. (D-119) Respondent opined Principal Golden's decision to remain in her office playing word games evidenced her arbitrary and capricious conduct toward him. Thus, contrary to Respondent's argument, the School District's concern regarding his performance did not "change" upon the appointment of Mr. Nazario as Principal of Oliver Street School.

Teachers and support staff at the Oliver Street School did maintain that Principal Nazario was a stickler for procedure. Clerk Marilyn Hromoko particularly noted Nazario's control over the Kronos system and the issuance of immediate emails to any staff member who appeared to be late on the system. Likewise, she indicated Nazario authored many memorandums to staff who, in his opinion, were neglectful of their duties. As a new Principal, Nazario may have suffered from a touch of

"supervisoritis." Nonetheless, the evidence established this Principal's conduct toward Respondent was consistent with his treatment of employees at the school - not arbitrary or capricious.<sup>8</sup>

Vice-Principals are required to participate in their evaluation process by conducting a self-assessment during the Fall of the school year. The self-assessment contains standards, goals and time lines for professional development. The attainment of these goals is measured in the midyear and annual evaluation. During Nazario's first school year as a Principal, Hawkins did not complete the Vice-Principal's self-assessment until May 21, 2011. (D-17)

Nazario's compunction to follow district procedure strictly resulted in his determination to issue the 2010-2011 school year summary evaluation rating of "proficient" even though Respondent did not conduct timely observations. Nazario viewed Respondent's failure to submit the self-assessment as the Principal's failure to obtain same. Nazario concluded he lacked evidence to support a lower rating.

In October of 2011, Hawkins and Nazario executed the Vice-Principal's initial self-assessment plan, identical to the

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<sup>8</sup>During my 35 years as an attorney in the field of labor and employment, I have seen many new managers and administrators with this condition which normally dissipates as they and their staff become more comfortable with the supervisory relationship. The evidence does reflect that every memorandum issued to Respondent from Nazario was supported by the inappropriate conduct addressed therein. (See i.e., D-11, D-14, D-19, D-20, D-35, D-38, D-39).

standards chosen in May 2011. Consistent with his behavior in the previous school year, Mr. Hawkins failed to fully complete the self assessment and failed to conduct timely and meaningful observations. When the resulting 2011-2012 summary evaluation was "unsatisfactory", Hawkins audaciously challenged the evaluation, with a formal union grievance, for not being based on the Vice-Principal evaluation protocol, i.e., a competed self-assessment.

During the commencement of the 2012-2013 school year, Responded initially complied with the requirements of the PIP. Unfortunately, after mid October, Hawkins did not complete any formal or informal observations. Instead, in November and again in December, Hawkins requested a transfer from the Oliver Street School. (RH-26) Thereafter, Hawkins filed an affirmative action complaint form alleging Nazario discriminated against him on the basis of race and gender. The form also asserted unlawful retaliation. (RH-27)

With the issuance of the CAP, the School District granted Mr. Hawkins with yet another opportunity to perform, providing substantial support and assistance. In April 2013, Dr. Wanda Brooks-Long offered Hawkins training, mentoring and monitoring to assist the completion of the CAP.

Late on the Friday afternoon before the Christmas holiday, Dr. Wanda Brooks-Long's testimony illuminated the hearing. Her recitation of how an observation is to be conducted was

provocative. The undersigned views the testimony of this administrator, who had no prior experience with Respondent, to be credible. She confirmed her belief that Respondent was well capable, with minor tweaking, to become an accomplished observer and be removed as an "outlier" in the Zoho system.

Unfortunately, she also confirmed, based upon Hawkins's denial of continued mentoring sessions and evident lack of interest during the joint coaching session at Oliver Street School, that Respondent was just not interested in complying with his CAP. After refusing assistance, Respondent incredulously argued his CAP was deficient, because Brooks-Long did not meet with him bimonthly.

Mr. Hawkins's decisions, not to check his email, gain access to the interest, respond to district mailings, or appear at his annual evaluation conference meeting, further evidence his determination not to perform the essential functions of a Vice-Principal.

Accordingly, I **find** the State operated School District of the City of Newark has proven, by a preponderance of the credible evidence, the charge of inefficiency, in its entirety, warranting dismissal.

**Charge Three: Other Just Cause - Chronic and Excessive Tardiness**

This certified charge articulated,:

"Despite repeated reminders and warnings, Respondent has been excessively tardy in his arrival at school, resulting in his

failure to perform administrative and supervisory duties as required, reflecting his failure to focus on students' learning as a priority, and causing a detrimental impact on the educational program of the school to which he has been assigned."

Upon consideration of this record, I **find** the School District has not met its burden to establish by a preponderance of the credible evidence the charge of Other Just Cause.

Pursuant to the Collectively Negotiated Agreement between CASA and the School District, Mr. Hawkins, as an administrator, was required to arrive no later than 8:20 a.m., and depart no earlier than 3:05 p.m. A review of School District Kronos Reports revealed Mr. Hawkins was, over the course of two academic years, late for a total of one hour and twenty-five minutes. (See D-131, D-141, D-144). The Kronos reports also disclosed Hawkins often remained at work after 3:05 p.m..

In post hearing submissions, both parties identified three factors the School District must demonstrate to establish Respondent's tardies were excessive:

"(1) that it considered both the number of days and the particular circumstances of the absences; (2) the impact that the absences had on the continuity of instruction during the period of time the absences occurred; and (3) that the teacher received some warning that his or her supervisors were dissatisfied with the [employee's] absences [or tardies]." In re Tenure Hearing of True, EDU 812-10

The record evidence in this matter does not satisfy the *True* test. Hawkins's tardiness did not effect the continuity of instruction, for instruction did not begin until 8:35 a.m. In accordance with the Collectively Negotiated Agreement, arriving

one minute early, on time or a few minutes after the contractual mandated arrival time, does not support a tenure charge for excessive tardiness. Rather, this record establishes that since his transfer to the Oliver Street School at the beginning of the 2007 school year, contrary to the articulated requests of Principal Golden and Principal Nazario, Hawkins did not appropriately assist during morning inclement weather or normal morning ingress. This record further supports the inefficiency charge; Hawkins was not a supportive member of the administrative team.

Accordingly, Charge Three: Other Just Cause-Chronic and Excessive Tardiness, is hereby, ***dismissed***.

**Charge Two: Unbecoming Conduct**

**Memoranda**

The memoranda issued by Nazario regarding insubordination on March 3, 2011, D-11, and May 5, 2011, D-133, were insufficient to support finding conduct unbecoming. Hawkins's counsel's argument is pervasive. Nazario failed to condemn these behaviors in the 2010-2011 annual "proficient" evaluation.

Likewise, the conduct identified in the memoranda of November 29, 2011, D-14, and December 1, 2011, D-15, do not rise to a level supporting tenure charges. Indeed, the December 1, 2011 incident relates to Mr. Hawkins determination not to arrive at school with

sufficient time to assist morning ingress, further supporting the inefficiency charge.

**Incident of May 14, 2013 and May 15, 2013 - Unauthorized Corporal Punishment**

Upon this record review, I **find** the School District has met its burden to establish by a preponderance of the credible evidence the charge of unbecoming conduct regarding the incident of May 14, 2013 and May 15, 2013. The evidence established Respondent used unnecessary force against a nine-year-old, M.K., by grabbing him tightly in front of his shirt, dragging him across the playground, into the building, and to Principal Nazario's office. Moreover, Hawkins's insistence on filing a charge against M.K., by requesting a police officer at the Oliver Street School immediately prior to the NJASK test supports this finding. Finally, it is clear to the undersigned Hawkins had no "problem" with his pay check. He visited the School District's payroll office knowing M.K.'s mother would be present.

Nevertheless, this record also established the School District did not provide any hands-on training for Vice-Principals on reasonable and necessary force to "quell a disturbance, threatening physical injury to others." (N.J.S.A. 18A:6-1(1)) Hawkins's action, stopping the physical altercation between M.K. and other children, was appropriate. As such, I find this proven tenure charge alone would not warrant dismissal but rather a direction for training and a reduction of salary.

However, for the reasons identified above, I **find** the School District has demonstrated by a preponderance of credible evidence the charges of inefficiency and unbecoming conduct, warranting dismissal.

**AWARD**

The State-Operated School District of the City of Newark, has met its burden of proving the following charges against Vice-Principal Lawrence E. Hawkins:

1. The charge of Inefficiency.
2. The charge of Unbecoming Conduct. On May 14, 2013, Lawrence E. Hawkins inflicted or caused to be inflicted corporal punishment upon a student.

The remaining charges are dismissed. Based upon the charges that have been proven, Lawrence E. Hawkins has been inefficient and has engaged in unbecoming conduct, constituting just cause for dismissal.

DATE: 3/10/14

Carol F. Laskin  
CAROL F. LASKIN, ESQUIRE

STATE OF NEW JERSEY :  
COUNTY OF CAMDEN :

I CERTIFY that on CAROL F. LASKIN, personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

DATED: 3-10-14

Lynda A. Green  
NOTARY PUBLIC

**Lynda A Green**  
**Notary Public**  
**New Jersey**  
**My Commission Expires 6-28-14**