

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
TEACHER TENURE HEARING UNIT

-----X
In the Matter of the Disciplinary Proceeding between

SED Case Number: 23257

THE BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK a/k/a THE
NEW YORK CITY DEPARTMENT OF EDUCATION
("DOE"),

**REVISED
OPINION OF
EUGENE S. GINSBERG
HEARING OFFICER**

Complainant-Employer,

- against -

ANN LEGRA,

Respondent-Tenured Teacher-Employee.

Pursuant to Education Law Section 3020-a

-----X
APPEARANCES:

For the DOE:

Courtenaye Jackson-Chase, General Counsel
By: Denice M. Szekely, Esq.

For United Federation of Teachers, Local 2, AFT, AFL-CIO ("UFT")

Richard E. Casagrande, General Counsel
By: Michael J. DelPiano, Esq.

Hearings:

Held at DOE, 49-51 Chambers Street, New York, New York 10007 on: November 26 (Pre-Hearing Conference), December 13 and 16, 2013; January 13, 16, 21, 22, 24 and 27, February 10, 11, 14, 24, 26 and 28, March 3, and 5, 2014.

Post Hearing Submissions:

From UFT – March 5 and 12, 2014 – Memorandum and cases.

From DOE – March 11, 2014 – cases.

Hearing Closed

March 20, 2014 upon receipt of final copy of transcript ("T").

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SPECIFICATIONS

INTRODUCTION

The New York City Department of education brings this action, pursuant to Education law §3020-a, against Ann Legra, for her failures in the nature of incompetent and inefficient service, neglect of duty, insubordination, unwillingness and/or inability to follow procedures and carry out normal duties, and engaging in misconduct, during the...2011-2012 and 2012-2013 school years. Ann Legra (hereinafter referred to as the "Respondent") under file number 2201183...entered the New York City Department of Education in 1990. Respondent is a tenured teacher assigned to PS 173, located at 306 For Washington Avenue, New York, New York within District 6, and holds a "Common Branches Pre K-6" license.

1) [REDACTED]

[REDACTED]

[REDACTED]

5) [REDACTED]

6) Respondent demonstrated a lack of professional fitness, neglected her duties, and/or used poor judgment, in that Respondent failed to timely, properly, adequately and/or effectively supervise students in her charge during the 2012-2013 academic year.

7) [REDACTED]

- 8) [REDACTED]
- 9) Respondent was excessively late and/or absent during the 2012-2013 academic year.
- 10) During the...2011-2012 and 2012-2013 academic years, Respondent failed to attend and/or accept professional development and assistance meetings with supervisors, and/or accept and/or heed advice, counsel, instruction, remedial professional development and/or recommendations regarding:
- a. The elements of effective lesson planning/execution.
 - b. Classroom management; and
 - c. [REDACTED]

THE FOREGOING CONSTITUTES:

- 1. Just cause for disciplinary action under Education Law §3020-a;
- 2. Insubordination;
- 3. Incompetence and/or inefficient service;
- 4. Conduct prejudicial to the good order, efficiency or discipline of the service;
- 5. Conduct unbecoming Respondent's position or conduct prejudicial to the good order, efficiency, or discipline of the service;
- 6. Substantial cause rendering Respondent unfit to properly perform obligations to the service;
- 7. Misconduct;
- 8. Neglect of duty; and
- 9. Just cause for termination.

DATED: October 9, 2013

APPOINTMENT AND BACKGROUND

On November 12, 2013 I was appointed as the Hearing Officer for this case.

At the Pre-Hearing, in person, conference, on November 26, 2013 Counsel for DOE consented to the motion of UFT Counsel to dismiss references related to the 2010-2011 academic year. This resulted in deletion of specifications 2, 3 and 4 and a reference in number 10, thereto.

During the hearing the following Exhibits were submitted and accepted into evidence.

EXHIBITS

JOINT

1. Agreement between The Board of Education of the City School District of the City of New York, and United Federation of Teachers Local 2, American Federation of Teachers, AFL-CIO, covering Teachers – October 13, 2007 – October 31, 2009, including Appendices A through L, (166 pages), (Collective Bargaining Agreement, or “CBA”).
2. June 27, 2008 letter to Chancellor Joel I. Klein from President of UFT, Randi Weingarten (5 pages).
3. April 15, 2010 letter to Michael Mulgrew, President of UFT, from Chancellor Joel I. Klein (8 pages).

DOE

1. Specifications, dated October 9, 2013 (3 pages).
2. Bill of Particulars, dated October 9, 2013 (5 pages).
3. June 21, 2012 Observation (on May 9, 2012) by Principal Dawn J. Boursiquot (3).
4. June 22, 2012 Annual Professional Performance Review and Report, for period 9/6/2011 to 6/30/2012 by Principal Dawn J. Boursiquot (2 pages).
5. December 17, 2012 Observation (on November 30, 2012) by Principal Dawn J. Boursiquot, with Receipt (4 pages).
6. June 21, 2013 Observation (on June 4, 2013) by Principal Dawn J. Boursiquot and Assistant Principal Kevin Goodman (5 pages).
7. June 17, 2013 letter to Respondent from Principal Dawn J. Boursiquot, with ten pages of attachments (12 pages).
8. June 21, 2013 Annual Professional Performance Review and Report, for period 9/4/2012 to 6/30/2013, by Principal Dawn J. Boursiquot (2 pages).
9. September 5, 2012 agenda for Faculty Meeting, with attendance sheet (2 pages).
10. February 7, 2013 letter to Classroom Teachers from Principal Dawn J. Boursiquot, with Receipt (2 pages).
12. November 18, 2011 letter to Teachers re: Portfolio Components from Assistant Principal Kevin Goodman (and others) (2 pages).
13. February 2012 memo to Respondent from Principal Dawn J. Boursiquot.
14. October 19, 2012 Agenda for Grade 1 Math Meeting.
15. January 17, 2013 memo to Respondent regarding visit.
16. Package of “The Week Ahead” memo’s to PS 173 Community, from 9/11/2011 – 6/12/2012 (70 pages).
17. January 25, 2012 e-mail from Assistant Principal Kevin Goodman to Respondent (2 pages).
18. June 22, 2012 letter from Assistant Principal Kevin Goodman to Respondent.
- 19.A. February 1, 2013 letter to Respondent from Assistant Principal Kevin Goodman.
- B. February 4, 2013 e-mail to Respondent from Assistant Principal Kevin Goodman.
- C. Observation of 2/1/2013 by Assistant Principal Kevin Goodman (5 pages).
20. April 10, 2013 Observation of 3/21/2013 by Assistant Principal Kevin Goodman (4 pages).

- 21.A. January 15, 2013 letter to Respondent from Assistant Principal Kevin Goodman.
- B. January 22, 2013 letter to Respondent from Assistant Principal Kevin Goodman.
- 22. September 22, 2011 e-mail to Respondent (and others) from Assistant Principal Kevin Goodman (2 pages).
- 23. September 28, 2011 time period sheets (log) to Respondent.
- 24. November 8, 2011 Class Environment Checklist draft.
- 28. May 7, 2012 letter to K-2 Teachers from Assistant Principal Kevin Goodman.
- 29. October 2012 letter to Teachers from Assistant Principal Kevin Goodman.
- 30. November 6, 2012 schedule and attendance sheet (2 pages).
- 31. November 13, 2012 letter to Faculty and Staff from Assistant Principal Kevin Goodman (3 pages).
- 32. December 14, 2012 letter to Respondent from Assistant Principal Kevin Goodman.
- 33. January 17, 2013 agenda and attendance sheet for Grade 1 meeting.
- 34. February 11, 2013 e-mail to Respondent from Assistant Principal Kevin Goodman (2 pages).
- 35. May 23, 2013 Grade 1 Agenda with attendance sheet (2 pages).
- 36. Undated "Big Ideas to Hold on to...".
- 38. October 10, 2012 Planning meeting notes.
- 39. January 31, 2013 Agenda for 1st Grade Literacy meeting.
- 40. January 17, 2013 Notes (2 pages).
- 41. February 12, 2013 Notes (2 pages).
- 42. February 2013 Demo lesson report.
- 44. November 9, 2012 Record Receipt Confirmation.
- 45. October 23, 2013 copy of Records Receipt Confirmation.
- 46. May 7, 2013 e-mail to Respondent from Office of Assessment.
- 47. 9/5/2000 Summary of Changes to Regulation, #C-601 (9 pages).
- 48. May 8, 2013 e-mail to Principal Dawn J. Boursiquot from Viv Ellis.

UFT

- R1. September 13, 2010 The Week Ahead to Staff (3 pages).
- R3. December 2, 2011 Kindergarten Component list.
- R4. February 6, 2012 revised assessment schedule to all Kindergarten Teachers from Tania Serratty.
- R5. February 13, 2013 e-mail from Respondent to Assistant Principal Kevin Goodman and February 11, 2013 e-mail from Assistant Principal Kevin Goodman to Respondent.
- R6. February 4, 2013 e-mail from Respondent to Assistant Principal Kevin Goodman and January 18, 2013 e-mail from Assistant Principal Kevin Goodman to Respondent.
- R7. February 9, 2013 e-mail from Respondent to Assistant Principal Kevin Goodman and January 18, 2013 e-mail from Assistant Principal Kevin Goodman to Respondent [same as in R6.].
- R8. June 14, 2013 e-mail from Principal Dawn J. Boursiquot to Assistant Principal Kevin Goodman and June 13, 2013 e-mail from Respondent to Principal Dawn J. Boursiquot (2 pages).
- R9. December 16, 2012 e-mail from Principal Dawn J. Boursiquot to Respondent and December 14, 2012 e-mail from Respondent to Principal Dawn J. Boursiquot.
- R10. November 12, 2012 e-mail from Respondent to Principal Dawn J. Boursiquot.

- R11. January 22, 2013 letter to Assistant Principal Kevin Goodman from Respondent.
- R12. April 11, 2013 e-mails to Assistant Principal Kevin Goodman from Respondent (2 pages).
- R13. 2012-2013 School Survey Report (15 pages).
- R14. May 5, 2012 e-mail from Assistant Principal Kevin Goodman to Monique Knight.
- R15. February 4, 2013 e-mail from Respondent to Assistant Principal Kevin Goodman and January 18, 2013 e-mail from Assistant Principal Kevin Goodman to Respondent.
- R16. February 4, 2013 e-mail from Respondent to Mayra Cruz.
- R17. Kindergarten Data Report (2 pages).
- R19. January 18, 2013 letter from Assistant Principal Kevin Goodman and Respondent.
- R20. Comprehensive Inquiry Report for Jayleen, dated March 18 and 20, 2013 by Respondent (2 pages).
- R21. Comprehensive Inquiry Report for Respondent, dated March 20, 2013 by Respondent (3 pages).
- R22. May 20, 2013 letter to Principal Dawn J. Boursiquot from Respondent (2 pages).
- R23. Comprehensive Injury Report for Respondent, dated May 21, 2013 by Respondent (2 pages).
- R24. Running Record Placement Chart of Respondent.
- R25. Sight Word Placement Chart of Respondent – March, April and May, 2013.
- R26. December 2012 Sight Word Placement Chart of Respondent.
- R27. December 2012 Running Record Placement Chart of Respondent.
- R28. First Grade Performance Assessment Data of Four Tables (4 pages).
- R29. June 2013 Class Profile of Respondent (2 pages).
- R30.A. January 8, 2013 Absence Request of Respondent with rejection by Principal Dawn J. Boursiquot.
- B. January 22, 2013 Absence Request of Respondent with rejection by Principal Dawn J. Boursiquot.
- C. January 28, 2013 Medical letter from Ana Guerra, M.D. (Manhattan Physicians Group) for Respondent.
- D. February 21, 2013 Medical note from (illegible) for a doctor's appointment, (Manhattan Physicians Group).
- E. Summons of Jose Morel for February 28, 2013 appearance before Support Magistrate in Family Court.
- F. March 1, 2013 Medical note from (illegible) for a nurse visit (Manhattan Physicians Group) for Respondent.
- H. May 6, 2013 e-mail from Office of Assessment to Respondent regarding attendance at ELA Section B.
- I. May 14, 2013 Medical letter from Tamara Pinkhasova, M.D. (Manhattan Physicians Group) for Respondent.
- J. Summons of Jose Nelson Morel for June 3, 2013 appearance before Support Magistrate in Family Court.
- K. June 12, 2013 Medical note from Trisha Samuel, R.N. coordinator (Manhattan Physicians Group) for Respondent.
- R31. June 3, 2013 Mathematics Workshop outline of Respondent (2 pages).
- R32. May 9, 2012 Reader's Workshop outline of Respondent (3 pages).
- R33. February 1, 2013 letter from Assistant Principal Kevin Goodman to Respondent.
- R34. Amended February 4, 2013 letter from Assistant Principal Kevin Goodman to Respondent.
- R35. April 12, 2013 e-mail from Principal Dawn J. Boursiquot to Respondent.

- R36. On My Own questions.
- R37.A. Monday, May 20 and Tuesday, May 21 handwritten lesson plans (4 pages).
- B. May 2013 and June 2013 First Grade calendar sheets (2 pages).
- R39. June 18, 2013 e-mail to Principal Dawn J. Boursiquot from Respondent.
- R42.A. March 7, 2013 e-mail to Respondent from Office of Assessment regarding Scoring Session A – ELA on April 22-23, April 29 – May 1.
- B. March 7, 2013 e-mail to Respondent from Office of Assessment regarding Scoring Sessions B-ELA on May 2-May 3, May 6-May 8.

As reflected, on the first page, both parties were represented by counsel in this proceeding. They had a full and fair opportunity to offer documentary and testimonial evidence, cross-examine witnesses, argue their respective positions, as well as submit court, arbitral and hearing officer decisions, opinions and awards.

The foregoing have been fully considered in the preparation and issuance of this opinion and award.

The DOE called as witnesses: Dawn Boursiquot, Principal; Tania Serratty, Math Coach; Kevin Goodman, Assistant Principal; Nilda Francisco, Literacy Coach; Marc Bush, Director New York State Assessment; and Yris Vargas, School Secretary.

The UFT called as witnesses: Jose A. Rodriguez, UFT Chapter Leader and ESL teacher; and Respondent, Ann Legra.

The closing arguments of Counsel were presented on March 5, 2014 and are reflected in the Transcript for that hearing day, ending with Page 1902.

EVIDENCE

A. The DOE's evidence relating to the five observations in Specification "1)" [page 6, above], are:

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C. The DOE's evidence relating to supervising students in 2012 - 2013 school year in Specification "6)"[page 6, above] are DOE's 5, 19C, 20 and 21B and the testimony of Principal Boursiquot and Assistant Principal Goodman in support.

DOE 21B is a January 22, 2013 two page letter, Bates No. 65 and 66, to Respondent from Mr. Goodman relating to an observation on January 15, 2013.

It included:

You were summoned to a disciplinary conference on Wednesday, January 16, 2013 at 8:10am to discuss what I observed inside of your classroom on Tuesday, January 15, 2013. The conference addressed the issues that I observed at approximately 8:50am while I was conducting a routine instructional walkthrough of Grade 1 classrooms. Present at the disciplinary conference was the Principal, Ms. Boursiquot and your union representative.

On January 15, 2013 while on the third floor, I was immediately drawn to your classroom by the excessive noise and sounds that suggested that you were struggling to manage your 17 Grade 1 students, likely as a result of your lack of adequate planning. I looked through the window on the door of your classroom and observed chaos; students up out of their seats, at least one was running, another was demonstrating karate moves on the closet door and the majority of the students were not involved in *anything* instructional in nature or otherwise — an issue that has repeatedly plagued your tenure as a classroom teacher at P.S. 173. I attempted to locate you, the professional classroom teacher, in the room and was unable to do so. One of your students noticed me standing at the door observing the mayhem and opened the door for me so I was able to enter. At that point, I observed you "buried"

in a corner of the classroom at the computer table; out of sight from your students in a position that would make it extraordinarily difficult to observe *all* of your students properly. You were negligent in maintaining a safe classroom environment because your position in the classroom at that time prevented you from monitoring the safety and well-being of your Grade 1 students, a minimal responsibility for any teacher — even the substitute teachers that cover classes in our school on a regular basis.

Once you observed that I was inside of your classroom, you quickly left the computer table and attempted to address the many behavioral issues that were evident.

At your disciplinary conference, you stated that you were "sharpening pencils" during the time I observed your classroom. You are not permitted to abandon your authority as the adult in the classroom to engage in a task that takes you away from your students, provided you were in fact "sharpening pencils." You also alluded to the idea that the several students in your class are responsible for the lack of order that is observed inside of your classroom consistently. You should be reminded that several students were removed from your class since September 2012 because you had great difficulty in addressing their behavioral and academic needs. You are required to maintain a safe classroom environment for all students and to immediately address behavior that is deemed to be disruptive; i.e. students running or demonstrating karate moves on a closet door. Idle first graders are likely to engage in unacceptable behavior.

You have been warned repeatedly and it has been documented on several occasions over the years that your inability to manage your students for the purpose of providing a safe learning environment has been a recurring theme and needs to be your professional priority moving forward. However, you continue to fail to acknowledge this.

It was brought to my attention later in the day on January 15, 2013 that *three* students were injured later that same day while in your care. This is unacceptable. It can be concluded that these students were injured as a result of your inability to, monitor the safety and well-being of your students and by failing to engage them in meaningful curriculum and instruction or activities. During your disciplinary conference, you stated that a female student in your class ■■■ initiated the behavior that led to the injuries.

Please be reminded of your responsibility to maintain a safe learning environment for your Grade 1 students. Failure to comply with these directives will result in further disciplinary action, including, but not limited to, charges that may lead to termination of your employment and an Unsatisfactory rating for the 2012-13 school year.

The Respondent testified she responded to Mr. Goodman's letter on January 22, 2013, (R11)

[T.1203 L. 23-25] and "placed it in his mailbox" [T.1205 L.4].

Her letter states

On the day you entered my class room (January 15, 2013) you first stated I was on the computer. Then you said I was sharpening pencils. The morning in which I was summoned to a disciplinary hearing by you I was re-sharpening three pencils which were too sharp. To prevent any accidents I decided to re-sharpen these pencils right away. The students were walking around the room working on word activities. One of which is reading the room. In this activity during our word work period students look for words in the room which have to do with the specific teaching point for that day.

I teach a first grade class which started with many issues of behavioral disruptions. This is not only stated by me but by their former teacher, and other teachers as well. I took over this classroom in October. I currently have two children with IEP's. I do implement and practice rules on a daily basis. As a professional I do care and do provide a safe environment for my students. The safety of my students is of great importance to me. I do like to practice moving games with my students. This has been since I took over this class. Moving activities tend to help students with attention deficit hyperactivity disorder. These activities were suggested by the student's therapist. The time that you do stand by my door please take this into consideration.

I am not aware of any students being removed from my room due to my lack of meeting their behavioral or academic needs. The students which have been removed from my room are [REDACTED]; which moved to the Bronx, and [REDACTED] who was transferred to a special Education classroom due to an IEP hearing in which it was determined that due to a learning impediment [REDACTED] would advance in that special classroom. I am unaware of any other student being removed due to anything else other than what was previously stated. You mentioned in your disciplinary letter dated January 22, 2013 that students were removed from my room since September of 2012. Please let me remind you that I took over class 104 in October. I really do not know of anyone being removed prior to that.

Respondent's testimony on direct examination included

1206

19 Q. During Mr. Goodman's testimony he
20 stated that you were behind a desk, not watching the
21 children on January 15th, 2013. Can you please
22 explain to us what you were doing that day?

23 A. That day there were students preparing
24 to go to ESL and they needed pencils. The pencils
25 were too sharp, so I re-sharped some of the pencils

1207

2 so that they can take one with them.

3 Q. Where is the pencil sharpener located

4 in your classroom?
5 A. On the computer desk.
6 Q. Where would have to stand in order
7 to sharpen pencils?
8 A. Behind the desk.
9 Q. Do you recall how long you were
10 sharpening pencils for?
11 A. Maybe a minute.
12 Q. What do you recall doing after you
13 sharpened those pencils for the students going to the
14 ESL class?
15 A. I had to gather them and give them
16 their pencils and send them to their class.
17 Q. After you took care of the ESL
18 students, do you recall what if anything you did after
19 that with your class?
20 A. I think I gathered them on the carpet.
21 Q. Mr. Goodman also testified about the
22 students misbehaving during that - - the time he was in
23 your class on that date. What is your recollection of
24 what your students were doing on that date?
25 A. On that date, I believe that was --

1208

2 January 15th was a Thursday. On Thursday we have
3 music. We were coming from the music and the ESL
4 teacher wanted to see the ESL students. Because we
5 had missed the reader's workshop which was supposed to
6 be during music; I made it up that period. Now,
7 before we went to music there were activities that we
8 were doing which was -- I don't recall whether it was
9 interactive writing or word study in which students
10 had to read the room. So I don't recall whether I
11 finished that portion when we came back from music
12 that we were doing prior to leaving or whether I just
13 gathered the students back in the meeting area for the
14 reading lesson.

15 Q. In your response letter you stated, "I
16 do like to practice moving games with my students."
17 Can you please explain to us what "moving games" are?

18 A. Well, especially with children that
19 have a hard time concentrating or have a hyperactivity
20 disorder, it's important for them to move around. So
21 that's one of the strategies that I used with them.

22 Q. But what exactly are moving games?

23 A. For example, when I see a student is

24 exhibiting behavior, then that student will have a
25 chance to go out to the restroom and walk around and

1209

2 walk it off by walking fast to and from the restroom.
3 So many students in my class knew that they could just
4 ask, that they needed that time and it would be given
5 to them. Another activity of moving games would be as
6 a whole class, for example jumping jacks or sometimes
7 they would be correlated into the lesson. So
8 different, different activities would be done.

9 Q. What if any rules are there at PS 173
10 about using moving games?

11 A. There are none.

D. [REDACTED]

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F. The DOE's evidence relating to excessively late and/or absent for 2012-2013 school year in Specification "9)" were listed as DOE 9 and 46 and the testimony of Principal Boursiquot and Secretary Vargas in support. DOE 7 and 48 were not listed. However, they were submitted and testimony was offered.

DOE's 9, Bates No. 83 and 84, is for a P.S. 173 Faculty meeting on September 5, 2012. The second page has Respondent's name and signature on the fourth line. The first page is an agenda, which includes:

- I. Welcome Back
 - Welcome New Staff Members
 - Ms. Kim; Grade 4
 - Ms. Angel; Grade 3
 - Ms. Moscoso; Grade 1
- III. Tentative Organization Sheet; student enrollment will dictate class needs
- IV. Library Update
- V. ATS Class List distribution, classes will appear large at first
- VI. Supervisory Assignments
 - Kevin Goodman - ELA, Cluster Teachers, New/Probationary Teachers
 - Madrid Deratus - Math, ESL, Discipline & Safety
 - All administrators will supervise classroom teachers across the grades
- VII. Cluster Program delayed due to Space Sharing
- VIII. First Day Procedures including roles of out of classroom personnel
- IX. Questions

***Please look for Book Baggies and Work Samples in your classroom; Grades 1-5 only. This will help facilitate Independent Reading during the first few days of school for many of your students - not all. We will once again try to facilitate the collection and return of these books later in the month. If you have a question, please speak with Mr. Goodman or Mrs. Francisco.**

Check with your grade level colleagues if you are missing these items or if you have materials for children who are not on your ATS since some class changes have been made.

FYI:

K, 2, and 5 will eat during the first lunch period this year.

1, 3, and 4 will eat during the second lunch period this year.

DOE 46 is a memo sent May 7, 2013 to Respondent from the Office of Assessment, Division of Academics, Performance and Support regarding her "ABSENT" status on 5/6/2013 as a "Scorer -- ELA - Session B". It included

The following is a summary of your attendance status for scoring that took place on 5/06/2013:

Position: Scorer - ELA - Session B
 Status: ABSENT
 Scoring Site: P.S. 076 A. PHILIP RANDOLPH (03M076)
 220 WEST 121 STREET, MANHATTAN, NY 10027

Please note:

1. If your principal instructed you not to report to the scoring site, or designated a different staff member to take your place, please disregard this notice.
2. If you believe that there is a mistake in the attendance data summarized above, please contact the scoring site supervisor.

If you have any questions, please email elamath@schools.nyc.gov.

DOE 7, the letter dated June 17, 2013 from Principal Boursiquot to Respondent, relating to lateness and absence, included

Dear Ms. Legra:

I had scheduled a conference with you for March 15, 2013 at 8:10am to discuss your attendance and punctuality. Since you were late on March 15th and did not arrive to work until 8:42am, I had no choice but to postpone the conference until March 18th.

On Monday, March 18, 2013 at 8:10am, I met with you and your union representative, David Brophy, to discuss your attendance and punctuality for the 2012-2013 school year. You were issued a letter dated December 13, 2012 which warned you that you had been absent 5 days from September 4, 2012 and late 6 times. Ms. Legra, as of March 18, 2013 you have been absent 20.5 days and late 22 times as follows:

(5 entities deleted)

Tuesday, January 8, 2013	Personal ½ day)
Friday, January 25, 2013	Med. Certified
Monday, January 28, 2013	Med. Certified
Tuesday, January 29, 2013	Med. Certified
Thursday, February 21, 2013	Med. Certified
Friday, February 22, 2013	Med. Certified
Monday, February 25, 2013	Med. Certified
Tuesday, February 26, 2013	Med. Certified
Wednesday, February 27, 2013	Self-Treated
Thursday, February 28, 2013	Self-Treated
Friday, March 1, 2013	Self-Treated
Monday, March 4, 2013	Self-Treated
Tuesday, March 5, 2013	Self-Treated
Wednesday, March 6, 2013	Self-Treated
Thursday, March 7, 2013	Self-Treated

Friday, March 8, 2013 Self-Treated

Since our March 18, 2013 (sic) conference you have been absent an additional 7 days as follows:

Wednesday, April 24, 2013	Personal
Monday, May 6, 2013	Self-Treated
Tuesday, May 14, 2013	Self-Treated
Tuesday, May 28, 2013	Unauthorized
Monday, June 3, 2013	Personal
Thursday, June 6, 2013	Self-Treated (Professional Development Day)
Wednesday, June 12, 2013	Self-Treated

Total Days Absent: 27

Total Times Late: 37

Ms. Legra, your absences for the 2012-2013 school year are excessive and have greatly impacted the continuity of Instruction for the students of your First Grade class. In addition to being absent, you have been late more than 37 times during the course of the school year. Your continued absence and lateness after being reprimanded during a disciplinary conference, and a Time and Attendance Conference which resulted in a fine, (i)ndicates that your behavior is reckless. You have made no attempt to correct your pattern of excessive absence and lateness as evidenced by your 7 additional absences after March 18, 2013.

Be advised that your Excessive Absence and Lateness will result In further disciplinary action that will lead to an Unsatisfactory Annual Rating, and charges that may lead to termination of your employment as a teacher with NYC Department of Education.

Attached to the letter, were eight pages, including the following information, entered by

YVARGAS

USER: YVARGAS NYC PUBLIC SCHOOLS EMPLOYEE INFORMATION SYSTEM E11M751
 06/05 10:49 TIME AND ATTENDANCE INQUIRY

EIS ID: _____ SSN: _____ NAME: ANN LEGRA
 FROM DATE: 09 01 2012 TO DATE: 06 05 2013 EVENT:

	EARNED DATE	EVENT CODES	EVENT DESCRIPTION	EVENT TIME DY HRS MIN	RECORD STATUS	ENTERED DATE
A	06/03/13	43A00	PERSONAL DAY	1 0 0	C A OS	06/03/13
A	05/28/13	50U00	ABSENCE UNAUTH	1 0 0	C A AJ	05/31/13
	05/22/13	49N00	UNEXCSD LTNESS	0 0 12	C A AJ	05/22/13
	05/21/13	49N00	UNEXCSD LTNESS	0 0 38	C A AJ	05/22/13
	05/16/13	41A00	SELF TREATED	0 2 15	C A AJ	05/22/13
	05/15/13	50U00	ABSENCE UNAUTH	0 0 10	C P SG	05/15/13
	05/15/13	49N00	UNEXCSD LTNESS	0 0 10	C P AJ	05/15/13
	05/14/13	50U00	ABSENCE UNAUTH	0 3 25	C P SG	05/14/13
A	05/14/13	41A00	SELF TREATED	1 0 0	C P AJ	05/14/13
	05/10/13	50U00	ABSENCE UNAUTH	0 0 8	C P SG	05/10/13
	05/10/13	49N00	UNEXCSD LTNESS	0 0 8	C P AJ	05/10/13
	05/09/13	50U00	ABSENCE UNAUTH	0 0 47	C P SG	05/10/13

Page 2

	05/09/13	49N00	UNEXCSD LTNESS	0 0 47	C P AJ	05/10/13
A	05/06/13	41A00	SELF TREATED	1 0 0	C P AJ	05/10/13
	04/30/13	40F00	CONVENT CONFRNC	1 0 0	C P OS	04/29/13
	04/29/13	40F00	CONVENT CONFRNC	1 0 0	C P OS	04/29/13
	04/25/13	50U00	ABSENCE UNAUTH	0 0 6	C P SG	04/26/13
	04/25/13	49N00	UNEXCSD LTNESS	0 0 6	C P OS	04/26/13
	04/24/13	90300	ABSENCE WO PAY	0 3 25	C P SG	04/24/13
A	04/24/13	43A00	PERSONAL DAY	1 0 0	C P OS	04/24/13
	04/23/13	40F00	CONVENT CONFRNC	1 0 0	C P OS	04/22/13
	04/22/13	40F00	CONVENT CONFRNC	1 0 0	C P OS	04/22/13
	04/16/13	50U00	ABSENCE UNAUTH	0 0 17	C P SG	04/16/13
	04/16/13	49N00	UNEXCSD LTNESS	0 0 17	C P OS	04/16/13

Page 3

04/10/13	50U00	ABSENCE UNAUTH	0	0	15	C P	SG	04/10/13
04/10/13	49N00	UNEXCSD LTNESS	0	0	15	C P	OS	04/10/13
04/03/13	50U00	ABSENCE UNAUTH	0	0	22	C P	SG	04/03/13
04/03/13	49N00	UNEXCSD LTNESS	0	0	22	C P	OS	04/03/13
03/22/13	50U00	ABSENCE UNAUTH	0	0	23	C P	SG	03/22/13
03/22/13	49N00	UNEXCSD LTNESS	0	0	23	C P	OS	03/22/13
03/20/13	50U00	ABSENCE UNAUTH	0	0	12	C P	SG	03/20/13
03/20/13	49N00	UNEXCSD LTNESS	0	0	12	C P	OS	03/20/13
03/19/13	50U00	ABSENCE UNAUTH	0	0	38	C P	SG	03/19/13
03/19/13	49N00	UNEXCSD LTNESS	0	0	38	C P	OS	03/19/13
03/15/13	50U00	ABSENCE UNAUTH	0	0	41	C P	SG	03/15/13
03/15/13	49N00	UNEXCSD LTNESS	0	0	41	C P	AJ	03/15/13

Page 4

03/13/13	50U00	ABSENCE UNAUTH	0	0	13	C P	SG	03/13/13
03/13/13	49N00	UNEXCSD LTNESS	0	0	13	C P	OS	03/13/13
03/12/13	50U00	ABSENCE UNAUTH	0	0	14	C P	SG	03/13/13
03/12/13	49N00	UNEXCSD LTNESS	0	0	14	C P	OS	03/13/13
03/11/13	50U00	ABSENCE UNAUTH	0	0	10	C P	SG	03/13/13
03/11/13	49N00	UNEXCSD LTNESS	0	0	10	C P	OS	03/13/13
03/08/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	03/08/13
A 03/08/13	41A00	SELF TREATED	1	0	0	C P	OS	03/08/13
03/07/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	03/07/13
A 03/07/13	41A00	SELF TREATED	1	0	0	C P	OS	03/07/13
03/06/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	03/06/13
A 03/06/13	41A00	SELF TREATED	1	0	0	C P	OS	03/06/13

Page 5

03/05/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	03/05/13
A 03/05/13	41A00	UNEXCSD LTNESS	1	0	0	C P	OS	03/05/13
03/04/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	03/04/13
A 03/04/13	41A00	SELF TREATED	1	0	0	C P	OS	03/04/13
03/01/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	03/01/13
A 03/01/13	41A00	SELF TREATED	1	0	0	C P	OS	03/01/13
02/28/13	50U00	ABSENCE UNAUTH	-1	0	0	H D	SG	03/01/13
02/28/13	50U00	ABSENCE UNAUTH	1	0	0	H D	OS	03/01/13
02/28/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	03/01/13
A 02/28/13	41A00	SELF TREATED	1	0	0	C P	AJ	03/01/13
02/27/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	02/27/13
A 02/27/13	41A00	SELF TREATED	1	0	0	C P	OS	02/27/13

Page 6

	02/26/13	90300	ABSENCE WO PAY	1	0	0	C P	SG	03/06/13
	02/26/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	02/26/13
A	02/26/13	41B00	MED. CERT. SICK	1	0	0	C P	AJ	03/06/13
	02/26/13	41A00	SELF TREATED	-1	0	0	H D	AJ	03/06/13
	02/26/13	41A00	SELF TREATED	1	0	0	H D	OS	03/01/13
	02/25/13	90300	ABSENCE WO PAY	1	0	0	C P	SG	03/06/13
	02/25/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	02/26/13
A	02/25/13	41B00	MED. CERT. SICK	1	0	0	C P	AJ	03/06/13
	02/25/13	41A00	SELF TREATED	-1	0	0	H D	AJ	03/06/13
	02/25/13	41A00	SELF TREATED	1	0	0	H D	OS	03/01/13
	02/22/13	50U00	ABSENCE UNAUTH	1	0	0	C P	SG	02/26/13
A	02/22/13	41B00	MED. CERT. SICK	1	0	0	C P	AJ	03/06/13

Page 7

	02/22/13	41A00	SELF TREATED	-1	0	0	H D	AJ	03/06/13
	02/22/13	41A00	SELF TREATED	1	0	0	H D	OS	03/01/13
A	02/21/13	41B00	MED. CERT. SICK	1	0	0	C P	AJ	03/06/13
	02/21/13	41A00	SELF TREATED	-1	0	0	H D	AJ	03/06/13
	02/21/13	41A00	SELF TREATED	1	0	0	H D	OS	03/01/13
	02/12/13	50U00	ABSENCE UNAUTH	0	0	4	C P	SG	02/12/13
	02/12/13	49N00	UNEXCSD LTNESS	0	0	4	C P	OS	02/12/13
	02/11/13	50U00	ABSENCE UNAUTH	0	0	13	C P	SG	02/11/13
	02/11/13	49N00	UNEXCSD LTNESS	0	0	13	C P	OS	02/11/13
	02/05/13	50U00	ABSENCE UNAUTH	0	0	11	C P	SG	02/05/13
	02/05/13	49N00	UNEXCSD LTNESS	0	0	11	C P	OS	02/05/13
	01/29/13	90300	ABSENCE WO PAY	1	0	0	C P	SG	01/30/13

Page 8

A	01/29/13	41B00	MED. CERT. SICK	1	0	0	C P	OS	01/30/13
	01/28/13	90300	ABSENCE WO PAY	1	0	0	C P	SG	01/30/13
A	01/28/13	41B00	MED. CERT. SICK	1	0	0	C P	OS	01/30/13
	01/25/13	90300	ABSENCE WO PAY	0	0	20	C P	SG	01/30/13
	01/25/13	41B00	MED. CERT. SICK	0	4	20	C P	OS	01/30/13
	01/08/13	49A00	LATENESS	0	0	9	C P	OS	01/08/13
	01/08/13	43A00	PERSONAL DAY	0	2	50	C P	OS	01/08/13

DOE 48, an e-mail to Principal Boursiquot, dated May 8, 2013 at 4:19 p.m. reflected Respondent "was absent on May 6".

Ms. Vargas testified on direct examination

1717

21 Q. Now Ms. Vargas, I would like to ask
22 you about your responsibilities with regard to
23 timekeeping. Tell us what happens when a teacher is
24 absent from school?

25 A. The rule is that, and I made a memo to

1718

2 everybody. They should call up the night before with
3 myself, instead of having them call central, which is
4 the rule....

11 And if they are going to be late, they can
12 call the school then after 7:00 and let me know
13 they're going to be late and I get somebody to pick up
14 the class. And they have to -- if they're going to
15 make it after 8:00. Because with 8:00 and 8:10, 8:15,
16 I am by the front to make sure if anybody is late,
17 they can clock in. And I put it in the system that
18 they arrived late.

19 A. When you say that if somebody arrives
20 late that they have to clock in.

21 A. Yes.

1719

9 Q. Now if the teacher is late to work,
10 what time is considered late to work?

11 A. 8:01.

12 Q. And if a teacher is late to work, what
13 happens with their timecards?

14 A. Once they clock in, I write it in my
15 book. I have my journal for everyday occurrences.
16 And I put it in the system.

1720

4 Q. Now, when a teacher is--well, during
5 the 2012-2013 school year, do you recall whether Ms.
6 Legra was ever late to work?

7 A. She was often late when, during the
8 school year. Sometime trouble with the road, her --.

9 Q. And what, if anything, does Ms. Legra
10 do to notify the school that she's going to be late?

11 A. She calls the school. She called the
12 school.

13 Q. And when she calls to notify the
14 school that she's going to be late, what if any
15 reasons does she give for her lateness?
16 A. Whatever it is, her asthma or car
17 troubles, like traffic on the bridge. Whatever it is.

1726

22 Q. Were there ever times during the 2012-
23 2013 school year that Ms. Legra provided you with any
24 form of documentation for her absences?
25 A. Well, whatever she give me, oh I

1727

2 always make a copy for the teachers. So whatever she
3 gives me, I make copies. So every school year she
4 brings at least one or two. Whatever she brings I,
5 you know, I make copies, give her a copy in case, you
6 know, something happens. With mine, I always say
7 that's from the record. That's why I give, always
8 give the teacher a copy, because we are only human.
9 If I was to misplace mine just in case I'm going to
10 file it and don't, I always give the teacher a copy,
11 always.

12 Q. Now were there ever times that Ms.
13 Legra gave you a medical note or any other sort of
14 documentation of her absence when you did not put that
15 document in her file?

16 A. No.

17 Q. Were there ever times that Ms. Legra
18 came to you and told you that a documentation of her
19 absence was missing from her file?

1728

3. A. No. Sorry.

1730

19 Q. Now I would like to direct your
20 attention to Department Exhibit 7, and specifically
21 looking at Bates page 73. Do you recognize that
22 document?

23 A. Yes.

24 Q. Can you tell us what it is?

1731

7 Q. Just this piece of paper, this print
8 out, what is this printout--

9 A. [Interposing] This is okay, that's
10 when the principal asked me, "I want you to print this
11 person's attendance from the beginning of the year
12 through today," for example. That was June 5th. So I
13 go and ask the system to give me the attendance from
14 September 1st, 2012 through June 5th, 2013. So it's
15 going to give me everything, you know, that she's been
16 late, she's been absent, everything.

1732

24 Q. --"Conference." Can you tell us what
25 that event description means?

1733

2 A. She could have gone to a training.
3 She could have gone schooling. Or she could have
4 been--that's the code that is used when the teacher is
5 out of the building. She's not charged. It's not an
6 absence. But we just want to show that she was out on
7 DOE, that we sent her for something, just in case they
8 want to say that something happened in the building
9 and she was involved. We just want to show that we
10 sent her for something, okay?...

20 Q. Now under the entry that you see for
21 May 6th, 2013...

24 A. Okay.

25 Q. What was Ms. Legra's attendance on

1734

2 that day?

3 A. So May 6th, it says "Self-treated."

4 Q. What does "Self-treated" mean?

5 A. That means that she called in sick and
6 she didn't go to the doctor. She treated her, you
7 know, without a doctor's note.

8 Q. And who determines whether, in the
9 event description, they listed as "self-treated" or a
10 sickness with a doctor's note?

11 A. The doctor's note that she brings to
12 me. If she brings me a doctor's note, then it's
13 medical. And if she has no days in her CAR, no sick
14 days, he lends her a day.

1735

3 Q. Well, my question is when you receive
4 a doctor's note, do you input the medical absence
5 before you place the note in the personnel file or
6 after?

7 A. Sure. One of the first thing I have
8 to do is in my book, okay? Because I just put the
9 person absent in my book. But I cannot do anything in
10 the system until I'm--the person comes back and I know
11 what's going to happen. So when I put it in my book
12 and oh, that's 41-B. I know that's medical. Change
13 it in the system and then put the note away. And then
14 at the end of the week, I have prepared a report with
15 everybody's attendance. And there again, because I
16 have like a different way to follow up and make sure
17 that is the right reason.

1736

2 ...for example, Monday a para was out. I know she
3 went to the doctor. The doctor has not given her the
4 note. He's going to send it by fax. I wait until
5 Friday, okay? Because I know it's coming. Because if
6 I just put self-treated, and the payroll is going to
7 take away that screen. And when I go and try to
8 change it, forever it's going to show that it was
9 self-treated and I changed it to medical. And it's
10 going to be a few lines of confusion. So I'm not
11 going to, until she comes.

12 It's never too late for a reason. Right
13 now, okay? You can go six months back...

20 ... You bring me a
21 doctor's note, it's not a copy, I will go in there and
22 change it.

1737

12 THE HEARING OFFICER: But if that note shows
13 up a month later, you have the ability to go into the
14 system--

15 THE WITNESS: [Interposing] And change it.

16 THE HEARING OFFICER: And change it.

17 THE WITNESS: Yeah. I guess at the first,
18 okay I'm going to do self-treated, okay? And then
19 when you bring it, I'll change it. Well, I tell the
20 person listen, you already took out your self-treated
21 days. If you don't bring me a note, you're going to

22 be docked.

1738

14 Q. Ms. Vargas, if a teacher leaves work
15 early for any reason, would that be reflected at all
16 in the time and attendance printouts, in the time and
17 attendance system that we see in Department's Exhibit
18 7?

19 A. Yes, it will. The person, if she's in
20 the building, will clock out. If the person was out
21 in her lunch and calls me that she's not returning, I
22 will put it in the book that that person left. I
23 would not dock from the lunch time. I would ask when
24 the lunch was finished, then from then on, after 2:50,
25 that's the time of dismissal, would dock for the time.

On cross examination Ms. Vargas testified

1748

6 Q. So for 5/14/13, there's two entries
7 and one is for self-treated an entire day.

8 A. Okay.

9 Q. And one is for absence unauthorized
10 for three hours and 25 minutes.

11 A. Okay, because in her bank, she--they
12 were able to give her part of the payment. For
13 example, she had some hours in the bank that they
14 could pay her, okay? But they didn't have enough to
15 pay her six hours and 50 minutes. So this you read it
16 as they're going to pay her three hours and 25
17 minutes, but they're going to consider three hours and
18 25 minutes without pay, unauthorized, because they
19 don't--there's not enough hours in the sick bank.

1749

5 THE HEARING OFFICER: [Interposing] Nobody
6 had to say this is authorized or not, it's the
7 computer.

8 THE WITNESS: The computer.

1750

2 on Bates 74, where it says, "Personal day" and then
3 above that it says, "Absence without pay." Does that
4 just signify that--

5 A. [Interposing] Okay.

6 Q. --for that day she received a half of

7 a day's pay because that's the time that she had?
8 A. Mm-hmm.
9 Q. Okay. But the--
10 A. [Interposing] The other part says
11 unauthorized. Then you will say why it says this
12 without pay and the other one unauthorized. I will
13 tell you why. Because of the--after the problem that
14 it happens a lot, I don't know how they program the
15 system, that in April it says without pay and then
16 once May comes, you call it unauthorized. Why? I
17 don't know. That's the program.
18 Q. So if it says, where it says,
19 "Personal day," is that your entry stating--
20 A. [Interposing] That's the code.
21 Q. --your reason for why?
22 A. Because she told me she was going to
23 court, something personal.
24 Q. Okay.
25 A. She asked for that day. I don't

1751

2 determine the reason. The teachers tell me.
3 Q. Okay.
4 THE HEARING OFFICER: So if you have time in
5 the bank, a personal day can be converted to a paid
6 day.
7 THE WITNESS: Yes, three days a year only...

1759

6 Q. Do you recognize Respondent's Exhibit
7 30-F?
8 A. Okay, this is a nurse visit. Okay?
9 That is not a doctors.

1760

14 Q. Do you know if the visit was with a
15 nurse practitioner?
16 A. It just said "nurse," so I just asked
17 for a doctor's note. I never got it.
18 Q. But is that the reason why this was
19 never changed on the attendance report to say--
20 A. [Interposing] It was--
21 Q. --"medical certified sick" because you
22 thought that this didn't qualify because it was a
23 nurse's note?

1761

3 A. Yes, you have to be a doctor's note...

7 THE HEARING OFFICER: No, just let me clear
8 it in my mind. There is a distinction then between a
9 nurse visit and a doctor visit. If you get a note
10 from a doctor, you will enter it as a medical.

11 THE WITNESS: Yes, correct.

12 THE HEARING OFFICER: If you get a note from
13 a nurse, you don't enter it because it's not from a
14 doctor.

15 THE WITNESS: Correct.

16 THE HEARING OFFICER: What effect then does
17 a nurse--

18 THE WITNESS: [Interposing] A nurse is not
19 certified to diagnose and give a note certifying to an
20 illness.

1762

4 THE WITNESS: --as established in the rules,
5 it has to be a doctor.

6 THE HEARING OFFICER: Okay. That's why you
7 call it a "doctor's note."

8 THE WITNESS: Yes, correct.

1763

15 Q. Turning your attention to Department's
16 Exhibit 7 on Bates page 73, it says that May 14th,
17 2013, was a self-treated date. Is that correct?

18 A. It's correct.

19 Q. And according to Respondent's Exhibit
20 30-I, Ms. Legra had a doctor's appointment on that day...

25 THE HEARING OFFICER: [Interposing] No, it

1764

2 says "return to work on the 16th," so that covers 14
3 and 15 right?

1765

17 THE HEARING OFFICER: So to go back to the
18 second page of Department's Exhibit 7, where I'm
19 looking at the date of May 6th as being an additional
20 seven days, okay that's accurate. The self-treated is
21 accurate based upon we just looked at, you put in she
22 was self-treated. Then she got paid part of the day.

23 THE WITNESS: Yes.
24 THE HEARING OFFICER: But either way, she
25 was still not there.

1766

2 THE WITNESS: No.
3 THE HEARING OFFICER: Whether she got paid
4 is not the issue. It's whether she was there...

10 THE WITNESS [Interposing] The 14, you mean
11 the 14?

12 THE HEARING OFFICER: Yes. May--

13 THE WITNESS: [Interposing] May no, she was--
14 she wasn't there.

15 THE HEARING OFFICER: Correct.

16 THE WITNESS: She was out, but she was paid
17 part of the day because she didn't have time in her
18 bank.

19 THE HEARING OFFICER: I understand that.

20 THE WITNESS: Uh-huh.

21 THE HEARING OFFICER: But the statement that
22 she was absent is accurate.

23 THE WITNESS: yeah, that's accurate. Yes,
24 it's accurate.

25 THE HEARING OFFICER: She wasn't there.

1767

2 THE WITNESS: She wasn't there.

3 THE HEARING OFFICER: Whether she got paid
4 is another story.

5 THE WITNESS: She wasn't there. It's just
6 the reason that is going to change.

1768

3 Q. So the three hours and 25 minutes only
4 signifies that she was paid for part of the day,
5 correct?

6 A. Yeah. Yeah, that won't change. It
7 will be the same amount, but it's going to change the
8 reason.

9 Q. So the excuse is for the entire day,
10 not for the half day. Correct?

11 A. Yeah.

12 Q. Okay.

13 THE HEARING OFFICER: I understand that.
14 But my point was she was absent.

15 THE WITNESS: Yes.
16 THE HEARING OFFICER: That day.
17 MR. DEL PIANO: Yes.
18 THE HEARING OFFICER: So it will--the
19 wording of the letter is correct. You've been absent.
20 MR. DEL PIANO: Yes.
21 THE HEARING OFFICER: You may have had a
22 medical excuse, you may not have had an excuse, that
23 is her pay. It doesn't deal with whether you're there
24 or not.

1769

3 MR. DEL PIANO: Yes, that's correct.

1774

16 Q. Now one of those days for Ms. Legra on
17 Department's Exhibit 7, Bates page 74 on May 6th,
18 2013, is marked as "self-treated." Is that the day
19 that you were referencing--

20 A. [Interposing] Yes, she was absent.

21 Q. --for her absent? And how did you
22 come to find out that she was absent?

23 A. They call us from the--

24 Q. [Interposing] Who?

25 A. --center, they call us. They let us

1775

2 know when one of the teachers has to go for scoring,
3 is absent.

4 Q. And who called you?

5 A. They--I don't keep record of who
6 called. They just let us know.

7 Q. Do you know when that phone call took
8 place?

9 A. The same day.

10 [Pause]

11 THE HEARING OFFICER: Let me ask a question.
12 Focusing on this May 6th, the day she did not appear
13 for scoring.

14 THE WITNESS: yes.

15 THE HEARING OFFICER: When they called you
16 and said, "She's not here," you then made the entry,
17 "She's absent, self-treating," okay? If she had shown
18 up at school that day, how would that be reflected?
19 Would you in some way take back--

20 THE WITNESS: [Interposing] Yes.

21 THE HEARING OFFICER: -or change the self-
22 treated date?

1777

12 Q. Respondent's Exhibit 30-H is an email
13 from the Department of Ed to Ms. Legra saying that she
14 was present on May 6th, 2013. Did you receive a
15 similar type email?

16 A. No.

17 Q. Did you receive a similar type email
18 that said that she was absent on May 6th, 2013?

19 A. I was informed verbally.

1779

7 Q. Did you speak with the person directly
8 who said that Ms. Legra was not present?

9 [Pause]

10 A. I was told. Somebody else took the
11 message.

12 Q. Who told you? Did Ms. Boursiquot tell
13 you?

14 A. Yes.

15 Q. Yes?

16 A. Yes.

17 Q. So this message, excuse me, the
18 information that you--of Ms. Legra being absent from
19 the scoring set (sic) on May 6th, 2013, was never directly
20 told to you by anybody from the scoring site?

21 A. No, usually the scoring site
22 administrators are the one that communicate directly
23 to principals...

1780

12 Q. So how do you know for sure when a
13 person is present or not present at a scoring site?

14 A. If I get a message that they didn't
15 show up, I get the message. They never contact me.
16 directly.

17 Q. So otherwise it's just presumed that
18 they did go to the scoring site?

19 A. Yes.

20 Q. Okay, thank you.

21 A. Yes.

1782

19 Q. If there was going to be a planned

20 absence, Ms. Legra always notified the school about
21 it?

22 A. Yes.

23 Q. And you said that when she was going
24 to be late, she always notified the school?

25 A. She'll call, looking for parking,

1783

2 traffic, whatever it was.

3 Q. And that benefitted you when she would
4 call and notify you that she was going to be absent or
5 late, correct?

6 A. In a way.

7 Q. And how so?

8 A. Well, at least I had a heads up that,
9 you know, I had to get somebody. Not all of the time
10 I was able to, but at least we knew. It was too
11 often, but at least we knew.

Mr. Bush, on direct examination testified

1594

18 Q. What if any procedures are in place to
19 record the attendance of teachers who score the ELA
20 and math tests?

21 A. For scoring that takes place during
22 the school day, each school is given a requirement in
23 terms of the number of teachers that they are required
24 to send for scoring at one of our designated scoring
25 locations. Those selections are made by each school

1595

2 principal, and they enter those names into an online
3 application. So we have a list of teachers that are
4 expected to report to each of the scoring locations
5 for each--all the days of scoring. So each scoring
6 location the morning of each day of scoring will print
7 out this list which serves as an attendance roster,
8 and the location will display that roster and ask
9 teachers to check in as they enter the building.
10 After that process is complete, one of the supervisors
11 at each scoring location takes the list and they go
12 into an online application that our office has built,
13 and they enter the attendance status of each of the
14 individuals who was expected to report.

15 Q. And how if at all are the teachers who

16 are at the scoring sites--who are assigned to the
17 scoring sites notified about their attendance status?

18 A. Right. So after the supervisor goes
19 into the online application and enters the status of
20 each individual, they press a button on the
21 application which submits the attendance status for
22 each individual for that particular day. When that
23 button is pressed on the application, that triggers
24 two different e-mails which are sent. The first e-
25 mail is for each of the scorers who was expected to

1596

2 show up for scoring that day, receives an e-mail which
3 has the date of scoring, the scoring location, and a
4 status which was recorded at that particular site.
5 And the second notification is sent to the school
6 principal, and that is a summary of all teachers from
7 that particular school for that day. It lists the
8 attendance status for everyone who was asked to report
9 from that particular school.

10 Q. Okay. Are there an circumstances
11 under which a teacher who is assigned to a scoring
12 site would receive two e-mails about their attendance
13 on one particular day?

14 A. Right. So there are circumstances
15 that each time the attendance is recorded on the
16 online application, that triggers a new e-mail. So if
17 the attendance was originally recorded for one status
18 and then that status is subsequently changed, if there
19 is an error in the entry process, then once the status
20 is changed and the attendance is submitted again, then
21 a subsequent e-mail or subsequent pair of e-mails is
22 sent out.

1601

2 Q. Mr. Bush, can you tell us what
3 Department Exhibit 46 is?...

6 A. Sure. this is the--an e-mail which
7 was sent to Ms. Legra regarding her attendance status
8 which was recorded at P.S. 76 for May 6th, 2013.

9 Q. Okay. And on what date was this e-
10 mail sent?

11 A. It was sent on May 7th at 3:11 p.m.

Respondent, on direct examination testified

1643

15 Q. And what do you recognize Respondent's
16 Exhibit 39 to be?

17 A. It's an e-mail from myself to Ms.
18 Borsico. (sic)

19 Q. And what is Respondent's Exhibit 39 in
20 reference to?

21 A. It's in reference to a June 17th
22 letter of attendance.

23 Q. And just to clarify, who wrote
24 Respondent's Exhibit 39?

25 A. I did.

1644

2 Q. And what was the date of Respondent's
3 Exhibit 39?

4 A. Tuesday, June 18th, 2013...

19 Q. Ms. Legra, what was the purpose of
20 sending Respondent's Exhibit 39 to Ms. Borsico? (sic)

21 A. There were several mistakes on my
22 attendance sheet and scoring dates.

23 Q. And what about that concerned you?

24 A. Because attendance is important, and I
25 had been told that my attendance had to improve, and

1645

2 for the benefit of the students. I saw that there
3 were many mistakes on my attendance of days that I was
4 present, I was marked absent.

5 Q. And what if any response did you
6 receive from Ms. Borsico (sic) to this letter?

7 A. I didn't receive any response.

8 Q. To this e-mail, excuse me.

9 A. No response.

10 Q. At the end of Respondent's Exhibit 39
11 it says, "I have written documentation which I would
12 also like to furnish to you regarding these attendance
13 errors." Did you ever provide documentation regarding
14 attendance errors?

15 A. No.

16 Q. And for what reason did you not
17 provide them?

18 A. Well, the meeting was never held, and

19 I never got a response.

On recross examination Respondent testified

1655

17 Q. Okay. And is it your testimony that
18 that box did not contain your entire personnel file?

19 A. Correct.

20 Q. What items were missing, Ms. Legra?

21 A. The... There's an attendance sheet
22 that I handed to the payroll secretary, the doctor's
23 note. When I had asked for the file in terms of the
24 items in the 3020-a, there were several documents
25 missing.

1656

2 Q. And you don't recall what documents
3 those were?

4 A. No. Not offhand.

5 Q. Now the attendance sheet and the
6 doctors' notes, those were documents that you said
7 that you yourself submitted to the payroll secretary?

8 A. Yes.

9 Q. Okay. Did you maintain a copy of
10 those documents for yourself?

11 A. Yes.

12 Q. Okay. And do you still have them?

13 A. I lost that particular one that I'm
14 referring to.

15 Q. Okay.

16 THE HEARING OFFICER: Well, the attendance
17 and doctors' notes are separate items. When you say
18 you lost the one, which one did you lose? The
19 attendance or the doctors or both?

20 WITNESS: The doctors.

21 THE HEARING OFFICER: The doctors.

22 WITNESS: Yes.

23 Q. So you still have the attendance
24 sheet?

25 A. I don't know.

1661

2 Q. Ms. Legra, I'd like you to take a look
3 at Respondent's Exhibit 39 which is the--...
5 --e-mail that you sent to Ms. Borsico (sic)
6 regarding the attendance. You stated in this

7 document, in this e-mail that you have written
8 documentation which I would like to furnish to you
9 regarding these attendance errors. Did you ever
10 provide this written documentation to Ms. Borsico? (sic)

11 A. No.

1663

2 ...Ms.

3 Legra, looking at the first two pages of Department
4 Exhibit 7, are there dates here which you are listed
5 as being absent for which you were actually present?

6 A. Yes.

7 Q. Okay. And what dates were those?

8 A. I have them written down. There are a
9 couple of dates, one of which is May 6th.

10 THE HEARING OFFICER: And that's on the
11 second page? Okay.

12 WITNESS: On the second page, yes.

13 A. June 6th which was a professional
14 development day and also a self-treated day. There
15 were many. Specifically I can't name them all.

16 Q. So other than May 5th and June 6th,
17 you don't know what other dates you were present but
18 marked absent?

19 A. Off the top of my head right now, no.

20 Q. Okay. May 6th is the date on which
21 you were assigned to be at the ELA scoring site, is
22 that right?

23 A. Yes.

24 Q. Okay. And it's your testimony that
25 you were present at P.S. 76 for the scoring on May

1664

2 6th?

3 A. Yes.

1665

25 Q. And so if the scoring site marked you

1666

2 absent on May 6th, that was an error?

3 A. Yes.

1668

24 Q. Okay. Ms. Legra, looking at
25 Department Exhibit 7, take a look at the second page

2 of the document. Does your signature appear at the
3 bottom of that page?

4 A. Yes.

5 Q. Okay. And you didn't write on that
6 anywhere near your signature that the dates listed in
7 this letter were incorrect did you?

8 A. No.

9 Q. Okay. And you didn't write anywhere
10 in this letter that you wanted to submit any
11 additional documentation to refute the statements made
12 in this letter, did you?

13 A. No.

14 Q. Okay. And you also didn't write in
15 this--below your signature or anywhere near it that
16 you intended to write a letter in response to this did
17 you?

18 A. Not in this particular document, no.

19 Q. ...

22 You signed your name here and write the date,
23 but you didn't attach anything to the document did
24 you?

25 A. No.

Counsel for Respondent argued

20 Specification nine states that Respondent was
21 excessively late and/or absent during the 2012-2013
22 academic year. And the main document that the
23 Department wants you to rely on for this specification
24 is Department's Exhibit 7.

3 There are errors in both sheets, where some
4 of the absences were supposed to be medically
5 certified behavior but were not in the letter or were not on
6 the attendance sheet...

9 Departments Exhibit 7 will clearly show, clearly
10 shows that these dates that Ms. Legra was not present
11 at the school were for some reason beyond her control,
12 such as illness or such as a court date or such as
13 grading the English Language Arts exam, which we

14 believe that Ms. Legra was present on May 6th, 2013,
15 and that there has been no convincing proof that she
16 was not present on May 6th, 2013. We have competing
17 emails from the Department of Education, solely the
18 information that we have to go upon.

1843

2 ...Ms.
3 Vargas testified today that Ms. Legra was absent on
4 May 6th, 2013, and that she didn't go to grade the ELA
5 exam.
6 And we found out that Ms. Vargas never
7 talked to anybody who was actually present at the
8 school, and that she only heard about this information
9 secondhand from Ms. Boursiquot. We don't know who Ms.
10 Boursiquot heard this information from, and we posit
11 that Ms. Boursiquot was targeting Ms. Legra at this
12 time period. There is not enough information on May
13 6th to conclusively say that Ms. Legra was not present
14 at the ELA during that time period.

1844

3 From February 21st, 2013 through May 8th,
4 2013, there is multiple days' absence, multiple days
5 that Ms. Legra was absent, but again they all revolve
6 around one event, the skin rash that Ms. Legra had.
7 She has notes for all of those days...

24 Now I'm referring specifically at this point
25 to Respondent's Exhibit 30-F. There is nothing, no

1845

2 reason to believe that there -- this document is somehow
3 not true or improper. It was turned in to the payroll
4 secretary...

14 ...On May 14th, 2013, Ms. Legra had a
15 medical note that was not properly documented on this
16 letter. It says "Self-treated" when it should say,
17 "Medically certified sick." On June 3rd, 2013, when
18 Ms. Legra had to take a personal day, it was because
19 she had a court appearance. And then again on June
20 12th, 2013, where it says that Ms. Legra had an
21 absence for self-treatment, that's again another-
22 should have been another medically certified absence.

1846

2 Ms. Boursiquot assigned Ms. Legra to grade state-wide
3 exams even though she claimed that her attendance was
4 affecting her class. The grading would continue to
5 take Ms. Legra out of her class...

22 Now Ms. Boursiquot stated that grading the
23 ELA was supposed to be a form of professional
24 development for Ms. Legra. But again, that doesn't
25 make any sense. What possible professional

1847

2 development could Ms. Legra have received related to
3 her first grade class by going to grade, fifth grade
4 English exams. There is no purported deficiencies of
5 Ms. Legra that include her inability to grade, so
6 again this is another disingenuous statement by Ms.
7 Boursiquot that is trying to show that she did some
8 form of professional development with Ms. Legra that
9 really didn't have anything to do with what she said
10 her purported deficiencies were.

11 Because of the years in Ms. Legra's
12 attendance and the mitigating factors of her excused
13 absences, you should not find that she was excessively
14 absent during the 2012-2013 school year.

G. The DOE's evidence relating to professional development, meetings, advice and recommendations during the 2011-2012 and 2012-2013 academic years in Specification "10)" regarding

a. The elements of effective lesson planning/executions are DOE's 3, 5, 6, 10, 13, 14, 15, 16, 17, 19C, 20, 21B, 22, 23, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41 and 42 and the testimony of Principal Boursiquot, Assistant Principal Goodman, Coach Serratty and Coach Francisco, in support.

DOE 10, Bates No. 111 and 112, is a two page letter dated February 7, 2013, to Classroom Teachers from Principal Boursiquot. The second page contains Respondent's name and signature on line 6. The first page includes

We are working toward ensuring that *every* child in our school is matched to appropriate, **Just Right** books daily.

Teachers are required to administer Running Records that reflect a late January/early February assessment interval. Please carefully determine the students in your class that have not been assessed recently. Ensure that all of your assessment documents are in order and accessible for supervisors and coaches daily. Be prepared to submit an updated Running Record Placement Chart by the close of business **Friday, February 15, 2013**. Ms. Pena will be facilitating the collection of this very important document on the 15th. She will provide teachers a copy of the document submitted.

It goes without saying that this point in this school year you should have multiple Running Records for *all* of the students who have been assigned to your class in ATS since September 2012. Teachers are required to retrieve records from colleagues and ultimately assess new and inter-classed students as soon as possible.

To maintain accountability and to provide a more consistent assessment approach at our school, expect to provide **all** of the Running Records administered to date for *at least* any one child in your class, including the Level tested following the Level the child is presently reading. Additionally, Reading Conference Notes for that child will be requested along with the Running Records. Expect this process to begin as early as February 11, 2013 through the end of the month.

Finally, in addition to the administration of Running Records and maintaining relevant Conference Notes, teachers are required to help students maintain healthy reading lives. That is, students must maintain Book Baggies that contain an adequate number of books that are on their level. Additionally, the distribution, maintenance, and safekeeping of Reading Logs is something that teachers need to address with their students, in Grade K - 5 when necessary.

Please do not hesitate to reach out to Mr. Goodman or Mrs. Francisco should you have a question or concern.

DOE 13, Bates No. 377 in a communication, dated "February 2012" addressed to Respondent "Kindergarten" referencing "Lesson Features" and "Suggestion", as follows:

Lesson Features	Suggestions
<ul style="list-style-type: none"> ▪ Some of your students were engaged in your interactive lesson. ▪ The children were “putting into practice” the lessons’ vocabulary. ▪ You introduced the vocabulary (printed on sentence strip) to the students once they had “put them into practice.” (very interesting for this grade) 	<ul style="list-style-type: none"> ▪ Prepare any materials and or manipulatives before your lessons this will help with the flow of the lesson and allow the children to have more time to practice the skill you’ve taught. ▪ Plan your lessons so that your entire class is engage. ▪ Improve your classroom environment so that your students have better accessibility to materials. ▪ Vocabulary should have pictures and examples, especially for lower grades. ▪ Encourage your students to follow along as you do the lessons and to complete the assignments. ▪ Plan so that your students have concrete finished products that you can assess their understanding.

DOE 14, Bates No. 97, dated October 19, 2012 referencing a “Grade 1 Math Meeting - 7th Period” with an Agenda and Respondent’s name and signature on the seventh line. The Agenda states

WINTER PERFORMANCE TASK - NINA’S NUMBERS

- I. BECOME FAMILIAR WITH CCLS**
- II. LOOK AT COMPONENTS**
- III. MODIFICATIONS TO CALENDAR**

DOE 15, Bates No. 376, communication dated January 17, 2013 addressed to Respondent “First Grade” references “Lesson Features” and “Suggestions” as follows:

Lesson Features	Suggestions
<ul style="list-style-type: none"> ▪ Started the lesson with a lesson that had been taught in the past (lesson 3.9) ▪ Proceeded to do review for units 1 and 3. Read the word 'Sum' asked its meaning and what operation do we do? ▪ Did several examples from the unit review. (Children had done the review at home for homework.) ▪ <i>Some</i> of the kids were engaged. 	<ul style="list-style-type: none"> ▪ As we (the first grade teachers) had discussed in the past we start the review in school and the children complete it at home. (Children answer questions similar or related to skills you reviewed in class that day.) ▪ Prepare your lessons ahead of time and manipulates/materials you may need. ▪ Vocabulary should have pictures and examples, especially for lower grades. ▪ Encourage your students to follow along as you do the lessons and to complete the assignments. Engage all your students in your lessons. ▪ Plan so that your students have concrete finished products that you can assess their understanding.

DOE 22, Bates No. 355 and 356, is a two page email of September 22, 2011 to Respondent and six others referencing "Kindergarten Classroom Visits - Feedback #1." It includes

Hello,

I am sorry for the delay in getting this email out to you. I wanted to provide you some feedback and provide you a few days *before* I spend some time in Kindergarten classrooms again.

Please read the attached one page document. Thank you in advance. We're looking forward to seeing you this evening.

Late last we had the opportunity to visit a number of Kindergarten classrooms using a very specific lens. We are addressing a few areas of concern and are attempting to keep our work in Kindergarten classrooms these first few weeks of the school year as focused as possible in our pursuit to improve life in Kindergarten for all students. As we continue to create and maintain structures in our classrooms and throughout the school that will allow children and teachers to thrive, please consider the following:

Room Environment - It is imperative that we continue working to ensure that our classroom environments are conducive to early childhood teaching *and* learning. One way to drastically improve early childhood classrooms is making certain that **everything** in the classroom has a place. Materials that are available for children need to be labeled and accessible. Materials that are for the sole use of the teacher should be stored in areas that are accessible, i.e.

conference notes, lesson plans, etc. We should avoid keeping books in piles in various locations around the classroom. Books that are leveled should be in leveled baskets unless there are book baskets set aside for children at tables. We should make every effort to find a safe place for books that we are in the process of leveling or books that we will be using in the future. We should avoid having piles of books or materials in different locations around the classroom. *Classrooms function best when everything has a place.*

Evidence of Units of Study - There should be evidence of current units of study in Kindergarten. When record our thinking or the thinking of our students, we want to be sure to have a record of our teaching through the creation of child friendly (kindergarten friendly) charts when possible. If we do a lot of our work on whiteboards, we don't have artifacts to be able to point children to after we teach our original mini-lesson. If we are recycling charts from a previous year, the charts won't hold the kind of value in the eyes of our students compared to charts we make alongside and with children. Always push yourself to think about what is useful, relevant, and accessible to kindergarteners. We have done so much important work with our coaches and staff developer recently that's still applicable *even* if we are from another grade level.

Differentiating Our Instruction - We need to be mindful of ensuring that we are paying attention to the students in our class and making decisions around what they're ready for. Think about what we are asking them to do and if they have the capacity (yet) to tackle the work we have them involved in. If we are suggesting that students put a POST-IT Note on a page that was a favorite part of a book, we have to be realistic about the students who are really capable of doing that work (probably not too many yet!) We need to pay attention to what students are ready for at this point in the year by having realistic expectations.

DOE 23, Bates No. 9, 10, 13 and 12, to Respondent, dated September 28, 2011 references "Early Childhood Inter-Visitation". The four pages include

Specific structures, routines, and instructional practices that I observed...	How I envision implementing this in my Kindergarten classroom...
e.g. Mrs. Harris - Has 2 monitors assigned to distributing materials so that she can help students get settled and right to work.	e.g. Some of my students might be ready for classroom jobs.
Mrs. Faioli - Morning Routine	Handshake and good morning.
Ms. Huang - Interactive Writing	Interactive Writing message.
Ms. Kapetanos - Read Aloud	Partner Reading/Chart.
Mr. Colon	Name Chart
	Reading Chart - How to Choose a Book.
	Things in the room are labeled (Listening Center)
	Class Behavior Chart has 4 colors for 4 chances of Behavior improvement.

Specific structures, routines, and instructional practices that I observed...	How I envision implementing this in my Kindergarten classroom...
e.g. Mrs. Harris - Has 2 monitors assigned to distributing materials so that she can help students get settled and right to work.	e.g. Some of my students might be ready for classroom jobs.

Use this template to keep track of how your time was used today.

Time Period	Class/Classroom Teacher	Brief description of what was observed
e.g. 8:00 - 8:20	e.g. 601/Ms. Harris	e.g. Interactive Writing
8:00 - 8:35	I / Fraioli	morning Routine
8:38	K / Ms. Huang	morning Routine
	K / Ms. Kapetanos	
	K / Ms. Castillo	
	/Mr.	Reader's Workshop
	I / Ms. Glickstein	

Use this template to keep track of how your time was used today.

Time Period	Class/Classroom Teacher	Brief description of what was observed
e.g. 8:00 - 8:20	e.g. 601/Ms. Harris	e.g. Interactive Writing

DOE 28, Bates No. 28, dated May 7, 2012, from Mr. Goodman to K-2 Teachers included

As you know, we are presently involved in a Professional Development Cycle with our K-2 Staff Developer from Teacher's College, Monique Knight. A fairly explicit set of expectations was outlined in the Weekly Letter sent electronically to teachers on Sunday morning. Kindly refer to that document. Remember, it'll be especially useful for teachers to have *easy* access to these "**Bottom Line**" expectations:

✓	Teaching Points (always a good idea to have TP's accessible for students) posted
✓	Relevant charts related to current Units of Study visible for <i>students</i>
✓	Current Reading Levels presented on a Running Record Placement Chart - which most teachers already have available from last week.
✓	Evidence of Reading Conferences <i>and</i> Small Group Work

Our visit to your classroom **today** will provide us with an opportunity to observe and or coach into your Workshop alongside you as we give thought to the work our school has been involved in throughout the year - and during our extensive time with the Project.

Teachers will teach their **Reader's Workshop** during the time indicated in the table below.

Time	Teacher	Monday Prep Period
8:15	Ms. Adames	3
8:45	Ms. Grube	5
9:15	Mr. Colon	7
9:45	Ms. Jackson	7
10:15	Ms. Hassan	7 and 8
11:50	Ms. Glickstein	7
12:20	Ms. Pepitone	2 and 8
12:50	Ms. Kapetanos	8
1:20	Ms. Legra	2
1:50	Mr. Menses	6

DOE 29, Bates No. 89, dated October 2012, from Mr. Goodman to Teachers included

Please note the *slightly* revised prep schedule. There are some instances where no changes were made although I would advise you to compare the schedule you were using in October to what has been placed in your mailbox today. Changes were necessary to accomplish the following:

- Provide permanent **Professional Activity Periods** for *all* teachers.
- When we made some lunch period changes a few weeks into the school year,

a few issues were never fully resolved that required us to take another look at the Prep Schedule and some concerns classroom teachers had.

- Our goal was to provide every grade with two Common Prep Periods. There were a handful of classes that did not have a Common Prep twice a week and that needed to be adjusted to allow for easier scheduling of Grade Level Meetings, planning sessions with Coaches, etc. With so many challenging initiatives underway, it is extraordinarily useful to be able to bring teachers together to interpret and plan for instructional mandates.
- Ms. Halpern advocated for a Special Education Team Common Prep. One was provided every Wednesday Period 8. This will give our S.E. Team some flexibility to come together to address matters specific to Special Education.
- A handful of classes did not really have a well-rounded program and we tried to make adjustments to give some classes a more equitable and fulfilling schedule. We can absolutely look at your Program during the middle of the year so more classes have access to Art and Music as well as Science and Technology. It's encouraging to know that so many of you were anxious to have us take another look at the Preps your class was assigned. *Again, we can take another look at the schedule midyear.*
- Please contact me **via email** regarding any scheduling glitches that come up during the week ahead or any questions that you may have. Don't hesitate to communicate with each other about scheduling. Of course, you can always check in with Cluster Specialists or classroom teachers if you want to clarify a matter pertaining to scheduling.

If there are adjustments that need to be made that impact ESL or SETTS, please let me know via email. I will work alongside Ms. Zenoz and Ms. Halpern to provide the best possible solution for our students. Thank you for your patience.

DOE 32, Bates No. 378, a letter, dated December 14, 2012, from Mr. Goodman to

Respondent, included

In an effort to support you professionally following your most recent Unsatisfactory Observation, Monique Knight, our Teacher's College K - 2 Staff Developer is going to visit your classroom during a portion of either your Reading or Writing Workshops **today**. This will allow her the opportunity to observe your lesson, coach in alongside you and your students, *and* provide you immediate feedback at the end of the school day.

She will stop by first thing this morning to observe your Flow of the Day for the purpose of determining when she can best support you and your students this morning.

DOE 33, Bates, No. 110, referenced a January 17, 2013 Grade 1 Meeting, Period 7, Room

514. It contained Respondents name and signature on line 5. The Agenda was

- I. How's it going?
- II. ELA Professional Development; our next day with Monique will involve a Lab Site, meeting time, student work and Reading Level/conference note analysis
- III. ELA Planning in the meantime...
- IV. ELA Performance Task Update; rationale for delaying this work, tweaking the calendar to make time for this work before the end of the month (Ms. Nuchman; 1/22?)
- V. Planning options outside of the regular school day (ELA/Math)
- VI. Strive for updated assessments by late January/early February; formal and Informal Running Record work, **next steps for individual students**
- VII. Student discipline; identifying expectations, roles, classrooms structures and routines (in and out of the classroom) that impact behavior
- VIII. Future Trips/Celebrations
- IX. Loose ends, questions, concerns

DOE 38, Bates No. 382, is a handwritten "1st Grade Planning Unit - Authors as Mentors" dated October 12, 2012. It includes

- What does the final product look like?
 - a narrative piece in which they try some craft moves, mimicking the Author they are studying
- What other lessons should we incorporate?
- More details
- Dialogue

Goals

- Increase Writing stamina - volume
- Reinforce strategies to develop writing
- Model more strategies and get kids to try them in their writing

DOE 39, Bates No. 390, January 31, 2013 1st Grade Literacy Meeting, contained Respondent's name and signature on the seventh space below a handwritten line with "0.18" in margin. The Agenda was

1. Looking closely at our reading levels
2. Where are my kids?
 - a. High
 - b. Middle
 - c. Low
3. During which component of balanced literacy will address the

- needs of my students?
4. Looking closely at TC's reading unit five
 5. Looking closely at the TC Performance Task

DOE 40, Bates No. 380 and 379, is a two page handwritten note dated January 17, 2013

1st

1/17/13

-- Demo lessons - labs sites - Monique
7th Period - 1st Grade

-- Clarify Persuasive

- Assessment - [REDACTED]

1st Erin

K - Grace

Writers Write a conclusion by

1. Restating - say your opinion again
2. Talking to reader
 - Don't you agree with me - question
 - You should love it too. statement

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Writers elaborate by adding labels,
speech bubbles & add a sentence.

Kindergarten

Writers teach more by

- Adding # facts; How much?
- Describing Words
 - Shape
 - Size
 - Color
 - Senses

- Plan a sentence by

- Touching the line
- Saying the words
- Putting a line

DOE 41, Bates No. 381, is an undated handwritten note

(1st Grade)

*T.P. always has a strategy attached to it.

Persuasive → You want the reader to agree with you.

DOE 42, Bates No. 387, letter dated February 2013, unsigned, to Respondent - "Demo

lesson". It stated

I visited Ms. Legra's class to conduct a reader's workshop demo lesson. The purpose of the lesson was to give readers strategies they could use to read for an extended period of time, since Ms. Legra was struggling with this. I conducted the entire reader's workshop and conferred with students during independent work. Below is a quick overview of the lesson.

Teaching Point: Readers use various strategies to figure out tricky words.

- They ask themselves:
 - "Does it make sense?"
 - "Does it sound right?"
 - "Does it look right?"
- They look at the whole word and look for sounds they know
- They ask themselves "what word would make sense here?"

Active Engagement: Readers use interactive chart to figure out unfamiliar words.

Independent work: Readers read their independent books and use some of the strategies taught today, as well as other previously learned strategies (I will confer with readers)

Respondent, on redirect, testified

1580

- 12 Q. And what do you recognize Respondent's
13 Exhibit 32 to be?
14 A. This is a lesson plan for readers
15 workshop lesson, Unit 8.
16 Q. Is Respondent's Exhibit 32 the written
17 lesson plan that you are referring to for the May 9th,
18 2012 lesson?
19 A. Yes.
20 Q. And who prepared Respondent's Exhibit
21 32?
22 A. I did.

1581

- 5 Q. do you recall when Respondent's
6 Exhibit 32 was provided to the administration?
7 A. The day of the observation.
8 Q. And do you recall how you provided
9 Respondent's Exhibit 32 to the school administration?
10 A. I hand delivered it.

11 Q. To whom?
12 A. To Ms. Borsico. (sic)

1618

9 Q. What do you recognize Respondent's
10 Exhibit 33 to be?
11 A. This is one of the schedule meetings
12 with a different date and time for a disciplinary
13 conference...

17 Q. And Ms. Legra, can you please read the
18 paragraph starting with, "I have schedule?"
19 A. "I have scheduled a meeting with you
20 on Tuesday, February 5th, 2013 at 8:15 a.m. in the
21 principal's office to discuss your failure to provide
22 lesson plans during a routine classroom visit on
23 February 1st, 2013."

1619

2 A. "Since this meeting will lead to
3 disciplinary action, you may bring a representative.
4 Please let me know in advance of this meeting who you
5 would like to represent you so that I can provide
6 coverage."

7 Q. Ms. Legra, when did Mr. Goodman accuse
8 you of failing to provide lesson plans on February
9 1st, 2013?

10 A. In this notice.

1628

10 Q. Do you recognize Respondent's Exhibit
11 35?

12 A. Yes.

13 Q. And what is Respondent's Exhibit 35?

14 A. It's an e-mail from Ms. Borsico (sic) to
15 myself, cc Goodman, collection of lesson plans.

16 Q. And Respondent's Exhibit 35 says "Per
17 the observation report dated April 10th, 2013, you are
18 required to submit our (sic) lesson plans for the week to
19 either Mr. Goodman or myself every Monday before 8:30
20 a.m." Prior to April 10th, 2013, what assignment if
21 any did you have to provide your lesson plans on a
22 weekly basis?

23 A. I didn't have any.

24 Q. After April 10th, 2013, did you submit
25 weekly lesson plans?

1629

2 A. Yes.

3 Q. And who did you submit weekly lesson
4 plans to?

5 A. I gave them to the secretary...

9 Q. Would they be handwritten? Would they
10 be typed up?

11 A. Well, they'd be handwritten if I was
12 not going to be absent. There were a couple of
13 occasions where I did e-mail the secretary the lesson
14 plans.

15 Q. How would the lesson plans be if you
16 were going to be absent?

17 A. They would be typed.

18 Q. And for what purpose would you be
19 submitting lesson plans when you're going to be
20 absent?

21 A. For the substitute teacher to continue
22 the flow of teaching.

1630

9 Q. And what do you recognize Respondent's
10 Exhibit 37 to be?

11 A. Lesson plans from myself.

12 Q. And do you know when these lesson
13 plans were from?

14 A. For the week of Monday, May 20th

15 Q. And do you know which year?

16 A. The 2012-'13.

17 Q. And Ms. Legra, where were these lesson
18 plans originally located?

19 A. In my composition notebook.

20 Q. And did you provide Respondent's
21 Exhibit 37 to the school administrators?

22 A. Yes.

1632

23 A. I do recall that I did submit the
24 lesson plans from the whole week of May 20th, and as I
25 see these copies, it only goes to Wednesday. And I --

1633

2 Tuesday. So there's two--only two days...

12 Q. And who did you provide Respondent's
13 Exhibit 37 to?
14 A. To the school secretary.
15 Q. Is that Iris (sic) Vargas or Carmen Pena?
16 A. Iris (sic) Vargas.

1634

15 MR. DELPIANO: So 37A would be Bates page
16 126 through 129...

1635

10 THE HEARING OFFICER: So 37B is going to be
11 130?
12 MR. DELPIANO: It's going to be 130 and 131.

1639

13 Q. And how would you give these to Ms.
14 Vargas?
15 A. I would give her the composition
16 notebook that they were on.
17 Q. Would she keep the notebook?
18 A. She'd make the copies and she would
19 give them back.

1642

5 Q. Ms. Legra, did you ever have any
6 conversations with Ms. Borsico (sic) concerning your
7 attendance--
8 A. Yes.
9 Q. --during the 2012-2013 school year?
10 A. Yes.
11 Q. Do you recall how that conversation
12 occurred?
13 A. That occurred with a disciplinary
14 letter.

Counsel for Respondent argued

1847

24 Now with regard to the 2011-12 school
25 year, there is no evidence at all any assistance

1848

2 meetings with supervisors or remedial professional
3 development or recommendations regarding any of these
4 three subjects. There was no testimony by any of the

5 witnesses that the Department put forward about any of
6 those subjects during that school year...

13 Now in terms of assistance meetings with
14 supervisors, she didn't have any. Her meetings were
15 either post-observation conferences or disciplinary
16 conferences and in the post-observation conferences,
17 she was just told about her problems. There was no
18 recommendations made in any of those. It was just
19 said that she was going to receive professional
20 development. Now we found out that she was supposed
21 to receive professional development, but it never
22 actually happened.

23 There was no advice, counsel, instruction
24 certainly no remedial professional development
25 performed for Ms. Legra during that school year, and

1849

2 there were no recommendations. Now that's with
3 respect to the elements of effective lesson planning
4 and execution and with classroom management. I'm
5 assuming that part C, which is production/maintenance
6 of required records and documents relates to running
7 records during the 2012-2013 school year.

8 Now Ms. Legra provided what she kept as
9 records of her intermediary running records during the
10 2012-2013 school year. There was not any evidence
11 provided by the Department that what Ms. Legra did to
12 track and test for running records was improper.
13 There is no information at all about that. Now again,
14 we requested for the completed running records for
15 this school year once Mr. Goodman said that the
16 records are not discarded. And they were never
17 provided to us. So therefore you should draw an
18 inference that had those records been provided that
19 they would have been proper and in the form that they
20 were supposed to be. So therefore, I say that the
21 Department has failed to carry its burden again with
22 respect to specification ten.

1850

11 But they moved her into that classroom and
12 they did nothing to help her when she was having
13 problems in there. They didn't do anything to help
14 her with the troublesome students. They didn't do
15 anything to help her in the areas where she

16 purportedly had problems with her pedagogy. Number
17 three, there is a complete failure by the Department
18 to make any attempt, any legitimate attempt at
19 remediation of Ms. Legra's deficiencies.

20 Almost all of the professional development
21 that was testified about was actually grade level
22 professional development provided to every teacher at
23 PS 173. Every teacher's file at PS 173 would look the
24 same in terms of professional development as Ms.
25 Legra's did. There was nothing individual about it.

1851

2 When you look at the scanned instances of professional
3 development, there is one demo lesson from Ms.
4 Francisco [phonetic], the literacy coach, which is
5 Department's Exhibit 42, which Ms. Legra was present
6 for the demo lesson, was watching the demo lesson, and
7 then Ms. Francisco testified that Ms. Legra wasn't
8 paying any attention.

9 But then she also testified that Ms. Legra
10 asked her questions about what happened and the demo
11 lesson, and specific questions about things happening.
12 Clearly Ms. Francisco's testimony about Ms. Legra not
13 paying attention but Ms. Legra also being able to ask
14 questions about what happened doesn't comport with
15 each other. Then, and also Ms. Boursiquot and Mr.
16 Goodman both testified that they never saw anything
17 about this demo lesson provided by Ms. Francisco.

18 They couldn't even identify that it happened
19 or when it happened, or what the subject was about.
20 Even though Ms. Francisco was the literacy coach, Mr.
21 Goodman was the literacy assistant principal, he
22 didn't know anything about it.

1852

4 And again, Ms. Boursiquot and Mr. Goodman
5 testified that they didn't see any documentation about
6 that lesson either. They didn't do anything to follow
7 up on the professional development that they were
8 claiming they provided to Ms. Legra. And then
9 furthermore, Ms. Boursiquot said that she assigned the
10 math coach and the literacy coach to work with Ms.
11 Legra during the 2011-2012 school years. But then we
12 found out through testimony after that from Mr.
13 Goodman and from the coaches themselves that they
14 would have been assigned to Ms. Legra no matter what

15 because she was new to kindergarten in 2011-2012 and
16 because she was new to first grade in 2012-2013.
17 So Ms. Boursiquot's testimony about the fact
18 that she did this is totally disingenuous. And again,
19 Ms. Boursiquot and Mr. Goodman spoke at length about
20 the individual professional development that was
21 provided by Ms. Legra, provided to Ms. Legra by
22 Monique Knight. Now there is not a shred of evidence
23 other than a blank sheet of paper about a day that Ms.
24 Knight was supposed to do a lab site in Ms. Legra's
25 class to substantiate of their testimony about

1853

2 that...

12 There are no written logs or assistance.
13 You have to take the Department witness's word for
14 everything that they said, because they don't have any
15 documentary proof. There is no written plan of
16 assistance that they worked together with Ms. Legra to
17 develop a program to improve her purported
18 deficiencies. There was no teacher improvement plan.
19 There was no professional improvement plan. These are
20 all things that they could have done to try to remedy
21 some of the problems that they claim that Ms. Legra
22 had that they didn't even make an attempt to do.

b. Classroom Management are DOE 3, 5, 13, 16, 17, 19C, 20, 21B, 23, 33, 34 and 42 and testimony of Principal Boursiquot, Assistant Principal Goodman and Coach Francisco in support. The Exhibits have been referenced previously.

c. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DISCUSSION

The record includes 98 Exhibits [page 8 through 11, above] and 1905 pages of Transcript (from the 17 hearing dates reflected above on the first page).

References herein to "pages" are to this Opinion, unless preceded by a "T" when it is to the Transcript or in an excerpt thereof.

I have considered the relevant portions of the foregoing with regard to each of the 17 Specifications, dated October 9, 2013, (above on pages 2 and 3), in determining whether each has been proven by a preponderance of the evidence and support a disciplinary finding against Respondent Teacher.

Each Specification must be considered based upon the evidence presented supporting it as well on the evidence presented that does not support it. DOE must achieve a level of preponderance of evidence to support a finding for it on a Specification. When there is a direct conflict of evidence the motivation of a witness may affect the weight accorded to that evidence.

Counsel for Respondent argued

18 Ms. Legra was a kindergarten teacher during
19 the 2011-2012 school year. There is not a single
20 letter to file or observation report in this case
21 regarding Ms. Legra that occurred prior to when
22 Respondent's Exhibit 14 was written. The first
23 observation that ended up with a report in this case
24 was conducted four days after Respondent's 14 was
25 written. This is clearly when Ms. Boursiquot and Mr.

1812

2 Goodman had decided that they were going to target Ms.
3 Legra.

4 They decided that they were going to take
5 severe measures to eradicate Ms. Legra from PS 173
6 and that therefore they were predisposed to not find
7 anything good with Ms. Legra's teaching and that they
8 papered her file accordingly in an attempt to get rid
9 of her. This is the epitome of unfairness in the
10 workplace. They decided prior to any of the documents
11 that we've heard about in this case, that Ms. Legra
12 was neglecting her duties and that they were going to
13 build a file to reflect that.

14 Now Ms. Legra's workplace at PS 173 was
15 filled with severe difficulties during the 2012 and
16 2013, school year. As you heard from Ms. Legra, Mr.
17 Goodman used to stand outside of her classroom on an
18 almost daily basis. You also heard from Ms. Legra
19 that he had never done this prior to the 2012-2013
20 school year. He used to come to her classroom on a
21 weekly basis like he did with every other teacher. He
22 changed his behavior, and the reason being was because
23 they were trying to find ways to document Ms. Legra.

24 Mr. Goodman used to promise Ms. Legra that
25 he was going to perform a formal observation of her,

1813

2 in particular in the middle of the 2012-2013 school
3 year. He never followed up on his promise. This
4 would have allowed Ms. Legra the ability to come up
5 with a formal lesson plan in conjunction with the
6 school administrators at PS 173 in order to show them
7 that she was implementing the items that she was
8 learning and the grade level professional development
9 in her classroom.

10 She was never given that opportunity.
11 Instead, Mr. Goodman would just come to her class on

12 what was labeled an informal observation but at the
13 same time he would call those informal observations
14 routine classroom visits and would send her
15 disciplinary notices for the same day. Ms. Legra
16 would call the office to complain about student
17 behavior and then Mr. Goodman would come to her class
18 and write her up for something. He was constantly
19 summoning Ms. Legra to the office for disciplinary
20 conferences.

21 Moreover, Ms. Boursiquot and Mr. Goodman
22 would promise Ms. Legra individual professional
23 development and then they never actually assigned it
24 to her. And then there's the comments that Mr.
25 Goodman made to Ms. Legra on February 4th, 2013, about

1814

2 Ms. O'Neal [phonetic]...

7 And what did Mr. Goodman say to Ms. Legra?
8 He said that she was going to go the way of Ms. O'Neal
9 and then he waved bye-bye to her in a sarcastic
10 manner.

1815

24 There is Respondent's Exhibit 14, which
25 proves that they were singling out particular

1816

2 kindergarten teachers, of which Ms. Legra was one...

11 The test is whether or not Ms. Legra
12 provided her students with a valid educational
13 experience.

1817

6 ...Now with respect to the...
7 ...timeline in this
8 case, the charges really only cover the time period
9 from May 2012 until June 2013.

10 Prior to May 2012, there is almost nothing
11 in evidence that shows of any problem that Ms.
12 Boursiquot or Mr. Goodman were having with regard to
13 Ms. Legra's performance. There is no letters to file
14 before May 2012. There's not even a counseling memo
15 before May of 2012. She has worked for the Department
16 for 23 years, and up until this time she hasn't been

17 brought up on 3020-a charges with respect to
18 incompetency. This is her first time.

1818

3 But with respect to the 2011-2012 school year, there
4 is only one date. There are not multiple dates. And
5 it's towards the end of the school year.

6 It's from May 9th, 2012, which is
7 Department's Exhibit 3. That report, if you will
8 recall correctly, was not given to Ms. Legra until
9 June 25th, 2012. There is no notice of any of these
10 ...purported deficiencies of Ms. Legra's
11 pedagogy that occur prior to this date. This is the
12 first time that we are receiving any evidence of
13 problems with Ms. Legra being able to effectively plan
14 or execute her lessons. To say that for the entire
15 2011-2012 school year, Ms. Legra was not able to
16 properly or adequately or effectively plan and execute
17 her lessons is disingenuous.

1819

7 ...that's the only observation for the 2011-2012
8 school year, and that the observation occurred four
9 days after Respondent's Exhibit 14, when they decided
10 that there was going to be a crackdown. Clearly there
11 was a predisposition to find that Ms. Legra wouldn't
12 do a good job on this lesson...

16 ...Now this is
17 occurring in the context of Ms. Legra recently taken
18 over this class, it's about a month and a half after
19 she had taken over this first grade class, which was
20 difficult to start off with.

The Respondent believes she was targeted by the Principal and Assistant Principal for termination. Respondent 14, referencing a "crackdown" on "some K teachers" and the "bye bye" to her by Mr. Goodman (page 30, above and R16, page 32, above) support her argument. Counsel for DOE commented Mr. Goodman was not asked about it in his cross-examination. This is true. However, Mr. Goodman was not recalled in rebuttal.

I have previously commented on this and concluded it was accurate. I conclude the goal of

the Principal and Assistant Principal was to terminate Ms. Legra, who was no longer Kindergarten teacher.

COMMENTS, CONCLUSIONS AND FINDINGS

My comments and conclusions on each Specification follow:

A.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Taking into consideration [REDACTED] the evidence [REDACTED], do not rise to the level needed to support "a" of Specification "1)" and I so find.

B. Regarding Specification 1b:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED], I

conclude the observation and evidence presented do not rise to the level needed to support "b" of Specification "1)" and I so find.

C. Regarding Specification 1c:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I conclude the evidence does not rise to the level needed to support "c" of Specification "1)" and I so find.

D. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I conclude the evidence does not rise to the level needed to support "d" of Specification "1)" and I so find.

E. Regarding Specification 1e:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] I conclude the evidence does not rise to the level needed to support "d" of Specification "1)" and I so find.

F. Regarding Specification 5

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted text block containing multiple lines of obscured content]

[REDACTED]

[REDACTED]

[REDACTED]

Based upon the foregoing I find the evidence presented does not rise to the level to support Specification "5)".

G. Regarding Specification 6:

DOE 5, 19C, 20 and 21B and the testimony of Principal Boursiquot and Assistant Principal Goodman were submitted as supporting this Specification relating to supervising students.

The Exhibits were considered in connection with Specification 1. They do not support a finding for this Specification.

DOE 21B, a January 22, 2013 letter referring to a January 15, 2013 observation and a disciplinary conference on January 16, 2013, is quoted on page 105.

Respondent testified she responded the same day by a letter she placed in his mailbox, and referenced her letter, R11.

She did not "at any point ask Mr. Goodman if he had in fact received it" [T1205 L.15 and 1206 L.2].

She did not recall if she requested her letter to "be placed in" her "file alongside" his letter [T1206 L.4-7].

The record does not reflect evidence of Mr. Goodman's receipt of her letter or of it being in her file.

In DOE 21B Mr. Goodman referenced "excessive noise and sounds", "students up out of their seats", "one was running", and "karate moves on the closet door", which he called "chaos" and "mayhem".

Respondent's letter referenced students "walking around the room" and "moving activities".

Respondent's testimony is generalized and not an adequate explanation.

I credit the description provided by Mr. Goodman. It supports her failure to effectively supervise students. I find it supports Specification "6)".

H. Regarding Specification 7:

[REDACTED]

Based upon the foregoing I find the evidence presented does not rise to the level to support Specification 7.

I. Regarding Specification 8:

[REDACTED]

[REDACTED]

I conclude the evidence does not rise to the level needed to support Specification 8, and I so find.

J. Regarding Specification 9:

DOE 9 and 46 and the testimony of Principal Boursiquot and School Payroll Secretary Vargas were submitted as supporting this Specification, relating to excessive lateness and absence.

The Agenda in DOE 9 does not appear to relate to this Specification.

DOE 46 relates to the absence on May 6, 2013.

DOE 7, the letter dated June 17, 2013 to Respondent from Principal Boursiquot, with eight pages of Time and Attendance, from September 1, 2012 to June 5, 2013, is relevant.

Ms. Vargas, the School Payroll Secretary, described her responsibilities. I credit her

testimony.

Respondent submitted documents as Exhibit R30, lettered A through K, as follows:

A - Absence Request for "early leave" on January 8, 2013, which was "rejected" by the Principal, with the comment "Denied, You arrived late this morning and have not indicated any emergency requiring you to leave at 11:45" and "If there is no emergency, then you are required to give advance notice.

B - Absence Request for January 29, 2013, dated January 22, 2013, stating as a reason "Court Appearance". It was Rejected by the Principal with the comment "You do not have any Personal days".

C - January 28, 2013 three day excuse letter with return to work on 1/30/13 from Dr. Guerra.

D - February 21, 2013 excuse letter for February 21 to February 26 from unidentified person at Manhattan Physicians Group.

E - Court Summons to Jose Morel for February 28, 2013 at 10 a.m.

F - March 1, 2013 excuse letter for February 26 through March 5, 2013 reflecting a "Nurse visit" from unidentified person at Manhattan Physicians Group.

H - May 6, 2013 e-mail to Respondent from Office of Academics, Performance and Support reflecting she was "PRESENT" at a scoring on May 6, 2013.

I - May 14, 2013 two day excuse letter with return to work on May 16, 2013 from Dr. Pinkhasova.

J - Court Summons to Jose Nelson Morel for June 3, 2013 at 10 a.m.

K - June 12, 2013 letter of office visit for "Lab testing/vaccine administration" by a nurse from RN Coordinator Samuel.

Mr. Bush described the attendance procedures for teachers who are assigned to score as well as correction communications.

The evidence relating to Respondent's attendance for scoring is in conflict. DOE 46 (page 125, 5/7/13 3:11 p.m.) and 48 (described on page 130) both reflect she was absent. DOE 48 confirmed DOE 46. An earlier DOE communication, R30H (5/6/13 9:25 a.m.) reflected she was present. DOE 46 corrected R30H.

The entry on page 2 of the Time and Attendance Inquiry attached to DOE 7 reflects her absence, described as "Self-Treated". The date and entry is referenced in the letter of June 17, 2013 (DOE 7).

Respondent testified she was not absent. I do not credit her testimony. I believe DOE 46 is correct. I conclude she was absent on May 6, 2013.

Exhibits R30A-F and H-K reflect the reasons for her absences. Some were credited as "Med. Certified" in DOE 7, although they appear to be from a nurse, not a medical doctor. That distinction was referenced in the testimony of Ms. Vargas. However, during her testimony the record clearly reflects that the reason for an absence, described as an "Event Description" in the eight pages attached to DOE 7, affect payment to Respondent.

Ms. Vargas' testimony reflected that DOE 7 is accurate in its listings of lateness and absence.

The record reflects that my observation that an excuse reflects payment and does not "deal with whether you're there or not" (i.e., presence or absence) was confirmed as "correct" by counsel for Respondent on page 141.

I conclude the record supports Specification "9)" and I so find.

K. Regarding Specification 10a:

DOE 3, 5, 6, 10, 13, 14, 15, 16, 17, 19C, 20, 21B, 22, 23, 28, 29, 30, 31, 32, 33, 34,

35, 36, 38, 39, 40, 41 and 42 and the testimony of Principal Boursiquot, Assistant Principal Goodman, Coach Serratty and Coach Francisco were submitted as supporting this Specification, relating to lesson planning.

DOE 38, 40 and 41 could have been the subject of comments.

DOE 42 was a report of a demo lesson in Respondent's class.

Some of the Exhibits were considered in connection with other Specifications. Some do and some do not support a finding for this Specification.

There is a conflict of evidence presented by Principal Boursiquot, Assistant Principal Goodman and Respondent regarding lesson plans, including when they were required to be submitted, the form thereof as well as if and when they were submitted.

I credit the testimony of Respondent that she had handwritten lesson plans in her book, (R37A) and that she gave Mr. Goodman her lesson plan when she left early and that it was not returned even though requested.

I infer that his request for it the next day was disingenuous because he had it. To fault her in his observation for not having it was not appropriate.

However, despite the foregoing, I conclude other evidence in the record does support Specification 10a, and I so find.

L. Regarding Specification 10b:

DOE 3, 5, 13, 16, 17, 19C, 20, 21B, 23, 33, 34 and 42 and the testimony of Principal Boursiquot, Assistant Principal Goodman and Coach Francisco were submitted as supporting this Specification, relating to classroom management.

Some of the Exhibits were considered in connection with other Specifications. Some do and some do not support a finding for this Specification.

However, despite the foregoing I conclude other evidence in the record does support Specification 10b, and I so find.

M. Regarding Specification 10c:

[REDACTED]

I conclude other evidence does not rise to the level needed to support Specification 10c, and I so find.

SUMMARY OF FINDINGS

My findings of support are for Specifications 6, 9, 10a and 10b. They relate to supervising student excessive lateness and absence, lesson planning and classroom management in the 2012-2013 school year.

Based upon the foregoing conclusions, I find that discipline of Respondent Teacher is appropriate

Counsel for Respondent argued

1854

2 However, if you decide that there should be
3 some imposition of discipline in this case, then we
4 argue that there is a lack of progressive discipline.
5 This is Ms. Legra's first 3020-a for incompetency
6 charges. She has been an employee of the New York
7 City Department of Education for 23 years. And now
8 for some portion of that she was a paraprofessional.
9 But for 15 plus years she has been a teacher
10 for the Department. And she has never been brought up
11 on these charges before. And the only other formal
12 discipline against Ms. Legra was for time and

13 attendance that resulted in a settlement in April of
14 2013. So in terms incompetency and Ms. Legra's
15 pedagogy, this is a matter of first instance.

1855

3 ...This is all based off of 13
4 months. That's it. It would take a 23 year career
5 with the Department of Education, wrap it up into 13
6 months and throw it out. That's not proper in this
7 case. A proper penalty, if you do decide to impose
8 penalty, would be a letter of reprimand or a fine with
9 some assigned professional development to Ms. Legra in
10 the areas where she purportedly has deficiencies.

Counsel for DOE argued

1901

21 ...In this case we have seen
22 not only Ms. Legra's failures to improve her teaching
23 practice over a two year period, we have also seen her
24 failure to improve her attendance. But this is not
25 Ms. Legra's first chance to improve. She's been U

1902

2 rated for six years. Six years of failing her
3 students. She's been given ample opportunity to
4 improve, and she has shown herself incapable of doing
5 so...

13 ...Ms. Legra has shown that she cannot or
14 will not improve. And I know that you will agree that
15 it is time to tell Ms. Legra that her excuses do not
16 work anymore, and that termination is the only just
17 result in this case.

The DOE Specifications are stated to be "just cause for disciplinary action..." "3. Incompetence..." and "9. Just cause for termination." [page 3, above].

The CBA Joint Exhibit 1, in "ARTICLE TWENTY-ONE DUE PROCESS AND REVIEW PROCEDURES" (page 110), "G. Education Law §3020-a Procedure" (page 113), "9. Incompetence

Cases” referencing a first time unsatisfactory rating (not this case) uses the phrase “the parties agree that in the spirit of progressive discipline” (page 118).

The cases provided to me, post-hearing by counsel for both parties, reflect discipline less than termination.

In DISCIPLINE AND DISCHARGE IN ARBITRATION, Second Edition, edited by Brand and Biren, (BNA Books, 2008) the following is to be found starting on page 65:

III. PROGRESSIVE DISCIPLINE AS AN ELEMENT OF JUST CAUSE

Discipline is an adverse action taken by an employer against an employee because of the employee’s behavior. Just cause principles require that the discipline imposed upon an employee be just and fair. (citation omitted) Just cause, therefore, requires “reasonable proportionality between the offense and the penalty” (citation omitted) and consideration of any mitigating factors or extenuating circumstances that are reflected in the record, such as employee’s length of service, performance, prior disciplinary history, as well as management fault. (citation omitted).

Just cause also includes principles of progressive discipline. (citation omitted). Progressive discipline is a system of addressing employee behavior over time, through escalating penalties. The purpose of progressive discipline is to correct the employee’s unacceptable behavior. Employers impose some penalty less than discharge to convey the seriousness of the behavior and to afford employees an opportunity to improve. The discharge penalty is reserved for very serious incidents of misconduct and for repeated misconduct. (citation omitted).

The concept of progressive discipline is based on the premise that both employers and employees benefit when an employee can be rehabilitated and retained as a productive member of the work force. (citation omitted) The trained employee is seen as a valuable resource, making it economically prudent to attempt rehabilitation of a current employee. (citation omitted) The expected result of progressive discipline is that the employee will recognize he has engaged in unacceptable conduct and will correct his future behavior (citation omitted).

C. Steps of Progressive Discipline

All progressive discipline systems use a series of steps, or disciplinary actions, which increase in severity. The generally accepted forms of discipline prior to discharge are oral warnings, written warnings, and suspensions. (citation omitted).

3. *Suspension.* Suspensions are typically the next step following oral or written warnings in progressive discipline and may be imposed following one or more incidents of less serious misconduct for which the employer has issued warnings. (citation omitted) They result in the employee being removed from the work place for a designated period of time, in loss of pay, and sometimes in loss of seniority for the period of the suspension. The suspension places a blemish on the employee's employment record and, like warnings, can serve as a basis for more severe discipline in the future.

Some arbitrators emphasize that suspensions should be corrective or rehabilitative, not punitive. For example, one arbitrator observed: "Suspensions are corrective measures designed to rehabilitate a miscreant employee; to restore him/her to acceptable levels of production and/or behavior." (citation omitted) A suspension may be overturned or reduced if found to be unduly harsh or retaliatory, rather than corrective. (citation omitted)

4. *Discharge.* Discharge is the most extreme industrial penalty since the employee's job, seniority, and other contractual benefits and reputation are at stake. (citation omitted) It was once referred to as "industrial capital punishment," but at least one arbitrator has suggested that "a more accurate equivalent to discharge is permanent exile. (citation omitted) One arbitrator has distinguished discharge from all other forms of discipline.

While arbitrators often speak of discharge as part of a disciplinary progression—a penalty which is a step above lesser penalties—the perception is flawed. Discharge and suspension are separate and distinct penalties. Suspensions are corrective measures designed to rehabilitate. Discharge on the other hand is the severance of an employment relationship. An

employer has no legitimate interest in whether or not a discharged employee ever achieves rehabilitation. Its sole purpose is to unburden the work force of an individual whose conduct has become intolerable. In other words, discharge is designed to abolish the employment relationship; disciplinary suspension is designed to improve it. (citation omitted)

Where discharge is the final step in the progressive discipline process, the employee will usually have received several warnings and often at least one suspension. (citation omitted)

IV. ARBITRAL CONCEPTS OF FAIRNESS

C. Appropriateness of the Penalty

Collective bargaining agreements usually do not limit the arbitrator's power to formulate remedies in discharge or discipline cases. The arbitrator, therefore, has the authority to order the remedy that he or she deems appropriate. (citation omitted)...Most arbitrators will evaluate the discipline imposed by the employer to determine whether the penalty (or corrective measure) is excessive. Discipline may be considered excessive if it is disproportionate to the degree of the offense, if it is out of step with the principles of progressive discipline, if it is punitive rather than corrective, or if mitigating circumstances were ignored.

Arbitrators have consistently held that an excessively harsh penalty for misconduct violates the requirement that discipline be imposed only for just cause. "Inherent in the right to discipline for just cause is the requirement that the form and degree of discipline be reasonable both as regards the basis for discipline and the penalties assessed." (citation omitted) One arbitrator wrote:

[C]onsideration has to be given to whether a lesser penalty will serve the employer's purpose, especially since discharge makes it difficult, if not impossible, for a person to obtain other employment. Where the

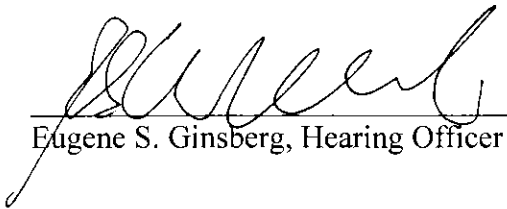
employee has a long record of service without any previous discipline, a lesser, but nonetheless severe, punishment will ordinarily preclude repetition of the offense...

In considering the discipline to be imposed in this case I have been provided with Respondent's prior discipline. It was a Stipulation of Settlement of a disciplinary proceeding under Education Law §3020(4)(a) based upon her record of time and attendance. She admitted excessive absence "during the 09-10, 10-11, and 11-12 school years." She agreed to pay a \$2,500 fine "through payroll deductions...over a twenty-four (24) month period."

DISCIPLINARY PENALTY

Taking all of the foregoing into consideration, including Respondent's employment by DOE for twenty-three (23) years and her prior disciplinary record, I conclude that the appropriate disciplinary penalty is a suspension of forty-five (45) days, without pay.

Date: May 14, 2014


Eugene S. Ginsberg, Hearing Officer

THE UNIVERSITY OF THE STATE OF NEW YORK
THE STATE EDUCATION DEPARTMENT
TEACHER TENURE HEARING UNIT

-----X
In the Matter of the Disciplinary Proceeding between

THE BOARD OF EDUCATION OF THE CITY SCHOOL
DISTRICT OF THE CITY OF NEW YORK a/k/a THE
NEW YORK CITY DEPARTMENT OF EDUCATION
("DOE"),

SED Case Number: 23257

Complainant-Employer,

**REVISED
AWARD OF
EUGENE S. GINSBERG
HEARING OFFICER**

- against -

ANN LEGRA,

Respondent-Tenured Teacher-Employee.

Pursuant to Education Law Section 3020-a
-----X


AWARD

I, the undersigned Hearing Officer, having been appointed, reviewed the Specifications, heard the proofs of the parties, carefully considered the evidence and arguments presented, do hereby Award as follows:

Teacher, Ann Legra, is suspended for forty-five (45) days, without pay, and

I retain jurisdiction to consider and determine any dispute of the parties arising from the foregoing.

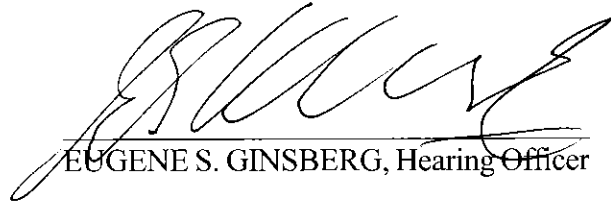
Date: May 14, 2013



EUGENE S. GINSBERG, Hearing Officer
300 Garden City Plaza (5th floor)
Garden City, New York 11530
(516) 746-9307

I, Eugene S, Ginsberg do hereby affirm that I am the Hearing Officer in the foregoing matter and that this document, which I have executed on this date, is my Revised Award, issued in compliance with all applicable laws, rules and agreements.

Date: May 14, 2014



EUGENE S. GINSBERG, Hearing Officer