

UNIVERSITY OF THE STATE OF NEW YORK
STATE EDUCATION DEPARTMENT

-----X

IN THE MATTER OF THE PROCEEDING
PURSUANT TO SECTION 3020-A OF THE
EDUCATION LAW

Between

The Department of Education of the
City School District of the City of
New York

Employer

-and-

Peter Zucker

Respondent

-----X

OPINION
AND
AWARD

FILE No. 23018

Before: Richard D. Williams, Esq., Hearing Officer

APPEARANCES:

FOR THE DEPARTMENT

Courtenaye Jackson-Chase, General Counsel
New York City Department of Education
Shareema Abel, Esq., of Counsel

FOR THE RESPONDENT

Office of Richard E. Casagrande
New York State United Teachers
Jennifer Hogan, Esq., of Counsel

PROCEDURAL HISTORY

Pursuant to § 3020-a and § 2590 (j) (7) of the New York State Education Law, Disciplinary Charges were preferred by the Department of Education of the City School District of the City of New York (“Department”) against Peter Zucker (“Respondent”), a tenured teacher assigned to Public School (P.S.) 154x- “Jonathan D. Hyatt Elementary School” (PS 154x) District 7 in the /Bronx during the 2012-2013 school year. The charges brought against Respondent were assigned State Education Department (SED) case number 23018 and covered allegations from the school year 2012-2013.

In its charges, the Department alleged that Respondent failed to perform his duties by providing incompetent and inefficient service, insubordination, neglect of duty and an unwillingness and/or inability to follow procedures and carry out normal duties.¹(D1). As a result of the above charges, the Department seeks, as a penalty, the Respondents termination from employment.

A pre-hearing conference was held on January 27, 2014, and thereafter, hearings were convened on December 2, 3, 8, 10, 15, 2014; January 8, 14, 16, 23 and February 3, 2015. Testimonial evidence was received from over fourteen witnesses including Dr. Allison Coviello, Principal PS 154x; Jessica Cruz, Assistant Principal P.S. 154x; Rajendra Jimenez-Jailall, Assistant Principal P.S. 154x; Claudia Macek, retired Principal of P.S. 83; Ann Gorman, retired assistant principal P.S. 83 and P.S. 498; Jennifer (Milliron) Sattaur, Teacher P.S. 154x; Allison Reynolds, Teacher P.S. 154x Linda Bobbitt, School Secretary P.S. 154x; Elaine Haynes worth, Special Education Teacher; John Didrichsen, Instructional Specialist, Maverick Educational

¹ (T.) refers to pages from the transcripts of the proceedings. (J.Ex.) refers to joint exhibits and (D.Ex.) and (R.Ex.) refer to Department and Respondent exhibits respectively from the hearings.

Partnership; Maria Ortega, Parent of former 154x student; Ralph Lembo, retired physical Education Teacher, P.S. 154x; Denise Green, Teacher, P.S. 154x and UFT Chapter Leader; and Respondent. 1 Joint Exhibit, 65 Department Exhibits and 14 Respondent Exhibits and 6 Hearing Officer Exhibits and various other cases were introduced and discussed in the record.

Both parties had ample opportunity to present testimony and documents to argue in support of their respective positions. The parties, chose to make oral closing arguments and after receipt of the final transcript, the record was declared closed.

INTRODUCTION

The New York City Department of Education, by and through its attorneys, brings this action, pursuant to Education Law § 3020-a, against Peter Zucker, for neglect of duty, misconduct, failure to follow procedures and carry out normal duties, and incompetent and inefficient service, during the 2012-2013 school year. Peter Zucker (hereinafter referred as “Respondent”) under # 0717267, Social Security [REDACTED], is a tenured teacher, most recently assigned to P.S. 54 Jonathan D. Hyatt Elementary School, Bronx, New York, District 7. Respondent holds a “Common Branches” license.

CHARGES AND SPECIFICATIONS

The Charges and Specifications against Respondent in SED case number 22686 read as follows:

SPECIFICATIONS

The New York City Department of Education brings this action pursuant to Education Law § 3020-a against Peter Zucker, for his failures in the nature of incompetent and inefficient service, insubordination, neglect of duty, and unwillingness and/or inability to follow procedures and carry out normal duties, during the 2012-2013 school year. Peter Zucker, under file #0717267 is a tenured teacher, with a Common Branches license, assigned to Community School 154x, located in District 7, in the Bronx.

SPECIFICATIONS

- 1) During 2012-2013 school year Respondent failed to properly, adequately, and/or effectively plan and/or execute lessons, as observed on the following dates:
 - a. November 8, 2012;
 - b. December 6, 2012;
 - c. March 5, 2013;
 - █ [REDACTED]
 - e. June 5, 2013
- 2) Respondent neglected his professional duties in that he failed to properly and/or adequately maintain his classroom environment during the 2012-2013 school year.
- 3) Respondent neglected his professional duties and/or failed to follow directives in that he failed to properly, adequately and/or timely maintain his bulletin boards as directed, during the 2012-2013 school year.
- 4) Respondent acted unprofessionally and/or in violation of Chancellor's Regulation C-810 in that he smoked on the block surrounding the school on December 12, 2012.
- 5) Respondent neglected his professional duties and/or failed to follow classroom management protocols in that he failed to properly and/or adequately address students who were missing from his classroom on January 25, 2013.
█ [REDACTED]
█ [REDACTED]
- 7) Respondent neglected his professional duties in that he failed to have a proper and/or adequate lesson plan for a second grade class, as observed on April 12, 2013.
- 8) Respondent neglected his professional duties and/or failed to follow directives in that he failed to timely, properly and/or adequately submit lesson plans to his supervisor for review as directed in April 2013.
- 9) Respondent acted unprofessionally and/or was insubordinate in that he shouted at a supervisor, stating in sum and substance, "that Nazi, Eva Braun" while referring to another supervisor on April 25, 2013.
█ [REDACTED]
█ [REDACTED]
- 11) Respondent neglected his professional duties and/or acted unprofessionally in that he arrived late and/or left early to an ELA per session scoring site on several occasions in April 2013.
█ [REDACTED]
█ [REDACTED]
█ [REDACTED]
- 14) Respondent acted unprofessionally and/or was insubordinate in that he yelled supervisor, in sum substance, "I told my wife that if I go into cardiac arrest, it is your fault" on June 14, 2013.
- 15) Respondent neglected his professional duties in that he failed to be at his assigned post on May 16, 2013.

- 16) Respondent neglected his professional duties in that he failed to be at his assigned post on June 10, 2013.
- 17) Respondent neglected his professional duties, in that he sent students he was scheduled to teach to other classrooms on June 14, 2013.
- 18) Respondent neglected his professional duties, created an unsafe learning environment and/or failed to provide instruction to his students, in that he told his students, to do whatever they wanted on June 14, 2013.

Respondent failed to implement professional development recommendations from observation conferences, plans of assistance, and professional development sessions, during the 2012-2013 school year regards to:

- a. Maintenance of classroom environment;
- b. Classroom management;

[REDACTED]

THE FOREGOING CONSTITUTES:

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

DATED: August 28, 2013

RELEVANT AUTHORITIES FOR PROCEEDING

New York State Education Law

§3020-a reads in relevant part:

1. **Filing of charges.** All charges against a person enjoying the benefits of tenure...shall be in writing and filed with the clerk or secretary of the school district or employing board during the period between the actual opening and closing of the school year for which the employed is normally required to serve. Except as provided in ... no charges under this section shall be brought more than three years after the occurrence of the alleged incompetency or misconduct, except when the charge is of misconduct constituting a crime when committed. 2(a) Disposition of charges.... (c) Within ten days of receipt of the statement of charges, the employee shall notify the clerk or secretary of the employing board in writing whether he or she desires a hearing on the charges and when the charges concern pedagogical incompetence or issues

involving pedagogical judgment, his or her desire for a single hearing officer or a three member panel. All other charges shall be heard by a single hearing officer....3. **Hearings...**c. **Hearing procedures.** (i) The commissioner of education shall have the power to establish necessary rules and procedures for the conduct of hearings under this section. Such rules shall not require compliance with technical rules of evidence. Hearings shall be conducted by the hearing officer selected pursuant to paragraph b of this subdivision with full and fair disclosure of the nature of the case and evidence against the employee by the employing board and shall be public or private at the discretion of the employee. The employee shall have a reasonable opportunity to defend himself or herself and an opportunity to testify in his or her own behalf. The employee shall not be required to testify. Each party shall have the right to be represented by counsel, to subpoena witnesses, and to cross-examine witnesses. All testimony taken shall be under oath which the hearing officer is hereby authorized to administer. A competent stenographer, designated by the commissioner of education and compensated by the state education department, shall keep and transcribe a record of the proceedings at each such hearing. A copy of the transcript of the hearings shall, upon request, be furnished without charge to the employee and the board of education involved....4. **Post hearing procedures.** (a) The hearing officer shall render a written decision within thirty days of the last day of the final hearing, or in the case of an expedited hearing within ten days of such expedited hearing, and shall forthwith forward a copy thereof to the commissioner of education who shall immediately forward copies of the decision to the employee and to the clerk or secretary of the employing board. The written decision shall include the hearing officer's findings of fact on each charge, his or her conclusions with regard to each charge based on said findings and shall state what penalty or other action, if any, shall be taken by the employing board. At the request of the employee, in determining what, if any, penalty or other action shall be imposed, the hearing officer shall consider the extent to which the employing board made efforts towards correcting the behavior of the employee which resulted in charges being brought under this section through means including but not limited to: remediation, peer intervention or an employee assistance plan. In those cases where a penalty is imposed, such penalty may be a written reprimand, a fine, suspension for a fixed time without pay, or dismissal. In addition to or in lieu of the aforementioned penalties, the hearing officer, where he or she deems appropriate, may impose upon the employee remedial action including but not limited to leaves of absence with or without pay, continuing education and/or study, a requirement that the employee seek counseling or medical treatment or that the employee engage in any other remedial or combination of remedial actions.

§ 2590-j reads in relevant part:

Appointment and removal of persons in the teaching and supervisory service

...7. (a) No member of the teaching or supervisory staff of schools who has served the full and appropriate probationary period prescribed by, or in accordance with law, shall be found guilty of any charges except after a hearing as provided by section three thousand twenty-a of this chapter. (b) Charges may be initiated by the community superintendent against any such employee for any of the following offenses: (1) Unauthorized absence from duty or excessive lateness; (2) Neglect of duty; (3) Conduct unbecoming his position, or conduct prejudicial to the good order, efficiency or discipline of the service; (4) Incompetent or inefficient service; (5) A violation of the by-laws, rules or regulations of the city board, chancellor, or the community

board; or (6) Any substantial cause that renders the employee unfit to perform his obligations properly to the service. (c) The community superintendent, in advance of the filing of charges and specifications, shall inform the employee accused and the community board of the nature of the complaint. No charge shall be brought outside the statute of limitation period provided for in section three thousand twenty-a of this chapter. (d) Upon the service of a copy of the charges upon such employee, the community superintendent may recommend to the chancellor the suspension of any such employee. If the chancellor shall determine that the nature of the charge requires the immediate removal of the employee from his assigned duties, he may suspend such employee for a period not exceeding ninety days pending hearing and determination of charges, provided however, that such employee shall be entitled to receive full compensation during the period of suspension. In case the employee is acquitted, he shall be restored to his position. 8. The community superintendent may transfer members of the teaching and supervisory service without their consent within the district for the following reasons only: (a) Disciplinary action pursuant to subdivision seven of this section, (b) Excess staff in a specific school...

Memorandum of Agreement between The Board of Education of the City School District of the City of New York and the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO (J1, p.1)

**ARTICLE SEVEN
PROGRAMS, ASSIGNMENTS AND
TEACHING CONDITIONS
IN SCHOOLS AND PROGRAMS**

A. High Schools

1. Program Preference

No later than 60 days before the end of the term, program preference sheets should be distributed to all teachers. Where advisable and feasible, preferences with respect to subparagraphs a through g below will be honored to the extent consistent with the provisions of this Agreement relating to rotation and programing.

No later than 10 schools days prior to the end of the term, teachers should be notified of the following matters concerning their programs for the following terms:

- a. Subjects to be taught;
- b. Grades of the subjects to be taught;
- c. Any special or unusual classes that teachers will be required to teach;
- d. The grade level and special nature, if any, of the official class;
- e. The session to which a teacher will be assigned if the school operates on more than one session;
- f. The particular special education program designation (e.g. staffing ratio, collaborative team teaching, Special Education Teaching Support Services (SETSS), etc.);
- g. The age range off special education classes;
- h. The professional activity assigned pursuant to Article 7A6 (Professional Activity options) and Article 7U (Professional Activity Assignment procedures).

No later than the end of the next to the last school day term, teachers should receive their building programs for the following term, including the periods and rooms where their teaching assignments occurred.

It is understood that all information detailed above is to be considered subject to change if necessary because of changes in subject enrollments, staff changes, and programming exigencies.... J1 p.16

R. Basic Instructional Supplies

The board and the union agree that schools should provide appropriate and sufficient basic instructional supplies and books to deliver an effective educational program. Basic instructional supplies and books are those that must be provided for use by students without which classroom instruction will be impaired.

In the event a member or members of the faculty believe that such supplies and books are not available to students and faculty, the chapter may request a meeting with the principal. Upon the request of the chapter leader, the principle shall meet with the UFT chapter committee to resolve the issue. If no resolution is achieved at the school level, the district representative and the appropriate superintendent will meet within five (5) school days to attempt to resolve it. If they are unable to do so, the dispute will be forwarded by the Union to the Chancellor for his/her prompt review and response (J1, p.43).

ARTICLE EIGHT EDUCATION REFORM (J1 P. 45)

ARTICLE TWENTY-ONE, DUE PROCESS AND REVIEW PROCEDURES

...G. Education Law §3020-a Procedures

Tenured teachers facing disciplinary charges filed, or in the case of Section 1 “Time and Attendance”, discipline pursuant to that Section, will be subject to Section 3020-a of the Education Law as modified by paragraphs 1-10 below.... (J1, p.113)

POSITIONS OF THE PARTIES

The Department

- This is a case about defiance, deprivation and deaf ears. (T31)

- Respondent's defiance included not following his supervisors recommendations, the Chancellors Regulations, professional development recommendations, and a common code of teach professionalism in dealing with colleagues and students.(T31-32)
- Respondent's deprivation to his students was the loss of valuable and critical learning time resulting from Respondents failure to follow the recommendations of his supervisors, the Chancellors Regulations and the recommendations provided to him through professional development. (T32)
- Respondent deprived his students of their education during the 2012-32013 school year. (T32)
- Respondent deprived his students of their dignity and self-respect; deprived them of their opportunity to succeed; and failed to follow the procedures rules and recommendations of administrators at P.S. 154; including the failure to carry out the most basic duties as a teacher either competently or effectively. (T32)
- Respondent's habitual disregard of the recommendations of his supervisors, his lack of professionalism towards his supervisors, colleagues and students demonstrate that he cannot be remediated. (T32-33)
- Respondent's lessons were not only uninspiring as evidenced by the constant critique on lack of student engagement, but his lessons also lacked the basic principles of teaching and pedagogical effectiveness. (T1497)
- Respondent demonstrated a fundamental lack of skill in basic instructional methods that would otherwise enable students to learn the material he was attempting to teach. (T1497)

- The school staff handbook, which was provided to all staff, clearly lays out the DOE and school administrator's expectations and teacher obligations for the year Respondent received a copy. (T1498)
- At the school years opening, Respondent had a duty to get his classroom ready in preparation for his students and to make sure the classroom was welcoming and conducive to learning. (T1498-1053)
- Respondent had a duty to maintain his bulletin boards in accordance with the staff handbook. (T1057, 1523-1525)
- As a 19 year employee, Respondent knew or should have known that the Department does not give supplies for students and that teachers need to write notes to students parents or have the homeroom teacher include his specialty in what they write the parents. (T1509)
- There was no improvement in Respondent's pedagogy with all the successive observations by administrators. (T1511-1519)
- Dr. Coviello wrote a specific and detailed staff handbook and attempted to hold her staff accountable to it for the benefit of the students.(T1528-1529)
- Dr. Coviello was not biased against the Respondent and the evidence shows that. (T1529-1530)
- Respondents behavior during the per session activity of scoring ELA tests was unprofessional, insubordinate, irresponsible, neglectful and deplorable. (T1531-1532)
- Respondents name calling episodes were not only unprofessional but were also reprehensible and Respondent showed no remorse. (T1530-1532)
- Respondent repeatedly dealt with his colleagues in a disrespectful way. (T1533-1540)

- Respondent dealt with his students with indifference and on one documented occasion Respondent told his students to do whatever they wanted. (T1539-1540)
- Respondent did not take any independent initiative to use any outside resources such a PIP to improve his performance. (T1540-1543)
- If a teacher is given a chance to improve but still does not improve, there is no excuse for that person to continue teaching. The system cannot be permitted to reward failure and protect a person from the appropriate consequences for their actions.
- The evidence shows that during 2012-2013, Respondent did the best he could which is beyond remediation, and is clearly unsatisfactory warranting termination.

The Respondent

- At the time of the charges, Respondent had been employed by the DOE for eighteen years and this 3020-a proceeding concerns a single school year, 2012-2013. (T1065-1066)
- During school year 2012-2013, Dr. Allison Coviello was serving in her first assignment as a full-time Principal and she only had two full months of experience in the job when the school year started. (T1065-1066)
- Respondent had not been assigned or required to teach a literacy component in any of his teaching assignments for a number of years prior to 2012-2013; yet the DOE seeks a finding Respondent is no longer fit to teach based on a single year in a new assignment under a new Principal. (T1066)
- Principal Coviello was motivated to rid herself of Respondent from the outset of the school year and she failed to provide Respondent with any advanced notice about the

change to the job description for his selected teaching preference –“Character Education.”(T1066-1067)

- The change with the addition of a literacy component was significant and not telling Respondent about it until 48 hours before the first day of school was a bad faith move. (T1066-1067)
- Principal Coviello also set unrealistic, unreasonable and irrational expectations for Respondent by requiring him to adhere to the same literacy standards as classroom teachers despite the fact he was responsible for over 150 students for 2 periods a week; and by requiring him to adhere to the same requirements as classroom teachers regarding differentiation and classroom management even though he was responsible for more students with IEP’s than anyone else in the school and functioned without a Special Education Teacher or Assistant; and by requiring him to use the Level 2 card system even though it could not be realistically implemented for Respondents specialty assignment. (T1067-1068, 1398-1399, 1438-1439)
- The administrators at P.S. 154 improperly utilized the Danielson Framework for Teaching in rating Respondents pedagogy. (T1069, 1419-1422)
- The issues identified as deficiencies during the informal and formal observations changed over time without recognition of the improvement Respondent had regarding previously identified deficiencies and only criticism for new deficiencies. (T1411)
- Respondent cannot be held to account for the state of his classroom when school is not in session and no instruction is occurring. (T1423)
- Many of the criticisms Principal Coviello identified in observation reports were simply overly critical. (T1439)

- Respondent had not received the chancellors Regulation on smoking as of December 12, 2012 and in any event, he never smoked near the school property again after the incident. (T1450)
- The manner in which Principal Coviello conducted her investigation by questioning 5th grade students about why they were not in class (T988) makes their statements that they were kicked out of class unreliable and suspect. (T1450)
- The informal buddy system for discipline problems was practiced during the 2012-2013 school year by Respondent and gym teacher Ralph Lembo. (T1451-1454)
- The only specification for failure to submit lesson plans that was proven was Specification 8. (T1455)
- Respondent admits to using the name “Eva Braun” when having a discussion with Marion Gorman but he denies using the word “Nazi.” (T1458)
- Respondent did not derive any compensation when he did not attend the per session activity of scoring ELA tests and as a result discipline is not appropriate. (T1462-1463)
- Principal Coviello acted in a one-sided manner by simply crediting Ms. Baum’s version of events rather than Respondents concerning interactions between the two of them. (T1464-1475)
- Principal Coviello acted as an administrator who had one prerogative with Respect to Respondent; that is to collect evidence and get him fired. This approach is evidenced on each specification. (T1486)
- The DOE has not proven it provided Respondent with appropriate remediation during the school year, and administration did not provide professional development specifically geared towards Respondents improvement. For example, John Didrichsen was not

assigned to work with Respondent until May, 2013, yet he was available to the school in November, 2012. (T1487-1489)

- Principal Coviello never offered Respondent the opportunity to participate in PIP plus during the school year as an effort at remediation. (T1488-1490)
- Termination is certainly not appropriate on these facts. (T1490-1494)

DISCUSSION AND OPINION

The record in this case includes over fifty exhibits and the testimony of fourteen witnesses (1,500 plus pages of testimony) to assess the truth or falsity of the allegations made against the Respondent in the Specifications. (D1) As a result, credibility determinations are critical and will be discussed under each Specification. Finally, it was clearly in Respondent's self-interest to deny the charges in whole or in part because of his stake in the outcome. Additionally, Respondent has shown that he is willing to testify in slanted fashion when it suits him. Therefore Respondents testimony on points of contention have been weighed accordingly.

In making the necessary credibility determinations in this matter, the testimonies of relevant witnesses have been assessed taking into account a number of variables, including demeanor, the possible existence of bias or motive, the ability to perceive and recollect and the degree of consistency in witnesses' factual assertions. In this regard, this Hearing Officer has sifted through each witness's testimony, and the relevant exhibits, evaluated the same and reached the following determinations concerning the relevant findings of fact in this proceeding.

RELEVANT FINDINGS OF FACT

1. Since approximately 1994, Respondent worked for the NYCBOE as a Teacher holding a pre-kindergarten through grade 6 license, with authority to teach all subjects. (T1234, 1346)
2. Respondent began working at PS 154 in 2004. (T1235)
3. Towards the end of the 2011-2012 school year, and while assigned to PS 154 under the leadership of Dr. Alison Coviello, Respondent indicated his teaching preferences in writing for the 2012-2013 school year. (T858-860,1036-1041,1236-1239, R5)
4. Respondent indicated a preference for teaching the specialty of “Care, Collaborate, Lead and Act Responsibly” (CCLR) as described in a written job description. (T1238-1239, R5, D42A)
5. The position describing the Care, Collaborate, Lead and Act Responsibly (CCLR) teacher at the end of the 2011-2012 school year did not include an explicit “literacy” component. (T1239, D42A)
6. On August 24, 2012 Dr. Coviello crafted an e-mail message concerning revisions to the job description for Respondent, in order to clarify expectations, and stated in relevant part that “...I have revised Zucker’s job description (per the advice of Mike Agona) so that it is focused more on literacy. This way, Agona explained, we’ll have a surer chance of winning a case when our observations detail incompetence.” (T 525-526, 861-882, R4)
7. On September 4, 2012, Dr. Coviello presented Respondent with a revised job description for the “Character Education through Literacy Position” and Respondent signed an acknowledgement of receipt for the document. (T345-348, 525-526, 858-860,1240-1242, D42A, D42B)

8. On September 4, 2012, Dr. Coviello also offered Respondent the opportunity to teach a kindergarten class, a class Respondent had never taught before. (T1241-1242, 1363-1364)
9. On September 4, 2012, Respondent accepted the Character Education through Literacy position. (T527-530, 1241-1242, R11)
10. On September 4, 2012, Respondent also signed an acknowledgement of receipt for the PS154x school staff handbook (2012-2013 edition) and a USB jump drive that also contained the school staff handbook and Chancellors Regulations. Also included was a “weekly bulletin” for the week of September 6, 2012. (T896-910, 1036-1041, 1054-1055, D20A)
11. On September 4, 2012, Respondent attended a Power Point Professional Development presentation created by Dr. Coviello and given to all staff, which highlighted certain expectations for the school year. (T515, 564-570, D20C)
12. On September 5, 2012, Respondent acknowledged receipt of a classroom “Readiness Checklist” advising that classroom environments were to be completed as detailed in the handbook and checklist by the close of business on September 5, 2012. (T914-927, 1246-1253, D21A)
13. At the close of business on September 5, 2012, Respondent’s classroom environment did not conform to the expectations of school administration as set forth in the Staff Handbook. (T514, D20B) As observed by Dr. Coviello, Respondent’s class “...did not have a Level 2 card system; did not have a rich classroom library (there was one basket of books); was arranged in a teacher-centered rather than student – centered manner; had a television that was not set up in the back of the room; had a bulletin board with half-ripped contact paper on it; had one poster titled “Citizenship” that was from the previous

- school year and had a visible footprint on it; had a bulletin board with paper sticking out from the bottom of the border; had no meeting area; did not speak to character education or literacy at all; had an outdated poster titled “ Rules” that did not align with the P.S. 154 C.A. R.E.S. matrix and stated as a consequence to see “Mr. Townsend,” an assistant principal who has not worked at P.S. 154 since 2009; and had no word wall. (T514, 543-554, 1251-1252, D21A)
14. On September 6, 2012, school administration noted that at the close of business there were continuing deficiencies in Respondents classroom environment and note was left that Respondent needed to complete his outside bulletin board. (T542-554, 917- 927,1245-1252, D21A, D21B)
15. On September 7, 2012, at the close of business, certain classroom environment issues continued to be judged deficient by the administration; including a lack of noticeable response to administrations comments that the room did not speak to character education or literacy at all and that the hallway bulletin board was still bare. (T542-554, 917-927, 1245-1252, D21A, D21B)
16. On September 7, 2012, Respondent filed a grievance concerning the revisions to the Job description for the Character Education teacher position. (T1247, R11, D42A, D42B)
17. On September 10, 2012 Respondent signed an acknowledgement of receipt for a letter from Dr. Coviello entitled “Informal Observation: Classroom and Hallway Walkthrough”. The document recounted the state of the classroom from September 5th – 7th. (T543-554, 917-927, 937-941, 1263-1264, D21A, D21B) Respondent received an unsatisfactory rating on the observation/classroom and hallway walkthrough. (T1263-1264, D21A)

18. On September 12, 2012, Dr. Coviello met with Respondent and his Union Representative about a grievance filed on September 10, 2012, regarding the altered job description for the Character Education position. After the meeting, Dr. Coviello verbally denied the grievance and provided a written denial September 14, 2012. (T1247, R11, D42A, D42B)
19. The PS 154x Weekly Bulletin for September 24, 2012 explicitly mentioned that all classroom learning environments must be completed entirely by the close of business on September 28, 2012. (T1248-1250, R12)
20. On September 30, 2012, Dr. Coviello sent an e-mail message to Respondent detailing his new class schedule. (T891-896, 1253, R6)
21. On October 8, 2012, Dr. Coviello sent an e-mail message to Respondent requesting that he submit his unit frameworks and she pointed out that she has not received any from Respondent. Dr. Coviello set a deadline of October 15, 2012 for Respondent to provide the unit frameworks. (T1035-1036, D41A)
22. On October 10, 2012, Dr. Coviello and AP Cruz facilitated a professional development course for staff, which Respondent attended, on “Aligning Lessons in the Broader Context of a Unit.” (D23A p.17)
23. On October 12, 2012, AP Jiminez-Jailall conducted an informal observation of Respondent. AP Jiminez-Jailall noted that Respondents teacher/student interaction reflected care and respect. The AP also noted the lack of essential questions, the lack of a flow of the day teaching point, a deficient amount of student work displayed the bulletin boards including a lack of rubrics or actionable feedback. (T191-202, 231-240, 244- 251, 928-934, 1254-1257, D7)

24. On October 17, 2012, Dr. Coviello and AP Cruz conducted a professional development course for staff, which Respondent attended, on “Developing a Unit Framework” from 2:40 pm to 3:25 pm. (T515-516, D20D)
25. On October 24, 2012, Dr. Coviello and AP Cruz had a professional development course for staff, which Respondent attended, on “Developing a Performance Task.” (T516, D20E)
26. On November 6, 2012, Dr. Coviello oversaw a professional development course for staff, which Respondent attended, on “Planning Rigorous and Aligned Units of Study: Focus on Developing Performance Tasks, Part II.” (T657-658, D8, D23A p.17)
27. On November 7, 2012, Kristen Smith of the “Teachers College Reading and Writing Project” (TCRWP) facilitated a staff development lab site, which Respondent attended, on “Focusing on Writing and Workshop Model.” During the session the staff developer demonstrated how to model a particular strategy or teach a new concept, then use the active engagement portion of the workshop as an opportunity for children to practice the strategy or consider the new concept that was introduced during the model or teach portion of the lesson and how to establish a focus for conferencing with students.(T203-206, 658-659, D8, D23A p.17-18)
28. On November 8, 2012, AP Cruz conducted an informal observation of Respondent and issues a report thereon. AP Cruz noted that Respondent was using his cell phone in view of the students during class time while sitting at a table with students. AP Cruz also noted that the inside bulletin boards did not display current work; that the charts in the classroom were not positioned in a practical or productive manner; students did not have working folders or portfolios raising the question on how growth is measured; there was

- no student awareness of the unit of study; no explicit teaching by unit title/theme or essential question; no evidence of strategic planning or mini-lessons; no real purposeful student conversation or exchange evidenced. (T290-306, 367-372, 1258-1261, 1265, D13)
29. On November 9, 2012, Respondent acknowledged receipt of a written informal observation report concerning the observation conducted by AP Jimenez-Jailall on October 12, 2012. AP Jimenez-Jailall rated the observation Unsatisfactory. (T191-202, 231-240, 244- 251, 928-934, 1254-1257, D7)
30. On November 9, 2012, AP Jimenez-Jailall taught a professional development course for staff, which Respondent attended, on “Planning and Instructional Strategies One-to-One Meeting” (T656-658, D8)
31. On November 14, 2012 Respondent was instructed on how to use the Special Education Student Information System (SEGIS) and was advised in the November 13th Weekly that Students’ “Needs Assessments” (titled “Needs at a Glance”) are organized by class in the main office and accessible through Marilyn Rodriguez. The Weekly Bulletin noted that assessments are an invaluable resource to teachers trying to learn more about the students they service. (T313-318, 1317, D23A p.19-20)
32. On, November 15, 2012 AP Jimenez-Jailall took Respondent to the Teacher Resource Room where Respondent received Authentic Children’s Literature for use in planning Units of Study. (T206, 259-260, 1261-1262, D8) In an e-mail message dated November 16, 2012, AP Jimenez-Jailall confirmed that he provided a copy of the book “Children’s Literature Briefly” and an electronic address link to possible materials for December’s theme on “self-discipline,” and a copy of “Fly Away Home.” (T260-262, D8) AP

Jimenez-Jailall also wrote that he provided some chapter books related to sports which speak to self-discipline. (D8)

33. On November 19, 2012, Dr. Coviello signed a letter to Respondent entitled “2012-2013 Action Plan for Instructional Improvement”. Dr. Coviello advised that the letter was intended to improve the quality of instruction Respondent provides to students and was in response to three unsatisfactory ratings of 9/10, 10/12 and 11/8. The delivery of support will be provided by conferences with Principals and Assistant Principals; both formal, informal and walk-through observations; workshops in or outside school; printed or internet based reading materials; intervisitations; demonstration lessons and the collection of lesson plans. Dr. Coviello identified the pedagogical deficiencies as 1. Instruction, 2. Classroom management and 3. Lesson Planning. The plan also provided for a “Log of Assistance” to be given to Respondent each month. (T554-559, 935- 938, 1263, D22)
34. On November 20, 2012, AP Jimenez-Jailall wrote to Respondent advising that he forgot to take the book “Children’s Literature, Briefly.”(D8)
35. On November 21, 2012, Kristen Smith of the TCRWP conducted a staff development lab site, which Respondent attended, on “Focusing on reading and workshop model.” The course was similar to the one offered November 7th however the focus at this time was reading. (T658-660, D8, D23A p.17-18)
36. On November 21, 2012, and November 28, 2012, Dr. Coviello conducted a professional development course for staff, which Respondent attended, on “Considering the Evidence of Standards Mastery We Expect To See in Performance Tasks; Using This Evidence to Identify Key Teaching Points: Part I & II.” During the sessions, staff, including Respondent, engaged in the third phase of backwards planning, including laying out

specific teaching points, mapping them out in order for teachers to plan exactly how they would get students to the understandings or the standards they are expected to meet at the end. (T659-660, D8, D23A p.17-18)

37. On December 4, 2012 Dr. Coviello issued a letter to Respondent containing a “Log of Assistance” detailing the specific dates and areas of support provided Respondent during the month of November 2012. Respondent signed an acknowledgement by each entry. (T203, 657-661, D8)
38. On December 4, 2012 Dr. Coviello and Respondent met for a first Pre-Observation Conference in anticipation of a December 6, 2012 formal observation. A discussion was had concerning the planned lesson for the formal observation. After reviewing the lesson plan it was agreed that another pre-observation conference would be held. (T573- 611, 949- 965, 1267-1269, 1348, D23A, D23B, D23C)
39. On December 5, 2012 Dr. Coviello and Respondent met for a second Pre-Observation Conference in anticipation of a December 6, 2012 formal observation. A discussion was had as Respondent had revised the planned lesson on “self-control” for the formal observation. Dr. Coviello made suggestions and advised Respondent of the aspects of teaching she would be looking for. Respondent provided Dr. Coviello with a copy of his revised lesson plan complete with notations. (T573- 611, 949- 965, 1267, 1348, D23A, D23B, D23C)
40. On December 6, 2012, Principal Coviello formally observed Respondent. In her feedback, she noted that she did not understand how Respondent’s lesson fit into the context of the whole unit; there was no linking of the teaching point to objectives and standards; there was not enough active engagement; there was not enough independent

work by students; there was not enough individual conferencing with students; there was also a lack of keeping conference notes, using the share portion of the lesson properly, appropriate differentiation, integration of authentic texts into the lesson or appropriate classroom management. (T573- 611, 949- 965, 1269-1274, D23A, D23B, D23C)

41. On December 9, 2012, Dr. Coviello sent the Respondent an e-mail message requesting a unit framework for his 4th grade unit on “self-control” and sets a new deadline of December 11th as the old deadline of November 30th had passed (T1035-1036, D41B)
42. The Weekly Staff Bulletin for the week of December 10, 2012 – December 14, 2012, indicates that by December 19th, all specialty teachers and service providers should have their bulletin boards updated. (T968-969, 1279-1282, D25D)
43. On December 10, 2012, Kristen Smith of the TCRWP presented a demonstration lesson, which Respondent attended, in a 5th grade literacy classroom: “Focusing on Reading and the Workshop Model.” (T661, 967, D9)
44. On December 11, 2012, Dr. Coviello oversees a workshop, which Respondent attends, on “How to Align Conference Notes with Unit Standards and Objectives”, (T661-664, 967, D9)
45. On December 12, 2012, custodians hung string in Respondents classroom so student work could be displayed. The direction to hang the string came from AP Jimenez-Jailall.(T207, D9)
46. On December 12, 2012, at approximately 2:40 p.m., Dr. Coviello observes Respondent smoking on the sidewalk next to the school parking lot which is on the block surrounding the school and school yard. (T611-614, 966-967, 1276-1278, 1348-1349, 1356-1357, D24)

47. The Weekly Staff Bulletin for the week of December 17, 2012 – December 21, 2012, indicates that by the close of business on December 19th, all outside bulletin boards updates are due. (T968-969, 617, 1279-1282, D25C)
48. On December 18, 2012 Dr. Coviello and Respondent met to discuss the December 12, 2012 incident wherein Respondent was smoking on a sidewalk that is considered school property. Dr. Coviello conceded to Respondent that while he was on the outside of the fence adjacent to school property and not in the parking lot, that sidewalk is still considered school property within the meaning of smoking prohibition rules. Dr. Coviello advised Respondent that crossing the street to smoke would not be considered smoking on school property. (T611-615, 966-967, 1276-1278, 1348-1349, 1356-1357, D24)
49. On December 19, 2012, Dr. Coviello facilitates a topical discussion, which Respondent attends, on “Looking at student work on performance tasks, understanding how to align feedback to students with standards, using data from student conferences to drive instruction.” (T664, 968, D9)
50. On December 21, 2012, Respondent received a copy of Dr. Coviello’s written formal observation report for her December 6th observation of Respondents teaching a lesson on “self-control”. Respondent signed an acknowledgement of receipt under protest. Dr. Coviello rated Respondents teaching performance on that lesson as “Unsatisfactory”. (T573- 611, 949- 966, 1267, 1269-1274, D23A, D23B, D23C)
51. On December 30, 2012, Dr. Coviello sent an e-mail message to AP Jimenez-Jailall asking whether he could lead a session on developing “next unit frameworks.” In the e-mail she asks that special attention be given to Respondent and she also notes that not much has

been done on sequencing a learning plan for the unit to align with goals and objectives.

AP Jimenez-Jailall responds yes to the e-mail on January 1, 2013. (T991-994, R7)

52. On January 2, 2013, Dr. Coviello issued a letter to Respondent containing a “Log of Assistance” detailing the specific dates and areas of support provided to Respondent during the month of December, 2012. Respondent signed an acknowledgement by each entry. (T661- 664, D9)
53. On January 2, 2013, AP Jimenez-Jailall held a support session, which Respondent attended, on “Support Developing Unit Frameworks and Lesson Plans.” (T209, 263-264, D10)
54. On January 4, 2013 Dr. Coviello and Respondent discussed Respondent’s incomplete hallway bulletin board. Respondent initially told her “there was no paper up,” when after he was corrected by Dr. Coviello and admitted he just “messed up.” (T615-624, 1278-1285, 1349-1353, D25A, 25B)
55. On January 4, 2013, Respondent signed an acknowledgement of receipt for a letter from AP Jimenez-Jailall regarding 300 folders for storing daily written student work that had been provided to Respondent. (T213-214, 256-258, 1257, D11)
56. On January 7, 2013, Angela Baez of the TCRWP facilitated a teacher support session, which Respondent attended, consisting of a “Demonstration lesson in 2nd grade literacy classroom: Focus on the Workshop Model.”(T665, D10)
57. On January 8, 2013, Respondent refused to sign an acknowledgement of receipt for a document entitled “Bulletin Board Checklist: Mr. Zucker (January 8, 2013)”. The refusal to sign was noted by Linda Bobbitt. In the written bulletin board review, Dr. Coviello

- found deficiencies across an array of components on the pre-printed rating form. (T631-640, 969-975, 1282-1290, 16A, D31C)
58. On January 14, 2013 Dr. Coviello, Respondent and his Union Representative Denise Green met to discuss the incomplete bulletin board issue. (T615-624, 970-971, 1278-1285, D25A, D25B)
59. On January 15, 2013, Dr. Coviello held a teacher support session, which Respondent attended, on “Review of mid-year instructional foci.” (T665-666, 994-995, D10)
60. On January 16, 2013, AP Jimenez-Jailall conducted a teacher support session, which Respondent attends, on “ST Math planning Guidance.” (T994-995, 1264-1266, D10)
61. On January 17, 2013, AP Jimenez-Jailall conducted an informal observation of Respondent and rated his teaching performance on that lesson as unsatisfactory. AP Jimenez-Jailall noted that during his observation limited student work was displayed during his observation and that none of the student work had a rubric or actionable feedback; folders that had been previously provided for storing student work were unorganized and were strewn on the floor and a table; no visible work was displayed on the cords hung for that purpose; no evidence portfolio folders were being properly used or that work was being archived. AP Jimenez-Jailall set a deadline for compliance/correction of February 1, 2013. (T215-223, 266-277, 1290-1294, D12)
62. On January 23, 2013, Dr. Coviello held a Teacher Support Session, which Respondent attended, on “Lesson Planning and Instructional Support” with guidance in (a) developing specific teaching points, (b) planning for effective modeling of strategies, (c) planning around larger, long-term products, (d) utilizing the independent work time to

differentiate instruction for struggling students and € using the share portion of the lesson to return to and highlight the lessons teaching point. (T665-666, D10)

63. On January 23, 2013, Dr. Coviello met with Respondent to review submitted lesson plans and to discuss how to improve the plans and ultimately the level of instruction. Among the items discussed was the professional development session, which the Respondent attended, wherein the TCRWP Staff Developer conducted a re-teach in a small group during independent worktime during a lab site in Ms. Fernandez's room. (T652-657, D26)
64. On January 25, 2013, AP Cruz reported to Respondent that several students were missing from his classroom. (T641-650, 986-990, 1096-1099, 1303-1306, D17, D17A)
65. On January 27, 2013, Dr. Coviello sent an e-mail message to Respondent summarizing their January 23, 2013 meeting. (T652-657, D26)
66. On January 28, 2013, Respondent signed an acknowledgement of receipt for the informal observation report issued by AP Jimenez-Jailall about his January 17, 2013 informal observation of Respondent. (T215-223, 266-277, 1290-1294, D12)
67. On January 30, 2013, Dr. Coviello met with Respondent and his union representative Denise Green to discuss his failure to make changes to his bulletin board as directed on January 8, 2013 when the deadline was set at the close of business January 22, 2013. At the meeting Respondent claimed he did not remember signing for the bulletin board feedback, that he did not read the feedback all the way through and that the written feedback was demeaning and unprofessional (T982-984, 1278-1285, D16, D16A)
68. On January 30, 2013, Dr. Coviello met with Respondent and his union representative Denise Green to discuss Respondents failure to follow classroom management protocols

and the incident of January 25, 2013 wherein 4th grade students were not in Respondents class as they should have been. At the meeting Respondent signed a non-retaliation agreement and denied what each student claimed had transpired between him and them. (T641-651, 984-990, 1303-1306, D17, D17A)

69. On January 31, 2013, at 8:20 a.m., Dr. Coviello, in response to Respondents request, held a second meeting with Respondent and his union representative Denise Green to discuss Respondents failure to follow classroom management protocols and to further discuss the incident of January 25, 2013 wherein 4th grade students were not in Respondents class as they should have been. At this meeting Respondent told Dr. Coviello that “All I said to A was ‘You could come in. I’m not gonna drag you to come in. I’m not gonna force you to come in. A was walking around in a figure eight. We know how A behaves. He didn’t want to come in.’” When asked about the other three students who were out of the classroom, Respondent told Dr. Coviello, “It’s fabrication.” (T641-651, 984-990, 1303-1306, D17, D17A)

70. On February 8, 2013, Kristen Smith of the TCRWP conducted and Respondent attended a literacy demonstration lesson and planning session, that was primarily for the benefit of third grade teachers, in a third grade classroom. (T666-667, 1004-1005, D27)

71. On February 11, 2013, Dr. Coviello issued a letter to Respondent containing a “Log of Assistance” detailing the specific dates and areas of support provided Respondent during the month of January, 2013. Respondent signed an acknowledgement by each entry. (T208-209, 990-995, D10)

72. On February 12, 2013, Respondent acknowledged receipt of an article from Dr. Coviello which was provided in response to conversations about his work with children who are

behavioral problems in his class. The article was titled “Individual Written Agreements: When a Child Needs Extra Support.” Dr. Coviello directed Respondent’s attention to page 10 of the article. (T667-669, 997-1000, D28)

73. On February 13, 2013, Zuleika Maldonado, a third grade teacher, facilitated a professional development session on the subjects, “Guidance and Advisement on 3rd-5th grade 2013 literacy assessments. Discussion of rubrics used to assess student writing facilitated.” (T667, 1005-1006, D27)
74. On February 15, 2013, Respondent acknowledged receipt of a Bulletin Board Feedback Form for his February Bulletin Boards from Dr. Coviello. (T710-711, 972-975, D31E)
75. On February 15, 2013, Dr. Coviello conducted an informal observation of Respondent and gave an overall rating of “unsatisfactory.” In the comment section of the observation report, Principal Coviello noted the Respondent’s lack of organization regarding classroom library books; the lack of evidence of student goal setting or teacher/student conferencing; general disorganization and a lack of supplies; poor appearance on bulletin boards; and no evidence of support for struggling learners. (T671-678, 1003-1004, 1294-1297, D29, D29A)
76. On February 15, 2013, Kristen Smith of the TCRWP facilitated a professional development session that includes a demonstration lesson on the topic “Literacy Demonstration in a 3rd Grade Classroom and Planning Session.” (T667, 1006, D27)
77. On February 17, 2013, Respondent sent an e-mail message to Dr. Coviello concerning “My Observation.” Respondent writes of “... several questions and concerns that have been on his mind for some time.” (T679, 684-706, D30A)

78. On February 17, 2013, Dr. Coviello sent an e-mail message to AP Cruz and AP Jimenez-Jailall attaching an updated "Formal and Informal Observation" schedule. The e-mail contained a sentence that stated in part that "...I've had to give two informals in a similar grade so it doesn't appear that we are targeting any one person." (T996-998, R8)
79. On February 20, 2013 Weekly Staff Bulletin provided that "...the next round of hallway bulletin boards will be due on March 8th for the entire school. Every teacher should complete one bulletin board with published work from their most recent unit of study." (T710-712, 716-718, D31G)
80. On February 21, 2013, Dr. Coviello reissued and replaced a letter, which had been sent on 12/18/12, and re-dated 2/20/13, regarding a smoking incident that occurred next to the school parking lot in violation of the School Staff Handbook and Chancellors Regulation C-810. The letter is signed by Respondent and acknowledged his comments that he was not in the school parking lot but was on the other side of the fence that surrounds the parking lot. Dr. Coviello acknowledged that crossing the street was acceptable. (T611-615, 966-967, 1276-1278, 1348-1349, 1356-1357, D24)
81. On February 21, 2013, Dr. Coviello reissued and replaced a letter, which was previously dated 1/7/13 and which Respondent previously signed on 1/14/13. The letter addressed Respondent's failure to complete his hallway bulletin boards by the close of business on January 4, 2013 in contravention of a 12/10/12 weekly announcement that contained a directive to complete the bulletin board updates by 12/19/12, as well as a directive in a 12/17/12 weekly announcement and an e-mail message from her on 12/19/12. (T619-624, D25A, D5B)

82. On February 21, 2013, Respondent signed an acknowledgement of receipt for a letter for from Dr. Coviello dated 2/20/13 concerning an incident on January 25, 2013 when 4th-5th grade students were absent from Respondents class. (T641-650,986-990, 1096-1099, 1303-1306, D17, D17A)
83. On February 21, 2013, Dr. Coviello and Respondent met for a first scheduled pre-observation conference in anticipation of a formal observation to take place on February 22, 2013. During the meeting, Respondent questioned his amended letters to file and accused Dr. Coviello of getting back at him. Respondent's plans for the observed lesson were also discussed. In response Respondent told Dr. Coviello that he had no questions because she was going to rate him "U" anyway. Respondent also asked about a demo lesson. (T678-706, 1006-1009, 1306-1312, 1348, D30)
84. On February 27, 2013, Dr. Coviello sent an e-mail message to Respondent advising him that the previously scheduled formal observation will now take place on March 5, 2013 and that the pre-observation conference was now scheduled for February 28, 2013. Respondent was absent on the prior formal observation date of February 22, 2013. (T679-680, D30B)
85. On February 28, 2013, Dr. Coviello provided Respondent with her written report for the informal observation of Respondents teaching on February 15, 2013. Respondent signed an acknowledgement of receipt under protest. Dr. Coviello also provided Respondent with a book titled "Smarter Charts K-2: Optimizing an Instructional Staple to Create Independent Readers and Writers." Respondent also sent an e-mail message to Dr. Coviello (D29A) contesting some points, seeking clarifications on others raising additional issues. (T670-678, 1003-1004, D29, D29A)

86. On February 28, 2013, a second pre-observation conference was held between Dr. Coviello and Respondent. During the meeting, Respondent claimed he did not have enough time to write a lesson plan for the observation. Dr. Coviello provided Respondent with the opportunity to provide her with the lesson plan by March 2, 2013. Respondent sent a lesson plan to Dr. Coviello who provided comments and feedback. Respondent requested another meeting prior to the observation and Dr. Coviello agreed to meet on the morning of the observation, March 5, 2013. (T678-706, 1006-1011, 1306-1312, 1348, D30)
87. On March 1, 2013, Dr. Coviello and Respondent met to discuss his e-mail message of February 28, 2013. (T670-678, D29, D29A)
88. On March 2, 2013, Dr. Coviello and Respondent met for a third pre-observation meeting at Respondents request. Respondent told Principal Coviello "... You hold me to different standards than others. You target me. You don't give me the support I need." Respondent also told Dr. Coviello he did not want to discuss his upcoming observation. (T681-706, 1011-1013, 1348, D30, D30A-J)
89. On March 3, 2013, Dr. Coviello sent Respondent an e-mail message and attaches the lesson plan that Respondent sent her the night before and includes her feedback and questions to consider. (T680-706, D30D)
90. On March 4, 2013, Dr. Coviello sent Respondent an e-mail message expressing confusion over how the planned lesson links at all to a personal narrative unit. Dr. Coviello wrote the following questions for Respondent's consideration: "What are the purposes of this unit?"; "What are the purposes of this lesson?"; "What do you aim for students to understand, know, be able to do?"; "Do these aims align with grade level

standards?"; "How will you know if you've achieved your objectives?" (T681-706, D30F)

91. On March 5, 2013, Dr. Coviello formally observed Respondent teaching class 5-336 at 10:35 a.m. (T681-706,1006, 1011-1017, 1306-1312, D30, D30A-I) (x-reference with April 4, 2013 herein)
92. On March 11, 2013, Dr. Coviello issued a letter to Respondent containing a "Log of Assistance" detailing the specific dates and areas of support provided Respondent during the month of February, 2013. Respondent signed an acknowledgement by each entry. (T666-667, D27)
93. On March 20, 2013, Dr. Coviello met with Respondent and his union representative to discuss deficient Bulletin Boards. (T706-728,1286-1290, D31, D31A, D31B)
94. On March 20, 2013, Respondent made a written acknowledgement of receipt for written feedback provided to him by Dr. Coviello on a document entitled "March Bulletin Board Guide: Mr. Zucker – Feedback given by Dr. Coviello". (T706-728, 1286-1290, D31A, D31B)
95. On March 22, 2013, Respondent acknowledged receipt of Principal Coviello's letter concerning their March 20, 2013 meeting about Respondent's failure to improve his Bulletin Board and show improvement in that area since January, 2013. (T706-728, 1286-1290, D31, D31A, D31B)
96. On April 3, 2013, Angela Baez of the TCRWP facilitated a Literacy Demonstration Lesson, which Respondent attended, in a second grade classroom, including a planning/debrief session and a "Character Education through Literacy" demonstration in

Respondent's classroom with a debrief session facilitated by Dr. Coviello. (T736, 1017, 1312, 1341-1343, D33)

97. On April 4, 2013, Dr. Coviello sent an e-mail message to Respondent summarizing the meeting they held April 3, 2013, to debrief the demonstration lesson conducted in Respondents classroom by Ms. Baez of the TCRWP. She recounted the discussion at the debrief that included explicitly modeling and reinforcing key literacy teaching points; the integration of a character education theme with a genre based literacy unit of study; the identification of some appropriate text for the conflict resolution unit of study and ways to obtain such texts; and the necessity and ability of kindergarten students to edit and revise. Respondent signed an acknowledgement of receipt for a printed version of the e-mail message. (T731-734, 1312, D32)
98. On April 4, 2013, Dr. Coviello signed her Formal Observation Report for her March 5, 2013 observation of Respondent's teaching. Dr. Coviello noted and commented upon the following: continuing problems with correct spelling and grammar; a failure to explicitly model the use of vocabulary; the lack of clear, explicitly defined or well developed teaching points; the lack of use of the standard conferencing template, the lack of skill or strategy modeling during active engagement; the need for better planning for independent work time; the need for lessons to build upon each other for cohesive units of study and the need to highlight the days teaching point. (T 681-706, D30, D30 A-J) Dr. Coviello and Respondent also held a post observation conference during which Respondent asserted that he did not have his reflection form. Dr. Coviello provided him with the opportunity to go through the bullet points in the report with her. Ongoing and continued support was discussed at the conference including one or more demonstration lessons in

Respondents classroom; TCRWP lab site and debrief sessions, an intervisitations, lesson plan and unit development support, and review of lesson plans. It was also agreed that Respondent is to submit lesson plans via e-mail to Dr. Coviello for review for one grade per week by the close of business every Friday. Dr. Coviello rated Respondent's teaching performance during the observation "Unsatisfactory." (T681-706, 1006, 1011-1017, 1036-1312, D30, D30A-J)

99. On April 5, 2013, Respondent signed an acknowledgement of receipt for Dr. Coviello's informal observation that took place on March 5, 2013. Respondent signed under protest and wrote "...Major portions of transcript were omitted and fabricated. Full rebuttal to come..." (T681-706, 1006, 1011-1017, 1306-1312, D30)
100. On April 6, 2013 Dr. Coviello sent an e-mail message to Respondent reminding him to send in lesson plans for review and feedback as part of his development. (T739-747, 1311, 1318-1319, D34A)
101. Between the weeks of April 8 – April 29, 2013, Dr. Coviello provided lesson plan feedback to Respondent.(T737-738, D33)
102. Between April 9-10, 2013, Dr. Coviello and Respondent exchanged e-mail messages about an attached lesson plan sent by Respondent and which caused Dr. Coviello to ask "Did you mean to attach these?" (T739-747, 1317-1319, D34B, D34C)
103. On April 12, 2013, AP Cruz conducted an informal observation of Respondent's teaching a second grade class. AP Cruz noted and commented upon the following observations: Respondent incorrectly uses the behavior management system – he was observed going straight to consequences without providing warnings which has a counter-productive effect on student behavior; there was no aim/objective/or teaching point on the board; Respondent

failed to produce a lesson plan; there was no evidence of differentiation for students; there was no evidence of intentional and meaningful instruction – no targeted instruction towards developing a conceptual understanding of how character is built, impacted or changed while developing reading, writing and communication skills. (T306, 375-394, 1313-1319, D14, D34A D35)

104. On April 15, 2013, Dr. Coviello met with Respondent and his union representative to discuss Respondents failure to send in lesson plans for review as discussed on March 5, 2013 and April 4, 2013. Dr. Coviello reiterates that lesson plan review was part of the support system implemented to help improve Respondent’s level of instruction. (T738-751, 1313, 1317-1319, D34, D34A, D35)

105. On April 17, 2013, Respondent refused to sign an acknowledgment of his receipt of an Informal Observation Report issued by AP Cruz detailing her April 12, 2013 observations. Janet Brissett and AP Cruz signed as witnesses to Respondents refusal to acknowledge receipt. (T306, 375-394, 1313-1319, D14, D34A D35)

106. On April 18, 2013, Dr. Coviello issued a letter to Respondent concerning his lack of lesson plans on April 12th during AP Cruz’s Informal Observation. The letter mentions that Respondent handed AP Cruz excerpt #30 from his Wise Words character Education program and how he stated at a meeting on April 15th that he thought the excerpt was a lesson plan. (T747-751, 1262-1263, 1347-1348, 1317-1319, D35)

107. In April of the 2012-2013 school year, Respondent requested that he be assigned to per-session work, applying online through the Department of education website. The work involved scoring English Language Arts (ELA) and math tests. (T40-41, 82, 1321-1322)

108. Per session work is an afterschool activity whereby participants including teachers, are paid an hourly rate for working the activity (T42); and his assigned hours were 4 p.m. to 8 p.m. (T1322)
109. Principal Claudia Macek served as the site supervisor for the activity which involved close to 200 teachers serving as test scorers for ELA and math tests for a period of about 2-3 weeks, dependent what a teacher's selection. (T40-42, 74-76) The ELA and math test scores impact a student's promotion and placement for the upcoming school year. (T71-72, 1321-1325)
110. Principal Macek became aware of Respondent after complaints by other scorers sharing his table were brought to her attention; and the attendance supervisor for the activity told her about him. (T42-43)
111. On April 20, 2013, which was the first day of the per session activity, Respondent was absent and missed the training. Principal Macek later learned the absence was for a religious observance. (T57-58, 1321-1325, D4)
112. On April 22, 2013, Respondent arrived on time at 4p.m. for the per session activity. (T58-59, 1321-1325, D4)
113. On April 23, 2013, Respondent was absent from the per session activity. (T59, D4)
114. On April 24, 2013 while working at PS 154X, Respondent told a student that the student could not come into his character education through literacy class because "...He (the student) never keeps his promises to behave." (T424-437, 1321-1325, D5, D5B)
115. On April 24, 2013, Respondent arrived late to the per session activity at 4:16 p.m. and left early at 6:55p.m. (T59, D4)

116. On April 25, 2013, Respondent arrived late to the per session activity at 4:27 p.m. (T59, D4) Assistant Principal Mary Ann Gorman spoke with Respondent about missing sessions, being absent, having soda on the table when about to score tests. AP Gorman also told Respondent he is often out of his seat, leaving the room (T60, 87-89), or talking to others who are trying to work. (T95-96). Principal Macek further told Respondent that he was repeatedly breaking rules and that such information could lead to a “U” rating. (1321-1325, D4) Respondent told AP Gorman he had a medical condition. (T84)
117. On April 25, 2013, after Respondent arrived late for work at the per session activity and was told by AP Gorman to put his signature next to his name on the attendance sheet, Respondent replied that he already spoke to “that Nazi,” and “who does she think she is?”, pointing to Principal Macek. (T83-84) Respondent then asked AP Gorman what Principal Macek’s problem was and AP Gorman replied the lateness and early departures. Respondent then began yelling “Well I feel I’m being abused,” and after AP Gorman requested that he stop yelling (T85) he threw a doctor’s note at AP Gorman. (T84-85, D4) AP Gorman told Respondent to take the note back as they did not collect doctors’ notes at the activity. (T86, 91-92)
118. On April 25, 2013, AP Gorman maintained a log of Respondents comings and goings at the per session activity after the initial encounter that day (T85-86, D4). AP Gorman recorded that Respondent did not perform any work for 32 minutes after being spoken to; his table mates accused him of making a Broom Hilda comment in reference to a supervisor (T54); he did not ask for permission to go eat; tests he scored were read behind by two content trainers and of the 22 tests he scored he made errors on 8 or 36% and his scores had to be corrected.(T55-56, 59-60, 67-68, 70, 72-74, 1321-1325, D4)

119. On April 27, 2013, Respondent was absent from the per session activity. (D4)
120. On April 29, 2013, Respondent was absent from the per session activity. (D4)
121. On April 30, 2013, Principal Macek and Respondents Union Chapter Leader Denise Green convened for a meeting to discuss Principal Macek's observations of Respondents professional misconduct. Respondent did not attend meeting and did not return to test scoring. (T94, 1325, D4) Principal Macek also prepared a letter bearing this date and presented it to Respondent on May 2, 2013, however Respondent refused to sign an acknowledgement of receipt at that time. (D4)
122. On May 1, 2013, Dr. Coviello facilitated a support session, which Respondent attended, entitled "Introduction to Teacher Effectiveness Work" (T759-760,1017-1018, D37)
123. On May 2, 2013, Principal Macek, site supervisor for the per session activity, issued a letter to Respondent advising him that because he did not attend a disciplinary meeting originally scheduled for April 29, 2013, she rescheduled the meeting. Respondent signed an acknowledgement of receipt for the letter. (T45-50, 1325, D4)
124. On May 7, 2013, Dr. Coviello met with Respondent and his Union Representative to discuss Respondents failure to improve the quality of his May bulletin board despite previously provided feedback in January, February and March, including warning in January and a disciplinary letter in March. Dr. Coviello agreed to allow Respondent to do his bulletin board by May 13, 2013. (T752-757, D36)
125. On May 13, 2013, Dr. Coviello issued a letter to Respondent containing a "Log of Assistance" detailing the specific dates and areas of support provided Respondent during the month of April, 2013. Respondent signed an acknowledgement by each entry. (T734, D33)

126. On May 13, 2013, Respondent signed an acknowledgement of receipt for a letter dated May 6, 2013 from Principal Claudia Macek, Site Supervisor, for the per session activity of test scoring. The letter reiterates the problems Respondent and Principal Macek previously discussed on April 25, 2013, and problems that arose afterward during the per session activity. (D4)
127. On May 15, 2013, teacher Jennifer Baum characterized Respondents actions towards her as angry, aggressive and nasty after Jennifer Baum denied his request that she cover his class so he could go downstairs. When Jennifer Baum walked away Respondent loudly asked a colleague “Can you believe this one?” (T762-767, 803-804, 1028-1030, D18, D39)
128. On May 16, 2013, Respondent was not at his post to teach class 3-330 at the appropriate time and place. Respondent began the class 25 minutes late and told the school secretary he “made a mistake” and “I am going now.” The absence from post caused Ms. Baum to miss her prep time. (T411-141, 761-767, 803-804, 834, 1326-1329, D18, D18A, D39)
129. On May 16, 2013, John Didrichsen, CFN of Maverick Education Partnership observed Respondent teach a lesson and provided “snapshot” observation feedback. (439-474, 1018-1020, 1338-1340, D19A, D19B, D19C) John Didrichsen provided suggestions for Respondent to consider including advice to post sentence starters and vocabulary for students as tools; that if the lesson keeps moving there will be fewer behavior issues; that Respondent needed to get to the independent work portion of the lesson faster and leave more time to share at the end; and that Respondent needed to follow through with what he says he will do regarding discipline.(T439-474, 1018-1020, 1338-1340, D19A, D19B, D37)

130. Dr. Coviello provided professional support to Respondent during the weeks of May 6th, May 13th, and May 20th with lesson plan feedback. (T758-759, D37)
131. On May 20, 2013, teacher Jennifer Baum characterized Respondent's actions towards her in the computer room as inappropriate and unacceptable. Jennifer Baum wrote that Respondent came into the computer room yelling at her to try and communicate with her. (T762-767, 803-804)
132. On May 22, 2013, AP Cruz facilitated a support session, which Respondent attended, entitled "Teacher Effectiveness Part II" (T759-760, 1017-1018, D37)
133. On May 29, 2013 Respondent signed an acknowledgement of receipt of a letter from Dr. Coviello on bulletin boards and Respondent's failure to improve from January to May in the areas of: (a) student process work; (b) using the appropriate rubric; (c) giving standards-based, actionable feedback to students; (d) having students self and/or peer assess; and (d) ensuring student work meets the grade-level standard that you post. (T753-757, D36)
134. On May 30, 2013, following Respondent's absence on May 29, 2013, Dr. Coviello met with Respondent to have a pre-observation conference to discuss the formal observation scheduled for June 5, 2013. (T1020-1022, D38)
135. On June 2, 2013, John Didrichsen sent an e-mail message to Respondent entitled "Observation and Follow-up." John Didrichsen advised Respondent that he would come in again on June 11, 2013. (T833, D19C)
136. On June 5, 2013, Dr. Coviello conducted a formal observation of Respondent's teaching that was originally scheduled for May 29, 2013 but cancelled due to Respondent's illness.

Dr. Coviello observed Respondent teach a lesson on bullying. Dr. Coviello rated the teaching she observed as unsatisfactory. (T808-827, D38)

137. On June 10, 2013 Respondent was not in class 2-236 as assigned, and had left his assigned post while instructing students, in order to pick up food. (T1030-1031, 1329-1331, D18)

138. On June 11, 2013, Dr. Coviello met with Respondent and his union representative for a post observation conference for the June 5, 2013 formal observation. When Dr. Coviello asked Respondent if he would like to discuss the feedback Respondent replied that he was just looking for the unsatisfactory rating. Respondent asked Dr. Coviello if she planned to rate him "U" for the school year and commented that he did not like being set-up. (T808-827, 1022-1023, D38)

139. On June 14, 2013 at about 1:30 p.m. Respondent sent a note to Ms. Milliron asking her to place about 5 named students in other classes for the duration of Respondent's Character Education class that runs between 1:50 p.m. and 2:35 p.m. Respondent met the class in the hallway and addressed the five students in elevated voice telling them where they were going to go instead of his class. Some of the students were brought to Dr. Coviello. Respondent called 911 and Dr. Coviello went to respondent's classroom, saw Respondent in the doorway as he yelled at her while students were sitting in his classroom that "...I told my wife that if I go into cardiac arrest, it is your fault." (T110-118, 323-331, 805-806, 1031-1032, 1136-1137, 1332-1337, D5A, D5C, D15, D39)

140. On June 17, 2013 AP Cruz writes a letter to Dr. Coviello detailing her observations of and involvement in certain activities that transpired on Friday June 14, 2013. The letter ends with AP Cruz requesting a meeting because of statements Respondent made in front

of students that continued to ignite their anger including his statement to the students to “do whatever they wanted” in the classroom as being a clear and present danger. The letter describes the Respondent calling EMS and refusing her (AP Cruz’) help. (T323-331, D15)

141. On June 17, 2013, Respondent signed an acknowledgement of receipt for Dr. Coviello’s formal observation report concerning her June 5, 2013 observation. Respondent included the following comment below his signature: “How can I succeed when it’s already been pre-determined by Dr. Coviello that ...incompetent? How can I succeed with a lack of support?” (T811-812, 827, D38)

142. On June 17, 2013, Dr. Coviello issued a letter to Respondent containing a “Log of Assistance” detailing the specific dates and areas of support provided Respondent during the month of June, 2013. Respondent signed an acknowledgement by each entry. (T 831, 1025, D40)

143. On June 18, 2013, Dr. Coviello held a met with Respondent and his Union Representative to discuss Respondent’s failures to be at his assigned posts on May 16, 2013 and June 10, 2013. (T802-808, D18) The same parties discussed the safety of and academic productiveness of Respondent’s classroom. (T782-799, D5) The same parties also discussed Respondent’s interaction with other staff members in light of incidents on May 17, May 20 and June 14 involving Ms. Baum. Respondent did not respond to the recitation of incidents. (T323-331, 782-799, 807, 1326-1337, D39)

144. On June 21, 2013, Respondent signed an acknowledgment of receipt for a letter from Dr. Coviello concerning the incidents of May 16, 2013 wherein Respondent was 25 minutes

late in arriving to start teaching class 3-330 and June 10, 2013 when Respondent was not at his teaching post at the appropriate time for class 2-236. (T802-808, D18, D39)

145. On June 21, 2013, Dr. Coviello issued a letter to Respondent concerning the matters discussed on June 18, 2013. Dr. Coviello concluded that Respondent engaged in conduct unbecoming of a professional, failed to show respectful and professional behavior, modeled inappropriate conduct in front of students, and failed to maintain appropriate student-teacher boundaries. Respondent acknowledged receipt of the letter. (T323-331, 782-799, 1028-1030, D39)

**CONSIDERATION OF THE SPECIFIC ALLEGATIONS IN CHARGES AND
SPECIFICATIONS BASED UPON FINDINGS OF FACT**

The following is a discussion of the specifications as set forth in the charging document²:

Specification 1

1) During 2012-2013 school year Respondent failed to properly, adequately, and/or effectively plan and/or execute lessons, as observed on the following dates:

a. November 8, 2012;

b. December 6, 2012;

c. March 5, 2013;

e. June 5, 2013

The DOE alleges that on five different occasions during the 2012-2013 school year, Respondent's pedagogy was observed and found to be deficient. The deficiencies were in the areas of planning and executing lessons. Moreover, the allegation asserts improper, inadequate and ineffective preparation and pedagogy for the dates observed.

Various documents establish that the employer is committed to monitoring the quality of instruction in its schools and that employees, including Respondent, were on notice of the same.

² In the discussion portion of this section, "FF" refers to the numbered paragraph in the section entitled "Relevant Findings of Fact."

For example, the agreement between the NYCBOE and the UFT expressly provides at Article Eight at subparagraph J., for an “Evaluation and Observation System” (J1p.50). That provision in turn provides that the parties’ full agreement is embodied in the document entitled “Teaching for the 21st Century” (J1p.50, R2). With regard to teacher competence, and in recognition of the diversity of the NYC public school system, the focus within the 21st Century document is on making appropriate assessments (to measure abilities and skills R2 p.4) and then offering the appropriate prescriptive professional development opportunities to each teacher on a case by case basis, so that the highest quality of teaching and education is provided to all children. (J2 p.32) The 21st Century document also makes clear that each individual teacher is responsible for maintaining a satisfactory level of teaching and that each principal, as the school’s official rating officer, has final responsibility for rating a teacher’s performance. (J2, p.7)

At P.S. 154, the “2012-2013 Staff Handbook” reiterated the importance of teacher observations referring to them as “... a critical means by which to dialogue about instruction and, ultimately to improve our practice as a school (J20B p.23). The Staff Handbook also explicitly set forth the school’s expectations for “Classroom Learning Environment” (J20B p. 11), “Hallway Bulletin Boards” (J20B p.18), “Planning and Preparation” (J20B p. 24) and “School Environment” which includes behavior management (J20B p. 27). These documents clearly establish the reasonable expectations of the employer regarding school pedagogy. Teacher observations were the means to measure adherence and commitment to those reasonable expectations. In this regard Dr. Coviello described classroom observations as looking at teacher practice, their pedagogy and ensuring children are getting the education they deserve. (T503) Both Dr. Coviello and AP Jimenez-Jailall explained that among various teaching/instructional practices, during an observation, they look for evidence of the Essential Question (T191, J20B p. 12); the Flow of the Day (T192-193, 536-537, J20B p. 13); a Rubric (T193-194, J20B p.25); Actionable Feedback (T194, J20B p.12); the Unit of Study (T198-199, J20B p. 24); Conferencing (T201-202, 532-534); Classroom Library (T535-536, J20B p. 12); Reference Charts and Word Walls (T535-538, J20B p. 11, 16); Process Work and Updated Bulletin Boards (T 539-541, 635-637, J20B p.16, 18-19)

Respondent argues that if any of the observations were rated using the Danielson Framework for Teaching, then they should be excluded from consideration on these charges. The Danielson Framework for Teaching was a new method for conducting teacher evaluations that was not to be utilized as a rating system during the time period in issue. Dr. Coviello testified that she created the informal observation template her school utilized during the 2012-2013 school year and that she continued to have staff rate teachers during that period as either “satisfactory” or “unsatisfactory.” She testified that she used elements or components from Danielson on the template. (T928-930) Dr. Coviello also testified that her staff were not rated using HEDI ratings and that she was prohibited from doing so. (T931) Also relevant in this regard is the 21st Century document where it states in part that, “... The performance review model provides broad latitude for teachers and supervisors to incorporate a wide range of approaches to professional development and teacher evaluation. ...encouraging new approaches to teacher assessment is important.” (R2, p. 7, emphasis added) On the record before me, I cannot conclude that the partial use of some of the assessment criteria from Danielson mandates the wholesale rejection of observation reports of Respondent for the 2012-2013 school year. I find that while Danielson is unique in its arrangement of criteria to assess and rate teacher performance, the criteria to assess teacher performance is not exclusive to Danielson. To make such a ruling would eliminate valid

approaches to teacher assessment that the 21st Century document encourages supervisors to incorporate. Had the ratings followed the Danielson Framework in substantial measure or in total, including final ratings, a different result would certainly be appropriate.

a. November 8, 2012

AP Cruz rated Respondents observation as unsatisfactory and her findings are noted earlier in FF 28 and Exhibit D13. Respondent asserts that AP Cruz suffered an inability to be impartial towards Respondent and that her observation came at the end of the lesson and was so abbreviated that it had no validity. Respondent testified that the observed lesson had to do with experiences during Hurricane Sandy and that he told his students "...when you're done writing and feel you have the best you can write, pick somebody you're sitting with and exchange and make corrections, make suggestions on writing. (T1260) I credit the observation findings of AP Cruz and reject the assertion she was biased. I also determine that Respondents critiques of her findings fail to diminish or render them invalid. **As a result, Specification 1(a) is sustained.**

b. December 6, 2012

Dr. Coviello made a "Formal Observation" of Respondent that was preceded by two separate Pre- Observation Conferences. Dr. Coviello rated Respondents observation as unsatisfactory and her findings are noted earlier in FF 38, 39, 40, 50 and Exhibits D23A, D23B, D23C, D23D, D23E. Respondent asserts that Dr. Coviello had an agenda to terminate him and as a result is unworthy of belief concerning the observation. Respondent argues that Dr. Coviello's criticisms are unsupported by the evidence. For example, contrary to her findings, there was differentiation but it was not accomplished using the rigid methods demanded by Dr. Coviello. There was no authentic text available for the subject matter of the lesson so he created his own text, rendering any criticism in that regard unfair. Dr. Coviello was simply inflexible in her view of Respondents pedagogy. (T1266-1274) I credit the observation findings of Dr. Coviello and also credit her testimony in such regard. I also determine that Respondents critiques of her findings fail to diminish or render them invalid. **As a result Specification 1(b) is sustained.**

c. March 5, 2013

Dr. Coviello made a "Formal Observation" of Respondent that was preceded by three Pre- Observation Conferences. Dr. Coviello rated Respondents observation as unsatisfactory and her findings are noted earlier in FF 83, 84, 86, 88-91, 98-99 and Exhibits D30, D30A-J. Respondent asserts this particular rating was unreasonable and irrational primarily evidenced by what was not in it. In this regard, Respondent asserts that because prior issues formally identified in the negative were not specifically identified as continuing, bias and unfairness is evident. For example Respondent cites to the lack of mention concerning the cooperativeness of Respondent during the pre-observation phase; the lack of mention of the teaching point and guided questions which were visibly displayed and the lack of any mention concerning classroom management. Respondent also asserts that because of his improvement in those pedagogical areas, Dr. Coviello cited new areas so she could continue to rate Respondent unsatisfactory. I find that the areas cited by Dr. Coviello were legitimate pedagogical concerns (continuing problems with correct spelling and grammar; a failure to explicitly model the use of vocabulary; the lack of

clear, explicitly defined or well developed teaching points; the lack of use of the standard conferencing template, the lack of skill or strategy modeling during active engagement; the need for better planning for independent work time; the need for lessons to build upon each other for cohesive units of study and the need to highlight the days teaching point.) Respondent's critiques notwithstanding, Dr. Coviello's findings on observation are not diminished and I credit those findings as valid and appropriate concerns for which she provided an unsatisfactory rating. **As a result Specification 1(c) is sustained.**

[REDACTED]

e. June 5, 2013

Dr. Coviello made a "Formal Observation" of Respondent teaching a lesson on "Bullying and speech bubbles" that was preceded by one Pre-Observation Conference. Dr. Coviello rated Respondents observation as unsatisfactory and her findings are noted earlier in FF 136, 138, 141 and Exhibit D38. Respondent again asserts that the lack of commendable comments such as the fact he used authentic text, the lack of any mention concerning a failure to differentiate make it clear his improvements and responsiveness to prior criticisms would not be credited and that the administration was on a mission to terminate him. In fact, Respondent refused to discuss feedback with Dr. Coviello after the lesson and told her he did not like being set up and asked her whether she planned to rate him "U" for the year. When signing for receipt of the formal observation report Respondent wrote "How can I succeed when it's already been pre-determined by Dr. Coviello that ...incompetent? How can I succeed with a lack of support?" (T811-812, 827, D38) Comments notwithstanding, I find that the areas of concern cited by Dr. Coviello were legitimate pedagogical where her concerns and comments included - avoid whispering for long periods of time, clearly define key vocabulary words, ensure that lesson plans are purposeful and complete, work to call students by name or courteously ask them their names when you are unsure, use a system for ease of classroom management, ensure the work is rigorous, grade appropriate and aligned to grade level common core standards, ensure that the content or skills you teach are correct, develop a long term plan for the lessons that you do, have a clear and well developed teaching point, teach a clear skill or strategy, ensure students have 15-20 minutes of work time, take conference notes so you can plan your next lesson purposefully, use the "Share" portion of the lesson to return, reteach, or extend the teaching point.

Respondent's critiques notwithstanding, Dr. Coviello's findings on observation are not diminished and I credit those findings as valid and appropriate concerns for which she provided an unsatisfactory rating. Further, I find Respondents refusal to discuss feedback as both counterproductive and unprofessional. **As a result Specification 1(e) is sustained.**

Specification 2

Respondent neglected his professional duties in that he failed to properly and/or adequately maintain his classroom environment during the 2012-2013 school year.

The staff handbook clearly set forth the expectations of P.S.154 administration for maintaining classroom learning environments (D20B). Dr. Coviello wrote the following regarding her expectations, "...Classroom learning environments need to be (1) reflective of children's questions, ideas, and new understandings; (2) fully accessible to children; (3) neat and organized; and (4) print rich. ...Administration will be using checklists based on bullet points below to determine your readiness." Listed were accessible materials; charts; classroom library; essential questions; evidence of student questioning, ideas, and critical thought; flexible spaces; flow of the day; highlighting the process; level 2 card system; literacy centers organizational chart; meeting area, notebooks and work folders; notebook, work folder, and portfolio baskets; open door policy; store bought posters and signs; student portfolios; student work; word walls/collections." (D20B p.11-16)

Respondent contends that his classroom did conform to the expectations of the administration and/or that if it did not, it was because the administration failed to provide him with the resources necessary to have his room reflect the expectations. I find that throughout the course of the school year, Respondent did not properly and/or adequately maintain his classroom environment in accordance with the reasonable expectations of the school administration. Respondent was expressly notified of the unsatisfactory state of his classroom, including a September 10, 2012 letter from Dr. Coviello (D21, D21A-B). In three informal observations Respondent was repeatedly rated unsatisfactory on having a classroom library that is organized, accessible, well labeled and inviting; and on having materials organized and accessible to children; and on having student notebooks, folders and portfolios accessible to students; on the failure to display student supports such as process charts and essential questions; on the failure to display student work with a rubric and actionable feedback; on the failure highlight student work with descriptions and standards and the failure display high quality student work that flows from the classroom into the hallway. (D12, D13, D14, D29) Respondent has generally denied these failures and casted the lack of success in meeting the expectations either on claims the materials had been put away when the observations were made; or that the school failed to provide him with the resources for compliance; or that he did comply in spirit but did not comply by the required method; or by minimizing the significance of the findings. (D29A) I find Respondents responses creative but not persuasive.

I find that Respondent did neglect his professional duties in failing to properly and/or adequately maintain his classroom environment in conformance with the reasonable expectations of his school administration after ample notice. **As a result Specification 2 is sustained.**

Specification 3

Respondent neglected his professional duties and/or failed to follow directives in that he failed to properly, adequately and/or timely maintain his bulletin boards as directed, during the 2012-2013 school year.

The staff handbook clearly set forth the expectations of P.S.154 staff for maintaining hallway bulletin boards (D20B). Dr. Coviello wrote the following regarding her expectations, "...Teachers/classes are asked to refresh the outside bulletin boards on the dates below...Specialty teachers should refresh their bulletin boards monthly (see schedule below) and student work should be relevant to the subject being taught. All outside bulletin boards must include a title, the class designation, both process work and final products, a rubric for each student's work, a clear discussion of the class's process, including key teaching points or strategies upon which focus was placed, and an account of the common core standards addressed throughout the entire process.... Bulletin board paper and borders will not typically be provided. On occasions when it will you will be notified." (J20B p.18)

Further documentary and testimonial evidence shows school administration repeatedly provided feedback to Respondent to address the deficiencies in his bulletin boards and the specific areas he needed to improve upon (FF 13-15, 42, 47, 54, 57-58, 74-75, 79, 81, 93-95, 124, 133). Respondent did not comply with the deadline to have his hallway bulletin board ready for welcoming students by September 5, 2012 (D21A); his classroom bulletin board was in disrepair between September 5-7, 2012; his outside (hallway) bulletin board was still bare at the close of business on September 7, 2012; on December 18, 2012 Dr. Coviello set a hallway bulletin board deadline for the close of business on December 21, 2012 (D25B, D25C, D25D) yet Respondent's bulletin board was still incomplete on January 4, 2013 and Respondent admitted he "messed up." (D25A) On January 8, 2013, Respondent's bulletin board was reviewed and was found unsatisfactory by Dr. Coviello for a variety of reasons. Included in the reasons were the lack of mention of any standards at all; the failure to include process work with any student's work; the failure to include any rubric; no evidence of student self-assessment; no attention grabbing display nor other visuals that add to the interest and quality of the display; there were many adult grammatical mistakes and spelling errors and there is no evidence that published student work is the result of significant revising and editing. (D16, D16A) After the January 8, 2013 review, Respondent was given a deadline of January 22, 2013 to get his bulletin board together. (D16, D16A) Respondent again failed to meet the deadline on January 22, 2013 and as of January 25, 2013 had still not brought his bulletin board into compliance with the expectations and directives of Dr. Coviello. (D16 – Feb 20, 2013 letter) On February 15, 2013, Respondent acknowledged receipt of written bulletin board feedback from Dr. Coviello from a review of that date (D31E). On March 20, 2013, Respondent acknowledged receipt of written March bulletin board feedback from Dr. Coviello (D31B) and on March 22, 2013, Respondent acknowledged receipt of a letter from Dr. Coviello finding him to have committed professional misconduct for not improving his

March bulletin board after receiving extensive feedback in January and February of 2013. (D31, D31A-H) By letter date May 28, 2013 Dr. Coviello summarized Respondents failures to improve his bulletin boards in four main areas that have been discussed since January, 2013. (D36)

Respondent asserts that he was only late with the December bulletin board (T1281) and that it is unfair to hold him to the same bulletin board standards as teachers who had less students and who taught literacy five days a week and therefore greater ability to have students go through editing processes. (T1289-1290, 1282-1283) Respondent also admitted that there should not be adult grammar and spelling mistakes on the bulletin boards and he also admitted that the bulletin board requirements during 2012-2013 were basically the same requirements as in 2011-2012. (T1283-1284, 1350-1354)

Respondent's admission that he was aware of the importance of bulletin boards to the education process and the P.S.154 administration's efforts to make him aware of deficiencies needing correction make clear he knew or should have known what the reasonable expectations were for performance in this area. His failures to comply with repeated directives to correct deficiencies constitute neglect of professional duties and a failure to follow directives for the proper and adequate and timely maintenance of bulletin boards. **As a result Specification 3 is sustained.**

Specification 4

Respondent acted unprofessionally and/or in violation of Chancellor's Regulation C-810 in that he smoked on the block surrounding the school on December 12, 2012

Respondent does not contest the fact Dr. Coviello observed him smoking on the outside sidewalk adjacent to the parking lot of the school. (FF 46, 48 and Exhibit D24) Respondent asserts that on December 12, 2012, he was unaware of the newest version of Chancellors Regulation Number C-810 which had been issued on November 29, 2012 or two weeks before the incident. Respondent was however responsible for familiarizing himself with all Chancellors Regulations. (D24) In any event, the immediately preceding version of C-810 also prohibited smoking on all school grounds including parking lots and the like. (R9)

I find Respondent did smoke in violation of Chancellors Regulation C-810 when he smoked on the block surrounding the school on December 12, 2012. **As a result Specification 4 is sustained.**

Specification 5

Respondent neglected his professional duties and/or failed to follow classroom management protocols in that he failed to properly and/or adequately address students who were missing from his classroom on January 25, 2013.

On January 25, 2013, three students left Respondent's class. Respondent admitted knowing the students left the class. When initially provided the opportunity by Dr. Coviello, Respondent did not admit to knowing where the students went. Respondent did not call the ROD or make any

notification to the school administration. Four female students, at least two of whom should have been in Respondents class of the students who should have been in Respondents class, were seen roaming the hallway by Ms. Merchant. AP Cruz responded to the ROD call of Ms. Merchant and brought the students to Dr. Coviello. Dr. Coviello had three students in front of her as a group and wrote down what they claim happened that caused them to be in the hallway. At some point the students arrived at the gym and assimilated into Mr. Lembo's gym class. During two meetings held with Dr. Coviello concerning the incident, five and six days after the incident respectively, Respondent initially denied saying anything to T or R, and disputed what "A" attributed to him saying. Respondent requested and was then given time to develop a written response. At a second meeting on the incident with Dr. Coviello, Respondent recalled saying to "A" that he was not gonna drag him into the class and he didn't recall what happened to "A". Respondent also stated he did not recall if he called for a Responder, and that the other three student's statements were fabrications. At the hearing on January 23, 2015, almost a full two years after the incident, Respondent testified about things he could not recall six days after the incident in vivid detail. (FF64, 68, 69 and D17, D17A, D21A, D20C) I do not find Respondent's testimony or recollections either credible or persuasive. I find it troubling that Respondent did not conduct any independent follow up or inquiry about the status of the missing students on the day of the incident, based on the record in this case. Respondent was confronted with uncooperative students and was simply asked to account for how he managed the incident. If his testimonial version of events was true, he could have easily shared that information with Dr. Coviello at one of the meetings held no later than six days after the incident when his memory was fresher.

Respondent had an obligation and was notified of his obligation to call the ROD and to be aware of where his students are (D20Bp.33, 37). This was not only for accountability reasons but also for student safety reasons.

I find Respondent did neglect his professional duties and failed to properly and/or adequately address students who were missing from his classroom on January 25, 2013. **As a result Specification 5 is sustained.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Specification 7

Respondent neglected his professional duties in that he failed to have a proper and/or adequate lesson plan for a second grade class, as observed on April 12, 2013.

As stated in the analysis of Specification 6, I find that the teaching plan purportedly being followed by Respondent while teaching a second grade class on April 12, 2013, had not been appropriately excerpted and/or modified to comport with the requirements for daily lesson plans contained in the 2012-2013 Staff Handbook. (D20B p.24, D14) The record is clear that Respondent mistakenly believed that teaching from the “Wise Words” program satisfied the requirement to create and have a written lesson plans containing specified elements in accordance with a lesson plan matrix. (D20B p.24) I find that in the context of this specification as charged, the production of the lesson plan is distinct from a review of the actual teaching of the lesson and Respondent failed to produce a lesson plan that complied with the known

reasonable expectations of P.S.154 in that regard. (D20B p.24) Also see FF103, 105 and Exhibits D14, D34A, D35. **As a result Specification 7 is sustained.**

Specification 8

Respondent neglected his professional duties and/or failed to follow directives in that he failed to timely, properly and/or adequately submit lesson plans to his supervisor for review as directed in April 2013.

Dr. Coviello sought to provide assistance and support to Respondent by reviewing his lesson plans after her March 5, 2013 formal observation. In her report of that observation she wrote "...In order to assist you with your lesson plans, please submit your lesson plans via email for one grade per week by the close of business every Friday beginning this Friday, April 5, 2013." (D30, D34) On April 6, 2013, having not received any lesson plans from Respondent on April 5th, Dr. Coviello sent an e-mail message to Respondent reminding him to send the lesson plans for review. (D34A). In response on April 8, 2013, respondent sent Dr. Coviello an e-mail message attaching lesson plans bearing the dates of October 17th -21st of 2011 which did not pertain to Respondent's current teaching duties. (D34B, D34C) Dr. Coviello responded with an e-mail message that asked "Did you mean to attach these?"(D34C) In response to her question, Respondent sent an e-mail message to Dr. Coviello attaching the same 5th grade lesson plan she had already reviewed, which contained his post-review revisions. Dr. Coviello had still not received Respondents second 5th grade lesson for the week. (T737-747, 1313, 1318-1319, D34) Respondent met with Dr. Coviello on April 15, 2013, and told her his uncertainty and mix-up about his own teaching schedule was the reason he did not fully comply with her request for lesson plans. (T746-747, D34) Also see FF 98, 100-106, D34, D34A, and D14)

I find Respondent did fail to comply with the directives of Dr. Coviello when he failed to timely, properly or adequately submit his lesson plans for review as directed in April, 2013. **As a result Specification 8 is sustained.**

Specification 9

Respondent acted unprofessionally and/or was insubordinate in that he shouted at a supervisor, stating in sum and substance, "that Nazi, Eva Braun" while referring to another supervisor on April 25, 2013.

Respondent admitted that during a conversation he was having with Ms. Gorman he referred to Ms. Macek as Eva Braun. Respondent also testified to the following concerning the remark, "...It was wrong. I truly, truly apologize. That's something that I never did before, and I don't want to do again and I don't feel good about myself for doing it. I wish I could apologize

personally to Ms. Macek.” (T1324) Mary Ann Gorman also testified that Respondent referred to Ms. Macek as “Eva Braun” in a conversation she was having with him about signing in on April 25, 2013. (T84, D4, FF117) Respondent did not admit to using the word “Nazi” but given the circumstantial evidence, including the testimony of Mary Ann Gorman and Respondent’s apologetic tone, I find both utterances were made. **As a result Specification 9 is sustained.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Specification 11

Respondent neglected his professional duties and/or acted unprofessionally in that he arrived late and/or left early to an ELA per session scoring site on several occasions in April 2013.

Respondent’s attendance record was recorded by Mary Ann Gorman and memorialized in a letter written by Principal Macek. Respondent’s lax attendance record rendered him unreliable for the per session activity. The dates and times can be found in Exhibit D4 and FF 111-121, 123, 126. Testimonial evidence can be found at T50-53, 58-59, 83-97, 1323-1324. That evidence establishes On the first day of the Activity, April 20, 2013, Respondent was absent; as he was on April 23rd, 27th and 29th. Respondent was late on April 24th and 25th. The Respondent did not return to work after April 29th. Also see FF 111-121, 123, 126.

I find Respondents neglect of his professional duties in accordance with the reasonable time and attendance obligations of his employer has been proven. **As a result Specification 11 is sustained.**

[REDACTED]

Specification 14

Respondent acted unprofessionally and/or was insubordinate in that he yelled supervisor, in sum substance, "I told my wife that if I go into cardiac arrest, it is your fault" on June 14, 2013.

Dr. Coviello testified "...I was in my office and I was told the FDNY had arrived and that someone was in cardiac arrest. I knew nothing about the FDNY being called. So, I accompanied them. They told me it was on the second floor. We went up to the second floor, arrived at Mr. Zucker's classroom. He was standing in the doorframe, doorway of the classroom and he immediately, upon me arriving, began to yell at me and told me that he told his wife if anything-or if he went into cardiac arrest, that it was my fault. So, and he was pointing his finger at me yelling." (T805, D39) Dr. Coviello went on to say this occurred while the class was in the classroom. (T806, D39)

Respondent testified he remembered calling 911 for EMS because he felt like his brain was short-circuiting and he was feeling physically stressed out. (T1336-1337)

I find that the specification was proven. I credit the testimony of Dr. Coviello on this incident. The yelling at a supervisor within earshot and possible eye shot of students, the accusation that the supervisor is to blame for a cardiac arrest under the same circumstances is unprofessional, disrespectful and insubordinate. **As a result Specification 14 is sustained.**

Specification 15

Respondent neglected his professional duties in that he failed to be at his assigned post on May 16, 2013.

On May 16, 2013, Respondent was not at his post to teach class 3-330 at the appropriate time and place. Respondent began the class 25 minutes late and told the school secretary he "made a

mistake” and “I am going now.” (T413, D18, D18A) Respondent testified that he admitted to Ms. Bobbitt that he was late and was not at his assigned post. (T1327) **As a result Specification 15 is sustained.**

Specification 16

Respondent neglected his professional duties in that he failed to be at his assigned post on June 10, 2013.

On June 10, 2013 Respondent was not in class 2-236 as assigned, and had left his assigned post while instructing students, in order to pick up food. (T1030-1031, 1329-1331, D18) Respondent testified that when he did exit the room he left two ATR’s in the classroom with about nine students. (T1328-1331) Respondent also testified he had a program change that interfered with his ability to eat breakfast. (T1330) Respondent did not officially notify school administration of his absence from the room, no matter how long. Accidents can occur in an instant and on that basis Respondent failed to exercise the care his position called for and was neglectful of his professional duty to remain in the proper place at the proper time in accordance with the reasonable expectations of his employer. He admittedly failed to do so when he left the students for whose care he had been entrusted. The specification as written has been proven. **As a result Specification 16 is sustained.**

Specification 17

Respondent neglected his professional duties, in that he sent students he was scheduled to teach to other classrooms on June 14, 2013.

On June 14, 2013 at about 1:30 p.m. Respondent sent a note to Ms. Milliron asking her to place about 5 named students in other classes for the duration of Respondent’s Character Education class that runs between 1:50 p.m. and 2:35 p.m. Respondent met the class in the hallway and addressed the five students in elevated voice telling them where they were going to go instead of his class. Some of the students were brought to Dr. Coviello. Respondent called 911 and Dr. Coviello went to respondent’s classroom, saw Respondent in the doorway as he yelled at her while students were sitting in his classroom that “...I told my wife that if I go into cardiac arrest, it is your fault.” (T110-118, 323-331, 805-806, 1031-1032, 1136-1137, 1332-1337, D5A, D5C, D15, D39) AP Cruz wrote a letter to Dr. Coviello detailing her observations of and involvement in certain activities that transpired on Friday June 14, 2013 with Respondent. (T323-330, D15) AP Cruz was concerned about statements Respondent made in front of students that continued to ignite their anger including his statement to the students to “do whatever they wanted” in the classroom, which statement AP Cruz viewed as being a clear and present danger. The letter also describes the Respondent calling EMS and refusing her (AP Cruz’) help. (T323-331, D15) In his testimony Respondent admitted that it is his obligation to deal with difficult students and that other teachers have no obligation to accommodate his request that they escort students elsewhere. Respondent also admitted that it was not appropriate to let students roam. (T1371-1372) Further, the links that would support the pre-arranged “buddy system” were not fully developed in the record. Claiming to have a prearranged “buddying” for a given situation permits a too convenient explanation without proof of or some independent confirmation of its existence

with a particular teacher in advance for a particular date or time period. It was not made clear that prior arrangements had been made to exercise the buddy option on June 14, 2013 for the times in issue. As a result, and before any proof existed that on June 14th the affected students should be summarily banned from class, Respondent had already decided to bar them. That decision evidences and proves a neglect of Respondent's professional duty to provide an education to students at the highest level. (Also see FF 139, 140, 143,145) **As a result, Specification 17 is sustained.**

Specification 18

Respondent neglected his professional duties, created an unsafe learning environment and/or failed to provide instruction to his students, in that he told his students to do whatever they wanted on June 14, 2013.

I do not find Respondent's assertions that the students misunderstood or had mistaken what he said to them as credible nor his sequencing of events leading to the utterance to "do whatever you want" as credible. (T1332-1337) AP Cruz testified that she was present during Respondent's own outburst, and after trying to de-escalate the situation occurring in the hallway, Respondent told the students in front of her that "... You guys don't have any consequences. Everybody go into the classroom and do whatever you want to do." (T325, D15) I credit the testimony of AP Cruz over the denials of Respondent.(T323-330, D15, FF 139, 140, 143, 145) The entire incident leading to this specification was not only neglectful of professional responsibility by creating an unsafe and unproductive instructional environment, it was bizarre and deflating for all stakeholders. The credible record evidence has proven this specification. **As a result, Specification 18 is sustained.**

Specification 19

Respondent failed to implement professional development recommendations from observation conferences, plans of assistance, and professional development sessions, during the 2012-2013 school year regards to:

a. Maintenance of classroom environment;

b. Classroom management;

[REDACTED]

Respondent was provided with numerous professional development opportunities and support from the administration during the school year. He had varied success in implementing all of the instruction he received. In sum, he struggled in some areas and showed slight cooperative improvement in others.

a. Maintenance of classroom environment

1a, 1b, 1c, 1e, 2, 3, 4, 5, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19a, 19b

I find the following specifications **have not been sustained**:

1d, 6, 10, 12, 13, 19d, 19e, 19f

I find the NYCBOE has met its burden of proving Respondent guilty of the above listed specifications and that good and sufficient cause for discipline exist under § 3020-a of the State Education Law. More specifically, I find the proven specifications do constitute and establish just cause for disciplinary action under Education Law § 3020-a; incompetence and/or inefficient service; neglect of duty; insubordination; conduct unbecoming Respondent's position and conduct prejudicial to the good order, efficiency, and discipline of the service; substantial cause rendering Respondent unfit to perform properly his obligations to the service; and just cause for termination.

As presented in this case, Respondent has approximately 19 years of service with no prior formal disciplinary record. That he may have had some level of comfort and developed a certain complacency at P.S. 154, that ended for him when Dr. Coviello entered her first full year as Principal at P.S. 154. Dr. Coviello was committed to create a learning environment where "...collaboration, honesty, cohesiveness, and optimism abound, high expectations are maintained by and for all, and new challenges are faced with grace." (D20B, p.1) I do not find that Respondent was targeted in a negative sense, rather he was identified as a teacher who may need significant support to meet the "high expectations" of Dr. Coviello's administration. (T535-526) Respondent's future was in his own hands from the beginning. Rather than rising to the challenge however, Respondent took on the mantle of victim and saw nefarious scheming behind almost each accountability test he encountered. His failure to comply with the reasonable

expectations of the school administration is amply set forth in this record. The fact that those expectations were made known to him is also in the record. Stated simply, Respondent was in control of his own destiny and continued to choose the path of non-conformance instead of a path of willing cooperation with a motivation to succeed.

Respondent's reactions to many of the incidents and circumstances he encountered during the 2012-2013 school year were unprofessional. It is not professional to yell at either colleagues, supervisors or students; it is not professional to recognize and acknowledge an employer's reasonable expectations and then to stubbornly choose a path of non-conformance in relation to those reasonable expectations and not follow them; it is not professional to engage in unnecessarily combative positions that escalate tensions and friction in a workplace or classroom; it is not professional for a teacher not to teach according to a well thought out plan of instruction and/or to try and utilize a "one-size-fits all" approach to education in a public school setting in the 21st century; it is not professional to engage in name calling of either other education professionals or students; it is not professional for an educator to fail to commit to personal improvement for the betterment of the students they serve; it is not professional to engage in making sarcastic and caustic remarks when being asked to account in the public service; it is not professional to endanger the safety of students or coworkers; it is not professional to absent oneself from being in their proper place at the proper time during a work day; it is not professional to arrive at work late and leave work early without permission; and it is not professional to not do a good job, especially when others destiny, i.e. students, is inescapably tied to your efforts.

Respondent has seemingly lost sight of the fact that as a “Character Education Through Literacy” teacher at P.S. 154, he was not merely holding a job, he was a teaching professional with a particular job within the Profession of Teaching. Respondent’s professionalism was severely lacking in 2012-2013, and he even recognized that it impacted the very people he desired to help, i.e. - his students. (T1368) His performance was clearly unacceptable and cannot be permitted to continue.

The record in this case establishes that Respondent was at times hostile in a direct manner and a passive/aggressive manner, obstinate, uncooperative, and defiant. His conduct caused unnecessary commotion, unnecessary upset to the school community, and disruption to the education process of the students he served. I am however mindful that the purpose of discipline is not to punish employees but to correct their behavior. Discipline should be the minimum necessary to assure the employee understands what they did or are doing is wrong and must not be continued or repeated. It is only when an employee clearly has not - and obviously will not - get the message that their termination should be upheld.

This is Respondent’s first formal discipline in a 19 year career. Respondent did indicate on this record that he engaged in some self-reflection and desires to continue serving the NYCBOE. Respondent admitted that in the past he viewed each request for accountability as a “gotcha.” He went on to add “...I’ve got to do away with those instincts when I think I’m being attacked or being singled out, and sometimes step back and look at the bigger picture. If I have a disagreement with another teacher or administrator that in the future I need to use the 24-hour rule, which is wait 24 hours until the dust settles. Then you go in and speak to the person. I think that will help me a great deal.” (T1380)

Respondent's admission that there is a bigger picture and that he is willing to try and change convinces me that the termination request of the NYCBOE is too harsh a penalty for the proven specifications. I also find that the Department attempted to remediate Respondent's performance during the 2012-2013 school year to very limited success by means of an employee assistance plan.

I therefore find the appropriate penalty to be a four month suspension without pay to impress upon Respondent the seriousness of the findings in this matter. Upon his return from the suspension without pay, Respondent has a choice to make good on his stated desire to improve his performance, professionalism and cooperativeness, including control of his "instincts." The choice is his. I am also directing that Respondent be involuntarily removed from any assignment whatsoever at P.S. 154 to a new school consistent with his license, as determined by the Department. Finally and upon his return, I direct that Respondent take part in a formal remediation program as determined by the Department.

Respondent's future is in his own hand and this is a Final Warning that future deficiencies of a similar nature warrant termination from employment.

AWARD

1. Specifications 1a, 1b, 1c, 1e, 2, 3, 4, 5, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19a, 19b are sustained all of which constitutes Just Cause for Discipline under 3020-a, Neglect of Duty; Conduct Unbecoming Respondent's position or conduct prejudicial to the good order, efficiency, or discipline of the service; Incompetence and/or inefficient service; Insubordination; Substantial cause rendering Respondent unfit to perform properly his obligations to the service; and Just cause for termination.
2. Specifications 1d, 6, 10, 12, 13, 19d, 19e and 19f are not sustained.
3. As and for a penalty, Respondent is to (a) suffer a suspension without pay of four months; (b) suffer an involuntary removal from any assignment whatsoever at PS 154X to an assignment determined by the Department; and (c) that upon return from the four month suspension without pay, that Respondent is to take part in a formal remediation program as determined by the Department.

Dated: May 18, 2015

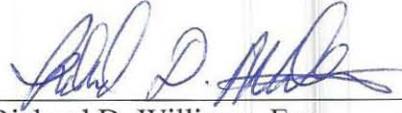


Richard D. Williams, Esq.
Hearing Officer

AFFIRMATION

State of New York)
) ss.
County of Westchester)

I, Richard D. Williams, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Opinion and Award.



Richard D. Williams, Esq.

Dated: May 18, 2015