

Pursuant to Referral By the Commissioner of Education
State of New Jersey
Before Timothy J. Brown, Esquire

In the matter of:

**The Tenure Hearing of
Alexander Gonzalez**

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

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: **Agency Docket No. 264-9/15**
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Decision and Award

Appearances:

**On behalf of the State Operated School District of the
City of Newark, Essex County:**
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On behalf of Alexander Gonzalez:
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Introduction

This matter arises from tenure charges submitted on September 11, 2015 by the State Operated School District of the City of Newark (the School District or the District) based upon inefficiency pursuant to N.J.S.A. 18A:6-11 and N.J.S.A. 18A6-17.3 against Alexander Gonzalez (Respondent) and a September 28, 2015 referral of the tenure

charges to the undersigned by the New Jersey Department of Education, Bureau of Controversies and Disputes pursuant to *P.L. 2012, c. 26, as amended by P.L. 2015, c. 109*.

The hearing in the matter was conducted on November 12 and 23, 2015, December 8 and 16, 2015 and January 5 and 11, 2016 in Newark, New Jersey. At the hearing all parties were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. A transcript was taken of the hearing. Respondent was present for the entire hearing and testified on his own behalf. At the close of the hearing on January 11, 2016 the parties elected to submit written closing argument, upon the receipt of which by the arbitrator on February 15, 2016 the matter was deemed submitted.

This Award is made following my careful consideration of the entire record in the matter, including my observation of the demeanor of all witnesses.

Issues

The issues presented in this matter may be accurately stated as follows:

Has the District met its burden of establishing by a preponderance of the evidence the truth of its tenure charges against Respondent, and if not, what is the appropriate remedy?

The Tenure Charge

The tenure charge in this matter are based upon inefficiency pursuant to N.J.S.A. 18A:6-11 and N.J.S.A. 18A6-17.3 and states:

TENURE CHARGE: INEFFICIENCY

Respondent has been rated ineffective in two consecutive annual summative evaluations, as follows:

1. Respondent was rated INEFFECTIVE in his 2013-14 annual summative evaluation.
2. Respondent was rated INEFFECTIVE in his 2014-15 annual summative evaluation.
3. Respondent has failed to effectively perform the duties of a teacher.
4. Respondent has failed to effectively use individual standard-aligned lessons to build on previous lessons and on students' prior knowledge.
5. Respondent has failed to effectively use standard-aligned lesson components to move students toward mastery of an objective that is aligned to objective...standards.
6. Respondent has failed to clearly and accurately communicate content and instruction effectively.
7. Respondent has failed to effectively use lesson plans that are standard aligned, grade-level appropriate, and reflect work toward annual student achievement goals.
8. Respondent has failed to use lesson objectives that fit into a larger coherent sequence that leads to student mastery of the appropriate standards.
9. Respondent has failed to effectively tailor instruction to move all students toward mastery.
10. Respondent has failed to effectively use questions and tasks to ensure student comprehension and ask for application, analysis, and/or synthesis.
11. Respondent has failed to effectively anticipate and respond to student reactions and misunderstandings by adjusting instructional strategies.
12. Respondent has failed to effectively require precision and evidence in tasks and responses from students and himself.
13. Respondent has failed to effectively demonstrate that student work included revisions based on teacher and peer feedback, especially revised explanations and justifications to demonstrate student movement toward mastery.
14. Respondent has failed to effectively demonstrate that students express satisfaction in solving problems and mastering new material.
15. Respondent has failed to effectively demonstrate that students show persistence in confronting demanding concepts and tasks.

16. Respondent has failed to effectively demonstrate that his strategies and routines capture and maintain student attention on learning.
17. Respondent has failed to effectively demonstrate that he fosters a classroom culture that is consistently one of high expectations and hard work.
18. Respondent has failed to effectively demonstrate that students hold themselves and their peers accountable for learning and supporting the culture of the classroom.
19. Respondent has failed to consistently check for understanding effectively.
20. Respondent has failed to effectively demonstrate that he and his students give and receive timely, specific, and constructive feedback.
21. Respondent has failed to effectively demonstrate students know more at the end of the year than they did at the start.
22. Respondent has failed to effectively track assessment data to understand each student's progress toward mastery and that she (sic) uses results to guide planning instruction.
23. Respondent has failed to effectively articulate specifically (and with evidence) whether or not each student has internalized grade-level standards and, if not, what s/he still needs to learn.
24. Respondent has failed to effectively demonstrate that data reflects that students are mastering the objectives of the focus areas, leading toward mastery of grade-level standards.
25. Respondent has failed to effectively demonstrate that he accurately self assesses strengths and substantive growth areas, seeks and incorporates feedback from others, and pursues his own growth and development.

Respondent

Respondent was certified by the State of New Jersey as a "Teacher of Spanish" in 2006, began teaching Spanish in the District in the 2005-2006 school year and from that time through the 2012-2013 school year, taught Spanish in three District high schools. He testified that throughout his time in the District he was never subject to any significant discipline and prior to the two years at issue herein always received his increment. For the 2012-2013 school year, Respondent taught at Newark Vocational High School and received an "Ineffective" in his annual evaluation. In the spring of 2013 Respondent

sought a transfer from Newark Vocational and during the summer of 2013 sought a teaching position in other schools within the District as well as other school districts; a search that did not result in a teaching position for Respondent. By letter from the District's Chief Talent Officer dated August 31, 2013, Respondent was informed that he had been assigned as an additional support staff member for the 2013-2014 school year in an "Educator Without Placement Site" (EWPS) status, and was directed to report to Park Elementary school on September 3, 2013.

At Park Elementary principal Sylvia Esteves assigned Respondent to teach World Language (Spanish) because her school's permanent World Language teacher was going out on leave. As the school's World language teacher, Respondent taught classes to 1st, 2nd, 4th and 5th grade students including special education and bilingual students. Due to his prior year's annual evaluation (for school year 2012-2013) Respondent was subject to a Corrective Action Plan (CAP) at Park Elementary.

Respondent's Observations and Evaluations

During school year 2013-2014 Respondent was observe and evaluated pursuant to the District's 2013-2014 "Framework for Effective Teaching" and received:

- (1) A scheduled Long Observation by Park Elementary Vice Principal Theresa Empirio on October 10, 2013 (including a pre-observation conference and later post-observation conference) in which he received an overall "Ineffective" rating;
- (2) A Short Observation on November 19, 2013 (including a later post-observation conference) by Park Elementary Vice Principal Maria

Rosendary-Donaldson, in which he received an overall “Ineffective” rating:

- (3) An unscheduled Long Observation by Empirio on December 19, 2013 (including a later post-observation conference) in which he received an overall “Ineffective” rating;
- (4) A Mid Year Review on February 14, 2014 by Empirio in which he received an “Ineffective” rating;
- (5) An unscheduled Long Observation by Empirio on March 19, 2014 (including a later post-observation conference) in which he received an overall “Ineffective” rating (and on which Respondent wrote: “I am signing, but I am not agree at all. Since Sept/13 -> 2/14/14 I was teaching a subject area with no license on it”);
- (6) An unscheduled Short Observation by Empirio on April 24, 2014 (including a later post-observation conference) in which he received an overall “Ineffective” rating;
- (7) An Annual Evaluation on April 9, 2014 by Empirio in which he received an “Ineffective” rating and
- (8) An unscheduled Short Observation by Theresa Empirio on April 24, 2014 (including a later post-observation conference) in which he received an overall “Ineffective” rating.

By memorandum dated May 23, 2014, Park Elementary principal Sylvia Esteves recommended tenure charges against Respondent for failing to meet required standards

for effective instruction. The District did not pursue the tenure charge recommendation of Esteves.

Respondent again held EWPS status for the 2014-2015 school year and was assigned to the Roberto Clemente elementary school. For that year Respondent was again subject to a CAP and was again assigned to teach World Language (Spanish). As in the previous year, Respondent was required to travel from classroom to classroom throughout the school to teach different grade levels of students.

During school year 2014-2015 Respondent was observe and evaluated pursuant to the District's 2014-2015 "Framework for Effective Teaching" and received:

- (1) An announced Long Observation by Vice Principal Sheila Laurenceau on September 28, 2014 (including a pre-observation conference and later post-observation conference) in which he received an overall "Partially Effective" rating;
- (2) A Short Observation on November 5, 2014 (including a later post-observation conference) by Laurenceau in which he received an overall "Partially Effective" rating;
- (3) A Short Observation on January 23, 2015 (including a later post-observation conference) by Principal Yolanda Mendez in which he received an overall "Ineffective" rating;
- (4) A February 2, 2015 Mid Year review by Mendez in which he received a rating of "Ineffective";
- (5) A Long Observation on March 24, 2015 (including a later post-observation conference) by school Innovation Officer Claudio

Barbaran in which Respondent received a rating of “Partially Effective”;

- (6) A Long Observation on May 7, 2015 (including a later post-observation conference) by Pier Validator Gina Wells in which he received a rating of “Ineffective” and
- (7) An Annual Evaluation by Mendez, Barbaran and Laurenceau on May 8, 2015 in which he received an overall rating of “Ineffective.”

In post observation conferences, semi-annual evaluations and annual evaluations throughout both years at issue, administrators continually evaluated Respondent’s applicable CAP and Respondent’s progress under the CAP and made recommendations and offered assistance to Respondent for his successful attainment of the improvements in his performance required by the CAP. In this regard, in addition to the consistent testimony of principals Esteves and Mendez, the various observation conference records and evaluations admitted into the record establish that Respondent was given repeated “CAP Reflection” feedback by administrators wherein his progress and lack of progress in addressing his performance issues were addressed, recommendations made and action steps by both Respondent and the administrators identified.

Efficiency Tenure Charges and Arbitral Authority

Because Respondent was rated Ineffective in two consecutive annual summative evaluations the District filed its charge of inefficiency Pursuant to Section 25 of TEACHNJ, N.J.S.18A:6-17.3 (2).¹ In such circumstances, TEACHNJ (the Act) provides

¹ As provided by N.J.S.18A:6-17, only evaluations conducted in accordance with a rubric adopted by the board and approved by the commissioner pursuant to P.L.2012, c.26 (C.18A:6-

that in rendering a decision on the tenure charges the arbitrator shall only consider whether or not:

- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including, but not limited to providing a corrective action plan;
- (2) there is a mistake of fact in the evaluation;
- (3) the charges would not have been brought but for considerations of political affiliation, nepotism, union activity, discrimination as prohibited by State or federal law, or other conduct prohibited by State or federal law; or
- (4) the district's actions were arbitrary and capricious.

The Act further provides that:

- b. In the event that the employee is able to demonstrate that any of the provisions of paragraphs (1) through (4) of subsection a. of this section are applicable, the arbitrator shall then determine if that fact materially affected the outcome of the evaluation. If the arbitrator determines that it did not materially affect the outcome of the evaluation, the arbitrator shall render a decision in favor of the board and the employee shall be dismissed.
- c. The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review.
- d. The board of education shall have the ultimate burden of demonstrating to the arbitrator that the statutory criteria for tenure charges have been met.

117 et al.) may be relied upon by the District for purposes of such efficiency tenure charges. I find that the District's 2013-2014 and 2014-2015 rubrics (as contained in the District's 2013-14 and 2014-15 "*Framework for Effective Teaching*") were "approved by the commissioner" as required by statute. Respondent asserts herein that the District failed to comply with various requirements of the District's rubric(s).

Respondent's Theory of the Case

Respondent argues that the two annual summative evaluations relied upon by the District as basis for the tenure charges are not valid because: (1) the District failed to substantially adhere to the evaluation process by failing to comply with statutory mandates regarding Corrective Action Plans (CAPs) and Student Growth Objectives (SGOs) in evaluations, (2) the District's conduct was retaliatory and (3) the District's conduct was arbitrary and capricious. As a result, the Respondent asserts, the tenure charges should be dismissed. Each of the Respondent's arguments are considered below.

Respondent's Claim that the District Failed to Substantially Adhere to the Evaluation Process, Including Providing a Corrective Action Plan

Respondent asserts that the District failed to substantially adhere to the evaluation process by failing to comply with statutory minimal requirements for Corrective Action plans. In this regard, Respondent argues that the 2013-2014 and 2014-2015 CAPs produced by the District for Respondent were defective and thereby did not meet the minimal standards to qualify as "adhering substantially to the evaluation process." In support of its argument Respondent maintains that each of the CAPs was not completed in a timely manner, each lacked timelines for corrective action, and each contained only "specific demonstrable goals" that were entirely unattainable under circumstances where, as here Respondent asserted, Respondent was: (i) never provided with a District approved curriculum, (ii) was never provided Spanish language text books or workbooks, (iii) was required to teach outside of his certification and (iv) was not provided adequate class instructional time to attain such goals. Nor did the CAPs include the required SGOs and "action steps" tailored to remedy perceived deficiencies, Respondent maintained.

Respondent's 2013-2014 and 2014-2015 Corrective Action Plans

Respondent was initially required to have a Correction Action Plan (CAP) for the 2013-14 school year because he received an annual rating of "Ineffective" for the 2012-13 school year. A CAP is the product of collaboration between the involved teacher and the teacher's supervisor. Respondent's 2013-14 CAP identified certain World Language, Common Core State Standards in response to the CAP question; "what are the standards you want all students to master this year?" The CAP went on to provide how Respondent would determine "student starting points" and provided that such would include –

- running records to track student growth toward mastery,
- informal assessment to gain understanding of the students' Spanish Language ability, and
- informal assessment to gain understanding of the students' Spanish culture

and then provided how Respondent would determine "student end points" to establish whether students had met their learning goals, including:

- Guided teaching questions to measure students understanding,
- running records to track student growth toward mastery,
- informal assessment and
- completion of class work.

The CAP also identified instructional tools and resources for Respondent including visiting exemplary classrooms to observe best practices, attending PLC² meetings, utilizing specific books on teaching, discussions with direct supervisor, pre and post observation assessments and the Common Core website. The CAP additionally provided

² PLCs (Professional Learning Communities) are weekly meetings of related teaching staff members in the school where teaching-related issues are explored and addressed. For Respondent, the community included other teachers of "specials."

a "Professional Growth Plan" wherein Respondent identified various "action steps" he would take to improve his teaching practice in identified indicator areas and steps the Administration would take to assist Respondent in improving. The steps listed for the administration included; "PLC," "Pre-Conference," "Post-Conference," "Pre & Post Assessment," "Long/Short Observation," "Administrative Monitoring," "Make opportunities for teacher to view an exemplary teacher instruct" and "Model lessons."

In 2014-15 Respondent's CAP set two Student Learning Goals, also known as Student Growth Objectives (or SGOs) for the school year. The first SGO focused on 12 Fourth Grade students to be measured over the course of the school year. Respondent identified the New Jersey Common Core Curriculum Standards as that to be used, identified a pre-test made by the World Language Department as the starting point assessment tool, and as the ending point assessment tool the CAP identified "Teacher made tests and post-test made by World Language Department NPS (Test will be modified for elementary students by teacher)". The CAP stated that based upon the starting assessment; "7 of 11 need support in writing and applying vocabulary, grammar, and sentence structure skills in the Spanish." The CAP described the Goal for Student Performance for the first SGO as: "Most (at least 70% to 90%) students will be able to write at least one cohesive paragraph with proper vocabulary, grammar and sentence structure skills in the Spanish language."

Respondent's second SGO in the 2014-15 CAP related to a class of third Grade students and offered similar means of pre and post assessments. The CAP stated that based upon assessments administered to students in that class "14 of 15 need support in writing and applying vocabulary, grammar, and sentence structure skills in the Spanish."

The CAP established an end of the year goal that: "At least 75% of students will be able to write at least one paragraph in Spanish with proper grammar, vocabulary and sentence structure." District witnesses testified that the SGO's in Respondents 2014-2015 CAP were narrowly drawn and limited to only two classes to give Respondent a good chance of succeeding in meeting the goals in the SGOs.

The record establishes that CAPs are uploaded to the District's on-line records site "Bloomboard," and that only the teacher, not the supervisor/administrator, may upload a CAP. Consequently, the teacher subject to the CAP bears significant responsibility to assure that the CAP is completed in full and within the time periods established by regulation. As a consequence, where as here, a teacher is claiming a school district failed to substantially comply with the evaluation process because one or more CAP was not timely or adequately completed, such a claim should be strictly scrutinized to determine whether the District exercised such attention and good faith in the process as to satisfy the "substantial compliance" standard and/or whether the alleged untimeliness of the CAP was caused by the teacher.

Contrary to the argument of Respondent, I find sufficient evidence to conclude that in both school years at issue the District received extensions of time from the Department of Education for completion of CAPs, that Respondent's CAPs were completed within the timeframes provided and that the terms of the CAPs were adequate. Although the 2013-14 CAP is not dated, the District offered testimony I credit by the responsible Park Elementary School Principal that the CAP was completed by the extended deadline approved by the Department of Education for that year. Similarly, the evidence establishes that the 2014-2015 CAP was submitted prior to the extended filing

deadline granted the District. In any event, the record further establishes that for both school years 2013-2014 and 2014-2015 Respondent was lackadaisical in his efforts to complete his CAPs and that District school administrators spent significant time and attention on encouraging and facilitating his compliance with requirements for timely completion of the CAPS. Notwithstanding Respondent's own lack of enthusiasm for the process, the administrations here did not let the matter go unaddressed and, instead, followed-up on the CAPs with Respondent and worked collaboratively with the teacher to assure that the CAPs were completed. There was no delay caused by the District and I find that Respondent's 2013-2014 and 2014-2015 Corrective Action Plans were timely filed. Moreover, considering the content of the CAPs, Respondent's shared responsibility for the plans and record evidence establishing that the requirements of the CAP were consistently reviewed with Respondent by District school administrators, that Respondent was provided ongoing feedback on his progress relating to the CAPs and Respondent was provided continuing and varied support designed and tailored to help him succeed under the CAPs, I find the CAPs were; (i) adequate and (ii) adhered substantially to the evaluation process.

The District otherwise Adhered Substantially to the Evaluation Process

In the two school years involved Respondent was presented with a daunting task and I do not discount the challenges he faced in adjusting to teaching elementary students where he had only previously taught high school students. However, under circumstances presented here, where Respondent is certified to teach the grades involved and has years of teaching experience, I find that the nature of the challenges facing Respondent are not enough, standing alone, to support either a claim that Respondent was set-up-to-fail or a

claim that evaluations of a teacher under such circumstances cannot reasonably be found to substantially adhere to the evaluation process. Instead, based upon the record as a whole, I find that as to each school year 2013-2014 and 2014-2015 the administration of Respondent's schools made substantial, good faith efforts to provide Respondent with the opportunities and tools to learn how to adjust his teaching to meet the needs of his students. In each school year the respective school administration offered Respondent support in meeting the goals outlined in the CAPs, conducted classroom observations to collect evidence of Respondents progress towards goals, provided Respondent opportunities and guidance on how to access and participate in professional learning opportunities throughout the year, and gave Respondent clear and regular feedback about his development. Respondent was provided coaching, pre and post observation conferences, access to peer groups, lesson plan reviews, recommendations of appropriate books, web-based resources, opportunities to observe other accomplished teachers and assistance of other teachers in the classroom.

Considering the number of observations and evaluations of Respondent conducted each year, and the varied identities of those conducting the observations, the CAPs applied to Respondent and the fact that an arbitrator is without authority to review the determinations as to the quality of an Respondent's classroom performance made by District evaluators, I find that during each school year at issue the respective administrations of Respondent's schools and therefore the District - complied

substantially with the District's applicable evaluation processes; processes approved by the Commissioner of Education.³

Retaliation /Arbitrary and Capricious Conduct

Respondent asserts that the tenure charges are in retaliation for his response to an assault by a student in December in of 2012. In this regard, Respondent testified that when he was speaking with a student in the hallway on or about December 7, 2012 he was hit with a water bottle thrown by another student, that he filed a report with the school, had to seek medical treatment and that when the school removed the offending student from his classroom only for one day, he filed a report with the local police department. Respondent argued that because the school disapproved of his having gone to the police, his school principal at the time threatened him by stating that his "life is going to change." Respondent argues that the instant tenure charge is the realization of the threat he received in December 2012 and the manner in which the District intended his life was "to change."

Consistent with its threat, Respondent asserted, his life was changed by the District when he was designated an Employee Without Placement Site, effectively removing him from his school, and the District thereafter assigning Respondent to the elementary school level rather than the high school level at which Respondent had successfully taught for years. In addition to such, Respondent argued, the District set Respondent up for sure failure when it: (1) failed to provide him with a curriculum for his elementary students, (2) refused to provide him text books, (3) refused to provide him

³ As discussed above, the District's evaluation rubrics are contained in each year's "Framework for Effective Teaching" publication. In regard to the number of minimal observations and conferences for teachers on a CAP, the Framework incorporates controlling sections of the New Jersey Administrative Code.

workbooks and (4) instead of recognizing the principles for effective learning of a language contained in the New Jersey Common Core Standards for World Languages and scheduling students for a minimum of three class periods per week, the District scheduled most of his students for only one class period a week. Considering many of his students were special needs or bi-lingual students and that he was not certified to teach either bi-lingual classes or special needs students, Respondent maintained, it is clear that the District not only acted in an arbitrary and capricious manner by setting Respondent up to fail, but that it also retaliated against Respondent for exercising his right to report an assault to the police.

The Evidence is Insufficient to Support a Finding of Retaliation

I am not persuaded by Respondent's argument that he was subject to retaliation for conduct in which he engaged in December 2012. Contrary to Respondent's argument, the evidence established that Respondent was not transferred out of Newark Vocational High School against his will, but rather that he requested transfer from the High School toward the end of the 2012-2013 school year. Additionally, the comment relied upon by the Respondent to show a retaliatory intent – that his life would change if he sought a transfer - is ambiguous at best and could easily be interpreted as stating the obvious; a teacher changing schools will likely experience change. In any event, there is no evidence that any observation or evaluation of Respondent during the two school years at issue was completed by any individual with knowledge of any aspect of Respondent's alleged December 2012 student-assault. Nor, for that matter, is there any evidence in the record sufficient to establish animus toward Respondent by any supervisor or administrator during the 2013-2014 or 2014-2015 school years.

Curriculum, Textbooks, Workbooks and Class Time

Contrary to the argument of Respondent, I find based upon the evidence, including testimony I credit by administrator Barbaran, that Respondent was provided a copy of the District's world language curriculum. Although it may be true that textbooks and workbooks were not provided Respondent because of the District's then recent transition to the Common Core Standards, the evidence establishes that Respondent was directed to specific web addresses containing extensive, relevant online teaching materials. Nor am I persuaded that because the New Jersey Core Curriculum Standards state that data has shown that programs "offering a minimum of 440 hours of particular instruction in classes that meet at least three times a week throughout the academic year produce a majority of students who can speak at novice, high proficient level or higher" requires a finding that a school's evaluation of a teacher who meets with students for fewer hours or fewer times per week must necessarily be arbitrary or capricious. In the instant matter there is no evidence that Respondent was singled out and given a more onerous schedule than the world language teachers he replaced, that the school's scheduling of Respondent's classes were inconsistent with the resources available to the schools, that the Respondent's CAPs were calibrated to a level of instructional time inconsistent with that provided Respondent, or that the goals set for Respondent – such as having his students progress to a point of being able to write a single paragraph with correct grammar – were so wholly unrealistic as to controvert the very legitimacy of the goals.

Respondent's Certification

Consistent with the argument of Respondent, the evidence establishes that Respondent is neither certified in "special education" or in "bilingual education," and that during both years at issue Respondent was required to teach bilingual classes and classes containing special needs students.⁴

District witnesses, including Park Elementary Principal Esteves, Roberto Clemente Principal Mendez and Roberto Clemente Administrator Barbaran, offered testimony that "specials" teachers in their respective schools who are certified to teach in the subject of their specialty course are qualified to teach bilingual and special needs students. Although Respondent disputed that the three District-witnesses had the authority and expertise to offer such testimony, the three witnesses testified based upon their years of experience and I credit their testimonies. The fact is, Respondent is certified and as stated in his state Certification: "is authorized to serve in the public schools of New Jersey as... Teacher of Spanish." There is nothing on the face of Respondent's teaching certification that otherwise restricts his certification or would render him unqualified as a "Teacher of Spanish" to students in New Jersey Public Schools who were bilingual or special needs.

⁴ As a World Language teacher Respondent taught what is referred to as a "special" class. "Specials" include such subjects as art, music, physical education and other subjects that students are taught one or two periods a week by teachers other than the student's regular classroom teacher. The teaching of such "specials" should not be confused with teaching of "special needs" students. As for the bilingual education reference, the record establishes that all bilingual classes taught by Respondent primarily consisted of students who spoke the Spanish language.

Conclusion

Under the circumstances presented, I find that the evidence is insufficient to support a finding that Respondent's annual evaluations were in any part motivated by a desire to retaliate against him or that additionally, in rating Respondent "Ineffective" in his annual summative evaluations the District actions were otherwise arbitrary or capricious. The District's administrators did not set Respondent up to fail, but rather the administrators made substantial, good faith efforts to address Respondent's performance issues and support the teacher. Notwithstanding such efforts, complying substantially with its applicable evaluation processes, the District rated Respondent Ineffective in school years 2013-2014 and 2014-1015.

Based upon the record as a whole and my consideration of all claims, theories and argument offered by the parties, I find that the District has met its burden of establishing by a preponderance of the evidence the truth of its efficiency tenure charges.

The tenure charges are sustained.

Dated: March 3, 2016



Timothy J Brown, Esquire
Arbitrator

I, Timothy J Brown, affirm that I have executed this document as my Award in Agency Docket case No. 264-9/15 relating to tenure charges against Alexander Gonzalez on Thursday, March 3, 2016.



Timothy J Brown