

STATE EDUCATION DEPARTMENT  
UNIVERSITY OF THE STATE OF NEW YORK

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**In the Matter of Charges Preferred by:**

**SED File No. 42017**

**THE DEPARTMENT OF EDUCATION OF THE CITY OF NEW YORK,**

**Complainant-Employer**

**- against -**

**PARYSS SHERMAN,**

**Respondent-Tenured Teacher,**

Pursuant to Education Law § 2590-j and 3020-a and  
Article 21G of the Collective Bargaining Agreement between the  
United Federation of Teachers and the Board of Education.

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Before: Jeanne Charles, Hearing Officer

**APPEARANCES**

**For the Complainant:**

Michelle Catalano (fka Greaux), Esq.  
Attorney for Complainant  
Office of Legal Services  
100 Gold Street, 3<sup>rd</sup> Floor  
New York, NY 10038

**For the Respondent:**

Stewart Karlin, Esq.  
Attorney for Respondent  
Stewart Lee Karlin Law Group, PC  
111 John Street, 22<sup>nd</sup> Floor  
New York, New York 10038

**INTRODUCTION**

Pursuant to the provisions of the New York State Education Law Section 3020-a, the undersigned was selected to hear and decide whether there is just cause for disciplinary action against **PARYSS SHERMAN** (hereinafter referred to as “Respondent”), a tenured teacher employed by the Department of Education of the City of New York (“Department” or “DOE”). A pre-hearing conference was held on August 17, 2023, before Hearing Officer Michael Lendino. Subsequently, sixteen (16) days of hearings were held on April 9, 2024; May 1, 2024; May 6,

2024; May 14, 2024; May 22, 2024; June 7, 2024; June10, 2024; June 12, 2024; June 28, 2024; July 12, 2024; July 15, 2024; July 19, 2024; August 17, 2024; September 25, 2024; October 8, 2024; and October 15, 2024 by videoconference.

The parties were provided with a full opportunity to examine and cross-examine witnesses. Witnesses were sworn and testified under oath. Closing arguments were presented on October 15, 2024. A 1,520-page transcript was made of all proceedings. The transcript was provided to the parties and the Hearing Officer. Testifying on behalf of the Department were Benny Urena, retired Assistant Principal; Mariela Graham, Former Principal; Merav Bayar, Teacher; Deena Soni, Teacher; Enrique Ramirez, Jr., Teacher; and Rani Pendharkar, Former Principal. Respondent testified on her own behalf. The record was closed upon the conclusion of the hearing on October 15, 2024.

### **THE CHARGES AND SPECIFICATIONS**

(D. Ex. 1)<sup>1</sup>

1. During the 2021-2022 and/or 2022-2023 school years, Respondent failed to properly, adequately, and/or effectively plan and/or execute separate lessons as observed on or about each of the following dates:
  - a. October 25, 2021;
  - b. March 21, 2022;
  - c. May 11, 2022;
  - d. October 11, 2022;
  - e. March 9, 2023; and/or
  - f. May 22, 2023;
2. During the 2022-2023 school year, Respondent violated Chancellor's Regulation A-421, failed to follow school policy and procedure, and/or used poor judgment, in that she:
  - a. penalized and/or threatened to penalize students for attending college trips and/or activities during school hours;
  - b. penalized and/or threatened to penalize students for not doing as they were told; and/or
  - c. used inappropriate language with students and/or otherwise treated students with disrespect.
3. During the 2021-2022 school year, Respondent violated Chancellor's Regulation A-421, failed to follow school policy and procedure, and/or used poor judgment, in that she:
  - a. yelled a (sic) student in the hallway for going to the college counselor's office instead of Respondent's advisory class;

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<sup>1</sup> "D. Ex.," followed by a letter or number, means "Department Exhibit" and the number or letter thereof. "R. Ex.," followed by a number, means "Respondent Exhibit" and the number thereof. "Jt. Ex.," followed by a number, means "Joint Exhibit" and the number thereof.

- b. forbade a student from seeking extra help during study hall;
  - c. threatened to put negative comment(s) on student transcript(s);
  - d. threatened to call the parents of student(s);
  - e. used inappropriate language with students and/or otherwise treated students with disrespect; and/or
  - f. failed to return parent phone call(s) and/or refused to meet with parent(s).
4. During the 2021-2022 school year, Respondent was excessively absent.
  5. In or about April 2022, Respondent failed to follow school policy and procedure, demonstrated a lack of professionalism, and/or used poor judgment, in that she engaged in a conversation with students about possible criminal activity by someone in the school community.
  6. In or about February 2023, Respondent failed to follow school policy and procedure and/or demonstrated a lack of professionalism, in that she left school early without authorization.
  7. On or about May 17, 2023, Respondent neglected her duties, failed to follow school policy and procedure, and/or demonstrated a lack of professionalism, in that she denied a special needs student to receive one-on-one academic tutoring during an advisory class.
  8. Respondent failed, during the 2021-2022 and/or 2022-2023 school years, to fully and/or consistently implement directives and/or recommendations for pedagogical improvement and professional development provided in observation conferences with administrators and/or outside observers; instructional meetings; teacher improvement plans; one-on-one meetings with administrators, school based coaches, and/or outside observers; as well as schoolwide professional development, with regard to:
    - a. Proper planning, pacing, and/or execution of lessons;
    - b. Using appropriate methods and/or techniques during lessons;
    - c. Designing coherent instruction;
    - d. Using assessment in instruction;
    - e. Student engagement; and/or
    - f. Using appropriate questioning and discussion techniques.

The Department alleges that the foregoing constitutes:

1. Just cause for disciplinary action under Education Law § 3020-a;
2. Incompetent and/or inefficient service;

3. Conduct unbecoming Respondent's position;
4. Conduct prejudicial to the good order, efficiency, or discipline of the service;
5. Neglect of duty;
6. A violation of Chancellor's Regulation A-421;
7. Misconduct;
8. Insubordination;
9. Substantial cause rendering Respondent unfit to properly perform obligations to the service; and
10. Just cause for termination.

### **BACKGROUND FACTS**

On the entire record produced, including the Hearing Officer's assessment of the credibility of each testifying witness, and weighing the probative value of the documentary evidence admitted, the Hearing Officer finds the following relevant facts for the purpose of providing the case background. Additional facts may be included in the Analysis and Findings section below.

#### **A. High School of Arts and Technology**

The High School of Arts and Technology is located at 122 Amsterdam Avenue, New York, New York 10023, in the Manhattan borough. Ms. Mariela Graham ("Principal Graham" or "Graham") who was the principal during the 2021-2022 school year testified there were about 450 students enrolled at the school during the charged years. The school's mission is to provide students with the academic, interpersonal, and technological skills needed to achieve excellence in post-secondary education and in their chosen careers.<sup>2</sup> The school's philosophy is that all children can learn and deserve a high-quality education; it is the educator's job to teach, nurture and support students as they become independent adults; and students will make mistakes but it is the educator's job to support them as they become their best selves.<sup>3</sup> The school consists of grades 9 through 12. During the 2021-2022 school year, in addition to Principal Graham, there were three (3) assistant principals: Mr. Benny Urena ("Urena"), Ms. Natalie Cazeau and Mr. Alex Castillo ("Castillo"). Other staff included a business manager, guidance counselors, a wellness coordinator, an instructional coach and lead teachers for various school jobs. At the time, Urena was the assistant principal of instruction and professional development and Castillo was the assistant principal of discipline. During the 2022-2023 school year, a new principal was assigned. Dr. Rani Pendharkar ("Pendharkar") was the principal until April 2023. Upon her departure, Urena became the acting principal for the remainder of the school year. Alisha Bethea ("Bethea") also served as an assistant principal during the 2022-2023 school year.

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<sup>2</sup> D. Ex. 25 at 3.

<sup>3</sup> *Id.*

## **B. Respondent's Work History with the Department**

The Respondent holds a BA in English with a writing concentration (1997) and an MA in English Literature (2014) from the City College of New York. She has a professional certification for teaching English Language Arts grades 7-12 from the New York State Department of Education ("NYSDOE"). Her teaching career includes positions at South Shore High School, Bread and Roses High School in Brooklyn, Norman Thomas High School, Murry Bergtraum High School, and the High School of Arts and Technology in Manhattan. She paused her teaching to earn her Master's degree, resulting in non-continuous employment with the NYSDOE. Respondent worked at the Arts & Technology High School for approximately five to six years and was employed there during the charged school years 2021-2022 and 2022-2023.

## **C. ADVANCE**

Advance is New York City's teacher development and evaluation system.<sup>4</sup> The evaluation system is made up of the Measures of Teacher Practice ("MOTP") and the Measures of Student Learning ("MOSL") to assess teacher performance. Advance returned to its pre-pandemic policy for the 2021-2022 school year with the following changes: state assessments were no longer required for MOSL in grades/subjects that culminate in a state assessment but a school could still choose to use this as an assessment and the conversion chart in MOSL was changed due to a New York State Education Department ("NYSED") regulatory amendment. The MOSL and MOTP are combined to create a teacher's Advance Overall Rating, which is the teacher's final rating of record used for employment decisions.

Advance scoring is dictated by the *Danielson Framework for Teaching*, which includes four domains that score a teacher on a scale of one to four based on evidence gathered through observations conducted by an Evaluator. Evaluations are either formal or informal. A formal evaluation lasts for a full class period, is conducted at a mutually agreed date and time, and includes a pre-observation and post-observation conference. Informal observations last a minimum of 15 minutes and can be either announced or unannounced. The ratings consist of Domains which are: Domain 1—Planning and Preparation; Domain 2—The Classroom Environment; Domain 3—Instruction; Domain 4—Professional Responsibilities. The Advance scoring categorizes the domains and overall score as either: Highly Effective, Effective, Developing, or Ineffective (HEDI).

The MOTP is calculated using the following eight prioritized components of the Danielson Framework:

- (1) Planning & Preparation
  - a. Demonstrating Knowledge of Content and Pedagogy
  - b. Designing Coherent Instruction
- (2) Classroom Environment
  - a. Creating an Environment of Respect and Rapport

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<sup>4</sup> J. Ex. 6 at 2.

- b. Managing Student Behavior
- (3) Instruction
  - a. Using Questioning and Discussion Techniques
  - b. Engaging Students in Learning
  - c. Using Assessment in Instruction
- (4) Professional Responsibilities
  - a. Growing and Developing Professionally

It is important to note that components in domains two and three make up 85% of the MOTP score and components in domains one and four make up 15%. Following the observation, the teacher receives an individual component rating for which there was observable evidence. The ratings are determined using a scale from 1, which equates to “ineffective,” to 4, “highly effective.” These ratings can be found on the teacher’s Annual Professional Performance Review (“APPR”) that teachers can access through their school file or Advance Web Application.

This case covers a period of two school years and includes six informal observation reports and seven letters to file. Respondent was not placed on a Teacher Improvement Plan (TIP) during the charged years. Next, is a review of the ratings received as documented in the observation reports, professional development activities, discipline and letters to file and related information presented during each school year charged.

#### **D. The 2021-2022 School Year**

##### 2021-2022 Observations

##### **October 25, 2021 – Informal Observation<sup>5</sup>**

On October 25, 2021, Urena conducted an informal observation of the Respondent’s teaching practice during a 12th grade English Language Arts class at approximately 1:00 p.m. Urena rated the Respondent less than effective in the following components:

- 1a (obs): Demonstrating knowledge of content and pedagogy – Developing
- 1e (obs): Designing coherent instruction – Developing
- 3b: Using questioning and discussion techniques - Developing
- 3c: Engaging students in learning - Developing
- 3d: Using assessment in instruction – Developing
- 4e: Growing and developing professionally – Ineffective

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<sup>5</sup> D. Ex. 3.

There were eight students present.<sup>6</sup> The objective of the lesson was for students to understand confessional poetry and demonstrate understanding of the Title, Paraphrase, Connotation, Attitude, Shifts, Title and Theme (TPCASTT) method of analysis. The lesson was centered around poems in *The Hurting* by Rupi Kaur.

With respect to Respondent's performance in component 1a., Urena's assessment that Respondent was rated developing was based upon Respondent's plans and practice reflecting a limited range of pedagogical approaches to the discipline or to the students. Urena indicated there was no Turn and Talk or Accountable Talk implemented; students were seated in groups but working individually to respond to prompts; and the only teaching strategy implemented was paraphrasing. Further, he concluded that the teacher was familiar with the important concepts in the discipline but displayed a lack of awareness of how these concepts relate to one another. He took exception to the teacher's instruction to the students to draw conclusions by paraphrasing one of the poems as a main activity. In his view, drawing conclusions is not the same as paraphrasing.

Urena's concerns regarding Respondent's performance in coherent lesson design, component 1e., were twofold: the activities were only "moderately challenging" and the lesson structure was uneven with unrealistic time expectations. The students completed a Do Now activity which was to assess the purpose of the poem explained in a minimum of three sentences. The answers were written by students in a Google document. After it was completed, students were called on and shared their explanations. Respondent then explained confessional poetry directing the students to write down the definition. There was a mini lesson requiring students to draw conclusions from a poem and to paraphrase a poem using a minimum of three sentences. Then students had to assess and identify the structure of the poem using the remaining aspects of the TPCASTT method of analysis. The students had fifteen minutes to complete this task. Urena wrote that the time constraints made it unlikely for students to complete the tasks thoroughly or engage in meaningful feedback, raising concerns about the practicality and clarity of the lesson plan.

Respondent was rated developing in component 3b. regarding questioning and discussion techniques. Urena wrote, "The teacher's questions lead students through a single path of inquiry, with answers seemingly determined in advance. Alternatively, the teacher attempts to ask some questions designed to engage students in thinking, but only a few students are involved" without specifying which aspect of this statement was at issue. Urena listed a series of questions and responses from students. He also noted that three to four students would raise their hands in response to the questions or the teacher randomly called on students.

Component 3c., engaging students, was scored as developing because "The student engagement with the content is largely passive; the learning consists primarily of facts or procedures." He noted that Respondent asked the students to share their opinion and repeated his concern about distinguishing paraphrasing from drawing conclusions.

Component 3d, using assessment in instruction, was rated as developing. Urena noted that aside from saying "okay" to students' responses, there was no evidence of immediate, actionable

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<sup>6</sup> In section 1e. Urena refers to nine students. In section 3b., he states eleven students were present. However, R. Ex.8 reveals that only eight of the 11 enrolled students were in attendance on this particular day.

feedback. As students worked in Google Docs and the teacher had no computer (which Respondent disputes), she could not provide “in-the-moment” feedback.

Finally, regarding the ineffective rating Respondent received for component 4e., Urena concluded that Respondent resists feedback on teaching performance from her supervisors. This conclusion was based upon Respondent’s objections to his assessment of her performance in various components. During the post-observation meeting where Urena shared both positive comments and areas of concern, Respondent questioned how he reached his conclusions on areas of concern and provided her explanations. For example, one exchange as captured in the observation report was as follows:

It was addressed that the lesson lacked rigor and the activity was watered down for the students, and there were no teaching strategies other than writing and sharing in class. Ms. Sherman then said: ‘What do you mean? My questions are all high levels, threes and fours.’ It was asked of the teacher to categorize the questions written on the lesson plan as the DOK was pulled out and reviewed. She labeled all the questions as level 3. She said that she is doing what Principal Graham has said, to have questions at levels three and four. It was indicated that Principal Graham has never said that questions should be written at one or two levels, but at all levels.<sup>7</sup>

The day after this meeting Respondent sent an email providing a written rebuttal to the evaluation. Urena incorporated the text of the email where she expressed appreciation for the feedback; explained she reviewed the lesson plan in order to improve it; explained what she believed demonstrated rigor; noted that while she did not agree with all of the feedback, she would receive and try to apply it; asked that she be provided with specific parts/details of what was missing from her plan; and noted that she had made an appointment with another teacher, Ms. Haggerty, to consider using the Nearpod device in her lessons.

The additional evaluator notes commended Respondent for implementing the practice of note taking in notebooks and laptops, as well as providing students with the TPCASTT methodology. It was recommended that Respondent meet with her colleagues in the English Department to reflect on lesson planning, focusing on presentation of materials and rigor. Urena suggested implementing a Turn and Talk activity and for the Respondent to circulate the classroom to assess the students and provide feedback. It was also indicated that the lesson plan lacked teaching strategies and sequence. Urena stressed the importance of creating different levels of questions for students; levels one, two, three and four to provide students with the opportunity to be more engaged so that she can assess their critical thinking skills. Finally, Urena emphasized that if students are using a technological mechanism to provide responses, then the Respondent needs to be able to monitor those submissions to provide feedback and adjust the lesson accordingly to ensure the use of critical thinking. He also suggested the use of other types of technology such as Nearpod and Padlet. While Urena signed the report on November 3, 2021. Respondent signed the observation report on December 6, 2021.

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<sup>7</sup> D. Ex. 3.



### **March 21, 2022 – Informal Observation<sup>8</sup>**

On March 21, 2022, Graham conducted an informal observation of the Respondent's teaching practice during a 12th grade English Language Arts lesson beginning at 1:05 p.m. until 1:22 p.m. Graham rated the Respondent less than effective in the following components:

- 1a (obs): Demonstrating knowledge of content and pedagogy – Developing
- 1e (obs): Designing coherent instruction – Ineffective
- 3b: Using questioning and discussion techniques - Ineffective
- 3c: Engaging students in learning - Ineffective
- 3d: Using assessment in instruction – Ineffective

In component 1a. of Graham's observation report, she indicated that Respondent was developing because her plans and practice reflected a limited range of pedagogical approaches to the discipline or to the students. The lesson and unit plans used limited instructional strategy, and some were not suitable for the content. Principal Graham observed that almost all of the lesson was oral, and nothing was written on the board, in notebooks, or in a computer-based document. Although Graham referenced Respondent's YouTube video, PowerPoint (PPT) presentation and documents in Google Classroom, she concluded it was problematic that nothing was written on the boards.

For component 1e. Graham noted that the literary devices included in the lesson plan (diction, imagery, and irony) were terms that were not mentioned in the observed part of the lesson plan and the pre-work indicated for the lesson (reading "Who Said It Was Simple") was not referenced during the observation. Because Respondent did not specify which resources (video or PPT) the students were to use, the lesson design was ineffective, in Graham's view.

Respondent was rated ineffective in component 3b. because the line of questioning posed by Respondent did not invite student thinking. Graham wrote that 17 minutes into the lesson, the students were told by the Respondent that they were going to have a discussion based on assessing how intersectionality relates to home, school, and family but no resources (other than a student designated as the TA leading the discussion) or explanations were available for students to know how to engage in the discussion, according to Graham.

In component 3c., rated ineffective, Graham noted that the following materials for the lesson were not suitable: a PPT with a definition that was read aloud to students and a video for students to watch with no further instructions on interpretation or thinking about intersectionality. Respondent asked two questions to invoke discussion. Principal Graham noted the materials were not engaging and did not meet instructional outcome, which was to comprehend intersectionality and demonstrate comprehension of intersectionality.

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<sup>8</sup> D. Ex. 4.

Principal Graham also reported that the Respondent did not conduct an assessment of student understanding nor provided any feedback. If anything, it was global or directed to one student, resulting in an ineffective rating in component 3d.

The evaluator notes indicated that the Respondent received notice that the informal evaluation would take place sometime between March 14<sup>th</sup> and March 25<sup>th</sup>. Respondent was commended for implementing a new approach of introducing a student Teaching Assistant with students sitting in a circle. The recommendations for Respondent were that it is mandatory to implement rigorous, grade-level appropriate text as a foundation for the lessons and to implement structure that includes resources such as text to organize information and set expectations. Graham signed the observation report on April 2, 2022. Respondent signed the observation report on April 8, 2022.

### **May 11, 2022 – Informal Observation<sup>9</sup>**

On May 11, 2022, Graham conducted an informal observation of the Respondent's teaching practice during a 9th grade English Language Arts lesson beginning at 9: 54 a.m. until 10:13 a.m. Graham rated the Respondent less than effective in the following components:

- 1a (obs): Demonstrating knowledge of content and pedagogy – Ineffective
- 1e (obs): Designing coherent instruction – Ineffective
- 3b: Using questioning and discussion techniques - Ineffective
- 3c: Engaging students in learning - Ineffective
- 3d: Using assessment in instruction – Ineffective

Component 1a. was rated ineffective citing that Respondent displayed little or no understanding of the range of pedagogical approaches suitable to student learning of the content because several times she asked questions and quickly gave students the answer.

Component 1e. was rated ineffective because the objective for the lesson plan was to identify and describe aspects of characterization, but Respondent's questions asked what characters were doing or thinking after reading an excerpt from a play. Graham concluded that, as a result, the learning activities were poorly aligned with the instructional outcomes; did not follow an organized progress; were not designed to engage students in active intellectual activity; and had unrealistic time allocations.

For component 3b. Graham opined that the questions were of low cognitive challenge, with single correct responses, and rapid succession. It stated that the student-teacher interactions were mainly recitation style with only a few students engaging in the lesson out of a class of seventeen.

Graham's observations for component 3c. reflected that very few students were intellectually engaged in the lesson. Two students were assigned roles in the play (Ariel and Prospero) during the Do Now activity, while some students did not participate in answering the question in Google Classrooms and others were Googling who the characters were in the prompt.

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<sup>9</sup> D. Ex. 5.

The additional evaluator notes capture a review of a post-observation conference held on May 16, 2022. There were no recommendations, and Graham indicated that Respondent gave students the option to read *Romeo and Juliet* or *The Tempest*. *The Tempest* was also being read by the Respondent's 12th grade class. Ultimately, the students chose to read *The Tempest*. In the observation report, Graham emphasized that this is not how curriculum decisions are to be made as there is a set curriculum for all classes.

Graham recommended that Respondent include pre-determined questions for discussion to deepen student understanding and give them more time to respond. Also, she suggested the Respondent consider using more of the blank boards and walls in her classroom to ensure there are resources and reference materials to help students like word walls, flow charts, family trees, and character lists.

In response to the observation report, Respondent filed a rebuttal notifying administration that a special complaint of harassment was filed by Respondent against Graham on May 26, 2022, with the UFT.<sup>10</sup>

The complaint stated that Graham removed all of Respondent's English classes for the remote spring 2021 semester. Therefore, Respondent filed a grievance because since she is an English teacher Graham was required to assign her to English classes.<sup>11</sup> The complaint also included a log of harassment, specifying events dating from July 21, 2021 through June 24, 2022. The list includes the following comments:

- July 16, 2021: Graham summoned Respondent to her office to inform her that she was aware Respondent interviewed and was applying for jobs at other schools. Respondent wrote that Graham's response to this was that it is good for the Respondent to move on and that she (Graham) was on board with it.
- November 16, 2021: The college counselor requested Respondent's help with college applications and once she (college counselor) informed Graham, Graham required Respondent to submit an application via email and to provide her resume. Once Respondent completed these tasks, Graham informed Respondent that they already had people to fulfill the request.
- February 11, 2022: Respondent noticed she was the only senior advisory teacher who was not permitted to attend the senior trip on February 18, 2022, after Graham published the list of attending staff via email.
- May 16, 2022: During a post-observation meeting, Respondent had the impression Graham was openly mocking her (Respondent) while smiling and bordering on laughter at inappropriate times. Respondent inquired about Graham's behavior. Subsequently, Graham sent an email scheduling the Respondent for another observation within two weeks.

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<sup>10</sup> D. Ex. 5a.

<sup>11</sup> R. Ex. 5.

- May 20, 2022: Respondent recorded that she was under the impression the letters to file were being used to exclude her from chaperoning another senior trip that she was previously asked to attend.
- May 25, 2022: Graham and Urena walked into Respondent's classroom while a teacher and student were in the hallway nearby. Graham spoke loudly and aggressively while the classroom door was open, stating that if Respondent did not change the grade for a student's MLA research paper, she would open an investigation on Respondent. Respondent wrote that she felt embarrassed by this. This incident was witnessed by the teacher, Erin Haggerty and Student E.R.
- May 25, 2022: Graham and Urena summoned Respondent for a meeting pertaining to a student's grade change for the MLA research paper with Respondent's co-teacher unjustifiably present. Prior to the meeting, Respondent had already agreed to change the student's grade. Graham printed emails from the student regarding Respondent. Respondent requested that the emails not be read aloud in front of the co-teacher, but Graham proceeded to read them despite Respondent's request. Respondent wrote that she felt humiliated by this.
- June 24, 2022: Respondent logged that she did not receive any of her three preferences for the [2022-2023] school year which were 12th grade English Language Arts, AP Literature & Composition, and 11th grade English Language Arts. Instead, she was assigned to a full program of AP Language & Composition which is a specialty class that requires training. For context, Respondent noted that this decision resulted in excluding her from 12<sup>th</sup> grade entirely.<sup>12</sup>

### 2021-2022 Professional Development

Throughout the 2021-2022 school year, there was a professional development framework created for the staff as evidenced by the log entered into the record as Department Exhibit 18a. The High School of Arts and Technology mandated professional development sessions on Mondays, which Respondent participated in, according to her testimony. The extent of the professional development curated by the Department for Respondent was the feedback she received in her observation reports.

Deena Soni ("Soni") testified to being the English Department Lead beginning the spring semester of the 2021-2022 school year and sitting on the Professional Development Committee at the school, in conjunction with being a 10th grade English teacher. Her primary focus was providing presentations on the components of the Danielson framework to support teachers. Soni testified that Respondent was active during English Department meetings. She was unsure how to support Respondent because Respondent generally shared positive feedback about her students during the meetings. Additionally, Soni attempted to avoid any possible confrontational encounters with Respondent due to a conflict they had during a past school year.

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<sup>12</sup> R. Ex. 5.

Respondent attended the English Department meetings during the spring semester that covered department goals and the progress being made towards those goals. The record reflects Respondent attending grade team meetings on January 18, 2022, February 28, 2022, April 25, 2022 and June 6, 2022. The record further provides Respondent setting goals for her students, sharing updates about student progress and indicating areas for future improvement as evidenced by Department Exhibit 16a. Soni testified that she did not recall Respondent participating in the intervisitation initiative that called for teachers in the department to serve as a host by opening up their classrooms for others in the English department to be a presenter to the class. The purpose of these visits was to enhance the students' analytical skills. Intervisitations served as an opportunity for non-evaluative observations by the teaching staff within the English Department.

Soni testified further that the professional development focus for the 2021-2022 school year was to garner more student engagement through student-centered discussion. The theory was that this approach would enhance student participation and increase attendance to aid in the transition of students returning back to in-person instruction from the COVID-19 pandemic. In turn, focusing on the discussion component of the Danielson framework was a target for the administration. Soni spent time with the teaching staff facilitating more discussions with students in the classroom as opposed to teacher-led instruction.

Urena testified that his professional development recommendation as a next step was for Respondent to meet with all the colleagues who were well-known in the school who have a grasp of writing rigorous lesson planning and are seen as role models and who are in leadership positions. He also stated that he suggested that Respondent look at questions of all levels even though she said she was asking questions at levels three and four. Urena explained that the reason for using questions of all levels is because some students are at levels one, two, three and four, not just levels three and four. Graham acknowledged that she did not recommend any professional development opportunities, training or coaching subsequent to the observations she conducted.<sup>13</sup>

Respondent testified that she met with Ms. Zakaria, who was the AP Literature teacher, once a week to get material for ensuring rigor in her course. She also met with Ms. Haggerty who was the History teacher because she used a technological device, Nearpod, which Respondent ultimately decided was beneficial for a history class because it was fact-based but not fit for her English class because it is discussion based. Therefore, Respondent continued using Google Classroom.

#### 2021-2022 Letters to File

During the 2021-2022 school year, Respondent received four letters to her file. The first letter, dated January 26, 2022, addressed a student complaint. The second letter, dated April 13, 2022, addressed professional misconduct due to student and parent complaints. The third letter dated May 3, 2022, was in relation to professionalism. The last letter was dated June 24, 2022, regarding Respondent's attendance. All four letters were issued by Principal Graham. Each letter is discussed below.

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<sup>13</sup> Tr. at 761.

a. January 26, 2022 Letter to File – Student Complaint

On January 26, 2022, Principal Graham issued a letter to Respondent to inform her that she received email communication from an unnamed student who stated they were offended by the way Respondent interacted with the student. In the letter, Graham clarified that she did not find that discipline was warranted in this instance. However, Graham wanted to remind Respondent to maintain a civil tone with students.<sup>14</sup>

b. April 13, 2022 Letter to File – Professional Misconduct

Principal Graham issued a letter to file on April 13, 2022, which memorialized a March 22, 2022 meeting pertaining to the Respondent's professionalism. During the meeting, Respondent was presented with five reports of student claims alleging Respondent was treating them unprofessionally and two parent concerns that had been shared with administration. The first student complaint was in regard to the instance referenced in the January 26, 2022 letter to file above; two other students claimed Respondent accused them of bullying Respondent; another student claimed Respondent was insensitive to her emotional state and did not provide an alternate lesson for required reading of Toni Morrison's *Beloved*. The parent complaints were regarding Respondent's unreturned phone calls to Student V's mother, and the refusal to meet with another parent.<sup>15</sup> The parent complaint for Student V was received by a phone call and conveyed in writing by Urena in an email sent directly to Graham on February 4, 2022. Graham suggested that Respondent participate in the *Respect for All Training*. Respondent initially obliged. However, two days later, Respondent wrote to Graham declining to take the training because she felt it would be tantamount to an admission that the student complaints were accurate. Respondent provided additional explanations during the meeting, as discussed in more detail below in the Analysis and Decision section.

c. May 3, 2022 Letter to File – Professionalism

The May 3, 2022 letter to file was issued because Graham was notified that Respondent participated in a discussion with students in her first period English class about a criminal incident which possibly included a student from the school. The incident was broadcast in the *New York Daily News* outlet. Additionally, Respondent was accused of using her cell phone to read the article about the incident. Following this alleged report from students, Principal Graham sent a reminder to the school's staff stating, "it is inappropriate and unprofessional to share or promote any news regarding any criminal matter than may include members of our school community." Respondent replied that she did not recall whether she used her phone to read the article and that she did not know there was a protocol to not discuss such incidents with students; she also reasoned that if a student asked a question about something in the news, it was appropriate to discuss it. Consequently, Graham concluded that the Respondent engaged in professional misconduct due to the conversation about possible criminal activity of someone in the school community.<sup>16</sup>

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<sup>14</sup> D. Ex.10.

<sup>15</sup> D. Ex.11 at 1.

<sup>16</sup> D. Ex. 12.

d. June 24, 2022 Letter to File – Attendance

Respondent's attendance was reviewed during a June 15, 2022 meeting with Graham, Urena and Respondent. The purpose of the meeting was to review Respondent's attendance record for the school year, which reflects thirteen absences, omitting absences related to death and any COVID-19 illness. During the meeting, Respondent explained it had been an exceptionally hard year due to her mother's death and that she had a great attendance record for two years prior to the pandemic.<sup>17</sup>

2021-2022 APPR Overall Rating

Respondent received a MOTP rating of developing; a MOSL of effective and an overall rating of effective for the 2021-2022 school year. Her MOTP score was 1.90, based upon observation ratings for that school year. Respondent testified that at the end of 2021-2022, she submitted her teaching assignment preference for the next school year. She requested 12th grade English Language Arts, AP Literature & Composition, and 11th grade English Language Arts. The assignment she received was a full program of AP Language & Composition which is a specialty class that required training. Respondent was not placed on a TIP for the 2021-2022 school year.

**E. School Year 2022-2023**

Respondent was assigned to AP Language Arts classes for the 2022-2023 school year. Respondent described AP classes as advanced college level classes. According to Respondent, the High School of Arts and Technology did not have standard AP classes. Typically, there are one or two classes. Arts & Tech was in the *AP for All Program*, which meant she had the entire grade level including special education, English as a Second Language (ESL), English language learners and special needs students. This was Respondent's first time teaching this course. Normally, students test for entrance into an AP level class or have advanced superior grades. However, there were no admission requirements for this particular course; it was the entire 11th grade. The Individualized Education Plan (a written plan for a student with a disability, hereinafter "IEP") population of the course was approximately 40 percent, and another 40 percent were ESL students.

According to Respondent, the goal of the AP Language and Composition course was to prepare students for the AP exam. The exam is comprised of three essays: a synthesis essay, a rhetorical analysis essay and an argument essay. The remainder of the exam is multiple choice questions.

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<sup>17</sup> D. Ex. 13.

**October 11, 2022 – Informal Observation<sup>18</sup>**

On October 11, 2022, Principal Pendharkar conducted an informal observation of Respondent's teaching practice during an 11th grade AP Language and Composition lesson beginning at an unspecified time. Respondent was not rated in component 1a. concerning knowledge of content and pedagogy. Pendharkar rated Respondent less than effective in the following components:

- 1e (obs): Designing coherent instruction – Ineffective
- 3b: Using questioning and discussion techniques - Ineffective
- 3c: Engaging students in learning - Ineffective
- 3d: Using assessment in instruction – Ineffective

In component 1e. Pendharkar determined Respondent was ineffective because the lesson plan submitted by Respondent was not aligned with what students were asked to do. In the observation report, she stated, "The objective of the lesson plan and Do-Now was absent and teacher was asking the students to take their writings out."

Component 3b., reflects there was no discussion observed. The students were primarily engaged in a writing assignment that was due the previous Friday. She continued, there was an absence of planned purposeful questions to prompt student discussions.

In component 3c., Pendharkar stated that there was no evidence of a lesson structure, and students were not engaged in a purposeful activity that should have been based on a properly planned objective. Component 3d. Comments that there was no evidence of an assessment besides a check-in with students about who did not complete the assignment from the previous Friday.

The additional evaluator notes reflect that Respondent was advised during the post-observation debrief that:

There should be a planned lesson each day with instructional outcome that is aligned with the objective. Each lesson should be planned with intentional student learning opportunity that mirrors the objective. Discussion questions and prompts should be utilized to elevate students' thinking in alignment with the objective and the planned student learning opportunity (spelling and grammar original). <sup>19</sup>

Respondent provided Pendharkar with her lesson plan indicating students were being introduced to the AP Writing Lab and rhetorical analysis writing about a particular situation and making strategic writing choices based on that situation. The lesson plan included vocabulary, a Do Now activity, mini lesson, discussion questions, an independent assignment and notes regarding special education student needs, among other things. Respondent also used a PPT presentation during the class that was aligned to the lesson plan. Respondent did not sign this observation report, and it

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<sup>18</sup> D. Ex. 6.

<sup>19</sup> *Id.*



was not signed by Pendharkar who was transferred to another school in April 2023. Urena signed it nine months later on May 30, 2023.

### **March 9, 2023 – Informal Observation<sup>20</sup>**

On March 9, 2023, Pendharkar conducted an informal observation of Respondent's teaching practice during a first period 11th grade AP Language and Composition lesson. Pendharkar rated the Respondent less than effective in the following components:

- 1a (obs): Demonstrating knowledge of content and pedagogy – Developing
- 1e (obs): Designing coherent instruction – Ineffective
- 3b: Using questioning and discussion techniques - Ineffective
- 3c: Engaging students in learning - Developing
- 3d: Using assessment in instruction – Ineffective

In component 1a., Respondent was rated developing because “there was no evidence of the lesson in alignment with the essential questions:

- How and why do writers write within a particular situation?
- How do we generate and justify claims when developing an argument? How do we acknowledge or respond to opposing arguments as part of our justifications and logic?
- What relationship exists between a text's reasoning, organization and evidence?”

Pendharkar continued by stating, “students were not aware of the essential questions and could not make a connection between the questions and the synthesis writing.” In component 1e., it was noted that based on the lesson plan emailed to Pendharkar, the lesson observed was not aligned, the objective was not visible and there was no evidence of intentional planning.

Respondent was rated ineffective for component 3b. because there was no discussion and students worked independently on essays even though discussion protocols were listed in the lesson plan. Component 3c. was developing because when Pendharkar asked students about the objective of the lesson, she received varied responses such as: several students stating it was to work on their assignment; there really was no lesson, the teacher just gave them a rhetorical situation but they did not know what it was; and that they did not know what a good syntheses essay looked like but they thought theirs was a good one.

In component 3d., Pendharkar rated Respondent as ineffective because there was only one student who was aware of the criteria being used. Only one textbook was used as a resource for writing their essay. There was no evidence of teacher feedback nor evidence of a writing process that consisted of teacher feedback.

The additional evaluator notes read as follows:

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<sup>20</sup> D. Ex. 7.

As per our debrief conversation, please implement the following recommendations:

- 1) Every AP class period has to be intentionally planned with a sequence of learning activities that are aligned with the instructional outcomes. For example, the observed lesson, there was no evidence of a lesson objective and students could not articulate what they were learning for that period.
- 2) There was an absence of a writing process and a feedback system for your students to progress with their writing pieces. What is your system of giving feedback and monitoring students' learning for each period? Do you hold writing conferences with each student so that they are aware of the criteria for them to be successful on the upcoming AP exam?<sup>21</sup>

Respondent sent an email after the observation expressing her confusion about the unannounced informal observation since Pendharkar had agreed about a week prior to postpone the formal observation "until further notice."<sup>22</sup> Respondent had requested a formal observation because after her first observation of the school year (which was informal), Respondent quoted Pendharkar as saying she wanted to "support [her] teachers, and that [she] would give [Respondent] a formal for [her] second observation." This observation report was not signed by the Respondent. While Pendharkar conducted the observation, Urena signed the report on May 30, 2023, after Pendharkar had been reassigned to another school in April 2023.

### **May 22, 2023 – Informal Observation**<sup>23</sup>

On May 22, 2023, Urena conducted an informal observation of the Respondent's teaching practice during an 11th grade AP Language & Composition lesson beginning at 11:42 a.m. Urena rated the Respondent less than effective in the following components:

- 1a (obs): Demonstrating knowledge of content and pedagogy – Ineffective
- 1e (obs): Designing coherent instruction – Ineffective
- 2a: Creating an environment of respect and rapport - Developing
- 3b: Using questioning and discussion techniques - Ineffective
- 3c: Engaging students in learning - Ineffective
- 3d: Using assessment in instruction – Ineffective
- 4e (obs): Growing and developing professionally - Ineffective
- 4e (p&p): Growing and developing professionally - Ineffective

Respondent was rated ineffective in her knowledge of content and pedagogy, component 1a., because Urena concluded she demonstrated little understanding of effective teaching methods, failing to offer students choices or differentiate instruction for those in the special education

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<sup>21</sup> *Id.*

<sup>22</sup> R. Ex. 14.

<sup>23</sup> D. Ex. 8.

program. There was no clear assessment plan for evaluating students' understanding of rhetorical writing through dialogue, as instructions and modeling were absent. Uneven groupings further disadvantaged students, and the lesson plan appeared disconnected from prior instruction, with no clarity on what had been taught since the AP exam. As a result, there was no evidence that students had been meaningfully engaged in learning.

For component 1e., Urena concluded Respondent's coherent instruction design was ineffective because the lesson lacked structure and clear expectations with a vague objective that did not specify how students should engage in dialogue writing. There was no allotted time for the activity, leaving students without clear goals for completion. Although a rubric was displayed, it lacked instructions, making it unclear how students were expected to complete the task within 45 minutes. Additionally, the only visible classroom outline provided no meaningful guidance on the lesson's purpose or sequence. The "outline" was the following schedule posted on the whiteboard:

Life after Exam (meaning the AP exam).

Monday-Game-Banned

Tuesday-Group Project

Wednesday-College Office Push-in

Thursday-Current events (written)

Friday-Current events (discussion)

In component 2a. regarding an environment of respect and rapport, Urena rated the Respondent as "Developing" and provided the following:

The teacher attempts to make connections with individual students, but student reactions indicate that these attempts are not entirely successful: As the teacher moved around the room, the students were observed bothered by the teacher's close proximity. The students were cautious as to how they responded to the question asked by the supervisor: "How is this activity preparing you for college and career?" As they answered this question, the (sic) kept their eyes on the teacher's movements. When the teacher approached their group, they lowered their voices and appeared to hold back. "We have to do what the teacher said," three students answered. "We have no choice."

In component 3b. Urena concluded Respondent was ineffective because:

Only a few students dominate the discussion: There were no questions asked in class by the teacher or the students. The students were observed discussing what character they would choose. For the entire class visit, the students were drawing and chatting about unrelated class discussion. They were passive and followed what the teacher instructed them to do. There was no urgency observed in

class both from the teacher and the students to complete today's task, which was to create a comic book project.<sup>24</sup>

Component 3c. for engagement was considered ineffective because the lesson lacked variety in instructional groupings, with unevenly sized groups that created role confusion and disengagement. Some students were unclear on the project's purpose, with one expressing frustration over unfamiliar content, while others stated they were only completing it because the teacher required it. Many students preferred writing essays for college preparation, and while they were drawing, they were also engaged in unrelated conversations. With no clear time frame or expectations, the activity lacked structure and direction.

Regarding component 3d. for assessments, Urena concluded Respondent was ineffective because students received little to no meaningful feedback, as the teacher initially remained seated and only began circulating the room after the observation started. When feedback was given, it was limited to whether students were on task rather than addressing the quality of their work. The teacher primarily engaged with students near the supervisors, ignoring the rubric displayed on the Promethean board, which students also did not reference. Additionally, there was no evidence of peer feedback or self-assessment during the activity.

In component 4e. (obs) regarding growing and developing professionally, Urena rated Respondent ineffective and offered the following:

The teacher resists feedback on teaching performance from either supervisors or more experienced colleagues: The teacher was argumentative and refusing to hear what I had to say about today's lesson. She was still insisting that there was nothing wrong with today's activity. She indicated that if the students did not want to do the comic book project, there was nothing she could do. That was the project and all of them had to do it. When I mentioned that some students wanted to be writing their college essay and personal statements, Ms. Sherman indicated that they were, but there was no evidence of that as the students have already said that they are not doing any writing. The teacher kept comparing her AP class with other AP classes in which the teachers, according to her, are not doing anything. Even though I tried to bring Ms. Sherman back to what was observed in today's lesson, she did not let go. She emphasized that she should not have been observed, and that the two required observations for the year were already completed. Ms. Sherman was reminded that teaching and learning must continue until the last day of school on June 13<sup>th</sup>. At the end of the post observation, it was noticed that Ms. Sherman was recording our discussion the entire time. I told Ms. Sherman that I did not consent to the recording, and that this behavior was not going to be tolerated. Later on, Ms. Sherman sent an email explaining the reasoning behind the activities going on in class since May 12<sup>th</sup>. Ms. Sherman did not want to hear anything the students had to say nor the recommendation I was trying to provide for this observation. Finally, there was no lesson plan during the class visit. It was requested five times; the

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<sup>24</sup> D. Ex. 8 at 2.

teacher's response was, "I cannot stop teaching to give you a lesson plan." She was observed trying to look for the lesson plan in the computer but was not able to find it, which indicated that the teacher did not have one as she was not able to show it on her screen. The teacher emailed the lesson plan 30 minutes after I left her classroom. (Spelling, grammar, and punctuation in original).<sup>25</sup>

Finally, the assessment of component 4e. (p&p) requests the observer to rate evidence for components 1a., 1e. and 4e. that were observed within 15 school days prior to the applicable observation to assess the teacher's preparation and professionalism. Urena rated the Respondent ineffective in this area due to events that occurred surrounding students being allowed to play games in class after the AP exam and not releasing a student for tutoring. In sum, Urena expressed his primary concern that Respondent was allowing students to engage in gaming instead of meaningful instruction after the AP exam, despite clear expectations that learning should continue until the last day of school. When confronted, Respondent defended her actions by stating that she had created a post-exam routine under guidelines recommended by the College Board that included gaming and insisted that college essay preparation was the responsibility of the college office. However, Urena directed she was reminded that the College Board does not dictate curriculum after the exam and that it was her duty to ensure students remain engaged in structured learning activities. Despite being instructed to stop gaming on Mondays and focus on reading, discussion, and writing, another teacher observed that gaming continued during advisory period when he went to retrieve a student for one-on-one tutoring. Urena concluded that "[i]t was evident that for Ms. Sherman gaming was more important to her than having the student receive much needed one-on-one tutoring instruction as the student is in the SWD program."

Urena's additional evaluator notes were as follows:

Ms. Sherman, we met on May 24<sup>th</sup>, 2023 to discuss the class visit conducted on May 22<sup>nd</sup>, 2023.

Recommendations:

1. Create meaningful learning opportunities for the students that they will find useful in the future such as reading, discussion and writing.
2. The month following the AP exam should have the students engaged in writing their college essays and personal statements with as many drafts as necessary upon receiving detailed written feedback from you. In addition, engage the students in peer editing and discussion. Generate high level questions in the DOK.
3. Listen to the students and what they wish to learn and how they want to learn. Offer options for the students to decide how they are going to demonstrate the skills you want them to acquire.

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<sup>25</sup> D. Ex. 8.

4. Lesson plans should be rigorous, well-structured and planned with a clear objective, assessments, pre-planned questions, and time allocations to monitor student progress.<sup>26</sup>

The observation report was signed by both Urena and Respondent by May 31, 2023. The final report included photos of the board from the Respondent's classroom.

Respondent wrote a rebuttal titled, *Response to Observation Report for Observation dated 5/22/23*. It is unclear when it was delivered to Urena. The rebuttal states:

Mr. Urena complained about being recorded in my post-observation meeting, which is understandable because the things he said I said in the meeting (detailed in the written report) were not true. I do have a recording of the entire meeting that would clearly show his dishonesty, and clear bias against me. He is my supervisor, and should be a professional at all times; I cannot understand his actions, but am paying the price in the form of my ratings for his bias. Mr. Urena's unprofessionalism definitely calls my observation report into question. In fact, the UFT found procedural inaccuracies in the report, and accepted an APPR complaint against Mr. Urena for this very report.<sup>27</sup>

Respondent filed a grievance through the UFT to appeal the rating in 1e. and 4e. of the May 22, 2023 observation report. The arbitrator denied the appeal and sustained the rating as reflected in Department Exhibit 8b.

### 2022-2023 Professional Development

Like the previous school year, the High School of Arts and Technology had designated Monday for professional development. The various professional development opportunities throughout the 2022-2023 school year as evidenced by the log in the record (Department Exhibit 18b), occurred in various settings to cover several topics, including but not limited to, 11th grade team meetings, intervisitations, department meetings, and Danielson framework meetings. The record indicates Respondent attended grade team meetings on March 20, 2022; April 3, 2023; May 1, 2023; and May 15, 2023.<sup>28</sup> The record also reflects Respondent attended English Department meetings on the following dates: September 19, 2022; January 27, 2023; February 27, 2023; March 13, 2023; March 27, 2023; April 24, 2023; May 8, 2023; May 15, 2023 and May 22, 2023. It appears Respondent was absent from two of the recorded meetings during this school year.<sup>29</sup>

Soni testified that she recalled Respondent participating in intervisitations by allowing Soni and Bethea to observe her classroom to conduct a non-evaluative observation for the purpose of seeing how Respondent was using rhetorical modes. Respondent was provided feedback about the observation during a debriefing in a subsequent grade team meeting. However, Soni could not

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<sup>26</sup> *Id.*

<sup>27</sup> D. Ex. 8a.

<sup>28</sup> D. Ex. 17.

<sup>29</sup> D. Ex. 16.

recall Respondent participating in intervisitations by hosting her class to allow a presenter into her classroom during this school year.

Pendharkar testified that instructional coaching was offered to Respondent for support, but Respondent did not take advantage of the opportunity. Respondent testified she actively sought out feedback and formal observations to get information on what administration viewed as deficiencies in her lesson plans, but they would not oblige. She said she had to rely on other teachers within and outside of her department to see what she could learn and apply, including observing classes of other teachers. She further testified that she was never sent for outside professional development nor supplied a coach to address the alleged deficiencies. Respondent explained that she kept in close contact with Soni, who taught the course prior to her and Soni provided her with resources to teach the class.

### 2022-2023 Letters to File

Respondent received three letters to file during the 2022-2023 school year. The first letter was related to Respondent's attendance/early departure without authorization. The second was regarding a verbal abuse allegation. The third letter was about a complaint from another teacher regarding Respondent not giving a student the opportunity to receive tutoring. Each letter was authored by Urena.

#### a. March 2, 2024 Letter to File—Attendance

On March 2, 2023, Urena, the Principal at the time, issued a letter to file notifying Respondent that she left school grounds before working hours ended. Specifically, the letter states the Respondent was seen leaving school grounds on Friday, February 6, 2023, at 2:30 p.m. and working hours on Friday's end at 2:35 pm. Urena referenced a subsequent meeting that took place with the Respondent, Urena, and Assistant Principal Castillo to discuss Respondent's premature departure. An additional investigation was conducted to review the school's surveillance in an effort to confirm the time Respondent left the school. It was established by the surveillance footage that she left at 2:31 p.m. -- four minutes early.<sup>30</sup>

Urena testified that he initiated this letter because the teachers were previously cautioned against leaving school before working hours concluded, and while exiting the school building to dismiss the students, he noticed the Respondent on the stairwell ahead of him. Therefore, he looked out a window to see her on a street and decided to take a picture of her. He then told the secretary to dock her for the time because she left early without permission. Respondent testified that she did not have an eighth period class that day. She was departing from her prep period, and she would have been downstairs near the exit anyway. Urena said he shared the surveillance with the UFT representative with the assumption that it would be shared with Respondent. Respondent wrote a rebuttal to the aforementioned letter to file dated June 2, 2023, which is discussed in more detail in the Analysis and Findings section below.

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<sup>30</sup> D. Ex. 14.

b. May 19, 2023 Letter to File—Verbal Abuse

On May 19, 2023, Urena issued a letter to file regarding student accusations of verbal abuse by Respondent. According to the letter, students provided written complaints stating they felt: 1) threatened that Respondent would not grade their work if they were not obedient; 2) she was biased; 3) her grading was based on students' behavior instead of their academic skills; 4) they were at risk of being penalized for participating in school activities or trips because Respondent would not provide them with makeup work and defaulted their grade to an "F"; and 5) she targeted students who she did not like and treated them with a lack of respect.

The allegations were reported to the Chancellor's Office of Special Investigations (OSI) by Urena. OSI issued a report finding verbal abuse unsubstantiated. After OSI returned the complaint (OSI Case #23-04051X) to Principal Pendharkar on April 3, 2023, directing the principal or a designee to investigate the matter within fifteen school days, Urena conducted the school-based investigation. He issued the findings in a letter dated May 19, 2023, substantiating verbal abuse.<sup>31</sup> The letter was presented to Respondent on May 31, 2023. She refused to sign it.

c. June 20, 2023 Letter to File—Teacher Complaint

This letter to file was issued due to a complaint initiated by Math and special education teacher, Enrique Ramirez ("Ramirez"), on June 16, 2023. Ramirez reported that a special needs student, Student V., was denied the opportunity to receive one-on-one tutoring by the Respondent on May 17, 2023.<sup>32</sup> During a meeting about the complaint, Respondent explained there was drama about a boyfriend and girlfriend and therefore, she required everyone to stay in place for the day. The letter further describes that Ramirez witnessed the students gaming in the Respondent's classroom, which was not on the agenda for the day.

In the letter, Urena informed Respondent about the protocol that permitted students to go to other classes for tutoring during advisory class. The letter continued by elaborating on Respondent's lack of behavioral improvement subsequent to receiving the previous student complaints. The letter concludes by warning Respondent that her actions could lead to further disciplinary action.<sup>33</sup>

Following the encounter between Respondent and Ramirez on May 17, 2023, Respondent emailed Ramirez the same day (at 2:22 p.m.) to inform him that he cannot remove a student from another teacher's class when no IEP meeting was scheduled for the student. Respondent also expressed that Ramirez was rude and disrespectful by shouting at her in a classroom full of students.<sup>34</sup> While testifying, Respondent explained that she never formally complained about Ramirez (a probationary employee) to anyone because she did not want any trouble for him. She only inquired about the protocol for removal of a student by a special education teacher with the

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<sup>31</sup> D. Ex. 9.

<sup>32</sup> D. Ex. 15a.

<sup>33</sup> D. Ex. 15.

<sup>34</sup> R. Ex. 12.



special education coordinator, who said the only time students can be removed from a classroom legally is with an IEP.

### 2022-2023 APPR Overall Rating

Respondent's overall rating for the 2022-2023 school year was "Developing." Her MOTP was "Ineffective" and MOSL was "Effective." Her MOTP score was 1.72, based on her ratings for the school year.

## **POSITIONS OF THE PARTIES**

### Respondent's Position

Respondent contends that she is a dedicated educator who has spent her life in service to students, including as a foster parent and volunteer, actively participating in school life. Over two school years, she was observed informally only six times, with each session lasting just 15 to 20 minutes. The Department seeks her termination based on these limited observations, totaling roughly two hours over two years. She argues that she has a constitutionally protected property interest in her job and cannot be removed without due process and sufficient proof of incompetence based on a preponderance of the evidence. Respondent maintains that the Department failed to meet this burden and instead relied on trivial issues, without offering appropriate support or professional development.

Respondent asserts that in order to justify termination, the Department must establish that she is incompetent, incapable of further educational development and unlikely to improve, as set forth in *Board of Education of the City of New York v. Arrak*, 28 Educ. Dept. 302, Decision No. 12114 (1988). This case also established a minimal educational standard for determining whether a teacher is "reasonable," which includes possessing content knowledge, communicating effectively, engaging students, maintaining a learning-conducive environment and assessing student performance. Additionally, the Department must prove that she failed to provide a valid educational experience. Respondent contends that she met these objective criteria.

Respondent continues that furthermore, under Education Law § 3020-a, the process is meant to determine if a teacher's deficiencies are remediable, and § 3020-a(4) mandates that the hearing officer consider what corrective measures the employer took. In this case, no meaningful remediation—such as peer intervention, an employee assistance plan, or a teacher improvement plan—was offered, and under the standard established by *Arrak*, and in light of the lack of corrective efforts, a penalty less than termination is warranted, especially since termination is punitive and must not offend a sense of fairness.

The Respondent contends there is serious question about the credibility of the Department's witnesses. For this reason, Respondent's due process rights would be violated without further evidence to justify termination of her employment outside of the rank hearsay presented as testimony under oath. Conversely, Respondent provided detailed testimony about each of her classroom observations, carefully explaining her actions and instructional strategies. She specifically addressed the October 25, 2021, and May 22, 2022 observations, noting that she

consistently used a school-issued computer to assess students in real-time through Google Classroom and provided rigorous, differentiated instruction. She testified that she proactively sought assistance from administration to improve her pedagogy, but received no support, and instead took the initiative to observe other teachers in the English Department. Respondent also described her creation of a teaching assistant program aimed at exposing students to a collegiate atmosphere, going well beyond her formal responsibilities, demonstrating professional dedication consistent with the standards for a reasonable teacher.

Respondent points out that when confronted with critiques in her observation feedback, such as claims about insufficient classroom displays or misalignment of activities to goals, she credibly rebutted them, explaining that her classroom was fully decorated and that the lesson in question addressed complex themes like intersectionality, which may not have been fully understood by the evaluator. According to the Department's evaluation system comprised of the MOTP and MOSL, Respondent's overall rating was "Effective" for the 2021-2022 school year. Accordingly, Respondent insists Specification 1, alleging the Respondent failed to plan and adequately execute lesson plans as observed during the charged years should be dismissed.

Respondent asserts that because of the questionable nature of the allegations made by the Department and unreliable or biased testimony by its witnesses, Specifications 2 and 3, which outline violations of Chancellor's Regulation A-421 during the charged years, should be dismissed. Specification 2 reflects that during the 2021-2022 school year, tensions between Respondent and Graham were evident, leading to multiple complaint filings against Respondent. The Respondent believed that Graham harbored personal animosity toward her, resulting in targeted harassment and differential treatment. While testifying, Graham exhibited a questionable memory, claiming she could not recall whether a harassment complaint had been filed against her, despite a UFT district representative mandating her to cease and desist such behavior. Further undermining Graham's credibility was her inability to recall how witness statements were obtained to justify an April 13, 2022, letter to file against Respondent. Throughout the year, Respondent actively sought support by requesting a formal observation, ensuring a pre-observation conference and a full-class observation, yet Graham dismissed the necessity of such evaluations. Additionally, Graham penalized the Respondent for excessive absences without considering the extenuating circumstances surrounding the illness and passing of the Respondent's mother, framing the legitimate absences as mere excuses.

Respondent also points out that during the 2022-2023 school year, which relate to Specification 3, allegations against Respondent continued under the supervision of Pendharkar. The charges included accusations of yelling at a student in the hallway for visiting a counselor's office, restricting students from seeking extra help, and using inappropriate language. However, the validity of these claims is questionable, as the complaints are based solely on hearsay from school leadership, without corroborating testimony from the students who initially wrote them. Pendharkar, a key witness in this matter, demonstrated unreliable recollection during testimony, failing to remember crucial details about observations conducted on Respondent. Despite acknowledging receipt of Respondent's requests for formal observations, she refused to conduct them, further undermining the legitimacy of her evaluations. Her abrupt and unusual departure from Arts & Tech High School mid-year left Urena to step in, raising additional concerns about the stability and fairness of administrative oversight during this period.

Respondent argues that Urena's testimony throughout the proceedings was riddled with inconsistency, misrepresentations and outright falsifications, making him an unreliable witness. One of the most blatant fabrications was his claim that Respondent did not have a device during an October 25, 2021 observation, despite the fact that all teachers were issued laptops, which Respondent used regularly for attendance, PPT presentations, and real-time student assessments via Google Classroom. His lack of credibility was further evident when he attempted to mischaracterize the reading scores of the Respondent's AP class, failing to acknowledge that the class was inclusive of special education and ESL students, making direct comparisons to traditional AP scores misleading.

Additionally, Urena demonstrated a fundamental misunderstanding of academic content when he incorrectly assessed a lesson on rhetorical writing as being at an eighth-grade level, despite later admitting that he did not know what rhetorical writing, rhetorical questions, or rhetorical appeals were. His scrutiny of Respondent's lesson plans, student participation, and assessment methods was unfounded, as Respondent provided clear evidence that she was actively evaluating student work through Google Classroom. Perhaps most concerning was his falsification of statements Respondent allegedly made during a meeting, which he misrepresented in an observation report. These inconsistencies and misstatements call into question the validity of his testimony and any administrative actions taken based on his reports.

Respondent maintains Bayar, a union delegate and the Respondent's co-teacher, exhibited questionable credibility due to her conflicting roles and personal biases. Despite her duty to represent union members impartially, she admitted to disliking Respondent and secretly kept a log about her, which she shared with Graham without Respondent's knowledge. Additionally, Bayar acknowledged experiencing similar issues with another teacher, further casting doubt on her impartiality and motives. For the above reasons, there is a lack of competent evidence to support Specifications 2 and 3, and the charges should be dismissed.

Respondent requests leniency for Specification 4, regarding excessive absences during the 2021-2022 school year. Respondent admitted to 13 absences due to her mother's illness, which ultimately led to her mother's passing. Otherwise, Respondent's attendance record was previously unblemished. The principal at the time, Graham, did not provide any warnings or notice to Respondent to inform her that the absences were becoming excessive. No action was taken by administration to mitigate any penalty to Respondent. Punishment is not warranted under this circumstance.

Respondent argues that she has admitted to and expressed remorse concerning engagement in a conversation with students about criminal activity possibly involving someone in the school community, as set forth in Specification 5. Respondent acknowledged she had a lapse in judgment. This demonstrates she is capable of acknowledging wrongdoing. Thus, the appropriate recourse should be a counseling memo, not termination.

Regarding Specification 6 related to Respondent's premature departure from the school premises, she admitted to leaving school early at the end of her prep period upon reviewing the surveillance footage. However, surveillance shows that another teacher exited the building with

her and Respondent did not realize she was leaving early at the time. The other teacher seen in the surveillance footage initially went without reprimand. Urena testified that he did not notice the other teacher next to Respondent in the video. Thus, it is clear Urena was targeting Respondent, which again raises questions about Urena's credibility. Once confronted by Respondent regarding the other teacher who was visible in the video, then, and only then, did he issue a letter to file to the other teacher. Respondent asserts there is a clear bias which calls everything in this case into question.

Respondent argues that concerning Specification 7 pertaining to her alleged denial of Ramirez' request to remove a student from her classroom for tutoring, no investigation was conducted. The Department simply rushed in to add another letter to Respondent's file. Ramirez' complaint was an act of retaliation because he only reported Respondent subsequent to her stating she was going to report him for removing a student from her classroom without an IEP. Respondent explained her initial refusal to release the student was because she had a concern about the safety of the student who had been in a physical fight the previous day. To substantiate this complaint, at least five to six students could have been interviewed to attest to the encounter. While testifying about this incident, Ramirez could not recall the email Respondent sent to him pertaining to this matter and once his memory was refreshed, he had to backtrack. The core of this instance is a disagreement between colleagues. This is an attempt to add yet another document to Respondent's file. Ultimately, Respondent released the student without a superior's intervention. Therefore, the charge should be dismissed.

Respondent argues that Specification 8, which alleges a failure to implement improvements, is flawed because no teacher improvement plan was imposed, contrary to standard progressive disciplinary procedures outlined in the Advance Guide. The lack of specific remediation and reliance solely on observations for termination demonstrate that proper preliminary steps were not followed, making the case unwarranted. Additionally, Respondent, a competent teacher committed to improving her pedagogy, was not provided with tailored resources to support her professional development. Given these failures, Respondent requests dismissal of the charges or, at the very least, a penalty less severe than termination due to the Department's inability to meet its burden of proof.

### The Department's Position

The Department argues it must meet its burden of proof by a preponderance of the evidence for each element. The standard for competence is the Danielson Rubric by mutual agreement of the parties. The standard of discipline to effectuate termination is just cause as delineated in Section 3020-a of the Education Law, which requires the Department to prove the underlying facts that support a determination of incompetency made by the evaluators. Just cause is defined by *Enterprise Wire Co. and Enterprise Independent Union*, 46 LA 359, the seminal case that establishes the standard.

The Department argues that the standard for competence in *Aarak* has since been replaced with the Danielson Rubric. Hearing officers in a predominant number of recent cases pertaining to New York State Education Law Section 3020-a have supported this as the standard to determine

competency. Danielson represents a much higher standard of pedagogy and professionalism now imposed upon teachers as agreed upon by the parties.

The Department contends that the just cause standard for discipline (including termination) is applicable to the instant case. *Enterprise Wire*, sets forth the seven tests for just cause and is widely used to evaluate disciplinary cases and establishes the rule for leniency as the prerogative of the employer. It argues the elements have been substantiated by the record evidence. Respondent was on notice via the observation reports and letters to file that her deficiencies subjected her to potential termination. The Department's expectation of Respondent is reasonably related to the efficient and orderly operation of the Department's business, safety and well-being of the students. The Department expected Respondent to treat her students with respect and sound care. Effort was made by the Department to determine Respondent's guilt. The implementation of the Advance system satisfies this prong because it evaluates the competency and effectiveness of the pedagogues in the New York education system. A full and fair investigation was conducted with respect to each specification and Respondent was provided the opportunity to respond to each observation report and letter to file throughout the proceedings. A fair and objective investigation was conducted.

The Department maintains that there is no evidence to indicate the administrators were not fair and objective in their evaluations and investigations of Respondent's performance and conduct. Substantial evidence of employee's guilt was obtained. The objective facts pertaining to Respondent's performance were applied to the rubric as determined by the administrators. This is where the Hearing Officer should defer to the judgment of the educational professionals since it is their area of expertise. The supervisory licenses combined with continuous training demonstrate that the administrators have the requisite expertise and qualifications set forth by the state to conduct observations and rate pedagogical skills accordingly.

The Department urges that the Hearing Officer is left to determine whether the facts provided were a reasonable non-arbitrary justification for the ratings. In this case, all the witnesses are credible, and their testimonies were devoid of any evidence of ill will towards the Respondent. There is clear testimonial and documentary evidence in the form of observations and ratings to show Respondent more likely than not rendered incompetent and inefficient service and violated Chancellor's Regulation A-421.

The Department contends there is no evidence to suggest unequal or unfair treatment of Respondent. While it is within the purview of the Hearing Officer to determine proportionality of the offense and to consider the remedial efforts, here, two years were given to Respondent to remediate her performance to no avail. Because of this, the remediation sought is termination in place of progressive discipline as warranted by Respondent's conduct. The remedial efforts provided to support Respondent are equivalent to progressive discipline in this case. For example, a suspension would not help a teacher who struggles with pedagogy or doing their job. The testimony and evidence show, by a preponderance of the evidence, that Respondent has incompetent pedagogy at best and is unwilling to improve her pedagogy or remediate her performance to meet the standard set forth by the education law.

Further, the Department argues Respondent's Advance overall rating for the 2021-2022 school year reflects an effective rating, but the MOTP was developing and the data used to compose her MOSL score was based on 10th grade regent scores, which is a class the Respondent

was not teaching during the applicable school year. For the 2022-2023 school year, her overall rating was less than effective with her MOTP being ineffective and her MOSL based on tenth grade regent scores again. Case law provides that the MOSL deserves far less weight than the MOTP, particularly in cases where the MOSL is not based on the teacher-student population. Additionally, Respondent's AP scores for the 2022-2023 school year are most dispositive in regard to her student test scores. Respondent's response to the low test scores was to blame it on the student population that she claimed was an AP for all class without any corroborating evidence to support the statement. Because of the reasons stated above, the Department submits that the burden of proof for Specifications 1a. through 1f. have been met and the specifications should be sustained.

The Department argues further that there is credible evidence to establish a violation of Chancellor's Regulation A-421 during the 2021-2022 and 2022-2023 school years due to Respondent's lack of professionalism and poor judgment. Multiple letters to file also demonstrate Respondent's neglect of duties and noncompliance with established rules and policies in the staff handbook. Despite arguments about the necessity of child testimony, the Department asserts that such testimony is not required to sustain charges, a stance supported by the First Judicial Department in *Board of Education v. Arbitrator McKeever, R. Allah* (Index number 453166-2021, Case # 2022-03225). Testimonies from Graham and Urena, who found student emails credible and conducted investigations alongside UFT representative Bayar's firsthand account, are sufficient. Thus, Specifications 2 and 3 should be sustained.

Regarding Specification 4, the Department maintains that Respondent was excessively absent for more than the ten permitted days during the 2021-2022 school year. In *DOE v. Maryanne Fiat*, SED #37377, the arbitrator sustained the Department's specifications where the respondent was absent for 14 and 11 days in the respective school years and found termination appropriate. Although the Department extends empathy to Respondent for her underlying circumstances resulting in her absence, her reason does not excuse her exceeding the ten allowable days where extended leave was available. Thus, the Department submits that the burden of proof has been met and Specification 4 should be sustained.

The Department argues that it has established through the letter to file, Bayar's testimony and Bayar's log of Respondent's behavior that Respondent demonstrated a lack of professionalism and used poor judgment when speaking about criminal activity of a student in the school community to her students in the classroom, as set forth in Specification 5. Respondent's admission that she used poor judgment and would not repeat it does not defeat the fact that she continued to show lack of care and respect for the students and the classroom. It shows she failed to be the adult in the classroom. Therefore, the Department submits that the burden of proof was met, and Specification 5 should be sustained.

The Department continues that the burden of proof has been met for Specification 6. Respondent's rebuttal accused Urena of having a vendetta and being biased against her, resulting in her refusal to take responsibility for her actions until video evidence was provided to her leaving school early without authorization. Only then did she admit to committing this infraction. This instance shows a pattern of the Respondent's unprofessional behavior and inability to accept when she is wrong. Therefore, Specification 6 should be sustained.

The Department asserts it has met its burden of proof regarding Specification 7. It argues that the letter to file, email from Ramirez and testimony from Ramirez support the charge. Respondent's attempt to justify her actions by Ramirez and Urena described video games being played in Respondent's classroom, with Respondent admitting to promoting violent games on a school flyer. Specification 7 should be sustained.

Finally, the Department argues that Specification 8, which relates to Respondent's failure to improve and develop professionally during the years charged, was proven. Respondent did not take feedback from administrators, co-teachers, nor colleagues to improve her pedagogy or develop professionally. Due to the credible evidence provided in support of Specification 8, it should be sustained.

The Department urges that the clear evidence is that Respondent has deficiencies. The administration made a good faith effort to remediate Respondent's deficiencies even though there is no set standard for doing so in teacher performance cases. While Respondent argues that she requested formal observations to incur the benefit of scheduled observations, pre and post observation conferences, there is no indication this would have done anything to improve her pedagogy, and formal observations are not required. Furthermore, Graham testified to providing teachers with advance notice of a two-week window when observations would be conducted and all three administrators testified to holding post-observation conferences with Respondent. Ultimately, it is the teacher's responsibility to take ownership of the opportunities available to them. Instead, Respondent did not seize the available opportunities, claimed she was effective and was already aware of what she needed to do. Respondent refuses to acknowledge she has any deficiencies in her pedagogy or that she needs to make changes for improvement to occur.

To meet the preponderance of the evidence standard, the Hearing Officer must find the witnesses credible. Urena is credible because he aimed to make Respondent comfortable by arranging a meeting with Ms. Zakaria to provide support. He also wanted to issue a counseling memo to Respondent instead of initiating an investigation into verbal abuse allegations. Graham is credible because she offered to review observation reports with Respondent. There were no findings from Respondent's harassment complaint against Graham. Pendharkar had not worked at the school long enough to develop a bias. Collectively, the administrators had over 50 years of experience. They adhered to the Danielson Rubric, reported their observations, and gave the ratings they believed were deserved.

In conclusion, the Department asks the Hearing Officer to discredit Respondent's testimony due to inconsistencies in her statements. Therefore, the Department respectfully submits that it has established the just case standard. The Department requests that the Hearing Officer find that Respondent is beyond remediation and that termination be the only appropriate penalty in this case.

## **ANALYSIS AND DECISION**

### **A. Department's Burden of Proof**

As this matter is brought pursuant to Section 3030-a of the laws of the State of New York, the Department is required to establish by a preponderance of the evidence that Respondent

committed the offenses as alleged in the Department’s specifications. In addition, the Department has the burden of proving that the termination of Respondent’s employment that it requests is the appropriate penalty. These well-established just cause standards, which have been legislatively cemented into the 3020-a process, require the Hearing Officer to scrutinize the charges put forth by the Department and evaluate the evidence in the record to arrive at a decision consistent with the Education Law.

If there is sufficient evidence that Respondent committed any of the offenses set forth in the charging document, then a determination must be made with respect to the appropriate penalty to impose. The Respondent urges the undersigned Hearing Officer to independently evaluate the evidence, while the Department contends that deference should be given to administrators trained in assessing pedagogy, unless their credibility is in question. After reviewing the record and hearing witness testimony, significant concerns arise regarding the credibility of various administrators, as discussed below. The entire record, including observation ratings, will be assessed to ensure they were not issued arbitrarily or unreasonably. Furthermore, while the Respondent argues that *Aarak* is the leading precedent for assessing teacher competency, I find that the parties agreed to use the Danielson Rubric as the applicable standard. Accordingly, I will examine the probative evidence to determine whether the Department has met its burden of proof regarding all specifications under the Danielson framework, the Education Law, the collective bargaining agreement, and other relevant policies.

While the Hearing Officer has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceeding, this award only refers to the submissions and evidence necessary to explain the Hearing Officer’s reasoning. The facts presented or relied upon may differ from one side’s or the other’s presented version and that is the result of the Hearing Officer necessarily having to weigh the presented evidence in providing the basis for and in coming to a decision as to the award.

## **B. Specifications**

### **ALLEGATIONS REGARDING RESPONDENT’S PEDAGOGICAL PERFORMANCE**

**SPECIFICATION 1:** During the 2021-2022 and/or 2022-2023 school years, Respondent failed to properly, adequately, and/or effectively plan and/or execute separate lessons as observed on or about various dates as set forth in the charging document.

#### **a. October 25, 2021 – Informal Observation**

##### **Department’s Evidence**

On October 25, 2021, Assistant Principal Urena conducted an informal observation during Respondent’s 12<sup>th</sup> grade English lesson beginning at 1:00 p.m. He rated Respondent developing in 1a, 1e, 3b, 3c, 3d and ineffective in component 4e. Urena explained during his testimony that overall, he was concerned about the lack of rigor; lack of assessment; and students teaching themselves. He testified that the Do Now activity was on a 9<sup>th</sup> grade level in that paraphrasing as a



teaching strategy was too basic at the 12<sup>th</sup> grade level. It was also problematic that only three of the eight students present answered questions. Urena explained further that Respondent was not able to assess students because while she was using Google Classroom, she did not have a computer of her own to monitor their work. Finally, Urena concluded that Respondent was resistant to his critique because she did not think anything was wrong with the lesson. In the observation report, he described the post-observation meeting held between Respondent, Graham and himself. After explaining to her where she needed to improve, he noted Respondent's insistence that she was an effective teacher and "it did not matter what she did, the administration is always going to look for ways to evaluate her as developing and/or ineffective."<sup>35</sup> And, she mentioned that she knew Principal Graham did not like her. Urena expressed in his documentation that the observations were not personal. He noted that she later apologized in a follow-up email sent the next day.

### Respondent's Defense

Respondent testified that the poem was more than moderately challenging, especially since confessional poetry is a relatively new genre of poetry. Respondent testified that she was using the TPCASTT method of analysis as the teaching strategy to teach students about confessional poetry. The lesson plan included an objective, a Do Now activity, a mini-lesson, differentiation via the PPT text, a six-minute questioning portion; and wrap-up through students sharing out loud. She assigned the pre-work for the lesson on October 23, which was a Saturday. Respondent prepared a PPT presentation to teach the lesson. She explained that it was on the Promethean board while Urena was present. To project an image on the Promethean board, it must be connected to a computer. She had her computer connected and was able to see students work in real time while they worked on the Google Classroom platform. Respondent explained that students had access to the poem as a resource while in the Google Classroom. It is via the Google Classroom that she was able to assess student learning.

Respondent explained that the grouping and sharing would occur about 25 minutes into the lesson. She could not recall if Urena was still present at that point. Respondent disagreed with Urena's criticism of the Do Now activity. She noted that taking responses from only a few students is necessary to stay on track for the lesson time frame. Respondent explained that her questions are open-ended so they cannot lead to one path and all eight students turned in responses to the questions. Students demonstrated they were not confused about conclusions and paraphrasing because they answered the questions correctly.

Respondent agreed that she was frustrated and confused about the feedback she was receiving because she tried to implement it, but administrators kept changing criteria. In her email after the post-observation meeting, she thanked the administrators for their feedback and provided additional details to explain the rigor in her lesson. She also stated in the email her plan to meet with the technology instructor about using Nearpod. Respondent testified that she also met with colleague Zakiria who also taught AP English. She reached out to Zakiria for assistance with developing more advanced questions.

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<sup>35</sup> D. Ex. 3 at 4.

Respondent asserts that she actively sought feedback from Urena, but it was denied. She wanted to know her deficiencies to correct them, as she is aware of her need for growth and learning. Respondent testified that neither Graham nor Urena provided coaching. For example, she mentioned an email from Urena about a meeting during her class, advising her co-teacher could start the session. It addressed one sentence in her 14-page lesson plan. She thanked him for pointing out the sentence despite its triviality.

### Analysis and Conclusions

To be considered developing under component 1a., Danielson looks at whether the teacher has a lack of awareness of the important concepts in the discipline being taught; demonstrates inaccurate or incomplete knowledge; and has plans and practice reflecting limited pedagogical approaches. Here, Urena acknowledged Respondent was familiar with the important concepts but displayed a “lack of awareness” of how the concepts relate to one another because she asked the students to draw conclusions by paraphrasing one of the poems being discussed. Respondent was teaching students how to understand confessional poetry by using TPCASTT as an analytical method. Respondent’s PPT specifically stated, “Drawing conclusions from any one of the first three poems in ‘The Hurting’, in a minimum of three sentences, paraphrase only one of the three.” On its face, the instruction is somewhat unclear. However, Urena did not note that any of the students were unable to respond to the question presented. Urena’s criticism about the use of paraphrasing appears odd since paraphrasing the “P” in the TPCASTT method. There is insufficient evidence that Respondent was less than effective in this component.

Under Danielson, to be rated developing for 1e., the learning activities must be poorly aligned with the instructional outcomes, do not follow an organized progression, are not designed to engage students in active intellectual activity, and have unrealistic time allocations. To be effective, most of the learning activities must be aligned with the instructional outcomes; reasonable time allocations are made; provide significant cognitive challenge and allow for differentiation. In this case, Respondent used the TPCASTT teaching strategy to teach confessional poetry to 12<sup>th</sup> grade students. The instructional activities involved assessing the purpose of the poem, group discussion about the author and the meaning of confessional poetry and individual assessment through Google Classroom. Urena did not identify the length of time he was in the class. His claim that Respondent had no computer is unfounded since she could not have displayed the PPT lesson on the Promethean board without it. On balance, there is insufficient evidence that Respondent’s performance was less than effective in component 1e.

In component 3b. Danielson effective teaching permits some low-level questions, but the idea is to promote student thinking and understanding. Danielson states, “[t]he teacher creates a genuine discussion among students, providing adequate time for students to respond and stepping aside when doing so is appropriate. The teacher challenges students to justify their thinking and successfully engages most students in the discussion, employing a range of strategies to ensure that most students are heard.”<sup>36</sup> The *assess* and *identify* the structure of the poem and having them to *apply* the TPCASTT strategy to the poem being taught demonstrates a challenge to students and

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<sup>36</sup> Jt. Ex. 5 at 13.

requires thinking employing an analytical methodology. This was a relatively small class of only eight students present. Urena noted that three to four students would participate and wrote details about the questions and responses in the observation report. For example, when one student provided a response, Respondent asked whether “Anyone want to add?” reflecting an attempt to build upon the answer to promote student thinking. Thus, the evidence establishes that Respondent was using questioning and discussion techniques that were considered effective under Danielson. Respondent’s rating should have been effective for 3b.

In component 3c., to be effective, Danielson requires the learning tasks and activities to be fully aligned with the instructional outcomes and to be designed to challenge student thinking, inviting students to make their thinking visible. Critical attributes include *most* students being intellectually engaged in the lesson; students are invited to explain their thinking; providing students with sufficient time to be intellectually engaged and using suitable groupings. Here, Urena reiterated that it was not clear whether students understood the paraphrasing assignment. Although there was no reported sign of confusion, the record reflects that many students engaged in the discussion and Google Classroom work. Respondent’s rating should have been effective for 3b.

In component 3d., to be effective, Danielson requires that questions and assessments are regularly used to diagnose evidence of learning; teacher feedback to groups of students is accurate and specific; some students engage in self-assessment; critical attributes include standards of high-quality work and are clear to students; teachers elicit evidence of understanding; and teachers provide timely feedback and guidance. In this case, Urena concluded that Respondent could not provide feedback because she did not have a computer. That has been unsubstantiated. It was acknowledged by Urena that the PPT was on the Promethean board which is connected to a computer. Respondent provided competent testimony that she could monitor their work in real time via Google Classroom. Respondent’s rating should have been effective for 3d.

Lastly, Urena concluded that Respondent was resistant to feedback when she disagreed with his critique of her teaching performance. Under Danielson, an ineffective rating is proper in component 4e. where a teacher engages in no professional development activities; resists feedback on teaching performance from supervisors or more experienced colleagues; makes no effort to share knowledge; or assume professional responsibilities. As it relates to feedback, an effective rating is appropriate where the teacher “actively engages with colleagues and supervisors in professional conversation about practice, including feedback about practice.”<sup>37</sup> In this case, Urena concluded Respondent resisted feedback when she challenged his conclusions about her observation. In the email she wrote after the post-observation meeting, she acknowledged being appreciative of the feedback and wrote, in part, “So as my supervisor, I would really appreciate it if you could tell me specifically what parts/details are missing from my lesson plan; I will look at other 12th grade lesson plans, but it would really help if you could just tell me as well so I cannot be mistaken about what's missing.”<sup>38</sup> Disagreeing with feedback is not being resistant to feedback. The evidence shows Respondent invited specific feedback on *how* to improve. There is insufficient evidence that Respondent was less than effective in this component. Respondent should have been rated as effective in component 4e. Based on the record evidence, I find that Respondent

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<sup>37</sup> *Id.* at 19.

<sup>38</sup> D. Ex. 3 at 4.

demonstrated effective performance in components 1a., 1e., 3b., 3c., 3d., and 4e. Specification 1a. is not sustained.

**b. March 21, 2022 Informal Observation**  
Department's Evidence

On March 21, 2022, Principal Graham conducted an informal observation during Respondent's 12<sup>th</sup> grade English Language Arts lesson from 1:05 p.m. until 1:22 p.m. Graham testified that this was the beginning of the period. She rated Respondent developing in component 1a. She rated Respondent ineffective in components 1e., 3b, 3c, and 3d. Principal Graham observed that almost all of the lesson was oral, and nothing was written on the board, in notebooks, or in a computer-based document. Graham testified that the lesson seemed to be in isolation. There was nothing referenced about the previous learning. Students were given no resources to draw from the questions asked; and there was no assessment because there was no written material, note-taking expectations or discussion rubric.

Respondent's Defense

As reflected in her lesson plan, Graham observed a lesson on understanding intersectionality based on the poem entitled, *Who Said It Was Simple* by Audre Lorde. Respondent testified that she specifically uses the effective rating language from the Danielson Rubric to create her lesson plans. She described her lesson plan steps as including pre-work (aka homework); a Do Now question; mini lesson; assessment via a question posted in Google Classroom; and a wrap-up by having students share out. Respondent explained that she created a teacher assistant (TA) program by posting criteria in the school for students looking to get into the program. The TA led the discussions. She had the only TA program in the school. For this lesson, the mini lesson was the focus. Respondent noted that a PPT is not required but she prepares it for students because it goes a long way toward helping them understand the lesson. Respondent explained that Graham's photos of her classroom reflecting blank walls only included two of the four walls. Respondent stated that one wall had the Promethean Board with the lesson being taught. The other wall had various literary posters and information. Further, she explained that the lesson was a self-reflection which naturally leads to discussion and understanding.

The sum of her testimony is that administrators kept moving the criteria they were looking for. For example, the level of discussion questions. They discounted parts of her lesson plan that they did not observe. They did not give her credit for using the technology of Google Classroom where she could see what students were doing in real time. They undermined her encouragement of self-reflection activities she attempted to complete. They did not give weight to her use of PPT and the resources available in the Google Classroom. Her use of open-ended questions to encourage rigor and thinking were discounted. No credit was given for creativity in developing the TA program which encouraged leadership. Regarding Graham's recommendations, they are unfounded. The rigor was embedded in the self-reflective nature of the discussion.

## Analysis and Conclusions

Graham's primary complaint in connection with Respondent's demonstration of knowledge and content (1a) was that "almost all of the learning was oral" and "[t]here was nothing written on the boards in the classroom that were pertinent to this lesson." However, Graham made reference to Respondent reading "the definition of intersectionality from the *powerpoint* on the board."<sup>39</sup> (Emphasis added). This was a complete contradiction. Notwithstanding this discrepancy, there is no evidence to support that Respondent's knowledge of the discipline was rudimentary, inaccurate, lacking in strategy or was unsuitable as required to support a developing rating. Therefore, the rating should have been effective.

Regarding components 1e., 3b., 3c., and 3d., Graham concluded Respondent was considered ineffective for primarily the same reasons she noted for component 1a. Although she was only in the classroom for seventeen minutes and observed Respondent show a video about intersectionality; review terminology and definitions about intersectionality; and had students engage in self-reflection by having them provide examples of intersectionality in their various environments, Graham concluded Respondent was ineffective in these components. The evidence does not support these ratings. The topic was built upon the study of a specific poem and challenged students to dig deeper by applying the concepts to their own experiences through self-reflection. Respondent encouraged leadership in her students by creating the TA role which Graham acknowledged Student G was the "student TA" leading the discussion. Graham failed to credit Respondent for implementing a high-quality program to further student engagement and learning. This is especially troubling in light of English Department Lead Soni's testimony that administration advised they wanted to see more student-led activities in accordance with the Reading Discussion and Writing model being implemented. Accordingly, I find that Respondent demonstrated effective performance in these components in line with the Danielson framework. Specification 1b. is not sustained.

### **c. May 11, 2022 Informal Observation**

#### Department's Evidence

On May 11, 2022, Principal Graham conducted an informal observation during Respondent's 9<sup>th</sup> Grade English lesson. Urena accompanied her and they were present from 9:54 a.m. until 10:13 a.m.--exactly fifteen minutes, as required. She rated Respondent ineffective in components 1a., 1e., 3b., 3c., and 3d. Based on the evidence, the administrators entered the classroom about seven to eight minutes into the period and they were present for the Do Now activity and part of the mini-lesson which incorporated a question to be answered in Google Classroom.

Graham testified her concerns were that what was happening in the classroom was different than what was on the lesson plan. Then the lesson plan itself was more comprehension than analytical. Lastly, only two students participated. Graham wrote that Respondent was ineffective

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<sup>39</sup> D. Ex. 4. at 2.

regarding her knowledge of the content because the pedagogical approach used was that she asked questions and quickly provided the answers which means Respondent was taking on the “cognitive load” instead of the students. She believed the instruction design was ineffective because the lesson plan was geared toward comprehension and no analysis for the students. The lesson did not reflect student thinking, in her opinion. Further, Respondent could have used Turn and Talk as a strategy to get students to answer questions and be more engaged which caused components 3a., 3b. and 3c. to be rated ineffective. Graham wrote that two students did not appear to know who the Sycorax character was, and the timing of the independent work stated in the lesson plan was late by seven minutes which reflected ineffective performance for student engagement and assessment.

A post-observation conference was held five days later on May 16, and Graham noted that the lesson plan used for this 9th grade curriculum was also used for 12<sup>th</sup> grade by pointing out typographical mistakes in Respondent’s lesson plan listing students in Respondent’s senior class instead of the 9<sup>th</sup> grade class. When inquiring about this, Respondent explained that she gave the 9<sup>th</sup> grade students the option of reading either *Romeo and Juliet* or *The Tempest*. The students picked the *Tempest*. Graham took issue with the fact that Respondent believed she could pick her own text for the 9<sup>th</sup> graders because the curriculum is set by the school district and the subject teams. Graham testified that this demonstrates Respondent’s level of disconnection from proper procedure. Graham’s recommendations to Respondent were that she use “predetermined questions” to “deepen student understanding” and give them time to respond. She also recommended adding resources like word walls, flow charts, family trees and character lists particular to the novels being read to the blank walls and boards in the classroom.

On cross examination, Graham testified that even though the Respondent’s 9th and 12<sup>th</sup> grade classes were assigned the same book, she did not compare the lesson plans for the two grade levels to verify whether they were different in order to meet the necessary level of rigor for each respective grade level. Graham confirmed that Respondent did use the common core standards for teaching 9th and 12th grade students as required by NYDOE.

### Respondent’s Defense

Respondent submitted into the record the lesson plan, the PPT presentation used during the class, the resources posted inside the Google Classroom and student responses to a question presented in the Google Classroom.<sup>40</sup> Respondent testified that the topic of characterization was being taught in this lesson. In relation to rigor, Respondent stated she was teaching Shakespeare which is Elizabethan language and was appropriately 9<sup>th</sup> grade level literature. Respondent admitted that she had some typographical errors in the lesson plan due to using it as a template for other courses she teaches using the same materials. Respondent explained that the lesson plan correlates to the PPT which is “heavily” differentiated and scaffolded especially since it is Elizabethan language. Highlighted text in the PPT demonstrates the differentiation. Respondent recalled that, overall, this was a fun and interesting assignment for the students especially where they were asked to create a music playlist to reflect the characters in the play using text from the play.

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<sup>40</sup> R. Ex.53., R. Ex.22., R. Ex.43., and R. Ex.44.

In response to Graham's specific comments made regarding the Danielson components, she disagreed with Graham's assessment that she had little or no understanding of the range of pedagogical approaches suitable to student learning of the content because the PPT was quite detailed. Regarding answering questions for students, she has been told to have answers to start involvement by students. Then she was criticized for giving only a minute for the Do Now. Respondent disagrees that such little time was given. Respondent also disagreed that her timeframes were problematic. She testified that time allocations are a guideline depending on the student's needs. A teacher may have to backtrack to ensure understanding. Respondent denied that the questions asked were about characterization. The questions listed in Graham's observation were not in the lesson plan. Respondent explained that the questions referenced by Graham were likely general questions about the story. Respondent pointed out that all of the questions in the lesson plan revealed something about the character. The Do Now question was a DOK level of 3. Additionally, the PPT revealed questions dealing with characters in the Think-Pair-Share and the independent work activity. The lesson was not of low cognitive challenge because it was an interpretive exercise so it could not be recitation style. As an interpretive activity, each student would have different responses.

Graham's comment that only two out of 17 students participated was incorrect. Based on the Google Classroom responses she received and her recollection, students participated throughout. The Google Classroom document shows 15 of 17 students responded to the question presented, demonstrating that almost all the students were engaged. At the beginning, when Graham was there, only two students spoke because they were reading roles from the play which had only two roles.

Respondent disagreed with Graham's comment that students did not appear to be aware of the assessment criteria because all students knew that Google Classroom was where she conducted the assessments through questions and responses. Students had resources available to them in the Google classroom, including the play. Regarding Graham's comment that the playlist activity on the lesson plan was not mentioned while she was present, Respondent explained that Graham was there only about 18 minutes. Besides, the playlist activity did not come until later in the class.

Respondent testified further that in the English Department, curriculum is swapped often. Teachers are encouraged to give students voice in their interests. That is why she gave them the option to read either *Romeo and Juliet* or *The Tempest*. *The Tempest* is Elizabethan and high-level including college. The Respondent testified that the lesson plans for the 9th and 12th grades varied according to the standards set forth for each respective grade level. She explained that according to Lexile, *The Tempest* is high order and read at the collegiate level. She further elaborated since it is Shakespeare, an Elizabethan, it is challenging and the class only spent two weeks on this piece of literature, so she did not foresee it being a problem. Respondent pointed out that there were several pre-determined questions built into the PPT, and she denied having any blank walls. Respondent explained that one of the walls in her classroom is used for the Promethean board; the parallel wall consists of classroom expectations and developing information; the left adjacent wall to the Promethean board includes reference materials and resources; and the remaining wall is a white board for students to utilize. The student resources for *The Tempest* included a video and other materials.

On May 26, 2022, Respondent filed a Special Complaint of harassment against Graham. During cross-examination, Graham could not recall whether such a complaint had been filed against her. She also could not recall that Respondent had requested a formal observation in December 2021. Respondent testified that she received the observation report on June 22, 2022, just before the school year ended which would give her no time to implement anything.

### Analysis and Conclusions

The Department did not establish that Respondent was properly rated as ineffective in components 1a., 1e., 3b., 3c., and 3d. During the approximately 15 minutes Graham observed Respondent's lesson which was already in progress, students were participating in a Do Now activity and listening to students read aloud scenes from a Shakespearean play. The lesson plan provided very detailed information about the objective which was to "Identify and describe what specific textual details reveal about a character, that character's perspective, and that character's motives."<sup>41</sup> The PPT that was being used in the classroom followed the lesson plan. Students were engaged in answering questions that the Respondent had prepared. The Do Now activity specifically challenged the students to "Assess what it means that Prospero has to take off his robe, his 'magic garment,' before he can tell Miranda about her history. Explain."<sup>42</sup> The Google Classroom document shows that 15/17 students responded to the questions, "Ariel was imprisoned by Sycorax. Why? How does the physical description of Sycorax compare to your impressions of Ariel? Cite evidence to support your impression."<sup>43</sup>

This prompt not only required identification of information, it also required research and analysis contrary to Graham's assessment. Graham concluded that students were not aware of the source of the lesson because she saw students searching on Google. It would seem that if students had never heard of *The Tempest* and its characters, there would have been immediate comments by them evidencing that they had never heard of the play. Students searching on Google to start a writing project is not unusual these days. The response provided by Student N, referenced in Graham's report, was as follows:

Ariel was imprisoned by Sycorax because Ariel was 'too kind and delicate to carry out her disgusting orders.' Impressions of Ariel in comparison to Sycorax is that he is an energetic and obedient sprite which is illustrated in the quote: "All hail, great master! Grave sir, hail! I come To answer thy best pleasure, be 't to fly, To swim, to dive into the fire, to ride On the curled clouds. To thy strong bidding, task Ariel and all his quality." Which means she is obedient from being a slave. Sycorax was described as an old hag with bags under her eyes. Which does not sound too pleasant, compared to Ariel who is kind and delicate. Not to mention Sycorax is literally a witch."<sup>44</sup>

As referenced above, 15 of the students participated.

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<sup>41</sup> R. Ex. 53.

<sup>42</sup> R. Ex. 22.

<sup>43</sup> R. Ex. 44.

<sup>44</sup> *Id.*



Finally, the independent work activity which was to develop a music playlist representative of one of the listed characters in the play using “evidence from the play” was an extremely creative assignment for the students to learn and engage with character meaning for Shakespearean text which is undoubtedly difficult to teach and learn. No credit was given for this in Graham’s review of the lesson plan. Graham’s criticism that the lesson plan had errors is attacking form over substance. The students do not see the lesson plan. Respondent admitted to typographical errors due to creating lesson plans based on a template which is not unreasonable or prohibited. Graham provided no competent evidence that Respondent violated any policy or directive by assigning *The Tempest* as part of the 9th grade curriculum. In fact, Respondent’s explanation that she allows students to have input into which literature to read was directly in line with Graham’s ideology of supporting and fostering student’s growth, providing leniency post Covid, and not being retributive.<sup>45</sup> Of note is the SMART GOAL found in the professional development English Department agenda for January 18, 2022. It states that by February 2022, students will be able to elaborate on their ideas using evidence from text-based reading comprehension questions with at least 65% accuracy as evidenced through their written responses to these questions, turn and talks, and class discussions. This aligned exactly with what was happening in Respondent’s class at the time of the observation.

Respondent also submitted into evidence a log of harassment document she presented to the UFT. It documents various incidents beginning in July 2021, where Respondent believed she was being harassed by Graham.<sup>46</sup> The nature of the harassment involved Graham letting her know Respondent was looking for other jobs and was on board with it; denying Respondent’s offer to assist on “Crunch Night” after being invited to do so by the college counselor; Respondent was the only senior class and senior advisory teacher not permitted to go on the Senior trip which was communicated to the entire staff; ineffective observation reports; Graham mocking her; letters to file were used to exclude her from another senior trip; being yelled at; having student complaint letters read in front of her co-teacher; and not receiving her class assignment preferences. This un rebutted list of events is disturbing and do raise questions about Graham’s motives related to Respondent.

Based on the record evidence, the Department did not establish that Respondent was properly rated as ineffective in components 1a., 1e., 3b., 3c., or 3d. I find that Respondent demonstrated effective performance in these components in line with the Danielson framework. Specification 1c. is not sustained.

#### **d. October 11, 2022 Informal Observation**

##### **Department’s Evidence**

On October 11, 2022, Pendharkar conducted an informal observation of the Respondent’s second period 11th grade AP Language and Composition lesson. Pendharkar rated Respondent ineffective in components 1e., 3b., 3c., and 3d. Components 1a. and 4e were not rated. At the time of testifying, Pendharkar was in her third year of a five-year probationary period as a principal.

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<sup>45</sup> Tr. at 580.

<sup>46</sup> See, R. Ex. 5.

Pendharkar testified that as an administrator, she was trained by District personnel 2-3 times per year on calibrating Danielson ratings and taking low-inference notes. She explained the observations were always conducted with two administrators present. Urena was also present during this observation.

Pendharkar's general comments included that the lesson plan did not align with what students were asked to do. The objective and Do Now were absent from the lesson plan. There was an absence of planned purposeful questions to prompt student discussions. Instead, students worked on writing assignments. There was no evidence of lesson structure, purposeful activity based on the objective or evidence of assessment.

Pendharkar's testimony was not significantly different than her observation report. Pendharkar expressed her main concerns with Respondent was that the lesson plans were missing sometimes, the same lesson seemed to be taught repeatedly, there was no visible instructional objective on the board, the standard of rigor was not being met to prepare the students for the AP exam, and there was a lack of evidence pertaining to the student's writing work for her to see their writing process. On cross examination Pendharkar said she could not recall when she entered the classroom; how long she was there; what the actual lesson was about; what the mini lesson was about; whether she asked for Respondent's lesson plan at any time; nor what about the objective did not specifically align with the lesson.

Pendharkar testified it was standard practice to have a post-observation meeting to provide each teacher with feedback. She recalled Respondent being reluctant to receive the feedback given. The evaluator notes provided no individual recommendations regarding the alleged deficiencies or how to respond to the feedback. While the observation was conducted in October 2022, the report was not signed by an administrator until nearly the end of the school year.

### Respondent's Defense

Respondent submitted into the record the lesson plan, the PPT presentation used during the class and the resources posted inside the Google Classroom for *The Glass Castle*, a 2005 memoir by Jeannette Walls.<sup>47</sup> The objective for the lesson was an introduction to the AP Writing Lab and demonstration of understanding of rhetorical textual analysis via analysis level prompts. The lesson plan and PPT included a Do Now activity which stated, "In two sentences, describe a party to your friends. Then, in another two sentences, describe that same party to your parents."

Respondent testified that this observation was conducted early in the semester when she was introducing the writing lab that was to accompany the class. She had been assigned as the teacher for the *AP for All Program* for the entire 11<sup>th</sup> grade. The *AP for All Program* included all students regardless of their testing level; even special education students were included. Since the class was based on a college curriculum, she felt the students needed assistance getting up to speed with the material. Therefore, she used her lunch hour to host the writing lab for the duration of the entire school year. She posted flyers around the school and invited teachers and students. She had to create her own curriculum for this unique AP course structure based on the College Board

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<sup>47</sup> R. Ex.54, R Ex. 6 and R. Ex. 39.

guidelines. Respondent testified that she intentionally inserted Danielson criteria in the lesson plan.

Respondent explained that since students were finding the class challenging, she let them use spare time to complete work from the previous class. Students were always worried about not being able to complete assignments. She also testified that she did not agree with Pendharkar's feedback in the observation. She explained that from her lesson plan, she creates a PPT and once the PPT is displayed on the Promethean board, the flow of the class will follow the PPT. Respondent also stated Pendharkar may have left before the discussion commenced. Both the lesson plan and the PPT included discussion prompts via the Think-Pair-Share activity. Normally assessment is done through Google Classroom questions. Assessment was taking place via the writing lab assignment, and she was able to see their work via Google Classroom.

### Analysis and Conclusions

I find no support for Pendharkar's ratings. She documented that the objective and Do Now were missing. They were not. Both are included in the lesson plan and the PPT which was displayed in the classroom. Pendharkar commented that the lesson had no structure, rigor, purposeful activity or assessment. The evidence is to the contrary.

The students were receiving focused assistance with their writing assignments in preparation for the AP exam. The lesson was structured to help them "make strategic writing choices" based on their understanding of the rhetorical reading material of *The Glass Castle*. They were prompted to "In two sentences, describe a party to your friends. Then, in another two sentences, describe that same party to your parents." This was to teach them how to write to a particular audience. The independent work assignment included students providing responses to questions structured specifically for analysis of the *Glass Castle* material. The Google Classroom materials included written material and videos for the students to use as resources. Pendharkar did not recall when she entered the classroom, how long she was there or whether she even reviewed the lesson plan after the observation.

Her comments fail to credit Respondent with establishing a writing lab for the entire 11th grade. Interestingly, Respondent was not rated in her knowledge and use of pedagogical strategies in light of the challenging teaching assignment and the initiative she took to establish a writing lab. Such failure to provide warranted credit undermines Pendharkar's credibility and conclusions. In sum, no evidence supports the ratings given. Accordingly, the Department did not establish that Respondent was properly rated as ineffective in components 1e., 3b., 3c. or 3d. I find that Respondent demonstrated effective performance in these components. Specification 1d. is not sustained.

#### **e. March 9, 2023 Informal Observation**

##### Department's Evidence

On March 9, 2023, Pendharkar conducted an informal observation of the Respondent's teaching practice during an 11th grade AP Language and Composition lesson during the first period for an unspecified amount of time. Pendharkar rated Respondent developing in components 1a. and 3c. Pendharkar rated Respondent as ineffective for components 1e., 3b., and 3d. The observation notes state that the observed elements were not in alignment with what was provided. The objective was not visible. There was no evidence of how the lesson plan was aligned with the essential questions. Students were not aware of the essential questions and could not make a connection between the questions and the synthesis writing. There was no discussion and students worked independently on essays even though discussion protocols were listed in the lesson plan. Pendharkar found it concerning that students were working on a rhetorical writing assignment and not engaged in a classroom discussion. She believed only one student knew the criteria being used. One textbook was used as a resource for writing their essay. There was no evidence of teacher feedback nor evidence of a writing process that consisted of teacher feedback. While testifying, Pendharkar stated it was apparent the Respondent did not implement any of the feedback given to her despite being given numerous opportunities to do so.

On cross examination, Pendharkar testified she was not present when the observation report was signed or delivered. She agreed there was no positive feedback provided to Respondent in this report. She did not recall when she arrived to or left the classroom and had no recollection of how long she was there. Further, she could not recall whether she actually had or asked for a lesson plan. She acknowledged that she took no specific examples of the lack of writing to which she referred and does not know the curriculum for AP English Rhetorical Writing. Pendharkar also agreed that AP level courses are assigned to the more experienced teachers. Finally, she could not recall which dates within the 15 days prior to the observation supported the developing rating in component 4e for growing and developing professionally.

### Respondent's Defense

Respondent submitted into the record the lesson plan, the PPT presentation used during the class, and the prompt posted inside the Google Classroom for the independent work assignment.<sup>48</sup> The Respondent testified that her curriculum/syllabus was developed using the College Board (the body who provides guidance for AP courses) directives. The College Board provides authorization for a teacher to teach at the AP level. She explained why she disagreed with Pendharkar's feedback. Her essential questions, "How do writers write within a particular situation? How do we generate and justify claims when developing an argument? What relationship exists between a text reasoning organization and evidence?" were all about the rhetorical situations and why we write.

In regard to students lacking awareness of the essential question, the Respondent refuted this comment because Pendharkar had previously commended Respondent in the school newsletter for magnifying the essential question by putting it on a poster so that it could be displayed in the classroom. Additionally, Respondent could not recall whether Pendharkar was still in the

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<sup>48</sup> R. Exs. 56, 64A, and 37.

classroom when the discussion portion of the lesson began, but if a discussion was in the lesson plan, then it in fact occurred, she explained.

Regarding the student who allegedly did not know what a rhetorical situation was, the Respondent testified this is what the students had been working on all year, and it was displayed on the PPT as evidenced by Respondent Exhibit 64. Respondent testified that approximately seven students were registered for this class and assessing their work was simpler because she could provide feedback from her laptop in real time. She added that she was the only teacher in the English Department teaching an AP class. Therefore, she was unsure about whether the other teachers used multiple textbooks in their courses. The student's writing samples were in Google Classrooms and that is where she (Respondent) provided feedback. The March 9 observation report was signed May 30, by Urena even though the observation was conducted by Pendharkar.

### Analysis and Conclusions

I find that none of the less than effective ratings were substantiated. To justify a developing rating in component 1a., the Department must establish that the teacher has a lack of awareness of the important concepts in the discipline being taught; teacher demonstrates inaccurate or incomplete knowledge; and the plans and practice reflect limited pedagogical approaches. This was completely unfounded. There was no evidence that Respondent demonstrated any deficiency in her knowledge about Rhetorical writing or that the writing assignment was not in alignment with the rhetorical writing objective. The lesson observed was for AP Language and *Composition*. Students were working on an essay writing assignment regarding a rhetorical situation. They were challenged with identifying and describing "components of the rhetorical situation: the exigence, audience, writer, purpose, context, and message" as reflected in the objective. Pendharkar did not establish when she entered the lesson or how long she was observing the class. Much of her criticism of Respondent's performance is centered around a purported review of her lesson plan.

Of particular note is that the observation reports about Respondent's allegedly inadequate lesson planning and execution mention very little, if anything, about her use of the PPT presentations and Google Classroom platform as her primary teaching tools. Use of these tools appear to align with methods to be implemented for an arts and technology high school. It is as if the observers fail to connect the planning and execution in the actual context of what is happening in the classroom. No credit is given for the use of technology to accomplish work assignments and engagement by the students. Instead, the observation reports repeat copied and pasted sentences unaligned with reality. For example, regarding Pendharkar's rating for coherent instruction design, she writes, "The lesson objective was not visible and no evidence of intentional planning." The lesson plan clearly states, "Use opportunity to complete synthesis essay. If finished, do rhetorical situation in google classroom."<sup>49</sup> As for the PPTs, Respondent structures the activities extracting exact language from the Danielson Rubric for effective teaching and aligns it to the specific topic she is teaching. For example, the instant observation listed the "indicator" for component 1a. as being lesson and unit plans that reflect important concepts in the discipline. Then she identified the rhetorical situation and strategy as meeting this indicator.<sup>50</sup> Further, the lesson plan and PPT

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<sup>49</sup> R. Ex. 56.

<sup>50</sup> See R. Ex. 56.

incorporated Do Now, mini-lesson, a discussion and independent work activity. The PPT was not created during the lesson. Therefore, it was necessarily planned intentionally in advance.

Likewise, there was no evidence that the other components rated less than effective fell within the Danielson Rubric's standards for justifying such ratings. The writing assignment was aligned with the instructional outcomes, followed an organized progression, was designed to engage students in active intellectual activity, and was appropriately timed. In this case, students had the entire lesson posted on the PPT. They had access to the Google Classroom where source materials could be accessed. And they completed their writing prompt in the Google Classroom environment so that Respondent could see their work in real time.

Based on the record evidence, the Department did not establish that Respondent was properly rated as developing in components 1a. and 3c. Nor is there sufficient evidence that she was properly rated ineffective in components 1e., 3b., or 3d. I find that Respondent demonstrated effective performance in these components in line with the Danielson framework. Specification 1e. is not sustained.

#### **f. May 22, 2023 Informal Observation**

##### Department's Evidence

On May 22, 2023, Urena conducted an informal observation during Respondent's 11th grade AP Language & Composition lesson beginning at 11:42 a.m. He rated Respondent ineffective in components 1a., 1e., 3b., 3c., 3d., and 4e. He rated Respondent developing in component 2a. The class was working on a comic book project. They were arranged in groups which Urena characterized as "uneven." He did not know whether the configurations were intentional and there is no evidence whether he inquired about it. Urena estimated arriving sometime during the middle of the class period because students were already working in groups when he arrived. While he documented in the observation that it was not clear whether students were working individually or in groups, at the hearing he testified that students were working individually.

His concern was rigor of the lesson. He documented that "there is no evidence that the students have been engaged in any type of instruction." He viewed the objective of rhetorical writing via a dialogue writing as "vague" and it was not clear how students would have enough time to accomplish the task within the 45-minute class period. He believed Respondent should be helping students with college essays and that teachers must continue to teach meaningful work after the AP exam. Urena wrote, "the students were observed bothered by the teacher's close proximity" as she circulated the classroom and were "cautious" about responses they gave to him. Urena documented that one student expressed not liking the project. Others expressed a preference for writing college essays. He noted that one group had only two students although there were three roles to be filled. He testified that despite this being an AP course, there are many students that come with a very low level of reading. He opined further that Respondent was not giving any actual feedback but was more concerned about where the two administrators were in the classroom than the students.

Regarding component 4e, he took issue with Respondent's plan to have a Monday Game Day which he learned about weeks prior to this observation. On May 12, he entered her classroom to find students playing card and video games. According to Urena, the games were images of people in a war zone, but the images were not moving on the screen. Subsequently, he met with Respondent in his office to explain that games were not allowed. As a result, while in Respondent's classroom for the May 22<sup>nd</sup> observation, he noted that she had revised the post AP exam schedule written on the classroom whiteboard to "Monday: Game Day BANNED" which he captured in a photograph and attached to the observation. Urena also complained that Respondent did not produce the lesson plan upon request while he was in the classroom but sent it to him by email thirty minutes after he left the class. According to Urena, the requirement is that the lesson plan be produced upon request or "immediately" after the class by email. He did not know if what she sent is what she actually used because she was not teaching, in his view. He also believed Respondent was refusing to allow students to go to advisory class where students receive tutoring and one-on-one instruction.

Under cross examination, Urena denied seeing Respondent's PPT for the lesson on the board reflecting the "rhetorical writing via dialogue writing" objective and opined that she was teaching at an 8<sup>th</sup> grade level. Urena testified that he had taught AP Literature in Spanish but could not explain rhetorical writing. On this point, he testified as follows:

- Q. Hypothetically, if the aim in the classroom was rhetorical writing, rhetorical or demonstrating or understanding rhetorical writing via dialogue writing, would that be at an 8th grade level?
- A. Yeah.
- Q. That would be at an 8th grade level. Okay. What is rhetorical writing?
- A. I don't know.
- ...
- Q. Okay. What is a rhetorical situation?
- A. I don't know.
- Q. What is a rhetorical question?
- A. I don't know.
- Q. What are rhetorical appeals?
- A. I don't know.
- Q. What is a synthesis essay?
- A. I don't know.
- Q. Do you know whether or not group projects are recommended by the AP College Board after the examination is taken?
- ...
- A. No.
- Q. You don't know or they're not?
- A. I don't know.<sup>51</sup>

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<sup>51</sup> Tr. At 275-277.

While Urena denied seeing a PPT for the lesson projected in the classroom, he documented under component 3d. for assessment in instruction “the teacher did not refer to the rubric displayed on the Promethean board....”<sup>52</sup>

During redirect examination, a recording of the May 24<sup>th</sup> observation feedback meeting was played and entered into the record as Department Exhibit 8c. Respondent emphasized that students were writing college essays on an ongoing basis, discussing current events, and engaged in group projects. During the recording, Urena and Respondent disputed whether the College Board curriculum after the AP exam should be implemented. Urena asked students “How is this project helping you for college and career?” (Recording at 9:00). Urena conveyed that students were doing the project only because the teacher wanted them to do it; not because they wanted to do it. Respondent objected that such a response was not possible because she came up with the project in conjunction with the students.

### Respondent’s Defense

In the lesson plan, Respondent included details to support the nature of her assignments which she explained were taken from College Board guidance. Respondent testified that the subject matter for this class was rhetorical writing by dialogue writing. The students were working on rhetorical writing in a comic book project—a college level assignment. Because their school took the AP exam early (May 9th) and there are a few weeks of school left subsequent to the exam, she consulted with the College Board about what students should be doing upon completion of the exam. The comic book was one of their suggestions and she chose the assignment because it also connected to rhetorical writing. She described rhetorical writing as an advanced concept (a rendition of persuasive writing) that is not even taught in regular English to debunk the commentary around her course having a lack of rigor. Regarding the observation, Respondent said she could not fathom why Urena conducted an observation after the AP exam was completed and after the two observations for the year were already completed. She recalled him being in her classroom briefly, not the full period and likely only 15 minutes.

Respondent testified that she agreed no times were allotted in the lesson because it was a student-centered group project, and they had the entire period to work on it. The assignment was going to continue in the following days. She also testified that the College Board recommended games to keep students engaged after the AP exam, and the students expressed their excitement for this activity. However, Urena prohibited it. Respondent testified that the groups had been established during the prior class. Because some students were absent, a group may have appeared to be uneven.

Regarding production of the lesson plan for Urena, Respondent testified that the lesson plan was on her flash drive and could not be removed immediately because the flash drive was being used for the PPT being displayed on the Promethean board. Providing the lesson plan would have required her to take the PPT down in the middle of the class. She confirmed she gave him the lesson plan immediately after class (as evidenced by Respondent Exhibit 67, the email with the lesson plan). The lesson plan was emailed to Urena at 12:19 p.m., which was about twenty minutes after Urena left the classroom.

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<sup>52</sup> D. Ex. 8.



Regarding the video games in class on May 12<sup>th</sup>, Respondent explained that the students had completed their AP exam on May 9<sup>th</sup> and she wanted to do something to celebrate them for their hard work. Her initial idea was to have a pizza party, but the students requested to have a game day instead because they knew she was in charge of the gaming club. She added that there were not just video games. There were also board games and card games in lieu of the pizza party. Her lesson plan documented support for using video games per the College Board guidance which stated, in part, “video games promote engagement and resilience, stimulate collaboration and encourage student participation, which can improve student attitudes toward learning and promote leadership and cooperation opportunities within the curriculum and through game clubs and esports.”<sup>53</sup> Similar documentation was provided for card games. Respondent testified further that students were continuously working on their college essays. The college office pushed in to the classroom throughout the week and the students sat with their advisors to develop a curriculum to work on their essays. Respondent explained she felt compelled to record her meetings with Urena because he would write false statements in the observation reports, which were affecting her evaluations and ratings.

### Analysis and Conclusions

I find no evidentiary support for Urena’s ratings. Urena’s primary complaint was that the assignment did not have rigor. It was on an 8<sup>th</sup> grade level. It did not reflect teaching. Effectively, the assignment was not permitted since students should have been working on college essays. The Arts & Technical H.S. Staff Handbook specifically places responsibility for the college application process on the College Office. It states, in part, that it is the College Counselor’s role to “Assist, guide and lead in all aspects of the college application process.”<sup>54</sup> This is consistent with Respondent’s understanding and her handling of the college essays.

Danielson’s requirement for an effective rating in the demonstration of knowledge and content of pedagogy indicates, in part, that a teacher displays solid knowledge of the important concepts in the discipline and how these relate to one another. Respondent was teaching rhetorical writing via a group comic book project. Urena testified that he did not even know what rhetorical writing is. His comments largely criticize her choice of assignment after administration of the AP exam three weeks earlier. This has nothing to do with Respondent’s knowledge of rhetorical writing and does not support the ineffective rating provided. Respondent should have been rated effective for component 1a.

Likewise for component 1e., Danielson cites as an example of effective lesson design, that “the teacher plans for students to complete a project in small groups; he carefully selects group members by their reading level and learning style.” The record reflects students had been placed in designated groups the week prior to the observation and they were working on a project to shore up rhetorical writing skills. The ineffective rating was unsupported, and Respondent should have been rated effective for component 1e. Further, Urena’s observation does not align with Danielson for component 2a. There is no evidence that students were being disrespectful. Respondent should have been rated effective for component 2a.

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<sup>53</sup> D. Ex. 8.

<sup>54</sup> D. Ex. 25 at 5 and Dx. Ex. 26 at 5.

The ineffective ratings for 3b., 3c., and 3d. are also unsupported. This was a self-directed on-going project which Urena acknowledged. A self-directed project does not require the discussion in the manner one would expect for a whole-class lesson. Thus, component 3b. should not have been rated. Urena rated component 3c. for engagement as ineffective largely because students were having disagreements about which animated characters to use; a student did not like the project; and a group of five students allegedly preferred to be writing college essays. I do not find Urena's insistence about students wanting to work on college essays instead of the comic book project plausible. Respondent testified that she came up with the project along with the students. The students had recently sat for what is undeniably an intense AP exam preparation process. That aside, except for a few side discussions among students which is typical of teenagers, the students were engaged in groups working on the assignment. An ineffective rating for component 3c. was unsubstantiated.

Regarding assessment, Urena noted that Respondent circulated the class but characterized it as an attempt to hear what the supervisors were asking students. This was unproven. If students were working in groups on an on-going project, it was appropriate for the teacher to make assessments by monitoring progress. As an example of effective assessment, Danielson identifies the teacher circulating the classroom "during small-group or independent work, offering suggestions to students." Urena actually confirmed that Respondent was circulating the class. Respondent should have been rated effective for component 3d.

I find the ineffective rating in component 4e for professional growth was unsupported by the evidence. For an ineffective rating in this area, Danielson requires the following:

Teacher engages in no professional development activities to enhance knowledge or skill. The teacher resists feedback on teaching performance from either supervisors or more experienced colleagues. The teacher makes no effort to share knowledge with others or to assume professional responsibilities.<sup>55</sup>

Urena's ineffective rating is premised on the "argumentative" post-observation feedback meeting; his insistence that "some students" wanted to work on their college essays; Respondent's recording of the feedback meeting without his consent; the need to direct the discontinuation of Monday game day ten days prior; a colleague's observance of games continuing to be played days later (which Respondent denied); Respondent's refusal to release a student to this colleague for an advisory class. In sum, Urena's view is that Respondent resists feedback.

When Urena advised that games could not be played, Respondent revised the schedule to state they were now "BANNED." Respondent denied refusing to release the student to advisory but tried to explain to the teacher (Ramirez) that the student had been in a fight, and she was concerned about letting her go from the classroom. Apparently, Ramirez did not agree and insisted on the student's release. Respondent documented by email that there was no IEP meeting scheduled for the student that day and accused Ramirez of being rude and disrespectful by "shouting at [her] in [the] classroom full of students."<sup>56</sup> Respondent chose not to elevate this matter for this probationary employee.

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<sup>55</sup> Jt. Ex. 5 at 19.

<sup>56</sup> R. Ex. 12.

While Respondent could have been less animated in her feedback meeting with Urena, she did not resist the feedback. She disagreed with his conclusions because he did not provide reasonable plausible examples of the deficiencies. His emphasis was on the college essay which Respondent explained was being addressed through regular push-ins by the college office and students' ability to work on it at any time. She did not understand that the essay was the only assignment students should be given and Urena provided no evidence that such was the instruction to the English Department. In fact, during the feedback meeting, Respondent invited explanation about the problems with the comic book project. This is welcoming feedback, not resisting it. On balance, there is insufficient evidence that Respondent's performance was ineffective in this component under Danielson. There is no evidence that her engagement was limited in any way. Respondent should have been rated effective for component 4e.

Based on the record evidence, the Department did not establish that Respondent was properly rated as ineffective in components 1a., 1e., 3b., 3c., 3d. or 4e. I find that Respondent demonstrated effective performance in these components in line with the Danielson framework. Additionally, the Department did not establish that Respondent was properly rated as developing in component 2a. Accordingly, Specification 1f. is not sustained.

**SPECIFICATION 8:** Respondent failed, during the 2021-2022 and/or 2022-2023 school years, to fully and/or consistently implement directives and/or recommendations for pedagogical improvement and professional development provided in observation conferences with administrators and/or outside observers; instructional meetings; teacher improvement plans; one-on-one meetings with administrators, school based coaches, and/or outside observers; as well as schoolwide professional development, with regard to: a. Proper planning, pacing, and/or execution of lessons; b. Using appropriate methods and/or techniques during lessons; c. Designing coherent instruction; d. Using assessment in instruction; e. Student engagement; and/or f. Using appropriate questioning and discussion techniques.

This specification is, essentially, about failing to implement directives and recommendations for improvement provided during the observations. Failure means that Respondent was either incapable or unwilling to make changes. As thoroughly examined and analyzed above, none of the specifications regarding Respondent's pedagogical performance were substantiated. Assuming arguendo that there were deficiencies in Respondent's instruction, no TIP was ever implemented to give the Respondent a genuine opportunity to improve. Further, there was no finding that Respondent was resisting feedback. Instead, the record reflects several instances where she invited specific feedback as to how to improve. Because Respondent's performance was not demonstratively less than effective and there was no evidence that she failed to implement proper recommendations, this specification is unsubstantiated. Specification 8 is not sustained.

### **ALLEGATIONS BASED ON OTHER POLICIES, PROCEDURES AND OR JUDGEMENT**

**SPECIFICATION 2:** During the 2022-2023 school year, Respondent violated Chancellor's Regulation A-421, failed to follow school policy and procedure, and/or used poor judgment, in

that she: penalized and/or threatened to penalize students for attending college trips and/or activities during school hours; penalized and/or threatened to penalize students for not doing as they were told; and/or; used inappropriate language with students and/or otherwise treated students with disrespect.

In a report dated March 3, 2023,<sup>57</sup> the OSI Report of Investigation form was completed finding the allegations of verbal abuse unsubstantiated.<sup>58</sup> However, Respondent was found to have exercised poor judgment. By email dated April 3, 2023, the matter was referred back to Principal Pendharkar to conduct a School-Based Investigation (SBI). The SBI investigation conducted by Urena reflects five (5) students alleged what he characterized as verbal abuse. The investigation was comprised of statements from students and staff.

Student M.S.<sup>59</sup> complained in a statement dated March 30, 2023, that Respondent would not let her friend sit next to her to charge a computer and threatened not to give them a grade and call their parents. Further, that Respondent treats students as “inferior” and targets students she does not like by having them change seats for (apparently) talking. This student accused Respondent of stating she would not grade their work if they attended college trips; she never helps students and makes them feel “stupid.” Student SF complained that Respondent did not allow her to make up work when she did not come to class, and she feared this might occur while on a college trip.

Student N.L. complained that Respondent refused to let her sit next to her friend M.S. to charge her computer. As N.L. was returning to her seat, M.S. directed her to ‘just sit down’ meaning to disobey Respondent. In response, Respondent stated, ‘you want to make this a challenge then you won’t be graded.’ Students N.L. and M.S. were “speechless and angry.” N.L. accused Respondent of being “very biased.”

Student E.K. who Respondent suspected of cheating while taking a test was asked to move his seat. In his statement dated April 20, 2023, he told Respondent she was doing “too much.” She asked him to say it to her face and later did not allow him to take the test resulting in a grade of F.

Student M.M. wrote in his statement dated April 18, 2023, that Respondent talks to students “in a certain manner, ignores students, doesn’t accept work out of pettiness,” argues with them when she’s “moody” and “she acts like a child and decides not to teach the class for the day” is “competitive” with students and “belittle[s]” them.

Paraprofessional Margarita Silverio wrote on May 1, 2023, that Respondent moved students during 5<sup>th</sup> period at times to interact with other students while some students are not moved. The co-teacher, Trevor Amaru, wrote in his May 1, 2023, statement that Respondent is “mean” for having certain students change seats and if they refuse, she gives them an F which he grades anyway. Then she overrides the grades he entered.

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<sup>57</sup> On its face, the report date is March 3, 2023, as reflected in D. Ex. 9a at 10. However, all the statements taken in support of this investigation are dated subsequent to this date. It is unclear whether the OSI report date is a typographical error or in connection with some other event(s).

<sup>58</sup> See D. Ex. 9a. OSI report page 4 of 6.

<sup>59</sup> In some portions of the award, students are referred to by codes assigned in the transcript. Where no such code exists, student initials are used to protect their identity. All statements are contained in D. Ex. 9a.

By letter dated May 19, 2023, Urena wrote, among other things, “the allegation of verbal abuse was substantiated as it has been a pattern of intimidations observed towards the students in which they are being threaten to receive zeros if they do not comply with your demands in class.”<sup>60</sup>

### Respondent’s Defense

Respondent denied the accusations and wrote in a statement dated May 2, 2023, that the students were angry. Respondent testified that the accusations were entirely false. She would not have been able to forego grading the student’s work or defaulting their grade to an “F” for any reason because her grade book is online and monitored by the administration. The claim that Respondent had a bias in grading based on behavior or likability was untrue because their actual performance is evident by the digital assignments captured in Google Classrooms. Respondent also testified that she had a positive scholarship record. She believed the students who complained were angry because she had recently changed their seating assignments from sitting together and all of the students who complained were good friends. She also suspected this group of students were cheating on the AP quizzes because all of their answers were exactly the same.

### Analysis and Conclusions

Verbal abuse is an extremely serious charge. In substance, the statements reflect students’ distaste for Respondent’s handling of behavioral issues from refusals to listen to her instructions to interference with suspected cheating. The claims of disrespect and belittling treatment are vague labels. No specific words allegedly made by Respondent were provided. No date on which this alleged improper conduct occurred was provided except for the computer charging incident which seemed to have triggered the entire investigation. No one testified about any of these allegations including the faculty that offered statements. Urena concluded that the allegations were substantiated for verbal abuse even though OSI had concluded the opposite. Such a conclusion brings Urena’s credibility and motives into question.

There is insufficient evidence that Respondent failed to follow school policy and procedure, and/or used poor judgment or used inappropriate language. Specification 2 is unsubstantiated. In accordance with Article Twenty-One, Section A.5., “if accusations of corporal punishment or verbal abuse against a UFT-represented employee are found to be unsubstantiated, all references to the allegations will be removed from the employee’s personnel file.”<sup>61</sup> Therefore, this letter to file reflecting a substantiated allegation of verbal abuse must be removed from Respondent’s file.

**SPECIFICATION 3:** During the 2021-2022 school year, Respondent violated Chancellor’s Regulation A-421, failed to follow school policy and procedure, and/or used poor judgment, in that she: a) yelled at a student in the hallway for going to the college counselor’s office instead of Respondent’s advisory class; b) forbade a student from seeking extra help during study hall; c) threatened to put negative comment(s) on student transcript(s); d) threatened to call the parents of

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<sup>60</sup> D. Ex. 9.

<sup>61</sup> Jt. Ex. 1.

student(s); e) used inappropriate language with students and/or otherwise treated students with disrespect; and/or f) failed to return parent phone call(s) and/or refused to meet with parent(s).

This specification is based on two letters issued to Respondent. Parts b. and c. are based upon the January 26, 2022 letter to file. Parts d-f are based upon the April 13, 2022, letter to file. Each letter will be addressed separately.

### Department's Evidence

In a January 26, 2022 letter, the Department alleged that Respondent yelled at a student in the hallway for going to the college counselor's office instead of Respondent's advisory class. This letter to file was in response to a Student A.W.'s complaint submitted directly to Graham by the student on January 14, 2022. The student alleged Respondent spoke to him in a very demanding tone that he believed was improper. According to the student's email, he was in a different teacher's office working on college documentation from fourth to sixth period without informing the Respondent the previous day, but did provide her notice on the day of this incident. The student continued by stating the Respondent "barged[d]" into the office, inquired about the student's whereabouts, and proceeded to say "Let's go!" The student wrote that he felt humiliated in front of everyone who was present in the office by this and ultimately requested an advisor change from the Respondent to another teacher.<sup>62</sup>

Graham testified that this student was a senior in high school at the time of the complaint and the staff was offering a lot of flexibility in attendance, grading, and general flexibility overall because students were just returning from remote learning caused by the COVID-19 pandemic. On cross, Graham said she did not recall whether she shared A.W.'s email with the Respondent.

### Respondent's Defense

Respondent testified that she does not recall this instance and never yelled at students especially since managing teenagers can be sensitive in nature. She explained that if there was an issue with a student, she should speak with them privately. Respondent further explained that the college counselor's office is right next to her classroom, and she may have asked the student where he was going to redirect him to the correct classroom. Respondent denied ever forbidding a student from seeking extra help. While testifying, the Respondent confirmed the email complaint from the student was never shared with her by Graham and her first time seeing it was during these proceedings.

### Analysis and Conclusions

It is problematic that Graham never shared the student complaint with Respondent. She was not given an opportunity to respond to the allegation in order for Graham to fully evaluate the circumstances at the time of the incident. However, Respondent did not request to review the complaint at the time the letter to file was issued even though she had the right to do so under

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<sup>62</sup> D. Ex. 11a.

Article Twenty-One, Section A.1. of the CBA. The letter shall remain undisturbed. Accordingly, Specification 3a. and b. are substantiated.

### Department's Evidence

Principal Graham issued a letter to file on April 13, 2022, which memorialized a March 22, 2022 meeting pertaining to the Respondent's professionalism. The April 13, 2022 letter to file regarding professional misconduct is inclusive of Specification 3 parts a., b., c., d, e and f. According to the letter, during the meeting Respondent was presented with five reports of student claims alleging Respondent was treating them unprofessionally and two parent concerns that were shared with administration. The first student's (Student A) complaint was in regard to the instance referenced in the January 26, 2022 letter to file discussed above. Two other students (Student B and Student C) claimed the Respondent accused them of bullying her (Respondent). Student D claimed Respondent was insensitive to her emotional state and did not provide an alternate lesson for the required reading of Toni Morrison's *Beloved*. Student E accused Respondent of lying to his parents by reporting that he was not in class when he was actually present. Then Graham shared two parent concerns.<sup>63</sup>

The letter also documented how Respondent responded to the allegations. It states that Respondent denied yelling at Student A and refuted Student C by intimating that she cannot write anything on a transcript. Respondent agreed that certain students do make her feel bullied by making sounds and faces directed toward her. Student D was eventually given an alternate assignment. Respondent denied lying on Student E. Regarding the parent contact, Respondent replied the first parent never contacted her despite Respondent leaving messages and she was unable to meet with the second parent due to personal circumstances and related absences at the time.

The letter further documented that Graham invited Respondent to attend a "Respect For All" training and Respondent accepted. Two (2) days later, Respondent rescinded her acceptance stating, "Those students lied, and attending would be tantamount to saying they were telling the truth."<sup>64</sup> Respondent explained further that she had previously taken the training and despite the false claims against her from a few students, there were at least "200 students that I have good relationships with in our school. Also, it's absolutely terrifying that students can say anything about a teacher, and without question, it can elicit such angry responses, emotions and judgment [as that of Mr. Castillo towards me]."<sup>65</sup> It is upon this basis that Graham concluded Respondent "engaged in professional misconduct by failing to provide students with a safe, positive learning environment." The letter indicates that Respondent refused to accept or sign the letter from the school secretary on April 13 and May 4, 2022.

The evidence relied upon by Graham included a handwritten statement from Student B (as referenced in the April 13, 2022 LTF) who reported responding to Respondent "in an upset way" and being "angry" when Respondent approached her and another student outside of the classroom

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<sup>63</sup> DX-11, at 1.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

by explaining that she (Respondent) felt bullied by earlier whispering and laughing from the students who mentioned her by name during an earlier period. The student also believed that her relationship with Respondent was better when her grades were better. The statement is undated. Student C, by handwritten statement dated March 4, 2022, claimed to also feel threatened because of Respondent's expression of feeling bullied. Student C alleged Respondent warned that she would note his transcript if the bullying continued.

In a handwritten statement dated March 22, 2022, Student B filed another complaint against Respondent. She described an instance where Respondent directed her to take a different path than to pass between Respondent and a chair that was situated behind Respondent. Respondent was at the board. In response, Student B disregarded Respondent's instruction and stepped over the chair positioned behind Respondent. Student B stated that she felt Respondent was "being petty."<sup>66</sup> To address the situation, Respondent asked to speak to Student B outside the classroom. Student B reported the exchange as follows:

She claims what I did was disrespectful and rude. She also stated that Ive had an attitude with her most of the time. As we were conversating she cuts me off while speaking. She disregards all of my statements and continued to play victim. At this point I decide to do exactly what she did to me in this conversnation which was, cut her off and disregard her claims because I came to a realisation that she was'nt going to be mature about it. This argument made me angry which made my voice and tone a little aggresive as we speak. I will admit was over the top. (Spelling and punctuation as in original).<sup>67</sup>

Graham testified that she was prompted to write this letter to file since she would characterize the Respondent's behavior towards students as "meanness" based on the nature of the complaints. Graham testified that there was a feeling of retribution and retaliation if the students did not do what the Respondent told them to do. Graham is of the belief that the staff is in the work of supporting students and helping them learn, grow, and build their adult lives. Graham testified that she did not know why Urena would send the parent complaint directly to her without copying the Respondent on the email. She also did not recall whether she shared the email with the Respondent for review. To remedy the situation, Graham thought the *Respect for All* training would be more suitable than a disciplinary letter to achieve improvement.

### Respondent's Defense

Respondent's testimony at hearing was consistent with what Graham memorialized in the letter to file. Respondent also explained that she was already adequately trained as a former Restorative Justice Coordinator ("RJC") who mediates issues between students and teachers. The Respondent testified further that she found another book for Student D while the rest of the class read *Beloved*, and the co-teacher developed a separate curriculum and took her out of the class to work with Student D separately. the Respondent's co-teacher and UFT representative, Bayar,

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<sup>66</sup> D. Ex. 11d.

<sup>67</sup> *Id.*



testified that she tried to organize the meeting between Respondent and the parent, but Respondent told Bayar that she had already resolved the situation with the student.

### Analysis and Conclusions

I find this specification which alleges violation of Chancellor's Regulation A-421 was unsubstantiated by the record evidence. Chancellor's Regulation A-421 prohibits verbal abuse against students. Verbal abuse is defined as language (written or oral) about or directed toward students, that:

1. Belittles, embarrasses or subjects students to ridicule; or
2. Has or would have the effect of unreasonably and substantially interfering with a student's educational performance or ability to participate in or benefit from an educational program, school-sponsored activity or any other aspect of a student's education; or
3. Has or would have the effect of unreasonably and substantially interfering with a student's mental, emotional, or physical well-being; or
4. Reasonably causes or would reasonably be expected to cause a student to fear for his/her physical safety; or
5. Reasonably causes or would reasonably be expected to cause physical injury or emotional harm to a student.

No specific school policy was provided as a basis for Respondent's alleged misconduct. There is no competent evidentiary support that Respondent engaged in any misconduct or poor judgment. It was unreasonable to conclude that Respondent's attempts to correct behavior of her students interfered with their well-being. Except for Student A's claim about feeling embarrassed for being called away from the college counselor, there is no evidence that Respondent did anything that would reasonably be interpreted as belittling, embarrassing or ridicule. In fact, the evidence shows that she pulled students to the side to discuss behavioral issues. Student A's claim was already addressed in Specification 3a. above and cannot be used to support a separate offense. The administration chose to take the complaints of a handful of students who, in most cases, were themselves engaged in disrespectful conduct. The investigations into what occurred were flawed in that Graham did not share alleged emails from parents and unreasonably discounted Respondent's explanations about student conduct.

Finally, the Department alleged that Respondent failed to return parent phone call(s) and/or refused to meet with parent(s). Based on the record evidence, Respondent admitted to not timely meeting with a parent. This one occasion did not justify such concern that a letter to file was warranted. Specification 3c., d., e., and f. are unsubstantiated.

**SPECIFICATION 4:** During the 2021-2022 school year, Respondent was excessively absent.

### Department's Evidence

In a letter dated June 24, 2022, Graham memorialized a meeting between herself, Urena and Respondent where they discussed Respondent's 13 dates of absence unrelated to family death or COVID-19. Graham noted Respondent's response that "this has been an exceptionally hard year" and that she had a great attendance record for two years prior to the pandemic.<sup>68</sup> At the evidentiary hearing, Graham testified she wrote the letter because students should be provided with consistent education which requires consistent teacher attendance. According to Graham, the rule of thumb is ten absences per school year and the teachers can accumulate one sick day per month. She further testified that she became aware that the Respondent's mother passed this school year through documentation submitted by the secretary, and she knew the Respondent had good attendance history the years prior.

### Respondent's Defense

The Respondent acknowledged that she had 13 days of absences during the 2021-2022 school year while testifying. She explained that her mother lived out of state and passed away unexpectedly. She explained further that it was a devastating time for her and the allotted bereavement days were not enough to cover her bereavement.

### Analysis and Conclusions

In this case, there is no evidence that Respondent's three additional absences affected the continuity of instruction, affected staff morale or was otherwise disruptive. As Chancellor's Regulation C-601 states, the fact of actual absences alone does not support disciplinary action. Here, the circumstances do not establish that three absences above those permitted by the CBA were so numerous as to limit the effectiveness of Respondent's service. Specification 4 is not substantiated.

**SPECIFICATION 5:** In or about April 2022, Respondent failed to follow school policy and procedure, demonstrated a lack of professionalism, and/or used poor judgment, in that she engaged in a conversation with students about possible criminal activity by someone in the school community.

### Department's Evidence

By letter dated May 3, 2022, Graham issued a letter to file finding that Respondent engaged in professional misconduct by "engaging in conversation with students about possible criminal activity of someone in our school community."<sup>69</sup> During a meeting held on April 14, at 2:05pm, Graham informed Respondent that it was reported that Respondent participated in a discussion with students in her first period English class about a criminal incident broadcast in the *New York Daily News* outlet. The incident possibly included a student from the school. It was reported that

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<sup>68</sup> D. Ex. 13.

<sup>69</sup> D. Ex. 12.

Respondent used her cell phone to read the article about the incident. Following this report from students, Graham sent a reminder to the school's staff stating, "it is inappropriate and unprofessional to share or promote any news regarding any criminal matter than (sic) may include members of our school community."<sup>70</sup> During the meeting, Respondent stated she did not know there was a protocol to not discuss such incidents with students since Graham's email was sent after the incident. She also reasoned that if a student asked a question about something in the news, it was appropriate to discuss it. On this basis, Graham concluded that the Respondent engaged in professional misconduct due to the conversation about possible criminal activity of someone in the school community.

Graham testified that she could not recall which student brought this incident to her attention. She further testified that the Respondent's actions were subject to discipline because [they] are in the business of supporting children. Because of this, Graham sought advice from the superintendent and legal counsel because she did not see how the conversation was tied to the academic lesson.

Bayar, a former UFT representative and Respondent's co-teacher at the time, testified that the article was related to a stabbing on the subway with four teenagers and was displayed on the classroom's smart board through a desktop computer. She said she told Respondent to take the article down and Respondent replied explaining it was fine because the students brought it up. Bayar said she emphasized that the sharing of the article was inappropriate.

### Respondent's Defense

The Respondent's testimony acknowledged that engaging with the students about this was a mistake and it would not happen again. She explained in retrospect, she regrets it. She said the topic was broached at the beginning of class by one student before class commenced, which caught her off guard and she engaged in the discussion for about two minutes. Respondent testified that she is certain she did not bring the article up on her phone because she does not have her phone when teaching. In hindsight she would have shut down the conversation and went right into the lesson.

### Analysis and Conclusion

While Respondent initially thought it appropriate to discuss news events with students, given the nature of the possible student involvement, she did not exercise the best judgment in allowing the conversation to continue. Specification 5 is substantiated.

**SPECIFICATION 6:** In or about February 2023, Respondent failed to follow school policy and procedures and/or demonstrated a lack of professionalism, in that she left school early without authorization.

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<sup>70</sup> Id.

### Department's Evidence

On March 2, 2023, then Principal Urena issued a letter to Respondent's file documenting that she was notified about leaving school grounds before working hours ended. Specifically, the letter stated that Respondent was seen leaving school grounds on Friday, February 6, 2023, at 2:30 p.m. and working hours on Friday's end at 2:35 pm.

An investigation was conducted to review the school's surveillance system in an effort to confirm the time Respondent left the school on the day in question. It was established by the surveillance footage that she left at 2:31 p.m.<sup>71</sup> Urena testified that he initiated this letter because the teachers were previously cautioned against leaving school before working hours concluded. While exiting the school building to dismiss the students, he noticed the Respondent on the stairwell ahead of him. Therefore, he looked out a window to see her on a street and decided to take a picture of her. He then told the secretary to dock her for the time because she left early without permission.

### Respondent's Defense

Respondent wrote a rebuttal to the letter to file dated May 2, 2023. In it, she explained having a recording of the meeting with Urena and that the true motivation behind this action was due to Respondent's threat of filing a complaint. Additionally, she expressed discomfort about being followed by an administrator and having an undisclosed picture taken of her. Respondent expressed that this matter was beyond professional "and is more in the personal realm for him."<sup>72</sup>

Further, Respondent testified that she did not have an 8th period class that day. It was her prep period, and she would have been downstairs near the exit anyway. She also testified that another teacher walked out at the same time which was later confirmed after she questioned why she (Respondent) was the focus of the investigation. Respondent admitted she left four minutes early.

### Analysis and Conclusion

Of note is that it was dismissal time as even Urena mentioned that he observed Respondent exiting the school building while he was dismissing the students. However, there is no dispute that Respondent left work four minutes early which technically violated time and attendance procedures. Specification 6 is substantiated.

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<sup>71</sup> D. Ex. 14b.

<sup>72</sup> D. Ex. 14a.

**SPECIFICATION 7:** On or about May 17, 2023, Respondent neglected her duties, failed to follow school policy and procedure, and/or demonstrated a lack of professionalism, in that she denied a special needs student to receive one-on-one academic tutoring during an advisory class.

#### Department's Evidence

On June 20, 2023, Respondent received a letter to file regarding a teacher complaint. Specifically, Math and Special Education teacher Ramirez reported that a special needs student, Student V., was denied the opportunity to receive one-on-one tutoring by Respondent on May 17, 2023.<sup>73</sup>

Ramirez, in an 11:43 a.m. email entitled, "Presumed complaint against me from Ms. Sherman (5/17)" informed Urena that he visited the Respondent's class to pull Student V. for Regents tutoring as requested by the student and her parents. According to Ramirez, Respondent denied the request without explanation but provided commentary about the student not being where she was supposed to be on a previous occasion. While visiting Respondent's classroom, he observed half the class playing video games and the other half on their phones. Urena's response on the same day (at 12:17 p.m.) indicated that games were not permitted and that he would be addressing the issue "immediately."<sup>74</sup> Ramirez testified he took the student out of the Respondent's class despite Respondent's disapproval. He claimed the Respondent threatened to report him to administration because of this, which resulted in him emailing Urena about the occurrence.

#### Respondent's Defense

Respondent testified that the day prior to this incident, Student V left the advisory class to go to tutoring and wound up in another classroom engaged in a physical altercation with another student regarding a romantic relationship. Therefore, she told the students they would not be able to leave the classroom in order to prevent a reoccurring incident. When Ramirez arrived at her classroom to retrieve the student, she prohibited the retrieval. She did not offer an explanation because other students were present.

Following the encounter between Respondent and Ramirez on May 17, 2023, Respondent emailed Ramirez the same day (at 2:22 p.m.) to inform him that he cannot remove a student from another teacher's class when no IEP meetings are scheduled for the student. Respondent also expressed that Ramirez was rude and disrespectful by shouting at her in a classroom full of students.

Respondent explained that she never formally complained about Ramirez to anyone because she did not want any trouble for him. She only inquired about the protocol for removal of

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<sup>73</sup> D. Ex. 15a.

<sup>74</sup> *Id.*

a student by a special education teacher with the special education coordinator, who said the only time students can be removed from a classroom legally is with an IEP.

On cross examination, Ramirez admitted he was on probation at the time of the incident and during the time of the proceedings. He said he could not recall the email the Respondent sent him about the encounter before it was presented to him.

### Analysis and Conclusion

The charge is that Respondent denied a special needs student to receive one-on-one academic tutoring during an advisory class. This is unproven. The evidence is that while Respondent expressed objection for the student's safety in connection with a physical altercation the previous day, Ramirez removed the student from the class for tutoring anyway. The student was not denied one-on-one academic tutoring. Therefore, Specification 7 is unsubstantiated.

### CONCLUSION

After a careful review of the hearing record, exhibits, transcript, and awards provided whether specifically addressed or not, I find that the Department has not carried its burden by a preponderance of the evidence with respect to all specifications. Specifically, Specification 1a.-f., Specification 2, Specification 3 c.-f., Specification 4, Specification 7 and Specification 8 are not sustained. Specification 3 a. and b., Specification 5 and Specification 6 are sustained.

### PENALTY<sup>75</sup>

As noted above, the Department was found to have proven by a preponderance of credible evidence Specification 3 a. and b., Specification 5 and Specification 6. Specifications 3 a. and b. concern Respondent's yelling at a student who was getting extra help from a school counselor. Specification 5 involved Respondent engaging in a conversation with students in her classroom about possible criminal activity reported in the news concerning a student in the school's population. Specification 6 establishes that Respondent left work four (4) minutes early on one day. In sum, these violations which occurred over two (2) school years can be characterized as lapses in judgment. Respondent could not recall the yelling incident; admitted that it was poor judgment to discuss the criminal news report with students and expressed remorse for doing so; and she admitted that she left the school building four (4) minutes early.

Respondent has been employed with the Department for more than ten years with no prior disciplinary issues. As a teacher, she has enriched students by taking them on field trips like a local courthouse to see a murder trial. She leads the Gaming Club at the school and received an award in 2022 "for going above and beyond to plan learning experiences outside the school building that

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<sup>75</sup> The Penalty and Award sections reflect a clarification to the award issued March 28, 2025, pursuant to the Hearing Officer's retention of jurisdiction to address any issues arising out of the implementation of the award.

enhances the lives of Arts & Tech students.”<sup>76</sup> She created a teacher assistant role for high school students encouraging leadership. She developed a writing lab which she held during her lunch periods. She had a demonstrated positive impact as evidence by a former student who wrote, “Good Afternoon Ms. Sherman, I’m one of your old students [D.R.], graduate of 2020. You were my teacher since freshman year, and all I wanna say is you were amazing, you taught skills that I can use in and out of school. Probably the most realist teacher in Arts and Tech. I hope you are doing okay and thank you once again.” Respondent submitted a letter from the social services agency for which she serves as a foster parent. It indicates that Respondent has “built an honest rapport with [girls in her care] while also setting a firm but nurturing environment.”<sup>77</sup> This sentiment is in line with what Respondent’s former student expressed which she undoubtedly infuses into her teaching style. As already discussed above, the attacks on Respondent’s pedagogy were unwarranted and appear to have been motivated by some other underlying conflict. With respect to the sustained charges, given the relatively minor nature of the incidents and Respondent’s acknowledgements and expression of remorse, no additional remedial actions are necessary.

### **AWARD**

1. Specifications 1a. through f. are not sustained.
2. Specification 2 is not sustained.
3. Specification 3a. and b. are sustained.
4. Specification 3c. through f. is not sustained.
5. Specification 4 is not sustained.
6. Specification 5 is sustained.
7. Specification 6 is sustained.
8. Specification 7 is not sustained.
9. Specification 8 is not sustained.
10. There is no just cause for termination.
11. Respondent shall be reinstated upon the completion of any course selected and paid for by DOE to reacclimate her to classroom instruction.

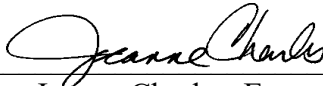
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<sup>76</sup> R. Ex. 24.

<sup>77</sup> R. Ex. 36.

12. The undersigned shall retain jurisdiction for a period of 30 days for the sole purpose of addressing issues arising out of the implementation of this Award.

April 4, 2025

  
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Jeanne Charles, Esq.

**AFFIRMATION**

I, Jeanne Charles, Esq., do hereby affirm upon my oath as Hearing Officer that I am the individual described in and who executed this instrument, which is my Opinion and Award.

April 4, 2025

  
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Jeanne Charles, Esq.