

BEFORE THE SCHOOL DISTRICT OF PITTSBURGH  
BOARD OF SCHOOL DIRECTORS

IN RE:

JOSEPH GIANSANTE

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ADJUDICATION**

**I. Introduction**

This matter is before the Board of School Directors (“Board”) of the School District of Pittsburgh (“District”) as a result of a request by Joseph Giansante for a hearing before the Board regarding his proposed dismissal.<sup>1</sup> Hearings were held at the Board of Public Education on five dates in 2015: April 9, April 20, April 29, May 12 and July 7. Representing the District Administration was Paul N. Lalley, Esquire, of Campbell, Durrant, Beatty, Palombo & Miller, P.C. Representing Giansante was James T. Carney, Esquire. Ira Weiss, Esquire, Solicitor for the District, served as Hearing Officer. The Board representative present was Cynthia Falls. A complete stenographic record of the hearing was made.

At the conclusion of the testimony and after receipt of the transcript, counsel were provided an opportunity to prepare post-hearing submissions. Counsel for each party submitted a brief and proposed findings of fact and conclusions of law.

**II. Findings of Fact**

1. The District is governed by the Board pursuant to the Public School Code of 1949, as amended (“School Code”). The District and certain of its professional employees are bound by

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<sup>1</sup> In a prior adjudication, the Board determined that Giansante did not knowingly waive his right to a Board hearing by initially electing to challenge his dismissal in arbitration.

the School Code and the collective bargaining agreement (“Agreement”) between the District and the Pittsburgh Federation of Teachers (“Union”).

**A. Background Regarding Giansante.**

2. Joseph Giansante was most recently employed by the District during the 2011-2012 and 2012-2013 school years as a mathematics teacher at Brashear High School (“Brashear”). (Tr. 637-38.<sup>2</sup>)

3. Previously, Giansante taught for six years at Westinghouse High School (“Westinghouse”) and for one year as a substitute in another school district. (*Id.* at 637.)

4. Giansante has an undergraduate degree in Mathematics from Carnegie Mellon University and a Master of Arts in Teaching from California University of Pennsylvania. Since 2004, Giansante has been certified by the Pennsylvania Department of Education (“PDE”) to teach Mathematics in Grades 7 through 12. (*Id.* at 636-37.)

5. Giansante has been an Adjunct Professor of Mathematics at the Community College of Allegheny County since 2007. (*Id.* at 639.)

**B. District’s Teacher Rating System; Ratings of Giansante.**

6. The School Code requires that all District teachers receive annual performance ratings. *See* 24 P.S. § 11-1123. Before the 2013-2014 school year, these ratings were based only upon classroom observations conducted by qualified evaluators – administrators who supervise the teacher being evaluated. *Id.*<sup>3</sup> Evaluators were to observe and rate teachers with regard to

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<sup>2</sup> In citations, “Tr.” refers to the Transcript of Proceedings in this matter. Exhibits introduced by the District Administration are designated “D. Ex.” Exhibits introduced by Giansante are designated “G. Ex.”

<sup>3</sup> Beginning with the 2013-2014 school year, ratings must give “due consideration” to student-performance data, in addition to classroom observations. *See* 24 P.S. § 11-1123(b)(1)(ii).

planning and preparation, classroom environment, pedagogy and professional responsibility. 23 P.S. § 11-1123.

7. Based on evaluators' observations, Giansante received unsatisfactory performance ratings for the 2011-2012 and 2012-2013 school years. (D. Ex. 42; D. Ex. 72.)

8. During the 2011-2012 school year, Giansante was observed on at least 11 occasions. Eight of the observations were formal, and three were informal. (D. Ex. 1; D. Ex. 16; D. Ex. 19; D. Ex. 20; D. Ex. 23; D. Ex. 24; D. Ex. 46; D. Ex. 47; D. Ex. 52; D. Ex. 53; D. Ex. 56.)

9. During the 2012-2013 school year, Giansante was again observed on at least 11 occasions. Nine of the observations were formal; two were informal. (D. Ex. 43; D. Ex. 44; D. Ex. 48; D. Ex. 51; D. Ex. 54; D. Ex. 55; D. Ex. 61; D. Ex. 63; D. Ex. 64; D. Ex. 68; D. Ex. 69.)

10. For each formal observation, the evaluator or evaluators completed an Observation and Conference Report that included basic facts about the class observed (subject, grade level, number of students present, length of observation) and detailed notations of activity in the classroom. Each observation was followed by a conference between the evaluator(s) and Giansante, during which deficiencies and opportunities for improvement were discussed. This information, along with any assistance provided to Giansante as a result of the observation, was outlined in the Observation and Conference Report. Each report was signed by the evaluator and Giansante. (D. Ex. 1; D. Ex. 16; D. Ex. 20; D. Ex. 23; D. Ex. 24; D. Ex. 43; D. Ex. 47; D. Ex. 48; D. Ex. 51; D. Ex. 52; D. Ex. 53; D. Ex. 54; D. Ex. 55; D. Ex. 63; D. Ex. 64; D. Ex. 68; D. Ex. 68.)

11. For each informal observation of Giansante, the evaluator completed a form titled "K-12 Mathematics Informal Observation Tool (Non-RISE)," which includes basic facts about the class observed, notations about classroom activity and the observer's comments and questions.

Informal observations are shorter in duration than formal observations and are not accompanied by a pre-observation or post-observation conference between the teacher and the evaluator(s). Instead, the teacher receives “feedback” through the completed informal observation tool form. (Tr. 62-63; D. Ex. 19; D. Ex. 44; D. Ex. 46; D. Ex. 56; D. Ex. 61.)

**C. Giansante’s Evaluators and Their Observations.**

12. At least seven administrators observed and evaluated Giansante during the two school years at issue.<sup>4</sup> Four of those administrators testified on behalf of the Administration: Principals Angel Washington, John Vater and Kimberly Safran, and mathematics supervisor (formerly coordinator) Jeffrey Ziegler. At least one of those individuals was present during each observation of Giansante. (D. Ex. 40; D. Ex. 74.)

**1. Washington’s Observations.**

13. Washington is currently principal of Carrick High School. During the 2011-2012 and 2012-2013 school years, she was co-principal of Brashear. She has been certified by PDE as a K-12 administrator since 2007. Before the 2011-2012 school year, Washington had conducted thousands of information observations of teachers and as many as 100 formal observations. (Tr. 11, 13.)

14. Washington testified regarding Giansante’s failure to properly implement the pedagogy and methods required by the District’s core curriculum. The District curriculum requires teachers to design each lesson in three phases: (1) a launch/set-up or warm-up; (2) an “explore” phase in which students engage in group activities to solve problems and the teacher

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<sup>4</sup> It appears an eighth administrator, Steven Travanti, observed Giansante on two occasions in 2012-2013. Reports of those observations are not in evidence, however.

identifies misconceptions; and (3) a closing, where students share, discuss and analyze concepts, compare solutions and discuss ideas. This pedagogy, which emphasizes student-to-student interaction, encourages students to assess the various concepts they may use to solve math problems. The pedagogy revolves around a full, complete understanding of math concepts applicable to real-world situations, as opposed to teaching methods through which students simply arrive at the right answer by the most expedient route. (*Id.* at 39, 40, 144, 200, 202.)

15. Washington observed that Giansante had consistently failed to implement the pedagogical tenets of the curriculum and repeatedly exhibited poor lesson planning. Giansante predominantly used an outmoded model of teaching known as initiate/respond/evaluate (“IRE”). The IRE method was teacher-centric and often involved the regurgitation of answers from the teacher, rather than the critical thinking mandated by the three-phase lesson design in the District curriculum. (*Id.* at 202, 216, 227.)

16. As examples of the IRE method, Washington cites observations where Giansante engaged in back-and-forth questioning of students that only resulted in the validation or dismissal of student responses. Giansante asked students to repeat a correct answer to the class, instead of pressing the students for explanation or analysis of why an answer was correct. Washington also noted that to the extent Giansante had planned his lessons, he failed to fully embrace the curriculum and to utilize class statistics. (*Id.* at 74, 88, 133.)

17. Washington noted that Giansante had consistently failed to address or correct off-task behavior and tardiness in his courses. Washington observed students arriving late, using inappropriate language and playing music without any correction from Giansante. Washington

provided recommendations and feedback to Giansante in multiple conversations. (*Id.* at 66, 70, 140, 143-44.)

18. Washington observed no improvement or progress in Giansante's teaching proficiency during the two school years when she evaluated him. (*Id.* at 145-46.)

**2. Vater's Observations.**

19. Vater is currently principal of Brookline Pre-K-8. During the 2011-2012 and 2012-2013 school years, he was co-principal of Brashear. After receiving his certification as a K-12 administrator in 2002, he served as an assistant principal and then principal in the District. Before the 2011-2012 school year, Vater had conducted roughly 800 to 1,000 formal and informal observations of District teachers, including math teachers. (Tr. 237-39, 241-42.)

20. Vater testified regarding Giansante's inability or unwillingness to follow the mandatory District curriculum, to properly plan lessons that reflected the pedagogy of the curriculum and to manage his classrooms. When Vater observed him, Giansante predominantly utilized the IRE method of teaching and failed to fully implement the pedagogy mandated by the District. Giansante consistently failed to put forth enough effort and preparation in planning his lessons. This lack of preparation was evidenced by the consistent absence of a learning objective in Giansante's lessons, which failed to build upon one another as required by the District curriculum. (*Id.* at 248-49, 264-65, 271.)

21. Giansante failed to manage his classroom in a way that promoted learning, as evidenced by a significant percentage of students who "opted out" of learning without any consequence. Students opt out by intentionally ignoring the lesson or engaging in an activity unrelated to the lesson. Vater observed the use of inappropriate language within Giansante's

classroom, most prominently in a projector slide that read, "Sorry, there is no vaccine against stupidity." (*Id.* at 244, 247.)

22. Vater observed a high level of segregation within Giansante's classes. The curriculum requires teachers to place students into specific groups based upon data regarding each student's learning and achievement. Such grouping was not evident in Giansante's courses, reflecting a failure to utilize data in a way that promotes classroom equity. (*Id.* at 257-58.)

23. Vater observed no improvement or progress in Giansante's teaching proficiency during the 2011-2012 and 2012-2013 school years. (*Id.* at 289, 301.)

**3. Ziegler's Observations.**

24. Ziegler has been a Curriculum Supervisor for Mathematics in Grades 6 to 12 in the District since October 2012. From October 2011 until October 2012, he was Curriculum Coordinator in Math for Grades 6 to 12. Previously, he was a Mathematics Teacher in the District for 11 years. He is certified by PDE as a Mathematics Teacher for Grades 7-12 and, since 2012, as a K-12 Principal. He conducted 12 observations of Math Teachers in 2011-2012 and four in 2012-2013. As Curriculum Coordinator, Ziegler assisted in writing and designing curriculum materials. As Curriculum Supervisor, he now oversees the 6-12 Math curriculum. (*Id.* at 327-29.)

25. Ziegler testified regarding Giansante's longstanding deficiencies in pedagogy, lesson planning and classroom management. Contrary to the curriculum, Giansante emphasized the memorization of a single solution as opposed to focusing upon the reasoning behind a Mathematics solution. Giansante consistently failed to properly prepare lesson plans. As a result, Giansante's lessons lacked structure and failed to anticipate potential questions or challenges. In at least one instance, Giansante placed a set of math problems into his lesson without reviewing

the problems in advance. When students asked questions about the problems, Giansante was unable to fully assess and answer the questions because of his lack of preparation. (Tr. 336, 338, 342, 345, 349, 360.)

26. Students consistently opted out during Giansante's class without consequence. Ziegler observed students using headphones, texting and arriving late to class without any correction from Giansante. Students were grouped based upon their proximity to one another, resulting in a high level of racial segregation within the classroom. Such segregation is inconsistent with the District's policy of grouping students according to academic data. (*Id.* at 341, 347-48.)

27. Giansante's classes lacked rituals and routines that facilitate classroom learning. For example, no routines were in place regarding homework or classroom dismissal. (*Id.* at 345-46.)

28. Even though Ziegler provided Giansante with an abundance of advice and written materials detailing proper teaching methods, Ziegler observed no improvement or progress in Giansante's teaching proficiency during the 2011-2012 and 2012-2013 school years. (*Id.* at 360-64, 370-72, 380.)

#### **4. Safran's Observations.**

29. Safran is currently principal of Brashear. During the 2011-2012 and 2012-2013 school years, she was co-principal of Brashear. Safran has been a principal in the District since receiving her K-12 principal certification from PDE in 2010. Before the 2011-2012 school year, Safran had conducted about 300 formal and informal observations of teachers. (*Id.* at 399-401, 402.)



30. Safran testified that Giansante failed to implement the pedagogical tenets of the core curriculum, to properly plan his lessons, to establish routines and rituals, and to manage his classroom. Giansante consistently failed to utilize the share/discuss/analyze pedagogy mandated by the curriculum. Dominated by the IRE method, Giansante's classes lacked the level of rigor demanded by the curriculum. Giansante employed a "very procedural," singular method of problem-solving that was antithetical to the curriculum, which stressed a multi-pronged approach. (*Id.* at 406-07, 417-18, 426.)

31. Giansante's classes were poorly planned and lacking in structure. On several occasions when Safran observed him, Giansante had failed to prepare **any** lesson plan. Furthermore, Giansante failed to pace his lessons to ensure that students had enough time for the share/discuss/analyze process. Giansante's courses lacked routines and rituals regarding simple tasks such as the answering of questions or the collection of homework. (Tr. 418-19, 432, 445, 494, 512.)

32. Giansante was unable to manage his classroom in a manner that encouraged learning. Safran observed numerous instances in which students, without correction from Giansante, opted out of learning by arriving late to class, listening to music on their cellular phones and loudly discussing matters unrelated to mathematics. On two occasions, Giansante appeared to be oblivious to inappropriate, derogatory language displayed by students in the classroom; Safran had to tell Giansante to remove the language. Giansante paired students based upon their proximity to one another, as opposed to purposefully selecting groups based upon academic data. (*Id.* at 411-12, 414, 443, 462, 466-67.)

33. Despite having provided Giansante with abundant feedback and suggestions regarding his teaching, Safran observed no improvement or progress in Giansante's teaching proficiency during the two years when she evaluated him. (*Id.* at 453, 526-27.)

**D. Giansante's Rating for 2011-2012.**

34. Prior to and during the 2011-2012 school year, Giansante participated in professional development periods where teachers were provided with extensive instruction in pedagogy, lesson planning, curriculum implementation and classroom management. (*Id.* at 195, 441-42.)

35. During the 2011-2012 school year, Giansante was formally observed and evaluated by Washington, Safran, Vater, Ziegler and mathematics supervisor Deborah Badertscher. (D. Ex. 1; D. Ex. 16; D. Ex. 20; D. Ex. 23; D. Ex. 24; D. Ex. 47; D. Ex. 52; D. Ex. 53.)

36. In the first half of the 2011-2012 school year, formal observations were conducted on September 23, 2011 (by Washington); November 9, 2011 (Washington and Badertscher); and December 14, 2011 (Washington and Badertscher). Informal observations were conducted on December 6, 2011 (Washington), and December 19, 2011 (Safran). The evaluators consistently noted Giansante's failure to properly plan lessons, implement the mandatory core curriculum, manage classroom behavior, establish rituals and routines, and display pedagogical proficiency. (Tr. 133, 140, 144, 406, 411, 494; D. Ex. 39; D. Ex. 40.)

37. Each formal observation was followed by a conference with one or more evaluators where Giansante was provided with recommendations on how to improve his teaching performance. (Tr. 144, 453; D. Ex. 38; D. Ex. 39; D. Ex. 40.)

38. On October 3-14, 2011, October 26, 2011, and November 14-17, 2011, the District provided Giansante with teaching instruction, advice and guidance from District mathematics specialist Ray Roberts. (D. Ex. 39.)

39. On October 21, 2011, Giansante was placed on an Employee Improvement Plan ("EIP") that outlined his teaching deficiencies and provided recommendations for improvement. (D. Ex. 6; D. Ex. 40.)

40. On November 15, 2011, Washington held a progress monitoring meeting with Giansante. No significant progress or improvement was noted in Giansante's teaching. (Tr. 53; D. Ex. 18.)

41. Additional formal observations of Giansante were conducted on January 12, 2012 (Washington); February 3, 2012 (Washington); February 9, 2012 (Badertscher and Ziegler); March 29, 2012 (Vater); and April 24, 2012 (Ziegler). An informal observation was conducted on January 6, 2012 (Vater). Evaluators continued to note deficiencies in Giansante's lesson planning, curriculum implementation, classroom management, pedagogical proficiency and rigor. (D. Ex. 40.)

42. Each formal observation was followed by a conference where strategies and recommendations for improvement were provided to Giansante by one or more evaluators. (*Id.*)

43. On January 12, 2012, Washington requested that Giansante observe the pedagogy, norms, routines and teaching methods of mathematics teacher Mark Sammartino. (Tr. 96.)

44. On January 18, 2012, Giansante and Washington observed Sammartino's mathematics course. After the observation, Washington requested that Giansante complete a

written reflection outlining Sammartino's teaching methods, why those methods were effective and the ways in which Giansante could apply such methods to his own classroom. (*Id.* at 100.)

45. Giansante failed to fully comply with Washington's request for a written reflection. Giansante's reflection was bereft of any details regarding the manner in which Sammartino's methods could be incorporated into Giansante's classroom. (*Id.* at 101-02.)

46. Giansante requested and received an opportunity to observe Sammartino's methods in a larger math class. Following this second observation, Giansante was to present a reflection outlining Sammartino's teaching methods and ways in which Giansante could implement those methods in his classroom. (*Id.* at 106.)

47. Giansante's second reflection regarding Sammartino's teaching methods lacked the same details as the first reflection. (*Id.* at 107.)

48. On April 11, 2012, Washington held a progress monitoring meeting with Giansante. No progress or improvement was noted in Giansante's teaching to that point in the school year. (*Id.* at 120; D. Ex. 35.)

49. Based upon the evidence gathered by multiple evaluators, the District issued Giansante an unsatisfactory teaching rating for the 2011-2012 school year. (D. Ex. 41.)

**E. Giansante's Rating for 2012-2013.**

50. During the 2012-2013 school year, Giansante was formally observed and evaluated by Safran, Vater, Ziegler, Washington and curriculum coordinator Marianne O'Connor. (D. Ex. 74.)

51. In the first half of the 2012-2013 school year, observations were conducted on September 24, 2012 (Safran and Vater); October 31, 2012 (Safran and Vater); November 8, 2012

(Ziegler); November 29, 2012 (Safran and Ziegler); and December 14, 2012 (Safran). An informal observation was conducted on September 11, 2012 (Safran). Evaluators consistently noted that Giansante displayed the same deficiencies in lesson planning, curriculum implementation, classroom management, rituals and routines, and pedagogical proficiency as were evident in the 2011-2012 school year. (D. Ex. 74; D. Ex. 75.)

52. Each observation was followed by a conference with one or more evaluators where Giansante was provided with recommendations on how to improve his teaching performance. (D. Ex. 74.)

53. The 2012-2013 curriculum requirements were no different from the 2011-2012 requirements. (Tr. 289.)

54. During the 2012-2013 school year, Giansante again participated in professional development periods where extensive instruction was provided to teachers regarding the District's expectations for pedagogy, lesson planning, curriculum implementation and classroom management. (*Id.* at 195, 441-442.)

55. On September 10, 2012, Vater met with Giansante to discuss respect and rapport strategies that Giansante could incorporate into his classroom. (*Id.* at 280; D. Ex. 74.)

56. Between October 1, 2012, and November 2, 2012, Giansante observed the teaching methods of various District mathematics instructors, with the goal of better understanding the curriculum. (D. Ex. 74.)

57. On October 10, 2012, Giansante was placed on an EIP outlining his teaching deficiencies and providing him with recommendations for improvement. Giansante consented to the EIP and did not object to its findings. (Tr. 276; D. Ex. 50.)

58. On November 20, 2012, Safran assisted Giansante in planning of a mathematics lesson. Safran instructed Giansante on how to effectively integrate the District's core curriculum into a lesson. (Tr. 453-54; D. Ex. 74.)

59. On December 21, 2012, a progress monitoring meeting was held with Giansante, during which continued concerns regarding Giansante's preparation, technique and classroom management were cited. Giansante was given recommendations for addressing those concerns, and he agreed to closely read the District mathematics handbook. (Tr. 478-79; D. Ex. 65.)

60. In the second half of the 2012-2013 school year, additional formal observations were conducted on January 17, 2013 (Washington); February 5, 2013 (Ziegler and O'Connor); March 20, 2013 (Safran); and May 7, 2013 (Safran). An informal observation took place on February 13, 2013 (Washington). Numerous areas of concern were identified during these observations. Evaluators consistently noted Giansante's failure to properly plan lessons, implement the core curriculum, manage classroom behavior, establish rituals and routines, and display pedagogical proficiency. (D. Ex. 74.)

61. Each observation was followed by a conference with one or more evaluators where Giansante was provided with recommendations on how to improve his teaching performance. (*Id.*)

62. On January 30, 2013, a progress monitoring meeting was held with Giansante. Concerns regarding lesson planning, curriculum adoptions, classroom management and pedagogy were noted, and Giansante received feedback regarding his teaching methods. (Tr. 514; D. Ex. 67.)

63. On February 2, 2013, Giansante and Safran observed the teaching methods of another mathematics teacher, Ms. Dankmyer. Dankmyer's math course mirrored Giansante's classes in size and student makeup. Safran wanted Giansante to observe and implement the pedagogy, lesson planning and rigor on display in Dankmyer's math course. (Tr. 520, 522; D. Ex. 74.)

64. On February 11, 2013, Safran instructed Giansante to write a reflection discussing Dankmyer's teaching methods and why those methods were effective. (Tr. 520.)

65. In his reflection, Giansante promised to incorporate the strategies and techniques utilized by Dankmyer into his own mathematics courses. (*Id.* at 523.)

66. In her observations of Giansante in March 2013 and May 2013, Safran found no evidence that Dankmyer's strategies or techniques were being implemented in Giansante's classes. (*Id.*)

67. On May 9, 2013, Safran held a progress monitoring meeting with Giansante. Safran informed Giansante that she had noted no progress or improvement in his teaching. (*Id.* at 526; D. Ex. 70.)

68. Based upon the evidence gathered in multiple observations, the District issued Giansante an unsatisfactory teaching rating for the 2012-2013 year. (*Id.* at 526-27; D. Ex. 75; D. Ex. 76.)

### III. Conclusions of Law

1. Giansante is a tenured professional employee subject to dismissal only in accordance with the School Code.

2. The School Code enumerates “[t]he only valid causes for termination” of a professional employee’s contract, which include “incompetency” and “unsatisfactory teaching performance based on two (2) consecutive ratings of the employee’s teaching performance that are to include classroom observations, not less than four (4) months apart, in which the employee’s teaching performance is rated as unsatisfactory....” 24 P.S. § 11-1122(a).

3. Giansante had a right to a detailed written statement of the charges upon which the District based his proposed dismissal. 24 P.S. § 1127. Giansante, through counsel, waived this right. (Tr. 9.)

4. Giansante had a right to a public hearing before the Board to challenge his proposed dismissal. 24 P.S. § 1126; 24 P.S. § 1127.

5. The hearings before the Board conformed in all respects with the procedural requirements of the Local Agency Law, 2 Pa. C.S. §§ 551-554, in that:

- A. Giansante was provided advance written notice of the charges against him and the date, time, and location of the Board’s hearings;
- B. Giansante was represented by counsel at the Board hearings;
- C. Giansante’s counsel cross-examined the Administration’s witness and Giansante presented witnesses and evidence on his own behalf; and
- D. A complete stenographic record of the hearings was made.

6. “In determining whether a professional employe shall be dismissed for incompetency or unsatisfactory teaching performance ... all professional employes ... shall be rated through the use of an approved rating tool developed by the Secretary of Education....” 24 P.S. § 11-1123(a).



7. Such ratings “shall be performed by or under the supervision of the chief school administrator or, if so directed by the chief school administrator, by an assistant administrator, a supervisor or a principal who has supervision over the work of the professional employe ... being rated, provided that no unsatisfactory rating shall be valid unless approved by the chief school administrator.” 24 P.S. § 11-1123(h)(3).

8. “No employe shall be dismissed ... unless the employe has been provided a completed rating tool provided for under this section, which includes a description based upon classroom observations of deficiencies in practice supported by detailed anecdotal records that justify the unsatisfactory rating.” 24 P.S. § 11-1123(h)(4).

9. The requirement of two consecutive unsatisfactory ratings before dismissal “insures that dismissal is not based on the first instance of unsatisfactory performance but that dismissal follows notice and an opportunity for the professional employe to improve.” 22 Pa. Code § 351.26(a). The anecdotal records supporting an unsatisfactory evaluation “shall include specific evidence likely to be important in the event of dismissal.” *Id.*

10. In order to dismiss a tenured professional employe such as Giansante, the Administration must prove that the employe received two consecutive, valid unsatisfactory performance ratings. *See Phillis v. Mechanicsburg Area Sch. Dist.*, 617 A.2d 830, 833 (Pa. Commw. Ct. 1992).

11. The Administration met its burden of proving that Giansante received two consecutive unsatisfactory performance ratings and that those ratings were valid.

12. Giansante has failed to provide valid evidence that his unsatisfactory ratings were arbitrary, capricious, issued in bad faith or otherwise invalid.

13. The District may properly dismiss Giansante from employment pursuant to the School Code and the Agreement.

#### IV. Discussion

Giansante generally does not dispute the content of the observations upon which his two consecutive unsatisfactory performance ratings were based. Rather, he asserts several affirmative defenses. Giansante contends that the Administration improperly based the unsatisfactory ratings on classroom observations, without considering certain student data; that the Administration misapplied the rating standards, which Giansante's performance actually fulfilled; and that the standards the Administration applied to Giansante are different from those applied to other teachers. Giansante also challenges the "judgment" of Safran because of "numerous contradictions and implausibilities in her statements." (Giansante Br. at 32.)

##### **A. Giansante's VAM and Tripod Scores.**

Giansante points to two sets of data as evidencing satisfactory teaching performance. The first, called Value-Added Measurement ("VAM"), is designed to measure the impact of a teacher's teaching on student achievement. The second, known as Tripod, is based on student surveys intended to measure students' response to a particular teacher compared with other teachers in a school and throughout the District. (See G. Ex. 1.) Giansante proffered his VAM scores for the 2010-2011, 2011-2012 and 2012-2013 school years, along with Brashear's average overall VAM scores for 2011-2012 and 2012-2013. The Hearing Officer excluded this evidence from consideration because the District did not use VAM scores to rate teachers in 2011-2012 or 2012-2013 (Tr. 633); PDE did not approve the District's use of VAM scores until the 2013-2014 school year, the first year during which the School Code required districts to consider student-

performance data, in addition to classroom observations, in evaluating teachers, *see* 24 P.S. §11-1123(b)(1)(ii). Although Giansante's Tripod scores were admitted into evidence, Tripod data were likewise not considered by the Administration in rating teachers during the 2011-2012 and 2012-2013 school years.

Giansante does not dispute that the Administration did not use VAM or Tripod data to evaluate **any** teacher during the two school years at issue here. Yet he asserts that the VAM results must be considered because they represent "the only objective evidence with respect to the impact of [Giansante's] teaching on the learning done by his students." (Giansante Br. at 5.) The Board concludes that the Hearing Examiner properly excluded evidence regarding VAM, and it gives no weight to the admitted evidence regarding Tripod. These measures were not part of "an approved rating tool developed by the Secretary of Education" in the 2011-2012 and 2012-2013 school years. *See* 24 P.S. § 11-1123(a). Moreover, the District did not use VAM or Tripod to rate any other teachers in those school years. By insisting that such data must be considered with regard to his proposed dismissal, Giansante is asking the Board to formulate a unique performance standard that applies only to him. Obviously, such special treatment is inconsistent with the teacher-evaluation procedures used by the District in 2011-2012 and 2012-2013, as well as the School Code.

**B. Anecdotal Reports as Evidence of Unsatisfactory Performance.**

Giansante argues that his performance was, in fact, satisfactory, notwithstanding the deficiencies noted in the voluminous anecdotal reports and other documentation compiled by seven administrators on nearly two dozen occasions over the course of two school years. These reports consistently reflect Giansante's failure to properly plan lessons; to adhere to the teaching

methods prescribed by the District's curriculum; and to maintain control of his classroom. Similar conduct has been held to constitute "incompetency" within the meaning of the School Code. See *Rosso v. Owen J. Roberts Sch. Dist.*, 380 A.2d 1328, 1329 (Pa. Commw. Ct. 1977) (sustaining dismissal based in part on failure to maintain lesson plans, where the "method of instruction was unvaried, 'teacher-dominated,' and did not create an atmosphere conducive to learning"); *Steffen v. S. Middletown Tp. Sch. Dist.*, 377 A.2d 1381, 1384 (affirming that "failure to maintain adequate classroom control is serious enough, without more, to warrant an unsatisfactory rating"). Furthermore, the anecdotal records are more than sufficient in both volume and detail to meet the Administration's burden. "The important, indeed vital, portion of any unsatisfactory rating is the accompanying anecdotal records." *Hamburg v. N. Penn Sch. Dist.*, 484 A.2d 867, 869 (Pa. Commw. Ct. 1984). In *Rosso*, the Secretary of Education and the court commended the administration's documentation supporting a dismissal:

While a teacher might object to being rated so often in a short period of time by different persons, such a procedure is clearly in the employe's best interest since it brings into the evaluation different viewpoints, thereby lessening the influence personal bias and prejudice with respect to teaching methods can have. We are particularly impressed with the ratings ... in which [the evaluator] recorded what was going on in the classroom at five minute intervals. This method of evaluation has given us the best picture of the learning atmosphere in a classroom that we have seen to date in an anecdotal record.

380 A.2d at 1329-30. The anecdotal records here, in which the evaluators tried to capture everything that happened in the classroom in real time, met or exceeded this standard. Even though Giansante was continuously apprised of his evaluators' observations and given assistance in improving his performance, these deficiencies persisted. Whether Giansante was unwilling or

unable to improve,<sup>5</sup> the Administration has met its burden of proving that his performance was unsatisfactory.

**C. Safran's Credibility; Validity of 2012-2013 Rating.**

Giansante attacks the credibility and "judgment" of Safran, who signed the form evidencing his second unsatisfactory performance rating. (See D. Ex. 77.) Even if it is assumed that some of Safran's statements were "contrary to documentary evidence or inherently improbable" (Giansante Br. at 31), Giansante identifies none that call Safran's testimony into question in any material way. Moreover, Safran was solely responsible for only three of Giansante's nine formal observations in 2012-2013 and none in 2011-2012. Safran's testimony was consistent with and corroborated by that of her fellow administrators. The unsatisfactory evaluation for 2012-2013 is amply supported by the anecdotal records, notwithstanding any discrepancies in Safran's testimony. See *Hamburg*, 484 A.2d at 869; *Rosso*, 380 A.2d at 1329-30.

**D. Giansante Witnesses.**

Giansante presented several witnesses in his defense: former Westinghouse teacher Craig Jackson and former Brashear students Tristan Roop and Riley Truffa. The Board declines to give any weight to their testimony. Jackson, a former principal in the District, shared a classroom at Westinghouse High School with Giansante during the 2009-2010 school year, when Jackson served as a math coach. (Tr. 911.) Because Giansante's performance during the 2009-2010 school year is not at issue here, the Board finds Jackson's testimony irrelevant. The Board declines to

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<sup>5</sup> Giansante admits he intentionally departed from the pedagogy required by the District's curriculum on several occasions, purportedly to achieve some overriding educational objective. Giansante's counsel faults the curriculum, rather than this client, for failing to establish "high standards." (Giansante Br. at 16-17.) It is the Administration's prerogative, subject to Board oversight, to choose the curriculum; it was Giansante's duty to implement the chosen curriculum, regardless of his opinion of it.

credit the testimony of Tristan Roop, who admitted to falsifying a signed statement that he gave to the Administration about Giansante in 2012. (*Id.* at 875-79; *see* D. Ex. 81.)

Although there is no similar reason to question Truffa's credibility, her testimony and Roop's are flawed in a number of other ways. To the extent Giansante offers their testimony to undermine the accuracy of the Administration's observations, it is simply too vague in comparison with the detailed anecdotal records.<sup>6</sup> If anything, Truffa actually confirmed that other teachers followed the required pedagogy and maintained better control of their classrooms than Giansante. (Tr. 887-92, 897-98.) To the extent his former students' testimony is offered to demonstrate that Giansante's performance was similar to that of other teachers, Truffa and Roop are not competent witnesses, as they are not qualified to evaluate teachers in accordance with the School Code. These issues aside, Truffa's and Roop's testimony is still of questionable relevance at best. *See Mapstone v. Tuscarora Intermediate Unit*, Teacher Tenure Appeal No. 8-87, slip op. at 210 (Pa. Sec'y of Educ. 1989) (upholding dismissal of teacher for sick leave misuse and finding testimony regarding others' alleged misuse of sick leave irrelevant: "The charges here are against Mapstone, not against another individual; and her deliberate misuse of sick leave is hardly excused if someone else had misused sick leave"). Giansante certainly presented no persuasive evidence that the Administration observed other teachers with the same shortcomings as himself who nevertheless received satisfactory ratings. Consequently, none of Giansante's defenses is meritorious.

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<sup>6</sup> The Board is entitled to reconcile conflicting testimony. *See Wissahickon Sch. Dist. v. McKown*, 400 A.2d 899, 901 (Pa. Commw. Ct. 1979).


E. Conclusion.

In summary, Giansante received two consecutive unsatisfactory ratings supported by extensive documentation, which was authenticated by multiple Administration witnesses. Although the Administration clearly expressed its expectations to Giansante and gave him ample opportunities to become more proficient over two full school years, Giansante's performance only stagnated rather than improving. Giansante generally does not dispute the accuracy of the Administration's documentation. The evidence he presented in his own defense is unpersuasive and largely irrelevant. Giansante's employment may be terminated in accordance with the School Code.

**V. Adjudication**

The Board of School Directors of the School District of Pittsburgh, in accordance with the foregoing Findings of Fact and Conclusions of Law, hereby dismisses Joseph Giansante from the position of mathematics teacher on the grounds of two consecutive unsatisfactory performance ratings. The Board directs that this Adjudication be sent by the Administration to Giansante and his counsel by certified mail, return receipt requested.

Dated:

  
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Ira Weiss, Esquire, Hearing Officer

