

**IN THE OFFICE OF THE SECRETARY OF EDUCATION OF THE  
COMMONWEALTH OF PENNSYLVANIA**

JOSEPH GIANSANTE,	:	
Appellant	:	
	:	
v.	:	Teacher Tenure Appeal
	:	No. 06-15
	:	
CITY OF PITTSBURGH BOARD OF	:	
EDUCATION,	:	
Appellee	:	

**OPINION AND ORDER**

Joseph Giansante (Mr. Giansante), Appellant, appeals the decision of the City of Pittsburgh Board of Education (Board) to terminate his employment as a professional employee with the School District of Pittsburgh (District).

**FINDINGS OF FACT**

1. Joseph Giansante was employed by the District during the 2011-2012 and 2012-2013 school years as a mathematics teacher at Brashear High School (Brashear). (April 9, April 20, April 29, May 12, and July 7, 2015, (Notes of Testimony (N.T.) 14, 637-38).
2. Previously, Mr. Giansante taught for six years at the Westinghouse High School (Westinghouse) and for one year as a substitute teacher in another district. (N.T. 637.)
3. Mr. 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, Mr. Giansante is certified by the Pennsylvania Department of Education (Department) to teach Mathematics in Grades 7 through 12. (N.T. 636-37).
4. Mr. Giansante has been an Adjunct Professor of Mathematics at the Community College of Allegheny County since 2007. (N.T. 639).

5. The School Code indicates that all District teachers may receive performance ratings. 24 P.S. §§ 11-1122, 11-1123. Before the 2013-2014 school year, these ratings were based only upon an approved rating system conducted by administrators who supervised the teacher being evaluated. *Id.* Generally, the evaluators were to observe and rate teachers in accordance with preparation, technique, student reaction, and personal qualities. 22 Pa. Code. §§ 351.21, 351.23; (District Exhibit(s) (Dist. Ex.) 42, 77).

6. The District requires that all of its teachers follow the District's curriculum. Additionally, teachers are required to submit weekly lesson plans. Lesson plans, including emergency lesson plans for substitute teachers, are to be submitted to the main office. All teachers are held to the same standard for all evaluations. (N.T. 95, 69, 120, 137).

7. Based on the evaluators' observations, Mr. Giansante received unsatisfactory performance ratings for the 2011-2012 and 2012-2013 school years. (N.T. 136; 528, 529; Dist. Ex. 42, 77).

8. During the 2011-2012 school year, Mr. Giansante was observed on September 23, 2011 (N.T. 15), November 9, 2011 (N.T. 45), December 6, 2011 (N.T. 63), December 14, 2011 (N.T. 68), December 19, 2011 (N.T. 404), January 6, 2012 (N.T. 243), January 12, 2012 (N.T. 86), February 3, 2012 (Dist. Ex. 24), February 9, 2012 (Dist. Ex. 40, 52), March 29, 2012 (N.T. 256, 323) and April 24, 2012 (N.T. 351). All above observations were formal except the observations on December 6 and 19, 2011, and January 6, 2012, which were informal. (Dist. Ex. 1, 16, 19, 20, 23, 24, 46, 47, 52, 53, 56).

9. During the 2012-2013 school year, Mr. Giansante was observed on September 11, 2012 (N.T. 424), September 24, 2012 (N.T. 279), September 28, 2012 (Dist. Ex. 74), October 31, 2012 (N.T. 301, 435, 436), November 8, 2012 (N.T. 364), November 29, 2012 (N.T. 461),

December 14, 2012 (N.T. 470), January 17, 2013 (N.T. 139), February 5, 2013 (N.T. 373), February 13, 2013 (N.T. 147), March 20, 2013 (N.T. 491) and April 10, 2013 (Dist. Ex. 74). All above observations were formal except the observations on September 11 and 24, 2012, and February 13, 2013, which were informal. (Dist. Ex. 43, 44, 48, 51, 54, 55, 61, 63, 64, 68, 74).

10. For each formal observation, the evaluator(s) completed an observation and conference report that included basic facts about the class observed, *i.e.* subject, grade level, number of students present, length of observation, and notations of the activities in the classroom. A conference followed each observation, between the evaluator(s) and Mr. Giansante, during which deficiencies and opportunities for improvement were discussed. This information, along with any assistance provided to Mr. Giansante following the observation, was outlined in the observation and conference report. Each report was signed by the evaluator and Mr. Giansante. (Dist. Ex. 1, 16, 20, 23, 24, 43, 47, 48, 51, 52, 53, 54, 55, 63, 64, 68, 69).

11. For each informal observation of Mr. Giansante, the evaluator(s) completed a K-12 mathematics informal observation tool (known as “Non-RISE”) that included basic facts about the class observed, notations about classroom activity, and the observer’s comments and questions. Informal observations are generally shorter in duration than formal observations and are not accompanied by a pre- or post- conference between the teacher and the evaluator(s). Instead, the teacher receives feedback through the completed informal observation tool form. (N.T. 62-63; Dist. Ex. 19, 44, 46, 56, 61).

12. At least seven administrators observed and evaluated Mr. Giansante during the two school years at issue. Of these seven administrators, Principals Angel Washington, John Vater and Kimberly Safran, and mathematics supervisor Jeffrey Ziegler testified on behalf of

the District. At least one of those individuals was present during each observation of Mr. Giansante. (N.T. generally; Dist. Ex. 40, 74).

13. During the 2011-2012 and 2012-2013 school years, Ms. Angel Washington was co-principal of Brashear. She has been Department-certified as a K-12 administrator since 2007. Before the 2011-2012 school year, Ms. Washington had conducted thousands of informal observations of teachers and up to 100 formal observations. (N.T. 11, 13).

14. Mr. Giansante was observed by Ms. Washington on September 23, 2011.

15. Ms. Washington observed that Mr. Giansante failed to properly implement the pedagogy and methods as required by the District's core curriculum. Initially, because Brashear had re-staffed, the administration has established as a norm in the building that all teachers were going to have posted for students to see an aim or objective for the day, an agenda in homework, and that the teacher and students would review these objectives at the beginning of the class. Ms. Washington observed that Mr. Giansante did not have an objective for the day, and, therefore, did not explain the objective. (N.T. 19, 207).

16. The District curriculum requires teachers to design each lesson in phases: a warm up, (a short activity that happens at the beginning of the class), a launch or set-up, an explorer phase in which students engage independently and then with peers to solve problems, and a closing where students share, discuss, and analyze concepts, compare solutions, and discuss ideas. This pedagogy (how the lesson is delivered), which emphasizes student-to-student interaction, encourages students to assess the various concepts they may use to solve mathematics problems. The pedagogy revolves around a full and complete understanding of mathematics 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. (N.T.21, 22, 25, 39, 40, 141, 144, 200- 203).

17. Ms. Washington observed that Mr. Giansante had exhibited haphazard planning. Mr. Giansante predominantly used a model of teaching known as initiate, respond, and evaluate. (IRE). The IRE method required that all communication be funneled through the teacher rather than the students grappling with an understanding of the mathematical concepts. The District considered IRE to be unsatisfactory. (N.T. 20, 21, 22).

18. As examples of the IRE method, Ms. Washington observed that Mr. Giansante engaged in back-and-forth questioning of students that only resulted in the validation or dismissal of student responses. Mr. Giansante also asked students to repeat a correct answer to the class, instead of asking the students for explanation or analysis of why an answer was correct.

19. Ms. Washington observed that Mr. Giansante's class lacked rituals and routines. The only ritual or routine that was observed was the warm-up for the day. (N.T. 25).

21. Ms. Washington observed that Mr. Giansante's technique was inappropriate in that his students used a packet that was not from the core curriculum. (N.T. 27-28).

22. Ms. Washington observed that Mr. Giansante had taken the rigor out of the lesson in that he did not intellectually engage his students in the mathematical concepts that he was teaching. (N.T. 29).

23. Ms. Washington observed that Mr. Giansante was not advancing properly through the core curriculum; rather, he was behind in the curriculum. The curriculum books were not delivered until the third week of school. (N.T. 30-31, 198).

24. As of September 27, 2011, Ms. Washington recommended that Mr. Giansante be placed on an Employee Improvement Plan. (EIP) (N.T. 32).

25. As of October 21, 2011, Mr. Giansante was placed on an EIP. (N.T. 33-42; Dist. Ex. 6).

26. In the EIP, Mr. Giansante was offered the assistance of the mathematics supervisor, the mathematics coach, the principals and vice principals, and the learning environmental specialist. (N.T. 43-44; Dist. Ex. 6).

27. Ms. Washington and Ms. Eden Badertscher, the mathematics supervisor at the time, conducted an observation of Mr. Giansante's classroom on November 9, 2011. (N.T. 45-46).

28. Mr. Giansante again engaged in the IRE method not in accordance with the curriculum. (N.T. 47).

29. Mr. Giansante did not use a tracking method to know which students answered what questions. (N.T. 47).

30. Ms. Washington observed that students were not engaged in the lesson. There were no open-ended problems as outlined in the core curriculum. Some students were not doing the work of the day. There was one whole group of students who were laughing and talking about things other than mathematics. There was another student who had her head down for almost the entire class. Mr. Giansante did not address the students' off-task behavior. (N.T. 47-49).

31. Ms. Washington also observed that a ritual had not been established in that Mr. Giansante had to remind the students to help each other out. (N.T. 48-49).

32. On November 15, 2011, Ms. Washington had a post-observation conference with Mr. Giansante and informed him that her observations were similar, if not identical, to what she had observed in the first observation in that there was no evidence of the phases or of the pedagogy that was embedded in the curriculum. (N.T. 49, 51). Further, Ms. Washington observed that the classroom lacked rituals and routines or norms, and that the students were not being held to high, well-articulated standards in an organized structured environment. (N.T. 52).

33. Ms. Washington again recommended that Mr. Giansante use the pedagogy that

was embedded in the core curriculum, that he review the objective with students, that he plan for specific questions to ask during the class in his lesson plans, that he plan rigorous tasks, and that he establish rituals and routines. (N.T. 53).

34. Mr. Giansante was again offered the assistance of the staff, and he was required to attend on-line classroom development. (N.T. 54).

35. On December 6, 2011, Ms. Washington made an informal observation of Mr. Giansante. (N.T. 63).

36. Ms. Washington observed that it was not clear what the goal of the warm-up was when the students were sharing answers. There were many off-task behaviors where students were talking when they should have been working, or pushing other students at the door, or texting on their phones. Two students had their hoods up, which is against the dress code, one student had a hat on which is against the dress code, and at least five students entered the room after the bell rang and were not assigned after school detention in accordance with the building policy. None of the above was addressed and/or documented by Mr. Giansante. (N.T. 64-66, 204-205).

37. On December 14, 2011, Ms. Washington, Ms. Eden Badertscher and Dr. Jerri Lynn Lippert, the District's chief academic officer, observed Mr. Giansante.

38. Mr. Giansante did not submit lesson plans for the week including December 14, 2011. (N.T. 69).

39. On December 14, 2011, the class was taking a quiz. However, students were talking during the quiz, and three students walked into class late with no evident consequences. (N.T. 69-70).

40. The staff had previously agreed to display a "student data wall" in their classroom showing the progress of students in the class in reaching their goals. (N.T. 70). Mr. Giansante

was observed having only one artifact on the student data wall and several pieces of posted student work with no feedback. (N.T. 70-71).

41. Ms. Washington also observed Mr. Giansante telling the students that “This is not the real thing, real test, I’m trying to scare you into understanding.” It is not appropriate to try to scare students into understanding. The students were frustrated that they were given a fake quiz that was intended to scare them. Further, the quiz was not from the curriculum. (N.T. 72-75).

42. Mr. Giansante was again observed using the IRE method of instruction. While trying to use the IRE model, the students talked over Mr. Giansante. Approximately 30 times, Mr. Giansante told the class to listen up. (N.T. 74, 76).

43. Following the observation, Ms. Washington reiterated her previous recommendations to improve Mr. Giansante’s deficient performance, and asked him to do a co-observation of another mathematics classroom. (N.T. 77-78).

44. At his progress-monitoring conference on December 20, 2011, Mr. Giansante was informed that there had been no progress since the last progress-monitoring. (N.T. 80).

45. Ms. Washington observed Mr. Giansante on January 12, 2012. (N.T. 86).

46. Ms. Washington observed that the English Language Learners were having difficulty culturally connecting to the activity. (N.T. 87, 206-210, 691).

47. Mr. Giansante did ask the students to read the objective and did ask the students to engage in a warm-up. (N.T. 87)

48. Ms. Washington observed that Mr. Giansante did not have a system in place for students to get materials or supplies on their own. (N.T. 88).

49. Mr. Giansante continued to use the IRE method of instruction. There was no personal struggle time for the students to explore and struggle with the mathematical concepts on

their own. There was no student data posted in accordance with the previously established norms. There was no feedback on the student work that is posted beyond the scores on the papers. When students finished with their work, they engaged in off-task conversation with each other. A student was confused when she went to the projector to work on a math concept because Mr. Giansante had the wrong chart displayed on the projector. When students completed their work correctly, it was not shared with the rest of the class. The class was not organized using the curriculum. (N.T. 87-91, 210).

50. Ms. Washington observed that when students entered the class significantly late, they were not issued a consequence. (N.T. 92).

51. At the post-hearing conference, Ms. Washington told Mr. Giansante that his classroom continues to lack the elements of a rigorous lesson as outlined in the curriculum, and that it is obvious he is not using the curriculum to plan the lessons. (N.T. 92).

52. Ms. Washington told Mr. Giansante that he must explicitly plan for the set-up phase of the lesson. (N.T. 94).

53. Ms. Washington observed Mr. Giansante's classroom on February 3, 2012. (N.T. 96).

54. Mr. Giansante continued to use the IRE method of instruction. There were no established rituals or routines. There was no timely student data displayed. The lesson plan was not rigorous or coherent. There was no set-up time, struggle time, or analyze and discuss time. The students were not engaged. (N.T. 96-98, 215).

55. Mr. Giansante joined Ms. Washington to observe another mathematics classroom at another school. In accordance with Ms. Washington's instructions, Mr. Giansante did provide a reflection on what had occurred in the other classroom, but did not indicate in his reflection how what he had seen could be transferred into a lesson plan for his own classes. Mr. Giansante then

provided a revised reflection. Mr. Giansante also observed a larger class, and, also wrote a second reflection. (N.T. 99-100, 104, 106).

56. On March 2, 2012, Mr. Giansante was issued a revised EIP. (Dist. Ex. 15).

57. On March 12, 2012, Mr. Giansante was instructed that if he sent a student out of his room, he was to send the student out of the room with a signed planner. If a student was sent out for disciplinary reasons, Mr. Giansante was instructed to write a referral and contact security. If a student walked out of the room, Mr. Giansante was instructed to call security. If a student cut class, Mr. Giansante was to continue to write a detention for class cut. (Dist. Ex. 31).

58. On April 10, 2012, Mr. Giansante was given permission to be off sick. He did not leave a lesson plan or substitute assignment for the substitute teacher to implement in the school office in accordance with the school's norms. Mr. Giansante admitted that he did not have his lesson plans in the school office. (N.T. 119, 694).

59. On April 11, 2012, Ms. Washington met with Mr. Giansante with regard to his progress towards his EIP goals. Ms. Washington concluded that Mr. Giansante was continuing to lack progress in technique, rigor, classroom management, and cultural responsiveness. In short, Mr. Giansante had made no improved progress towards his EIP goals. (N.T. 121, 123, 206-210).

60. On April 30, 2012, Ms. Washington again informed Mr. Giansante that there had been no improvements towards meeting his EIP goals. (N.T. 124-125).

61. Based on all of Ms. Washington's experiences in Mr. Giansante's classroom, the post-conference meetings, the progress-monitoring meetings, and the observations of other administrators, Ms. Washington concluded that Mr. Giansante did not perform at a satisfactory level for the 2011-2012 school year, and that, in fact, he was unsatisfactory. (N.T. 131).

62. On January 13, 2013, Ms. Washington observed Mr. Giansante's teaching

performance. A student used inappropriate language twice and was not redirected. Students arrived late and did not receive consequences. Students wore headphones, and the wearing of the headphones was not addressed. There was no discussion about the warm-up, so Ms. Washington was unclear as to the purpose. There were no routines or ritual. There were posters about reasonable learner rules and expectations for group work, but these posters were not used to redirect inappropriate behavior. There was no launch to the lesson, and there was no engagement in the phases of the lesson. Mr. Giansante did not ask assessing and advancing questions. Instead, he used the IRE talk structure. The students were asked to engage in partner-talk, but did not appear to understand what Mr. Giansante meant. The students collected at the door before the bell rang. (N.T. 139, 140, 142, 143-44).

63. On January 22, 2013, Ms. Washington met with Mr. Giansante and explained that he was not advancing the core curriculum, the phases of the mathematics lesson, engaging students beyond the IRE talk structure, the lack of rituals and routines, and the lack of rigor in the lesson. Ms. Washington also asked Mr. Giansante to use the actual core curriculum as his lesson plan, annotate it, and have it available in his classroom for observers so that the observers could see how he was applying the core curriculum. (N.T. 144-146).

64. On February 4, 2013, many students entered Mr. Giansante's classroom 13 minutes late. Mr. Giansante was told to contact parents and to document when students arrived significantly late to class. (N.T. 147).

65. On February 13, 2013, Ms. Washington informally observed Mr. Giansante's class. During this observation, students continued to engage in off-task conversations. There was no routine for students to get their own books. Mr. Giansante tried engaging the students as to whether they agreed or disagreed, but it was apparent that engaging students was not something that was regularly done in the classroom. There was no set-up, explore, share, analyze, or discuss

as required by the core curriculum. Further, there was little work done in the classroom. There were no goals evident. One student answered all the questions. (N.T. 147-151).

66. Ms. Washington concluded that there was no improvement from the previous school year and that Mr. Giansante's performance continued to be unsatisfactory. (N.T. 152-153).

67. At the time of the hearing, Mr. John Vater was the 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, Mr. Vater had conducted approximately 800 to 1,000 formal and informal observations of District teachers, including math teachers. (N.T. 237-39, 241-42).

68. On January 6, 2012, Mr. Vater conducted an informal observation of Mr. Giansante's classroom. Mr. Vater observed that on the projector Mr. Giansante had placed the inappropriate comment, "Sorry, there is no vaccine against stupidity." Mr. Vater observed Mr. Giansante's failure to follow the District's curriculum and to properly plan lessons that reflected the pedagogy of the curriculum. When Mr. Vater observed him, Mr. Giansante predominantly utilized the IRE method of instruction. The students were not encouraged to share, discuss, and analyze the mathematical concepts. There was an absence of a learning objective in Mr. Giansante's lesson which resulted in no connection with previous mathematics knowledge as required by the curriculum. There was no wrap-up time. Additionally, at the start of the lesson, students were waiting by the door. During the lesson, five students were off-task talking about their weekend plans, students were observed making fun of one another because they answered a question incorrectly, and students had their heads down and were opting out of the lesson. Approximately 19 students were off-task. No action was taken by Mr. Giansante to bring the

students back to task. (N.T. 242-250, 252-253, 255, 264-65, 271).

69. On March 29, 2012, Mr. Vater observed Mr. Giansante's class. 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 Mr. Giansante's class, reflecting a failure to utilize data in a way that promoted classroom equity. The objective was posted, but it was placed behind the projection screen. (N.T. 257-58.).

70. Mr. Vater observed that the class completed a warm-up at the beginning of the class. However, when the class completed the warm-up, it was not clear if it had been a quiz or if the warm-up could be corrected during the review. Four students were off-task during the warm-up. Mr. Giansante used the IRE method of instruction during the class approximately 80 percent of the time, including times when it was not appropriate. Mr. Giansante had the class complete worksheets, and there were no deeper mathematical concepts identified for the class. This was not in accordance with the pedagogy which indicated that Mr. Giansante should push the students to dig deeper to know and to understand the mathematical concepts. There was no student data on the Board to indicate how well the students are doing and what they should do to meet the standards of the classroom. There were graded tests posted, but there was no teacher feedback to make sure that the students understand mathematical concepts. Responsible learner rules were posted. Mr. Giansante did not set up the lesson, did not include the exploration and struggle time, and did not have the share, discuss, and analyze phase. There was also no rigor in Mr. Giansante's classroom and no clear routines and rituals other than the warm-up and worksheet. Mr. Giansante did not demonstrate proficient teaching techniques during the class. (N.T. 259-265, 267, 269-270, 271, 272- 274).

71. Mr. Vater told Mr. Giansante that the class needs to be more than worksheets,

that the students must be able to work with other students, that there needs to be routines and rituals as part of the lesson from the beginning of class to the end, that the students should be required to keep a notebook in class, and that the responsible learner tools should be referred to everyday. Mr. Vater also suggested that Mr. Giansante continue to learn from the other teaching specialists. (N.T. 277-278).

72. On September 24, 2012, Mr. Vater and Ms. Kimberly Safran conducted an observation of Mr. Giansante's classroom. The focus for the school year was related to the concept of "equity." All teachers were expected to have an equity display in their classroom. Mr. Giansante wrote "equity for all" on the bulletin board and nothing else. This did not develop the concept of equity as the school intended. A student was late for class, but this was not adequately addressed with detention or some other communication. Mr. Giansante did not have a formative assessment management tool to mark down who was getting the lesson and who was not. Three students were off-task until the classroom assistant began working with them. Students did not have notebooks. Other students then went off-task. Mr. Giansante was not effective in his efforts to redirect the students. Mr. Giansante did not use the elements of the mathematics lesson as outlined in the core curriculum of set-up, launch, explore, share, discuss, and analyze. There was no evidence of rigor. There was no growth in Mr. Giansante's lesson planning from the previous year. Mr. Vater recommended that Mr. Giansante be placed on an EIP. (N.T. 279, 282, 284, 285-287, 288, 290, 292-293).

73. In Mr. Vater's observations of Mr. Giansante in either the 2011-2012 school year or the 2012-2013 school year, he did not see any evidence of Mr. Giansante demonstrating teaching proficiency in the classroom. (N.T. 301).

74. Mr. Jeffrey 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 the curriculum coordinator for mathematics for Grades 6 to 12. Previously, he was a mathematics teacher in the District for years. He is Department certified as a mathematics teacher for Grades 7-12 and since 2012 as a K-12 principal. He conducted 12 observations of mathematics teachers in 2011-2012 and four in 2012-2013. As the curriculum coordinator, Mr. Ziegler assisted in writing and designing curriculum materials. As curriculum supervisor, he now oversees the 6-12 mathematics curriculum. (N.T 327-330).

75. On February 9, 2012, Mr. Ziegler observed Mr. Giansante's deficiencies in pedagogy, lesson planning, and classroom management. Contrary to the curriculum, Mr. Giansante emphasized the memorization of a single solution as opposed to focusing upon the reasoning behind a mathematics solution. Mr. Giansante consistently failed to properly prepare lesson plans. Mr. Giansante's lessons lacked structure and failed to anticipate potential questions or challenges. In at least one instance, Mr. Giansante placed a set of mathematics problems into his lesson without reviewing the problems in advance. When students asked questions about the problems, Mr. Giansante was unable to fully assess and answer the questions because of his lack of preparation. (N.T. 333-338, 342, 345, 349, 360).

76. Students consistently opted out during Mr. Giansante's class without consequence. Mr. Ziegler observed students using headphones, texting, and arriving late to class without any correction from Mr. 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. (N.T. 341, 346-48).

77. Mr. Ziegler also observed that Mr. Giansante's class lacked rituals and routines that facilitate classroom learning. No routines were in place regarding homework or classroom

dismissal. (N.T. 345-46).

78. On April 24, 2012, Mr. Ziegler observed Mr. Giansante's class. According to Mr. Ziegler, Mr. Giansante spent an inordinate amount of time on the warm-up portion of the class (18 minutes of class time). Mr. Giansante continued to ask questions that were IRE-dominant. After 31 minutes into the lesson, Mr. Giansante distributed the worksheet. Two students had their phones out and were texting in the middle of class. Mr. Giansante did not redirect these two students. Mr. Ziegler noted that after five minutes 15 of the 24 students had not done any work on their worksheet. After almost 40 minutes into the lesson, some students were working on a different packet than other students. When asked why, a student responded with: "she is smarter than us." Mr. Giansante did not address the situation. Such conduct indicated that the classroom culture and expectations were not appropriate. One student was cursing in the back of the room, and it also was not addressed. Mr. Giansante also spent nine minutes with one group of students to the exclusion of others, which was a disproportionate amount of time in Mr. Ziegler's view. A student walked out of the room. Two students from another class stood by the door to the room. Students, who were on their phones, entered the room to converse with other students. Mr. Giansante did ask these students to leave. At the end of class, Mr. Giansante talked about work for the next day. However, the method had not yet been presented. The structure and expectations were not appropriate. (N.T. 351- 359).

79. In the post-observation conference, Mr. Ziegler told Mr. Giansante that there was little to no evidence of planning the content of his instruction, that there was no real evidence of goals, and that as part of planning and doing the task. Also as Mr. Giansante was not following the curriculum, he was instructed to do so. (N.T. 360).

80. Mr. Ziegler recommended that Mr. Giansante work on effective group

instruction, lesson planning, and also look for ways to promote student understanding, stressing that working together is important. (N.T. 362-363).

81. Mr. Ziegler observed Mr. Giansante's class on November 8, 2012. In this class of 17 students, there were seven students off-task, two on their phones, one writing a note, one with his head down, one with her back to the screen playing with her hair, another one on the phone and one working on an assignment from another class. It took 19 minutes to get through the warm-up and to the core part of the lesson. The class was given 12 minutes to complete an assignment, but then Mr. Giansante gave the class extra time. As a result, Mr. Giansante left only two minutes to discuss the problems before the bell rang, which is not a sufficient amount of time. Also, Mr. Giansante continued to use IRE-dominant questioning. (N.T. 367-369).

82. In the post-observation conference, Mr. Ziegler told Mr. Giansante that there was little or no evidence of the use of structure and little to no evidence of formative assessment in the lesson. Mr. Giansante was instructed to use the lesson structure with the core curriculum as a guide and allowing time for the students to work and explore mathematics. (N.T. 371).

83. On February 5, 2013, Mr. Ziegler conducted another observation of Mr. Giansante. The students asked for the warm-up and were told that there was no warm-up. The rituals and routines did not take place. He had the students work by themselves for 10 minutes when the recommendation is three to five minutes. The students were off-task again. Two students argued with each other in the class. A student was frustrated because Mr. Giansante did not address his question. A student had his phone out, and Mr. Giansante addressed it; but when Mr. Giansante walked away, the student took out his phone again. Mr. Giansante may have misled the class with a comment that increase implies addition. (N.T. 374-378).

84. In the post-observation conference, Mr. Ziegler again recommended that Mr.

Giansante utilize lesson structure with the core curriculum as a guide, shifting his questioning from IRE to assessing, advancing, and rigorous questioning, and building relationships with the students. (N.T. 380).

85. Even though Mr. Ziegler provided Mr. Giansante with an abundance of advice and written materials detailing proper teaching methods, Mr. Ziegler observed no improvement or progress in Mr. Giansante's teaching proficiency during the 2011-2012 and 2012-2013 school years. Mr. Giansante still had an unsatisfactory classroom. (N.T. 360, 364, 370-72, 380, 382).

86. Ms. Kimberly Safran was the principal of Brashear at the time of the hearing. During the 2011-2012 and 2012-2013 school years, she was co-principal of Brashear. Ms. Safran has been a principal in the District since receiving her K-12 principal certification from the Department in 2010. Before the 2011-2012 school year, Ms. Safran had conducted about 300 formal and informal observations of teachers. (N.T. 399-402).

87. On December 19, 2011, Ms. Safran observed Mr. Giansante. Ms. Safran observed that she could not find the "learning objective" in Mr. Giansante's classroom instruction. Mr. Giansante also failed to implement the pedagogical tenets of the core curriculum. Specifically, contrary to the curriculum he did no sharing, discussing, or analyzing the assessment to make sure that the students had met the learning objective, to properly plan the lessons, to establish routines and rituals, and to manage his classroom. Mr. Giansante had his door locked from the outside and teachers are instructed not to lock their door from the outside. Students walked in late, and there was no detention given in violation of the school policy. Mr. Giansante also violated school policy in that he was not at his door between classes. During the class, students called out the answers to Mr. Giansante's questions as there was no system for answering the questions he was

asking. Mr. Giansante did not assign seats or give any thought to the seating in the room. Mr. Giansante did not redirect a student who was listening and singing with music on her phone. Seven students were off-task. Mr. Giansante was ineffective in bringing them back to task. Mr. Giansante's class lacked the level of rigor demanded by the curriculum. (N.T. 404-07, 411-18).

88. On January 5, 2012, Mr. Giansante received a memo because he was not present in the hallway between classes as previously agreed upon. Students were left outside in the hallway. Mr. Giansante admitted that he was not in the hallway in violation of the school's norms. (N.T. 420-421, 691).

89. On March 2, 2012, Mr. Giansante admitted that he was previously involved in a confrontation with a student and that he told the student to hit him. He also admitted that he told a student to not act like an "a\*\*." Both statements demonstrated a lack of professional judgment. (N.T. 422-423, 700).

90. On September 11, 2012, Ms. Safran observed Mr. Giansante's classroom. Ms. Safran saw no physical evidence of the mathematics curriculum with set-up, explore, share, discuss, and analyze. Due to the manner in which Mr. Giansante had the classroom seating organized, students could not see all their classmates. There were no posters with the mathematics instructional philosophy, and there was no evidence of student work throughout the classroom. Mr. Giansante was not using the actual lesson plans that are in the curriculum. There were no content-specific instructional strategies. The students were not able to articulate the goals of the lesson. Mr. Giansante solved the problems for the students; the students did not solve the problems. Mr. Giansante circulated through the room when the students call his name due to a lack of rituals and routines. One student answered all the questions. The English Language Learners were separated from the rest of the class. One student entered class late,

and it was not addressed by Mr. Giansante in accordance with school procedures. For these reasons, Mr. Giansante's teaching performance was unsatisfactory. (N.T. 424-435).

91. Ms. Safran observed Mr. Giansante on October 31, 2012. The students were completing a quiz that was not part of the curriculum. Mr. Giansante forgot to time the quiz from the beginning. A student entered the room late, and Mr. Giansante did not address the tardiness in violation of school policy. There were no student artifacts in the classroom. There was no warm-up, agenda, or homework. Mr. Giansante used excessive IRE questioning. Mr. Giansante's teaching performance was still unsatisfactory. (N.T. 435-438, 440-441, 445).

92. Ms. Safran observed Mr. Giansante's class on November 29, 2012. Once again, Mr. Giansante used IRE questioning. Mr. Giansante still did not use the core curriculum set-up, explore, share, discuss, and analyze. Mr. Giansante had a poster in the room that said, "Bang! Bang! Free my ni\*\*\*hs! Imani." This poster perpetuated both gun violence and inappropriate language. Mr. Giansante was directed to remove the poster and he did so. (N.T. 463, 465-467).

93. At the post-observation conference meeting, Ms. Safran discussed planning, technique, core curriculum, using the share discuss, and analyze, the rigor of the task and classroom management. Mr. Giansante was not making any progress in planning his classroom. (N.T. 467-468).

94. On December 14, 2012, Ms. Safran observed Mr. Giansante. There were two late students, and their tardiness was not addressed. The students' work was all mixed up with another class. Instead of helping a student, he just told her that she was wrong. Another late student entered the classroom and it was not addressed. The IRE method of questioning was followed. Students were not grouped with any intent. (N.T. 470-474, 477).

95. At the post-observation conference meeting, Mr. Giansante agreed that he needed to do more planning and that he needed to follow the actual curriculum. Ms. Safran also informed Mr. Giansante that he needed to include the rigor of the task, the grouping of the students, the rituals and routines and tracking the data. Mr. Giansante agreed to implement think, pair, and share when dividing his students into groups. (N.T. 479, 490).

96. On January 14, 2013, Mr. Giansante received a memo because he was absent and did not leave a lesson plan or substitute assignment for the substitute teacher to implement. Mr. Giansante admitted that he knew that the lesson plans had to be turned into the office by Monday morning and that emergency lesson plans had to be maintained in the office. (N.T. 485, 820-823). On January 23, 2013, he was late for a class on professional development. Mr. Giansante admitted that he was late for the class. (N.T. 488-489, 746).

97. On March 20, 2013, Ms. Safran observed Mr. Giansante. There was no posted appropriate aim, there was no warm-up, and there was no purposeful seating. The previous recommendations had not been implemented. Mr. Giansante admitted that he did not have a lesson plan. He instructed students to go off-task. There were no rituals and routines. (N.T. 491-494, 497, 499, 794).

98. At the post-observation conference, Ms. Safran told Mr. Giansante that he needed to plan his lessons using the core curriculum, review the objective with the students, plan for the questions that he wanted to ask the students during the lesson focusing on the goals of the lesson, plan, and track data, use a formative assessment tool, plan for engagement and rigorous tasks, and implement rituals and routines. Mr. Giansante gave no indication that indicate that he was going to comply with the recommendations. (N.T.500-501).

99. On May 7, 2013, Ms. Safran observed Mr. Giansante's class. The lights were out

in the classroom. Students had written their hash tags on the board next to the aim of the class. Mr. Safran observed a student tell Mr. Giansante: “Suck my a\*\*.” Mr. Giansante did not address the comment. Students talked over Mr. Giansante. One student banged on the door and another student fell out of his chair. Another student put his back to the wall with his arms folded and was not doing anything. Mr. Giansante sent students out without planners. He gave calculators to some students, but not to all. Students put their heads down and opted out. (N.T. 503-506, 508, 510, 511).

100. On May 9, 2013, Ms. Safran held a meeting with Mr. Giansante. Ms. Safran informed Mr. Giansante that she had noted no progress or improvement in his teaching and that there were continued concerns about his planning, his preparation, the rituals and routines, and classroom management. (N.T. 515).

101. Mr. Giansante’s classes were poorly planned and lacking in structure. On several occasions when Ms. Safran observed him, Mr. Giansante had failed to prepare a satisfactory lesson plan in accordance with the core curriculum. Furthermore, Mr. Giansante failed to pace his lessons to ensure that students had enough time for the share, discuss, and analyze curriculum. Mr. Giansante’s classes lacked routines and rituals regarding simple tasks such as the answering of questions or the collection of homework. Mr. Giansante did not understand that just because a student was admitted to the school building late, he could still mark the student tardy for the class. Mr. Giansante’s unsatisfactory teaching performance showed no improvement. (N.T. 418-19, 432, 445-449, 488, 494, 512, 513, 78-781, 839).

102. Despite having provided Mr. Giansante with abundant feedback and suggestions regarding his teaching, Ms. Safran observed no improvement or progress in Mr. Giansante's teaching proficiency during the two years when she evaluated him. (N.T. 453, 525-27).

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

104. Additionally, Mr. Giansante's formal observations were generally followed by a post-observation conference with one or more evaluators where Mr. Giansante was provided with recommendations on how to improve his teaching performance. (N.T. 52,80,92, 360; Dist. Ex. 1, 16, 20, 23, 24, 38, 39, 40, 43. 47, 52, 53).

105. On October 3-14, 2011, October 26, 2011, and November 14-17, 2011, the District provided Mr. Giansante with teaching instruction, advice, and guidance from the District mathematics specialist Ray Roberts. (Dist. Ex. 39, 40).

106. Mr. Giansante's lesson planning, curriculum implementation, classroom management, pedagogical proficiency, rigor, and routines continued to be deficient notwithstanding the significant time and effort spent by the District to help him to improve his teaching performance. (Dist. Ex. 7, 8, 9, 10, 12, 13, 15, 21, 22, 32, 35, 37,39, 41).

107. Mr. Giansante was also provided with frequent school-based professional development, and he was granted leave to attend a conference. (Dist. Ex. 40).

108. On February 7, 2012, Ms. Washington requested that Mr. Giansante observe the pedagogy, rituals, routines, rigor, core curriculum, and teaching methods of mathematics teacher Mr. Mark Sammartino. Ms. Washington and Mr. Giansante observed the class on January 18, 2012. After the observation, Ms. Washington requested that Mr. Giansante complete a written reflection outlining Mr. Sammartino's teaching methods, why those methods were effective, and the ways in which Mr. Giansante could apply such methods to his own classroom. (N.T.

98-99, 100; Dist. Ex. 24, 25).

109. As of January 24, 2012, Mr. Giansante had not completed the reflection as assigned. Only after being reminded by Ms. Washington did he finish the assignment. (N.T. 100-101; Dist. Ex. 25, 26).

110. Mr. Giansante also failed to properly complete Ms. Washington's assigned request for a written reflection. Mr. Giansante's reflection did not contain any details regarding the manner in which Mr. Sammartino's methods could be incorporated into Mr. Giansante's classroom. Mr. Giansante thereafter submitted an amended reflection. (N.T. 101-104; Dist. Ex. 28).

111. Mr. Giansante requested and received an opportunity to observe Mr. Sammartino's methods in a larger mathematics class. Following this second observation, Mr. Giansante was to present a reflection outlining Mr. Sammartino's teaching methods and ways in which Mr. Giansante could implement those methods in his own classroom. (N.T. 104-106).

112. Mr. Giansante's second reflection regarding Mr. Sammartino's teaching methods lacked the same details as the first reflection. (N.T. 106-107.)

113. Based upon the evidence gathered by multiple evaluators, the District issued Mr. Giansante an unsatisfactory teaching rating for the 2011-2012 school year. The District found Mr. Giansante to be unsatisfactory using the Department professional rating form. 22 Pa. Code § 351.21, (Dist. Ex. 41, 42).

114. During the 2012-2013 school year, observations were conducted and the evaluators consistently noted that Mr. Giansante displayed the same deficiencies in lesson planning, curriculum implementation, classroom management, rituals, routines, and pedagogical

proficiency as were evident in the 2011-2012 school year. (Dist. Ex. 74, 75).

115. Each observation was followed by a conference with one or more evaluators where Mr. Giansante was provided with recommendations on how to improve his teaching performance. (N.T. 144-146, 371, 380, 467-468, 479-490, 500-501; Dist. Ex. 48, 51, 54, 55, 63, 64, 68, 69, 71, 74, 75).

116. The 2012-2013 curriculum requirements were no different than the 2011-2012 requirements. (N.T. 289).

117. During the 2012-2013 school year, Mr. 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. (Dist. Ex. 71, 74).

118. Between October 1, 2012, and November 2, 2012, Mr. Giansante observed the teaching methods of five different mathematic teachers' classrooms to develop a deeper understanding of the core curriculum. (Dist. Ex. 74.)

119. On October 10, 2012, Mr. Giansante was placed on an EIP outlining his teaching deficiencies and providing him with recommendations for improvement. Mr. Giansante consented to the EIP and did not object to its findings. (N.T. 294-300; District Exhibit 50).

120. The EIP was followed up and discussed frequently with Mr. Giansante. (Dist. Ex. 62, 65, 67, 70). Despite having the EIP, Mr. Giansante's lesson planning, curriculum implementation, classroom management, pedagogical proficiency, rigor, and routines continued to be deficient. (Dist. Ex. 71-76).

121. In the 2012-2013 school year, formal observations were conducted. Numerous areas of concern were identified during these observations. The evaluators consistently noted

Mr. Giansante's failure to properly plan lessons, implement the core curriculum, manage classroom behavior, establish rituals and routines, and display pedagogical proficiency. (Dist. Ex. 74).

122. On February 6, 2013, Mr. Giansante participated in a peer observation of another teacher, Ms. Debora Dankmyer. Ms. Dankmyer's mathematics course mirrored Mr. Giansante's classes in size and student make-up. Ms. Safran wanted Mr. Giansante to observe and implement the pedagogy, lesson planning and rigor on display in Ms. Dankmyer's mathematics course. (N.T. 519-523).

123. Ms. Safran instructed Mr. Giansante to write a reflection discussing Ms. Dankmyer's teaching methods and why those methods were effective. In his reflection Mr. Giansante promised to incorporate the strategies and techniques used by Ms. Dankmyer into his own classroom. (N.T. 519-523).

124. In her observations of Mr. Giansante in March 2013 and May 2013, Ms. Safran found no evidence that Ms. Dankmyer's strategies or techniques were being implemented in Mr. Giansante's classes. (N.T. 519-523).

125. Ms. Safran noted that there was a lack of evidence of lesson design, preparation, and planning, that multiple observers saw that there was a lack of on-task behaviors in the classroom, that the classroom was frequently characterized as chaotic, and that the students were not engaged in learning. (N.T. 525; Dist. Ex. 70).

126. Based upon the evidence gathered in multiple observations, the District issued Mr. Giansante an unsatisfactory teaching rating for the 2012-2013 year. (N.T. 526-27; Dist. Ex. 75, 76).

127. Mr. Giansante and his union representative were notified by the District's

administration in a meeting on June 17, 2013 that the District would proceed with Mr. Giansante's termination based on his receipt of two consecutive unsatisfactory teacher ratings, pursuant to Section 1122 of the School Code, 24 P.S. § 11-1122.

128. Initially, a grievance was filed challenging Mr. Giansante's proposed dismissal, and the grievance was scheduled for an arbitration hearing. (Hearing of September 5, 2014; N.T. 12).

129. Mr. Giansante subsequently requested that the grievance be withdrawn and that the Board convene a dismissal hearing pursuant to the School Code, 24 P.S. § 11-1131. (Hearing of September 5, 2014; N.T.11).

130. The District's Administration opposed Mr. Giansante's request, believing that he had made a valid election of remedies in pursuing grievance arbitration as permitted under Section 1133 of the School Code, 24 P.S. § 11-1133. (Hearing of September 5, 2014; N.T. 5).

131. The Board held a hearing on September 5, 2014, limited to the question of whether Mr. Giansante waived his right to a Board hearing. (Hearing of September 5, 2014; N.T. 3, 4).

132. Thereafter, the Board agreed to allow Mr. Giansante to withdraw the grievance and proceed with a hearing pursuant to the School Code, 24 P.S. § 11-1131. (N.T. 9).

133. Because Mr. Giansante, through the PFT, initially filed a grievance to challenge his proposed dismissal, no written statement of charges was provided. Mr. Giansante acknowledged that he was told that his proposed dismissal was based on his receipt of two consecutive unsatisfactory ratings and waived the issuance of a formal written statement of charges. (N.T. 8-9).

134. Board hearings were held on April 9, April 20, April 29, May 12, and July 7, 2015,

during which the District and Mr. Giansante presented witnesses' testimony and numerous exhibits. (N.T., generally).

135. The District and Mr. Giansante submitted proposed Findings of Fact and Conclusions of Law to the Board.

136. On November 24, 2015, the Board dismissed Mr. Giansante from his employment as a professional employee with the Board, and issued an adjudication in support of its action.

137. On or about December 12, 2015, Mr. Giansante appealed his dismissal to the Secretary of Education.

138. Oral argument was held before the Secretary's appointed Hearing Examiner on January 14, 2016.

### **CONCLUSIONS OF LAW**

1. Pursuant to Section 1122 of the School Code, one of the valid causes for termination of a professional employee's contract shall 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 months apart, in which the employee's teaching performance is rated as unsatisfactory and persistent negligence in the performance of duties. 24 P.S. § 11-1122.

2. Mr. Giansante had a right to a detailed written statement of the charges upon which the District based his proposed dismissal. 24 P.S. § 11-1127. Mr. Giansante, through counsel, waived this right. (N.T. 9).

3. Mr. Giansante had a right to a public hearing before the School Board to

challenge his proposed dismissal. 24 P.S. §§ 11-1126, 11-1127.

4. The hearing before the School Board conformed in all respects with the procedural requirements of the Local Agency Law, 2 Pa. C.S. §§ 551-554, in that Mr. Giansante was made aware of the date, time, and location of the Board's hearing, Mr. Giansante was represented by counsel at the hearing, Mr. Giansante's counsel cross-examined the District's witnesses, Mr. Giansante presented witnesses and evidence in his own behalf, a complete stenographic record of the hearings was made, and the adjudication was in writing, contained findings and the reasons for the adjudication, and was served upon all parties and/or their counsel.

5. In determining whether a professional employee shall be dismissed for incompetency or unsatisfactory teaching performance, all professional employees shall be rated through an approved rating tool developed by the Secretary of Education. 24 P.S. § 1123(a).

6. 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 employee being rated, provided that no unsatisfactory rating shall be valid unless approved by the chief school administrator. 24 P.S. § 1123(h)(3).

7. No employee shall be dismissed unless the employee has been provided a completed rating tool as 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. § 1123(h)(4).

8. 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 employee 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. 22 Pa. Code § 351.26(c).

9. To dismiss a tenured professional employee such as Mr. Giansante for incompetency, the District must prove that the employee received two consecutive, valid unsatisfactory performance ratings. 22 Pa. Code § 351.26; *Hamburg v. North Penn Sch. Dist.*, 484 A.2d 867, 869 (Pa. Cmwlth 1984).

10. The School Board met its burden of proving that Mr. Giansante received two consecutive unsatisfactory performance ratings and that those ratings were valid.

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

12. Negligence is defined as the failure to exercise that care a reasonable person would exercise under the circumstances, and there must be sufficient continuity and repetition of negligent acts to support a charge of persistent negligence. *Lauer v. Millvale Area Sch. Dist.*, 657 A.2d 119, 121(Pa. Cmwlth. 1995).

13. Mr. Giansante negligently failed to follow the District's curriculum; failed to use lesson plans; failed to ensure that disruptive and off-task behaviors by students were adequately addressed; ignored suggestions and, indeed, directives in his prior EIPs developed to help Mr. Giansante remedy his deficient classroom teaching techniques; and, failed to utilize resources and options provided to him to improve his teaching.

14. Mr. Giansante has not shown that he had any justification for his persistent negligence with regard to his failure to follow the District's curriculum; failure to use lesson

plans; failure to ensure that disruptive and off-task behaviors by students were adequately addressed; ignoring suggestions and, indeed, directives in his prior EIPs developed for the purpose of helping Mr. Giansante remedy his deficient classroom teaching techniques; and failure to utilize resources and options provided to him to improve his teaching.

15. The District properly dismissed Mr. Giansante from employment pursuant to the School Code.

## **DISCUSSION**

A tenured professional employee may only be dismissed for the reasons set forth in Section 1122 of the School Code. *Foderaro v. Sch. Dist. of Phila.*, 531 A.2d 570, 571 (Pa. Cmwlth. 1987), *appeal denied*, 542 A.2d 1372 (Pa. 1988). “It is thus apparent that the legislature intended to protect tenure except for the serious charges listed.” *Lauer v. Millvale Area Sch. Dist.*, 657 A.2d 119, 121 (Pa. Cmwlth. 1995), *appeal denied* 675 A.2d 1253 (Pa. 1996). The purpose of Section 1122 is to provide “the greatest protection possible against dismissal.” *Id.* at 121. To dismiss a professional employee protected by contract requires a serious reason. *Id.* at 123.

In short, the grounds for dismissal listed in Section 1122 must be strictly construed in favor of the professional employee and against the District. *McFerren v. Farrell Area Sch. Dist.*, 993 A.2d 344 (Pa. Cmwlth. 2010). Where, as here, there is more than one charge raised to justify the dismissal, only one of these charges must be established for the dismissal to be upheld. *Horton v. Jefferson County-DuBois Area Vocational Tech. Sch.*, 630 A.2d 481, 483 (Pa. Cmwlth. 1993).

In the instant case, the Board dismissed Mr. Giansante for incompetency and persistent negligence in the performance of duties. The term ‘incompetency,’ within the context of a

professional employee dismissal, has acquired the limited denotation of two consecutive unsatisfactory ratings. 22 Pa. Code § 351.26; *Hamburg v. North Penn Sch. Dist.*, 484 A.2d 867, 869 (Pa. Cmwlth 1984). Persistent negligence in the performance of duties is not defined in the School Code. However, negligence is defined “as the failure to exercise that care a reasonable person would exercise under the circumstances.” *Lauer v. Millvale Area Sch. Dist.*, 657 A.2d 119, 121(Pa. Cmwlth. 1995). Persistent is defined as continuing or constant; thus, “there must be sufficient continuity and repetition of negligent acts to support a charge of persistent negligence.” *Id.* This can occur either as a series of individual incidences or as one incident carried on for a substantial time period. *Id.* Dismissal for persistent negligence is warranted when a teacher fails to comply with a directive of supervisors on numerous occasions. In fact, a single act, continued for a time period, may support dismissal for persistent negligence. *Harrison v. Capital Area Intermediate Unit*, 479 A.2d 772 (Pa. Cmwlth. 1984). Intent is not an element of the District’s burden with respect to persistent negligence. *Lenker v. East Pennsboro Sch. Dist.*, Teacher Tenure Appeal No. 10-90, p. 11 (1995).

At the time that Mr. Giansante was reviewed, Section 1123 of the School Code provided a detailed methodology for determining how a professional employee shall be rated:

the professional employe or temporary professional employee shall be rated by an approved rating system which shall give due consideration to personality, preparation, technique, and pupil reaction, in accordance with standards and regulations .... Rating shall be done by or under the supervision of the superintendent of schools or, ... a principal, who has supervision over the work of the professional employe ... who is being rated: Provided, That no unsatisfactory rating shall be valid unless approved by the district superintendent.

24 P.S. § 11-1123.

Further, as a companion to the School Code, Department regulations require: Whenever an unsatisfactory rating is given, it shall be supported by anecdotal records. The records shall

include specific evidence likely to be important in the event of dismissal. 22 Pa. Code § 351.26(c).

The School Code vests the Secretary of Education with authority to hear appeals brought by professional employees from actions of school boards. *See* 24 P.S. § 11-1131.

Interpreting the above section of the Law in *Belasco v. Board of Education of the Sch. Dist. of Pittsburgh*, 510 A.2d 337, 343 (Pa. 1986), the Pennsylvania Supreme Court determined that the Secretary had the authority to review the board's termination decision *de novo*, even when, as in this case, no additional evidence was presented and the appeal was limited to the record created before the board and the oral argument before the hearing examiner.

The credibility of witnesses and the weight to be accorded their testimony is within the exclusive province of the Secretary. *Rhodes v. Laurel Highlands Sch. Dist.*, 544 A.2d 562 (Pa. Cmwlth. 1988). Additionally, the Secretary is not required to make specific findings as to the credibility of each and every witness where the decision itself reflects which witnesses were believed and upon whose testimony the Secretary relied. *Forrest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993).

In his appeal, Mr. Giansante alleges that the District failed to evaluate Mr. Giansante's performance in accordance with the School Code, discriminated against Mr. Giansante by applying different standards to him than were applied to other teachers, and did not afford Mr. Giansante due process of law.

Initially, I find the testimony of the District's witnesses to be credible. More specifically, I find the testimony of Ms. Angel Washington, Mr. John Vater, Ms. Kimberly Safran, and Mr. Jeffrey Ziegler to be credible. Based on five days of hearings, the School Board hearing record is comprehensive and extensive in the witnesses' descriptions of Mr.

Giansante's failings as a teacher at Brashear, as thoroughly documented by contemporaneous anecdotal records based on multiple classroom observations by more than a half-dozen evaluators, including the District's high school math curriculum specialist, who uniformly found that Mr. Giansante's teaching performance failed to meet professional teaching standards. These principals and supervisors had conducted hundreds of formal and informal observations of other high school teachers and were well-qualified to pass judgment on Mr. Giansante's failings. These professional evaluators found Mr. Giansante: (1) failed to follow the District's curriculum; (2) failed to use lesson plans; (3) failed to ensure disruptive and off-task behaviors by students were adequately addressed; (4) ignored suggestions and, indeed, directives in his prior EIPs developed to help Mr. Giansante remedy his deficient classroom teaching techniques; and, (5) failed to utilize resources and options provided to him to improve his teaching. There is no evidence that the District administrators treated Mr. Giansante differently than other Brashear teachers or held him to a different standard in their evaluations of him.

No aspect of the evidentiary rulings by the Board's hearing officer changes the result in this case. The District's VAM and/or Tripod that Mr. Giansante sought to introduce at the hearing was not approved for use by the School Board for rating professional employees in either the 2011-2012 or the 2012-2013 school years and, in any event, was not relied on by the evaluators who rated Mr. Giansante as unsatisfactory.

**I. THE SCHOOL DISTRICT EVALUATED MR. GIANSANTE’S PERFORMANCE IN ACCORDANCE WITH THE SCHOOL CODE.**

**A. The 2011-2012 and 2012-2013 Rating Forms Complied with the Requirements of the School Code.**

As a threshold issue, Mr. Giansante challenges the rating form utilized by the District in the 2011-2012 and 2012-2013 school years. (Mr. Giansante’s Brief at 8, 9). Before the School Board, however, Giansante failed to challenge the District’s use of a Department of Education approved alternative rating form, as authorized by 22 Pa. Code § 351.23.

If Mr. Giansante had objected at the School Board hearing to the rating form, the District could have introduced into the record the Department’s prior approval of the form. *Wing v. Unemployment Comp. Board of Review*, 436 A.2d 179 (Pa. 1981) (the administrative law tribunal must be given the opportunity to correct its errors as early as possible; diligent preparation and effective advocacy before the tribunal must be encouraged by requiring the parties to develop complete records and advance all legal theories). *Bond v. Phila. Sch. Dist.*, Teacher Tenure Appeal No. 9-88 (finding waiver on appeal to the Secretary of issue regarding failure of a hearing officer to issue subpoenas where no objection made during the school board hearing).

Accordingly, Mr. Giansante waived this issue by failing to raise an objection at the School Board hearing when the District could have produced evidence of the Department’s approval of the District’s alternative rating form. Regardless of Mr. Giansante’s waiver of this issue, the rating tool that the District used for the 2011-2012 and the 2012-2013 school years complied with the existing requirements of the School Code and the Department’s regulations pertaining to ratings. 22 Pa. Code §§ 351.1 *et seq.* Moreover, minor variations from the rating form, similar to the variations in the District’s form, will not invalidate the rating. *Gabriel v. Trinity Area Sch. Dist.*, 350 A.2d 203, 207 (Pa. Cmwlt. 1976).

The District’s form contains the four categories for rating a professional employee

(preparation, technique, student reaction, and personal qualities) and indicates that the rater is to place check marks under a category where a professional employee was unsatisfactory. (Dist. Ex. 42, 77). Although the District's alternative rating form does not utilize a numerical score, the Department regulations "require only that unsatisfactory ratings be approved and signed by the district superintendent or intermediate unit director and be supported by anecdotal records. There is no requirement in 22 Pa. Code § 351.26 that unsatisfactory ratings contain numerical scores." *Board of Educ. of the Sch. Dist. of Phila. v. Kushner*, 530 A.2d 541, 543-44 (Pa. Cmwlth. 1987) (quoting *Hamburg v. North Penn Sch. Dist.*, 484 A.2d 867, 869 (Pa. Cmwlth. 1984)).

"The important, indeed vital, portion of any unsatisfactory rating is the accompanying anecdotal records." *Hamburg v. North Penn Sch. Dist.*, 484 A.2d 867, 869 (Pa. Cmwlth. 1984) (citing *English v. North East Bd. of Educ.*, 348 A.2d 494 (Pa. Cmwlth. 1975)). Here, Mr. Giansante's ratings were issued prior to the new rating system and forms that went into effect for professional employees for the 2013-2014 school year. 24 P.S. § 11-1123(b)(1). The ratings that were based on numerous formal and informal observations of Mr. Giansante's classroom are more than adequate to support the validity of the two consecutive unsatisfactory ratings. These anecdotal records and the corroborating witness testimony are "specific in detail and contemporaneous in nature so as to secure 'the justified discharge of the incapable' and avoid 'the unjustified discharge of the capable.'" *Mastro v. Board of Public Educ., Sch. Dist. of Pittsburgh*, Teacher Tenure Appeal No. 1-98, p. 7 (quoting *Augustine v. Turkeyfoot Valley Area Sch. Dist.*, 9 Pa. D. & C. 3d 147, 173-74 (CCP 1977)). The District superintendent's reliance on the recommendations of Mr. Giansante's supervising building-level principals, Ms. Washington and Ms. Safran, in approving the 2011-2012 and the 2012-2013 unsatisfactory

ratings is entirely permissible. *Homan v. Blue Ridge Sch. Dist.*, 405 A.2d 572, 575 (Pa. Cmwlth. 1979). I, therefore, reject any apparent procedural challenge to the 2011-2012 and 2012-2013 unsatisfactory ratings.

**B. Pursuant to the Secretary's *De Novo* review of this matter, Evidence of Value-Added Measures ("VAM") and/or Tripod Data Which Was Not Part of the District's or the Department's Approved Method for Evaluating Teachers in Either 2011-2012 or 2012-2013 should be afforded no evidentiary weight.**

Because the Secretary conducts *de novo* review of the board hearing record, any issues regarding the propriety of the admission of evidence at the board hearing are irrelevant and not a proper basis for reversing the board's decision. *Forest Area Sch. Dist. v. Shoup*, 621 A.2d 1121, 1125 (Pa. Cmwlth. 1993). Because the Secretary decides the case anew, events occurring procedurally at an earlier stage of the case are irrelevant. *Id.* With respect to Mr. Giansante's claim that the hearing officer erred in excluding the Board's consideration of VAM data, this claim is not relevant. To the extent that Mr. Giansante contends that his dismissal should be overturned based on the hearing officer's allegedly erroneous evidentiary ruling with respect to VAM data, the Secretary's *de novo* review precludes him from so doing.

In accordance with this statutory and regulatory system then in place for evaluating and rating professional employees, the Brashear supervising principals who had primary responsibility for supervising Mr. Giansante, Ms. Washington for 2011-2012 and Ms. Safran for 2012-2013, based their recommendations for Mr. Giansante's unsatisfactory ratings on the multiple formal and informal observations of Mr. Giansante's classroom instruction that they personally conducted, or that had been conducted by other evaluators, and the lack of progress that Mr. Giansante repeatedly demonstrated based on his failure to implement

techniques, practices, behaviors, and his supervisors' directives as outlined in post-observation progress monitoring meetings intended to ascertain whether Mr. Giansante was meeting his goals outlined in each year's EIP. Indeed, Ms. Safran did not have, and, therefore, could not have reviewed, Mr. Giansante's VAM data when she completed her recommendation for Mr. Giansante's unsatisfactory rating for the 2012-2013 school year. (N.T. 623-624).

The General Assembly changed the system for evaluation of professional employees with the passage of Act 82 of 2012 (Act 82). Act 82 of June 30, 2012, P.L. 684, §14.1. Act 82 amended the School Code to allow for the utilization of certain student test data results in the evaluation of professional employees. 24 P.S. § 11-1123. Act 82, however, did *not* apply to the rating of professional employees until the 2013-2014 school year. *See* 24 P.S. § 11-1123(b)(1).

In excluding from the School Board hearing the VAM data that Mr. Giansante sought to introduce, the School Board hearing officer properly determined that because the proffered VAM data was not approved by the Secretary for rating the District's professional employees in 2011-2012 or 2012-2013 and was not actually relied on or even reviewed by the principals who observed Mr. Giansante and recommended his unsatisfactory ratings, the VAM data should not be considered by the Board. (N.T. 632-635; Findings of Fact, Conclusions of Law and Adjudication at 18-19).

Additionally, Mr. Giansante has not requested the opportunity to submit additional testimony before the Secretary, notwithstanding that the Department's regulations permitted him to do so. 22 Pa. Code § 351.8(c). As a result, there is nothing in the record that would guide the Secretary as to what weight to give to the excluded VAM data, particularly where the data was not part of the rating system for 2011-2012 and 2012-2013.

Consequently, the Secretary could not have considered the VAM data in determining whether the observation-based consecutive annual ratings of Mr. Giansante were valid because that data was not approved by the Department for use in rating professional employees in either the 2011-2012 or the 2012-2013 school years. For the 2011-2012 and 2012-2013 school years, Section 1123 of the School Code mandated that “professional employees shall be rated by an approved rating system which shall give due consideration to personality, preparation, technique, and pupil reaction, in accordance with standards and regulations for such scoring...” 24 P.S. § 11-1123 (repealed). Section 1122 of the School Code requires that the two consecutive unsatisfactory ratings necessary for dismissal must be based on “classroom observations, not less than four (4) months apart.” 24 P.S. § 11-1122.

The District’s Tripod data was admitted into the Board hearing record. (N.T. 538-539; Giansante’s Exhibit 1). Tripod data consists of student survey responses and, in the case of Mr. Giansante’s data, represented responses from only 9 students. (N.T. 538-539). However, the School Board refused to give the Tripod data any weight because it was not part of the approved procedure for rating professional employees in either 2011-2012 or 2012-2013 school years. (Findings of Fact, Conclusions of Law and Adjudication at 18-19). The 2013 Tripod data was not considered by Ms. Safran in evaluating Mr. Giansante in the 2012-2013 school year. (N.T. 623).

The Secretary has also not considered the Tripod data in determining whether the observation-based consecutive annual ratings of Mr. Giansante were valid because that data was not approved by the Department for use in rating professional employees in either the 2011-2012 or the 2012-2013 school years. The Secretary, therefore, has not given any weight to the Tripod data.

## **II. THE DISTRICT'S ADMINISTRATORS DID NOT DISCRIMINATE AGAINST MR. GIANSANTE BY APPLYING DIFFERENT STANDARDS TO HIM THAN WERE APPLIED TO OTHER TEACHERS.**

Mr. Giansante alleges that the District discriminated against him by allegedly holding him to a standard different than that applied to other Brashear teachers. (Mr. Giansante's Brief, at 11-16). There is no claim by Mr. Giansante that this alleged discrimination was based on any protected classification, and it appears that Mr. Giansante believes that he was singled out for some unspecified reason for different treatment than any other Brashear teacher. As the United States Supreme Court has made clear, Mr. Giansante's apparent class-of-one claim does not trigger special protection (*i.e.*, heightened scrutiny) under the Fourteenth Amendment, and is not cognizable in the context of public employment. *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591 (2008).

Mr. Giansante does not explain how his dismissal was arbitrary, discriminatory, or based on improper reasons. As the record demonstrates, Mr. Giansante was not treated differently than other Brashear teachers in how he was evaluated. The District administrators who testified had all conducted hundreds of formal and informal evaluations of teachers and had been involved in the ratings of many District professional staff. (N.T. 11, 13, 237-39, 241-42, 327-330, 399-402). During the 2011-2012 and 2012-2013 school years, Ms. Washington was co-principal of Brashear. She has been Department certified as a K-12 administrator since 2007. Before the 2011-2012 school year, Ms. Washington had conducted thousands of informal observations of teachers and up to 100 formal observations. (N.T. 11, 13). Ms. Washington testified that of the 30 teachers she evaluated at Brashear in the 2011-2012 school year, Mr. Giansante and one other teacher were rated unsatisfactory. (N.T. 137).

At the time of the hearing, Ms. Safran was currently the principal of Brashear. During the 2011-2012 and 2012-2013 school years, she was co-principal of Brashear. Ms. Safran has been a principal in the District since receiving her K-12 principal certification from the Department in 2010. Before the 2011-2012 school year, Ms. Safran had conducted about 300 formal and informal observations of teachers. (N.T. 399-402). Ms. Safran testified that of the nearly 50 teachers she observed at Brashear in 2012-2013, three (including Mr. Giansante) were rated unsatisfactory. (N.T. 529-530). Accordingly, Mr. Giansante was not singled out among his Brashear co-workers for receiving unsatisfactory ratings in either 2011-2012 or 2012-2013. Indeed, Ms. Washington credibly responded, “absolutely not” to the question of whether she held Brashear teachers to a different evaluation standard than she applied to Mr. Giansante. (N.T. 137).

There is no evidence that any of the supervisors who observed Mr. Giansante’s classroom did not follow the District’s procedures for conducting informal and formal observations of Mr. Giansante’s classrooms. Each evaluator recorded his or her observations of Mr. Giansante’s classrooms on forms developed by the District for that purpose and utilized for all observations of professional employees’ classrooms. (Dist. Ex. 1,16, 19, 20, 21, 23, 24, 43, 44, 46, 47, 48, 51, 52, 53, 54, 55, 56, 63, 64, 68, 69, 73). Each evaluator met with Mr. Giansante to discuss his or her observations of Mr. Giansante’s classroom. (Dist. Ex. 1,16, 19, 20, 21, 23, 24, 43, 44, 46, 47, 48, 51, 52, 53, 54, 55, 56, 63, 64, 68, 69, 73). Additionally, the evaluators met regularly with Mr. Giansante with regard to progress-monitoring of his EIP. (Dist. Ex. 18, 22, 35, 37, 62, 67, 70.). On multiple occasions Mr. Giansante was offered supplemental services to assist him develop professionally and, hopefully, improve towards his EIP goals, as documented by the District in the “Assistance Provided” logs. (Dist. Ex. 38, 71). Both Ms. Washington and Ms. Safran actually

accompanied Mr. Giansante on separate occasions for him to observe the classrooms of two other high school math teachers, with the expectation that Mr. Giansante would incorporate the successful teaching techniques that those teachers demonstrated and thereby improve his performance. (N.T. 98-100, 519-523). The District treated Mr. Giansante the same as other Brashear teachers in using the same forms and in offering him professional development and individualized support to improve his performance.

I do not credit Mr. Giansante's testimony and the testimony of the witnesses offered on Mr. Giansante's behalf at the School Board hearing in support of his allegation that he was treated differently than other Brashear teachers in that he had been held to a higher level of classroom control than other teachers. (Mr. Giansante's Brief at 14). Mr. Giansante offered the testimony of Tristan Roop a former District student who had been in Mr. Giansante's class. (N.T. 857). Mr. Roop admitted at the Board hearing that he had been expelled from the District due to disciplinary problems and sent to an alternative education program. (N.T. 870). Mr. Roop also admitted that a written statement he had provided to the District regarding an incident in Mr. Giansante's classroom was false even though he had known that he had an obligation to be truthful when he provided it. (N.T. 873-878). Therefore, I do not credit Mr. Roop's testimony that Mr. Giansante's class was "pretty well-behaved." (N.T. 865).

Mr. Giansante also called one other former student, Riley Truffa, who testified briefly and generally regarding off-task behaviors that occurred in other teachers' classes that he attended and how those behaviors were addressed. (N.T. 885-900). In essence, Mr. Giansante offered Mr. Truffa to claim that the poor student behavior that was observed in his own classroom occurred elsewhere and, therefore, should not be a basis for rating his performance as unsatisfactory. This is not a basis to ignore Mr. Giansante's own unsatisfactory performance. In *Mapstone v. Tuscarora Intermediate Unit*, Teacher Tenure Appeal No. 8-87 at 210, "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.” Further, Mr. Truffa never identified any specific teacher and, unlike the District’s witnesses, is not qualified to evaluate Mr. Giansante’s actual classroom instruction techniques or how they compare to other Brashear teachers.

Finally, Mr. Giansante offered the testimony of only one witness who was an adult at the time: Craig Jackson. Mr. Jackson had retired from his employment with the District in 2010, so he had no first-hand knowledge of how Mr. Giansante performed his teaching duties at Brashear in either 2011-2012 or 2012-2013. (N.T.916-922). Further, Mr. Jackson himself had been placed on an improvement plan and had accepted a demotion to the District’s Westinghouse High School rather than comply with an improvement plan. (N.T. 918-922). Mr. Jackson’s testimony about what he observed of Mr. Giansante’s classroom relates to one year at Westinghouse, not to the years relevant to Mr. Giansante’s dismissal and not in connection with any formal or informal observations of Mr. Giansante’s classroom because, while at Westinghouse, Mr. Jackson was not in a supervisory position. (N.T. 921). Mr. Jackson’s desk was in Mr. Giansante’s classroom, and he was supposed to be completing his paperwork duties for Westinghouse while at his desk. (N.T. 921). Because Mr. Jackson did not complete any formal or informal observations of Mr. Giansante and because his presence in Mr. Giansante’s classroom did not occur during the time period at issue, I find Mr. Jackson’s testimony not to be credible.

Mr. Giansante claims the School Board disregarded the testimony of mathematics coach L. Ray Roberts, that he found Mr. Giansante had improved during class year 2011-2012’ on the grounds that he was not qualified to tell if Mr. Giansante had improved even though he

was the individual assigned the task of helping Mr. Giansante improve. (Mr. Giansante's Brief at 21-22). This misstates the record. The record indicates that Mr. Roberts did not testify at the School Board hearing.

### **III. THE DISTRICT AFFORDED MR. GIANSANTE DUE PROCESS OF LAW.**

Mr. Giansante claims that the School Board denied him due process of law. (Mr. Giansante's Brief at 16-22). Initially, the Secretary notes that due process requires that Mr. Giansante be given notice of the charges against him and an opportunity to be heard. 2 Pa. C.S. § 501; *McCoy v. Lincoln Intermediate Unit No. 12*, 391 A.2d 1119 (Pa. Cmwlth. 1978). Due process also requires that a litigant have, at some stage of a proceeding, a neutral factfinder. *Katruska v. Bethlehem Center Sch. District*, 767 A.2d 1051 (Pa. 1997).

Mr. Giansante further alleges that he was denied due process of law based on certain evidentiary rulings made by the School Board hearing officer and by the School Board's consideration of certain hearing testimony (in particular, the Board's finding that Ms. Safran's testimony was credible). (Mr. Giansante's Brief at 16-22). Again, with regard to whatever weight or consideration the School Board gave to witness' testimony, in *Forest Area School District v. Shoup*, 621 A.2d 1121 (Pa. Cmwlth. 1993) this was held to be irrelevant because the Secretary is required to conduct *de novo* review of the Board hearing record and may draw his own conclusions regarding the credibility of witnesses. "A *de novo* review entails full consideration of the case another time; the Secretary, in effect, is substituted for the Board, the prior decision maker, and redecides the case." *Id.*, at 1125, citing *Civitello v. Pa. Dep't. of Transportation*, 315 A.2d 666 (Pa. Cmwlth. 1974).

The *de novo* review conducted by the Secretary eliminates any alleged due process denial in the conduct of the Board hearing. *Katruska v. Bethlehem Center Sch. Dist.*, 767 A.2d 1051 (Pa. 1997). The Pennsylvania Supreme Court specifically held that “the Secretary of Education's *de novo* review of the decision of a school board ensures that the requirements of due process are satisfied.” *Id.* at 1056. As there is no supportable claim of due process denial by the School Board because of the Secretary’s *de novo* review, I conclude that Mr. Giansante has received due process of law.

**IV. THE ANECDOTAL RECORDS AND THE TESTIMONY OF THE DISTRICT’S WITNESSES CREDIBLY SHOW THAT MR. GIANANTE DEMONSTRATED UNSATISFACTORY TEACHING PERFORMANCE IN 2011-2012 AND 2012-2013.**

Anecdotal records are the essence of an unsatisfactory evaluation, *Hamburg, supra.*, and must be specific in detail and contemporaneous in nature as to secure “the justified discharge of the incapable,” and avoid “the unjustified discharge of the capable.” *Mastro v. Board of Educ. Sch. Dist. of Pittsburgh*, Teacher Tenure Appeal No. 1-98 at 7 quoting *Augustine v. Turkeyfoot Valley Area Sch. Dist.*, 9 D & C3d 147, 173-74 (1977). In the instant case, the supporting documents attached to each of the unsatisfactory evaluations were sufficiently precise and detailed to satisfy the requirements of an anecdotal record.

Mr. Giansante received his unsatisfactory ratings in 2011-2012 and 2012-2013. The District introduced approximately 80 exhibits that documented the observations of many evaluators over this two-year period. (Dist. Ex., generally). These anecdotal records were contemporaneously made, are thorough and descriptive, and were explained by the over 600 pages of testimony of the District’s evaluators whose observations are recorded in those anecdotal records. (N.T. generally; Dist. Ex., generally). Those evaluators’ explanations relate

how what they had witnessed in each observation of Mr. Giansante's classroom instruction failed to follow specific prior guidance to him, as well as the goals and objectives of his EIPs, and failed as a matter of pedagogy.

During the 2011-2012 school year, Mr. Giansante was observed on September 23, 2011 (N.T. 15), November 9, 2011 (N.T. 45), December 6, 2011 (N.T. 63), December 14, 2011 (N.T. 68), December 19, 2011 (N.T. 404), January 6, 2012 (N.T. 243), January 12, 2012 (N.T. 86), February 3, 2012 (Dist. Ex. 24), February 9, 2012 (Dist. Ex. 40, 52), March 29, 2012 (N.T. 256, 323) and April 24, 2012 (N.T. 351). All the above observations were formal, except that the observations on December 6 and 19, 2011 and January 6, 2012 were informal. (Dist. Ex. 1, 16, 19, 20, 23, 24, 46, 47, 52, 53, 56).

During the 2012-2013 school year, Mr. Giansante was again observed on September 11, 2012 (N.T. 424), September 24, 2012 (N.T. 279), September 28, 2012 (Dist. Ex. 74), October 31, 2012 (N.T. 301, 435, 436), November 8, 2012 (N.T. 364), November 29, 2012 (N.T. 461), December 14, 2012 (N.T. 470), January 17, 2013 (N.T. 139), February 5, 2013 (N.T. 373), February 13, 2013 (N.T. 147), March 20, 2013 (N.T. 491) and April 10, 2013 (Dist. Ex. 74). All the above observations were formal, except that the observations on September 11 and 24, 2012 and February 13, 2013 were informal. (Dist. Ex. 43, 44, 48, 51, 54, 55, 61, 63, 64, 68, 74).

For each formal observation, the evaluator(s) completed an observation and conference report that included basic facts about the class observed, *i.e.* subject, grade level, number of students present, length of observation, and notations of the activities in the classroom. A conference followed each evaluation, between the evaluator(s) and Mr. Giansante, during which deficiencies and opportunities for improvement were discussed.

This information, along with any assistance provided to Mr. Giansante from the observation, was outlined in the observation and conference report. Each report was signed by the evaluator and Mr. Giansante. (Dist. Ex. 1, 16, 20, 23, 24, 43,47, 48, 51, 52, 53, 54, 55, 63, 64, 68, 69).

For each informal observation of Mr. Giansante, the evaluator(s) completed a K-12 mathematics informal observation tool (Non-RISE) that included basic facts about the class observed, notations about classroom activity, and the observer's comments and questions. Informal observations are generally shorter in duration than formal observations and are not accompanied by a pre- or post-conference between the teacher and the evaluator(s). Instead, the teacher receives feedback through the completed informal observation tool form. (N.T. 62-63; S. D. Exhibits 19, 44, 46, 56, 61).

Four of those administrators who observed Mr. Giansante's classroom instruction (Ms. Washington, Ms. Safran, Mr. Vater, and Mr. Ziegler) testified over three separate days regarding the content of those detailed anecdotal records and their observations and why what they observed consistently failed to meet the standards of their teaching profession. (N.T. generally).

Ms. Washington testified regarding Mr. Giansante's failure to properly implement the pedagogy and methods required by the District's core curriculum. Ms. Washington observed that Mr. Giansante's failed to properly implement the pedagogy and methods as required by the District's core curriculum. Initially, because Brashear had re-staffed, the administration has established as a norm in the building that all teachers were going to have an aim or objective for the day posted for students to see, as well as an agenda in homework that the teacher and students would review at the beginning of the class. Ms. Washington observed that Mr. Giansante did not

have an objective for the day and did not explain the objective. (N.T. 19, 207).

The District curriculum requires teachers to design each lesson in phases: a warm-up (a short activity that happens at the beginning of the class), a launch or the set-up, the explorer phase (students engage independently and then with peers to solve problems), and a closing (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 mathematical 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. (N.T. 21, 22, 25, 39, 40, 141, 144, 200- 203).

Ms. Washington observed that Mr. Giansante had exhibited haphazard planning. Mr. Giansante predominantly used a model of teaching known as initiate, respond, and evaluate. (IRE). The IRE method required that all the communication be funneled through the teacher rather than the students grappling with an understanding of the mathematical concepts. The District considered IRE to be unsatisfactory. (N.T. 20, 21, 22).

As examples of the IRE method, Ms. Washington observed that Mr. Giansante engaged in back-and-forth questioning of students that only resulted in the validation or dismissal of student responses. Mr. Giansante also asked students to repeat a correct answer to the class instead of asking the student for an explanation or analysis of why an answer was correct. Ms. Washington also noted that Mr. Giansante failed to fully embrace the curriculum and to fully utilize class statistics. (N.T. 23, 26).

Ms. Washington observed that Mr. Giansante's students were brought back to his class by another teacher. (N.T. 24). Ms. Washington observed that Mr. Giansante's class lacked rituals and routines. The only ritual or routine that was observed was the warm-up for the day. (N.T. 25). Ms.

Washington observed that Mr. Giansante's technique was inappropriate in that his students used a packet that was not from the core curriculum; rather, it was something that Mr. Giansante had created on his own. (N.T. 27-28). Ms. Washington observed that Mr. Giansante had taken the rigor out of the lesson in that he did not intellectually engage his students in the mathematical concepts he was teaching. (N.T. 29).

Ms. Washington observed that Mr. Giansante was not advancing properly through the core curriculum; rather, he was behind in the curriculum. While the curriculum books were not delivered until the third week of school, the curriculum was available online. (N.T. 30-31, 198). Ms. Washington observed that there were many off-task behaviors where students were talking when they should have been working, pushing other students at the door, texting on their phones, had their hoods up or a hat on, which is against the dress code, entered the room after the bell rang and were not assigned after school detention in accordance with the building policy, and none of the above was addressed and/or documented by Mr. Giansante. (N.T. 64-66, 204-205).

Mr. Giansante did not submit lesson plans for the week including December 14, 2011. (N.T. 69). On December 14, 2011, the students were taking a quiz. However, students were talking during the quiz. Three students walked into class late with no evident consequences. (N.T. 69-70).

The staff had previously agreed to display a student data wall in their classroom showing the progress of students in the class at reaching their goals. (N.T. 70). Mr. Giansante had only one artifact on the student data wall and several pieces of posted student work with no feedback. Thus, it was unclear as to the usefulness of the posted student work. (N.T. 70-71). Ms. Washington also observed Mr. Giansante telling the students; "This is not the real thing, real test, I'm trying to scare you into understanding." It is not appropriate to try to scare students into understanding. The students were frustrated that they were given a fake quiz that was intended

to scare them. Further, the quiz was not from the curriculum. (N.T. 72-75).

Ms. Washington observed that Mr. Giansante was not standing in his doorway greeting students in accordance with the consistency norms previously established for the building. Additionally, the English Language Learners were having difficulty culturally connecting to the activity. Mr. Giansante admitted that he did not stand at the doorway in violation of the school's norms. (N.T. 87, 206-210, 691). Ms. Washington observed that Mr. Giansante did not have a system in place for students to get materials or supplies on their own. (N.T. 88). Ms. Washington observed that when students entered the class significantly late, they were not issued a consequence. (N.T. 92).

On April 11, 2012, Ms. Washington met with Mr. Giansante about his progress towards his EIP goals. Ms. Washington concluded that Mr. Giansante continued to lack progress in technique, rigor, classroom management, and cultural responsiveness. In short, Mr. Giansante had made no improved progress towards his EIP goals. (N.T. 121, 123, 206-210).

On April 30, 2012, Ms. Washington again informed Mr. Giansante that there had been no improvements towards meeting his EIP goals. (N.T. 124-125). Based on all of Ms. Washington's experiences in Mr. Giansante's classroom, the post-conference meetings, the progress-monitoring meetings, and the observations of other administrators, Ms. Washington concluded that Mr. Giansante did not perform at a satisfactory level for the 2011-2012 school year, and that, in fact, he was unsatisfactory. (N.T. 131). Additionally, Ms. Washington observed no improvement or progress in Mr. Giansante's teaching proficiency during the two school years when she evaluated him. (N.T.145-46).

Mr. Vater also observed Mr. Giansante's classroom. Mr. Vater observed that on the projector he had placed the inappropriate comment: "Sorry, there is no vaccine against stupidity." Mr. Vater observed Mr. Giansante's failure to follow the District's curriculum and to properly

plan lessons that reflected the pedagogy of the curriculum. When Mr. Vater observed him, Mr. Giansante predominantly utilized the IRE method of teaching and failed to fully implement the pedagogy. The students were not encouraged to share, discuss, and analyze the mathematical concepts. There was an absence of a learning objective in Mr. Giansante's lesson, which resulted in no connection with previous mathematics knowledge as required by the curriculum. There was no wrap-up time. Additionally, at the start of the lesson, students were waiting by the door. During the lesson, some students were off-task talking about their weekend plans, students were observed making fun of one another because they answered a question incorrectly, and students had their heads down and were opting out of the lesson. Approximately, 19 students were off-task. No action was taken by Mr. Giansante to bring the students back to task. (N.T. 242-250, 252-253, 255, 264-65, 271).

Additionally, when Mr. Vater observed Mr. Giansante's class, the curriculum required teachers to place students into specific groups based upon data regarding each student's learning and achievement. Such grouping was not evident in Mr. Giansante's class, reflecting a failure to utilize data in a way that promoted classroom equity. The objective was posted, but it was placed behind the projection screen. (N.T. 257-58).

Mr. Vater observed that the class completed a warm-up at the beginning of the class. However, when the class completed the warm-up, it was not clear if it was a quiz or if the warm-up could be corrected during the review. Four students were off-task during the warm-up. Mr. Giansante used the IRE talk structure during the class approximately 80 percent of the time, including times when it was not appropriate. Mr. Giansante had the class complete worksheets, and there were no deeper mathematical concepts identified for the class. This was not in accordance with the pedagogy, which indicated that Mr. Giansante should push the students to

dig deeper to know and to understand the mathematical concepts. There was no student data on the Board to indicate how well the students are doing and what they should do to meet the standards of the classroom. There were graded tests posted, but there was no teacher feedback to make sure that the students understand mathematical concepts. Responsible learner rules were posted. Mr. Giansante did not set up the lesson, did not include the exploration and struggle time, and did not have the share, discuss, and analyze phase. There was also no rigor in Mr. Giansante's classroom and no clear routines and rituals other than the warm-up and worksheet. Mr. Giansante did not demonstrate proficient teaching techniques during the class. (N.T. 259-265, 267, 269-270, 271, 272- 274).

Mr. Vater told Mr. Giansante that the class needs to be more than worksheets, that the students must be able to work with other students, that there need to be routines and rituals as part of the lesson from the beginning of class to the end, that the students be required to keep a notebook in class, and that the responsible learner tools should be referred to everyday. (N.T. 277-278). Mr. Vater observed no improvement or progress in Mr. Giansante's teaching proficiency during the 2011-2012 and 2012-2013 school years. (N.T. 301).

Mr. Ziegler observed Mr. Giansante's deficiencies in pedagogy, lesson planning, and classroom management. Contrary to the curriculum, Mr. Giansante emphasized the memorization of a single solution as opposed to focusing upon the reasoning behind a mathematics solution. Mr. Giansante consistently failed to properly prepare lesson plans. Mr. Giansante's lessons lacked structure and failed to anticipate potential questions or challenges. In at least one instance, Mr. Giansante placed a set of mathematics problems into his lesson without reviewing the problems in advance. When students asked questions about the problems, Mr. Giansante was unable to fully assess and answer the questions because of his

lack of preparation. (N.T. 333-338, 342, 345, 349, 360).

Students consistently opted out during Mr. Giansante's class without consequence. Mr. Ziegler observed students using headphones, texting and arriving late to class without any correction from Mr. 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. (N.T. 341, 346-48).

Mr. Ziegler also observed that Mr. Giansante's class lacked rituals and routines that facilitate classroom learning. No routines were in place regarding homework or classroom dismissal. (N.T. 345-46).

On April 24, 2012, Mr. Ziegler observed Mr. Giansante's class. Mr. Giansante spent 18 minutes of class time on the warm-up. The recommendation is five to seven minutes. Mr. Giansante continued to ask questions that were IRE-dominant. After 31 minutes into the lesson, Mr. Giansante distributed the worksheet. Mr. Giansante did not check both equations of a student's work. Two students had their phones out and were texting in the middle of class, and Mr. Giansante did not redirect these two students. Mr. Ziegler noted that after five minutes 15 of the 24 students had not done any work on their worksheet. After almost 40 minutes into the lesson, some students were working on a different packet than another student. When asked why, a student responded with: "she is smarter than us." Identifying one student as smarter indicated that the classroom culture and expectations were not appropriate. One student was cursing in the back of the room, and it was not addressed. Mr. Giansante also spent nine minutes with one group which is too long to be working with one group and not working with other groups. A student walked out of the room. Two students from another class stood by the door

to the room. Students who were on their phones entered the room to converse with other students. Mr. Giansante did ask these two students to leave. At the end of class, Mr. Giansante talked about work for the next day. However, the method had not yet been presented. The structure and expectations were not appropriate. (N.T. 351- 359).

Mr. Ziegler observed Mr. Giansante's class on November 8, 2012. In this class of 17 students, there were seven students off-task, two on their phones, one writing a note, one had his head down, one had her back to the screen playing with her hair, another one was on the phone and one was working on an assignment from another class. It took 19 minutes to get through the warm-up and to the core part of the lesson. The class was given 12 minutes to complete an assignment but then Mr. Giansante gave the class extra time. As a result, he left only two minutes to discuss the problems before the bell rang which is not a sufficient amount of time. Also, Mr. Giansante continued to use IRE-dominant questioning. (N.T. 367-369).

On February 5, 2013, Mr. Ziegler conducted another observation of Mr. Giansante. The students asked for the warm-up and were told that there was no warm-up. The rituals and routines did not take place. He had the students work by themselves for 10 minutes when the recommendation is three to five minutes. The students were off-task again. Two students argued in the class with each other. A student was frustrated because Mr. Giansante did not address his question. A student had his phone out and Mr. Giansante addressed it; but when Mr. Giansante walked away, the student took his phone out again. Mr. Giansante may have misled the class with a comment that increase implies addition. (N.T. 374-378).

Even though Mr. Ziegler provided Mr. Giansante with an abundance of advice and written materials detailing proper teaching methods, Mr. Ziegler observed no improvement or progress in Mr. Giansante's teaching proficiency during the 2011-2012 and 2012-2013 school

years. Mr. Giansante still had an unsatisfactory classroom. (N.T. 360, 364, 370-72, 380, 382).

Ms. Safran observed Mr. Giansante. Ms. Safran observed that she could not find the learning objective. Mr. Giansante also failed to implement the pedagogical tenets of the core curriculum by sharing, discussing, or analyzing the assessment to make sure that the students had met the learning objective, to properly plan the lessons, to establish routines and rituals, and to manage his classroom. Mr. Giansante had his door locked from the outside, and teachers are instructed not to lock their door from the outside. Students walked in late; yet there was no detention given in violation of school policy. Mr. Giansante also violated school policy in that he was not at his door between classes. During class, students called out the answers to the questions as there was no system for answering the questions that Mr. Giansante asked. Mr. Giansante did not assign seats or give any thought to the seating in the room. Mr. Giansante did not redirect a student who was listening and singing with music on her phone. Seven students were off-task. Mr. Giansante was ineffective in bringing them back to task. Mr. Giansante's class lacked the level of rigor demanded by the curriculum. (N.T. 404-07, 411-18.)

On or about January 5, 2012, Mr. Giansante received a memo because he was not present in the hallway between classes as previously agreed upon. Students were left outside in the hallway. Mr. Giansante admitted that he was not in the hallway in violation of the school's norms. (N.T. 420-421, 691).

On March 2, 2012, Mr. Giansante admitted that he was previously involved in a confrontation with a student and that he told the student to hit him. He also admitted that he told a student to not act like an "a\*\*." Both statements demonstrated a lack of professional judgment. (N.T. 422-423, 700).

On September 11, 2012, Ms. Safran observed Mr. Giansante's classroom. Ms. Safran

saw no physical evidence of the mathematics curriculum with set-up, explore, share, discuss, and analyze. Students could not see all their classmates. There were no posters with the mathematics instructional philosophy, and there was no evidence of student work throughout the classroom. Mr. Giansante was not using the actual lesson plans that are in the curriculum. There were no content-specific instructional strategies. The students were not able to articulate the goals of the lesson. Mr. Giansante solves the problems for the students; the students do not solve the problems. Mr. Giansante does not pair the students. He circulates through the room when the students call his name due to a lack of rituals and routines. One student answered all the questions. The English-as-a-second-language students were separated from the rest of the class. One student entered class late, and it was not addressed by Mr. Giansante in accordance with school procedures. Mr. Giansante's classroom was unsatisfactory. (N.T. 424-435).

Ms. Safran observed Mr. Giansante on October 31, 2012. The students were completing a quiz that was not part of the curriculum. The students were not aware that there was to be a quiz. Mr. Giansante forgot to time the quiz from the beginning. A student entered the room late, and Mr. Giansante did not address the tardiness in violation of the school policy. There were no student artifacts in the classroom. There was no warm-up, agenda, or homework. Mr. Giansante used excessive IRE questioning. Mr. Giansante's teaching performance was still unsatisfactory. (N.T. 435-438, 440-441, 445).

Ms. Safran observed Mr. Giansante's class on November 29, 2012. Once again, Mr. Giansante used IRE questioning. Mr. Giansante still did not use the core curriculum set-up, explore, share, discuss, and analyze. Mr. Giansante had a poster in the room that said, "Bang! Bang! Free my ni\*\*\*hs! Imani." This poster perpetuated both gun violence and inappropriate language. Mr. Giansante was directed to remove the poster and he did so. (N.T. 463, 465-

467).

On December 14, 2012, Ms. Safran observed Mr. Giansante. There were two late students, and their tardiness was not addressed. The students' work was all mixed up with another class of students. Instead of helping a student, he just told her that she was wrong. Another late student entered the classroom, and it was not addressed. The IRE method of questioning was followed. Students were not grouped with any intent. (N.T. 470-474, 477).

At the post-observation conference meeting, Mr. Giansante agreed that he should do more planning and that he should follow the actual curriculum. Ms. Safran also informed Mr. Giansante that he should include the rigor of the task, the grouping of the students, the rituals, and routines, and tracking the data. Mr. Giansante agreed to implement think, pair, and share, when dividing up his students into groups. (N.T. 479, 490).

On January 14, 2013, Mr. Giansante received a memo because he was absent and did not leave a lesson plan or substitute assignment for the substitute teacher to implement. Mr. Giansante admitted that he knew that the lesson plans had to be turned into the office by Monday morning and that emergency lesson plans had to be maintained in the office. (N.T. 485, 820-823).

On January 23, 2013, he was late for a class on professional development. Mr. Giansante admitted that he was late for the class. (N.T. 488-489, 746).

On March 20, 2013, Ms. Safran observed Mr. Giansante. There was no posted appropriate aim, there was no warm-up, and there was no purposeful seating. The previous recommendations had not been implemented. Mr. Giansante admitted that he did not have a lesson plan. He instructed students to go off-task. There were no rituals and routines. The classroom was deficient. (N.T. 491-494, 497, 499, 794).

At the post-observation conference, Ms. Safran told Mr. Giansante that he needed to plan

his lessons using the core curriculum, review the objective with the students, plan for the questions that he wanted to ask the students during the lesson focusing on the goals of the lesson, plan, and track data, use a formative assessment tool, plan for engagement and rigorous tasks, and implement rituals and routines. Mr. Giansante did not indicate that he was going to comply with the recommendations. (N.T. 500-501).

On May 7, 2013, Ms. Safran observed Mr. Giansante's class. The lights were out in the classroom. Students had written their hash tags on the board next to the aim of the class. A student tells Mr. Giansante, "Suck my a\*\*." Mr. Giansante did not address the comment. Students are talking over Mr. Giansante. One student is banging on the door and another student falls out of his chair. Another student puts his back to the wall with his arms folded and is not doing anything. Mr. Giansante sends students out without planners. He gives calculators to some students, but not to all. Students put their heads down and opt out. (N.T. 503-506, 508, 510, 511).

On May 9, 2013, Ms. Safran held a meeting with Mr. Giansante. Ms. Safran informed Mr. Giansante that she had noted no progress or improvement in his teaching, that there were continued concerns about his planning, his preparation, the rituals and routines, and classroom management. (N.T. 515).

Mr. Giansante's classes were poorly planned and lacking in structure. On several occasions when Ms. Safran observed him, Mr. Giansante had failed to prepare a satisfactory lesson plan in accordance with the core curriculum. Furthermore, Mr. Giansante failed to pace his lessons to ensure that students had enough time for the share, discuss, and analyze curriculum. Mr. Giansante's classes lacked routines and rituals regarding simple tasks such as answering questions or collecting homework. Mr. Giansante did not understand that just because

a student was admitted to the school building late, he could still mark the student tardy for the class. Mr. Giansante's class was unsatisfactory. Further Mr. Giansante was not making any improvement. (N.T. 418-19, 432, 445-449, 488, 494, 512, 513, 78-781, 839).

Despite having provided Mr. Giansante with abundant feedback and suggestions regarding his teaching, Ms. Safran observed no improvement or progress in Mr. Giansante's teaching proficiency during the two years when she evaluated him. (N.T. 453, 525-27).

The testimony regarding Giansante's lack of instructional technique warrants his unsatisfactory ratings. *Rosso v. Owen J. Roberts Sch. District.*, 380 A.2d 1328, 1329 (Pa. Cmwlth. 1977) (sustaining dismissal based in part on failing to maintain a proper pace to ensure that the scheduled program for the year would be completed; not maintaining lesson plans and keeping the presentation organized; and where the method of instruction was unvaried, teacher-dominated, and did not create an atmosphere conducive to learning).

Mr. Giansante was unable to manage his classroom in a manner that encouraged learning. Ms. Safran observed numerous instances in which students, without correction from Mr. Giansante, opted out of learning by arriving late to class, listened to music on their cellular phones, and loudly discussed matters unrelated to mathematics. This basic lack of classroom management also warrants Mr. Giansante's unsatisfactory ratings. *Steffen v. South Middleton Tp. Sch. District*, 377 A.2d 1381, 1384 (Pa. Cmwlth. 1977) (affirming that failure to maintain adequate classroom control is serious enough, without more, to warrant an unsatisfactory rating). On two occasions, Giansante appeared to be oblivious to the inappropriate, derogatory language displayed by students in the classroom. Ms. Safran had to tell Mr. Giansante to remove the language. Mr. Giansante paired students based upon their proximity to one another, as opposed to purposefully selecting groups based upon academic

data. (N.T. 411-12, 414, 443, 462, 466-67). Despite having provided Giansante with abundant feedback and suggestions regarding his teaching, Ms. Safran observed no improvement or progress in Mr. Giansante's teaching proficiency during the two years when she evaluated him. (N.T. 453, 526-27.)

Additionally, Mr. Giansante had persistently neglected to perform his duties and/or consistently exhibited unsatisfactory teaching performance by repeatedly failing to implement the pedagogy and methods of the curriculum. For negligent performance to be shown, the District must prove that the professional employee had knowledge of the District's performance expectations and had been warned of the consequences of failing to meet them. Warnings may take place in the course of performance evaluations.

In *Harrison v. Capital Area Intermediate Unit*, 479 A.2d 62 (Pa. Cmwlth. 1984), the teacher was dismissed after being placed on probation for his serious performance issues. Those performance issues included, *inter alia*, the teacher's failure: to keep student records; to prepare lesson plans and substitute plans; to supervise his students; to follow policies the intermediate unit; to follow the directions of his supervisors; to give notice of his absences; or to report for duty on time. The Commonwealth Court affirmed the teacher's dismissal for negligent performance because the teacher had been sufficiently warned of the district's performance expectations.

It is the Secretary's duty, as it was the Board's obligation below, to carefully review this testimony and the anecdotal records and other documentation provided by the District to demonstrate Mr. Giansante's incompetency and his persistent neglect in the performance of his duties. The Secretary notes that the substantial majority of the observation reports that were introduced at the School Board hearing and the details contained therein were

unchallenged by Mr. Giansante. Not one evaluator who observed Mr. Giansante's classroom in the 2011-2012 or 2012-2013 school years believed that he demonstrated satisfactory teaching technique.

To the contrary, the record is replete with evidence substantiating the District's complaint that Mr. Giansante had little or no ability to control student behavior in his classroom. Other evidence adduced that Mr. Giansante was inattentive to detail, poorly prepared, and lacked mastery of his subject matter. Such deficiencies have previously been found to support a finding of incompetency. *Hamburg, supra*; *Steffen v. Board of South Middletown Twp. Sch. District*, 377 A.2d 1381 (Pa. Cmwlth. 1977).

Applying *de novo* review to the record here, I find ample support for the two consecutive unsatisfactory ratings issued to Mr. Giansante for the 2011-2012 and 2012-2013 school years, as well as persistent neglect of duties, conclude that the District has met its burden of proof, and affirm the District's decision to terminate Mr. Giansante's employment as a tenured professional employee on the grounds of unsatisfactory teaching performance and persistent neglect of duties pursuant to Section 1122 of the School Code.

The District has clearly established that, when viewed in the aggregate, the above actions evidence an unacceptable pattern of conduct by Mr. Giansante. There is sufficient evidence in the record to support the District's dismissal of Mr. Giansante. Accordingly, the following Order is entered:

**IN THE OFFICE OF THE SECRETARY OF EDUCATION OF THE  
COMMONWEALTH OF PENNSYLVANIA**

JOSEPH GIANSANTE,	:	
Appellant	:	
	:	
v.	:	TEACHER TENURE APPEAL NO.
	:	06-15
	:	
CITY OF PITTSBURGH BOARD OF	:	
EDUCATION,	:	
Appellee	:	

**ORDER**

AND NOW this 27<sup>th</sup> day of September, 2017, the Secretary affirms the Board's decision to dismiss Joseph Giansante, a tenured professional employee, on the grounds of unsatisfactory teacher performance based on two consecutive unsatisfactory ratings for the 2011-2012 and 2012-2013 school years in accordance with the foregoing opinion.



Pedro A. Rivera  
Secretary of Education

Date Mailed: September 27, 2017