

2018 CarswellOnt 16289
Ontario Arbitration

OSSTF and Trillium Lakelands District School Board (Tait), Re

2018 CarswellOnt 16289

**Ontario Secondary School Teachers' Federation (the "Federation")
and Trillium Lakelands District School Board (the "Employer")**

Robert D. Howe Chair, Bob Morose Member, Michael Riddell Member

Heard: February 20, 2013; November 20, 2013; February 20, 2015; March 3, 2015; March 31, 2015; April 21, 2015; June 10, 2015; June 16, 2015; June 18, 2015; September 30, 2015; February 24, 2016; February 25, 2016; March 2, 2016; March 3, 2016; March 4, 2016; April 6, 2016; April 7, 2016; April 8, 2016; April 20, 2016; April 22, 2016; May 4, 2016; May 6, 2016; December 15, 2016; December 16, 2016; January 12, 2017; January 13, 2017; January 25, 2017; January 26, 2017; April 11, 2017; April 26, 2017; April 27, 2017; May 18, 2017; October 4, 2017; October 5, 2017; January 24, 2018; January 25, 2018; February 13, 2018; February 14, 2018; June 28, 2018; June 29, 2018; July 5, 2018; July 10, 2018

Judgment: September 25, 2018

Docket: None given.

Counsel: Susan Luft, for Federation
Carolyn L. Kay, for Employer

Subject: Public; Labour; Human Rights

Related Abridgment Classifications

Education law

IV Teachers

IV.5 Termination of employment

IV.5.a Dismissal

IV.5.a.ii Performance

Headnote

Education law --- Teachers — Termination of employment — Dismissal — Performance

Table of Authorities

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s. 4 — referred to

s. 6(1) — considered

s. 8(1) — considered

s. 8(1) ¶ 3 — considered

Robert D. Howe Chair:

1 This award pertains to an individual grievance filed by the Federation (also referred to in this award as the "OSSTF") on behalf of William Bradbury (Brad) Tait (the "Grievor") in January of 2011, alleging that he had been dismissed by the Employer (also referred to in this award as the "Board" and as the "TLDSB", for ease of exposition) without cause, in violation of the parties' collective agreement.

2 During the forty-two days devoted to the hearing of this matter, eleven persons were called as witnesses. In addition to their testimony, 49 exhibits were entered into evidence during the course of the proceedings, including several exhibits consisting of numerous documents (such as Exhibit 4, which has 16 tabs; Exhibit 6, which is a five-volume exhibit with 299 tabs; Exhibit 7, which is a four-volume exhibit with 33 multi-document tabs; and Exhibit 9, which has 23 multi-document tabs). Counsel also helpfully provided the Board of Arbitration with a Partial Agreed Statement of Facts. In making the findings and reaching the conclusions set forth in this award, we have duly considered all of the oral evidence and documentation, the extensive oral and written submissions of counsel, and the usual factors germane to assessing evidentiary credibility and reliability, including the firmness and clarity of the witnesses' respective memories, their ability to resist the influence of self-interest when giving their version of events, the internal and external consistency of their evidence, and their demeanour while testifying. We have also assessed what is most probable in the circumstances of the case, and considered the inferences which may reasonably be drawn from the totality of the evidence. In this regard, reference may usefully be made to the following oft-quoted passage from *Faryna v. Chorny*, [1951] B.C.J. No. 152, [1952] 2 D.L.R. 354 (B.C. C.A.), which was one of the cases cited by Union counsel during the course of her submissions:

11 The credibility of [an] interested witness, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions....

3 On November 20, 2013, after hearing some submissions regarding the order of proceeding, the Arbitration Board advised counsel that a ruling on that issue would be premature before they had concluded working on a partial agreed statement of facts, and before the Federation had provided the Employer with full particulars. Since Employer counsel was not satisfied with the particulars that were provided to her by Federation counsel in a letter dated June 9, 2014, the Board of Arbitration conducted a teleconference regarding that matter on July 7, 2014. Federation counsel subsequently provided further particulars through a letter dated November 4, 2014, in which the lack of an "on review" letter was raised for the first time as an issue. The parties also subsequently reached a partial agreed statement of facts, set forth in a document dated February 20, 2015.

4 After hearing further submissions on February 20, 2015, regarding the order of proceeding, the Board of Arbitration provided the parties with the following unanimous ruling through a letter dated February 23, 2015:

Having duly considered all of the submissions made at the November 20, 2013 and February 20, 2015 hearings, and the materials relied upon in support of them, the Board of Arbitration has reached the following conclusion regarding the order of proceeding.

Although the TPA process mandated by the *Education Act* and further refined by the "Performance Appraisal Concepts" document appended to the parties' collective agreement certainly provides the Grievor and the Union with more information regarding the basis for his termination than is generally available in other termination contexts, we are not persuaded that the availability of that information warrants a departure from the well-established arbitral practice of calling upon the Employer to proceed first with its evidence in termination cases.

As indicated on page 36 of the majority award dated August 19, 2011 in *OSSTF and Toronto District School Board (Gusita Termination)*, a teacher terminated as a result of three consecutive overall performance ratings of "unsatisfactory" is subject to the protection of a just cause standard of review if the applicable collective agreement so provides. The requirement of establishing "just cause" in the instant case is set forth in Article 5.02 of the collective agreement. As indicated at page 40 of the *Gusita* award, to satisfy that standard the Employer must demonstrate "that the essential elements of the mandated teacher performance assessment were followed", "that the essential elements of fairness built into the TPA process to enable [the Grievor] to demonstrate his competence as a teacher were applied to [the Grievor]", "whether the respective Evaluators carried out the TPA process without discrimination, arbitrariness or bad faith", and "whether the three successive Overall Performance Ratings of 'Unsatisfactory' were reasonable and based on supporting facts".

The efficiency with which at least some of those elements can be addressed will be significantly enhanced by the Partial Agreed Statement of Facts which counsel have helpfully produced. The scope of the detailed evidence to be adduced by the Employer may also be somewhat minimised and refined by the existence of the detailed particulars provided by Union counsel, enabling the Employer to focus the evidence on those aspects of the case, after introducing and duly proving the voluminous documentation upon which it relies, including many pages of handwritten notes which both fairness and practicality require to be subject to Union counsel's cross-examination of their writer(s) for the purpose of clarifying their contents and how what is recorded in them led their writer(s) to reach the conclusions based upon them. Requiring the Union to proceed first would be unfair as it would put the Union in the position of either having to proceed first with its evidence without the benefit of that clarification and exploration, or of having to call the writer(s) of those notes as its own witness (es) in order to obtain it. Moreover, we are not satisfied that requiring the Union to proceed first would shorten the proceedings, as most if not all of the evidence that would be adduced by the Employer if it proceeded first would still have to be adduced if the Employer proceeded second, and adopting the latter course might well expand the scope of reply evidence to be called by the Union, and might well also expand the amount of time devoted to hearing submissions and making rulings regarding what evidence could properly be called in reply.

For the foregoing reasons, the Board of Arbitration hereby rules that the Employer is to proceed first with its evidence in accordance with the usual arbitral procedure in termination cases.

Facts

5 After graduating in 1991 from a concurrent educational program at Lakehead University, through which he obtained both a Bachelor of Arts degree (in English and History) and a Bachelor of Education degree, the Grievor initially worked as a supply teacher before obtaining more permanent employment as a teacher with what was then the Kapuskasing and District Board of Education. He commenced employment with the TLDSB on February 15, 1999, in response to an advertisement for a teaching position at Haliburton Highlands Secondary School (also referred to in this award as the "School" and as "HHSS"), where he taught mainly English courses. During the course of his teaching career, he was also involved in a number of extracurricular activities; he served as a student council advisor, and also coached a number of sports, including volleyball, softball, and football. He was also active in the Federation.

6 The Grievor's teaching performance was evaluated in April of 1999 by Gary Brohman, who was the Principal of the HHSS at that time. In his evaluation report, Mr. Brohman found the Grievor's planning to be satisfactory for the lesson which he observed on April 19, 1999, and found the lesson that Mr. Tait taught to be good overall. In the "General Comments" section of the report, he indicated that the Grievor had "taken on a challenging teaching assignment [that] term with a positive outlook". He also indicated that in his short time knowing Mr. Tait, he felt that the Grievor was "a team player willing to go the extra mile for students". The "Helpful Hints" offered by Mr. Brohman in that evaluation included recommendations that the Grievor "Tidy up [his] start-up" in order to "get everyone on 'page one'", and that he "Teach with more pizzaz". The evaluation also included "Some Helpful Suggestions for Improvement", including "Hands up - One at a time when answering", "Make sure all students are listening and focused", and "Follow-up on your direct instructions -don't say them unless you are going to follow up".

7 By December of 2002 when the Grievor was next evaluated by Mr. Brohman, the process had become more standardized and formalized through amendments to the *Education Act* (also referred to in this award as the "Act") and a Regulation made under the *Act*. The Summative Report Form that had to be used for that evaluation required the principal to evaluate the teacher on sixteen specified competencies, and to give the teacher an overall performance rating of "Exemplary", "Good", "Satisfactory", or "Unsatisfactory". Mr. Brohman rated the Grievor's performance as "Good", which the form defined as "Performance that consistently meets the expectations for the set of competencies". Mr. Brohman also included the following comments in the optional "summary comments" section of the form: "Mr. Tait is a valued teacher on Haliburton Highlands Secondary School staff. He puts his students first and is a great team player".

8 When Mr. Brohman evaluated the grievor in May of 2006 (in accordance with the applicable mandatory evaluation cycle), he gave him an overall rating of "Satisfactory". The Summative Report Form's definition of that rating was:

Performance that does not always meet all the expectations for the set of competencies. Performance must be improved.

9 Mr. Brohman also included the following "summary comments" on that Summative Report Form:

Mr. Tait's lesson today was on the introduction of short stories. It was received by his students in a positive manner. I was impressed with the power-point delivery and the notes that accompanied the presentation.

Mr. Tait's classroom management style is relaxed in a caring environment. One suggestion: make sure all students are focused and not in private conversations.

Mr. Tait must continue to upgrade his skills in assessment and evaluation. The TLDSB rubric that I have discussed with him must be reviewed on a semester by semester basis. I do have concerns over his applied-level marks and I suggest he seek all information on how to motivate students for assignment completion. Along with Assessment and

Evaluation - new Teaching Practices are important. Mr. Tait must attend workshops and conferences to update his knowledge in new teaching practices and use these skills in the classroom. It is imperative that Mr. Tait run a safe learning venue for all his classes. I strongly recommend that Mr. Tait does not leave his classroom for any personal or school business while classes are in progress.

Mr. Tait's strength is his rapport with students. I support his new challenge of obtaining his Special Education Part 1 and teaching in the PALS Program.

In conclusion my advice to Mr. Tait is - to ensure your students are life-long learners you must be a life-long learner. It is imperative to keep up to date on Assessment and Evaluation and Teaching Methodology. I will support these initiatives and I ask you to make this the highest priority so you can make a better learning environment for all of your students. I look forward to you meeting all of your professional teaching responsibilities.

10 During the next few years, the Grievor completed both Special Education Part 1 and Special Education Part 2 Additional Qualification Courses. However, there continued to be issues with his performance. Darrell Dobson, the School's Head of Modern Languages, raised concerns that the formative and assessment tools being used by Mr. Tait were inadequate to meet TLDSB and Ministry Guidelines. Dr. Dobson expressed those concerns in a memo to Mr. Brohman and Mr. Tait in March of 2009, in which he expressly indicated that he was "willing to provide any help necessary". However, Mr. Tait did not seek any assistance from him. Mr. Tait's response to that memo was to dispute Dr. Dobson's assertions and to indicate that he would be consulting with his Federation representatives to determine if Dr. Dobson's comments constituted a breach of professional conduct. He also indicated he would distance himself from Dr. Dobson as much as was professionally possible. Their different perspectives on what had occurred led Dr. Dobson to indicate that he planned to record future conversations that he had with Mr. Tait, but he was dissuaded from doing so by Mr. Brohman. However, in his memo advising them of his plan, Dr. Dobson also wrote: "In my role as Modern Languages department head and based on my Ph.D. in Education, which focuses on teacher education and development, I remain willing to assist Mr. Tait in his professional development."

11 Although Dr. Dobson repeatedly expressed concerns to Mr. Tait about high failure rates in his classes, that problem continued unabated. Mr. Tait's attitude regarding those issues is reflected in the following response that he gave when he was asked in cross-examination to agree that there were performance issues prior to 2010: "I suppose you could characterise the issues I had with Darrell Dobson as such".

12 Section 6(1) of the Regulation 99/02 permits a principal to conduct performance appraisals of a teacher that are additional to those required by the five-year evaluation cycle (delineated by section 4 of the Regulation) if the principal considers it advisable to do so in light of circumstances relating to the teacher's performance. However, this did not occur in the 2009-2010 school year, because Mr. Brohman did not want to do what he anticipated would be a difficult TPA of Mr. Tait in his last year before retiring from his principalship.

13 When Mr. Brohman retired at the end of that school year, Dan Marsden was appointed at the School's principal. Mr. Marsden commenced teaching in 1992. He began teaching for the Board in 1995, after teaching in Nova Scotia and in northern Ontario. From 1999 to 2004, he taught at HHSS, where he shared general office space with the Grievor and the other teachers in the School. In 2004 he was appointed as vice-principal at the Board's Fenelon Falls Secondary School, where he was subsequently appointed as principal, before becoming the principal of HHSS.

14 Administrators in all of the Board's elementary and secondary schools conducted "three minute walk throughs", which were brief visits to teachers' classrooms to observe their instructional practices and see how students were doing. In accordance with that practice, after becoming the principal of HHSS, Mr. Marsden conducted "walk throughs" of all of the teachers' classrooms, and provided feedback to the teachers through a "HHSS 'walk through' communication update" form that he had developed for that purpose. That form included a number of items that Mr. Marsden would checkmark if they were present during the walk through, including "Three-part lesson", "Posted Daily Agenda", "Word Wall", "Students engaged in 'accountable talk'", and "Higher order questioning". The form also had a section in which

he would write reflective comments, and included the following request: "Please see me or respond with any comments, questions or concerns."

15 In the form that he prepared regarding a walk through of Mr. Tait's classroom on September 29, 2010, Mr. Marsden noted that there was a posted daily agenda but no word wall. He put a question mark over "three part lesson", and noted that the class was a work period. He witnessed some students engaging in accountable talk, but noted in his reflective comments that some students were on task but that some were not. He also wrote the following request in that section: "Please have students sitting in their desks - not on desk tops."

16 The walk through form regarding M. Marsden's visit to Mr. Tait's classroom on October 7, 2010, contained the following reflective comments:

Please post "AGENDA" for the day.

Q: Is there a "word wall" that supports your unit.

Q: OUTLINE the consolidation (expectation) of today's lesson.

17 On October 28, 2018, Dr. Dobson sent the following memo to Mr. Tait regarding his marks summary:

This is the fifth semester that I have emphasized the following three criteria as departmental policy: medians should be in the 70's (level three, as per provincial expectations), failure rates should be low (anything more than 1-2 is a teacher's problem, not a student problem), and that there should be two summative assignments given before Progress reports.

After reviewing your marks summary dated October 20, I have the following concerns:

1) It seems that not one of your three classes had two summative assignments for the Progress report card mark. You report only one for each class.

2) The course medians of ENG 1D (58%) and ENG 4C (65%) are too low. The classes you teach consistently have such low medians, and you have repeatedly been asked to address this problem and are not doing so.

3) The failure rates are unacceptably high. The ENG 1D class has 4 of 23 students failing and the ENG 4C has 5 of 27 students failing. Again, the classes you teach consistently have such high failure rates, and you have repeatedly been asked to address this problem and are not doing so.

18 The Teacher Performance Appraisal ("TPA") process which led to the termination of the Grievor's employment is described as follows in the parties' Partial Agreed Statement of Facts (that also includes references to various tabs in the parties' Joint Book of Documents, which references have been omitted from this quote):

5. Part X.2 of the *Education Act* and *Teacher Performance Appraisal*, O. Reg. 99/02 establish the Teacher Performance Appraisal process and the fundamental requirements for the process.

...

6. The *Education Act* and *Teacher Performance Appraisal* regulation provide that each teacher who is not a "new Teacher" (i.e. a permanent teacher who has taught less than 2 years) shall participate in a performance appraisal once every five years. A performance appraisal consists of up to three evaluations. After each evaluation a teacher is given a rating of either "Satisfactory" or "Unsatisfactory".

7. The grievor, at all relevant times, was not a "new teacher".

8. Each evaluation is made up of a series of steps, mandated under the *Teacher Performance Appraisal* regulation, including:

- * A pre-observation meeting between the teacher and his or her evaluator in preparation for a classroom observation of the teacher and a review of the teacher's current learning plan.
- * A classroom observation where the evaluator observes the teacher.
- * A post observation meeting to review the results of the classroom observation.
- * The preparation and delivery of a summative report which outlines the evaluator's findings and the final rank of the teacher.
- * The signature of the summative report by the teacher in order to acknowledge receipt of a copy of the summative report by the teacher.

9. If the teacher is given a "Satisfactory" rating after their first evaluation, then the process is concluded. If the teacher is given an "Unsatisfactory" rating then an improvement plan is prepared, which is designed to help the teacher address the deficiencies noted in the evaluation. The teacher is given a period of time to improve before the next evaluation. The period of time can be as long as 60 school days, after which the teacher is given a second evaluation.

10. If the teacher receives a "Satisfactory" rating after the second evaluation, the performance appraisal process is concluded. If the teacher receives an "Unsatisfactory" rating after the second evaluation, a further improvement plan is prepared, and the teacher is given a period of time to improve. The period of time can be as long as 120 school days, after which the teacher is given a final evaluation.

11. Further, after a second "Unsatisfactory" rating, the teacher is put on "review status". While a teacher is on "review status", the principal is required to monitor the teacher's performance, consult regularly with the Supervisory Office, and provide feedback and recommendations to the teacher.

12. If a teacher receives a "Satisfactory" rating after the third evaluation, the performance appraisal process is concluded. If the teacher receives an "Unsatisfactory" rating then a recommendation that the teacher's employment be terminated shall be submitted to the Board of Trustees.

13. The Ministry of Education publishes a document, called the *Performance Appraisal of Experienced Teachers - Technical Requirements Manual* (the "Manual") which guides evaluators on how to conduct teacher performance appraisals. This Manual has been amended from time to time over the years, however, the major components have remained largely the same at all relevant times. The parties agree that the process as described in the Manual is the process of conducting a performance appraisal under the *Education Act*. It is also agreed that the TLDSB uses the Manual as its guide for conducting teacher performance appraisals.

...

14. The parties have agreed to an additional set of Guidelines attached to the collective agreement which set out slightly different timelines with regards to some of the procedural steps. The Guideline [sic] also provides that a teacher shall be given at least forty-eight (48) hours' notice before a classroom visitation and that a supervisory officer will be appointed as evaluator for the third TPA evaluation in every case.

...

19 One of the TPA requirements stipulated in section 8(1) of Reg. 99/02 (the "Regulation") is that a teacher (other than a new teacher) "must be evaluated with respect to the competencies set out in Schedule 1" to the Regulation. That

Schedule lists five general categories (referred to in the mandatory Summative Report Form as "Domains"), in which a total of sixteen competencies are identified are follows:

Commitment to pupils and pupil learning

Teachers:

- (a) demonstrate commitment to the well-being and development of all pupils,
- (b) are dedicated in their efforts to teach and support pupil learning and achievement,
- (c) treat all pupils equitably and with respect,
- (d) provide an environment for learning that encourages pupils to be problem-solvers, decision-makers, life-long learners and contributing members of a changing society,

Professional knowledge

Teachers:

- (e) know their subject matter, the Ontario curriculum and education-related legislation,
- (f) know a variety of effective teaching and assessment strategies,
- (g) know a variety of effective classroom management strategies,
- (h) know how pupils learn and factors that influence pupil learning and achievement,

Teaching Practice

Teachers:

- (i) use their professional knowledge and understanding of pupils, curriculum, legislation, teaching practices and classroom management strategies to promote the learning and achievement of their pupils,
- (j) communicate effectively with pupils, parents and colleagues,
- (k) conduct ongoing assessment of their pupils' progress, evaluate their achievement and report results to pupils and parents regularly,
- (l) adapt and refine their teaching practices through continuous learning and reflection, using a variety of sources and resources,
- (m) use appropriate technology in their teaching practices and related professional responsibilities,

Leadership and community

Teachers:

- (n) collaborate with other teachers and school colleagues to create and sustain learning communities in their classrooms and in their schools,
- (o) work with other professionals, parents and members of the community to enhance pupil learning, pupil achievement and school programs,

Ongoing professional learning

Teachers:

(p) engage in ongoing professional learning and apply it to improve their teaching practices.

20 The TPA process that gave rise to the grievance commenced in December of 2010. Since that process was being conducted in accordance with the applicable five-year cycle, it was "on cycle" and could be anticipated by the Grievor. When Mr. Marsden advised the Grievor that the observations would be conducted sometime that fall, Mr. Tait asked if it could be put off to the second semester because he was coaching junior boys football during the first semester. Mr. Marsden denied that request and told the Grievor that he would advise him of the observation dates when he had the schedule.

21 Prior to conducting classroom observations for the first TPA evaluation, Mr. Marsden arranged to meet with the Grievor on December 14, 2010 for the required pre-observation meeting. While he was Principal at Fenelon Falls, Mr. Marsden developed a template of items that he would request teachers undergoing the TPA process to provide to him to assist him in evaluating their performance. By the time he conducted the Grievor's TPA, he had previously used that template for approximately thirty other TPAs. The ten items listed in that template are:

1. Daily 3-part lesson plans, posted agenda, current word wall
2. Most recent Mark updates
3. Assessment examples (diagnostic/for, formative/of & summative/as"
4. Copy of last test
5. Final 30% culminating activity (with assessment)
6. IEP student list (with accommodations)
7. Learning Skill tracking sheet
8. PD opportunities
9. Home communications log
10. Log of Teaching Practice with "look for" identifications

22 Mr. Marsden used that document at the pre-observation meeting during his discussions with the Grievor about what he would be seeing during the classroom observations, and what documents the Grievor would be providing to him prior to those observations. The classes that the Grievor was teaching that semester were Grade 9 English Academic Level ("ENG1D"), Grade 11 English College Level ("ENG3C"), and Grade 12 English College Level ("ENG4C"). Mr. Marsden advised the Grievor that he would be attending all of those classes for the purpose of conducting classroom observations pursuant to the TPA process. He conducted classroom observations on December 16, 20, 21, and 22, 2010, but did not attend all of the Grievor's classes on each day. The classes that he would be attending were agreed upon at the pre-observation meeting. The Grievor did not object to the number of classes that he proposed to observe, but did express some concern to Mr. Marsden that students would tend to be more rambunctious than normal in those days leading up to Christmas. However, he acquiesced in having the observations scheduled for those dates. During his testimony, he acknowledged that "every day is a teaching day", but went on to testify that "different circumstances dictate different techniques", noting by way of example that a teacher would not begin a new unit a day or two before Christmas, and would more likely wrap up a unit at that time of year.

23 Mr. Marsden observed nine of the Grievor's classes over that period of four days, and took detailed notes of his observations. While observing those classes, he also reviewed some of the students' notebooks and found that they

contained no reflective feedback. He did not attend any of the Grievor's classes on December 17, 2010, because the Grievor was absent that day due to sickness. However, in following up on a parent's concern, Mr. Marsden did review the notebook of one of the Grievor's students that day and found that it also contained no reflective feedback.

24 The post-observation meeting took place on December 23, 2010. At that meeting, Mr. Marsden told the Grievor that he had concerns about what he had seen in his classroom, but did not specify what they were nor advise the Grievor what his rating was going to be, because he had not yet drafted a summative report. He subsequently did so and delivered it to the Grievor, along with an Explanation of Rating Form and a draft improvement plan, on January 20, 2011. Also in attendance at that meeting were Peter Carroll, who was the President of OSSTF District 15 at that time, and Bruce Barrett, a Superintendent responsible for a total of fifteen of the Board's schools, including HHSS. Prior to becoming a Superintendent, Mr. Barrett was an experienced teacher, vice-principal, and principal.

25 The Summative Report identified the classes that Mr. Marsden attended as part of his overall evaluation of the Grievor, and also listed the ten items from the aforementioned template as "Other Additional Input". The Report found the Grievor's performance to be unsatisfactory in respect of each of the sixteen competencies, and included detailed information regarding his deficiencies. In the section of the report titled "Overall Rating of Teacher's Performance", Mr. Marsden wrote:

Mr. Tait has not met the expectations outlined in his Summative Report Form for Experienced Teachers evaluation. The main areas of concern are: a) focused and detailed daily lesson plans, b) implementing and working toward the implementation of the 3-part lesson planning, c) incorporating the "Design Down" method of instructional planning to provide scope and sequence to your lessons, d) focused and purposeful time on task for students with accountable and intentional learning outcomes, including strategies of chunking and fewer large assignments with unstructured work periods, e) more appropriate and rigorous test expectations for all your classes, especially including higher-order thinking response questions, f) lack of tracking late assignments and utilization of our school's late assignment policy including the support of our Student Success room, g) not following school's and Ministry expectation for learning skill tracking, and h) collaboration with other professional colleagues (primary your Department Head and school support staff, including the Student Success teacher) to improve your professional knowledge and professional practice.

26 The Summative Report also contained a number of specific suggestions regarding things that the Grievor could do to improve his performance, including providing students with a "hand-out" of the materials used in his power-point presentation to assist them in following along with and deciphering the information contained in the numerous hard to read slides that Mr. Tait used in a presentation that Mr. Marsden observed; navigating the classroom on a more frequent basis to assist learners in practicing new skills and to monitor student activities, instead of sitting at his desk for extended periods of time; displaying assignment exemplars that have been reviewed (with reflective feedback) to support student learning and achievement; recording reflective feedback in student notebooks to provide students with valuable input on their learning and information for next steps in helping them improve their craft; providing students with written response opportunities on tests by incorporating more higher-order thinking, communication, and application based questions with opportunities for students to apply their writing skills in short answer, long answer, opinion and essay-style format questions, instead of using "black-line masters"; handing in exams on time for review by his Department Head and responding to inquiries from members of the School's support team in a timely fashion; providing students with written constructive criticism as part of the evaluation process; using summative assignments and not formative tasks such as Chapter questions to generate course marks; chunking large assignments into small units so students could more manageably complete those segments; and recording on his blackboard due dates for assignments.

27 Explanations of how his performance was lacking in each of the domains were also provided to the Grievor through an Explanation of Rating Form, which set forth thirty-one expectations, including "Create organized, daily lesson plans to be submitted weekly, incorporating and working toward 3-part lesson planning"; "Use a variety of assessment strategies and instruments to make short term and long range decisions to improve student learning"; "Organize subject matter into meaningful lessons and not simply work periods"; "Track all home communications"; "Teacher must remain

in the classroom unless released by another staff member"; "Follow the school departmental templates for courses"; and "Follow the school departmental templates for final exams".

28 The improvement plan developed by Mr. Marsden with input from the Grievor, Mr. Carroll, and Mr. Barrett, listed the sixteen competencies requiring improvement, and set out the following "Expectations":

It is my expectation that Mr. Tait, with the assistance of the targeted support identified below, will follow the steps and actions to improve long range and short term planning, which will include modified instruction and materials and a teacher reflection component following his formal daily lesson plan. He will create and use a variety of appropriate assessment and evaluation practices, and provide ongoing and appropriate feedback and communication to students and parents, and track relevant assessment and learning skills data.

29 The improvement plan also listed the following "Steps and Actions for Improvement":

Long range and short term planning

- * Create daily lesson plans that include the key learning expectations, the steps to be followed (including utilization of 3-part lesson planning as an evolving process - see template provided), the resources that will be used, and the targeted assessment that is linked to the learning.
- * Ensure the planning is detailed and complete, and organized following from one day to the next.
- * Utilize the "Design Down" method of instructional planning to provide scope and sequence to your lessons.
- * Indicate how you will use differentiated instruction to support the needs of students outlined in their IEP.
- * Add and complete a reflection section to your lesson plan to help you articulate what worked in your lesson and what areas require modification to improve your future instructional practices.
- * Follow the school's Modern Language Department's between different sections of the same course.

Appropriate and variety of assessment and evaluation practices

- * Align assessment strategies with learning objectives.
- * Use a variety of diagnostic, formative and summative activities, assignments and assessments to make both short term and long range decisions to improve student learning.
- * Include more appropriate and rigorous test expectations (no more "black-line" masters) for all your classes, especially formal written and essay format response questions.
- * Modify programs and assessments to fit student needs using their IEP as a framework.
- * Follow the school's Modern Language Department's template for final exams to ensure consistency between different sections of the course.
- * Ensure that assignments used to generate students marks are summative in nature, rather than formative.
- * Use consistently high failure rates and consistently low course medians as a source of teacher reflectivity and modify teaching and evaluation practices to achieve more satisfactory failure rates and course medians.

Ongoing and appropriate feedback and communication to students and parents

- * Use a variety of appropriate assessment and evaluation techniques to support student learning.

- * Use reflective feedback on all assignments for student engagement and improved learning expectations.
- * Track and record learning skills for all your students and reporting and communication purposes.
- * Due date and feedback timelines to students must be implemented so students and parents know of progress being made in all courses.
- * Collaboration with the school, with the student and the parents will help establish a cooperative learning environment.

Tracking relevant assessment and learning skills data

- * All student assessments must be tracked and recorded for future reference when completing assessment records and documentation.
- * Provide students an exemplar (including formative reflective feedback) of the expected work to be completed for assessment.
- * Give reflective feedback to students and parents on assignments in a timely fashion.
- * Follow the school's late assignment policy and utilize the support of our school's Student Success room.

30 In the "Support" section of the improvement plan, Mr. Marsden indicated that the Grievor should read "*Failure is NOT an Option - Six Principles That Guide Student Achievement in High Performing Schools*", and "*How to Give Effective Feedback to your Students*", to obtain textual assistance to help guide him on his path forward. He provided those two books to Mr. Tait on February 14, 2011. The first book was selected because it was felt that it would resonate with the Grievor in view of his experience as a coach. Mr. Carroll was of the view that requiring the Grievor to read two books was not unreasonable. He testified that professional reading is important for the professional growth of a teacher, and that the idea of doing it as part of an improvement plan was quite acceptable. He also indicated that he had previously seen improvement plans with four or five readings listed, and that in such cases the Federation would attempt to get an indication of the most important chapters, or to get one or two of the readings eliminated.

31 The support section of the improvement plan also included the following information regarding internal and external support persons from whom the Grievor could obtain collegial support:

1. **Internal** - Darrell Dobson, Head of Languages will share his time and experience with Mr Tait in the areas of professional practice and knowledge of curriculum. Mr Dobson will meet with Mr Tait and visit his classroom at mutually agreed upon times (3 times before his next TPA). Mr Tait will also make classroom visits (3 times before his next TPA) to observe Ms Andress, history teacher, who models the areas of improvement listed in the chart and who also teaches similar students. These arrangements will be made in consultation with Mr Marsden and Mr Dobson.
2. **Internal** - Mr Tait should also organize time to meet with Amy Klose, Math Dept Head to expand and organize expectations into his 3-part lesson plan preparations, as well as time to reflect on the lessons delivered to his students.
3. **Internal** - Mr Tait will meet with Mr Griffith, Head of Special Education, who will provide assistance around accommodations and modifications for identified students.
4. **Internal** - Mr Tait will meet with Ms Hutson, Student Success Teacher, who will provide assistance around ensuring success for at-risk students.
5. **External** - Mr Tait will contact and meet with TLDSB Curriculum Consultant Ann Varty to investigate appropriate and focused lesson planning and organization for improved effective professional and instructional teaching practices.

6. **External** - OSSTF could also provide opportunities for workshops (i.e. differentiated instruction, classroom management, planning, assessment and evaluation).

7. Walkthroughs by the Principal will still take place for classroom observations of improved teaching performance and lesson preparation.

These working relationships should be in place by the end of February of 2011.

32 Although Mr. Carroll testified that the Federation generally had a concern about members being involved in any way in the evaluation of other members, he also indicated that he recognized that the Board had a limited number of people who could provide support in the improvement plan process and consequently accepted that in this case it would have to be members who were involved in the process. He also had a concern about the number of support persons included in the improvement plan, as he was of the view that focused advice from a few people would be more helpful than getting different advice from a large number of people. However, he recognized that the designated support persons were busy individuals and testified that in the end, the five individuals were accepted due to the concern that each of them would have a limited amount of time available to assist the Grievor.

33 Mr. Marsden advised each of the support persons that they were part of the improvement plan, and that Mr. Tait would be contacting them to obtain assistance. They were not provided with a copy of the improvement plan, which was a private document containing information that a teacher might well not want to be provided to his peers. It was open to Mr. Tait to share part or all of that document with his support persons to assist them in understanding the improvements that he needed to make, but he only did so to a very limited extent.

34 The support section of the improvement plan also specified that the "following organizational professional practices must also be completed":

1. Weekly outlines for all his classes will be submitted each Monday before classes start to the Principal. Daily lesson plans are to be developed to support the key learning expectations for each class using the template provided or an alternative template approved by the Principal.

2. Monitoring meetings will also take place between the teacher, and the Principal and Superintendent every 3 weeks to allow for teacher reflection.

[Dates for those monitoring meetings and the topics to be covered at them were also specified in that section of the improvement plan.]

35 The improvement plan also listed 21 "Sample Indicators of Success", such as "Daily 3-part lesson planning that is focused and sequential and linking assessment to learning", "Evidence that the school's department course template is being followed", "All future tests will have formal writing expectations including essay response questions that are vetted through his Languages Department Head", "Marks for reports will be generated by summative, not formative, assignments", "Assignment due dates will be posted in the classroom for student support and tracking", and "Learning Skills will be formally tracked and recorded by the teacher for reporting purposes, and student and parent updates".

36 To assist the Grievor in taking the steps and actions set out in the improvement plan, Mr. Marsden provided him with a "Learning Skills and Work Habits Tracking Sheet" template, a "Weekly Outline" template, and a "Three Part Lesson Planning" template. He also provided Mr. Tait with a "Log of Teaching Practice", which is an optional resource appended to the Technical Requirements Manual that may be used to record noteworthy instances related to the various competencies. That Log also includes ninety examples (referred to in the evidence as "look fors") of possible ways in which the competencies can be shown in practice, such as the following six examples of what the "Teachers demonstrate commitment to well-being and development of all pupils" competency "may look like in practice":

- * applies knowledge of how pupils develop and learn physically, socially, and cognitively

- * responds to learning exceptionalities and special needs by modifying assessment processes to ensure the special needs of pupils are met
- * shapes instruction so that it is helpful to pupils who learn in a variety of ways
- * effectively motivates pupils to improve pupil learning
- * demonstrates a positive rapport with students

37 It is clear from the totality of the evidence that lesson planning is an essential part of a teacher's professional responsibilities. Mr. Barrett described lesson plans as the "bread and butter" of every teacher, and noted that lesson planning is "taught from day one at teachers' college". Mr. Carroll also testified that lesson planning is a very important part of the work of a secondary school teacher, and that they spend a lot of time doing it. The evidence also indicates that lesson plans have for many years consisted of three parts, which have been variously described by terminology such as "hook, teach, and takeaway"; "introduction, body, and conclusion"; and "beginning, middle, and end". The terminology used for those three parts in the more formalized version of three part lesson planning referred to in the improvement plan is "minds on", "action", and "consolidation". The "minds on" portion of the lesson uses various activities to guide students to review their prior knowledge and prepares them to make connections with new ideas and concepts. It also allows them to focus their attention and begin to engage in learning. The bulk of the lesson consists of the "action" component, where learning takes place through a variety of teaching techniques and a variety of forms of student involvement. The "consolidation" component is the "wrap up" activity at the end of the lesson, which enables the teacher to gauge the students' understanding of what has been taught during the class.

38 That three part lesson format had been used in the School's math department since 2002, but its use was being expanded into other departments in the 2009-2010 school year. In a student success inventory summary report distributed by Mr. Brohman to all of the School's teaching staff in December of 2009, "Use of the three part lesson structure to deliver classroom instruction" was identified as an area requiring improvement. School-wide professional development in three part lesson planning was provided in March of 2010. "Three Part Lesson" was one of the "Look for's" listed by Mr. Brohman in a memorandum to staff members, including Mr. Tait, regarding the April 21, 2010, student success inventory post observation day. Daily lesson plan binders and the "Three Part Lesson Planning" template that Mr. Marsden had developed during his previous principalship were also included in the materials provided to the School's staff at their September PA Day for the 2010-2011 school year. As indicated above, "Three-part lesson" was also one of the items that Mr. Marsden was specifically looking for during his classroom walk throughs, as indicated on the "HHSS 'walk through' communication update" forms through which he provided feedback to teachers regarding what had been observed.

39 The Grievor acknowledged during his evidence that Mr. Marsden presented the idea of three part lesson plans on the professional development day that was held at the beginning of the 2010-2011 school year, but testified that it was his understanding that this was something that staff members were going to work towards, so that at some future date they would all be doing three part lesson plans. However, that evidence is inconsistent with the testimony of Mr. Marsden, who indicated that the expectation was not that it was "something to work towards; the expectation was to implement it", Moreover, there is no evidence that Mr. Tait did anything to "work towards" using three part lesson plans prior to the commencement of the TPA process, and it was his evidence that it was "probably not until the first improvement plan" that he "started to shift to this new way of doing things".

40 The above-quoted section of the improvement plan specifying the organizational professional practices that Mr. Tait was required to complete gave him the option of using either the aforementioned template provided by Mr. Marsden or an alternative template approved by him. The Grievor used the provided template, and did not seek approval for an alternative template.

41 Although he was dismissive of the Board's move to the three part lesson plan and template as a specific model of lesson planning (referring to it rather sarcastically as a "pretty document" and a "wonderful document that the Board

wanted"), Mr. Carroll also indicated that what he described as the "heavy workload" involved in providing fifteen written lesson plans per week to the Principal was acceptable, provided that the Grievor was getting a lot of valuable feedback. However, he was of the view that the Grievor did not receive adequate feedback regarding those lessons plans.

42 As indicated above, the improvement plan named five individuals as collegial support persons for the Grievor. The first support person named in the plan was Dr. Dobson. He had been one of Mr. Tait's colleagues for a number of years and described Mr. Tait as a "nice guy" whom he had always liked. Although they were never friends, they were friendly to one another before Dr. Dobson became the department head. However, as indicated above, after Dr. Dobson became department head, some issues arose between them because that position required him to provide feedback to Mr. Tait regarding concerns such as Mr. Tait's failure to provide him with drafts of final summative assessments and final exams in a timely manner, and the ongoing problem of high failure rates and low medians in Mr. Tait's classes. The strain which those concerns placed on their relationship was exacerbated by the fact that the Grievor "did not appreciate his approach to running the department". In describing that approach, the Grievor testified that Dr. Dobson was "much more of a direct individual" than his predecessor, whose approach to running the department had been more "congenial" and "laid back". He further testified that Dr. Dobson "had certain ideas about the directions things should go, and wasn't shy about seeing that those things happened".

43 Mr. Tait testified that when he approached Dr. Dobson about what he had been "ordered" to do by the improvement plan, Dr. Dobson "kept putting [him] off". However, the reliability of that testimony evidence is open to question in that it was not put to Dr. Dobson during the course of his testimony (because Federation counsel had not previously been told about it). It is also inconsistent with the testimony given by Dr. Dobson, who indicated that he was quite confident that he had advised the Grievor that he was welcome to come to his class at a time that worked for the Grievor. In his testimony regarding whose responsibility it was to make those arrangements, Dr. Dobson also indicated that he did not "make Brad pull out his day organizer and do so", because it was not his TPA and was therefore not his responsibility.

44 At the improvement plan meeting on March 23, 2011, the Grievor stated that Dr. Dobson was vetting his tests and assignments before he gave them to his students, but also indicated that he was not helping him. When Mr. Marsden brought up at the May 9, 2011 improvement plan meeting that Mr. Tait did not appear to be using Dr. Dobson as a resource, Mr. Tait stated that he had sent a media assignment to Dr. Dobson in April but had not received a reply. When Mr. Marsden raised that matter with Dr. Dobson, he immediately sent the following email to Mr. Tait:

Hi Brad,

Dan just spoke to me about the media test(s) and assignments that you sent to me for feedback. I want to apologize for not getting back to you. I remember seeing that they had arrived and thinking that I would get to it when I finished something I was working on at the time (likely a set of marking) but way must have led to way, and I didn't get back to it, and I am sorry I missed that.

I want to assure you that I am willing to provide feedback on course work, formatives, summatives - any aspect of the courses. And if I don't respond on a timeline that meets your needs, feel free to send another message or stop by in person - any delay on my part is only due to busy-ness.

Darrell

45 When it was put to Dr. Dobson in cross-examination that the Grievor found him to be unapproachable as a support person because of his demeanour and attitude towards him, Dr. Dobson stated: "That's on him. I've always offered to help. I continued to be friendly and willing to meet. Perhaps he was feeling frustration, and chose to personalize a professional situation as an excuse for being unwilling or unable to provide work at a level that his Principal was expecting to demonstrate professional competence."

46 Ms. Varty was a curriculum consultant employed by the Board, but was also contracted from the Board by the Ministry of Education as a Provincial Literacy Coach. Her office was in a building located next to the School. On February 28, 2011, Mr. Tait initiated contact with her by sending her the following email:

As part of my Improvement Plan, I have been ordered to meet with you "to investigate appropriate and focused lesson planning and organization for improved and effective professional and instructional teaching practices."

My prep period this week is Period 3 (immediately after lunch). Are you available on Wednesday for a preliminary meeting?

47 Ms. Varty confirmed her availability and met with the Grievor at the requested time in his classroom. She suggested that he do something right away to show that he was taking the process seriously and moving forward immediately to avoid getting another unsatisfactory rating. She advised him that the first thing he should do was use his classroom walls to reflect that there was learning going on in it; she suggested that he post interactive word walls, anchor charts, and examples of student work, as had been done in a model classroom set up at the School and in other classrooms.

48 Ms. Varty also asked to see the students' notebooks because they would provide a record of what was going on in the classroom, but Mr. Tait told her that he did not have any to show her because he did not monitor students' notebooks. She then suggested that he begin to build evidence of his classroom instruction through student notebooks for supporting student learning. She also suggested that he read one of the recommended books and submit a summary of it to Mr. Marsden right away. She also looked at one of his summative assessments and indicated that it did not link to expectations in the curriculum, and that his rubric was based on old achievement chart categories and not on the revised curriculum. Mr. Tait was visibly upset by her suggestions, and gave Ms. Varty no indication that he planned to adopt them.

49 On March 2, 2011, Mr. Tait emailed to Ms. Varty a rubric, a test, and some assignments, and indicated that "[a]ny suggestions/changes/edits would be greatly appreciated". He also emailed her some additional materials on the following day. Ms. Varty responded through the following email on March 4, 2011:

Hi Brad

Attached is an example of how your assignments can be altered to reflect the curriculum expectations. I have also changed the rubric and included a student checklist that links to the rubric.

I have noted under each assignment the support that would be needed in order for each to be completed.

I have looked at the other work you sent and in all cases I would suggest that you attach overall and specific expectations. Make sure that you are assessing the Oral Communications strand.

In looking at the assignments in many cases you are assessing things that are not expectations. Also peer evaluation cannot be included in summative assessments.

Keep in touch

Ann

50 In commenting on that aspect of the assistance that Ms. Varty provided to the Grievor, Mr. Barrett noted that she had gone into the curriculum document and tied the overall expectation to the specific expectations, which he described as "an enormous amount of work for her to be doing".

51 Ms. Varty did not hear from the Grievor again until March 29, 2011, when he emailed her to advise that he had attended an improvement plan meeting on March 23rd, and that he needed "to do a design down unit which

hopefully employs lots of student-centred activities". Since Ms. Varty was not available the following week, she arranged to meet with him on the afternoon of April 11th. She also raised the possibility of using an alternate contact with earlier availability, but Mr. Tait did not pursue that. They did not do a design down unit when they met on April 11th because Mr. Tait did not bring the necessary materials to that meeting, and because he indicated that he needed to do a short story unit instead. Consequently, they worked together to create a short story template on her computer in order to do what the Grievor indicated he needed to get done. Ms. Varty had set aside the whole afternoon for that meeting as requested by the Grievor, but he left early, stating that he had to get back to school. After he left, she emailed that template to him along with another one that had been created that day.

52 Although Ms. Varty had advised the Grievor to call her if he needed additional assistance, she did not hear from him again during remainder of that school year, nor during the fall of 2011. She did not follow up with him to see how he was progressing nor seek to initiate another meeting with him, because it was neither her job nor her place to do so. In explaining why it was not her responsibility to follow up with the Grievor, Ms. Varty testified that when teachers get an unsatisfactory rating, they "own it" and have to figure out whatever they have to do so that the next one is not unsatisfactory. The Grievor's explanation for not seeking any additional assistance from Ms. Varty was that he found it more helpful to work with Ms. Klose and later with her replacement, Martin Gage, because they were more accessible and easier to contact.

53 The Grievor and Ms. Klose had been friends and colleagues for many years. The evidence indicates that he made extensive use of her as a resource and that they had a reciprocal relationship in which he worked actively with her on improvement suggestions. They met several times during Mr. Tait's preparation period and after school hours, and also had several shorter conversations. She provided him with valuable assistance regarding three part lesson plans and student engagement during the period between his first two performance appraisals. She also stopped by his classroom on March 2, 2011, to offer assistance with his use of a technique that they had developed together.

54 Mr. Tait also met with Bruce Griffith to discuss the IEP accommodation requirements of the identified students in his classes. However, this did not occur at the beginning of the semester, when Mr. Tait was expected to meet with him to get to know their needs; it only occurred after he was prompted to do so at an improvement plan meeting.

55 After receiving the improvement plan, the Grievor met with Kathy Hutson to discuss students in his classes who could benefit from the student success room. They went through a class profile list and he made notes of their conversation on that list. He also referred students to that room to work on late assignments. However, the manner in which he did so was a matter of concern. He often sent them there without providing Ms. Hutson with any specific direction. She also had concerns about the number of students he was referring and the timing of those referrals. For example, in May of 2011, he sent her late assignment referral sheets for his ENG3C classes, listing numerous students from each of those classes. Mr. Hutson testified that this was definitely a concern because "almost half the class had an assignment late in one class and a little bit more in the second one". In elaborating on her concern, she also gave the following testimony:

Why are all these assignments late, as opposed to putting things into effect in the classroom to avoid that: checkpoints with the assignment, chunking, conferencing with the students? Why so many students with a late assignment due all at once instead of putting things in place along the way.....

56 Although Mr. Tait did not make three classroom visits to observe Ms. Andress as stipulated in the improvement plan, after the first improvement plan meeting he did arrange to observe her twice. In addition to meeting with the support persons identified in the improvement plan, Mr. Tait also met with Oona Durkin-Thomas, as recommended by Ms. Andress, to obtain information about student-centred activities and to discuss strategies for their implementation.

57 Improvement plan meetings were held on February 23, March 23, and April 18, 2011. At those meetings Mr. Marsden and Mr. Barrett discussed with the Grievor and Mr. Carroll the steps that the Grievor was taking pursuant to the improvement plan, and attempted to assist him by making requests for additional items, such as student notebooks

and such other forms of student product as he might choose to provide. They also made specific suggestions to him, such as recommending that he use exit cards for evidence of reflection, that he use smaller groups, that he choose a few strategies with a view to perfecting them, and that he write succinct learning goals on the blackboard, such as one that Mr. Barrett provided to him by way of example. Mr. Marsden expressed concern that although he was providing feedback to the Grievor regarding his lesson plans, he was not seeing any changes in the lesson plans that the Grievor was submitting. He also expressed concern that what was happening in the Grievor's classes differed from his lesson plans. At those meetings, Mr. Marsden and Mr. Barrett also identified other concerns and made suggestions regarding how the Grievor might do things differently.

58 Since the Grievor was still not preparing adequate lesson plans by April of 2011, at the April 18th improvement plan meeting Mr. Barrett spent a considerable amount of time discussing learning goals, minds on, and consolidation strategies. Following that meeting, Mr. Tait attempted to incorporate those suggestions into a reworked lesson plan and sent it to Mr. Barrett on April 19th with an email requesting him to comment on whether or not he had succeeded, in any degree, with incorporating Mr. Barrett's advice. Mr. Barrett's emailed response to that request was: "I appreciate you sending me this work, but please send it to Dan as the lead in the improvement process". Since the Grievor was frustrated with that response, he replied: "Of course I have submitted it as today's lesson plan. I was just hoping that you could comment on the specific areas that you suggested for improvement to see if I'm getting it, on the way to getting it, etc." In explaining why he sent the Grievor back to Mr. Marsden rather than commenting on the reworked lesson plan himself, Mr. Barrett testified (in cross-examination) that "at this stage of the process, this was nothing more than like a child who doesn't like the response from one parent, so will go to the other". When Federation counsel then suggested to Mr. Barrett that he had just compared Mr. Tait to a child, Mr. Barrett stated: "No, I'm suggesting that behaviour - I don't like what one person is saying, I'll ask someone else - is like a child's".

59 Mr. Barrett testified that he provided the Grievor with oral feedback on that lesson plan, but was uncertain when that occurred. During cross-examination in January of 2017, he initially suggested that it was at the next improvement plan meeting, but the next improvement plan meeting after the one held on April 18, 2011, did not take place until the following September. When he was asked later that day if he ever gave Mr. Tait feedback on that lesson plan prior to the May observations, he replied, "Yes, I believe I did", and responded to the question of when by stating "in the pre-observation meeting, I guess". However, when it was pointed out to him that Mr. Carroll's notes of the pre-observation meeting did not record him as having been present, he acknowledged that he could not have given him any feedback at that meeting because he was not present. During continuation of his cross-examination in April of 2017, it became apparent that the discussion of the lesson plan that he had in mind when answering those earlier questions was the discussion that had taken place at the April 18th improvement plan meeting.

60 During the period covered by that improvement plan, Mr. Marsden conducted "walk throughs" on seventeen days, through which he viewed brief portions of twenty-two of the Grievor's classes. He provided the Grievor with feedback regarding what he observed via "walk through" communication update" forms and via comments made at improvement plan meetings.

61 The pre-observation meeting for the second TPA appraisal was held on May 3, 2011, as scheduled at the April 18, 2011 improvement plan meeting. The second set of observations were also scheduled for May 4, 5, and 6, 2011, at that improvement plan meeting, without objection. However, at the pre-observation meeting, Mr. Carroll asked why the observations were being held three days in a row, to which Mr. Marsden responded that he wanted to see the continuity of instruction for three days. When Mr. Marsden noted that the lesson plan for one of the classes included fifteen minutes of quiet reading, and indicated that he would rather watch Mr. Tait than watch students read, Mr. Tait voiced opposition to having to change his lesson plan with only twenty-four hours' notice. Mr. Marsden then agreed to live with the lessons that Mr. Tait had prepared. They also discussed what students would be learning, how Mr. Tait's lesson plans would support that learning, how students would know that they had achieved that learning, and what diagnostic, formative, and summative pieces would be used to provide feedback to support students' learning growth in the poetry unit that was commencing that week. They also discussed the identified students in Mr. Tait's classes.

62 The classroom observations were conducted as scheduled on May 4, 5, and 6. A post-observation meeting was held on May 9, 2011, at which Mr. Marsden raised several serious concerns about what he had observed, including classroom management issues (such as inconsistencies in Mr. Tait's reaction to students "blurting out", lack of student engagement (with one student sleeping, another student reading, and a third student doing nothing), classtime not being used in a focused manner, lack of timely return of assignments, Mr. Tait's failure to complete one of the lessons that he had planned to teach, and his failure to navigate the classroom. He also told Mr. Tait that his rating was again going to be unsatisfactory. During that meeting, Mr. Tait expressed concern that the improvement plan that was supposed to promote growth and improvement now appeared to be a plan to promote perfection.

63 On May 25, 2011, Mr. Marsden sent Mr. Carroll an email stating:

I have finished drafting the summative report for Brad Tait's TPA.

Brad Tait's TPA is an unsatisfactory rating.

I will share this info at our mtg on May 27 at 10:15 a.m.

I will also let Brad know this info today.

64 Mr. Marsden provided that information to Mr. Tait by meeting with him at the end of that school day. The Grievor also spoke that day with Mr. Carroll, who advised him that he would be "on review" as a result of that second unsatisfactory rating, that he would have a period of between 80 and 120 school days to improve, and that the process would be basically the same, except that his third appraisal would be done by a supervisory officer. Mr. Carroll also discussed student learning strategies with Mr. Tait, and provided him with advice echoing what the Grievor had been told by Mr. Marsden and Mr. Barrett.

65 Mr. Carroll had previously been copied on letters from other Board superintendents advising other teachers that their status was "on review", as a result of having received two consecutive unsatisfactory appraisals. Mr. Carroll's awareness of that requirement is also evidenced by the fact that when he told Mr. Tait on May 25, 2011, that he would be "on review" as a result of the second unsatisfactory rating, he also told him that he would receive an "official letter".

66 At the May 27, 2011 meeting, Mr. Marsden advised the Grievor (in the presence of Mr. Barrett and Mr. Carroll) that he was officially "on review" and that he would be going through another TPA. He also delivered the Summative Report, Explanation of Rating Form, and a draft improvement plan.

67 In accordance with his usual practice, Mr. Barrett followed up with the Grievor a day or two later to verbally confirm that he was "on review". He testified that he had followed that practice not only as a superintendent, but also when he was a principal, because he felt it was more humane than following up with a heavy-handed letter.

68 At the May 27, 2011 meeting, there was also a discussion of what courses the Grievor would be assigned to teach in the following academic year, with input from the Grievor regarding his preferences. The Summative Report that Mr. Marsden delivered to the Grievor at that meeting again found the Grievor's performance to be unsatisfactory in respect of each of the sixteen competencies. It set out detailed information regarding the many observed deficiencies, with numerous specific examples. In the section of the report titled "Overall Rating of Teacher's Performance", Mr. Marsden wrote:

Mr. Tait has not met the expectations outlined in his Summative Report Form for Experienced Teachers evaluation. The main areas of concern continue to be:

- a) focused, organized and detailed daily lesson plans,

- b) utilization and implementation of the 3-part lesson planning incorporating the "Design Down" method of instructional planning to provide scope and sequence to your lessons and assessment planning including both formative and summative assignments,
- c) focused and purposeful time on task for students with accountable and intentional learning goals, including strategies of chunking assignments into smaller pieces to meet established and recorded due dates,
- d) more appropriate and rigorous test expectations for all your classes, especially including formal written summary, opinion or essay-style formatted response questions,
- e) lack of tracking late assignments and utilization of our school's late assignment policy including the support of our Student Success room,
- f) not following school's and Ministry expectation for regularly scheduled learning skill tracking,
- g) detailed and confirmed tracking of home communication in an up to date log,
- h) collaboration with other professional colleagues (primarily your Department Head, assigned peer support through the Improvement Plan, and school support staff, including the Student Success teacher) to improve your professional knowledge and professional practice,
- i) reflection geared to learning goals established for each lesson and
- j) linking grammar to each unit of study and threading these lesson plans to the learning goals expectation.

69 The Explanation of Rating Form which Mr. Marsden delivered to the Grievor at that meeting listed 28 expectations, most of which were substantially similar to those contained in the previous Explanation of Rating Form, because many of Mr. Marsden's concerns remained the same. The draft improvement plan provided to the Grievor at that meeting set out the following expectations:

It is my expectation that Mr. Tait, with the assistance of the targeted support identified below, will follow the steps and actions to improve long range and short term planning, which will include focused, organized, detailed and sequential lesson planning, instructions and materials as well as a teacher reflection component following his formal daily lesson plan. Mr. Tait will create and use a variety of appropriate diagnostic, summative, and especially formative assessment and evaluation practices. Mr. Tait will provide ongoing and appropriate feedback on all diagnostic and formative assessments and communicate all academic concerns to students and parents in a timely fashion, as well as marking all assessments in a timely fashion. Mr. Tait will track all relevant assessment and learning skills data, utilizing the school / student support structures to help all students find academic success whenever a student is in jeopardy of failing the assignment or the course.

70 The draft improvement plan also listed steps and actions for improvement. Many of those were substantially similar to those contained in his first improvement plan, but some were modified or added to reflect additional concerns that had arisen during the second phase of the TPS process. For example, the lesson plan requirements included:

- * Create focused, organized, and detailed daily lesson plans that include the learning goal and key learning expectations, the steps to be followed (including utilization of 3-part lesson planning), the resources that will be used, and the targeted assessment that is linked to the learning.
- * Daily lesson plans will be submitted weekly - every Monday before classes start for that week

The new or modified requirements also included:

- * Ensure that course materials are kept separate for each course...

- * Align assessment strategies with learning objectives and post assignments, rubrics and exemplars in class.
- * Ensure that summative assignments in each course match all Language Department expectations.
- * Use a variety of appropriate assessment and evaluation techniques to support student learning, especially utilizing diagnostic and formative assessments.
- * All summative assessments must have formative assessment to allow for student learning to take place.

71 In the support section of the improvement plan, Mr. Marsden indicated that the Grievor should read chapters 1 and 3 to 8 inclusive of *Talk About Assessment - High School Strategies and Tools*, as well *How to Give Effective Feedback to your Students*, which was also the second reading listed in his first improvement plan. That section also listed the same internal and external support persons as those named in his first improvement plan, with the addition of Paul Longo as one of the teachers whose classes he was to visit three times before his next TPA, and the substitution of Carrie Pilgrim (and later Amy Klose) for Ann Varty. It further indicated that walk throughs by the principal would still take place for classroom observation of improved teaching performance and lesson preparation.

72 The draft improvement plan also listed 28 "Sample Indicators of Success". Many of them were similar or identical to those listed in his first improvement plan, but there were also some additions and refinements, such as "Detailed and up to date weekly long-range plans for each class outlining differentiated instruction practices submitted every Monday", "Long range plans for course delineating units and timing for assessments"; "Align assessment strategies with learning objectives, and have posted assignments, rubrics and exemplars in each class for each unit of each course"; "All rubrics will have a mark breakdown so students know assignment and assessment expectations"; "Differentiated instruction practices will be utilized in all assessment and evaluation practices"; "Summative Assignment expectations will follow the Language Department template (later changed to "Language Department outline"); "Formative assessment assignments with reflective feedback will be completed prior to all summative assignment assessments"; "Regular report updates to students and their parents are to be recorded by the teacher"; and "Utilization of the school / student support structure (Student Success - Room 6) must be initiated in an effective manner to promote student achievement".

73 Their next meeting was held on June 17, 2011. Mr. Barrett called that meeting to see the exams that the Grievor had prepared for his classes, to discuss his improvement plan, and to set the stage for what the Grievor was going to do over the summer. The Grievor's timetable for the following school year was finalized at that meeting. For the first semester of that school year, the Grievor was given the option of either teaching three courses that he had recently taught, or one course that he had just finished teaching (ENG3C) plus two courses of ENG2P, which he had previously taught for several years between 2002 and 2009. Although he had some reservations about teaching a course that he had not taught in the previous three years, in order to avoid having three preparations in that first semester he opted to teach ENG3C and two courses of ENG2P, so as to have only two preparations during that semester.

74 Ongoing problems with the Grievor's lesson plans were discussed at that meeting, along with the fact that some of the Grievor's students still had assignments outstanding, despite the fact that exams were going to begin the next week. While commenting on those and other deficiencies, Mr. Barrett asked the Grievor, "Do you understand what being on review means?", to which the Grievor responded in what Mr. Barrett described as a very sarcastic and enormously disrespectful way, "No, why don't you tell me?". Mr. Barrett then reviewed the history of what had already occurred in the Grievor's TPA process, described the future parts of that process and explained the consequences of getting another unsatisfactory rating, including dismissal with no bridging to retirement, and the requirement that it be reported to the College of Teachers. He also told him, "Brad, there are three other people in this room who are extending enormous amounts of time dedicated to helping you improve, but you're the only one in the process not working". He also referred to the "enormous supports and resources" that the Grievor "had at his disposal but was wilfully choosing not to engage with". They proceeded to discuss what a good lesson plan would look like, with Mr. Tait explaining the importance of teaching the structure of literature, and Mr. Barrett suggesting some alternative approaches to teaching it. They also

discussed the Grievor's professional plans for the summer. Suggestions made by Mr. Barrett included that the Grievor read the curriculum with particular attention to teacher prompts, contact Ms. Pilgrim to tell her specifically what help he required, connect with teachers of ENG2P at other schools, and attend summer programs with financial assistance from the Board.

75 The Grievor's improvement plan was finalised and signed at the next improvement plan meeting, which was held on September 20, 2011. The finalised version included some minor amendments, such as the substitution of Amy Klose for Carrie Pilgrim as one of his support persons due to the strong pre-existing professional relationship that he had with her, and the addition of the following sentence at the end of the section outlining his collegial supports: "These working relationships should be in place by the end of September of 2011." The finalised plan also indicated the Grievor's next performance appraisal would be held during the week of December 5 to 9, 2011.

76 At the September 20, 2011 meeting, they also discussed the summer programs that the Grievor had attended and had unfortunately not found to be as helpful as he had hoped they would be. Ongoing problems with his lesson plans were also discussed. Although the Grievor had been requested to bring "IEP Accommodation updates" to the meeting, he did not do so. This was very concerning to Mr. Barrett, who gave the following testimony about it:

[Accommodation of IEP students] is a legal obligation. We're over two weeks into the school year and he doesn't know his IEP students. He hasn't met with the department head. Brad had the highest qualification you can get in this Province for special education. To not know the IEP kids in his class is entirely unacceptable and it was an ongoing theme. ...

77 On the morning of October 5, 2011, the Grievor called Mr. Marsden to his ENG3C class because he was having problems with student behaviour. Later that day, Mr. Marsden emailed the following suggestions to the Grievor regarding classroom management:

Brad, see the following suggestions for your classroom mgmt for your ENG3C class after you invited me into your class today at approx 11:09.

1. The re-arrangement of your classroom I suggested to you on Sept 30 "reflection" feedback, ie: space out classroom - remove audio-visual equipment realigning rows.

2. A must is that you need to navigate the classroom. By arranging the desks so that the rows are wider and away from the back window/wall you will be able to move freely through the entire room.

ie: [BH] had his story under his back pack and was reclining way back and [MK] had his story under his coat and was laying down on his desk. I made them take their work out.

3. Have a seating plan that you have created -separate students of concern and have no one sitting at the end of rows unless you have made this decision.

4. Students need to put their hand up to contribute to the lesson materials / discussion, ie: avoid mass chatter about lots of stuff - pertinent or not?

5. Move students along who are trying to derail the lesson with "humorous" comments, ie: [TS's] "poking the tiger in the eyes" so that he could save his life?

6. Direct every students' attention to the other students' input so that all can benefit from their insight, especially when there is a teachable moment.

7. You need to set a more direct tone with the class and their actions of academic accountability and respect for the learning environment in your class.

Brad, please see me with any questions or concerns with the feed back I have given you.

[Student names have been anonymised in this quote to protect their privacy.]

78 Mr. Marsden responded to that request even though the person whom the Grievor should have called was the vice-principal. During his testimony, Mr. Marsden indicated that teachers should be able to manage the behaviour of their class, and that if a student is engaging in conduct that is not conducive to the learning process, the student should be sent to the office. He also testified that there was nothing new in that email that he had not previously communicated to the Grievor.

79 After noting that Mr. Marsden's response to the situation reinforced the level of his commitment to the TPA process in that he not only went to the classroom as requested but also followed up with a detailed list of suggestions to help remedy the problem, Mr. Barrett testified that the fact that Mr. Marsden was called to the class was a "huge concern":

Of the sixteen competencies classroom management is arguably the most profound because it doesn't matter one whit how much you know or how well you plan; if students won't abide by the norms you establish they won't respect you as a teacher and you can't teach. When you relinquish responsibility for your classroom you are on very very thin ground. You don't have to be seventeen years old like these students are to know when someone is relinquishing control. That's not a good thing....

80 The next improvement plan meeting was held on October 18, 2011. The first item on the agenda for that meeting was "collegial meeting dates, future dates, and new product as a result of this support". Mr. Barrett was disappointed to discover that the only classroom observation that Mr. Tait had made was one class taught by Ms. Address, in which she had shown her students a YouTube video to elicit reaction from them. As a result of observing that class, Mr. Tait had been looking for a video clip to show his class but had not yet found one that would be suitable. The only other support person that he had met with was Ms. Klose, with whom he had met on the previous day. Since the limited initiative that Mr. Tait had shown in attempting to set up additional contact with his support persons had not been fruitful, Mr. Barrett requested Mr. Marsden to make arrangements for the Grievor to meet with them.

81 Mr. Barrett was also disappointed to learn that the Grievor had elected to attend a Federation meeting rather than taking advantage of a professional development session given by Ms. Klose. He testified that he felt that this encapsulated where the Grievor's priorities were.

82 Other topics discussed at that improvement plan meeting were Mr. Tait's assessment and evaluation practices, lesson plans, and classroom management techniques. It was noted that his classroom walls were blank except for one anchor chart, with no rubrics or exemplars of student work on display. It was also noted that the 50% failure rate for a test that he had given to his ENG3C class was very high, even though the test was not very challenging. Mr. Tait indicated that he did not see how he could have designed the test differently, and noted that four of the students had not read the book on which it was based. Mr. Barrett pointed out that Mr. Tait had read three of the book's six chapters to his students, but that reading to them had not engaged their attention. Since it was evident that this technique had not worked, Mr. Barrett advised the Grievor that he needed to reflect on that experience and take corrective action. Mr. Marsden noted that students' essay results were not strong because there had been no design down for the assignment nor formative practice for each piece, which raised again the issue of the Grievor's failure to provide adequate feedback to students. Mr. Barrett advised Mr. Tait that those results indicated a weakness in using a collaborative approach to teach essay writing, and a need to reflect on the results and make changes. In his testimony, Mr. Barrett described those concepts as being rudimentary things that every teacher would know. Mr. Barrett was also dissatisfied with the limited knowledge that Mr. Tait had regarding his IEP students' needs, and the limited measures that he had adopted to accommodate those needs.

83 On October 21, 2011, Mr. Carroll sent the following letter to Mr. Barrett:

I am writing this letter to make clear the union's position that the improvement plan process and the actual plan put in place by the Board for Brad Tait are inappropriate in terms of supporting improvement for our member.

The major deficiency in the Improvement Plan is that it does not state clearly the standard of teaching performance that Mr. Tait must attain in order to gain a satisfactory rating during the next evaluation of his professional work as a teacher at Haliburton Highlands Secondary School. The Board has refused the union's request that clear standards for successful performance be outlined in the Improvement Plan.

No rubric or equivalent assessment instrument for each of the sixteen competencies stated as requiring improvement has been provided. Such an omission is quite strange since the employer insists that in student assessment, a rubric be provided to students with each summative assignment. The omission is also hard to understand since the rubrics requested should be the same rubrics used consistently by the Principal and Vice-Principal at Haliburton Highlands Secondary School in the performance appraisals of all teaching staff.

The following statements of expectation are inadequate.

"Mr. Tait will create and use a variety of appropriate diagnostic, summative and especially formative assessment and evaluation practices." Variety indicates more than one strategy should be used. However, it is unclear exactly how many strategies or methods will be required in order to demonstrate competence. The Board must identify how many strategies or methods will be required in order to demonstrate competence. The term "appropriate" is imprecise. The Board has not made clear what are "appropriate" practices; no exemplars have been presented by the evaluator during the meetings with the teacher and the teacher's union representative.

"Mr. Tait will communicate all academic concerns to students and parents in a timely fashion." Does this mean that a failure to communicate a single academic concern of minor importance to the success of one student will mean that the teacher is incompetent? The Board needs to identify the specific circumstances and the time requirements for Mr. Tait to inform students and parents in order to achieve a satisfactory rating performance.

"Mr. Tait will track all relevant assessment and learning skills data." The evaluator did not present any school tracking sheets which he had developed for the teaching staff to track the "relevant assessment and learning skills data".

"Mr. Tait ... utilizing the school/student support structures to help all students find academic success whenever a student is in jeopardy of failing the assignment or the course." [sic] Does this statement mean that if Mr. Tait fails to utilize one of the school's support structures in the case of one student being in jeopardy of failing a single assignment that his work will be judged unsatisfactory?

Mr. Tait is required by the Improvement Plan to submit daily lesson plans for each lesson taught in each of his three classes (15 lessons in a normal week). This might be considered by many as an excessive demand. However, the requirement lacks any justification as an improvement strategy if the evaluator does not provide feedback for each lesson. To the present time, the principal's feedback has consisted of unexplained check marks and questions for clarification. Useful feedback for Mr. Tait should indicate elements in the lesson planning that constitute improvement and areas of weakness that undermine in a critical way satisfactory teaching. In case of weaknesses, clear explanation as well as concrete examples of alternative strategies should be provided. A statement of next steps for Mr. Tait to follow would be helpful in focussing his efforts on making the critical improvements which would raise his performance to the level of satisfactory.

While I could provide further comments, these were the major amendments which the union has sought and continues to seek to strengthen the Improvement Plan and the Board's efforts to provide the required assistance to Mr. Tait to achieve a satisfactory rating for his teaching performance.

I look forward to the Board's response to address these deficiencies in the Improvement Plan.

84 At the October 18th improvement plan meeting, Mr. Barrett acknowledged receipt of that letter and advised Mr. Carroll that he would get back to him about it. His letter of response dated October 24, 2011, reads:

I am writing in response to your letter dated October 17, 2011 regarding the performance appraisal process for Brad Tait.

Initially, I would like to emphasize that the performance appraisal process for Mr. Tait is consistent with the Education *Act*, the Regulations, the Technical Requirements Manual for Experienced Teachers and the Collective Agreement.

With respect to the collective agreement, the performance appraisal of Brad Tait is consistent with the Performance Appraisal Concepts - Experienced Teachers appended to the collective agreement. These Concepts have guided performance appraisals throughout the Board for many years without objection from OSSTF, District 15. Moreover, the Concepts reference the applicable legislation and Technical Requirements Manual for Experienced Teachers that govern the performance appraisal process of all teachers, including Mr. Tait.

The performance appraisal process utilized by Trillium Lakelands District School Board is designed to be supportive of improvement in teacher performance. With that in mind, and in a spirit of cooperation and collaboration, I make the following comments in response to your letter.

The Board acknowledges that in the support meeting of September 20, 2011, the union asked, for the first time, for clear standards as it relates to three identified terms or phraseology. In particular, the Union raised the following issues:

1. What does "variety of appropriate" assessments mean?;
2. What does "all academic concerns" mean in terms of timely communication to parents and students?"; and
3. Lesson plans are being submitted, but Mr. Tait is unclear as to what he is doing at a satisfactory level and what areas need further attention.

The responses provided at the meeting on September 210, 2011 to the above-noted questions were, and are reiterated below:

1. "Variety" means both the type (i.e. diagnostic, formative, peer and summative) and kind (i.e. forms of standard writing, reports, quizzes, performances, and tests). Mr. Tait is aware, as is the union, that the English Department has a clear policy document about the quantity of assessments required at specific benchmarks during each semester. Furthermore, both Mr. Tait and the union are in possession of this document.
2. The term "all academic concerns" relates directly to the acquisition of credits and any and all actions that place the credit in jeopardy; be it quality of work, ownership of work, attendance, behaviour, or other, such that it is the professional responsibility of the teacher to report such concern to students and parents in a timely manner.
3. The claim, made at the end of the September 20th support meeting, that Mr. Tait's unwillingness to seek clarification from the Principal is because he is "scared" is not acceptable as a barrier to his success. The Principal has gone, and continues to go, to great lengths on lesson plans to both check the logical flow of ideas and comment on areas that require elucidation.

Mr. Tait is free, and has been free, to bring the staff representative or local representative to any discussion where he wishes to seek clarification. It is disturbing that September 20th was the first time Mr. Tait suggested that he was "scared".

As to the use of school supports, the Board views this as a new concern that was not asked previously. The Ministry and School Board have invested significant money, time, and professional development with respect to the areas of student success teachers, teams, and rooms. These structures exist to assist teachers by broadening the number of adult educators, their scope of expertise, and range of abilities, to help engage students, generate missed or late assignments, and improve the quality of work.

To say Mr. Tait should access these resources on behalf of his students (and himself) is a rather obvious observation.

We trust the above will serve to reinforce the Board's position as it was stated when these questions first arose at the support meeting of September 20th.

Each of the areas highlighted in the Improvement Plan, from Long-Range and Short-Term Planning to Tracking Relevant Assessment and Learning Skills Data, include a series of steps and actions for improvement. Sample indicators of success in each of the areas identified are also provided. An Explanation for Rating was provided following the Summative Report.

A range of support has been provided throughout the Performance Appraisal process, only some of which Mr. Tait has availed himself of. Support has targeted both collegial modeling and textual assistance to guide practice as well as Professional Development workshops that focus on specific areas for improvement. In the latter case, the Provincial Federation has also been requested to provide opportunities for professional development from their bank of resources to assist Mr. Tait.

Monitoring meetings have taken place between Mr. Tait, the Principal and the Superintendent every 2 to 3 weeks to confirm the improvement plan.

The Board has rigorously followed the performance appraisal process as outlined in *The Education Act*, the Regulations, the Technical Requirements Manual for Experienced Teachers and the Collective Agreement. Just as the Board expects teacher practice to model the principles for student success, so too does the Board model success for teacher performance appraisal. In that light, your allegation that the requirement to submit daily lessons plans for each lesson taught is an excessive demand is disappointing. Moreover, it is in direct contradiction to your other allegations that the Board does not state clearly the standard of teaching performance that Mr. Tait must attain.

The Board will continue to assist Mr. Tait and work collaboratively with his representative Federation to achieve satisfactory teaching performance.

85 On November 8, 2011, a final improvement plan meeting was held at which the contacts that the Grievor had made with his support persons were reviewed, along with how he planned to use the teaching techniques that he had observed by visiting some of their classes. Mr. Barrett advised him to try what he had seen, reflect on how effective it was, modify it, and try it again. Ongoing weaknesses in the Grievor's assessment of students were also discussed, along with the need for him to make better use of class time. He was again advised to do more chunking of the students' work, and to pre-teach students before giving them an assignment. He was also advised to engage the students and to use checkpoints along the way to test their engagement.

86 During the period covered by the second improvement plan, Mr. Marsden conducted "walk throughs" on eleven days, through which he viewed brief portions of eighteen of the Grievor's classes.

87 The pre-observation meeting for the Grievor's third evaluation was held on December 1, 2011, to set the dates on which Mr. Barrett would be observing the Grievor's classes, go over the lessons that Mr. Barrett was going to see, and

talk about the things that Mr. Tait wanted him to look for during the observations. They also reviewed the contacts that Mr. Tait had recently had with his support persons and discussed what he had gleaned from them. Mr. Barrett confirmed that he wanted Mr. Tait to select "high, medium, and low" student notebooks so that he could review them as part of his appraisal. He testified that he made that request because student notebooks are a record of student learning. He also asked for seating plans. He indicated that he would be briefly speaking with some of the students to ask them what they were learning, how it connected with what they had done previously, how well they were doing, and how they knew how well they were doing. They also discussed some "tweaking" that the Grievor planned to do on a summative for one of his classes. When the Grievor indicated that he was going to be using some new resources, Mr. Barrett said that was great and that he appreciated the modifications that the Grievor was making.

88 The first class that Mr. Barrett observed was the Grievor's ENG3C class on December 7, 2011. The "minds on" activity for that class was a "brainstorming" exercise intended to activate prior knowledge by getting students to create a list of ways in which humans communicate. Although the Grievor had been advised many times during the improvement plan process that the purpose of a "minds on" activity was to remove the teacher from the equation so that students were doing the thinking, rather than letting the list just come out he began prompting students and asking "What else, what else?" while he wrote a list on the blackboard. While some of the students were yelling out answers, others were engaged in side conversations. None of them had their books open to record anything.

89 Since Mr. Tait recognized that things were moving in a direction that was not productive, he said, "In drunk tanks they paint the walls pink to calm drunks down". That observation prompted one of the students to blast out, "So if you see pink are you gonna calm down?". Although the implication of that comment was obvious, Mr. Tait did not do anything about it other than looking sternly at the student. He then used cards to develop random groups of students. Amidst lots of student chatter and some audible yawning, he stated that people communicate to inform, entertain, and persuade. He instructed the students to get a piece of paper in their group, make three columns with those titles, and copy the words from the blackboard into those three columns. When a student observed that lots of the words on the blackboard belong in more than one of those columns, Mr. Tait said "yes, that's true", but did not attend to the confusion that this caused.

90 When Mr. Tait indicated that they were supposed to talk in their group to do this, one of the students observed "No, you said don't talk", to which Mr. Tait sarcastically responded "No, that was just for you". In his testimony regarding that comment, Mr. Barrett indicated that sarcasm is a very dangerous tool for a teacher to use and that most educators know not to use it because one never knows how it is going to be interpreted, and because it is often condescending. When a student received no response from Mr. Tait after asking "Are we handing this in", the student disengaged by crumpling up the paper and throwing it away, prompting Mr. Tait to say "No, everyone needs a record of this". However, when Mr. Barrett cycled around the room, he noticed that many students had nothing recorded.

91 Since there were many side conversations going on about unrelated matters and the exercise was not going anywhere, Mr. Tait changed gears by saying "Choose a topic of interest and generate an ad". He attempted to use an advertisement about junior football as a model, and requested them to do one for each of the three purposes of informing, entertaining, and persuading". When he asked the students "Is that as clear as mud", one of the students replied "You got that right, it's clear as mud". Mr. Tait then said "Pick a topic and make a plan" but no one moved, prompting him to add "I want you to do three separate things". However, very little happened because he had given them too much to do and had not drawn the students back to the learning goal of the class so that they would have known the purpose for which they were supposed to be doing it. Most of the groups did not complete the task, and the quality of the product that was generated was very low. When Mr. Tait saw that one of the group's three ads were on three different topics, he initially told them, "That's good", but then said, "Actually they all should have been about the same thing". Although Mr. Tait had planned to have the groups make presentations, by the time that was supposed to occur the class had totally dissolved, with noisy movement of desks and students talking in groups. Consequently, no presentation was made. In commenting on Mr. Tait having not gotten to his consolidation, Mr. Barrett indicated that he would need a full period to redo the lesson, rather than just doing a consolidation.

92 Mr. Barrett also observed one of Mr. Tait's ENG2P classes on December 7, 2011, and observed all three of his classes on December 9, 2011, making detailed notes of his observations. He observed many deficiencies in those classes, including failing to connect activities to the learning goal, failing to define terms that students needed to understand in order to meaningfully participate, failing to assist dysfunctional groups in which there was a lack of engagement in an activity in which other groups were displaying lots of engagement, providing confusing and incorrect information, preparing a very promising lesson plan but failing to follow it, failing to correct unacceptable student conduct, failing to provide the necessary building blocks to enable students to perform the assigned task, assigning an activity that yielded very little writing, pausing excessively to read from a sheet of paper while attempting to deliver a lesson, unnecessarily and inappropriately using a group structure, and failing to keep students on task.

93 Mr. Barrett also reviewed student notebooks provided to him by the Grievor, and found them to be indicative of a number of deficiencies in the Grievor's performance, including inadequate accommodation for identified students, inadequate feedback regarding formative assignments, failure to motivate students to complete assignments, and failure to properly space due dates for assignments. Student work samples provided by Mr. Tait also showed many of the same inadequacies as has been identified in the previous year. Mr. Barrett's reaction to what he saw in those notebooks and assignments was:

Beyond disappointment - complete dismay! The things we were asking Brad to do were easy: just get students to write, decrease your reliance on blackline masters, and provide feedback. I just didn't see any of it.

94 The post observation meeting was held on December 13, 2011, At that meeting the Grievor was given an opportunity to indicate how he felt the classes had gone, and to provide clarification regarding things that Mr. Barrett had observed. Mr. Barrett asked some pointed questions about teaching decisions that Mr. Tait had made, and received honest but weak responses, which he found to be very disappointing because they indicated that the Grievor continued to think that what he was doing was adequate. Mr. Tait became very agitated and took great offence when Mr. Barrett questioned the accuracy of entries that he had made in his log of communications with parents, which included a number of very short phone calls. His response was to angrily tell Mr. Barrett, "That's way over the line".

95 After the post-observation meeting, Mr. Barrett prepared a summative report in which he gave the Grievor an unsatisfactory rating and found the Grievor's performance to be unsatisfactory in respect of each of the sixteen competencies. That summative report contains a myriad of facts, observations, and conclusions, and has been appended to this award because a summary of that thirteen-page document would not do it justice.

96 On January 9, 2012, the Board's Director of Education sent Mr. Tait a letter advising him that a recommendation that his employment be terminated had been sent to the Board of Trustees as required by the *Education Act*, due to his third consecutive unsatisfactory performance appraisal. It also advised him that he had been suspended with pay as of December 20, 2011, and assigned to home. It included an invitation to make a written submission to the Board of Trustees and to attend the private session of the Board of Trustees' meeting scheduled for January 24, 2012, at which he would be given fifteen minutes to make a presentation regarding the recommendation for termination. Mr. Tait did not make a written submission nor attend the meeting. The Board of Trustees voted to uphold the recommendation and to terminate his employment. This was communicated to Mr. Tait on January 25, 2012, through a letter which also advised him that the Employer would be reporting to the Ontario College Of Teachers with respect to that matter, as required under the legislation.

Submissions of Counsel

97 Final argument in this matter commenced on June 28, 2016, and continued on June 29, July 5, and July 10, 2016. In addition to their oral submissions, both counsel also provided the Board with extensive written submissions, including highly detailed submissions regarding the voluminous evidence adduced in these proceedings. We are very grateful for all of those submissions, and particularly for those written submissions, which we have found to be very helpful, and

which avoided the need for several additional days of hearing. As indicated above, we have duly considered all of those oral and written submissions in making the findings and reaching the conclusions set forth in this award. However, we do not propose to detail all of them in this award, nor to specifically deal with all of the hundreds of points raised in them, as to do so would result in a substantially delayed and unduly lengthy award. It will suffice for purposes of this award to summarize the positions advanced on behalf of the parties, and to specifically address later in this award the matters that we have found to be material in reaching our decision.

98 The provisions of the *Education Act* that were referred to by counsel during the course of their submissions included:

PART X.2 TEACHER PERFORMANCE APPRAISAL

...

PERFORMANCE APPRAISALS

Appraisals, teachers other than new teachers

277.28 Performance appraisals of teachers, other than new teachers, shall be conducted in accordance with Ontario Regulation 99/02 (Teacher Performance Appraisal).

...

Second unsatisfactory rating

277.37 (1) This section applies when a principal conducting a performance appraisal under subsection 277.36 (3) determines that the rating is unsatisfactory, with the result that a teacher has received two consecutive unsatisfactory ratings under this Part.

Duties of principal

(2) Within 15 school days of determining that a performance appraisal of a teacher has resulted in an unsatisfactory rating, the principal shall,

- (a) give the teacher written notice of the unsatisfactory rating, explain the reasons for the unsatisfactory rating to the teacher, place the teacher on review status and advise the teacher in writing of that fact;

...

Review status, third appraisal

277.38 (3) Subject to subsection 5, during the 120 school days starting with the day on which the teacher is advised that he or she is on review status, the principal shall conduct one more performance appraisal.

Recommendation of termination following third appraisal

(9) Where a performance appraisal conducted under subsection (3) results in an unsatisfactory rating, the principal shall promptly transmit a recommendation in writing to the board that the teacher's employment should be terminated.

Same

(10) A recommendation under subsection (5) or (9) shall be accompanied by,

- (a) written reasons for the recommendation....

Same

(11) The principal shall promptly provide the teachers with,

(a) a copy of a recommendation under subsection (5) or (9);

(b) a copy of the written reasons referred to in clause (10) (a)....

99 Counsel also referred to the following provisions of Regulation 99/02 in their submissions:

PART II TEACHERS OTHER THAN NEW TEACHERS

...

Performance appraisal

8. (1) A performance appraisal of a teacher must satisfy the following requirements:

...

3. The performance appraisal must be conducted in accordance with such guidelines as the Minister may issue and in accordance with such additional policies, rules, standards, methods, processes, timelines and steps as may be established by the appropriate board.

...

100 The provisions of the collective agreement referenced during argument were:

ARTICLE 5 - RIGHTS AND RESPONSIBILITIES

...

5.16 Performance Appraisals

It is understood and agreed that any recommendation for termination resulting from the teacher performance appraisal process is subject to the grievance/arbitration process set out in Article 6 of this Agreement. Further, it is understood and agreed that any alleged violations of the process, including alleged violations of the governing legislation, regulations and/or Board policies/procedures/resolutions, may be raised in the termination grievance, regardless of timeframes set out in the grievance process.

...

Summary of Employer Counsel's Submissions

101 The legal framework for the TPA process is provided by s. 277 of the *Education Act*, Regulation 99/02, and the TPA Technical Requirements Manual. The Government requires school boards to take active steps to ensure that teachers are competent and meet the standards imposed on them not only by the boards but also by the College of Teachers. The evidence establishes that the Grievor failed to meet many of them, and substantiates the Board's decision to terminate his employment.

102 It is not the role of an arbitration board to substitute its own assessment of an employee's performance for that of management, particularly where the assessment is being done by very qualified and capable evaluators such as Principal Marsden and Superintendent Barrett. If you are satisfied that the Employer's decision to terminate the Grievor was not arbitrary, discriminatory, made in bad faith, or unreasonable, you ought not to interfere with that decision.

Authorities for those principles include Brown & Beatty, *Canadian Labour Arbitration*, at paragraph 6:3100; *Toronto District School Board and CUPE, Local 4400 (Kandiah), Re* [2016 CarswellOnt 19800 (Ont. Arb.)], 2016 CanLII 8900 (Sheehan); *Orillia Power Generation Corp. and IBEW, Local 636 (O'Brien), Re* [2018 CarswellOnt 7666 (Ont. Arb.)], 2018 CanLII 49742 (Monteith); *Laurentian University v. L.U.F.A.*, 2011 CarswellOnt 7914, 107 C.L.A.S. 172 (Ont. Arb.) (Surdykowski); *University of Ontario Institute of Technology and UOIT Faculty Assn. (Sartipi), Re*, 2015 CarswellOnt 12154, 124 C.L.A.S. 73 (Ont. Arb.) (Anderson); *Toronto District School Board v. O.S.S.T.F., District 12 (2011)*, 111 C.L.A.S. 117 (Ont. Arb.) [2011 CarswellOnt 8216 (Ont. Arb.)], 2011 CLB 39209 (P.C. Picher); and *Dufferin Peel Catholic District School Board and OECTA (Gonsalves), Re*, 2014 CarswellOnt 17367, 121 C.L.A.S. 154 (Ont. Arb.) (Carrier).

103 *Bhasin v. Hrynew*, [2014] 3 S.C.R. 494, 2014 SCC 71 (S.C.C.) (CanLII), indicated that good faith contractual performance is a general organizing feature of the common law of contract, and established a general duty of honesty in contractual performance. As indicated in *UFCW, Local 175 and Islamic Foundation School, Re* [2018 CarswellOnt 8662 (Ont. Arb.)], 2018 CanLII 48194 (Anderson), arbitrators have acknowledged that a collective agreement is a contract to which those principles apply. The assertion that the Superintendent's failure to provide the Grievor with an official "on review" letter somehow voided the final evaluation in the TPA process flies in the face of those principles, as it was not raised until after the hearing of this matter had commenced. A party to a contract cannot sit on its hands, say nothing, allow the other party to the contract to continue through the process, and then assert three years later that everything the first party did after that is void. There is no question that the Grievor was told that he was "on review" and that he understood the consequences of being "on review". The fact that there is not an official letter telling the Grievor what he already knew is not a fatal flaw.

104 The assertions made by the Grievor and by Mr. Carroll that the Board's expectations of the Grievor as a teacher were never clearly articulated are untenable. Teachers are trained professionals with university degrees. Their education specifically prepares them for the classroom. They learn how to teach and the methodology behind student learning. They also learn what is expected of them as educators. Some obtain additional qualifications, such as the Grievor's additional qualifications in Special Education. Teachers' duties are prescribed by the *Education Act* and Regulations. Regulation 99/02 specifies five domains and the sixteen competencies that Ontario teachers are expected to have. The TPA Technical Requirements Manual includes a mandated Summative Report Form for Experienced Teachers (Appendix B) which is built around those domains and competencies. The Manual also includes a Log of Teaching Practice (Appendix G), which is an optional resource that sets out the domains and competencies, and also sets out "look fors", which are things that an evaluator may look for in assessing the competency of a teacher. Specific to the Employer, there is also an explanation of rating form that identifies deficiencies in the left hand column and identifies in the right hand column the steps to be taken to remedy these deficiencies. The Manual also requires the evaluator to prepare an improvement plan setting out the steps and actions that the teacher should take to improve his or her performance. The minimum requirements of what a teacher is expected to teach are also set out in curriculum documents issued by the Ministry of Education, such as the Ontario Curriculum for Grades 9 and 10 English. They set out overall and specific expectations regarding the knowledge and skills that students are expected to develop and demonstrate. They are full of prompts about how a teacher might go about teaching the required subject matter. The Employer also provides a wealth of professional development opportunities for teachers. If the Grievor had taken the initiative, there was a wealth of information that he could have accessed.

105 The Grievor had performance issues that predated the involvement of the Mr. Marsden and Mr. Barrett. There was a general degradation in his performance over an extended period of time. The previous principal assessed his performance as having declined from "good" in December of 2002 to merely "satisfactory" in May of 2006 (in accordance with the applicable mandatory evaluation cycle). That Summative Report includes a number of observations about performance issues that continued to be seen during the current TPA process. Those issues continued to exist in subsequent school years.

106 The TPA process that resulted in the Grievor's termination was duly conducted in accordance with the requirements of the applicable legal framework. After his performance was found to be unsatisfactory, the Grievor was given clear

information about his shortcomings, the areas in which he needed to improve, and the things that he needed to do to improve his competence. He had at his disposal a wealth of assistance, including written materials and support persons who were highly knowledgeable, very experienced, and talented. However, he lacked commitment to the process. He initially suggested that it was not his obligation to make contact with the support persons. That shifted to him meeting with them after he was questioned about it at improvement plan meetings. However, he took little initiative and merely went through the motions of meeting with them so that he could say that he had done so. He did not reciprocate with them, and did not take away any learning that found sustained use in his own teaching practice. It was open to him to seize those opportunities to get the most out of the process, but the evidence reveals that he did not do so. Suggestions that were made were not being followed up on by the Grievor, and were certainly not showing up in his lesson planning or delivery. He also failed to access the written resources and professional development opportunities that were available to him. The Grievor's lack of ownership is a pervasive theme in the evidence. He wanted others to make decisions for him, and levied blame on others, including staff and students.

107 After receiving his second unsatisfactory rating, the Grievor was in the enviable position of having a two-month break over the summer to prepare for his fall courses and the next phase of the TPA process. However, there is no evidence that he took any initiative to do so, and in the fall the problems with his performance were still there.

108 Many of the complaints raised in OSSTF's letter of objection dated October 17, 2011 are strikingly similar to those raised in the *Gusita* award, which was released in August of 2011. Mr. Carroll never made similar objections either verbally or in writing before or after the Grievor's TPA. He testified that if there was something detrimental to his member, he would challenge it. However, he raised no such challenge with respect to the Grievor until October of 2011. The only logical inference to be drawn from that is the Mr. Carroll did not see any procedural flaws along the way that were so detrimental to his member that he had to put them in writing. It is also important to note that the Toronto District School Board had a rubric built into their procedure. As a result, all of a sudden in the fall of 2011 Mr. Carroll was insisting on a rubric and suggesting that the lack of a rubric was a fundamental flaw, even though there had never been such a thing at the TLDSB. This objection should be recognized for what it is: a meritless objection that is merely a desperate attempt by the Federation to save the Grievor from the path for which he himself is responsible,

109 None of the litany of objections raised by the Federation counsel in her opening statement and throughout the hearing has any merit. The Federation is merely grasping at anything in an attempt to undermine the integrity of the process undertaken by the principal and the superintendent. The TPA process in the present case is consistent with all of the other TPA's that the Employer has done. The Employer did nothing to treat the Grievor differently, but the Federation contends that the same process that was applied to the Grievor was so fundamentally flawed that the decision to terminate cannot stand. That contention should be rejected because the evidence refutes all of the Federation's procedural objections.

110 None of the procedural objections raised by the Federation are of such a character as to fundamentally undermine the validity, reliability, or integrity of the assessment. The number of observations was not excessive, nor was their timing inappropriate. As recognized in *Gusita*, it may well be appropriate and relevant for an evaluator to record a single negative observation under a number of different competencies when the observation recorded is relevant to each of those competencies. The evidence completely refutes the Federation's complaints about generalizations, globalizations, and false conclusions. There was nothing unreasonable or inappropriate about not acknowledging improvements, particularly when the evidence confirmed that any improvement was short-lived and certainly not sustained from one evaluation to the next. The improvement plan requirements were neither onerous nor unreasonable. There was nothing unreasonable about the expectation that the Grievor would use the three part lesson plan template that was being advanced in the fall of 2009 in all classrooms in the Board's secondary schools. While that specific template may have been new, the concepts on which it was based were certainly not. Preparing lesson plans is an important part of the job of a teacher and it has always been an expectation that teachers plan their lessons daily. The principal provided a high volume of meaningful feedback to the Grievor, who could have received even more feedback if he had followed up with questions as the principal had told him on more than one occasion that he could do. The Board was entitled to look at all

of the information that it had regarding the Grievor's teaching practice, including assignments, tests, student notebooks, student marks, his report card comments, his use of the student support room, and how he dealt with IEP students.

111 The Federation's allegations of bad faith and bias are baseless and unsupported by any evidence. They represent pure speculation on the part of the Grievor and the Federation. There is absolutely no evidence to support the Federation's claim that there was a concerted effort to document the Grievor out the door.

112 The unsatisfactory ratings given to the Grievor by the principal and the superintendent ought to be given significant deference. There is no reason to interfere with those ratings. The evidence does not support any suggestion that the decisions were arbitrary, discriminatory, made in bad faith, or unreasonable. The grievance should be dismissed and the decision to terminate the Grievor, as required by the *Education Act*, upheld.

Summary of Union Counsel's Submissions

113 The Grievor is a long service teacher who deserved to have a meaningful opportunity to be able to demonstrate his improvements throughout the TPA process, but the manner in which the performance appraisals were conducted ensured that he was not given that opportunity. There were a number of flaws in that process, which both separately and cumulatively ensured that there was no meaningful opportunity for the Grievor to be successful, and which resulted in his termination following thirteen years of employment with the Board and twenty years of teaching. It was not conducted in a spirit of co-operation, nor with the intention of assisting the Grievor to ensure that he would be able to meet the expectations of the principal and the superintendent. The Grievor was placed under a microscope, particularly by Mr. Marsden. Every possible flaw or failure was documented, gathered, and collected in order to support his termination. Conversely, the Grievor's improvements were not acknowledged or documented in his performance appraisals. The TPA process in this case was hostile and designed to create the Grievor's failure.

114 The termination of a teacher following the TPA process is subject to a just cause standard, and the Employer bears the legal onus of proving just cause. In the context of a TPA, the *Gusita* case established the following four-part test for determining whether or not there was "just cause" for termination:

1. Whether the essential elements of the mandated teacher performance assessment procedure were followed, including whether the steps in and criteria for the teacher performance appraisal were followed and applied to the Grievor;
2. Whether the essential elements of fairness built into the TPA process enabled the Grievor to demonstrate his competence as a teacher;
3. Whether the respective evaluators carried out the TPA Process without discrimination, arbitrariness or bad faith;
4. Whether the three successive overall performance ratings of "unsatisfactory" were reasonable and based on supporting facts.

115 Essential elements of the mandated TPA procedure were not followed. There were a number of procedural deficiencies, including failure to give the Grievor a warning in writing that his employment was in jeopardy and failure to advise the Grievor in writing that he was being placed "on review". The Board also failed to clearly explain to the Grievor what was expected of him in areas in which his performance was lacking, and failed to provide the Grievor with sufficient feedback.

116 Section 11(4) of *Education Act* Regulation 298 is a longstanding requirement that a teacher be given written warning, assistance, and a reasonable time to improve, before a principal recommends the dismissal of a teacher. In *Re Kirkland Lake Board of Education and OSSTF (Grievance of Nancy McGregor)*, unreported award issued in September of 1994, Arbitrator Burkett found (in the context of the dismissal of a probationary teacher) that the Legislature "would

never have intended that the warning required under Regulation 298 be other than an unequivocal warning in writing that the teacher's continued employment is at risk". *Bluewater District School Board and OSSTF, District 7 (Tooke)*, Re, [2001] O.L.A.A. No. 109 (Ont. Arb.) (Roberts), confirmed that those three procedural steps must have been followed sequentially for basic procedural fairness to be found to have occurred.

117 The Grievor was not advised in writing of the fact that he had been placed on review, as required by section 277.37(2)(a) of the *Education Act*. The 120 day timeline for the third appraisal established by section 277.38(3) runs from the date on which that written notice is given. The parties cannot contract out of that statutory requirement, nor can it be waived; it also overrides any practice that might otherwise give rise to an estoppel: *Brown & Beatty, Canadian Labour Arbitration*, at paragraph 2:2215, and *Compass Group Canada (Beaver) Ltd. v. U.F.C.W., Local 175*, 2008 CarswellOnt 7504, 176 L.A.C. (4th) 344 (Ont. Arb.) (Brent). The *Bhasin* and *Islamic Foundation* cases do not apply to any suggested failure of the Union to raise that issue during the TPA process, because it is a statutory requirement. This issue did not have to be raised during the TPA process; Article 5.16 of the collective agreement specifically permits any alleged violations of that process, "including alleged violations of the governing legislation", to be raised in the termination grievance.

118 The Board's failure to give the Grievor that written notice made the third performance appraisal void, but the entirety of the TPA process was done in manner which was so flawed that fairness demands more than simply requiring the Board to do another third evaluation of the Grievor.

119 Essential elements of fairness were also absent from the process. There was unfairness caused by the timing and excessive number of classroom observations, the newness of the Board's three part lesson plan template and specific teaching methodologies that the Board set as a standard against which the Grievor was judged, a lack of meaningful support from the identified support persons, an unsupportive environment in improvement plans meetings, onerous improvement plan requirements which had little corresponding benefit to the Grievor, and the failure to warn the Grievor that his employment was in jeopardy.

120 The third part of the test was violated by the bad faith manner in which the repetition of a series of alleged deficiencies was used to support an unsatisfactory rating in multiple competencies and to create an unduly negative and harsh appraisal, the bad faith manner in which each element of the Grievor's improvement plan was treated and tracked as if it were a compulsory requirement, the bad faith manner in which the principal micromanaged and documented all of his interactions with the Grievor, the bad faith manner in which the principal failed to respect the Grievor's professional judgement, the bad faith manner in which the Grievor's own lesson plan reflections were used against him, the bad faith manner in which the Grievor was criticized overly harshly and excessively, the bad faith manner in which student achievement was used as part of the analysis of the Grievor's performance, the bad faith manner in which the Grievor was held responsible for late student assignments, the bad faith manner in which student notebooks were used to assess the Grievor's teaching, the bad faith manner in which the Grievor was penalized for not attending voluntary grades meetings, the bad faith manner in which the Grievor was criticized for not attending a voluntary mentorship meeting, the bad faith manner in which the Grievor was criticized regarding classroom management, and the bad faith manner in which the Superintendent refused to respond to the Grievor's request for assistance. Both evaluators were also biased as a result of anti-union animus, and their predetermined opinions regarding the Grievor's performance and the expected outcome of the TPA process.

121 The overall performance ratings were not reasonable nor based on supporting facts. The evaluators reached unreasonable or false conclusions respecting the Grievor's final exams, and regarding the relationship between student marks and the Grievor's performance. The Grievor's improvements and his positive teaching were not acknowledged and were undervalued in the TPS process, as were the steps that he took to fulfill his improvement plans, and his collaboration with school colleagues, professionals, and members of the community. The evaluators also reached false conclusions that the Grievor was not engaged in the process and that he was not responsive to suggestions.

122 The flaws in the manner in which the TPA process was conducted separately and cumulatively resulted in an unfairness to the Grievor. There was not an atmosphere of support with respect to his success. There was a level of scrutiny and documentation which appears to have been done for the purpose of supporting his termination. Many parts of the process seemed both hostile and designed to ensure Mr. Tait's failure. There were no clear guidelines for success set out in the process, and the Grievor was left frustrated in his attempts to meet unspecified, broad, and ever-shifting targets, as well as broad, subjective goals. Clear standards of performance must be established and communicated to an employee prior to a discharge for incompetence: *George Brown College of Applied Arts and Technology and OPSEU, Re (Kuca Grievance)*, [2010] O.L.A.A. No. 566 (Ont. Arb.) (Bendel); and *Canada Council for the Arts and PSAC (Reid), Re*, [2003] C.L.A.D. No. 409 (Ont. Arb.) (Chapman). Employer counsel referred to numerous resources being available to the Grievor and to all of the support that he could derive from curricular documents and other publications, but failed to acknowledge that what is required is for the Employer to clearly articulate its standards and what would be necessary in order for the Grievor to improve to the expected level of performance. Employer counsel also submitted that there is no evidence that the Grievor used the two-month summer break following his second unsatisfactory performance appraisal to prepare for his fall courses and the next phase of the TPA process. However, there is also no evidence that he did not do so; there is no evidence either way, as he was not asked about it during his testimony.

123 There was a lack of meaningful feedback on lesson plans. Although the Grievor worked with colleagues and instructional coaches, there was no circling back or feedback from the principal or superintendent with respect to the steps he was taking, and with respect to what was and was not working. Bad faith can be discerned from the overwhelmingly negative tone of the three TPA's, the lack of recognition of positive aspects of the Grievor's teaching and improvements in his teaching, and the number and timing of classroom visits.

124 The Grievor should be reinstated and made whole, all three of the TPA's should be declared void, and the Grievor should be reviewed by evaluators other than Mr. Marsden and Mr. Barrett in all future TPA's.

Summary of Employer Counsel's Reply Submissions

125 The Board has to conduct itself in accordance with the *Education Act*, which is incorporated by reference into the collective agreement, and which is an employment-related statute within the meaning of s. 48(12)(j) of the *Labour Relations Act*, as indicated in *O.S.S.T.F., District 17 v. Simcoe (County) District School Board* [2010 CarswellOnt 11137 (Ont. Arb.)], unreported award dated February 17, 2010 (Howe). When interpreting such legislation, arbitrators are entitled to apply the same canons of construction and equitable doctrines that apply in interpreting a collective agreement, including estoppel, waiver, and substantial compliance. The standard of review applied in applications for judicial review of arbitration awards interpreting employment-related statutes is the standard of reasonableness: *Toronto District School Board v. E.T.F.O.* [2004 CarswellOnt 2790 (Ont. Div. Ct.)], 2004 CanLII 1652.

126 Section 11(4) of Regulation 298, and the *Kirkland Lake* and *Bluewater* awards which interpret it, are of no relevance as they relate to a time before the comprehensive TPA process set forth in Part X.2 of the *Education Act* was added to the Act. That general provision has been overtaken by the specific provisions contained in that part of the Act. Section 277.37 was added in 2001. Section 277.28 is a newer provision that was added in 2006. Consequently, cases interpreting section 11(4) are not helpful; the necessary warnings are now established through the combined effect of the mandated TPA process that was added to the Act and the mandated documents.

127 Part 3 of section 8(1) of Regulation 99/02 requires the Board to conduct the TPA in accordance with such guidelines as the Minister may issue. The TPA Technical Requirements Manual is the guideline to which the Board must adhere. There is absolutely nothing in the Regulation or the mandated Technical Requirements Manual that requires written notice of being "on review". Subsections 277.38(9) and (11) set out a very comprehensive process that ensures that the teacher is aware that there is a recommendation to terminate his employment and is also aware of the reasons for that recommendation. The cumulative effect of the amendments in 2001 that subsequently evolved in 2006 with Regulation 99/02 and further evolved in 2010 with the Technical Requirements Manual, is the process designed to

provide the warning that was contemplated by section 11(4) of Regulation 294. Given the evolution of the legislation, it is inconceivable that failure to give the Grievor written notice of being "on review" would be a fatal flaw.

128 The Act does not say that the clock for the third appraisal begins to run from the time of an "on review" letter; it states that the period of 120 school days starts "with the day on which the teacher is advised that he or she is on review status". There is no requirement that this notification be in writing. All that the Union relies upon is section 277.37(2) (a), which has clearly been superseded by this very elaborate process that does not mandate an "on review" letter.

129 Even if there has been a procedural breach of section 277.37(2)(a), it does not rise to a fatal flaw because there has been substantial compliance with its requirements. That provision consists of four components, the combined effect of which is to make sure that the teacher is aware that his performance has been rated "unsatisfactory", as a result of which he is now "on review". The consequences of being "on review" are set out in the Act. However, those consequences are not required to be put in writing; the only thing that has to be put in writing is the fact that the teacher is "on review". Mr. Carroll suggested in his evidence that an "on review" letter would impress upon the Grievor that his job was in jeopardy. However, that is not what the final component of that provision requires; it only requires a piece of paper that says nothing more than what the Grievor had already been told several times. The Employer complied with the first three of the four components, and in fact went beyond what the provision requires by spelling out for the Grievor what the consequences of being "on review" would be if he had another unsatisfactory rating. Consequently, this situation cries out for the application of the doctrine of substantial compliance, which was applied in *Natrel (Ontario) Inc. v. Teamsters, Local 647* (2000), 85 L.A.C. (4th) 289 (Ont. Arb.) (Albertyn); *Sydenham District Assn. v. Limestone District School Board*, 2014 ONSC 7199 (Ont. Div. Ct.) (CanLII); and cases referred to in *Brown & Beatty, Canadian Labour Arbitration*, at paragraph 7:2140.

130 The doctrine of estoppel also applies to that procedural breach. The authorities relied on by the Federation dealt with cases involving rights under the *Employment Standards Act*, the *Human Rights Code*, and the *Occupational Health and Safety Act*. The present case does not deal with those type of issues; it deals simply with an issue of process. Since the arbitration board is charged with interpreting the combined effect of the *Education Act* and the collective agreement, there is no basis on which it can be said that it cannot apply the doctrine of estoppel. As indicated in *Brown & Beatty, Canadian Labour Arbitration*, at paragraph 2:2211, silence or acquiescence can constitute a representation that a party is not insisting on their strict legal rights. In the present case there is clear evidence of inaction until well after this hearing began. The issue of failure to provide an "on review" letter was not raised in the grievance, nor in Federation counsel's June 9, 2014 letter of particulars. The first time that it was raised was in Federation counsel's November 4, 2014 letter of further particulars. Thus, it was clearly an after-thought that has now been raised to the level that Federation counsel contends ought to be fatal to everything that the Employer did in the third appraisal. That cannot possibly flow from the aforementioned principles including the one the Federation relies upon: fairness. There is clear evidence of prejudice to the Employer in terms of its inability six and a half years after the fact to remedy the alleged breach, not to mention the time, effort, and expense involved in the hearing of this case. Contrary to Union counsel's argument, the principle established in *Bhasin* is also very much applicable to this case. The fact that the arbitration board is required to interpret an external statute which has been incorporated into the collective agreement requires it to consider all of those principles.

131 The evidence given by the witnesses called by the Employer in these proceedings was credible and unshaken in cross-examination. While there may have been the odd "slip up" in terms of dates or the identification of a document, there was nothing of significance that would undermine the credibility of those witnesses. The vast majority of the testimony given by Mr. Marsden and Mr. Barrett was unchallenged. Their evidence is supported by the documentary evidence. This was the Grievor's forum in which to persuade the Arbitration Board of all the wonderful changes that he had made in his performance that somehow they just missed, yet we heard none of that; the evidence adduced by the Federation is simply a litany of complaints about the process. There is no evidence that the evaluators' assessment of the Grievor's performance was inaccurate, let alone unreasonable. Even if the arbitration board were to accept that there were things that could have been done differently or better, that does not undermine the time and effort that Mr. Marsden and Mr.

Barrett devoted to ensuring that due process was followed for the Grievor. The evidence is entirely consistent with what they summarized in the three summative reports.

132 The Federation has failed to establish that the applicable test has not been met. The grievance ought to be dismissed.

Decision

133 It is common ground between the parties that the standard of review to be applied in the present case is the one described as follows by Arbitrator P.C. Picher in *Toronto District School Board v. O.S.S.T.F., District 12 (Gusita)*, (2011), 111 C.L.A.S. 117 (Ont. Arb.) [2011 CarswellOnt 8216 (Ont. Arb.)], 2011 CLB 39209 (the *Gusita* award):

[67] Because the teacher performance appraisal process is cast within a framework that is so highly regulated and defined by Statute, Regulation, the mutually agreed TDSB TPA Process, as well as Ministry-issued Curriculum Documents, a just cause standard of review must reflect respect for this highly controlled scheme of teacher performance appraisals.

[68] In applying the standard of just cause, the Board of Arbitration will not substitute its own evaluation of Mr. Gusita's teaching performance for that of the respective Evaluators and, ultimately, the School Board. The Board will not consider that any action in the evaluation process should have been taken beyond those actions included in the TDSB TPA Process, as derived from the revised *Education Act* and its Regulations. The Board will not conclude that any additional steps outside the stipulated process should have been taken to ensure due process and fairness. The Board will not find that there should have been any curriculum expectations other than those set out in the Ministry-issued Curriculum Documents. The Board will not determine that any element of evaluation should have been made beyond the assessment of the 16 mandated Competencies, together with the approximate 133 "Look-Fors".... More generally, the Board will not interfere with the established process. The framework for teacher performance appraisals has been set and requires the utmost respect in the application of the just cause standard.

[69] To determine just cause, the Board of Arbitration will look to whether the essential elements of the mandated teacher performance assessment procedure were followed, including whether the steps in and criteria for the teacher performance appraisal were followed and applied to Mr. Gusita. The Board will evaluate whether the essential elements of fairness built into the TPA process to enable Mr. Gusita to demonstrate his competence as a teacher were applied to Mr. Gusita, whether the respective Evaluators carried out the TPA Process without discrimination, arbitrariness or bad faith and whether the three successive Overall Performance Ratings of "Unsatisfactory" in the Cycle 1, 2 and 3 Summative Reports were reasonable and based on supporting facts.

134 As submitted by Employer counsel, that standard of review reflects the approach which has generally been applied by arbitrators in cases pertaining to the assessment of employees' skills, abilities, and competence. Arbitral deference to managerial assessment of such matters is based upon the perspective that an employer is in a better position than an arbitrator, or board of arbitration, to make such assessments. As indicated by Arbitrator Sheehan in *Toronto District School Board and CUPE, Local 4400 (Kandiah), Re, supra*, at page 27, "this point was captured by Arbitrator Knopf as noted in [*Acadian Platers Co. v. U.S.W.A., Local 8059 (1997)*, 68 L.A.C. (4th) 344 (Ont. Arb.), at p. 359]":

.... Arbitrators recognize that supervisors should be in a better position and be better able to judge employees than an arbitrator. Further, proper management and supervision in the workplace is a far superior method of determining an employee's abilities than the adversarial forum of a formal arbitration hearing. It is not in the interest of labour relations or operations to have "management by arbitration". (See *Canadian Pacific Ltd.* [(1980), 28 L.A.C. (2d) 430], at page 433.) Accordingly, arbitrators have voiced reluctance to overrule management's decisions unless they are made in bad faith, as a result of bias, discrimination or unreasonably. See *Domtar Inc. (Domtar Chemicals Group, CDC Division)* [(1980), 28 L.A.C. (2d) 107].

See also Brown & Beatty, *Canadian Labour Arbitration*, at paragraph 6:3100; *Orillia Power Generation Corp. and IBEW, Local 636 (O'Brien), Re, supra*; *Laurentian University v. L.U.F.A., supra*; and *University of Ontario Institute of Technology and UOIT Faculty Assn. (Sartipi), Re, supra*.

135 Reference may also usefully be made to the following observations made by Arbitrator Carrier in *Dufferin Peel Catholic District School Board and OECTA (Gonsalves), Re, supra*:

22 ... While the legislation and regulations do indeed establish eight (8) competencies against which each new teacher must be assessed, the determination as to whether or not they are successful with respect to that competency is specifically assigned to the judgment of qualified principals. In my view the legislature chose principals to perform these assessments since they are best suited to do so having themselves the background classroom experience, training, familiarity with the programs and courses as well as student contact necessary to perform the appraisal as to whether or not a teacher's performance is satisfactory within each of the various competencies. The Legislature has chosen principals to exercise their skills and experience to assess those factors and that, in my view, must entail a significant subjective determination as opposed to an objective one.... It is their subjective opinion upon which the Legislature seeks to rely. While the Legislature did identify the competencies, there are no specific standards identified with respect to those competencies against which a teacher's suitability might be measured. That task is left to the judgment, discretion, and wisdom of the principals. There is no multiple choice questionnaire for the principals to complete. Accordingly, I confirm my view that the appropriate test is not correctness but whether or not the principal's assessment of the teacher with respect to the eight (8) competencies was reasonable in all of the circumstances....

136 Although that case dealt with a performance appraisal of a "new teacher" (for whom the appraisal process at that time delineated eight competencies), we are of the view that those observations are also equally applicable to principals and superintendents in the context of performance appraisals of teachers who have taught for two or more years and who are, therefore, not "new teachers".

137 As indicated above, it is the Federation's position that essential elements of the mandated TPA process were not followed. Counsel for the Federation submitted that the Grievor's third performance appraisal is void due to the Board's failure to provide him with written notice that he was "on review", and that his employment was in jeopardy. While it may well be that, as submitted by Employer counsel, the notice requirement set forth in section 11(4) of Regulation 298 has been superseded by the TPA process delineated by section 277 of the *Education Act*, Regulation 99/02, and the TPA Technical Requirements Manual, it is unnecessary for purposes of this award to conclusively decide that issue because, even if that submission is correct, there remains a requirement to give a teacher written notice of being placed "on review"; section 277.37(2)(a) of the Act specifies that within fifteen school days of determining that a (second) performance appraisal of a teacher has resulted in an unsatisfactory rating, the principal shall "give the teacher written notice of the unsatisfactory rating, explain the reasons for the unsatisfactory rating to the teacher, place the teacher 'on review' status and advise the teacher in writing of that fact". We are not persuaded that this statutory requirement has been superseded by any of the subsequent amendments to the Act, nor by Regulation 99/02 or the Technical Requirements Manual.

138 At the May 25, 2011 meeting, Principal Marsden gave the Grievor written notice of the unsatisfactory rating by providing him with the Summative Report, which specified the "Overall Rating of Teacher's Performance" to be "Unsatisfactory". He also explained the reasons for that rating by providing the Grievor with an Explanation of Rating Form. He also advised the Grievor at that meeting that he was officially "on review". As indicated above, in accordance with his usual practice, Mr. Barrett followed up with the Grievor a day or two later to verbally confirm that he was "on review".

139 The evidence indicates that the Grievor was made fully aware of the potential consequences of being "on review" by both Mr. Barrett and Mr. Carroll. Although Mr. Carroll anticipated that the Grievor would also be provided with written notice that he was "on review", when that did not occur Mr. Carroll did not raise any objection about it. Although

Mr. Carroll acknowledged that Mr. Marsden told the Grievor that he was "on review" and further acknowledged that Mr. Barrett made the Grievor aware of the implications of being "on review", he also testified that "an 'on review' letter probably would have focussed the member's attention on the seriousness of this step". However, if that had been his view at any time during the third stage of the TPA process, he would presumably have voiced it and requested that an "on review" letter be sent. Moreover, it is clear from the totality of the evidence that the Grievor did not suffer any prejudice as a result of the Board's failure to advise him in writing of that fact that he had been placed "on review", because he was well aware at all material times during the third phase of the appraisal process that this was his status.

140 In view of the Board's substantial compliance with the requirements of section 277.37(2)(a) of the Act, and the absence of any prejudice to the Grievor, the Board's technical breach of the final component of that provision does not warrant overturning the Grievor's termination or granting any other remedial relief in the circumstances of this case. Having reached that conclusion, we find it unnecessary to determine whether that result would also flow from the principle of estoppel, and/or from the general duty of honesty in contractual performance established by *Bhasin v. Hrynew*, *supra*, as contended by Employer counsel.

141 Federation counsel also submitted that if Mr. Brohman had concerns about the Grievor's performance during in the 2009-2010 school year, he should have warned the Grievor about those concerns. However, as indicated above, the Grievor was already on notice from the summative report that Mr. Brohman prepared in May of 2006 that Mr. Brohman was of the view that his "performance must be improved", that he needed to "upgrade his skills in assessment and evaluation", that there was a concern about his marks, and that he needed to "update his knowledge in new teaching practices and use these skills in the classroom".

142 Counsel for the Federation also contended that essential elements of fairness were absent from the process. She identified the timing and number of classroom observations as one of the bases of the alleged unfairness. In her submissions on that matter, she referred to not only the formal classroom visitations conducted by Mr. Marsden during the first two phases of the TPA process, but also to the informal walk throughs conducted by Mr. Marsden during the periods covered by the improvement plans.

143 Both of the improvement plans specifically indicated that walk throughs by the principal would still take place for classroom observation of improved teaching performance and lesson preparation. This resulted in Mr. Marsden conducting "walk throughs" on a total of twenty-eight days, through which he viewed brief portions of forty of the Grievor's classes. He provided the Grievor with feedback regarding what he observed via "'walk through' communication update" forms and comments made at improvement plan meetings.

144 In her written submissions, Federation counsel noted that Mr. Tait generally did not have advance notice of those walk throughs, and further noted that "[t]he parties have guidelines appended to their collective agreement which set out that a teacher shall be given at least 48 hours' notice before a classroom visitation, which govern the ordinary course of behaviour". Employer counsel's written response to those submissions was: "No advance notice required". As indicated in paragraph 14 of the parties' Partial Agreed Statement of Facts, those guidelines provide that a teacher "shall be given at least forty-eight (48) hours' notice before a classroom visitation". Although that requirement is clearly applicable to formal visitations that are arranged at pre-observation meetings for purposes of classroom observation, it is unclear whether the parties intended it to also be applicable to walk throughs. Without the benefit of full argument on the ambit of that requirement (and any evidence which might arguably be of assistance in determining its intended scope), it would be inappropriate for us to interpret it in these proceedings. For purposes of this award, it is sufficient to note that if the Federation had been of the view that the Grievor was entitled to advance notice of any walk throughs conducted during periods covered by the improvement plans, that matter could and should have been raised by Mr. Carroll either when the improvement plans were being formulated, or when the walk throughs continued to be conducted without any advance notice during the periods covered by the improvement plans. Moreover, we are not persuaded that the absence of advance notice of the walk throughs resulted in any significant prejudice to the Grievor, as the summative reports were based primarily on what occurred during the formal observations, along with what was gleaned from other relevant sources, such as student notebooks, and assignments, tests, and exams prepared by the Grievor.

145 During the first TPA evaluation, Mr. Marsden observed nine of the Grievor's classes over a period of four days. In support of her contention that the timing of those observations was unfair, counsel for the Federation noted that three of those observations took place on December 22, 2010, which was only one day before students were released for the holidays. However, as stated by Mr. Barrett and acknowledged by Mr. Tait, "every day is a teaching day". Since Mr. Tait knew that observations were going to be taking place on December 22nd and on other dates in the week before the Christmas vacation period, it was his responsibility to plan meaningful lessons for those dates, duly taking into account the predictable rambunctiousness of students during that time frame, in order to demonstrate satisfactory performance to Mr. Marsden.

146 In support of this aspect of her argument, Federation counsel also raised the fact that some of the classes that were observed were afternoon classes, noting that Mr. Barrett testified that walk throughs which took place in the School as part of a student success inventory in the spring of 2010 were only conducted during morning periods because it is "much harder to teach in the afternoon", since students get tired in the afternoon. However, the timing of the TPA formal observations is dependent upon a number of factors, including the evaluator's availability and when a teacher's classes are scheduled to take place. Moreover, in determining whether a teacher is performing satisfactorily, it is not unfair to consider the teacher's performance during afternoon classes, as well as during morning classes.

147 Counsel for the Federation further submitted that an unfairly large number of formal observations were conducted. However, as submitted by Employer counsel, the Act does not preclude more than one classroom observation. Furthermore, Mr. Carroll testified that he would have had an issue if there had been only one classroom observation. He also agreed (during cross-examination) that it would be reasonable for the evaluator to want to observe each of the classes of a teacher. In order for an evaluator to do so, there would have to be at least three formal observations during each phase of the TPA process. We are not persuaded that the fact that more took place in the instant case was unfair to the Grievor, as each class that was observed gave him an opportunity to attempt to demonstrate competence; the substantial number of formal observations that were conducted in this case ensured that the Grievor had ample opportunities to attempt to demonstrate satisfactory teaching performance.

148 Another aspect of Federation counsel's unfairness argument was what she described as "unfairness caused by the newness of [the] Board's 3-part lesson template & specific teaching methodologies as a standard against which the Grievor was judged". She further contended that there was an essential unfairness resulting from the amount of work involved in submitting the numerous lesson plans, reflections, and supporting documents, which had diminishing returns in terms of the benefit to the Grievor. However, we respectfully agree with Employer counsel's submission that requiring the Grievor to submit that material for review by Mr. Marsden was not unfair. As indicated by Mr. Barrett, organization was clearly a significant deficiency, and lesson plans are a starting point for organization as they are "at the very heart of the execution and delivery of teaching practice". In addition, the division of lesson plans into three parts was not new; as indicated above, lesson plans had for many years consisted of three parts, which had been variously described. The three part lesson plan template was merely a more formalized version of three part lesson planning. The improvement plans also gave the Grievor the option of using an alternative template approved by the principal, but the Grievor did not seek to do so.

149 Lesson planning was identified in the first Summative Report as an aspect of the Grievor's professional practice that required significant improvement. Consequently, the requirement of submitting daily lesson plans to Mr. Marsden was neither unwarranted nor unfair. It may also be noted that this requirement would have been less onerous if the Grievor had previously taken steps to begin introducing three part lesson planning into his teaching practice, as he and the other members of the Board's staff had been strongly encouraged to do through the aforementioned actions that were taken by the administration to advance the expectation that it would be used by all members of the School's staff.

150 We also find no merit in the Federation's contention that the feedback given to the Grievor regarding those lesson plans was inadequate. Mr. Marsden reviewed the lesson plans and returned them to the Grievor with various forms of feedback: checkmarks beside satisfactory portions; question marks in portions which were unclear or which had

been left blank by the Grievor; written comments such as "good" and "need more details"; suggestions and observations, such as "review assignment expectations with examples", "chunk assignment to meet May 4 due date", "this should have been identified at the beginning B4 reading to promote student engagement", "may need to omit this if you are thinking there are time constraints", "Your lesson plans should be detailed so that another teacher could deliver this lesson", and "create the master list from your resources ... like an Exam review sheet + provide to students as a homework activity to organize their binders"; questions, such as "examples?", "from what resource?", "how far do you expect students to get to in assignment?", "where is symbolism + imagery in this assgn't?"; and "when will they write + share their opportunities to provide feedback to them?"; and requests such as "Brad, please identify and list curriculum expectations as we move towards your next T.P.A."

151 Mr. Marsden also provided the Grievor with feedback regarding weekly outlines, projects, rubrics, and other documents that the Grievor submitted for review. The evidence further establishes that Mr. Marsden and Mr. Barrett went through a lesson plan section by section with Mr. Tait at both the March 23, 2011, and the April 18, 2011, improvement plans meetings. Having regard to the totality of the evidence, we are satisfied that the Grievor was given adequate feedback regarding his lesson plans.

152 The Federation also contended that there was unfairness caused by a lack of meaningful support with respect to identified support persons. In her submissions in support of that contention, counsel referred to the use of classroom teachers as support persons, the lack of any direction being given to them, and the difficulties presented by the large number of support persons and their busy schedules.

153 As indicated above, although Mr. Carroll testified that the Federation generally had a concern about members being involved in any way in the evaluation of other members, he also indicated that he recognized that the Board had a limited number of people who could provide support in the improvement plan process and consequently accepted that in this case it would have to be members who were involved in the process. He also had a concern about the number of support persons included in the improvement plan, but recognized that the designated support persons were busy individuals and testified that, in the end, the five individuals were accepted due to the concern that each of them would have a limited amount of time available to assist the Grievor.

154 During the improvement plan finalization process, neither the Grievor nor Mr. Carroll expressed any concern about any of the particular individuals who had been selected as support persons. The Grievor had far more knowledge than Mr. Marsden about what had previously transpired between himself and Dr. Dobson. If he or Mr. Carroll had concerns about the additional interactions that would result from Dr. Dobson being one of his support persons, those concerns could and should have been raised with Mr. Marsden during the improvement plan finalization process. Although Mr. Tait testified that he expressed concern to Mr. Marsden and Mr. Barrett at improvement plan meetings about working with Dr. Dobson "given [their] strained relationship", there is no evidence that any such concern was raised before he and Mr. Carroll accepted the first improvement plan, nor that any suggestions were offered by the Grievor or by Mr. Carroll regarding who else might be used to provide the assistance that the improvement plans contemplated would be provided by Dr. Dobson. If either of them had been of the view that there were other persons available who would have been in a better position to provide collegial support to the Grievor than Dr. Dobson or any of the other persons named in the improvement plans, they would presumably have raised that matter with the Employer and sought to have them included in the improvement plans.

155 Mr. Marsden advised each of the support persons that they were part of the improvement plans, and that Mr. Tait would be contacting them to obtain assistance. They were not provided with a copy of the improvement plans, which were private documents containing information that a teacher might well not want to be provided to his peers. It was open to Mr. Tait to share part or all of those documents with his support persons to assist them in understanding the improvements that he needed to make, but he only did so to a very limited extent.

156 Federation counsel made particular reference to what she submitted to be a lack of effective help being provided to the Grievor by Ms. Varty and Dr. Dobson. We have summarised earlier in this award some of the assistance that they

and the Grievor's other support persons provided to him. Although busy schedules presented some difficulties in making arrangements to obtain their help, a larger obstacle was the Grievor's perception of that aspect of the improvement plan as a burden rather than as an opportunity to obtain useful assistance. In the circumstances of this case, we are satisfied that the level of support provided by Dr. Dobson and Ms. Varty, and by the other support persons, was not unfair to the Grievor.

157 The submission that an unsupportive environment at improvement plan meetings caused unfairness is also not persuasive in the circumstances of this case. Although Mr. Carroll and the Grievor testified that the improvement plan meetings were negative in nature and not sufficiently supportive, some negativity was unavoidable at those meetings, as Mr. Marsden and Mr. Barrett had legitimate concerns that the Grievor was not taking the improvement process as seriously as necessary, and was not showing sufficient initiative in seeking to benefit from it. With the Grievor showing little improvement despite the extensive resources that were available to him, it is not surprising that those meetings tended to concentrate on the ongoing defects in his performance. Moreover, when he did show some improvement, such as in the preparation of lesson plans, the improvement tended to be short-lived and to highlight other shortcomings, such as his inability to follow those plans and to effectively teach lessons in accordance with them. However, we are satisfied on the totality of the evidence, including the testimony of Mr. Marsden and Mr. Barrett, and the notes that were made of those meetings, that they took reasonable steps to provide the Grievor with assistance at those meetings and to encourage him to make the changes that would be necessary for him to receive a satisfactory rating.

158 The Federation also faults the Board for providing "no clear markers for success". As indicated above, that issue was raised by Mr. Carroll in his letter of October 21, 2011, in which he expressed the view that the improvement plan "does not state clearly the standard of teaching performance that Mr. Tait must attain in order to gain a satisfactory rating", and suggested that this was a "major deficiency" in the plan. That letter also complained that there had been no rubric or equivalent assessment instrument provided to Mr. Tait regarding the sixteen competencies. However, as acknowledged by the Grievor (in cross-examination), rubrics do not identify "how" to achieve a particular level of achievement. Mr. Carroll testified that he wanted to know what the Grievor's critical weaknesses were, "where the pass line was", and how much improvement in what areas would be enough. He also expressed the view that the summative reports made all of the weaknesses look approximately equal in value, and wanted to know "what were the really critical weaknesses" where the Grievor could show meaningful improvement in order to get a satisfactory rating.

159 Having regard to all of the evidence, we are not persuaded that the Board's expectations of the Grievor were not adequately articulated. The Summative Reports that were provided to the Grievor in the form mandated by the TPA Technical Requirements Manual identified a number of specific deficiencies in the Grievor's performance. That Manual includes numerous "look fors", which are things that may be considered in assessing the competency of a teacher. The Board also provided Mr. Tait with two explanation of rating forms identifying deficiencies and the steps to be taken to remedy them. It further provided him with two detailed improvement plans setting out the steps and actions that he should take to improve his performance to a satisfactory level. The minimum requirements of what a teacher is expected to teach are also set out in curriculum documents issued by the Ministry of Education, which contain numerous prompts regarding how a teacher might go about teaching the required subject matter. In view of the wealth of information that was available to the Grievor regarding what was expected of him, we find no merit in the contention that he was also entitled to a rubric and to be provided with even more specific information about what he needed to do to obtain a satisfactory rating.

160 As indicated above, it is also the Federation's position that the "bad faith" prohibition in the third part of the *Gusita* test was violated in several ways, the first being its contention that repetition of a series of alleged deficiencies was used to support an unsatisfactory rating in multiple competencies, and to create an unduly negative and harsh appraisal. However, a deficiency may well be germane to more than one domain and to more than one competency (see, for example, the *Gusita* award, at paragraph 187), and we are satisfied that this was true in the circumstances of the instant case. Although Mr. Carroll described the summative reports as being "strange documents in that they were totally negative", their negativity was not materially different from the level of negativity found in three other summative

reports (entered as Exhibits 47, 48, and 49) which rated the performance of three of the Board's other secondary teachers, including another English teacher, as unsatisfactory.

161 Mr. Carroll also indicated that although all of the competencies are of equal weight "on paper", in his experience evaluators would put greater weight on some "look fors". While it is open to evaluators to place greater weight on some competencies than on others, they are under no obligation to do so. It is also open to them to ask the teacher to identify "look fors" for purposes of the evaluation, as both Mr. Marsden and Mr. Barrett did in this case. However, as submitted by Employer counsel, those identified "look fors" do not eliminate the obligation to evaluate the Grievor in respect of all of the domains and competencies. Although Mr. Carroll wanted the evaluators to indicate which competencies were the critical areas of improvement needed for Mr. Tait to attain a satisfactory rating, it is clear from the evidence that the Grievor needed to improve his performance in all of the domains and competencies in which his performance was found to be unsatisfactory.

162 The Federation also alleges bad faith on the basis of the manner in which the elements of the improvement plans were treated and tracked, as well as in the manner in which Mr. Marsden documented his interactions with the Grievor. In support of those allegations, Federation counsel submitted that the improvement plans were treated by the Employer as being mandatory in nature, rather than as being a list of resources for Mr. Tait to access. She also submitted that improvement plan meetings frequently focused on matters such as whether or not he had met with the various support persons and read the recommended books. However, as submitted by Employer counsel, during improvement plan meetings questions were posed to the Grievor about the support persons and other aspects of the plan not only to gauge his commitment to the process, but also to ascertain what he had learned from those individuals and other resources, and what he had implemented or tried in an effort to improve his teaching. Much less time would have been occupied by such matters if the Grievor had shown greater initiative in contacting and following up with the support persons.

163 It is clear from the evidence that Mr. Marsden was a prolific note taker, and that he assiduously tracked his interactions with the Grievor, as well as such matters as when the Grievor handed in his lesson plans. However, we are satisfied that he did not do so in order to support a predetermined outcome of termination, as alleged by Federation counsel, or for any other improper purpose. In this regard, we accept the evidence, given by both Mr. Marsden and Mr. Barrett, that there was no predetermined goal to have the Grievor terminated, as alleged by the Federation. We are also satisfied that the reason why Mr. Marsden and Mr. Barrett attempted to ensure that the Grievor was taking full advantage of the opportunities provided by the improvement plan was that they hoped that by doing so, he would be able to improve his performance to a satisfactory level.

164 The Federation also alleges bad faith on the basis of the "manner in which the Grievor's own lesson plan reflections were used against him". That allegation is based on Mr. Marsden's inclusion of a lesson plan reflection in the following portion of the "Professional Knowledge" domain part of the second summative report prepared by Mr. Marsden:

... Mr Tait's lack of professional knowledge of curriculum materials and planning was evidenced during his TPA classroom observation on May 4, 2011. This was confirmed in Mr Tait's ENG3C lesson reflection where he stated, "Didn't get Lesson 37 done, didn't get to Consolidation. One problem is that I have my back to the clock - I thought I had lots of time." This is evidence of Mr Tait's unsatisfactory professional knowledge and is another example of the poor planning and lesson organization and delivery that is taking place in Mr Tait's courses and is outlined in his Improvement Plan.

However, that allegation is not supported by that passage, nor by any other evidence. The reference to the lesson reflection is merely confirmatory of what Mr. Marsden had observed in the Grievor's classroom on May 4th. When Federation counsel suggested to Mr. Marsden that he had collected this information to add to the TPA to make it even more negative, Mr. Marsden's response was: "No. This is the second TPA and with all of the planning that has gone on through the first and second TPA, and with all of his experience, Mr. Tait is still not finding a way to fulfill his own lesson plan."

165 The Federation's contention that Mr. Marsden engaged in overly harsh and excessive criticism of the Grievor also lacks any legitimate evidentiary basis. A few of the criticisms that Mr. Marsden expressed during the course of his seven days of testimony may be characterised as instances of Mr. Marsden not giving Mr. Tait the benefit of the doubt. For example, Mr. Marsden was initially somewhat critical of Mr. Tait's request to pick up an exit card at a professional development session so that he could complete it and later return the card, but agreed in cross-examination that Mr. Tait did immediately hand it in after realizing that he was required to do so, and further agreed that it was possible that this was just a misunderstanding, rather than an example of a lack of ownership. However, those occasional instances fall far short of establishing bad faith on the part of Mr. Marsden, as do the other portions of the evidence that Federation counsel referred to in support of that aspect of her argument.

166 We also find no evidence of bad faith in the use of student achievement as part of the analysis of Mr. Tait's performance. The evidence establishes that, although it is certainly not definitive, student achievement is one of many indicators of the effectiveness of a teacher's lessons. Accordingly, we are satisfied that it was properly taken into consideration during the TPA process. As indicated above, high failure rates and low medians in the Grievor's classes had been a source of concern for several years. As asserted by Mr. Barrett in his testimony, it was incumbent upon Mr. Tait to reflect on how he was teaching and what steps he could take to improve student success in his classes, rather than blaming those poor results on his students or on other factors beyond his control.

167 The basis for the Federation's bad faith allegation regarding the "manner in which the Grievor was held responsible for late student assignments" is the inclusion of the following sentence in his first improvement plan: "There is to be no backlog of late student assignments." That sentence is one of the four "sample indicators of success" listed under the heading: "*Tracking relevant assessment and learning skills data*". If the Grievor and Mr. Carroll had interpreted that sentence as requiring the virtually impossible task of ensuring that all student assignments were invariably submitted on time, they would presumably have voiced a concern during the improvement plan finalisation process about its proposed inclusion in the plan. However, that did not occur. Moreover, the evidence indicates that what was actually being sought was to encourage the Grievor to establish and make effective use of a system of ongoing checks and balances to reduce student assignment backlogs, to encourage him to work with his students in reducing those backlogs, and to encourage him to make effective use of the student success room, rather than using it as what Ms. Hutson described as "the clean up crew", after a substantial backlog of student assignment had already developed. While the sentence in issue could have been better worded, its inclusion in the improvement plan does not evidence bad faith.

168 The Federation also alleges that student notebooks were used in bad faith to assess the Grievor's teaching. As noted by Federation counsel, student notebooks were not included in list of items that Mr. Marsden requested the Grievor to provide to him in advance of the classroom observations. However, both he and Mr. Barrett testified that student notebooks are typically reviewed as part of the TPA process, either during the classroom observations or after receiving them from the teacher. Mr. Barrett testified that notebooks are a great indicator of what impact a teacher's teaching is having on students, and that they can also be reflective of how successfully a teacher is fulfilling the accommodations required by IEP's. Since Mr. Marsden only reviewed some of the students' notebooks, the following statement included in the "Professional Knowledge" section of the first summative report is overly broad: "lack of mastery of subject knowledge and related curriculum skills ... is also evidenced by the absence of any reflective feedback on all students' written assignments in each of his classes". However, we do not find it to be indicative of bad faith.

169 The Grievor was given ample opportunity to address concerns about his student notebooks during the periods covered by the two improvement plans. As indicated above, the first summative report contained a number of specific suggestions regarding things that the Grievor could do to improve his performance, including "recording reflective feedback in student notebooks to provide students with valuable input on their learning and information for next steps in helping them improve their craft". Moreover, when Ms. Varty met with the Grievor on March 2, 2011, she asked to see the students' notebooks because they would provide a record of what was going on in the classroom. When Mr. Tait told her that he did not have any to show her because he did not monitor students notebooks, she suggested that he begin to build evidence of his classroom instruction through student notebooks for supporting student learning. However, he

did not act upon those suggestions. Consequently, the contents of his students' notebooks continued to provide a basis for negative inferences to be legitimately drawn by the evaluators.

170 The Federation further alleges bad faith on the basis of the "manner in which the Grievor was penalized for not attending voluntary grades meetings", and on the basis of the "manner in which the Grievor was criticized for not attending a voluntary mentorship meeting on May 5, 2011". In support of those allegations, counsel referred to the following passage from the section of the second summative report pertaining to the "Leadership in Learning" domain:

Mr Tait did not attend the volunteer teacher mentorship luncheon for "learning skills" on May 5, 2011, as communicated to him during the learning Improvement Planning and pre-observation meetings. Mr Tait has only attended one volunteer grade meeting to date during lunch hour for each grade where teachers collaborate and share interventions to help students find academic success. Minutes of the meetings are posted to a general staff site so that all staff can share in the information gleaned from their co-workers on what strategies work best for each student in HHSS.

171 As noted by Federation counsel, Mr. Marsden agreed that grade meetings were voluntary and that there were many reasons why a teacher might not attend a voluntary lunch meeting. He acknowledged that the legitimate reason for Mr. Tait's not attending the lunchtime grade meeting that was held on November 17, 2010, was that he was keeping his classroom open for students who wanted help on their essays. He also acknowledged that Mr. Tait had provided notes about some of his students for use at that meeting. One of the competencies included in the "Leadership in Learning Communities" domain is: "The Teacher collaborates with other teachers and school colleagues to create and sustain learning communities in his or her classroom and school". As submitted by Employer counsel, the fact that grade meetings are voluntary does not mean that they cannot be considered in assessing how a teacher measures up against that competency, nor that a teacher's absence from some of those meetings cannot legitimately be included in an evaluator's overall assessment of it. Although that section of the report would have been more balanced if Mr. Marsden had included the aforementioned information regarding the November 17, 2010 meeting in it, the fact that he did not do so does not warrant a finding of bad faith on his part, nor does the reference that he made to Mr. Tait's not attending the May 5, 2011, volunteer teacher mentorship luncheon that took place on May 5, 2011. That professional development opportunity was specifically geared to one of the issues identified in the first summative report, and was drawn to Mr. Tait's attention at the improvement plan meeting held on April 18, 2011, and at the pre-observation meeting. In the absence of any evidence that Mr. Tait provided Mr. Marsden with a satisfactory explanation of why he did not attend, Mr. Marsden cannot be faulted for including the fact of his non-attendance in the summative report.

172 The Federation also alleges bad faith regarding the "manner in which the Grievor was criticized regarding classroom management". One of the competencies included in the "Professional Knowledge" domain is: "The teacher knows a variety of effective classroom management strategies". In support of this allegation, Federation counsel referred to the following sentence contained in the portion of the second summative report pertaining to that competency: "Hats are seen on students during class time on a regular basis and this has been an issue with one student in particular where the Vice-Principal had to be called into the classroom." That sentence is part of the following passage included in that portion of the report:

Mr. Tait does not implement the behaviour code consistently. Hats are seen on students during class time on a regular basis and this has been an issue with one student in particular where the Vice-Principal had to be called into the classroom. During my observation in the classroom, some students put their hat on in class while they were waiting a few minutes for the bell to ring. This is a regular occurrence as students pack up early and wait for the dismissal bell at the classroom door. Mr. Tait is unable to effectively manage a school rule within his own classroom.

173 Federation counsel submitted that this part of the report references an incident in which Mr. Marsden sent an email to the Grievor, requesting an update on the following email that Mr. Marsden had received from Vice-Principal Irv Sternberg:

While doing my attendance rounds period 2 today, I stopped in to room 2, Mr Tait's class and [J] had his hat and hood on which I addressed. Told him he had a

My concern is why didn't Mr Tait address that??

[An initial has been substituted for the student's name in this quote, to protect the student's privacy.]

174 In responding to Mr. Marsden's request, the Grievor wrote:

[J] had JUST returned to class from a washroom visit and I was in the middle of something with the class. I had not even had time to address this with [J] when Mr. Sternberg opened my door.

While [J] does often need reminders about wearing his hat in class, he responds fairly quickly when I mention it to him (I often just make a physical gesture to him to take it off).

175 Although Mr. Tait testified that he could not recall any other incidents regarding "hats on in class", we accept Mr. Marsden's evidence that there was another instance. Referring to it in the summative report did not constitute bad faith on the part of Mr. Marsden.

176 Federation counsel also referred to the following sequential portion of that part of the report:

As well, the Vice-Principal was also called into Mr. Tait's classroom to deal with a student with their head down on their desk. Mr. Tait sent the Vice-Principal the following email while trying to handle the situation himself. "I've spoken 3 times to [K] he says he couldn't sleep last night so now he can't keep his eyes open. He's having a nap on his desk right now. What would you like me to do? I do not want a confrontation with him! Generally, he's a nice guy and we get along well."

[An initial has also been substituted for the student's name in this quote, to protect the student's privacy.]

177 In commenting on that incident, Mr. Marsden testified that Mr. Tait should have been able to handle this situation in his class by addressing the concern with the student or waking him up. He also testified that it should not have been necessary for Mr. Tait to contact the Vice-Principal about it because classroom management is a teacher responsibility.

178 In support of her contention that whether Mr. Tait contacted the office or did not contact the office regarding matters of classroom management, he was criticized by the principal throughout the TPA process, Federation counsel juxtaposed Mr. Marsden's criticism of the Grievor's contacting the vice-principal regarding that incident, with what she characterised as his criticism (in his testimony in chief) of the Grievor's failure to contact the office before meting out discipline to a student for inappropriate downloading of material from the internet. In describing that incident in an email that he sent to Mr. Marsden on May 2, 2011, Mr. Tait wrote:

After two warnings, [J] was still surfing the net, not using the computer appropriately for his media unit summative project.

I believe he also printed some inappropriate material. I have logged him off the network starting immediately. Let me know when I should reinstate him. I have no idea whether he needs access for his other classes.

However, Mr. Marsden was not critical of the Grievor regarding the manner in which he handled that incident. When he was asked (in examination in chief) if that incident raised any concerns for him, he answered, "Yes, that a student was accessing inappropriate sites". After indicating that monitoring students in a computer lab is a teacher's responsibility, he also testified that if there are concerns that the teacher feels need to be escalated, the teacher can send the student to the office. During cross-examination, he agreed that Mr. Tait took appropriate steps to address that student's behaviour by logging him off the network and referring him to the office, where Mr. Marsden gave him two detentions.

179 The Grievor testified that he felt that he could not win, because there were incidents where he handled the situation himself and was told that he should have let the administration handle it, and other incidents where he asked the administration for assistance and was criticized for not handling it himself. However, we accept Mr. Marsden's evidence that every situation was dealt with on its own merits, and we are satisfied on the totality of the evidence that there was no bad faith involved in the manner in which the Grievor was criticized regarding classroom management.

180 The Federation's final allegation of bad faith pertains to the "manner in which the Superintendent refused to respond to the Grievor's request for assistance". That allegation is based on Mr. Barrett's response to the request for comments on a reworked lesson plan that Mr. Tait emailed to him on April 19, 2011. As indicated above, his response was: "I appreciate you sending me this work, but please send it to Dan as the lead in the improvement process". Counsel for the Federation submitted that this response was designed to ensure the failure of the Grievor, and that it was contrary to a good faith effort to assist the Grievor in achieving his improvement goals. That allegation of bad faith is also based on Mr. Barrett's testimony in which he likened that request to the behaviour of a child who does not like the response from one parent and therefore goes to the other parent. Counsel submitted that this testimony indicated a lack of genuineness with respect to any real efforts to assist Mr. Tait to be successful, and constituted clear evidence of bias.

181 Federation counsel's submissions on that allegation also included an assertion that Mr. Barrett provided "shifting explanations" regarding his response. The suggestion implicit in that argument is that Mr. Barrett was being evasive. During cross-examination on January 26, 2017, Mr. Barrett initially suggested that he provided feedback to the Grievor regarding that lesson plan at the next improvement plan meeting. However, the next improvement plan meeting did not take place until the following September. When he was asked later that day if he ever gave Mr. Tait feedback on that lesson plan prior to the May classroom observations, Mr. Barrett replied, "Yes, I believe I did", and responded to the question of when by stating "in the pre-observation meeting, I guess". However, when it was pointed out to him that Mr. Carroll's notes of the pre-observation meeting did not record him as having been present, he acknowledged that he could not have given him any feedback at that meeting. During the course of further cross-examination of Mr. Barrett in April of 2017, it became apparent that the discussion of the lesson plan that Mr. Barrett had in mind when answering those earlier questions was the discussion that had taken place at the April 18, 2011, improvement plan meeting.

182 We are not persuaded that Mr. Barrett's uncertainty regarding the timing of his feedback on that lesson plan constitutes evasiveness on his part. As submitted by Employer counsel, it is not surprising that Mr. Barrett was confused about the timing of the feedback, given the number of meetings that took place during the TPA process and the fact that he was testifying about those meetings more than five years after they occurred. We are also not persuaded that Mr. Barrett's response to Mr. Tait's request for comments on the reworked lesson plan constituted bad faith. As Mr. Barrett indicated in his response, Mr. Marsden was the lead in that improvement plan process, and was the person to whom the Grievor was required to submit his lesson plans. He was also the person who had conducted the observations in the first phase of the TPA process, and who was going to be conducting them in the second phase of that process. Since he had already devoted a lot of time to discussing the components of three part lesson plans with the Grievor at improvement plan meetings, it was not unreasonable for Mr. Barrett to decline to provide the comments requested by Mr. Tait, and to direct him back to Mr. Marsden.

183 We also respectfully disagree with Federation counsel's submission that Mr. Barrett made "belittling and offensive comments" about the Grievor's attempt to have him review that lesson plan, and that the analogy which he drew is clear evidence of bias. In likening Mr. Tait's request to the behaviour of a child who does not like a response from one parent and therefore goes to the other parent in an attempt to obtain a different response, Mr. Barrett was not belittling the Grievor; he was merely drawing an analogy in describing his perception of what the Grievor was requesting.

184 It is also the Federation's position that both Mr. Marsden and Mr. Barrett were biased as a result of anti-union animus, and as a result of predetermined opinions regarding the Grievor's performance and the expected outcome of the TPA process.

185 The allegation of anti-union animus on the part of Mr. Marsden is based on the fact that while he was a teacher at HHSS, he was opposed to the work-to-rule that took place during the 2000-2001 school year. Mr. Marsden testified that although he would have preferred to continue coaching, he followed the work-to-rule guidelines. Since the Grievor was District 15's local chief negotiator at that time, he was one of the people who advised Mr. Marsden to adhere to those guidelines. However, those facts do not support a finding of anti-union animus on the part of Mr. Marsden, nor does anything else in the circumstances of this case.

186 The allegation of anti-union animus on the part of Mr. Barrett is based on the following sentence in the third summative report: "Whatever merit existed in this line of thinking was immediately lost when this evaluator discovered that on one of those days Mr. Tait chose to attend an all day OSSTF meeting". That sentence forms part of the following passage (found on pages 9 and 10 of the Summative Report appended to this award) included in the "Leadership in Learning Communities" section of that report:

... this fall the Board offered a series of self-selected professional development opportunities specifically geared to classroom practice, high yield strategies, and quality tasks. Mr. Tait chose not to attend any of these sessions. In his defence he claimed that through illness and other interruptions he felt it was more important to be with his students rather than attend the PD session(s). Whatever merit existed in this line of thinking was immediately lost when this evaluator discovered that on one of those days Mr. Tait chose to attend an all day OSSTF meeting. This is particularly disappointing when Mr. Tait's decision making and prioritizing in terms of his attendance at meetings for professional growth was a point of significant concern in his TPA summative as in, "Mr Tait did not attend the volunteer teaching mentorship luncheon for "learning skills" on May 5, 2011, as was communicated to him during the last Improvement Planning and pre-observation meetings... Mr. Tait has only attended one volunteer grade meeting to date during lunch hour for each grade where teachers collaborate and share intervention to help students find academic success."

187 In explaining why he included that information in the report, Mr. Barrett testified:

People's time and energy has limits. When you put time and energy into other things, I think it's a fair question.... I wouldn't have cared what the meeting was. If it wasn't related to continuing Brad's improvement in the classroom, this is a fair question. Let's focus everything you have on improving your performance in the classroom and getting a satisfactory. The fact that I and Peter Carroll had to coach him down that road on more than one occasion was troublesome.

188 In view of that credible testimony and the context in which the impugned sentence is found, we have concluded that it does not constitute anti-union animus.

189 Federation counsel also submitted that it is more likely than not that both Mr. Marsden and Mr. Barrett came into the TPA process with a predetermined opinion regarding Mr. Tait's performance and the expected outcome. She further submitted that this opinion would have been reinforced by Dr. Dobson, whom she characterised as having an extremely hostile and acrimonious attitude toward the Grievor. As indicated above, in fulfilling his department head responsibilities, Dr. Dobson raised a number of concerns about the formative and assessment tools being used by Mr. Tait, the failure rates in the Grievor's classes, and other departmental matters. However, we are not persuaded that he prejudiced Mr. Marsden and Mr. Barrett against the Grievor. We also do not share Federation counsel's view that Mr. Marsden made a point of downplaying any prior knowledge of the Grievor when he gave a response of "Yes, I think so", to the question (put to him during examination in chief) of whether he had known the Grievor from any of his previous schools. As indicated above, before becoming the vice-principal (and later the principal) of another school, Mr. Marsden taught at HHSS from 1999 to 2004, and shared general office space there with the Grievor and the other teachers in the School. However, there is no evidence that he formed any opinion regarding the Grievor's teaching performance during that period, nor that anything that occurred during that period influenced his appraisal of the Grievor's performance six years later. Furthermore, the fact that during the 2009-2010 school year Mr. Barrett acceded to Principal Brohman's

request not to do what he anticipated would be a difficult TPA of Mr. Tait in his last year before retiring from his principalship does not lead us to infer that Mr. Barrett came into the TPA process with a predetermined opinion regarding Mr. Tait's performance and the expected outcome, nor that Mr. Barrett's appraisal of the Grievor's performance was in any way influenced by it. Having regard to the totality of the evidence, we are satisfied that neither Mr. Marsden nor Mr. Barrett were biased against the Grievor. We are also satisfied that neither of them had a predetermined opinion regarding the Grievor's performance and the expected outcome of the TPA process

190 The Federation also asserts that the Grievor's overall performance ratings were not reasonable nor based on supporting facts. The first basis for that assertion is its contention that the evaluators reached unreasonable or false conclusions respecting the Grievor's final exams. In support of that contention, reference was made to the concluding sentence in the first paragraph of the "Professional Knowledge" domain section of the first Summative Report, which reads: "His ENG3C exam was missing two mandatory major sections of the course and exam template". However, that statement is accurate; the ENG3C exam that the Grievor provided to Dr. Dobson for approval, and to Mr. Marsden as part of the TPA process, was missing two mandatory major sections of the course and exam template. Although those omissions led Dr. Dobson to suggest in an email to Mr. Marsden that "it seems like Brad did not teach 40% of the 3C course", Mr. Marsden acknowledged that there was no evidence that the Grievor had failed to teach 40% of that course, and did not include any such assertion in the Summative Report. There was also nothing unreasonable about Mr. Marsden and Mr. Barrett expressing concern at the June 17, 2011, improvement plan meeting about the Grievor's decision to use the same exam for each of his ENG3C classes when the two classes were writing the exam on different days. Although they were prepared to accept it in that case because the department head had approved it, Mr. Barrett quite properly provided the Grievor with future guidance on that matter by indicating that he was generally opposed to identical exams being used on different days.

191 The second basis for the Federation's position that the Grievor's overall performance ratings were not reasonable is its contention that the evaluators reached unreasonable and/or false conclusions regarding the relationship between student marks and the Grievor's performance. In support of that position, Federation counsel submitted that their conclusions regarding the Grievor's marks and medians were not based on supporting facts. Mr. Marsden's impugned conclusion is set forth in the final sentence in the section of the first Summative Report pertaining to the "Commitment to Pupils and Pupil Learning" domain: "Given his low course medians and high failure rates, both present and during this evaluation cycle since his last TPA, Mr. Tait needs to modify his teaching strategies to better suit the individual needs of pupils". Mr. Barrett's impugned conclusion is contained in the second sentence of the middle paragraph on page 9 of the Summative Report appended to this award: "Analysis of Mr. Tait's marks indicate that significant problems still exist in the area of assessment and evaluation despite the fact that he (in his own ALP's) and the Board had identified this as an area in need of improvement".

192 In explaining the significance of marks, Mr. Barrett testified that although marks are a relevant consideration in the assessment, ultimately what is being assessed is the teacher's teaching practice measured against the domains and competencies. As submitted by Employer counsel, the evidence shows that Mr. Tait's marks and medians were low compared to the provincial standard, which is a benchmark against which they may appropriately be assessed. As further submitted by Employer counsel, a TPA is not a relative assessment of how a teacher is faring in comparison with his or her colleagues; it is an assessment of the merits of a teacher's own performance. Consequently, how a teacher's students are performing or have historically performed in other classes does not impact that assessment. Deficiencies in the performance of other teachers would be identified through their own TPA's. During cross-examination, Mr. Barrett acknowledged that he had not looked at how the student marks in Mr. Tait's classes compared to marks in other English classes. When he was asked (during re-examination) why he had not done that, he responded: "The process I was involved in was trying to help Brad reach a satisfactory standard. It wasn't about a comparison of student marks over different courses with different teachers." It was also his uncontradicted evidence that he had never reviewed student transcripts as part of a TPA process, and that Mr. Carroll had never suggested that he should.

193 The marks reviewed as part of the Grievor's TPA process were marks collected at various times during the process. They were not final marks, as awaiting the issuance of final marks before issuing a Summative Report would be inconsistent with the twenty school day time limit within which the Summative Report must be given to the teacher following the classroom observations (as specified in part 10.2.5 of the TPA Technical Requirements Manual). The evidence also indicates that final marks may ultimately not be a reflection of what the teacher has done, as administrators may pass a student having regard to a variety of factors. We are also not persuaded that the presence of IEP students in the Grievor's classes made the evaluators' conclusions regarding the Grievor's student marks unreasonable or false, nor that their presence excused the Grievor's poor teaching performance. Indeed, the substantial evidence adduced regarding the Grievor's failure to provide appropriate, differentiated instruction to his IEP students fortifies the reasonableness of their conclusions.

194 It is also the Federation's position that the Grievor's improvements and positive teaching were not acknowledged and were undervalued in the TPA process. In support of that position, counsel for the Federation submitted that there was no acknowledgement in the TPA process of the Grievor's significant improvements in the development of his lesson plans.

195 In the second paragraph of the section of the first Summative Report pertaining to the domain of "Professional Knowledge", Mr. Marsden wrote:

Mr. Tait does not have formal daily lesson plans created for his classes. He simply uses a course binder that has outlines for his resources. There is no lesson development that details the learning expectation for his students that will be achieved during that lesson.

Although the three part lesson plans that Mr. Tait submitted to Mr. Marsden as part of his improvement plan represented some improvement, Mr. Marsden continued to have issues with them as they did not consistently meet his expectations. Consequently, in the above-quoted section of the second Summative Report titled "Overall Rating of Teacher's Performance", Mr. Marsden indicated that one of the main areas of concern continued to be "focused, organized and detailed daily lesson plans".

196 After receiving the second Summative Report, the Grievor's lesson planning continued to show some improvement. During cross-examination focused on a comparison of the Grievor's first lesson plan with lesson plans that he submitted for his ENG1D classes of June 6-9, 2011, Mr. Marsden acknowledged that there had been improvement in the Grievor's lesson planning. This improvement was also recognized by Mr. Barrett. However, there continued to be issues with the Grievor's lesson planning. Moreover, his inability to successfully implement his lesson plans remained a substantial concern.

197 There was also some improvement in the Grievor's tracking of students' learning skills, as he began using the skills tracking sheet template in accordance with the following requirement set out in the section of the first Summative Report pertaining to the domain of "Professional Knowledge": "Mr. Tait must also formally track the 6 expected learning skills, making use of the template provided on our September 1, 2010 P A Day, as part of the assessment strategies and instruments to make both short- and long-term decisions to improve pupil learning." Although that improvement was not acknowledged in the second Summative Report, Mr. Marsden's testimony about the concerns that he had about the infrequency of Mr. Tait's tracking and entering notations in some of the rows on that template provides evidentiary support for his inclusion of "not following school's and Ministry expectation for regularly scheduled learning skill tracking" as an area of concern in the "Comments on the Overall Rating of the Teacher's Performance" section of that report.

198 As submitted by Federation counsel, the evidence indicates that after receiving his first unsatisfactory rating, the Grievor began to use a number of student-centred techniques, rather than almost entirely relying on lessons that were primarily Socratic in nature. Consequently, Mr. Marsden's comment, contained in the second Summative Report,

that Mr. Tait's "primarily Socratic lessons of give and get are a daily occurrence where Mr. Tait stands or sits behind his podium at the front of the classroom" is an overstatement. However, there is evidentiary support for the following statement that is also included in that Report: "Mr. Tait's predominantly Socratic teaching style also shows a lack of effective teaching practices". The evidence also indicates that there was a lack of consistent and effective use of student-centred techniques by the Grievor.

199 There is also evidence of some unacknowledged improvement in the Grievor's tracking of late assignments and in his communication with student success room teachers. However, the evidence indicates that the inadequacy of the steps that the Grievor took to assist students with late assignments before referring them to the student success room remained a problematic issue, as did his ongoing failure to use the student success room in an effective manner.

200 There is also evidence of some observed improvements in the following areas that were not acknowledged in the second or third Summative Reports: navigating the classroom, checking student work, agenda posting, recording of due dates on blackboard, classroom management, and use of exemplars and visual aids in the classroom. However, we are not persuaded that those or any of the other improvements in the Grievor's performance were undervalued, as the evidence provides ample support for the following comment included in the "Comments on the Overall Rating of the Teacher's Performance" section of the third Summative Report:

This process has resulted in some improvement for Mr. Tait. However, the nature of this improvement is problematic because it is largely of low quality and significantly below the measure of satisfactory. Of equal importance is the fact the improvement was superficial, both in terms of understanding and application.

201 It was also argued on behalf of the Federation that the Grievor's collaboration with school colleagues, professionals, and members of the community was not acknowledged and was undervalued, and that the same is true of the steps that he took to fulfill his improvement plans. The evidence indicates that the Grievor did take somewhat more initiative in seeking assistance from support persons and other individuals than is indicated in the second and third Summative Reports. The evidence also indicates that he was responsive to some of their suggestions, and that he attempted to adopt some of the strategies and techniques that they suggested. However, the evidence also establishes that, unfortunately, he was unable to translate the assistance he obtained from them, and from other aspects of his improvement plans, into sufficient improvement in his performance to obtain a satisfactory rating.

202 For the foregoing reasons, we have reached the following conclusions: the essential elements of the mandated TPA procedure were followed; the essential elements of fairness built into the TPA process to enable Mr. Tait to demonstrate his competence as a teacher were applied to him; Mr. Marsden and Mr. Barrett carried out the TPA Process without discrimination, arbitrariness or bad faith; and the three successive overall ratings of his performance as "Unsatisfactory" were reasonable and based on supporting facts.

203 Since the majority award and dissent could not be issued within the period of sixty days prescribed by subsection 48(8) of the *Labour Relations Act* due to other commitments, the complexity of the issues, and the substantial amount of evidence and argument which had to be carefully reviewed, that period has been extended by seventeen days pursuant to subsection 48(9)(b) of the Act.

204 The grievance is hereby dismissed.

Michael Riddell Member:

205 I concur.

Bob Morose Member:

206 I dissent from the decision of the majority,

207 The *Education Act* sets out the following requirement regarding the Teacher Performance Appraisal (TPA) process in s.277.37(2)(a).

208 The importance and significance of being placed on review demands that the teacher is given written notice of that fact in order that no confusion arises. Oral notification is always subject to misunderstanding or misinterpretation. Many things can and do go wrong. As a result, the *Education Act* requires that a teacher be provided with a written notice upon being placed on review.

209 Additionally, *Regulation 298, Operation of Schools - General*, reiterates the requirement to provide written communication to a teacher prior to making a recommendation of termination under the *Duties of Principals*.

210 During the course of this hearing, conclusive evidence established that written notice was never provided to the grievor by the evaluating principal nor the evaluating

211 Supervisory Officer. It is significant to note that the *Act* makes no provision for oral notification.

212 The fact that the *Teacher Performance Technical Requirements Manual* is silent on the requirement that a teacher must be informed in writing upon being placed on review does not in any way negate nor lessen the importance of complying with this statutory requirement. In my view the employer's failure to do so was a fatal procedural flaw.

213 It should be noted that the evidence also revealed that other similarly-situated teachers had received written notice of being placed on review, while the grievor did not.

214 The School Board's argument that the Federation representative did not raise the issue of the employer's failure to provide written notice of the grievor's on-review status at the time of the breach is not relevant, and in fact is specifically envisioned by the collective agreement between the parties which states:

215 As the grievor was never provided with the statutory mandatory written notice of being placed on review, and the timelines begin to flow from receipt of such written notification, then it would follow that any performance appraisal conducted after the statutory breach must be declared void. The *Education Act* states:

216 On this basis, I would find that the grievor should be reinstated, be provided with the required written notice of being placed on review and be allowed to participate in the TPA process to its conclusion with an alternate evaluator.

217 Based on the totality of the evidence at the hearing, I would have found that the employer did not meet the test for just cause set out in *Toronto District School Board v. O.S.S.T.F., District 12, supra*. There were flaws in each of the evaluations which created an unfairness for the grievor and as a result, I would have found that the grievor should be evaluated again at first instance, and that none of the three evaluations were valid in the circumstances.

218 First, the essential elements of fairness required by the TPA process were absent for the following reasons:

219 Without reviewing all of the evidence which was presented at the hearing, I found that the evidence supported the Federation's position set out above. With respect to the issue of the timing and the excessive number of classroom observations, I note that although only one classroom observation is required under *The Act*, there were nine classroom observations for the purpose of the first TPA. Three of those classroom observations took place on December 22, only one day before students were released for the Christmas break. The grievor expressed concern about the timing of the observation and testified that the students were excited and anxious for the holidays to begin. In my view, it is self-evident that the timing of these classroom observations had the effect of creating an unfairness in the evaluation process. The grievor's testimony was clear and unambiguous in this regard and he testified about the classroom interruptions including the delivery of candy-grams, school assemblies and the need to wrap up units of study.

220 In addition to the timing of the observations, there was an excessive number of observations. Not including the formal observations, which formed part of the TPA process, there were 22 less formal walk-through observations prior to the second TPA and 18 observations which followed the second TPA. In my view, the number of observations bordered on harassment. Certainly, the students and parents became aware of and commented on the frequent monitoring of the grievor. This undoubtedly would have had the effect of undermining the grievor's authority in the classroom.

221 On the issue of the newness of the three-part lesson planning, the evidence also clearly supported the fact that the Board's expectations regarding three-part lesson planning were being articulated at the very same time that the grievor was being judged against that same standard. The principal, Mr. Marsden agreed the three-part lesson planning and the new techniques for minds on and consolidation were still evolving at the time of the grievor's first TPA and improvement plan. Professional development for teachers on this method of lesson planning and teaching techniques was occurring at or around the same period of time.

222 The need for the grievor to produce and submit approximately 540 lesson plans during the TPA process along with the multiple supporting documents was overly onerous in light of the quality of the feedback that was provided for him. The Federation representative, Mr. Carroll testified to the number of times he raised concerns regarding the quality of the feedback which was provided to the grievor and which in his opinion did not provide clear markers for success.

223 The poor quality of the principal's feedback was highlighted when it was contrasted with a more thorough analysis of a lesson-plan provided by the department head which was used by the principal as part of the grievor's second TPA, but was never provided to the grievor. In my view this was also evidence of the principal's bad faith attempt to document any concerns regarding the grievor's lesson plans, rather than a genuine attempt to assist the grievor to improve his teaching performance, as it was never provided to or discussed with the grievor.

224 I would have also found that there was clear evidence of discrimination, arbitrariness and bad faith for the following reasons:

225 Again, I will not summarize all of the evidence which supported each of these findings, but will highlight a few. With respect to the tracking of each element of the grievor's actions toward his improvement plan, it appeared as if the principal set out to document "flaws" for the purpose of supporting a termination rather than to assist the grievor in improving his performance. As an example, on one occasion, the grievor handed in his lesson plans to the principal, who made a note on the lesson plans that there were "no reflections shared". The reflections component is the portion of the lesson plan which reflects on how the lesson went. However, these particular lesson plans were handed in prior to the lesson being taught and could not have possibly contained a reflection portion. In my opinion, this example of confirmation bias was evident in multiple situations where the principal appeared to see only what he wanted to see.

226 The principal also documented the exact time each lesson plan was received and made a note of each, i.e. the lesson plan was handed in at 9:29 a.m., rather than prior to classes starting. On other occasions, there were notes regarding worksheets not being attached to the lesson plan, while there had been an agreement between the grievor and the principal that the grievor could provide the student worksheets at the same time he provided them to the students. The principal continued to note when he received the worksheets in a manner which appeared as if they had been handed in late. The grievor raised this concern as he was worried about the negative effect these notations would have on the Superintendent and he believed they were written in a manner to appear as if he was not complying with the requirements of the improvement plan.

227 On the issue of the bad faith manner in which student achievement was used as part of the analysis of the grievor's performance, the evidence was clear that it was not realistic to expect that all of the grievor's classes would achieve a median level of three in the circumstances, nor is it required. The Ministry Document, "Growing Success" specifically states, "there is no expectation that a certain number or percentage of students must be allocated to any one level of achievement."

228 I would disagree with the decision of the majority on the issue of the voluntary grades meetings and the one voluntary mentorship meeting, as it is well understood between the parties that the meetings are *voluntary*, and as such it should not be held against the grievor who chose not to attend for various reasons. He provided rationales in each case, and in one instance attended a lunchtime grades meeting and in another instance he sent in relevant notes for discussion at a grades meeting.

229 One very significant instance of bad faith on the part of the employer, was the Superintendent's refusal to respond to the grievor's request for assistance. Following an improvement plan meeting where the Superintendent made suggestions to the grievor, the grievor went home and reworked a lesson plan. He sent it to the Superintendent and asked if he was getting what the Superintendent was suggesting, or on the way to getting it. Superintendent Barrett refused to review the grievor's lesson plan. Furthermore, in the hearing he suggested that the grievor was "like a child looking for another answer from his other parent." The statement reflects a lack of a supportive environment for the grievor and underlines the fact that the employer's actions were not taken with the intention of assisting the grievor to meet his improvement goals.

230 The overall performance ratings of the grievor were not reasonable nor based on supporting facts for the following reasons:

231 I would make the following comments regarding the unreasonable conclusions regarding the grievor's marks. There was no evidence that the students in the grievor's class fared differently than in any other class. There was no evidence to support the conclusions that the grievor's marks and medians were low vis-à-vis other teachers, nor was there evidence that individual students performed worse in the grievor's class. In fact there was evidence to suggest the opposite. Students who were not doing well academically in the grievor's class had performed similarly in other classes. The statistical evidence also supported the fact that at least one of the grievor's classes during the observation period was a class which would be unlikely to have a median of level three, based on the past performance of these students.

232 There was abundant evidence that the grievor took steps to improve his teaching, that he had improved in the area of lesson planning, tests and assignments, tracking of late assignments and using student-centered teaching techniques. The numerous classroom observations documented the grievor navigating the classroom, checking homework, using student centered activities, putting agenda outlines on the board, recording due dates and using exemplars. These were all areas which had been identified as needing improvement in the first TPA and continued to be recorded as needing improvement, or not mentioned at all. The grievor's TPAs were consistently negative and every competency in all three TPAs was recorded as unsatisfactory. None of the grievor's efforts or documented improvements were captured in the evaluations,

233 For these reasons I would find that the grievance should have been upheld.

Appendix

Ontario

Summative Report Form for Experienced Teachers (Approved Form)

This form must be used for each performance appraisal. The duties of the principal may be delegated to a vice-principal in the same school, or an appropriate supervisory officer,

Boards are not allowed to remove any of the content from this approved form. Boards may add information, such as additional competencies (Section 277.32 of the *Education Act*), as long as this does not affect the substance of the form or mislead, and the form is organized in substantially the same way as the approved form.

Teacher's Last Name
Tait

Teacher's First Name
Brad

Principal's Last Name
Marsden
Name of School
HHSS

Principal's First Name
Dan
Name of Board
TLDSB

Description of Teacher's Assignment (Grade(s), Subject(s), Full-time/Part-time, Elementary/Secondary, etc.)

Full-time Secondary teacher in the Languages Dept.

Grade 10 Applied English - ENG2P 2 sections, and 1 section of Grade 11 College English - ENG3C

Instructions to the Principal

1. This report is to be completed during the performance appraisal process.
2. A copy signed by the principal must be provided to the teacher within 20 school days after the classroom observation (or 15 school days if the appraisal has resulted in a performance rating that is *Unsatisfactory*).
3. The teacher can add comments and must sign this report to acknowledge receipt of the report. At the request of either the teacher or the principal, the teacher and the principal must meet to discuss the performance appraisal after the teacher receives a copy of this report.
4. A copy of this report signed by both the principal and the teacher must be sent to the board.
5. In preparing the summative report, the principal must:
 - consider all 16 competencies in assessing the teacher's performance;
 - provide comments regarding the competencies identified in discussions with the teacher as the focus of the performance appraisal ¹ ;
 - provide an overall rating of the teacher's performance in accordance with the rating scale;
 - recommend professional growth goals and strategies for the teacher's development.

Meeting and Classroom Observation Dates (yyyy/mm/dd)

Pre-observation:
Dec 1, 2011

Classroom Observation:
Dec 7, 9, 2011

Post-observation:
Dec 15, 2011

Focus of the Classroom Observation ²

2 visits to ENG2P - section 2

2 visits to ENG3C

1 visit to ENG2P - section 1

All classes were in the Media unit of their respective curriculums

Other Appraisal Input (Please specify)

? Additional input attached

Student notebooks

Teacher mark book

Communication Log

Sample assessments

Instructions to the Principal: Comment on competencies identified in discussions with the teacher as the focus of the teacher's performance appraisal (the principal may also comment on other competencies that were assessed through the performance appraisal).

Domain: Commitment to Pupils and Pupil Learning

- The teacher demonstrates commitment to the well-being and development of all pupils.
- The teacher is dedicated in his or her efforts to teach and support pupil learning and achievement.
- The teacher treats all pupils equitably and with respect.
- The teacher provides an environment for learning that encourages pupils to be problem solvers, decision makers, lifelong learners, and contributing members of a changing society.

Mr Tait demonstrates an unsatisfactory commitment to the well-being and development of all his pupils. On Sept. 20th, the first support meeting of the 2011-2012 school year, Mr. Tait was asked whether or not he was aware of the particular exceptionalities of any identified students in his classes. He responded that he was not. When pressed however, he thought that there were two IEP students in one class, and maybe two in another class. Mr. Tait was asked whether he had made contact with the Head of Special Education to which he responded, "Not yet". This was despite the fact that the Head of Special Education was identified as a support figure in the first improvement plan (IP), as well as the IP following the second unsatisfactory TPA. Mr. Tait stated that he "wanted to get to know the kids first and didn't want to make an assessment of them without having his own opportunity." This is in contravention of the Act and requirement of a teacher to plan for those students with exceptionalities, and particularly disappointing in the case of Mr. Tait because his OCT record card reflects Special Education Part I (2006), Special Education Part II (2007) and Special Education Specialist (2008). Notwithstanding, Mr. Tait was reminded that that Sept 20th is not too early in the school year to make judgements or consult experts within the building regarding critical [illegible text] timing of known accommodation and modification for any student is not an issue over which a teacher may exercise lax discretion. In fact it is a critical, and legally binding, component for all teachers in the preparation of any school year, or any school semester. When class lists were actually referenced it was found that Mr. Tait's three classes contained 4, 6, and 6 students respectively who were in need to individualized education planning. Unfortunately, in the subsequent support meeting of Oct. 18th when Mr Tait was asked whether or not he had made contact with the Special Education Head the response was, once again, "No". Mr. Tait did indicate however, that he did have an opportunity to go over his class lists with the Student Success Teacher. When asked to elaborate on what he had learned in that meeting Mr. Tait said that they had gone over some information regarding two students. Closer examination of the two students in question showed that both had IEPs. Mr. Tait was asked to share his understanding of Student Success because it was clear that there was some confusion with regard to formally and informally identified students, and the other group of students typically helped through Student Success and referred to as At-Risk. Mr. Tait's three semester one classes contain no less than 16 identified students and yet on Oct. 18 he had yet to contact the Head of Special Education about these students. In fact, when this very observation was put to Mr. Tait he responded by saying "i actually don't find much value in speaking with him and he's difficult to track down during football season." As an example of his own

abilities Mr. Tait offered up a student in one of his classes that has a formal identification of behavioural. Mr. Tait explained that the boy was quite fine in his class and that he felt it might simply be a case of maturity. In addition, Mr. Tait had seated the boy with a stronger classmate and reported that the boy was doing fine. I asked Mr. Tait how the boy he described was doing in terms of student achievement. There was a pause as Mr. Tait consulted his mark sheet. He then responded that the student had actually failed the only test to date, and after a further pause that his current mark was 53%. It was explained to Mr. Tait that this represents the classic definition of a student at-risk, yet in Mr. Tait's mind this student was doing "fine". This pattern of lack effort and understanding was echoed elsewhere in lack of commitment to pupil well-being and development. For example, had Mr. Tait carried out even the most rudimentary investigation of his students he would have discovered that eight of his 27 grade 11 students had failed the OSSLT in the spring, and the knowledge of this should have helped shape the use of diagnostics test or at the very least informed his instruction. Without the knowledge, however, it did neither.

Mr. Tait is not dedicated in his efforts to teach and support pupil learning and achievement. 19 of the 27 students in ENG3C failed the thesis statement for a group essay assigned on September 19th. It is completely unacceptable that September, 20th would be too soon to go over class lists for identified students or students at-risk with expert colleagues, and yet a day earlier it would be completely appropriate to assign a group essay in a class where almost a third of the students were unable to pass the OSSLT just five months previous in April 2011 - a test which is widely regarded as only a base measure functional literacy in comparison to other EQAO assessments which actually level students. Even as recently as the November midterm reports 16 students were failing ENG3C and it was not until the SST and Principal became involved, chasing students, providing assistance, and contacting home that the mark verification sheets were changed to show 3 students failing. In the observation window between December 7th and 9th students in the 2P class produced a collage and an advertisement that were of extremely low quality and contained little or no writing. There was no assessment of the work, nor was there a rubric or exemplars to deepen and guide the quality of the product. The activities amounted to little more than busy work because they were not critiqued in any meaningful way by the teacher, peer assessed by students, or linked to any previous or future learning in the class.

Mr Tait does not treat all pupils equitably and with respect. Mr. Tait classes are largely teacher centered where he uses the Socratic method in an attempt to maintain classroom discipline. This was identified as a weakness in previous TPA's and has been the target of much of the collegial support offered during this process. Despite these supports, observed changes were minimal and, as such, contributed to Mr. Tait's lack of success with respect to this "look for" as seen in the account that follows. Even when Mr. Tait attempted strategies to activate students' prior knowledge at the beginning of the class it was a teacher directed Q & A session. As a result, student engagement using such strategies was variable at best, and this was evidenced in the class observations where some students had their heads on desks, others read quietly, and still others became distracted and bothered neighbours. Mr. Tait's general approach used to refocus the class is through the use of conversation. However, this conversation is off task and often sarcastic in nature. At one point during the observation he said to one student whose head was on his desk, "Head up X. If I have to stay awake for this than so do you." However, a boy in another class had his head down for twenty minutes without any comment from the teacher. When this class moved to the group work portion of the lesson I asked the boy if he was alright. He said he was. I asked if he found it difficult to follow the teacher when he spoke from the front for long periods. He replied, "I'm just not a very good student." This boy was not a trouble maker - just a disengaged lad with little or no self esteem. Mr. Tait made no attempt to connect with this lad at any point during my class observations. In the grade 11 class there was a great deal of distraction during the lesson with students calling out, looking out the door into the hallway, moving desks around, and yawning loudly. When I returned to the class on the second day of the observation cycle students approached me outside the classroom and asked if I was going to be in class. When Mr. Tait finally had the class break into groups 55 minutes into the lesson I began to circulate. I asked one group how this session connected to yesterday's lesson. The reply was, "I don't remember what we did yesterday, but I know we got yelled at." I circulated to another group and asked the same question. The response was consistent "Not sure, yesterday Mr. Tait lost it." When asked to elaborate I was

told that Mr. Tait berated the class, "he was yelling, saying this class is totally incompetent, anti-social, and you embarrassed me in front of the supervisor." Another student asked for help and was told, "look at it, read it, and do it". The student continued, "I don't find Mr. Tait helpful and I'm not learning this year." I referenced the seating plan and later checked the student's performance in English. Last year, in ENG2P this student achieved 73%. To date in ENG3C he is achieving 54%. Outbursts were identified as an area of concern in the previous TPA and this information indicates there has been no change with respect to this deficiency. Furthermore the use of sarcasm is a damaging teaching tool that minimizes students and does not contribute to a safe and trusting learning environment. On November 28th an irate parent of another student called the Principal and demanded to know why Mr. Tait would "call out" his son in front of the whole class tell everyone he has ADHD. Mr. Tait admitted to this outburst and later apologized to the student.

Media has the potential to be the most engaging current, and relevant unit of study in any English curriculum. Combined this with the fact that both Mr. Tait's grade 10 and 11 were similarly in the early stages of the media unit and there was the real opportunity for Mr. Tait to be at his best. However, instead of challenging, thought-provoking lessons designed to weave students through the world of intentional advertising, stereotypical profiling, violence, and the myriad of other rich topics that could be used as excellent platforms to initiate opinion, frame arguments, and crystallize thinking I experienced disjointed lessons, with low interest and low level tasks that challenged neither student thinking nor provided any opportunity to write. Even when Mr. Tait attempted to improve student engagement by moving to group work, the groups were too large (4 and 5 members) and the tasks too thin to engage all participants in each group. In fact, invariably what happened in each class was that one or two students performed the task while others sat by, sometimes quietly but more often as distracters to others in class. Groups of two could have easily done these tasks of making an advertisement for an electronics store, or listing the sequence of stories for a newscast. I will reserve comment on the quality of these tasks and their lack of execution in the *Professional Practice* domain of this report but the complete lack of pre-teaching any of the targeted outcomes of these lessons or their alignment with the posted *Learning Goal* was a theme I saw repeatedly during this process - both in support meetings as well as the actual classroom observations.

Domain: Professional Knowledge

- The teacher knows his or her subject matter, the Ontario curriculum, and education-related legislation.
- The teacher knows a variety of effective teaching and assessment practices.
- The teacher knows a variety of effective classroom management strategies,
- The teacher knows how pupils learn and factors that influence pupil learning and achievement.

The teacher does not know his subject matter, the Ontario curriculum, and education-related legislation. Throughout this supportive process Mr. Tait has been handing in his lesson plans to the Principal. There were several reminders, during support meetings and via email that the plans for the week needed to be in on Monday before classes commenced. This was often not the case. In addition, support items were regularly missing from the plans (work sheets, handouts, etc). Nonetheless, these lesson plans were dutifully assessed by the Principal, often with significant feedback for growth such as checkmarks to represent logical flow of the lesson, suggestions, questions, and points of clarification. These plans were then sent back to Mr. Tait. At no time in the process did Mr. Tait ever act on these suggestions. In fact, on September 20th the Federation introduced they were having difficulty understanding how to move forward on lesson plans because they felt they was little value in plans. The Principal went over the details of a sample plan that had feedback on it. Mr. Tait claimed he did not understand what some of the comments meant. Mr. Tait was asked if he had sought clarification from the Principal. He had not. When asked why he had not clone so [illegible text] through the Federation, by other means, or through any of the support people, had the issue of fear ever arisen. The entire function of handing in lesson plans in advance of the week is to assist the teacher with planning, pacing, questioning, instructional strategies, and reflection. To

be a wilful non-participant in this reciprocal endeavour completely undermines its intended purpose. Along the same theme of non-participation, the support visits as outlined in the IP, had the potential to provide varied and detailed expertise in the areas of content, planning, and execution of lessons. For reasons unknown, and described further in this document, Mr Tait chose not to access those human resources to a level anywhere close to capacity. The failure to openly engage in the improvement process was borne out in the support meeting of September 19th. Mr. Tait was asked to elaborate on a learning goal that ended in mid sentence, it was further pointed out to Mr. Tait that this pattern appeared elsewhere in other lessons. The observation was made to Mr. Tait that it looked as though this were simply "cut and paste" features of text editing. He denied this and said it was a feature of the lesson template he was using. This is important in the context of this report because during the classroom observations it became apparent that Mr. Tait did not generate any of the lesson material. Specifically, Mr. Tait introduced a lesson on the Evolution of Technology as it pertained to the use of persuasive language. Mr. Tait became mired in a description of human evolution and creationism that was clearly out of his area of expertise. The lesson continued by watching a video produced by German Electronics giant Saturn. At several points in the lessons there were long pauses with Mr. Tait at the front, staring down at his lesson plan. There was good reason for this as it turned out. I later went to the department head to ask for the resources for the ENG2P media unit and was given the [Nelson 10 Media Literacy](#) package. Upon quick examination of this resource it became abundantly clear why Mr. Tait struggled with evolution, struggled with the video, struggled with the questions, and struggled with the activity - because he had ownership over none of it. He had simply used the disc provided with the media package to cut and paste the learning goal, minds on, action and consolidation lesson onto the template for his lessons. The really sad part about this was that with even the slightest amount of his own research Mr. Tait could have easily turned this into an engaging lesson where student learning occurred. As it was, this was a lesson with no central message that could be solicited from students, miscommunication and misunderstanding between the teacher and students, and a poorly done, low quality activity at the end which amounted to an weak art exercise, rather than a class focussed on the use of persuasive language in advertising. Further investigation of the resource proved equally disappointing as the pattern repeated itself both before and after this initial observation. I find it exceedingly hard to believe that an educated man with sixteen years of teaching experience would not have something of value to offer on the topic of media, persuasive language, targeted marketing and advertising strategies. The fact remains however, that I did not see a single shred of evidence that Mr. Tait put any of himself, his perspective, his ideas - in fact his effort - into what I witnessed. My disappointment was compounded because the observation dates were initially designed to be on back-to-back days but scheduling issues forced the dates to be shifted back by one day with a day in between observations (initially Dec 6/7, altered to 7/9). Rather than continue with his weekly outline as suggested, Mr. Tait chose to rearrange the week so that the lessons originally planned would actually fall on the observations days. The conclusions drawn are obvious. Using the search engine Google for less than ten minutes that evening I discovered the marketing platform used by Saturn in 2008 to launch the advertisement in the video clip that Mr. Tait used. The information and story provided were compelling and would have easily engaged Mr. Tait's grade 10 students, or any of today's teens, so caught up in a world of newest, sleekest, fastest...

Mr. Tait does not know a variety of effective teaching and assessment practices. Mr. Tait had 16 of 27 students fail his ENG3C unit test in mid September. He was angered by their performance claiming that this was the weakest group of grade eleven students he had ever had. When asked if there was any review for the test Mr. Tait said, "Yes, they had a quiz." A question followed about their performance on the quiz. Mr. Tait's answer was their performance was, "terrible". Mr. Tait has had dedicated school and central staff support at his disposal for well over a year now. In addition, Mr. Tait attended the TLDSB Summer Institute and the Gains Summer session with renowned educator Douglas Fischer. Even with such supports it is difficult to understand why any teacher would not respond to poor performance with personal reflection of any kind. When I questioned Mr. Tait about preparing for success he claimed they were too many safety nets for students. He further stated that the school's motto of pride, responsibility, and commitment was on the front wall of his classroom and that this group of students fell short in this regard. A school's motto is intended to direct the thinking and actions of all of the members of the school community - students and adults alike. Mr. Tait's actions don't reflect the school motto or the reflective practice of

a satisfactory teacher. He claimed, "How much easier can it get! The test was only on the first three chapters and I read chapters 1 and 3 aloud." I asked Mr. Tait to reflect on what that told him? He stated that it meant they didn't read chapter two or study. When I asked him if he thought there was any value in the observation that his choice of material or reading aloud caused or allowed his students to disengage from learning he did not respond. When a task or skill is performed poorly and nothing changes to rectify, modify, or enhance the skills or understanding needed for improvement one cannot be disappointed when the result remains the same. With that in mind, it was most discouraging to learn that on the midterm marks for ENG3C Mr. Tait had 16 failures on his initial mark submission form. Through the concerted efforts of the Student Success team and the Principal this number dropped to 3 by the time mark verifications were due. For such a complete "lack of ownership around student performance to exist is completely unacceptable. It is even more disconcerting when this teacher has identified assessment and evaluation as a focal point as far back as the ALP for 2008 and that the Principal's summary comments of the 2006 evaluation stated, "If is imperative to keep up to date on assessment, evaluation, and teaching methodology." The efforts of the Board and support of the Federation have had no appreciable impact in this regard.

The teacher does not know a variety of effective classroom management strategies. Mr. Tait used the Socratic method of teaching for large portions of the each of the classroom sessions observed. This was despite the fact that agenda on the board clearly outlined lessons that involved student-student sharing as well as group work. This disconnect between planning and application has been identified in previous summative reports during this process as well as the previous TPA of 2006. It is clear that Mr. Tait is best in control when he is using a strategy of direct transmission with students. This is true even in situations where discussions are strategy of choice because Mr. Tait's idea of discussion is simply a teacher-directed Q&A session. The direct consequence of this is that students simply lose interest, become disengaged, and invariably become management issues. This pattern of initial student compliance, followed by disengagement, followed by off-task behaviour was repeated over and over again over the two days and five classes I attended. In fact it was because of the very observation of this fact that the IP had, as part of its regimen that Mr. Tait was to engage in reciprocal visits with three colleagues whose classroom planning, routine, and management would have benefitted him. This report has identified in various sections Mr. Tait's reluctance to organize or engage in growth opportunities even with his fellow Halliburton High School colleagues. However, when the observations finally were arranged through the Principal, Mr. Tait was asked if he saw strategies or management techniques that he could employ. He responded that the classes he observed were much smaller than his and so he felt no real value was gained. Mr. Tait was asked whether he engaged the colleagues in dialogue around how or if they taught differently when they had larger classes. His response was "No". The largest class I observed over my two days with Mr. Tait was 22 students and the smallest was 14. Yet the distractions, calling out, off-topic conversations, students leaving class and general behaviour was one of a classroom lacking in routine, structure, engagement and sustained learning of any kind. It should be noted that Mr. Tait does try to befriend students but there were several examples of this friendly rapport causing inappropriate comments from both teacher and student. In one such case Mr. Tait had wandered off into a conversation of how colours impact on human emotion in his ENG3C class. He said that drunk-tanks are painted pink to calm the emotions of those intoxicated. A student who had already been quite disruptive from his seat in the front row then responded, "Does that mean if we painted this room pink you'd calm down?" Mr. Tait looked at the boy sternly but carried on. During our support meeting of October 18th the Principal inquired as to the implementation of any of six suggestions he had made to Mr. Tait in response to a call he received in the middle of one of the ENG3C classes that had become particularly unruly. In this case the Principal responded to the call and went to the class for the remainder of the period. At the end of the class he conferred with Mr. Tait on ideas like, rearrangement of the physical seating, specific student pairing to avoid, changes in classroom start-up routines, establishing shared norms within the class, the collection and formative marking of product at the end of class for a time. Mr. Tait's response around implementation of any of the strategies was evasive. When pressed, he did say that he had changed the seating plan. I asked if he adhered to this change, but his response was "No, not if the kids are doing well." It's disheartening and frustrating when a teacher asks for help but then lacks the follow through or conviction of a simple seating change to set the conditions for learning in the classroom. Moreover, Mr. Tait is easily angered with students and has been spoken to about

leaving his class to escort students to the office while the remainder of the class are left unsupervised. This is critically important in this case of Mr. Tait because classroom management has been an area requiring improvement for many years. In fact it was identified as such in the TPA of 2006 as well as in a Letter of Expectation (LoE) from 2009. The letter closed with, "Your compliance with expectations will ensure that your classroom if appropriately supervised and prepared for the day's activities." In between observation day 1 and day 2 on Dec 8th Mr. Tait once again did exactly that. He became angered with the class because their behaviour had embarrassed him in front of the Supervisory Officers shouting, "You're totally incompetent and antisocial." When a student laughed in disbelief he marched to student to the office where he remained until the Vice-Principal came out of his own meeting with another student to attend to Mr. Tait. Such evidence indicates that collegial conversations and LoE's did not impact Mr. Tait's practice of leaving class.

Mr. Tait does not know how pupils learn and factors that influence pupil learning and achievement. Mr Tait did not perform a single diagnostic test on any of the student or across any of his classes. This was clearly pointed out to Mr. Tart and delineated in the last summative of May, 2011 in, "Mr Tait does not use appropriate diagnostic techniques to assess pupil difficulties in either of his ENG1D or ENG3C courses." The is even more remarkable considering that two thirds of his current teaching assignment contain students, who at the time of this report were only three months away from writing the graduation requirement OSSLT. Furthermore, Mr. Tait has a gender imbalance in his ENG2P classes skewed to males. This means he is working with the group identified by the Halliburton High School data as the "at-risk" group for failure and yet he never did anything to gauge their readiness for learning or to establish a benchmark from which to inform his own decision making. This lack of interest in students was echoed in Mr. Tait's ENG3G where he had no idea in the October 18th meeting that 8 of his students had failed the OSSLT the previous spring. It wasn't surprising then, that when Mr. Tait choose to do an essay in the first month of school that the results were abysmal I asked Mr. Tait why he would introduce something as taxing and skilled based as an expository essay so early in the semester to which he responded it was a group effort. I asked if he had pre-taught thesis statements. "No." Pre-taught introductions and worked through samples. "No." Pre-taught paragraph structure. "No." Pre-taught concluding paragraphs and worked through samples. "No." Other ENG3C students write essays as a culmination of the entire years learning complete with a logical build up from simple structure like framing an opinion paragraph and advancing to writing achievable, specific thesis statements. Mr. Tait does none of this. In fact in a sampling of some of Mr. Tait's best student notebooks I found almost no student writing and not a single example of formative feedback that could be used to advance student product or next steps for student improvement. If the books showed any teacher marking it was of the form of checkmarks, circles on the level of a rubric or the odd comment of "good, more detail, I like this."

Domain: Professional Practice

- The teacher uses his or her professional knowledge and understanding of pupils, curriculum, legislation, teaching practices and classroom management strategies to promote the learning and achievement of his or her pupils.
- The teacher communicates effectively with pupils, parents, and colleagues.
- The teacher conducts ongoing assessment of his or her pupils' progress, evaluates their achievement, and reports results to pupils and parents regularly.
- The teacher adapts and refines his or her teaching practices through continuous learning and reflection, using a variety of sources and resources.
- The teacher uses appropriate technology in his or her teaching practices and related professional responsibilities.

Mr Tait does not use his professional knowledge and understanding of pupils, curriculum, legislation, teaching practices and classroom management strategies to promote the learning and achievement of his or her pupils. Previously in this report it has been documented that Mr. Tait uses lesson resources verbatim rather than as a

guide to assist appropriate planning or target the needs of his classroom. In fact it was difficult to find much in the way of his personal touch or original work that targeted specific student learning at any point in this process. And while this observation was both disappointing and unacceptable it was even more demoralizing to ask students how the learning on one day connected to that of the previous day. Invariably across all the classes the most common response was, "I don't know" or "I can't remember what we did yesterday." During the week of my two visits Dec. 5-9 students in Mr. Tait's classes completed three tasks on chart paper. One task involved the use of old magazines to cut and paste pictures that represented a theme of advertising like Family or Humour. There was no writing, decision making, or validation of the activity and neither it nor any of the other tasks, where ever used to consolidate student learning. When I went by the classroom the following week this student work was rolled up on filing cabinets or lying on an AV cart.

Mr. Tait does not communicate effectively with pupils, parents, and colleagues. In terms of pupils, Mr. Tait's classes are almost exclusively teacher directed. He talks to the class, tells them what he wants them to do and then says things like, "Ready, set, go." My observations revealed that this lone form of communication is the cause for significant confusion among students. For example, in the 3C class on day one students were asked how humans communicate. They generated a list of twenty-two ways on the board. He then told students to group the ways into one of three columns (inform, persuade, entertain). Students struggled with this saying that many fit in both columns. Mr Tait responded, "yes" but never elaborated on what to do about it. Most students lost interest in this task, and many had no record of any attempt Mr. Tait then asked students in their groups to choose one topic of interest and generate three separate ads (one to inform, one to persuade, one to entertain). Again this information was only verbal and again not all students were listening. He used football as possible interest and told students verbally how they could make their three ads. At the end of class not one group had completed the assignment as it was designed. Some groups choose three different topics, some groups couldn't distinguish between how ads inform, persuade or entertain, and some groups just didn't produce any effort. Through the whole process Mr. Tait circulated and he could see early on that problems around communication were clearly evident but he chose to let the students continue. The resulting low quality product was reflective of miscommunication combined with lack of teacher intervention. In terms of parents Mr. Tait's last TRA clearly stated his lack of follow through with parents, "Having parents say to administration that they have not heard from you regarding their child's academic concerns raises a red flag of concern for his professional practice. Confirmation of email correspondence for this stated concern has yet to be received by administration and has been requested from the teacher on more than one occasion." As a supporting component of the IP and for this report Mr. Tait was requested to provide communication log. A log was provided at the pre-observation meeting but for only two of his three classes Mr. Tait was asked how he contacted parents and he responded with "sometimes email and sometimes phone calls." There was one date (Oct 3rd) where several emails were logged. Mr. Tait was then asked how long individual phone calls take to which he responded, "I made two the other night that each lasted fifteen minutes." With this in mind, Mr. Tait was asked to explain the observation that in many cases (16 from some 30 calls Sept 27, Oct 3, and Nov 21) there was two minutes or less between calls. Mr. Tait became angry at the line of questioning but did not provide an answer as to how he could call a parent, introduce himself, indicate the purpose of the call, and cordially sign off in the times recorded in his personal communication log book.

Mr. Tait does not conduct ongoing assessment of his or her pupils' progress, evaluates their achievement, and reports results to pupils and parents regularly. Analysis of Mr. Tait's marks indicate that significant problems still exist in the area of assessment and evaluation despite the fact that both he (in his own ALP's) and the Board had identified this as an area in need of improvement. The problem is multi-faceted. Mr. Tart only assesses using summative work, this summative work is large and not chunked, and students wait for long periods of time before marked items are returned. A particular example was the short story assignment from October 6th. There was a complete lack of teacher comments on anything beyond the first page of any of the stories analyzed. When asked to explain this observation Mr. Tait said he only marked the first page for grammar and punctuation and that the bulk of the assignment was for character development. The Principal was sufficiently worried about the lack of teacher mark-

up on the paper and so he took it upon himself to simply mark for grammar and punctuation. The pages were littered with errors. Mr. Tait explained that that was the responsibility of the peer editor. Mr. Tait was asked if the editor of this work received a poor mark. "No, they just received a checkmark for completion." Mr. Tait was then asked how he felt this student did in terms of character development to which he responded that the work was quite weak. He referenced the pertinent mark sections where the student showed marks in the high 50's low 60's. In actual fact however the marking scheme was skewed in the opposite way so that grammar and punctuation counted for significantly more than character development. Thus this student got an "A" for an assignment that by the teacher's own admission was poorly done in the intended area of focus. The fact that Mr. Tait neglected to mark the area carrying the bulk of the mark weight resulted in work that was weak in quality but a student that believed she was doing marvellously well. What makes this even more disturbing is that as of November 29th Mr. Tait only had five summative tasks in his ENG2P and four in his ENG3C class. The department minimum is 5 summatives by the midterm mark date.

Mr. Tait does not adapt and refine his teaching practices through continuous learning and reflection, using a variety of sources and resources. It is noted elsewhere in this report that Mr. Tait failed to make any changes to his teaching of the novel "Of Mice and Men" despite being fully aware of a disastrous quiz in the week prior to a summative test on the novel. He didn't regroup, reteach, change the date of the summative or modify it in any way and when his students performed at the same low level his response that they were the weakest group he has had in his career. However, when I observed his ENG2P morning class struggle with the content, volume, and purpose of an electronics advertisement assignment he did nothing to modify his lesson or the assignment for the afternoon section of the same course. It is a critically important teaching skill that as professionals we respond to learning situations that require [illegible text]

Mr. Tait does not use appropriate technology in his or her teaching practices and related professional responsibilities. Mr. Tait did attempt to use a data projector in his ENG2P class on the second day of observations to show a youtube clip. He had to abort its use however, when he could not get the clip to play. Mr. Tait told the class he was "no good at this youtube stuff. He did have the Nelson DVD however and so showed the clip on the television. Tech support arrived in time to help him resolve the problem for the afternoon class but in both cases Mr. Tait's inability to pause the clip at the appropriate segment using the counter caused the lesson questions to lose their impact. The only other technology in use was an overhead on day one of the observation period. The ENG3C class was completely devoid of technology.

Domain: Leadership in Learning Communities

- The teacher collaborates with other teachers and school colleagues to create and sustain learning communities in his or her classroom and school.
- The teacher works with other professionals, parents, and members of the community to enhance pupil learning, pupil achievement, and school programs.

Mr. Tait does not collaborate with other teachers and school colleagues to create and sustain learning communities in his classroom and school. In Mr. Tait's previous unsatisfactory report of May, 2011 it was noted that there was a lack of cooperation and communication with his Languages Department Head. This was even more troubling because Mr. Tait shared his prep with the Head. Moreover the Head regularly has, and had, taught the 1D and 2P courses that Mr. Tait had as a portion of his timetable in each of last two semesters. This trend continued in the early part of this support cycle. On October, 18th Mr. Tait had yet to arrange reciprocal visits with the Head as outlined in the IP. In response, the Supervisory Officer explicitly distinguished for Mr. Tait the difference between professional and personal relationships and that further, he saw no evidence of a personality conflict. It was also made clear that any Head would be upset with a teacher in their department that was not following policy with regard to the number of summatives prior to midterm, not utilising resources to maximize student learning, and not engaging

students in rich thinking and application tasks. When asked about the resources available in Mr. Tait's observed 3C class the Head was able to share a wide range of exciting material. However, when I probed as to Mr. Tait's use of this bank of resources the Head said, "Brad has shown only limited interest in using these marvelous resources." On a historical note it is also important to establish that the Board has had a Curriculum Coordinator, Literacy Coach, and Instructional Lead over the past three years. Furthermore that these expert Individuals have availed themselves to assist all staff looking to increase their professional knowledge and classroom strategy repertoire. All of these individuals have been anchored at HHSS or at the Halliburton Board Office in close proximity to the school. Mr. Tait's use of these people can be described as only superficial. In fact this fall the Board offered a series of self-selected professional development opportunities specifically geared to classroom practice, high yield strategies, and quality tasks. Mr. Tait chose not attend any of these sessions. In his defence he claimed that through illness and other interruptions he felt it was more important to be with his students rather than attend the PD session(s). Whatever merit existed in this line of thinking was immediately lost when this evaluator discovered that on one of those days Mr. Tait chose to attend an all day OSSTF meeting. This is particularly disappointing when Mr. Tait's decision making and prioritizing in terms of his attendance at meetings for professional growth was a point of significant concern in his TPA summative as in, "Mr Tait did not attend the volunteer teacher mentorship luncheon for "learning skills" on May 5, 2011, as was communicated to him during the last Improvement Planning and pre-observation meetings...Mr Tait has only attended one volunteer grade meeting to date during lunch hour for each grade where teachers collaborate and share interventions to help students find academic success."

The teacher does not work with other professionals, parents, and members of the community to enhance pupil learning, pupil achievement, and school programs. Mr. Tait's actions speak powerfully about his philosophy of learning and where to responsibility for student success lies, The most obvious of the actions is the way Mr. Tait interacts with the Student Success (Rm 106). He sends students to this room when assessments are missed, or assignments are not done, This is typically after the due date and without any prior communication with the staff of Rm 106. This treatment of Rm 106 as a metaphorical "garage" where students are sent for fixing is completely at odds with its intended purpose. The purpose of the Student Success team is to broaden the scope of caring adults working to inspire, assist and fortify students in need of support. In order to function properly a copy of detailed assignments, including due dates, rubrics with marks, and possibly exemplars need to be in the hands of RM 106 staff when the assignment is handed out. Furthermore, they must be kept informed at various checkpoints along the way for larger assignments so as to intervene with students before they begin to struggle. The evidence for Mr. Tait is completely contrary to this collegial model of professional networking to enhance student learning and achievement. Firstly, Mr. Tait does not forewarn staff when assignments are due except when there is a problem. Secondly, Mr. Tait rarely provides the necessary materials to assist his colleagues in the task of generating late student product. Thirdly, Mr. Tait does not provide checkpoints along the way for larger assignments so that they are effectively chunked into more manageable tasks. In fact in our support meeting of October 18th Mr. Tait was asked why his ISU summative had so many parts for applied and college level students. And further, had he taught all of the components within the assignment? He responded, "No." Upon greater inspection he realized he had in fact handed out the wrong assignment. Whether or not this discovery would have been made had it not come under such close scrutiny may be debatable. What is known is that in its original form it contained nine parts, no intermediate due dates and a final due date of November 21 "NO EXTENSIONS!!" written clearly on the last page. That this is an assignment for 2P students and that many of the 49 items of choice had no previous intentional teaching targeted to them is completely unacceptable, Especially considering that Mr. Tait was told to incorporate chunking, and intentional teaching as per his IP. From a communications perspective, Student Success had not seen the assignment. In fact that the students had just chosen there ISU novels in the library the week preceding the October 18th support meeting. Mr. Tait never did change the assignment as evidenced by student notebooks I sampled. The only modification evident was a change in due dates such that staggered dates appeared hand written by students in the margin. The new due date of Dec 5th was over two weeks later than originally planned Nov 21st and in conversation with students and Rm 106 staff most certainly helped students.

- The teacher engages in ongoing professional learning and applies it to improve his or her teaching practices.

Mr. Tait did not engage in a single professional relationship that could be described as "ongoing." I have repeatedly documented in this report Mr. Tait's tardy nature as it relates to making contact with the support experts provided. The most glaring example of this is that, in spite of a series of reminders and checkpoints through this process, the Principal actually had to move to organize the dates and times of collegial visits. This is testament to the fact that both the Board's and the Federation's advice to honour the IP had no impact on Mr. Tait. For his part Mr. Tait provided reasons as to the many barriers that stymied his ability to connect with these colleagues. The range of "he's too busy with football," "I never see her in the school, he's a difficult personality, we'll connect after Thanksgiving" are all examples of the depth of this unwillingness to engage. In fact, it was only during the October 18th support meeting when Mr. Tait confirmed he had yet again failed to make contact with a number of support experts identified in the IP that the Supervisory Officer publically stated that the responsibility of making contact and setting agreeable dates was not a task Mr. Tait was either willing or capable of fulfilling. The task was assigned the Principal and the necessary arrangements were made within the week and meetings began to occur. It is particularly troubling that HHSS was the Board's pilot school for a full time release Instructional- Lead in the second semester of 2010. The Lead did do some dedicated work with Mr. Tait during this time but when the Lead became a consultant in 2011 and had HHSS assigned as a school of responsibility there was an excellent opportunity to move this relationship to one focused on the "ongoing" improvement of classroom planning and practice. Mr. Tait did not take this opportunity choosing instead to claim the consultant was never in the building. The fact that Mr. Tait rarely, if ever, used Board email to make contact with support colleagues simply emphasizes the observation that he either saw little value in the help, or quite possibly was of the belief that he did not require help.

Additional Competencies

.....

Overall Rating of Teacher's Performance

(Check the appropriate box.)

Satisfactory X Unsatisfactory (If the teacher received an Unsatisfactory rating, an Improvement Plan will also be developed)

Comments on the Overall Rating of the Teacher's Performance

If the teacher received a *Satisfactory* rating, the principal is encouraged to provide further feedback on strengths and possible areas of growth for the teacher.

This process has resulted in some improvement for Mr. Tait. However, the nature of this improvement is problematic because it is largely of low quality and significantly below the measure of satisfactory. Of equal importance is the fact the improvement was superficial, both in terms of understanding and application. Mr. Tait's unwillingness to engage in the support process fully and whole-heartedly from the outset of the TPA process caused a significant lag phase in time available to move from theory and discussion, to routine practice and application. In addition, it should be noted that at no time during this lengthy process did any artefacts of his learning, or discussion items he was engaged in ever reflect an individual capable of carrying out the difficult and demanding profession of teaching. In fact, despite being counselled by his Federation Representative and told by the Principal that he was officially on "Review" this evaluator actually stopped the June 17th support meeting when Mr. Tait was providing weak answers and being oppositional to ask if he understood what "On Review" meant. Mr. Tait responded in a facetious tone "no, please tell me". This evaluator gave a pointed description of the gravity of the situation and that this process was put in place to help Mr. Tait maintain his profession and his livelihood and that all concerned would appreciate an effort that reflected the significant investment of those in the meeting and all others involved. Despite this articulation, and a somewhat more receptive and reserved Mr. Tait, little changed in the weeks and months that followed. The depth

and breadth of his deficiencies, combined with his unwillingness to engage in any ongoing professional relationships designed to help him, and the overall absence of any sustained effort yielded improvement that was both sporadic and significantly below the standard of satisfactory teaching in this Board and this Province.

Professional Growth Goals and Strategies for the Teacher (Required, if rating is Satisfactory)

The following professional growth goals and strategies are recommended for the teacher to take into account when developing his or her Annual Learning Plan (ALP).

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Principal's Additional Comments on the Appraisal (Optional)

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Teacher's Comments on the Appraisal (Optional)

.....

Principal's Signature

My signature indicates that this performance appraisal was conducted in accordance with Part X.2 of the Education Act and Ontario Regulations 99/02 and Ontario Regulation 98/02, as amended.

Graphic 1

Date (yyyy/mm/dd)

Teacher's Signature

My signature indicates the receipt of this summative report.

Graphic 2

Date (yyyy/mm/dd)

Summative Report Form for Experienced Teachers

(2) Within 15 school days of determining that a performance appraisal of a teacher has resulted in an unsatisfactory rating, the principal shall

(a) Give the teacher written notice of the unsatisfactory rating, explain the satisfactory rating to the teacher, **place the teacher on review status and advise the teacher in writing of that fact.**

s.11 (4) A principal shall only make a recommendation to the board under subclause (3) (i) (ii) after **warning the teacher in writing**, giving the teacher assistance and allowing the teacher a reasonable time to improve. RRO, 1990, Reg. 298, s.11(4).

s.5.16 — It is understood and agreed that any recommendation for termination resulting from the teacher performance appraisal process is subject to the grievance/arbitration process set out in Article 6 of this Agreement. **Further, it is understood and agreed that any alleged violations of the process, including alleged violations of the governing legislation, regulation and/or Board policies/procedures/resolutions, may be raised in the termination grievance, regardless of timeframes set out in the grievance process.**

s.277.38(3) Subject to subsection (5) during the 120 school days starting with the day on which the teacher is advised that he or she is on review status, the principal shall conduct one more performance appraisal.

- There was unfairness created by the timing and excessive number of classroom observations.
- There was unfairness caused by the newness of the Board's 3-part lesson template and the specific teaching methodologies as a standard against which the grievor was judged.
- There was unfairness caused by a lack of meaningful support with respect to identified support persons.
- There was unfairness caused by an unsupportive environment in improvement plan meetings.
- There was unfairness resulting from onerous improvement plan requirements which had little corresponding benefit to the grievor including inadequate lesson plan feedback and no clear markers for success.
- There was unfairness caused by the failure to warn the grievor.
- The repetition of a series of alleged multiple deficiencies was used to support an unsatisfactory rating in multiple competencies and create an unduly negative and harsh appraisal;
- Each element of the grievor's improvement plan was treated and tracked as if it was a compulsory requirement;
- The principal micromanaged and documented all of his interactions with the grievor;
- The principal failed to respect the grievor's professional judgment;
- The grievor's own lesson plan reflections were used against him;
- There was overly harsh and excessive criticism of the grievor;
- Student achievement was used as part of the analysis of the grievor's
- performance;
- The grievor was held responsible for late student assignments;
- The using of student notebooks to assess the grievor's teaching;
- The grievor was penalized for not attending voluntary grades meetings;
- The manner in which the grievor was criticized regarding classroom management;
- The superintendent refused to respond to the grievor's request for assistance;
- There was bias/evidence of anti-union animus;
- There was bias and a predetermined opinion regarding the outcome of the performance appraisal.
- The evaluator made unreasonable or false conclusions in respect of the grievor's final exams;

- The evaluator made unreasonable and/or false conclusions regarding the relationship between student marks and the grievor's performance;
- The grievor's improvements and positive teaching were not acknowledged and were undervalued in the TPA process;
- Classroom observations of improvements and classroom teaching were not acknowledged and were undervalued in the process;
- The evaluator made false conclusions that the grievor was not engaged in the process and not responsive to suggestions.

Footnotes

- 1 Notwithstanding the discussions held between the teacher and the principal, the principal is required to assess teacher performance in relation to all 16 competencies set out in Schedule 3 of O. Reg. 99/02, as amended, and may comment on competencies other than those discussed.
- 2 Notwithstanding the discussions held between the teacher and the principal, the principal is required to assess teacher performance in relation to all 16 competencies set out in Schedule 3 of O. Reg. 99/02, as amended, and may comment on competencies other than those discussed.