

NEW YORK STATE EDUCATION DEPARTMENT
UNIVERSITY OF THE STATE OF NEW YORK

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In the Matter of the Charges Preferred by:

THE DEPARTMENT OF EDUCATION OF
THE CITY OF NEW YORK,

SED File No. 32,319

Complainant-Employer,

OPINION

v.

AND

AWARD

ROBERT TORRENS

Respondent-Tenured Teacher,

Pursuant to Education Law Section 3020-a

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Before James McKeever, Esq., Hearing Officer

For the Complainant:

Howard Bruce Friedman, Esq., General Counsel to the Chancellor

Michael Saint-Pre, Esq., of Counsel.

For the Respondent:

Robert T. Reilly, Esq., General Counsel, NYSUT

52 Broadway, 9th Floor

New York, New York 10004

Gregory M. Ainsley, Esq., of Counsel.

Pursuant to the provisions of the New York State Education Law Section 3020-a, the undersigned was appointed to hear and decide whether there is just cause for disciplinary action against the Respondent, Robert Torrens, a tenured teacher employed by the Department of Education (“Department”). A pre-hearing conference was held on December 20, 2017. Thereafter, the hearing was conducted at the offices of the New York City

Department of Education located at 100 Gold Street, New York, New York on February 6, 7, and 12, 2018, March 5, 6, 7, 15, 16, 22 and 27, 2018.

A record was taken of all proceedings and transcripts were provided to the parties and the Hearing Officer. The undersigned obtained the final transcript on or about April 3, 2018.

The parties were represented by counsel and had a full opportunity to present evidence and arguments in support of their respective positions. The evidence and arguments presented by the parties have been fully considered in rendering this Opinion and Award.

Factual Background

Robert Torrens (hereinafter “Respondent”) is a tenured math teacher who, during the relevant time period, was assigned to the Absent Teacher Reserve (“ATR”), which is a term that refers to teachers who have been reassigned to substitute for absent teachers within the Department. Prior to being assigned to the ATR, Respondent had been assigned to a regular classroom and has been employed by the Department for approximately 22 years.

Justin Stark is currently the Assistant Principal of Social Studies at Thomas A. Edison High School located in Flushing, Queens (“AP Stark”). Previously, AP Stark served as the ATR Field Supervisor for approximately four school years and was Respondent’s rating officer for part of the 2014-2015 school year and for the entire 2016-2017 school year.

Stella Kostopoulos is also an ATR Field Supervisor and was Respondent's rating officer during for the 2015-2016 school year ("AP Kostopoulos").

ATR teachers are rated under the "Satisfactory" or "Unsatisfactory" rating system established in Teaching for the 21st Century, which is a framework for performance review and professional development agreed to by the parties.

The Charges and Specifications:

Respondent is charged with failing to properly, adequately and/or effectively plan and/or execute his lessons during the 2015-2016 and 2016-2017 school years. The particulars of the Specifications are as follows:

(1) During the 2015-2016 and 2016-2017 school years, Respondent failed to properly, adequately and/or effectively plan and/or execute separate lessons, as observed on or about each of the following dates:

- a. November 10, 2015;
- b. January 21, 2016;
- c. March 3, 2016;
- d. May 19, 2016;
- e. November 16, 2016;
- f. December 9, 2016;
- g. March 8, 2017; and/or
- h. April 24, 2017.

(2) On or about May 19, 2016, Respondent acted in an unprofessional manner and used poor judgment in that he made unsuitable comments in the presence of students during an informal observation.

(3) Respondent failed during the 2015-2016 and 2016-2017 school years to fully and/or consistently implement directives and/or recommendations for

pedagogical improvement and professional development, provided in observation conferences with administrators and/or outside observers; instructional meetings; teacher improvement plans; one-on-one meetings with administrators; school based coaches; and/or outside observers; as well as school-wide professional development, with regard to:

- (a) Proper planning, pacing and/or execution of lessons;
- (b) Designing coherent instruction
- (c) Creating a classroom environment of respect and rapport;
- (d) Using questioning and discussion techniques;
- (e) Managing student behavior;
- (f) Student engagement; and/or
- (g) Using assessment[s] in instruction:

According to the Department, the foregoing constitutes:

1. Just cause for disciplinary action under Education Law Section 3020-a;
2. Incompetence and inefficient service;
3. Conduct unbecoming Respondent's position;
4. Conduct prejudicial to the good order, efficiency or discipline of the service;
5. Substantial cause rendering Respondent unfit to properly perform obligations to the service; and
6. Just cause for termination.

(Exhibit D-1).

POSITION OF THE PARTIES:

Respondent:

Respondent contends that the Department has failed to meet its burden of proof with respect to the charges referenced above and requests that the within charges be dismissed.

Respondent notes that he had been teaching in the ATR during the last two school years, which means that he had no permanent teaching

assignment during the charge period, which placed him at a disadvantage during the subject observations. Specifically, Respondent claims that he was typically observed teaching students whom he had met for the first time, and that he was also observed teaching classes that were outside his license area, which impacted his ability to instill regular classroom norms and his ability to differentiate his instruction.

With respect to the 2015-2016 school year, Respondent claims that AP Kostopoulos made several misstatements about his performance and, at times, “flat out lied.” In particular, Respondent contends that when testifying about one of her conference forms, which was not signed by Respondent, AP Kostopoulos initially testified that Respondent refused to sign the document (Exhibit D-30). However, when pressed on cross-examination as to whether she ever presented the document for Respondent to sign, AP Kostopoulos admitted that she had not. Thus, Respondent contends that this is evidence of the fact that this case is really about a personal animus of AP Kostopoulos toward Respondent and not a fair assessment of Respondent’s teaching.

Additionally, Respondent claims that he was never told that he was required to have a “stand-alone” math lesson prepared, which he was required to use in the event he was not given a lesson plan by the classroom teacher. Respondent submits that although AP Kostopoulos claimed that she told Respondent he needed to do so, there is nothing in the record that supports her assertion because AP Kostopoulos never memorialized the

alleged directive in any writing.

Further, with respect to the issue of discipline, Respondent asserts that the penalty of termination is inappropriate in this case because Respondent is clearly competent to teach. Nevertheless, Respondent admits that he is not perfect and claims that he is willing to improve. However, Respondent asserts that his ratings were unfair because they do not reflect his efforts to address the issues raised in the observation reports and because his supervisors failed to acknowledge the difficult circumstances that existed for him to teach class a that he was not familiar with.

With regard to remediation, Respondent contends that the Department failed to make any genuine attempts to remediate the alleged deficiencies in Respondent's teaching performance, which is required under §3020-a, Subsection 4, of the Education Law. Specifically, Respondent contends that during the two school years at issue, the main supports that were provided to him were basically conferences with his two ATR field supervisors, which were not particularly substantial. Respondent notes that although he was always open to having a dialogue about his teaching and his performance with his supervisors, there was never any one-on-one support. Moreover, the remediation provided by AP Kostopoulos only consisted of her giving Respondent an article to read, which they never discussed. Accordingly, Respondent believes that the Department has not shown that they made a genuine effort to remediate his alleged deficiencies. As such, the charges

should be dismissed.

Department:

The Department contends that it has proven all of the specifications charged and that based on the proven charges, Respondent must be terminated from his employment with the Department. The Department notes that this is Respondent's fifth consecutive year as an unsatisfactory teacher, and that although Respondent has been a teacher for over 20 years, this is the second time he has been charged with incompetence, which is unfair to the students that Respondent teaches.

Additionally, the Department asserts that although Respondent attempted to paint an illustration of himself as blameless, the evidence has shown that Respondent has taken no responsibility for the deficiencies in his practice, and has only sought to blame everyone else for his ineffective and unsatisfactory teaching during the charged period.

The Department notes that Respondent was continuously given clear and specific notice of his deficiencies and that the administration went to great lengths to provide him with remediation and professional development to support his practice. Thus, Respondent cannot claim that he was not on notice with respect to the Department's concerns about his pedagogy. To the contrary, the evidence shows that Respondent was simply unwilling to improve his performance.

With respect to remediation, the Department asserts that it provided a significant amount of professional development and remediation to the

Respondent, which is reflected in the Log of Assistance that was admitted in evidence (Exhibit D-18). Specifically, Respondent's supervisors encouraged Respondent to attend professional development at each of the schools he was assigned to and instructed Respondent to inter-visit with other teachers, who could model an appropriate lesson for him. Moreover, the Department developed multiple Plans of Assistance for Respondent, which identified the deficiencies with respect to his pedagogy. Further the Department notes that Respondent was provided with one-to-one pre-observation and post-observation conferences, wherein Respondent received detailed feedback in order to help him improve his pedagogy.

In conclusion, the Department contends that the evidence adduced at the hearing was both substantial and substantiated, and that after eight unsatisfactory observations, which documented Respondent's pedagogical deficiencies, termination is not a disproportionate penalty.

Finally, despite Respondent's assertions to the contrary, the Department contends that there is nothing in the record that raises the question as to the motives of any of the field supervisors who observed the Respondent in a variety of settings. As such, their conclusions regarding Respondent's pedagogy should be credited. Accordingly, based upon all of the evidence, the Department submits that termination of Respondent's employment is the only appropriate penalty.

DISCUSSION:

Specification 1a:

Observation November 10, 2015:

On October 13, 2015, AP Kostopoulos met with Respondent for a pre-observation conference to discuss what was expected of him during his lessons as an ATR for the 2015-2016 school year. AP Kostopoulos testified that during the meeting Respondent was advised that he needed to effectively manage his classroom and that he needed to be prepared for his lessons, among other topics.

On November 10, 2015, AP Kostopoulos conducted an informal observation of Respondent while he was serving as a substitute for a social studies lesson (Exhibit D-25). AP Kostopoulos rated Respondent unsatisfactory because when she entered the classroom, which was after the beginning of the lesson, she observed Respondent's students talking to each other with their books bags closed and on their desks. Thereafter, she observed Respondent state to the class that "if you have any work to do from this class or any other class, do it." AP Kostopoulos noted that 18 of the 22 students ignored Respondent and just continued talking amongst themselves. Respondent then told the class that if they needed help with "math," he could help them. Subsequently, AP Kostopoulos asked Respondent if he had a lesson plan with him. Respondent responded: "no, they did not give me one." AP Kostopoulos reminded Respondent that he was required to always have his own lesson plan, to which Respondent stated that he did not have a lesson

plan because he did not know what he would be teaching on this particular day. AP Kostopoulos told Respondent that he should always have a lesson plan in the event the host school doesn't provide him with one and that he was always required to teach a lesson. At this point, Respondent waved his hand at AP Kostopoulos and dismissively said: "I don't want to hear it."

Thereafter, AP Kostopoulos testified that she observed Respondent walk over to a student who was on his cellphone and abruptly told the student "to do some work." AP Kostopoulos noted while Respondent spoke to this student, the rest of the class continued to talk with each other and did not do any work. Subsequently, another student, who was locked out of the classroom, knocked on the door. Respondent ignored the student until a student in the classroom yelled out: "open the door, you dodo." Respondent then opened the door and let the student into the classroom. However, Respondent failed to address the student who called him a "dodo."

During the post-observation conference, AP Kostopoulos counseled Respondent for not addressing the student who made the rude remark and reminded Respondent that he needed to be able to manage his classroom. AP Kostopoulos also reiterated that Respondent failed to provide any instruction during the lesson and advised Respondent that he should have used his prep period, which he had before this class, to prepare for this lesson. AP Kostopoulos further advised Respondent that waving his hand at her, dismissively, was inappropriate, particularly in front of his students.

In a written rebuttal, which was attached to the observation report, Respondent reiterated that he was not provided with a lesson plan by the regular classroom teacher, and that he should not have been expected to have a lesson plan for this class unless he knew the class before he was assigned. Nevertheless, Respondent stated that he had several math lesson plans with him on a pen drive, which he said he carried with him at all times, and he denied that he failed to plan for this class.

At the hearing, Respondent asserted that the unsatisfactory rating for this observation was unfair because the observation was unannounced and took place during a social studies class, which is outside his license area. Respondent also claims that because the regular classroom teacher forgot to leave a lesson plan, he could not teach a lesson.

Finally, Respondent claims that he was never told that he could actually teach a math lesson in a social studies class, and that AP Kostopoulos' assertion that she told Respondent that he could teach a "stand-alone" math class, should not be credited because it was never documented in written form.

Here, the evidence shows that Respondent failed to provide any instruction during this lesson, which was evidenced by the fact that most of the students just sat and talked to each other during the entire class period. Although Respondent claims that this was his first day with this particular class, and that he was not provided with a lesson plan by the classroom

teacher, the evidence shows that Respondent had a prep period before this class, which Respondent should have used to prepare a lesson.

Additionally, Respondent's conduct toward AP Kostopoulos, wherein he dismissively waved his hand at her and then told her he "didn't want to hear it," was unprofessional and inexcusable. Moreover, regardless of whether AP Kostopoulos memorialized her instruction to Respondent that he could teach a "stand-alone" math lesson, in lieu of the social studies lesson, Respondent was aware, in this instance, that the classroom teacher did not leave a lesson plan for him, yet Respondent refused to prepare anything for this lesson even though he had a prep period before this lesson began, which was inappropriate for an experienced pedagogue. Thus, based on these facts, I find that Respondent failed to adequately plan and/or execute this lesson. Specification 1a is sustained.

Specification 1b:

Observation: January 21, 2016;

On January 14, 2016, AP Kostopoulos held a pre-observation conference with Respondent and provided Respondent with lesson planning suggestions to utilize for the observation that was scheduled for January 21, 2016 (Exhibit D-27).

On January 21, 2016, AP Kostopoulos observed Respondent during a math lesson. AP Kostopoulos noted that Respondent had been assigned to this class for the two previous weeks and that the Department's teachers had

conferred with Respondent regarding the students in the class and gave him the materials that they were using in their lessons (Exhibit D-28).

When AP Kostopoulos entered the classroom, which was 15 minutes before the class was scheduled to begin, she asked Respondent for a copy of his lesson plan. Respondent stated that he had it on his thumb drive. AP Kostopoulos asked Respondent to print it out at the end of the lesson. Respondent told her that he would email it to her instead. AP Kostopoulos noted that Respondent's tone was "abrupt and impatient."

During the lesson, AP Kostopoulos observed that Respondent also used an abrupt tone, on at least four different occasions, in front of the entire class when he called on a student who was not paying attention. AP Kostopoulos told Respondent that his manner was inappropriate and that he should have spoken to student privately in order to redirect his behavior.

Subsequently, AP Kostopoulos observed that when Respondent distributed a work sheet, which consisted of two pages, Respondent failed to give the students the second page and then ignored the students who asked for it. AP Kostopoulos also noted that Respondent only called on one student during the lesson and then talked over the few students who were actually working to solve the problems on the worksheet. Significantly, AP Kostopolus noted that only 3 of the 7 students in the class actually did any work, and that although Respondent issued an Exit Ticket, he failed to check for student understanding during the lesson and then did not collect the Exit

Ticket at the end of the lesson. Thus, based on these observations, AP Kostopoulos concluded that Respondent's lesson was unsatisfactory.

Respondent contends that his pre-observation meetings with AP Kostopoulos were not helpful because AP Kostopoulos only gave him a form to fill out and failed to discuss anything specific with him. However, Respondent claims that this lesson was satisfactory because he had prepared a power-point presentation and modeled the lesson for the students, and answered student's questions during the lesson. Respondent also contends that AP Kostopoulos' criticism that Respondent inappropriately told a student who was not paying attention to do some work, was unfair because AP Kostopoulos admitted that Respondent did not yell or scream at the student. As such, Respondent contends that the unsatisfactory rating was inappropriate and that this charge should be dismissed.

Here, the evidence clearly shows that Respondent's lesson was unsatisfactory because almost half the students failed to do any work during the lesson and because Respondent failed to conduct any assessment during the lesson to confirm that his students were actually working and understanding the lesson. Additionally, Respondent did not have a lesson plan available as he was required and his conduct toward his students and AP Kostopoulos was inappropriate throughout the lesson. Significantly, I note that although AP Kostopoulos conceded that Respondent did not "yell or scream" at the student who was not paying attention, AP Kostopoulos

testified that Respondent's tone was "abrupt and impatient" at several points during the lesson. Moreover, Respondent's failure to provide his students with the complete worksheet and then ignoring the students who asked for it, was inexcusable. Finally, I find that Respondent demonstrated poor pedagogy when he only called on one student during the lesson and then talked over the few students who were actually working. Therefore, although it is acknowledged that Respondent prepared a power-point presentation for this lesson, which was good pedagogy, based on the above, the facts clearly show that Respondent failed to adequately execute this lesson.

Specification 1b is sustained.

Specification 1c:

Observation: March 3, 2016:

On March 2, 2016, AP Kostopoulos met with Respondent during a pre-observation conference and discussed the expectations for the formal observation that was scheduled for March 3, 2016.

On March 3, 2016, AP Kostopoulos conducted the observation of Respondent in a math class, which Respondent had taught on two previous occasions (Exhibit D-33). AP Kostopoulos testified that this observation was unsatisfactory because Respondent did not present the material in a clear and effective manner. Specifically, AP Kostopoulos noted that Respondent's pacing was off, which did not permit the students to complete the work that was presented and/or allow for any assessment of student understanding

during the lesson. Additionally, AP Kostopoulos testified that Respondent did not address the questions posed to him by the students who did not understand the material and who had asked for clarification on 3 separate occasions. Respondent also did not have a complete lesson plan, and although Respondent posted the math formulas on a Smartboard, he did not give the students a copy of the formulas and then took the formulas off the Smartboard when the students were working on their activity sheets, which did not allow the students to reference the formulas as they were working.

Further, Respondent again spoke over the students when they asked for clarification and then failed to provide individual support to the students who needed it.

During the post-observation conference, Respondent stated that he thought the pacing of the lesson was appropriate and that he would not do anything differently if he had to do it again. Respondent also told AP Kostopoulos that she was being “picky” when she reminded him to distribute the Exit Ticket at the end of the lesson and not in the middle of the lesson.

At the hearing, Respondent stated that there was no real discussion at the pre-observation meeting and that he was only given a checklist to fill out with respect to this observation (Exhibit D-33). Nevertheless, Respondent claims that this was a satisfactory lesson because he had a “Do now” at the beginning of the lesson and because he had asked high-level questions during his instruction. Respondent also noted that he distributed an Exit Ticket to

assess for student understanding.

Further, Respondent notes that the regular classroom teacher, who was present during the observation, had sent him an email indicating that he thought Respondent did well during this lesson (See, Respondent's response to the observation report).

I find that the evidence presented by the Department in support of this charge shows that Respondent's lesson was unsatisfactory. Specifically, as set forth by AP Kostopoulos, Respondent, who was familiar with this class because he had taught these students on two previous occasions, again did not have a lesson plan. Additionally, Respondent did not address the questions posed to him by the students who did not understand the material and he ignored those who had repeatedly asked for clarification. Further, Respondent was unable to pace the lesson appropriately, which did not allow the students to complete the work that was presented and Respondent failed to conduct any assessment of student understanding during the lesson. Further, although it is true that Respondent posted the math formulas on a Smartboard, Respondent also took them down too soon to allow his students to reference the formulas as they were working, which was pointless. Thus, although it is true that Respondent distributed an Exit Ticket, this fact, alone, does not support a finding that this lesson was satisfactory.

Lastly, I note that despite the fact the classroom teacher sent

Respondent an email supporting his contention that the lesson was satisfactory, it is understood that the classroom teacher, who did not testify at the hearing, was not qualified to rate Respondent's pedagogy. Thus, I do not credit his assertions.

Specification 1c is sustained.

Specification 1d:

Observation: May 19, 2016.

On May 19, 2016, AP Kostopoulos observed Respondent while he was covering an English as a Second Language class (Exhibit D-38.). This was the second day Respondent had taught this class. AP Kostopoulos rated Respondent's lesson unsatisfactory because when she walked into the classroom she noted that Respondent's "Aim," which was on the board in front of the classroom, stated: "Continue with the reading of the article on Islam...if you finished yesterday, let me know," which AP Kostopoulos testified was not a learning objective, but simply a set of directions. AP Kostopoulos also testified that Respondent's Aim showed that Respondent was teaching the same material from the day before. AP Kostopoulos further noted that Respondent again failed to have a lesson plan and that when she asked Respondent for it, Respondent abruptly told her: "...they gave me this article" and then abruptly asked: "...is this my fault too?" Thereafter, Respondent leaned on the wall and stood over AP Kostopoulos as she wrote down her notes on the observation, which AP Kostopoulos said was intimidating. AP Kostopoulos also testified that Respondent did not

encourage a discussion about the article that was assigned and otherwise failed to engage any of his students in the learning process. Significantly, AP Kostopoulos noted that Respondent simply walked around the room telling the students that he could help them with “Google translate” if they needed it. Finally, AP Kostopoulos observed that for the students who completed the article, Respondent simply gave them a “word search puzzle” to keep them busy for the rest of the period.

Respondent contends that the unsatisfactory rating for this observation was unfair because AP Kostopoulos observed him teaching an ESL class, which was outside his license area as a math teacher. Additionally, Respondent claims that the rating was also unfair because he was simply teaching the lesson that was left by the classroom teacher, which was an article on Islam, and that the Department actually gave him the word-search puzzle to distribute to the students who had finished the article. As such, Respondent submits that because he gave the students the work that was given to him by the classroom and the Department, and offered to help the students comprehend the article by using Google Translate, this observation should have been rated satisfactory.

Here, the evidence presented by the Department clearly shows that Respondent did not plan or present an adequate lesson during this observation. As indicated above, this was the second day Respondent taught this class, which means even though it was not a math class, Respondent was

familiar with these students. Nevertheless, and despite having this class for two days, Respondent was still using the materials that he used the day before. I find that even assuming the work from the day before had to be continued on the second day, which is unlikely because it only involved reading one article, there was no evidence that Respondent had planned to teach anything about the material he was using. Significantly, as indicated by AP Kostopoulos, Respondent again did not have a lesson plan, which is inexcusable in light of the fact that this was his second day with these students and because he knew in advance what material he would be presenting. Additionally, Respondent he did not design any instruction around the article and failed to ask any questions of the students in order to assess and/or reinforce their understanding of the article. Thus, although it is true that Respondent offered to help students with Google Translate, which was not inappropriate, the evidence presented by the Department clearly shows that Respondent failed to adequately plan and execute this lesson.

Specification 1d is sustained.

Specification 1e:

Observation: November 19, 2016:

This was the first observation conducted during the 2016-2017 school year. AP Stark conducted the observation on November 19, 2016 (Exhibit D-18), which was a formal observation during a math lesson.

AP Stark rated Respondent unsatisfactory because Respondent failed

to address his students' off-task behavior, which included talking to each other, singing songs and using derogatory language. AP Stark noted that although Respondent was aware of the students' inappropriate conduct, Respondent did nothing to redirect their behavior. To the contrary, AP Stark observed Respondent actually undermine his own authority when he referred to himself as a "substitute for life" in front of his students and stated that he would "never be allowed to have his own classroom again." AP Stark also observed that Respondent's instruction was too teacher-centered and that most, if not all, of the students who were actually working, worked on their own. Finally, AP Stark testified that Respondent never checked any of his student's work for accuracy, nor did he adapt his instruction to meet all of the needs of this students.

During the post-observation conference, AP Stark reported that Respondent informed him that he was "only a sub" and that anything he did beyond using the worksheet that the teacher left for him, "was extra." AP Stark reminded Respondent that he was a professional and that he was expected to implement an appropriate lesson plan. AP Stark also noted that Respondent had two free periods before this lesson, which gave him more than sufficient time to prepare for this lesson.

Respondent contends that the unsatisfactory rating for this observation was unfair because Respondent had distributed a handout that was left for him by the regular classroom teacher and because Respondent

had greeted students as they entered the classroom. Respondent also stated that he modeled the lesson and that he addressed some of the questions posed by the students during the lesson. Further, Respondent submits that although he was critiqued by AP Stark for not addressing the student who was signing an inappropriate song, the observation report indicated that Respondent told the student to “stop that nonsense.” Moreover, Respondent contends that this was not his regular classroom, therefore it was unfair to expect him to establish any classroom behavior expectations. Nevertheless, Respondent claims that the inappropriate behavior, which he categorized as minor, was addressed. Finally, with respect to his comment about being a “sub for life,” Respondent stated that he only responded to a student who asked him if he was their teacher, which Respondent did not believe was inappropriate.

Based on the testimony of AP Stark, which confirmed the contents of the subject observation report, it is clear that Respondent’s lesson on this date was unsatisfactory. Although it is true that Respondent modeled some of the math problems that were included on the worksheet left by the classroom teacher, and that Respondent greeted some of the students as they entered the classroom, which was appropriate, the evidence presented by the Department shows that Respondent could not control this class. Specifically, as stated by AP Stark, Respondent’s students talked, sang songs and used crude language throughout the lesson, which went unaddressed by

Respondent. Additionally, the record shows that there was no evidence of any group work and that Respondent did not check for any understanding of the material he was teaching. Thus, based on these facts, I find that the Department has proven this charge.

Specification 1e is sustained.

Specification 1f:

Observation: December 9, 2016:

On December 9, 2016, AP Stark conducted this observation while Respondent was teaching a math class, which Respondent had been teaching for several days prior to this observation (Exhibit D-12).

AP Stark rated this lesson unsatisfactory because Respondent did not encourage his students to work with each other as they worked on the math problems he presented, but instead interrupted his students during the “DO NOW” with his own questions and then proceeded to solve the problems for the students instead of allowing them to do the work (Exhibit D-12). Additionally, AP Stark noted that when Respondent actually told his students to talk to each other, Respondent stated: “I’m sure your teacher thinks it’s important,” which suggested that Respondent did not think peer-to-peer discussion was important, and which actually undermined the authority of the regular classroom teacher. AP Stark further noted that Respondent again failed to differentiate any of his instruction and failed to collect the Exit Tickets to confirm student understanding of the lesson.

Respondent claims that although he was criticized for this lesson being

too teacher-centered, the observation report actually indicates that Respondent told his students to work with a partner and not to work in isolation. Respondent also claims that he approached to different groups of students during the lesson and tried to provide assistance, which he said he was criticized for not doing in previous observations. Respondent further notes that his lesson included an Aim and a Do Now, and that his students were participating in a discussion involving a problem that was displayed on the SmartBoard. Thus, Respondent submits that this was a satisfactory lesson.

Here, I agree that Respondent prepared an appropriate lesson because the record shows that Respondent had an Aim and a DO Now, as well as an Exit Ticket to assess for student understanding at the end of the lesson. However, the record shows that during the lesson Respondent cut-off the students who tried to engage in the lesson and then spoke from the front of room and completed their work for them. The record also shows that Respondent again failed to check for student understanding during the lesson, which would have allowed Respondent to adapt his instruction to meet the individual needs of his students. Significantly, the record also shows that Respondent simply presented the same material in the same format to all the students and did not check to see which students understood the work and who needed help. Additionally, although it is understood that this was not Respondent's permanent class, nothing prevented Respondent from

assessing his students work during the lesson and then modifying his instruction to meet their needs.

Thus, although I find that there were aspects of this lesson that were commendable, the record, overall, shows that Respondent failed to adequately execute this lesson.

Specification 1f is sustained.

Specification 1g:

Observation: March 8, 2017:

AP Stark conducted this observation of Respondent on March 8, 2017, during another math lesson.

AP Stark rated this lesson as unsatisfactory because Respondent again stood in front of the classroom and wrote the answers to the math problems on the board, which allowed his students to remain off task and simply copy his answers from the board and put the answers in their work-books. AP Stark also testified that the students had called out and talked to each other throughout the lesson without any consequences imposed by Respondent. AP Stark further noted that Respondent again failed to differentiate any of his instruction and that Respondent failed to complete all of the problems that were presented in the workbook.

During the post-observation conference, Respondent told AP Stark that he believed the observation was conducted to “get rid of” him and Respondent criticized the Department’s expectations with respect to instruction and the Common Core curriculum.

At the hearing, Respondent asserted that this was a satisfactory lesson because he provided his students with a variety of problems and because Respondent modeled part of the lesson. Respondent also said he circled around the room and monitored his students' progress and provided individual support to the students who needed it. Respondent further asserted that there were no significant behavior issues during this lesson and, therefore, this lesson should not have been rated unsatisfactory.

Here, the evidence presented clearly shows that several students talked throughout the lesson and remained off-task without any redirection from Respondent. AP Stark also confirmed that Respondent stood in front of the room and gave the answers to the problems he presented to the students, which he had been counseled not to do previously. Additionally, Respondent again failed to differentiate any of his instruction to help the students who struggled and failed to appropriately pace the lesson, which did not allow enough time to complete the work. Thus, based on these facts, I find that the Department has proven this charge.

Specification 1g is sustained.

Specification 1h:

Observation: April 24, 2017:

AP Stark conducted a final observation of Respondent on April 24, 2017, which was a formal observation during a math lesson (Exhibit D-16). In preparation for this observation, Respondent "inter-visited" with the subject class on seven occasions in order to familiarize himself with the students and

their learning styles. Respondent was also provided with a pre-observation conference, which was held on April 21, 2017, wherein AP Stark helped Respondent develop a visual aid to utilize during his lesson.

AP Stark rated this lesson as unsatisfactory, in part, because Respondent failed to pace the lesson appropriately which resulted in a “mixing of activities and objectives” for the students, which confused the students as to what they were suppose to be doing at any given time. Specifically, AP Stark noted that Respondent had multiple activities going on at the same time and failed to check for student understanding before he moved on to the next activity. AP Stark also testified that while Respondent had students come to the board and present and discuss their work, which was a good a practice, on two occasions during this lesson the work that was actually presented on the board had to be corrected by another student because it was actually wrong, which Respondent failed to acknowledge. Respondent also failed to employ a coherent behavioral standard for this lesson, which was evidenced by the fact that Respondent allowed students to call out their answers in the beginning of the lesson without raising their hand, but then reprimanded one student for calling out without raising his hand in the middle of the lesson. This caused the entire class to laugh at the situation and then caused that particular student to stop participating for the remainder of the lesson. Significantly, AP Stark noted that after the reprimand, Respondent continued to allow the rest of the class to call out

their responses without raising their hand, which was confusing and inappropriate.

Further, AP Stark was concerned that Respondent failed to make any reference to a “real life” application of the math problems he presented, which the students could have connected to the lesson, and which was discussed at length with Respondent during the pre-observation conference. Additionally, AP Stark reported that Respondent’s comment to the class that “some of you are really going to do well on the test,” was inappropriate because the statement suggested that Respondent believed that the rest of the class would not do well, which was discouraging to the other students, particularly those who struggled.

AP Stark also observed that Respondent again failed to differentiate and/or adapt any of his instruction to meet the needs of the students who were struggling. Specifically, AP Stark observed that everyone received the same work problems, which were presented in an identical format, and that all students were given the same amount of time to complete the problems.

Finally, AP Stark reported that although Respondent had an Exit Ticket, which was an appropriate assessment for the end of the lesson, Respondent failed to check and/or evaluate for student understanding during the lesson to confirm whether the students were understanding the work.

Respondent contends that this lesson was actually satisfactory because the observation report shows that Respondent greeted the students as they

came into the classroom and because Respondent told some of the students to take off their headphones. Respondent also asserted that he had an Aim and a Do Now written on the board, which was good pedagogy. Respondent further asserts that the evidence presented shows that he was able to make the shift from having a teacher-centered class to a student-centered class, which was evidenced by the fact that Respondent told his students to confer with each other before seeking his assistance. Additionally, Respondent noted that he called on students to demonstrate their answers at the board in front of the classroom and that he praised students who provided correct answers, which showed that there was a positive classroom rapport.

Lastly, Respondent notes that the classroom's permanent teacher, who was present during the observation, had a favorable impression of what went on in the classroom on this particular day, which rebuts AP Stark's conclusion about the lesson. Accordingly, Respondent submits that this lesson should not have been rated as unsatisfactory and that Respondent should have been given credit for trying to implement many of the strategies that were provided to him by the administration.

Here, the evidence clearly shows that Respondent's lesson was unsatisfactory. Significantly, the record shows that despite having worked with this class on seven separate occasions prior to this lesson, Respondent again failed to differentiate and/or adapt his instruction to meet the needs of the students who were struggling. Additionally, as observed by AP Stark,

Respondent gave everyone the same work problems in the same format, and all the students were given the same amount of time to complete the problems, which Respondent was counseled not to do on previous occasions. Respondent also failed to check to see if any of his students actually understood the work and then failed to correct the work that was actually wrong, which was completely inappropriate.

Further, AP Stark observed that Respondent did not pace the lesson appropriately, which was evidenced by the fact that Respondent had multiple activities going on at the same time, which was only added to the confusion during this lesson.

Finally, Respondent's comment to the whole class that "some of you are really going to do well on the test," was pointless and insensitive, particularly to the students who struggled in the class. Thus, while I agree with Respondent that having an Aim and a Do Now on the board, as well as greeting students at the door, was good pedagogy, the facts referenced above clearly show that Respondent failed to adequately execute this lesson. Further, I note that although Respondent presented an email from the classroom teacher, which Respondent contends supports his claim that this was a satisfactory lesson, the teacher, who is not an administrator, and therefore not qualified to rate Respondent's pedagogy, did not testify at the hearing. Accordingly, I find this point unpersuasive.

Specification 1h is sustained.

Specification 2: On or about May 19, 2016, Respondent acted in an unprofessional manner and used poor judgment in that he made unsuitable comments in the presence of students during an informal observation.

In a Letter to File, dated June 1, 2016, AP Kostopoulos recorded an incident that occurred on May 19, 2016, wherein Respondent made “unprofessional comments” to AP Kostopoulos in front of his students during an informal observation. Specifically, AP Kostopoulos noted that when she arrived at Respondent’s school to conduct an informal observation, Respondent approached her in the lobby and told her that “it is illegal” for her to observe him outside of a math class, and said “You will not get away with this.” Thereafter, during the actual observation, and in front of several students in the classroom, Respondent stated: “I don’t understand why you observe me out of license. I don’t understand it.” Respondent also stated “You’re writing like a newspaper...I don’t understand it; it’s out of license.” Subsequently, when AP Kostopoulos asked Respondent for his lesson plan, Respondent stated: “they gave me this article.”...and then abruptly stated: “...is that my fault too?” Finally, toward the end of the lesson, when AP Kostopoulos told Respondent that she would be conducting a post-observation conference in the following week, Respondent stated: “For an observation out of my license? Boy, you must have a lot of free time.”

During the post-observation conference on May 31, 2016, Respondent admitted he made these statements and he apologized to AP Kostopoulos for

doing so (Exhibit D-26).

At the hearing, Respondent again apologized for his conduct, but also stated that his statements were taken out of context. Specifically, Respondent claimed that although he told AP Kostopoulos that it was “illegal” to observe him out of license, Respondent only meant that he would be filing a grievance on the issue. Respondent also noted that he was not physically threatening toward AP Kostopoulos and asserted that it was not unreasonable for someone to be upset when they are observed outside their licensed area.

Here, it is undisputed that Respondent made these comments to AP Kostopoulos at the school and in front of his students. Although it is understood that Respondent was upset because he believed it was unfair to be observed outside of a math class, Respondent’s comments to AP Kostopoulos, particularly in front of his students, were clearly inappropriate and unprofessional.

Specification 2 is sustained.

Specification 3: Respondent failed during the 2015-2016 and 2016-2017 school years to fully and/or consistently implement directives and/or recommendations for pedagogical improvement and professional development provided in observation conferences with administrators and/or outside observers; instructional meetings; teacher improvement plans; one-on-one meetings with administrators; school based coaches; and/or outside observers; as well as school-wide professional development, with regard to:

- (a) Proper planning, pacing and/or execution of lessons;
- (b) Designing coherent instruction;
- (c) Demonstrating knowledge of content and pedagogy;
- (d) Creating a classroom environment of respect and rapport;
- (e) Using assessment in instruct;
- (f) Using questioning and discussion techniques;
- (g) Student engagement; and/or
- (h) Managing student behavior.

The Department asserts that it provided a significant amount of professional development and remediation to the Respondent with respect to the areas identified in subparagraphs (a) through (h), which is reflected in the Log of Assistance in evidence as Exhibit D-18. Additionally, the Department provided Respondent with multiple Plans of Assistance throughout the charged period, which were designed to address his deficiencies, and provided Respondent with articles that directly addressed his pedagogical issues, as well as direct support from AP Stark with respect to his deficiencies around curriculum. Moreover, Respondent was provided with numerous pre-observation and post-observation conferences wherein he received detailed feedback with respect to his deficiencies in order to help him improve his practice and he was instructed to inter-visit with other teachers in order to observe examples of good pedagogy.

Contrary to the Department's assertions, Respondent contends that the Department did not make any genuine attempts to remediate the alleged deficiencies in Respondent's teaching performance. Specifically, Respondent asserts that during the two charged years, the main supports that were

provided to him were basically conferences with his two ATR field supervisors, wherein not much was discussed. Respondent also contends that although he was always open to having a dialogue about teaching and his performance, there was no one-on-one support. Moreover, Respondent asserts that the only remediation provided by AP Kostopoulos was an article she had given him to read, which they never discussed. As such, Respondent requests that this specification be dismissed.

Here, the evidence shows that the Department provided more than adequate professional development support to Respondent during the two school years charged. Specifically, during the 2015-2016 school year, the record shows that the Department met with Respondent on numerous occasions during pre-observation and post-observation conferences, wherein Respondent received direct feedback on his pedagogy (Exhibit D-41). Respondent was also provided with a Plan of Assistance in November 2015, February 2016 and May 2016, as well an Action Plan in December 2015, all of which delineated the areas in which Respondent needed to improve and provided professional development resources which addressed the areas of deficiencies identified by the Department (Exhibits D-25, D-31 and D-37). Further, Respondent was also provided with inter-visitations with his colleagues during this school year for the purpose of providing Respondent with examples of satisfactory teaching (Exhibit D-41).

Thereafter, in the beginning of the 2016-2017 school year, AP Stark developed another Plan of Assistance for Respondent, which also addressed the Department's areas of concern with respect to Respondent's pedagogy and which provided Respondent with the professional development resources to help him improve his teaching (Exhibit D-4). AP Stark also held numerous pre-observation and post-observation conferences during this school year, wherein AP Stark provided Respondent with direct support with respect to his pedagogy. Finally, the record shows that Respondent had several inter-visitations with other pedagogues during this school year, which addressed differentiation and small group instruction, as well as formative assessments, among other areas, and then received direct feedback from AP Stark following the inter-visitations (Exhibits D-4 and D-19). Thus, based on these facts I find that the Department provided a sufficient amount of professional development to Respondent during the two years charged.

Further, I find that although Respondent does not lack the content knowledge in math, the record shows that Respondent failed to improve during the charge period, which is evidenced by the fact that Respondent was rated unsatisfactory during every observation.

Thus, based on these above, I find that the Department has proven this charge.

Specification 3(a), (b), (c), (d), (e), (f), (g) and (h) are sustained.

Penalty:

The Department has proven the charges against Respondent set forth in Specification 1, subsections (a) through (h), Specification 2, and Specification 3, subsection (a) through (h). The proven charges support a finding of just cause to discipline Respondent.

The purpose of Education Law Section 3020-a is to determine a teacher's fitness to teach and to carry-on professional responsibilities. To impose termination as a penalty for failure to teach and to perform the required professional responsibilities, the charges against the teacher must be substantial and substantiated and dismissal must not be disproportionate to the offense charged.

Here, the Department has proven all of the charges preferred against Respondent, which shows that Respondent has been an unsatisfactory teacher during the 2015-2016 and 2016-2017 school years. I find that the proven charges are substantial, and are directly related to Respondent's competency to teach and his ability to provide his students with a valid educational experience. Significantly, I find that the evidence demonstrates that Respondent is unable, and/or unwilling, to develop and deliver an appropriate lesson. Additionally, based on the entire record, I find that the Department made significant and substantial efforts to assist Respondent in correcting his pedagogical deficiencies. Unfortunately, Respondent was unwilling to improve.

Additionally, having found that there is just cause to discipline

Respondent, I reviewed Respondent's employment history, which shows that Respondent received unsatisfactory ratings for the 2011-2012 and 2012-2013 school years, as well as an "Ineffective" rating for the 2013-2014 school year. Thus, the record shows that Respondent has been an unsatisfactory teacher for the last 5 school years. Accordingly, I find that the penalty of termination is appropriate in this case. Significantly, the unsatisfactory and ratings during the subject school years, shows that Respondent is unwilling to implement the suggestions he received from his administrators and consequently, unwilling to improve his pedagogy. Moreover, the record shows that Respondent interacted inappropriately with his supervisors and, at times, was abrupt and impatience with his students. I note that contrary to Respondent's contentions, there is no evidence that the conclusions his supervisors reached regarding his pedagogy were motivated by personal animus. I also note that although I agree with Respondent that teaching in the ATR is, at times, difficult, this record shows that Respondent made very little effort to develop and/or implement any instruction, which denied his students a valid educational experience.

Thus, in conclusion, based on the entire record, and after considering Respondent's prior unsatisfactory service, which shows that Respondent has been unsatisfactory or ineffective for the last 5 school years, I find that the appropriate penalty for the sustained charges is termination of Respondent's employment with the Department.

For all of the foregoing reasons, I issue the following:

AWARD

1. The Respondent, Robert Torrens, is guilty as charged in Specification 1, subsections (a) through (h), Specification 2 and Specification 3 , subsections (a) through (h).
2. The appropriate penalty for Respondent’s culpability under the sustained charges is immediate termination of his employment with the New York City Department of Education.

Dated: June 11, 2018.

James McKeever
 James McKeever, Esq., Hearing Officer

AFFIRMATION

State of New York)
)
 County of Suffolk) SS:

I, James McKeever, do hereby affirm upon my oath as a Hearing Officer that I am the individual described herein and I am the person who executed this document, which is my Opinion and Award.

Dated: June 11, 2018

James McKeever
 James McKeever, Hearing Officer

