



B-27

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Assistant Business  
Administrator (M0270R), Jersey City  
School District

CSC Docket No. 2015-3201

Request for Enforcement

ISSUED: **NOV 06 2015.** (CSM)

The Division of Agency Services (Agency Services) requests enforcement of the decision rendered on November 6, 2014 that ordered a classification review of the position encumbered by Rhonda Curry, Jersey City School District (District).

By way of background, the District requested permission from the Civil Service Commission (Commission) not to make an appointment from the October 16, 2013 certification for Assistant Business Administrator. Specifically, the District stated that it removed the provisional appointee to the title, Curry, because it does not utilize the title of Assistant Business Administrator. Rather, it maintained that that it had attempted to resolve the matter of the posting for the subject examination with the former Division of Classification and Personnel Management (CPM) in 2013, explaining that the title it utilizes is Assistant School Business Administrator, which is an unclassified position. Patrick Pisano, an eligible on the subject list, requested that the appointment waiver be denied since Curry was appointed as an Assistant Business Administrator without the benefit of passing a competitive examination. In its decision, the Commission ordered that the matter of the District's waiver of the appointment requirement be held in abeyance pending a determination from CPM regarding the proper classification of Curry's position. In compliance with the order, CPM requested that Curry complete a Position Classification Questionnaire (PCQ) to determine the proper classification of her position. In response, Curry submitted a PCQ indicating that she performs the duties of a "Teaching staff member" as defined by *N.J.S.A. 18A:1-1*. Thus, in accordance with *N.J.S.A. 11A:3-5(g)*, the District contended that position should be in the unclassified service. Thereafter, Agency Services referred the matter for enforcement.

In response, the District, represented by Jennifer Roselle, Esq., states that in October 2012, it appointed Curry to the title of "Assistant Business Administrator" which refers to the assistant to the School Business Administrator. The District emphasizes that the position of Assistant School Business Administrator requires incumbents to hold a School Business Administrator certificate issued by the New Jersey State Board of Examiners. As the Assistant School Business Administrator position is considered professional staff and requires possession of a certification appropriate to the position, an incumbent in the position is considered a "teaching staff member" as defined by *N.J.S.A. 18A:1-1*. Therefore, in accordance with *N.J.S.A. 11A:3-5(g)*, Assistant School Business Administrators, as teaching staff members defined by *N.J.S.A. 18A:1-1*, are unclassified positions not subject to the provisions of Title 11A. In support of its position, the District provides copies of its job announcement for "Assistant Business Administrator" which indicates that candidates, among other things, are required to possess a School Business Administrator Certificate.

It is noted that Curry's provisional appointment to Assistant Business Administrator was discontinued effective December 2, 2013.

### CONCLUSION

*N.J.S.A. 11A:3-5(g)* states, in pertinent part, that the political subdivision unclassified service shall not be subject to the provisions of Title 11A and shall include teaching staff, as defined by *N.J.S.A. 18A:1-1*, in the public schools.

*N.J.S.A. 18A:1-1* and *N.J.A.C. 6A:9-2.1* define "teaching staff member" as a member of the professional staff of any district, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse and a school athletic trainer.

*N.J.S.A. 18A:17-14.2* states that no person shall act as school business administrator or perform duties of a school business administrator, unless he or she holds an appropriate certificate as prescribed by the State School Board.

The job specification for Assistant Business Administrator states:

Assists the Business Administrator in the administration of municipal affairs, and in integrating and coordinating activities of the various departments; does related work as required.

In this case, the record demonstrates that the position of Assistant School Business Administrator requires possession of a School Business Administrator's certification. Additionally, *N.J.S.A.* 18A:17-14.2 indicates that a person who is appointed as a school business administrator or perform the duties of a school business administrator, such as an assistant who assumes the performance of those duties in the business administrator's absence, are considered professional staff and are required to possess certification as a School Business Administrator issued by the State Board of Examiners. Further, in no uncertain terms, *N.J.S.A.* 18A:1-1 defines a teaching staff member as a member of the professional staff whose position requires him or her to hold a valid certificate, appropriate to the office, issued by the State Board of Examiners. Therefore, since *N.J.S.A.* 11A:3-5(g) specifically states that teaching staff members as defined by *N.J.S.A.* 18A:1-1 are unclassified positions not subject to the provisions of Title 11A, the position that Curry encumbered cannot be considered to be in the competitive division of the career service. Although the record is unclear, it appears that the District's generic use of the term "Assistant Business Administrator" resulted in the erroneous recording of Curry's appointment in the County and Municipal Personnel System (CAMPS) to the career service title. Indeed, as noted by the District in its prior decision, it had attempted to correct this issue when the open competitive announcement for the subject title was issued in 2013, but it was unable to resolve the problem with this agency. The District's position is also persuasive given the fact that the career service title of Assistant Business Administrator limits incumbents in that classification to the administration of *municipal affairs*, not the distinct and unique affairs of a school district. Therefore, use of the career service Assistant Business Administrator title is clearly not warranted in the District.

In accordance with *N.J.S.A.* 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as the result of an erroneous provisional appointment of Curry to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver. It stated that the subject title was not appropriate and it attempted to correct this error prior to the posting of the open competitive examination for the subject title. Accordingly, based on the foregoing, the appointing authority has presented adequate justification for granting an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives

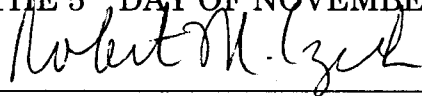
permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the civil service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. However, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process.

### ORDER

Therefore, it is ordered that the request for waiver of the appointment requirement be granted and no selection costs be assessed.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 5<sup>TH</sup> DAY OF NOVEMBER, 2015



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c: Rita Salley  
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STATE OF NEW JERSEY

In the Matter of Assistant Business  
Administrator (M0270R), Jersey City  
School District

DECISION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2014-2160

Appointment Waiver Request

ISSUED: NOV 10 2014 (CAG)

The Jersey City School District (District) requests permission not to make an appointment from the October 16, 2013 certification for Assistant Business Administrator (M0270R).

The record reveals that the District provisionally appointed Rhonda Curry, pending open-competitive examination procedures, to the title of Assistant Business Administrator, effective October 25, 2012. As a result of the provisional appointment, an examination was announced with a closing date of April 9, 2013. Four applicants were admitted to the unassembled examination. For reasons that are not clear in the record, Curry did not apply for the examination. The resulting list of four eligibles promulgated on October 10, 2013 and expires on October 9, 2016. The District took no action to obviate the need for the examination at the time of the announcement or prior to the promulgation of the eligible list. On October 16, 2013, the names of all four eligibles were certified from the list. The District returned the certification and requested a waiver of the appointment requirement. Specifically, it stated that the provisional in the title had been removed. In addition, the District stated that it does not have the title of Assistant Business Administrator. Rather, it asserted that the title it utilizes is Assistant School Business Administrator which is not recognized by Civil Service.

The District's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. In response, the District requested a waiver of the costs of the selection process. Specifically, it asserts that the

appointing authority at the time, Dr. Hermione McNeil, attempted to resolve this matter via e-mail with staff of the Division of Classification and Personnel Management (CPM) to no avail. It states that an e-mail was sent to CPM dated March 18, 2013 requesting that the examination for Assistant Business Administrator not be posted based on the fact that the District's title is Assistant School Business Administrator which is not recognized by Civil Service. It asserts that the title is an "unaffiliated/unclassified" title that was approved by the county. Therefore, there could be no appointment made to the title of Assistant Business Administrator. In addition, the District states that there were other attempts to resolve this matter via e-mail with CPM, but the matter was never resolved.

Patrick Pisano, represented by Philip Feintuch, Esq., states that he is on the eligible list for Assistant Business Administrator. He argues that Curry was appointed to the title of Assistant Business Administrator on October 18, 2012 without the benefit of passing a Civil Service examination. He also argues that her title was changed to Assistant School Business Administrator at a later date without the benefit of passing a Civil Service examination. In addition, he argues that she is currently performing the work of an Assistant Business Administrator. Further, he argues that the District's request for an appointment waiver for the title of Assistant Business Administrator violates the protections he should be afforded under Civil Service law and rules. Therefore, he requests that the appointment waiver request be denied.

Personnel records reveal that Curry's provisional appointment as an Assistant Business Administrator was discontinued effective December 2, 2013. There is no record of Curry's appointment to another title after this date in CAMPS.

### CONCLUSION

In accordance with *N.J.S.A. 11A:4-5*, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

It is noted that, although Pisano argues that he has been denied the protection of Civil Service law and rules, merely appearing on an eligible list for a Civil Service title does not confer a right of appointment to any eligible. It is further noted that, if it is determined that an appointment must be made from the eligible list for the title of Assistant Business Administrator, there are four eligibles on the certification as indicated above.

In the instant matter, the examination for the title of Assistant Business Administrator was generated as a result of the provisional appointment of Curry. After a complete certification was issued, the District indicated that Curry was removed from the title of Assistant Business Administrator and appointed to the "unaffiliated/unclassified" position of Assistant School Business Administrator. As a result, Curry's provisional appointment as an Assistant Business Administrator was terminated effective December 2, 2013 and the District stated that she was appointed to the "unaffiliated/unclassified" title of Assistant School Business Administrator. Although the District argues that Curry is serving in an unclassified title, there is no record of her appointment to the title of Assistant School Business Administrator since it is not a title recognized by this agency's classification plan, and, therefore, cannot be recorded in CAMPS. Although Curry's title may be Assistant School Business Administrator according to the District, it would be considered a functional title since it is not included in the classification plan. Therefore, it appears as if the new position was created so that Curry could continue to be employed even though she did not apply for the open-competitive examination for the title of Assistant Business Administrator and, consequently, she was not eligible for appointment on the subject certification.

*N.J.S.A. 11A:3-1* and *N.J.A.C. 4A:3-3.1(a)* provide that each position in the career and unclassified services shall be assigned to a job title. *N.J.A.C. 4A:3-3.3(d)* provides that positions in the career, unclassified and senior executive service shall be subject to job audit to ensure accurate classification and compliance with Titles 11A and 4A. Moreover, *N.J.A.C. 4A:3-3.4* provides that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds. In the instant matter, the District asserts that Curry's proper classification should be Assistant School Business Administrator, an "unaffiliated/unclassified" title. However, it appears that such an appointment might have been an attempt to circumvent Civil Service law and rules as explained above. Since the Commission cannot determine on the existing record the title to which Curry should be classified, it is appropriate that this matter be referred to the Division of Classification and Personnel Management for a classification review of Rhonda Curry's position.

### ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be held in abeyance pending the determination of the Division of Classification and Personnel Management regarding the proper classification of Rhonda Curry's position.

It is further ordered that the Division of Classification and Personnel Management complete its classification review of Curry's position and issue its

determination to Curry, the Jersey City School District and the Civil Service Commission within 30 days of the issuance of this decision.

**DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 6<sup>TH</sup> DAY OF NOVEMBER 2014**



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