

- (1) Serve as a liaison and resource expert in school nursing and comprehensive school health services for county, State, and national school health organizations, and policy setting groups;
- (2) Provide consultation and technical assistance to support school districts in facilitating parent and community engagement;
- (3) Coordinate school health program activities with public health, social services, environmental, and educational agencies as well as other public and private entities;
- (4) Monitor, interpret, synthesize, and disseminate relevant information associated with changes in health and medical care, school nursing practice, legislation, and legal issues that impact schools;
- (5) Facilitate the development of policies, standards, and guidelines to enhance comprehensive school health services;
- (6) Foster and promote professional development for school nurses, which may include planning, coordinating, or providing educational guidance, and networking with universities and other providers of continuing education to meet identified needs;
- (7) Promote quality assurance of comprehensive school health services by advocating for the use of evidence-based school nursing practice and participating in the National Association of School Nurses data collection initiatives;
- (8) Participate in State-level public interagency partnerships and private partnerships with Statewide stakeholders to foster comprehensive school health services, representing school nurses in multi-disciplinary collaborations;
- (9) Initiate, participate in, and utilize research studies related to comprehensive school health services, the health needs of children and youth, school nursing practice, and related issues; and
- (10) Serve as a liaison regarding school health issues with the Department of Health and the Legislature.

DOE stated that it needs to be able to reach an applicant pool that will meet the specific criteria put forward in the legislation.

Agency Services indicates that it reviewed existing titles to determine if there was any title that would accommodate the needs of the State School Nurse Consultant function. Upon review, it determined that there were no current titles commensurate with the specific requirements, roles, and responsibilities as described. Agency Services also notes that it has developed a job specification for the new title and that the Governor's Office of Employee Relations has assigned the bargaining unit. Agency Services requests an effective date of April 10, 2021 for the creation of the new title.

CONCLUSION

In matters involving the question of whether a particular title should be allocated to the career or unclassified service, the starting point is the *New Jersey Constitution*, Article VII, sec. 1, par. 2, providing that:

Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, *as far as practicable, by examination*, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law (emphasis added).

An interpretation of Civil Service law governing the unclassified service must be made in view of this constitutional mandate and a strict interpretation is generally given in matters concerning allocation to the unclassified service. *See in the Matter of Investigator, Penal Institution, et al., Essex County* (MSB, decided September 16, 1997).

In State service, *N.J.S.A.* 11A:3-4 provides that the unclassified service shall be limited to those titles it specifically designates and all other titles as provided by law or as the Civil Service Commission (Commission) may determine. *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Commission to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3(a) provides that a title shall be allocated to the unclassified service when:

- 1) In State service, the title is so designated under *N.J.S.A.* 11A:3-4;
- 2) In local service, the title is so designated under *N.J.S.A.* 11A:3-5;
- 3) The title is designated unclassified by another specific statute;
- 4) A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
- 5) The [Commission] determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career

service. See *Walsh v. Department of Civil Service*, 32 N.J. Super. 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 N.J. 424, 434 (1983); *State v. Clark*, 15 N.J. 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 N.J. Super. 362, 371 (App. Div. 1981). This principle of ascertaining “merit and fitness” for promotions and appointments through an open-competitive examination process is at the very heart of our merit system.

There is no question that the title of State School Nurse Consultant is not specifically designated as unclassified by N.J.S.A. 11A:3-4. No specific statute states, in such explicit terms, that the title is to be unclassified. Likewise, there is no statute providing for the appointment of an incumbent in the title to serve for a fixed term or at the pleasure of an appointing authority. In sum, none of these statutory preconditions for the allocation of a title to the unclassified service have been met. Thus, the real issue is whether the title requires possession of knowledge and skills and the exercise of duties and functions so unique that “merit and fitness” for the position cannot be ascertained through a competitive examination process and that a permanent appointment to the title is not appropriate, and, accordingly, allocation of the title to the unclassified service is warranted.

Ogden v. Department of Civil Service, 77 N.J. Super. 296 (App. Div. 1962), cert. denied, 39 N.J. 238 (1963), though not involving facts that precisely mirror those found here, is nevertheless instructive. In *Ogden*, the Appellate Division held that, given the complex nature of the duties and the uniqueness of the position of General Superintendent and Chief Engineer of the Passaic Valley Water Commission (PVWC), it was not practicable to determine merit and fitness for the position by examination or minimum qualification requirements. In that case, the position was the highest ranking full-time position in the employ of the PVWC, answerable only to the four Commissioners whose role was analogous to that of a governing body. Moreover, since the Commissioners themselves served only part-time in the role of trustees and lacked technical training, they necessarily relied on the General Superintendent and Chief Engineer for guidance. Additionally, concurring with the findings made by the Department, the court noted the many complex duties and required abilities of the General Superintendent and Chief Engineer, involving knowledge of engineering, administration, fiscal policies, expansion programs, personnel problems, and public relations. The court further underscored the importance of the confidential relationship that must exist between the Commissioners and the General Superintendent and Chief Engineer and the fact that the Commissioners leaned heavily on this individual for advice and guidance in creating and implementing policy.

In this matter, State School Nurse Consultant is a single, unique position created by N.J.S.A. 18A:4-35.1 to serve a high-level mission: working with school districts and school nurses throughout the State to facilitate best practices by advancing comprehensive school health services that address the health and wellness

of all students. The appointee would be expected to bring to the job the knowledge, skills and abilities required to effectively perform the varied and complex duties specifically set forth in the legislation. For example, the incumbent is required to serve as a resource *expert* in school nursing and comprehensive school health services for county, State, and national school health organizations, and policy setting groups; coordinate school health program activities with a host of public and private entities, including public health, social services, environmental, and educational agencies; and participate in State-level public interagency partnerships and private partnerships with Statewide stakeholders to foster comprehensive school health services, representing school nurses in multi-disciplinary collaborations. As such requirements are not easily tested for, it would be impracticable to determine merit and fitness for the position by examination. In addition, it must be noted that per *N.J.S.A.* 18A:4-35.1, the Commissioner of Education, an appointee of the Governor, see *N.J.S.A.* 18A:4-21, appoints the State School Nurse Consultant, who, in turn, exercises policy-making responsibilities. Specifically, the State School Nurse Consultant is required to serve as a liaison and resource expert in school nursing and comprehensive school health services for *policy setting* groups and to facilitate the development of *policies*, standards, and guidelines to enhance comprehensive school health services. In light of the manner in which the State School Nurse Consultant is appointed and the position's role in policy-making, a permanent appointment to the title is not appropriate. Thus, good cause exists to create the title of State School Nurse Consultant in the unclassified service.

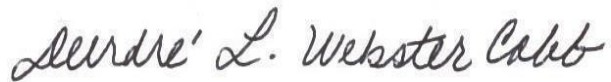
Allocating the title to the unclassified service is also appropriate as a matter of statutory structure and consistency. In this regard, it bears noting that *P.L.* 2020, c. 85, codified in relevant part at *N.J.S.A.* 18A:4-35.1 as already noted, *supplemented* Chapter 4 of Title 18A, New Jersey Statutes. Chapter 4 had already provided, and continues to provide, that the Commissioner of Education, subject to the State Board of Education's approval, has the authority to appoint assistant commissioners, directors, inspectors, and assistants. See *N.J.S.A.* 18A:4-32 and *N.J.S.A.* 18A:4-35. However, Chapter 4 separately provided, and continues to provide, that the Commissioner of Education may appoint "such clerks and other employees" *subject to the Civil Service Act*, except where otherwise provided by law. See *N.J.S.A.* 18A:4-38. Since the appointment of "clerks and other employees" is generally made expressly subject to the Civil Service Act, the absence of a specific reference to the Civil Service Act in *N.J.S.A.* 18A:4-35.1 further counsels in favor of allocating the State School Nurse Consultant title to the unclassified service.

ORDER

Therefore, it is ordered that this request be granted and that the title of State School Nurse Consultant is established in the unclassified service, effective April 10, 2021, to be utilized in the Department of Education.

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 28th DAY OF APRIL, 2021



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