

JAMES BALDINI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF TRUSTEES OF THE SUSSEX : DECISION
COUNTY CHARTER SCHOOL FOR
TECHNOLOGY, SUSSEX COUNTY, :

RESPONDENTS. :

SYNOPSIS

Petitioner – who was hired by the respondent Board in 2010 as Vice Principal/Technology Consultant – claimed that his tenure rights were violated when the Board abolished his position during a reduction in force (RIF) in August 2015 and reassigned him as a Teacher of Social Studies, a position for which he had tenure rights. Petitioner contended that the RIF had been conducted in bad faith and in an arbitrary and capricious manner, and sought a directive from the Commissioner that he be placed in the position of Administrative Principal with respondent’s charter school and restored to the grade of his previous position as Vice Principal. The Board filed a motion to dismiss, asserting that it acted in good faith in implementing the RIF as part of a reorganization plan in response to the school being placed on probationary status by the Department of Education in February 2015; further, the petitioner never served in the position of Principal and accordingly had no right to that position.

The ALJ found, *inter alia*, that: the respondent Board in this case was faced with non-renewal of its charter and the closing of the school; the RIF was undertaken as part of the school’s reorganization plan to address this situation, and the decision to abolish the petitioner’s position was well within the Board’s discretion; petitioner offered no credible evidence whatsoever that the RIF was done in bad faith; while petitioner does hold a Principal certificate, it is undisputed that he never served in the position of Principal; the position of Principal is not substantially identical to petitioner’s past position as Vice Principal/Technology Consultant as it encompasses significantly more duties than those previously performed by petitioner in his former role; the newly hired Principal is responsible for special education and discipline, which were not part of petitioner’s duties as Vice Principal/Technology; further, petitioner is not qualified to act as supervisor of special education. The ALJ concluded that petitioner has not met his burden to show that he is entitled to tenure in the position of Principal, and the RIF was not done in bad faith. Accordingly, the ALJ dismissed the petition.

Upon a comprehensive review, the Commissioner concurred with the ALJ’s determinations and adopted the recommended decision of the OAL with modification.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

December 7, 2017

JAMES BALDINI, :
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This dispute concerns whether petitioner has a tenure right to the position of Principal following abolishment of his tenured position as Vice Principal at the Sussex County Charter School for Technology (SCCST), and whether petitioner’s termination through reduction in force (RIF) was for good cause.¹ The Administrative Law Judge (ALJ) determined that petitioner did not have a tenure right to the position of Principal and that the RIF was implemented in good faith.

The record of this matter, along with the Initial Decision of the Office of Administrative Law (OAL), have been reviewed. Additionally, petitioner’s exceptions and respondent’s replies thereto – submitted in accordance with *N.J.A.C.* 1:1-18.4 – were also considered by the Commissioner. Upon comprehensive review, the Commissioner is in accord with the ALJ’s determinations, as modified herein.

¹ Petitioner’s abolished position was entitled Vice Principal/Technology Consultant. The record uses “consultant” and “coordinator” interchangeably; however, the Commissioner will use “consultant” for purposes of consistency in her decision.

While reflecting his obvious disagreement with the findings and conclusions contained within the Initial Decision, petitioner's exceptions are unpersuasive, and substantially recast and reiterate the arguments made below. Petitioner takes exception to the ALJ's determination that petitioner did not have a tenure right to the Principal position. Petitioner contends that the ALJ did not properly consider important events relating to the "creation" of the Principal position, and that the ALJ did not analyze same under the "substantially identical" standard.² Petitioner argues that he is qualified for the Principal position by virtue of his certifications and his tenure as Vice Principal. Petitioner further contends that the ALJ erred in concluding that the RIF was not implemented in bad faith. Petitioner argues that the RIF was not for reasons of economy and that petitioner was improperly overlooked for the Principal position.

Petitioner has proffered a revised argument in his exceptions, *i.e.*, that the job responsibilities of the Principal position held by Jill Eckel following the RIF were substantially the same as the abolished Vice Principal/Technology Consultant position. Petitioner argues that at the "initial stage" of the RIF, Eckel was "doing [his] job, which ha[d] been recast as Principal," and that petitioner was "passed in favor of [] Eckel" despite his qualification for the position and his tenure as Vice Principal. Petitioner reasons that the "re-named" Principal position occupied by Eckel was the "second-in-command position" following the RIF, which is akin to his "second-in-command" position as Vice Principal prior to the RIF.³ Petitioner,

² The ALJ found that although there was an overlap of duties, the Principal position encompassed significantly more duties and, therefore, was not "substantially identical" to the abolished Vice Principal/Technology Consultant position.

³ Petitioner's repeated reliance on this notion of "second-in-command" connotes his misunderstanding of the right to a new position based on tenure. The Commissioner clarifies that entitlement to a new position arises when the duties of the position are substantially similar; it is not based on the hierarchy of the position within the structure of a school or district, as petitioner proposes.

therefore, contends that he is entitled to the Principal position held by Eckel and that the ALJ should have applied the “substantially identical” analysis to *that* Principal position.⁴

In reply, respondent argues that the ALJ properly concluded that petitioner does not have tenure in the Principal position because: petitioner never held the position of principal and was not automatically entitled to assume such role; petitioner’s claim to the principal position held by Eckel – which was raised for the first time in his exceptions – is improper and untimely; the Principal position held by Eckel existed prior to the RIF and therefore there was no vacancy in that position until after Eckel’s retirement, at which point the Principal position was “restructured”, and that new position is the subject matter of this litigation. Respondent also reiterates its arguments below that the newly created Principal position is not substantially similar to the abolished Vice Principal/Technology Consultant position. Respondent further argues that the RIF was implemented in good faith, as it was conducted for good cause – for reasons of economy and efficiency – and there is no credible evidence that petitioner’s position was abolished in bad faith.

It is well-settled that tenure rights in an administrative or a supervisory position – such as the separately tenurable positions of principal or vice principal – is accrued only by

⁴ In his petition of appeal, petitioner sought placement in the “Administrative Principal” position, which petitioner alleged was the Principal position presently held by Deirdre Mastandrea. Specifically, petitioner alleged that the “top two positions in [SCCST] ha[d] been recast from Administrative Principal and Vice Principal to Executive Director and Principal” and that the “[n]ew position of Principal is effectively a recreation of the abolished Vice Principal position.” See Pet. of Appeal ¶ 6. In essence, petitioner did not see a difference between Eckel’s and Mastandrea’s respective terms as Principal. Additionally, throughout the course of the litigation, petitioner has maintained that the subject Principal position is indistinguishable from his position as Vice Principal and, therefore, he is entitled to the position currently occupied by Mastandrea. After all, petitioner only filed this action after Mastandrea was hired for the “new Principal position,” not when Eckel’s title changed from Administrative Principal to Principal. Following the ALJ’s finding that the Principal and the Vice Principal positions were not substantially similar, petitioner has now bifurcated the Principal position into two separate positions based on the term served by Eckel, and the term served by Mastandrea and wants the Commissioner to determine *de novo* that petitioner has entitlement in the Principal position held by Eckel and that Mastandrea was improperly hired to serve as Principal. Even if the Commissioner were to disregard petitioner’s prior position and review this matter as petitioner now proposes, the outcome would remain the same, as the distinction between Eckel’s term and Mastandrea’s term is a distinction without a difference for the purposes of determining petitioner’s tenure claim to the position.

employment in that position, and is not transferable to another administrative or supervisory position. *See N.J.S.A. 18A:28-5(c)*. In the context of a RIF, it is intended to prevent tenured employees from asserting claim to another position in which they have not served. *See Nelson v. Bd. of Educ. of the Twp. of Old Bridge*, 148 N.J. 358 (1997) (holding that service is required in the enumerated positions before tenure is achieved in said position, and finding that petitioner did not have tenure right to the principal position following a RIF – despite having an administrative certificate with a principal endorsement – as he never served in the capacity of principal).

After a RIF, an employee may claim tenure rights in a new position based on tenure in the abolished position when the two positions are substantially identical. *See Dennery v. Bd. of Educ. of the Passaic Cnty. Reg'l High Sch. Dist. #1*, 131 N.J. 626, 639 (1992) (finding “[w]hen the duties of the position in which a teaching-staff member has acquired tenure are substantially identical to those of the position that the person seeks, a local school board may not sidestep an educator's tenure rights by simply renaming the position or tacking on additional meaningless requirements[,]” and tenure rights must be extended to the “newly-created position”) (citing *Viemeister v. Bd. of Educ. of the Boro of Prospect Park*, 5 N.J. Super. 215, 218 (App. Div. 1949)). A position is not substantially identical if there is a “mere overlap in duties.” *Id.* at 640. In fact, if the new position is similar to an employee’s abolished position but also requires additional duties or different responsibilities, then the two positions are not considered substantially similar. *Id.* In this matter – as detailed below – petitioner cannot overcome the substantially identical requirement, as the Vice Principal and the Principal positions are separate and distinct in title and duties. Therefore, by asserting tenure rights to the Principal position on

the basis of his tenure as a Vice Principal, petitioner seeks to extend his accrued tenure from one administrative position to another in direct contravention of *N.J.S.A. 18A:28-5(c)*.

For the purpose of clarity, the Commissioner outlines some of the undisputed facts as follows. Prior to the RIF, there were four administrative positions at the SCCST: Administrative Principal (Jill Eckel); Vice Principal/Technology Consultant (James Baldini); Supervisor of Curriculum and Instruction (Barbara Zappile); and Special Education Supervisor/Disciplinarian (Deirdre Mastandrea). Immediately following the RIF – when the Vice Principal/Technology Consultant and Supervisor of Curriculum and Instruction positions were abolished – the administration consisted of the Turnaround Specialist (Noreen Lazariuk), Principal (Eckel), and Special Education Supervisor/Disciplinarian (Mastandrea). At which time, the duties of the two eliminated positions were consolidated with the positions of Turnaround Specialist and Principal. The record does not reflect that Eckel surrendered her previous duties in her new role as Principal. Instead, the record supports that the Administrative Principal role evolved into Principal, with the Turnaround Specialist overseeing implementation of SCCST's remedial plan.

Within two weeks of the RIF, however, further changes were made to the administration as a result of Eckel's retirement. Specifically, the Board created an Executive Director position and appointed Lazariuk. The Board also hired Mastandrea for the vacant Principal position, at which time the duties she had performed in her previous capacity as Special Education Supervisor/Disciplinarian were subsumed in the Principal position. A review of the job responsibilities in the record of the two positions reveal that apart from the Special Education Disciplinary and Supervisory duties, the Executive Director and the Principal continued to share and maintain the division of responsibilities of the previously abolished positions.

Petitioner's duties as Vice Principal were reported to be as follows: a. Assist the principal in duties related to instruction, supervision, evaluation and the overall administration of the school, including walk throughs as well as evaluations in coordination with the Supervisor of Curriculum; b. Serve as building administrator in the absence of the principal; c. Responsible for introduction of the school to the students during the first two days of school; d. Assist in conducting safety drill practice activities; e. Assist the principal in coordinating transportation, custodial, cafeteria, and other support services; f. Greet and interact with parents and visitors in the absence of the principal; g. Responsible for dance and special programs, with the exception of drama. (Initial Decision at 4) As such, it is axiomatic that Eckel's duties as Administrative Principal were separate and unique from those of the petitioner. When SCCST hired Lazariuk to serve as Turnaround Specialist, it is uncontroverted that Eckel's previous duties as Administrative Principal continued in her role as the Principal, and the duties of the abolished positions were distributed between the Turnaround Specialist and the Principal. Therefore, it follows that many of the duties of the Principal position were the same job responsibilities Eckel had prior to the RIF, and petitioner could not have tenure rights in a position in which he did not serve and where the duties are not substantially similar to his abolished position.

The parties do not dispute that the duties presented in the record as responsibilities of the Principal position were to be performed by Eckel following the RIF, and the only significant difference in the position after Eckel's retirement was that Mastandrea retained her duties as Special Education Supervisor/Disciplinarian when she was hired as Principal. Therefore, petitioner's renewed claim in his exceptions is tenuous. Notably, at the time of Eckel's appointment following the RIF, petitioner did not assert tenure rights in the Principal position on the basis that it was indistinguishable from the Vice Principal position and

that it was the same “second-in-command” position as the abolished Vice Principal. Instead, petitioner exercised his bumping rights and acquired a teaching assignment in SCCST. The Commissioner finds that implicit in petitioner’s tenure rights claim to the Principal position only after Eckel’s retirement is the tacit acceptance that the new Principal position assumed by Eckel was not the same as the abolished Vice Principal position, rather it was a restructuring of the Administrative Principal position previously held by Eckel, in which position petitioner has no tenure rights.

Significantly, and contrary to petitioner’s assertion, the Principal position is plainly *distinguishable* from petitioner’s previous position of Vice Principal/Technology Consultant. A review of the “performance responsibilities” in petitioner’s role as Vice Principal⁵ and the “duties” of the Principal position establish that a majority of the tasks and duties of the Principal position are separate and apart from those of the abolished Vice Principal position. Specifically, the following Principal duties cited in the record are some of the job responsibilities that are irreconcilable with the duties of the Vice Principal position: a. Assisting with leading the school through renewal and probation; daily decision-making to ensure the changes the State seeks; b. Assisting in the completion of the Charter renewal application; c. Teacher professional development; d. Review of lesson plans; e. Participation in revisions of curriculum; f. Affirmative Action Office duties; g. Supervision of Teachers, Staff, and Students; h. Department Meeting; i. Parent contact and Communication; j. Community involvement; and k. Climate and Culture.⁶ (Respondent’s Motion for Summary Decision at 28) The only

⁵ For purposes of brevity, the Commissioner will not reiterate the job responsibilities of the Vice Principal position, as they have been listed above, are well-documented in the record, and there is no dispute over same.

⁶ The Commissioner intentionally did not include Discipline and Supervision of Special Education as petitioner has already conceded to the distinction; notwithstanding the inclusion of the duties following Eckel’s departure. Additionally, the Commissioner acknowledges that some of the duties, such as parent contact and communication, and supervision of teachers, staff and students, are also duties that were listed as part of petitioner’s responsibilities

reconcilable overlap in duties are “teacher evaluations/observations,” “PARCC implementation” and “classroom walkthrough and feedback.”⁷ A mere overlap of duties is insufficient to confer tenure rights to a new position. Petitioner cannot prove that his duties were the same as Administrative Principal and later, Principal. As such, petitioner’s arguments relating to his purported tenure right in the Principal position – irrespective of whether it was held by Eckel or Mastandrea – are without merit.

Petitioner’s exception relating to the ALJ’s finding that the RIF was not in bad faith is equally without merit and unpersuasive. The Commissioner finds that the substantial evidence in the record supports that the ALJ properly determined that the RIF was implemented for good cause and that petitioner failed to offer credible evidence proving that the RIF was conducted in bad faith.

Accordingly, the recommended decision of the OAL is adopted – as modified herein – as the final decision in this matter, and the petition is dismissed.

IT IS SO ORDERED.⁸

COMMISSIONER OF EDUCATION

Date of Decision: December 7, 2017

Date of Mailing: December 8, 2017

as Vice Principal, but such duties – among others – were the Vice Principal’s responsibility in the absence of the principal and/or in a subordinate capacity.

⁷ The Commissioner notes that under petitioner’s broad definition of his job responsibilities, some of the duties listed under the Executive Director position also appear to overlap with the abolished Vice Principal position.

⁸ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 20523-15

AGENCY REF. NO. 339-10/15

JAMES BALDINI,

Petitioner,

v.

BOARD OF TRUSTEES OF THE SUSSEX COUNTY

CHARTER SCHOOL FOR TECHNOLOGY,

Respondent.

Frank S. Gaudio, Esq., for Petitioner (Miller and Gaudio, attorneys)

Cherie L. Adams, Esq., for Respondent (Adams, Guitierrez & Lattiboudere,
attorneys)

Record Closed: August 22, 2017

Decided: September 12, 2017

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, James Baldini, filed a Petition of Appeal with the Commissioner of the Department of Education (DOE) on October 20, 2015, requesting that respondent be directed to place him in the position of Principal and restore him to a grade of his

previous position. Petitioner's previous position of Vice Principal/Technology had been eliminated by the Respondent School Board.

Respondent filed a motion to dismiss with the Commissioner of the New Jersey Department of Education, which was filed on December 18, 2015.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on December 21, 2015, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Petitioner filed his brief in opposition to Respondent's motion to dismiss with the OAL on January 5, 2016.

A prehearing conference was held on January 15, 2016, and a prehearing Order was entered on January 19, 2016, wherein the undersigned determined the motion to dismiss would be considered a motion for summary decision pursuant to N.J.A.C. 1:1-12.5, and that said motion would be held in abeyance pending completion of discovery. The discovery completion date was set in the prehearing order at March 15, 2016. There were no additional filings as to the motion by either Petitioner or Respondent.

Respondent filed its Answer to Petition of Appeal with the OAL on March 18, 2016.

By Order dated April 14, 2016, Respondent's motion for summary decision was denied.

A Substitution of Attorney was filed on July 6, 2016.

Respondent again filed a motion for summary decision with the OAL on December 23, 2016. Petitioner filed its brief in opposition on January 5, 2017. Respondent filed its reply brief on January 13, 2017.

By Order dated January 26, 2017, Respondent's motion for summary decision was denied.

On February 6, 2017, Respondent filed a request with the Acting Commissioner of DOE for interlocutory review of the Order of the undersigned dated January 26, 2017. By letter dated February 14, 2017, the Acting Commissioner denied Respondent's request for interlocutory review.

A hearing was held on August 21, 2017, and August 22, 2017. The record closed on August 22, 2017.

ISSUES

Whether the RIF was done in good faith; and, whether Petitioner has a tenure claim to the newly created position of Principal based upon his tenure in the abolished position of Vice Principal/Technology.

STIPULATED FACTS

1. The State of New Jersey Department of Education (DOE) placed SCCST on probationary status in February 2015.
2. Upon its review of SCCST, the DOE found that the school failed to meet all nine (9) standards within the Performance Framework in the 2013-2014 school year for student achievement.
3. As a condition of probation, the school was required to submit a remedial plan to the DOE addressing the eight (8) federal turnaround principles: 1) School Leadership; 2) School Climate and Culture; 3) Effective Instruction; 4) Curriculum, Assessment and Intervention System; 5) Effective Staff Practices; 6) Enabling the Effective Use of Data; 7) Effective Use of Time; and 8) Effective Family and Community Engagement.
4. Respondent prepared and submitted a Remedial Plan in March 2015, which was amended in May 2015 and resubmitted in June 2015.

5. In June 2015, the DOE reviewed SCCST's probationary status and proposed remedial plan.
6. In the report, the DOE reviewed its findings from its February 5, 2015, site visit, after which it placed SCCST on probation due, in part, to its conclusion that the school "lacks an effective way of administering and utilizing assessment data to drive ongoing instruction and strategic planning that will impact immediate and long-term student outcomes." The DOE further concluded that the administrators lacked the skill set and understanding to utilize and/or analyze data effectively.
7. As to the remedial plan, the DOE concluded that it was unclear how the school would track its progress and that the student achievement goals highlighted within the plan lacked rigor.
8. Baldini himself detailed his "performance responsibilities" in his role as Vice Principal as follows:
 - a. Assist the principal in duties related to instruction, supervision, evaluation and the overall administration of the school, including walk throughs as well as evaluations in coordination with the Supervisor of Curriculum and Instruction;
 - b. Serve as building administrator in the absence of the principal;
 - c. Responsible for introduction of the school to the students during the first two days of school;
 - d. Assist in conducting safety inspections and safety drill practice activities;
 - e. Assist the principal in coordinating transportation, custodial, cafeteria, and other support services;
 - f. Greet and interact with parents and visitors in the absence of the principal;
 - g. Responsible for dance and special programs, with the exception of drama.
9. In his role as District Data Analyst/Technology Coordinator, Baldini described his job functions as follows:
 - a. Guides and supports staff in better use of data-based decision making in regards to student instruction;
 - b. Research and develop models to keep staff and administration updated on data;
 - c. Integrate data analysis with student, parent, and teacher understanding;
 - d. Perform record-keeping functions as the principal may direct;

- e. Responsible for asset management of technology;
 - f. Maintain technology improvement plan;
 - g. PARCC coordinator;
 - h. Order and maintain the necessary equipment as needed;
 - i. Manage technology budget and resources;
 - j. Organize and maintain School Technology Committee;
 - k. Provide support to obtain ERATE improvements;
 - l. Manage technology contracts;
 - m. Supervise computer lab and audio lab improvements;
 - n. Maintain network security;
 - o. Direct and manage school IT personnel as necessary;
 - p. Maintain student guardian program;
 - q. Provide support for technology concerns of staff; and
 - r. Research potential technology products.
10. Charles Culver has approximately twenty (20) years of experience in Information Technology (IT). He worked as a Helpdesk/Tech Support/Intern at ITT from March 1996-July 1996, a PC Bench Technician at Computer Discount of New Jersey from July 1996-June 1997, and an Onsite/Field Technician for TAP Computer Services from September 1997-August 1999.
11. For school year 2007-2008, Sussex Technical School awarded Culver with the honor of Staff Member of the Year.
12. Culver has developed skills in the following IT:
- a. Microsoft: Windows Server, Active Directory, Exchange;
 - b. Apple: MacOS;
 - c. Mobile: Android iOS;
 - d. Linux: Various Operating Systems, as well as Apache, PHP, and MySQL (LAMP);
 - e. Networking: HP, Cisco 802.1x Wireless, Radius, and VLANS;
 - f. Programming: PHP, HTML/CSS, Python, Javascript, and JQuery;
 - g. ITSM: Freshdesk, Nagios, and Zabbix; and
 - h. Other: Google Apps, Cisco Unity/CM, Photoshop, Acrobat Pro, Meraki, Ubiquity, Genesis SIS, and NJSmart.
13. Culver holds a Computer Science, Data Center Support degree from Chubb Institute (January 1996). He is also a Certified Fiber Optic Technician and Certified Fiber Optic Specialist/Testing.

14. Baldini was Culver's immediate supervisor beginning in or about April 2010, when he was promoted to the position of Vice Principal/Technology Coordinator, until the position was eliminated in or around August 2015.
15. In July 2015, the Board resolved to approve Noreen Lazariuk's hiring as School Turnaround Specialist for the 2015-2016 school year. Lazariuk was tasked with implementing Respondent's remedial plan, addressing the DOE's concerns, and responding to the Board's investigative findings concerning the administration. Lazariuk then assumed the Executive Director role at SCCST.
16. The Board also hired Deirdre Mastandrea (Mastandrea) to the newly created role of Principal during its August 24, 2016, meeting.
17. Mastandrea applied for the vacant position of Principal. Mastandrea has approximately twenty (20) years of experience working in schools. She worked as a School Social Worker for the Hamburg Public School and the Stillwater Public School from 1996-1997, and the Rockaway Township School from 1997-2002. Mastandrea then worked as the Family Outreach Coordinator for Rockaway Township School from 2002-2010.
18. Mastandrea began her employment at SCCST in 2012 in the position of Supervisor of Special Education, which position she held until she was elevated to Principal in August 2015. She also was appointed as the District Disciplinarian from January 2015 through the time she was elevated to her current position.
19. Mastandrea holds a Principal's License (April 2015), Supervisor's Certificate (January 2013), and School Social Worker Certificate (August 1996). Mastandrea obtained her Bachelor of Arts from Rutgers College in May 1994, Master of Social Work from Rutgers University in May 1996, and Master of Educational Leadership from Thomas Edison State College in March 2015.
20. At the Special Meeting of the Board of Trustees on August 24, 2015, the Board resolved to approve Mastandrea's hiring as Principal beginning Tuesday, August 25, 2015, at her current rate of employment under her 10-month contract of \$77,400 from September 1, 2015, to June 30, 2016.

21. Mastandrea’s newly created role as Principal of SCCST continues to evolve in order to meet the challenges identified by DOE’s probationary review of the school. However, as of August 24, 2015, her duties included the following:

- a. Assisting with leading the school through renewal and probation; daily decision-making to ensure the changes the State seeks;
- b. Assisting with the completion of the Charter Renewal application;
- c. Teacher professional development;
- d. Review of lesson plans;
- e. Participation in revisions of curriculum;
- f. Teacher evaluations/observations;
- g. Discipline;
- h. Supervision of Special Education;
- i. Department meeting;
- j. PARCC implementation;
- k. Classroom walkthrough and feedback; and
- l. Affirmative Action Officer duties.

22. As further set forth in Respondent’s Renewal Application for 2015-2016, Mastandrea’s roles broadly include: Supervision of Teachers, Staff and Students, Climate and Culture, Parent Contact and Communication, Community Involvement.

23. Mastandrea’s duties also include hiring, interfacing with parents (e.g. providing tours and focusing on recruitment), supervising and organizing afterschool activities, and schedule building.

24. As a result of the reorganization, the administration of SCCST changed as follows:

Former Administration (3.5 Administrators)		
Position	Employee	Compensation in 2015
Administrative Principal (1, 12-mo. Administrative Position)	Jill Eckel	Salary: \$105,053.00 Longevity: \$1,500.00
Vice Principal/Technology Coordinator (0.5, 12-mo. Administrative Position)	James Baldini	Salary: \$80,323.00 Longevity: \$1000.00
Supervisor of Curriculum and Instruction (1, 12-mo. Administrative Position)	Barbara Zappile	Salary: \$80,323.00
Special Education Supervisor/Disciplinarian (1, 10-mo. Administrative Position)	Deirdre Mastandrea	Salary: \$77,400.00
<u>TOTAL</u>		<u>\$345,599.00</u>
Current Administration (2 Administrators)		

<u>Position</u>	<u>Employee</u>	<u>Compensation in 2015</u>
Executive Director (1, 12-mo. Administrative Position)	Noreen Lazariuk	Salary: \$96,000.00
Principal (1, 12-mo. Administrative Position)	Deirdre Mastandrea	Salary: \$77,400.00
<u>TOTAL</u>		<u>\$173,400.00</u>

25. As set forth in Respondent's Renewal Application for 2015-2016, Lazariuk's roles also broadly include: Curriculum, Human Resources, State Reporting, Professional Development, Recruitment, and Ensuring of Mission and Vision.
26. As set forth in the October 15, 2015, Probation Site Visit Summary, Respondent's "Organizational Capacity" now "Meets the Standard" of the federal principles due to the following improvements:

The School's new leadership team has clear priorities and plans for improving student achievement.

- The school has a new leadership team, and interviewed stakeholders described clear roles and responsibilities.
 - Interviewed teachers indicated regular support in developing lesson plans as well as instructional observation and feedback.
 - The school has a formal evaluation system in place, but school leaders are developing walk-through protocols to enhance formative feedback to teachers.
 - The school has increased opportunities for common planning and promoted more collaboration among faculty, particularly around curriculum and use of data.
 - The school leaders have a professional development plan with clear priorities, including an ongoing focus on curriculum development, student-centered learning through co-teaching, assessment and use of data. The school is using internal expertise as well as consultants to improve instructional practices.
 - Interviewed stakeholders, such as faculty and parents, note improved communication from the school's administration.
27. The DOE specifically noted the strength of the new organizational structure of SCCST in its Renewal Site Visit Summary dated January 28, 2016.

(Lazariuk Cert., ¶36, Exh. Q, Renewal Site Visit Summary dated January 28, 2016.) That summary also reflects that the “Organizational Capacity” of Respondent “Meets the Standard” set forth by the federal principles, and specifically found the following:

The school has a clear and well-functioning organizational structure that leads to continuous improvement.

- The school has clear and well-understood systems for decision-making.
- The school provides strong instructional leadership to teachers.
- The school has an effective, comprehensive professional development program that improves the implementation of the curriculum and instructional practices.
- The school has developed systems for proactively addressing areas such as communication with stakeholders, community outreach, and teacher evaluations.

28. The DOE renewed SCCST’s charter for a period of five (5) years, through and including June 30, 2021. Respondent remains on probation through February 28, 2017, during which time Respondent must continue to demonstrate effective implementation of its remedial plan and demonstrable growth on State assessment data.

29. The DOE specifically praised the new administration in its correspondence advising of Respondent’s five (5) year renewal. It stated as follows:

In August 2015, the Board hired a new executive director and promoted the former special education supervisor to the role of principal. Since the start of the school year, the new administration has directed several key initiatives that align to the school’s remedial plan. With the help of consultants, teachers have developed the school’s curriculum to ensure its alignment to State standards. Teachers have received professional development pertaining to student-centered learning, lesson planning, assessment, and use of data. Administrators have been consistently reviewing lesson plans, conducting classroom observations, and providing teachers with feedback and the school is making progress on developing a data-driven culture at the school.

30. As reflected in the data, student academic proficiency has improved in Math (Overall) by 6.4% and in ELA (Overall) by 18.1% when compared to 2015.
31. Shortly after Respondent implemented its administrative reorganization, Baldini filed a Petition of Appeal on October 29, 2015.
32. This matter was transferred to the New Jersey Office of Administrative Law, where it was filed on December 21, 2015, as a contested case.
33. Baldini holds the appropriate certification for the position of principal.

SUMMARY OF RELEVANT TESTIMONY

Petitioner's Case

James Baldini, Petitioner, testified as follows:

Mr. Baldini reviewed his resume and the various certifications and training he has received. He explained how his previous position as Vice Principal/Technology evolved. He explained the various duties he had as Vice Principal. He reviewed various contracts he had with Respondent. He noted that his job as Vice Principal/Technology had no formal job description. He drafted a job description himself at some point. Mr. Baldini described himself as "Second in Charge" of the school.

The State of New Jersey Department of Education came to SCCST on February 11, 2015. He was out on family leave from January 12, 2015, to March 2, 2015.

He was the supervisor of the Supervisor of Special Education, Deirdre Mastandrea. At that time the Supervisor of Special Education was a part time position. When Ms. Mastandrea was hired to a full-time position Mr. Baldini was no longer her supervisor.

Mr. Baldini explained that he was in charge of SCCST when the principal, Jill Eckel, was absent.

Mr. Baldini described the Technology part of his job title as being more a supervisory role. He made sure the systems were working. He prepared a technology plan. He updated as needed. Mr. Baldini stated that running the school comes first and the technology part comes second.

Mr. Baldini described the duties of Charles Culver as being his assistant.

Mr. Baldini spent a great deal of his testimony describing his background and qualifications for the position of principal. He detailed the various training courses he took, as well as the fact he has the requisite Principal certificate.

Mr. Baldini described how he attended several Board meetings in 2015 and complained of Principal Eckel. He also noted he complained about the purchase of computers that were inadequate, using the term “garbage,” to the Board in 2013. He also stated that school staff did not like he was gone too often (a reference to his family leave time).

Respondent’s Case

Edwin Selby testified as follows:

He is the president of the Board of Trustees for SCCST. He has been a board member for ten years and president for four years.

In 2013 the State of New Jersey DOE advised SCCST that it was not keeping up with comparable schools. A warning was issued, but there was no specific directive.

In 2015 the DOE again became involved and visited the school twice. One visit was a surprise visit and the other was a scheduled visit. SCCST was placed on probation and advised that its charter would not be renewed if there was no improvement. The charter was due for renewal in 2015. DOE required a remedial plan. Additionally, the school needed to submit its re-charter application.

The Board undertook an investigation and looked for suggestions to address the school's shortcomings. The Board reviewed staffing. The Board formed a committee to address these issues. The Charter Office of DOE also had concerns about the school's administrative staff. The Charter Office was concerned that the administrative staff structure was inadequate to move the school forward and would need changes. The Charter Office disagreed with the Board and did not think the administrative staff would be able to carry forward a remedial plan and bring the school up to expectations.

The Charter Office wanted a change in leadership. The school needed someone with experience in turning around a school. The school advertised for a turn-around specialist. The turn-around specialist was to mentor the staff and give them skills to implement data-driven instruction. The Board inquired of the school's business administrator on how to afford the position. In order to afford hiring a turn-around specialist the school needed to consolidate administrative positions. This was the only option. The Board did not consider eliminating teaching staff.

The Board spoke with its administrators and looked for suggestions. Administrators were asked to provide job descriptions. The Board reviewed the job description submitted by Mr. Baldini.

The Board hired Noreen Lazariuk as the turn-around specialist. The Board also hired Jill Eckel as Principal. Lazariuk and Eckel would share the duties of vice principal, supervisor of curriculum and instruction, which included data collection and application. The hardware technology would be sustained by Mr. Culvert, a part-time employee. Ms. Lazariuk would have executive responsibility over the entire school.

In order to afford hiring the turn-around specialist the Board eliminated the positions of Vice Principal/Technology and Supervisor of Curriculum and Development. The duties of these two positions were consolidated with the duties of the turn-around specialist and the principal, Ms. Lazariuk and Ms. Eckel, respectively. This took place at the Board meeting of August 10, 2015.

The plan changed after ten days as Ms. Eckel decided to retire. The Board then immediately advertised for the position of principal. The Board hired Deirdre Mastandrea as principal after reviewing several applications. Ms. Mastandrea had been supervisor of special education and disciplinarian. Those roles would now be included in the principal position. In effect the Board consolidated four administrative positions into two. This resulted in a reduction of more than \$170,000 in administrative salaries.

The school's charter was renewed in February 2016.

Mr. Baldini and Ms. Zappile, the former Supervisor of Curriculum and Instruction, were each paid two months salary at the rate of their abolished positions.

Ms. Mastrandrea was hired based upon the response received and the needs of the school at the time. Interviews for principal were conducted by Ms. Lazariuk. Ms. Mastrandrea was interviewed on August 24, 2015, and hired that day at the Board meeting.

Mr. Baldini's resume was not submitted until the next day. He was not considered for the principal position as Ms. Mastrandrea had already been hired. Ms. Mastrandrea's duties including supervisor of special education, supervisor of curriculum and instruction and discipline. Ms. Mastrandrea continued as supervisor of special education after a part-time special education position was filled.

Noreen Lazariuk testified as follows:

She is Executive Director of SCCST. Her role was to save the school from closing, get its charter re-newed and have the school removed from probation. She immediately did an assessment of the reports and took action to remedy. She reviewed curriculum teachers submitted. She retained experts. She began writing the charter renewal application. She began this process on her first day, August 3, 2015. The renewal application was due October 15, 2015. A renewal visit was also to occur on October 15, 2015.

She informed the Mr. Baldini that his position as Vice Principal/Technology was being eliminated at the next Board meeting. The new administrative team consisted of herself, Ms. Eckel and Deirdre Mastrandrea as Supervisor of Special Educational/Disciplinarian.

Ms. Eckel decided to retire and Ms. Lazariuk immediately posted the job opening. She interviewed four candidates and recommended Deirdre Mastrandrea to the Board for the principal position. The Board hired Ms. Mastrandrea. The principal responsibilities included getting school open and continuing to work on renewal application and preparing for October 15, 2015, renewal visit. Ms. Lazariuk took over technology with the assistance of Ms. Mastrandrea and Mr. Culver. Ms. Mastrandrea also did affirmative action.

Ms. Lazariuk explained "bumping" rights, stating you cannot bump up into a position such as vice principal to principal.

Mr. Baldini was never considered for the principal position. She knew Mr. Baldini had a principal certification. Ms. Lazariuk interviewed four candidates for the principal job. She received Mr. Baldini's application for the principal job within hours of announcing Ms. Mastrandrea had been hired. She did not do anything regarding Mr. Baldini's application as the position had been filled.

The salary savings realized by the school in reducing four administrator positions into two of \$172,199 does not include the sixty days of pay given to Mr. Baldini and Ms. Zappile. It also did not include the costs of consultants hired by Ms. Lazariuk. It also does not include the part time hire of a Learning Disabilities Teacher Consultant (LDTTC). The annual salary for the LDTTC position is about \$11,000. The consultants hired were a onetime thing and only one was paid \$5,000. The other consultants did not charge.

FINDINGS OF FACT

Based on the evidence presented at the hearing as well as on the opportunity to observe the witnesses and assess their credibility, I **FIND** the following:

1. Petitioner was hired by Respondent as Vice Principal/Technology in 2010. He continued in that position until it was abolished by the Board in August 2015.
2. Petitioner had tenure rights to the position of social studies teacher, which he assumed following the abolition of his previous position.
3. On August 3, 2015, Noreen Lazariuk began in the position of turnaround specialist, now executive director, at SCCST. Ms. Lazariuk was hired by the Board in response to the Charter Office of the New Jersey DOE placing SCCST on probation.
4. The Board determined that the only way to afford to pay Ms. Lazariuk would be to consolidate administrative positions.
5. At the time of Ms. Lazariuk's hire there were four administrative positions at SCCST: Administrative Principal held by Jill Eckel; Vice Principal/Technology held by James Baldini; Supervisor Curriculum and Instruction held by Barbara Zappile; and, Special Education Supervisor/Disciplinarian held by Deirdre Mastandrea.
6. At the Board meeting of August 10, 2015, the positions of Vice Principal/Technology and Supervisor of Curriculum and Instruction were abolished. Ms. Eckel was named principal and she, Ms. Lazariuk and Ms. Mastandrea remained as three administrators. Ms. Mastandrea's position was a ten-month position.
7. Within ten days Ms. Eckel retired leaving an opening for the principal position.
8. The principal position opening was immediately posted and four candidates, including Ms. Mastrandrea, were interviewed by Ms. Lazariuk. Ms. Lazariuk thereafter recommended Ms. Mastrandrea to the Board for the position of principal. The Board hired Ms. Mastrandrea at their August 24, 2015, Board meeting.

9. In addition to being principal, Ms. Mastrandrea retained her duties as supervisor of special education and disciplinarian.
10. The total savings in salary by reducing four previous administrative positions into two was \$172,199.
11. Both Mr. Baldini and Ms. Zappile were paid two months' pay after the abolition of their respective positions.
12. Sometime after Ms. Mastrandrea was hired a part time position of LDTC was filled at approximately \$11,000 per year. Ms. Mastrandrea still retained her role as supervisor of special education after this part time hire.
13. After Ms. Lazariuk was hired she retained the services of several experts to assist her in addressing the issue of SCCST being placed on probation by DOE. One of those experts was paid \$5,000. The others did not charge a fee.

LEGAL ANALYSIS AND CONCLUSION

Petitioner asserts two arguments: He is entitled to the position of Principal based upon his tenure in the abolished position of Vice Principal/Technology; and, the RIF was done in bad faith. Accordingly, an analysis of the applicable statutory and case law as to both issues is required.

The tenure of teaching staff is authorized by the Tenure Act, N.J.S.A. 18A:28-1 et seq. A teaching staff member must hold a valid certificate to “teach, administer, direct or supervise the teaching, instruction, or educational guidance of . . . pupils in such public schools and of such other certificate, if any, as may be required by law.” N.J.S.A. 18A:26-2. In order to attain tenure, a teaching staff member must hold the appropriate certificate for his or her position. N.J.S.A. 18A:28-4. In addition to certification, the teaching staff member must also be employed by the school district or board for: “(a) [t]hree consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or (b) [t]hree consecutive academic years, together with employment at the beginning of the next succeeding academic year; or (c) [t]he equivalent of more than three academic years within a period of any four consecutive academic years.” N.J.S.A. 18A:28-5.

There are three types of educational certificates issued by the Board of Examiners: (1) instructional; (2) administrative and supervisory; and (3) educational services. N.J.A.C. 6:11-2.3. The Board of Examiners may also issue special “endorsements” under the appropriate certificates. Ibid. A teaching staff member must have the appropriate certificate and endorsement for his or her position. For example, an art teacher would be required to hold an instructional certificate with an art endorsement, which “authorizes the holder to teach art in all public schools.” N.J.A.C. 6:11-6.2(a)(2). A teaching staff member may possess multiple endorsements under a certificate, qualifying him or her to fill any position covered by the corresponding endorsement. For example, an art teacher holding an instructional certificate with an art endorsement and English as a second language endorsement is authorized to teach

both art and English as a second language in all public schools. N.J.A.C. 6:11-6.2(a)(2), (a)(8).

There are at least four separate endorsements under an administrative and supervisory certificate: (1) school administrator; (2) principal; (3) supervisor; and (4) school business administrator. N.J.A.C. 6:11-9.3. According to the Supreme Court in Denney v. Board of Education of the Passaic County Regional High School District # 1, 131 N.J. 625, 634 (1993), “[A]n educator with tenure in any endorsement that he or she possesses can, in effect, extend or transfer that tenure to other endorsements that are subsumed under the same certificate.” Thus, the art teacher in the foregoing example with tenure under her instructional certificate with an art endorsement may apply that tenure to her English as a second language endorsement, i.e., she is a tenured art teacher as well as a tenured English as a second language teacher. A literal reading of Denney would appear to compel the conclusion that a supervisor with tenure under her administrative and supervisory certificate with a supervisor endorsement could also apply her tenure to her principal endorsement, which is held under the same administrative and supervisory certificate. However, both the legislature, and the Supreme Court in a subsequent decision, Nelson v. Board of Education of the Township of Old Bridge, 148 N.J. 358 (1997), rev’g, A-6441-94T5 (App. Div. April 29, 1996), rev’g, 95 N.J.A.R.2d (EDU) 257, make it clear that tenure does not apply in the same way for administrative and supervisory personnel as it does for teachers.

In Nelson the petitioner held an administrative and supervisory certificate, with a principal endorsement and a supervisor endorsement, as well as an instructional certificate. He began his employment as a teacher of industrial arts, and was eventually appointed to department chairperson of industrial arts, achieving tenure in that supervisory position in 1985. His duties included assisting in the recruitment, hiring, training and supervising of department personnel, preparing the departmental budget, and evaluating teacher performance. Five years later, the board of education eliminated his position, reassigning him to his former position as a teacher of industrial arts. About three years later, three positions opened up, two as elementary school principals and one as a middle school vice principal. The petitioner filed a petition of

appeal with the Commissioner of Education, asserting that he was entitled by tenure to be appointed to any one of the three positions, even though he had never actually served as a principal or vice principal. Citing to the Supreme Court in Dennerly, which held that a tenured educator in any endorsement can transfer that tenure to other endorsements under the same certificate, the ALJ determined that the petitioner was entitled to an appointment to one of the elementary school principal positions.

However, the Commissioner of Education rejected the ALJ's decision, finding that tenure accrued only as a result of actual work experience in the separately tenurable positions specifically enumerated in N.J.S.A. 18A:28-5. Since the petitioner could not transfer his tenure as a supervisor to the position of principal, he was not entitled to the position of elementary school principal. The State Board of Education affirmed the Commissioner's decision. 95 N.J.A.R.2d (EDU) 257.

On appeal, the Appellate Division reversed the State Board of Education, reading the Dennerly decision the same way as the ALJ, having earned tenure in the supervisor endorsement under the supervisory and administrative certificate, the petitioner could transfer his tenure to his principal endorsement, even though he never worked as a principal. Dennerly, supra, A-6441-94T5.

During pendency of the appeal to the Supreme Court, the Legislature amended N.J.S.A. 18A:28-5 in response to the Appellate Division's decision in Nelson, to clarify that "tenure is acquired in one of the specifically enumerated positions only if the individual has served for the requisite statutorily required period of time in that position." L. 1996, c. 58, §1, eff. June 28, 1996. The statute now reads, in pertinent part: "[T]enure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position. Tenure so accrued shall not extend to any other administrative or supervisory position." N.J.S.A. 18A:28-5.

The Supreme Court subsequently reversed the Appellate Division's decision in Nelson, and although it did not expressly overrule the Dennerly decision, it noted that Dennerly emphasized that the courts "should defer to the State Board in its

interpretation of complex tenure laws.” Nelson, supra, 148 N.J. at 366 (citing Denney, supra, 131 N.J. at 637).

The decision in Nelson makes it clear that tenure is not transferable between certificates, or even between endorsements for separately tenurable positions within a single certificate. However, tenure may be transferable within the same endorsement, particularly a supervisor endorsement, which is “generic and authorizes the holder to supervise any subject matter and any grade level.” Galbraith v. Lenape Regional High School District, 96 N.J.A.R.2d (EDU) 396, 406, aff’d, 97 N.J.A.R.2d (EDU) 558.

Further, N.J.A.C. 6A:32-5.1(l) makes it clear that principal and vice principal are separate tenurable positions.

To summarize, tenure accrues only as a result of actual work experience in the separately tenurable positions specifically enumerated in N.J.S.A. 18A:28-5, including all positions that require appropriate certificates and endorsements. Tenure accrued in a particular administrative or supervisory position does not extend to any other administrative or supervisory position enumerated in the statute.

The courts have permitted an individual to claim eligibility to a new position based on tenure in another position only when the two positions are “substantially identical.” The New Jersey Supreme Court has recognized that, “[w]hen the duties of the position in which a teaching-staff member has acquired tenure are substantially identical to those of the position that the person seeks, a local school board may not sidestep an educator’s tenure rights by simply renaming the position or tacking on additional meaningless requirements” and “must extend the teaching-staff member’s tenure rights to the newly created position.” Denney v. Passaic County Reg. High School District Bd. of Educ., 131 N.J. 626, 639 (1993); see Viemeister, supra, 5 N.J. Super. at 218 (providing for the reinstatement of a tenured principal on the basis that his position had not in fact been abolished when the board created the position of “teaching” principal); Vogel v. Ridgefield Bd. of Educ., State Bd. of Educ. (June 5, 1985), slip op. at 6-8 (holding that the board did not abolish in substance the position of elementary school principal but merely reassigned the duties of that position to a

substantially similar position and the board's failure to reinstate petitioner, a tenured principal, to that position violated his tenure and seniority rights).

The Supreme Court in Dennery further explained:

A mere overlap in duties, however, does not mean that two positions are equivalent for tenure purposes. If a newly-created position is similar to a tenure holder's abolished position but also requires additional duties or different responsibilities, then the newly-created position is not considered to be substantially similar to the former position. Santasiero v. Parsippany-Troy Hills Bd. of Educ., 1984 S.L.D. 854, 879; see also Sandri v. Board of Educ., 1986 S.L.D. 1501 (ruling that duties of abolished position of supervisor of guidance/shop were similar but of greater nature and scope than newly-created position of director of special needs and student services); Rufalo v. Board of Educ., 1986 S.L.D. 1699 (ruling that despite overlap of duties between post of vice-principal and newly-created supervisor position, positions were "substantially different").

[Dennery, *supra*, 131 N.J. at 640.]

In the instant matter Petitioner holds a Principal Certificate and served in the position of Assistant Principal/Technology, where he earned tenure in that position. It is undisputed that Petitioner never served in the position of Principal.

Prior to the abolishment of the position of Vice Principal/Technology, SCCST had four administrative positions: Administrative Principal; Vice Principal/Technology; Director of Curriculum and Instruction; and, Special Education Supervisor/Disciplinarian. The Petitioner's previous position of Vice Principal/Technology and the position of Director of Curriculum and Instruction were abolished. The duties of those positions were incorporated into the Principal position the Executive Director (previously the turnaround specialist). That position of Principal is not substantially identical to the abolished position of Vice Principal/Technology as it encompasses significantly more duties than previously performed by Petitioner as Vice Principal/Technology. Certainly there were some overlap in duties. However, the newly hired Principal was responsible for special education, and discipline. These were not part of Petitioner's duties as Vice Principal/Technology. Further, Petitioner is not qualified to act as supervisor of special

education. Accordingly, Petitioner's claim that he has tenure in the position of Principal must fail.

N.J.S.A. 18A:28-9 states:

Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article.

A Board has broad discretion to implement RIFs. In Carpenito v. Board of Education of Borough of Rumson, Monmouth County, 322 N.J. Super. 530 (App. Div. 1999) the court states" "If done for proper reasons, such as 'economy' or because of a reduction in the number of pupils enrolled, the effectuation in force is entirely within the authority and discretion of the board."

Here the board reduced the number of administrators from four to two. The express purpose of the reduction was to afford the hiring of a turnaround specialist. The board was faced with a non-renewal of its charter and the closing of the school. The decision to abolish Petitioner's position of Vice Principal/Technology was well within the board's discretion. Further, Petitioner offered no credible evidence whatsoever that the RIF was done in bad faith.

Accordingly, Petitioner's claim that the RIF was done in bad faith must also fail. Based upon the above, I **CONCLUDE** and that the Petitioner does not have tenure rights to the position of Principal. I further **CONCLUDE** that the RIF was not done in bad faith.

ORDER

It is hereby **ORDERED** that Petitioner's Complaint be **DISMISSED**.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

September 12, 2017



DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency:

Date Mailed to Parties:

db

APPENDIX

List of Witnesses

For Petitioner:

James Baldini, Petitioner

For Respondent:

Edwin Selby, Board President SCCST

Noreen Lazariuk, Executive Director SCCST

List of Exhibits

Joint Submission:

Joint Stipulation of Facts

For Petitioner:

- A Relevant Employment Contracts
 - B Baldini C.V. and Qualifications
 - C Certificates of Training and Workshops
 - D Leave History for James Baldini
 - F Evaluations
 - G Emails
 - H Baldini Application for Principal Position
 - I "Rice" Notices and Board Meetings
 - SCO 178 was not admitted
 - SCO 179 was admitted
 - P50-56 was admitted (Board minutes)
 - J Job Descriptions
 - SCO 462-464 was not admitted
 - SCO 554-559 was not admitted
 - SCO 628-631 was admitted
- SCO 632-637 was admitted

For Respondent:

- R-1 Correspondence from the State of NJ Dept. of Education (DOE) placing SCCST on probationary status dated Feb. 16, 2015
- R-2 Remedial Plan submitted by SCCST to DOE in March 2015 and revised plan re-submitted in June 2015,
- R-3 DOE Probation Summary Report dated June 10, 2015
- R-4 Cover letter and job description created by Petitioner
- R-5 To-From Reports from appellant dated December 3, 2009
- R-12 Respondent's Renewal Application for 2015-2016
- R-13 DOE's Probation Site Visit dated Oct. 15, 2015
- R-14 DOE's Renewal Site Visit Summary dated Jan. 28, 2016
- R-15 Correspondence from DOE renewing SCCST's charter for a period of five years dated Feb. 29, 2016
- R-19 August 10, 2015 Board minutes
- R-20 August 24, 2015 Board minutes