

ERIKA HACKETT, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :  
CITY OF ORANGE, ESSEX COUNTY :

RESPONDENT. :

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SYNOPSIS

The petitioner contended that the respondent Board acted in an arbitrary, capricious or unreasonable manner when it eliminated her position as Supervisor of Science (K-7) in a reduction in force (RIF), and subsequently approved the new positions of Supervisor of Science (K-12) and Supervisor of STEM-Focused Learning (K-12). Petitioner possesses standard certificates with endorsements as: Elementary School Teacher, Grades K-6; Middle School Teacher with Subject Matter Specialization: Science, Grades 5-8; and Supervisor. Petitioner, who was tenured in the eliminated position of Supervisor of Science (K-7), was reassigned to a teaching position for the 2017-2018 school year at a reduced salary. Petitioner subsequently filed the within appeal, arguing that she should have been transferred to the position of Supervisor of Science (K-12), which includes responsibility for management of the science curriculum and instructors at the high school level.

The ALJ found, *inter alia*, that: in response to a budget shortfall resulting from reduced State aid during the 2016-2017 school year, the Board instituted a RIF which consolidated certain supervisory positions; at the same time, the Board sought to upgrade its curriculum and staff qualifications; the resulting reorganization eliminated 26 staff positions, including petitioner’s position as Supervisor of Science (K-7); boards of education have broad discretion to implement a RIF; the issue herein is whether the Board acted arbitrarily in requiring a secondary science teaching certification for the new Supervisor of Science (K-12) and Supervisor of STEM-Focused Learning (K-12) positions; the Board’s witnesses testified credibly regarding the need to revise the required certifications; the District demonstrated the need for supervisors who possessed the additional K-12 certification; and the distinction in title, knowledge and responsibilities for the new supervisory positions was plainly distinguishable from the requirements for the previous positions; accordingly, petitioner cannot assert tenure rights to the new positions; and petitioner’s contention that the new K-12 requirement was not only arbitrary but malicious in its intent, is fully without merit. The ALJ concluded that the petitioner failed to meet her burden of proof, and dismissed the petition.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and analysis of the law, and adopted the Initial Decision of the OAL as the final decision in this matter, with modification to clarify the ALJ’s discussion of the certificates and endorsements required for the newly established positions. Accordingly, the petition of appeal was dismissed with prejudice.

<p>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.</p>
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July 26, 2018

ERIKA HACKETT, :  
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 PETITIONER, : COMMISSIONER OF EDUCATION  
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 V. : DECISION  
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner’s exceptions – and respondent’s reply thereto – have also been reviewed and considered. Upon such review, the Commissioner finds that the Board did not act in an arbitrary, capricious or unreasonable manner in conducting the reduction in force (RIF), and in its subsequent creation of new supervisory positions and hiring for same. Furthermore, and as thoroughly set forth in the Initial Decision, the Board has justified its need for requiring the instructional endorsements for the “Supervisor of Science (K-12)” and the “Supervisor of STEM-Focused Learning (K-12)” positions. While the Commissioner is in agreement with the Administrative Law Judge’s findings and analysis of the law, the Commissioner notes that clarification of the Initial Decision is necessary with regard to the certificates and endorsements as discussed therein.<sup>1</sup>

*N.J.A.C.* 6A:9-2.1 defines “certificate” as “a legal document issued by the Board of Examiners that permits an individual to serve as a teaching staff member.” There are three

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<sup>1</sup> The Commissioner also notes that citations to the governing regulations referenced on pages 21 through 23 and on page 26 of the Initial Decision are inaccurate, and corrects them as follows: from “*N.J.A.C.* 6:11-9.3 and 9.6” to *N.J.A.C.* 6A:9B-12.3 and *N.J.A.C.* 6A:9B-12.6; from “*N.J.A.C.* 6A:9-5.5(a)” to *N.J.A.C.* 6A:9B-5.5(a); and from “*N.J.A.C.* 6A:9-5.5(b)(1)” to *N.J.A.C.* 6A:9B-5.5(b)(1).

categories of certificates: instructional, administrative, and educational services. “Endorsement” is “an authorization allowing a certificate holder to teach one or more specific subject area(s) or to serve in one or more specific teaching staff role(s).” *See N.J.A.C. 6A:9-2.1.* Each endorsement is valid for grades preschool through twelve, unless otherwise specified, *e.g.*, an elementary school teacher endorsement or a middle school with subject matter specialization endorsement.<sup>2</sup> A review of petitioner’s instructional and administrative certificates reveal that she possesses standard certificates with the following endorsements: Elementary School Teacher in Grades K-6; Middle School Teacher with Subject Matter Specialization: Science Grades 5-8; and Supervisor. Therefore, petitioner’s instructional certificates are limited to elementary and middle school, and do not qualify her to teach science subjects in high school.

The Supervisor of Science (K-12) position that was created following the RIF required – in addition to a supervisor endorsement – a science subject endorsement in any one of the following areas: Earth Science, Physical Science, Biological Science, or Physics.<sup>3</sup> As explained above, such instructional endorsements are valid for grades preschool through twelve. The Board’s use of “secondary (K-12) certificate” and “secondary (K-12) New Jersey instructional certificate” in the job descriptions for the respective supervisory positions for science and STEM – and the parties’ continued reference to the aforementioned endorsements as a “K-12 certificate” – is, therefore, unnecessary; and has further obfuscated the issue. In that regard, petitioner’s insistence that the Board was ill-intentioned in requiring a “K-12 certificate” for the science supervisory positions but not for the “Supervisor of Mathematics

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<sup>2</sup> An elementary school endorsement authorizes the holder to teach grades kindergarten through six in the subject areas enumerated in *N.J.A.C. 6A:9B-9.3(b)(2)*, and “reading, writing, mathematics, and spelling, for basic-skills purposes only, in grades six through 12.” A middle school with subject matter specialization allows the holder to teach in grades five through eight, and “does not permit the holder to teach the subject matter specialization in grades nine through 12.” *See N.J.A.C. 6A:9B-9.3(b)(3)*.

<sup>3</sup> Similarly, the Supervisor of STEM-Focused Learning (K-12) position required an endorsement in either Mathematics, Physics, Chemistry, Biological Science, Physical Science, and/or Technology Education.

(9-12)” position is baseless.<sup>4</sup> Likewise, petitioner’s contention that the Supervisor of Mathematics position did not require a “subject specific certification” – but the science and STEM supervisory roles did – is inane.<sup>5</sup>

Notably, for the various post-RIF supervisory positions that required an endorsement in “Mathematics” or “English” or “Social Studies,” an “elementary school teacher” or a “middle school with subject matter specialization” endorsement would not suffice because those supervisory positions require instructional endorsements that are valid for grades preschool through twelve. Therefore, the Board’s requirements for the new supervisory positions in science – which included instructional endorsements that are valid for grades preschool through twelve – were not unique; nor were such qualification requirements arbitrary, capricious, or unreasonable.

The Board has credibly and persuasively defended its rationale for requiring supervisors to possess instructional endorsements that are valid for preschool through to the twelfth grade, and reflect appropriate knowledge of the content area. Moreover, to suggest that a teaching staff member such as petitioner – who would otherwise not be qualified to teach science classes in grades nine through twelve because she does not possess the proper endorsement –

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<sup>4</sup> The Board required “a standard teaching certificate in Mathematics” – as listed in the revised math supervisor job description – which means that the certificate holder must possess an endorsement in “Mathematics” in order to serve in the supervisory role. An endorsement in “Mathematics” – just like an endorsement in “Earth Science,” “Physical Science,” “Biological Science,” or “Physics” – is valid for grades preschool through twelve. The same is true for an endorsement in “English” or “Social Studies.”

<sup>5</sup> An endorsement in “Mathematics” authorizes the holder to “teach mathematics in all public schools” without grade restriction and without further delineating “Mathematics” into specific subject areas, *e.g.*, algebra or geometry. *See N.J.A.C. 6A:9B-9.3(a)(4)*. Whereas, there is no singular “science” endorsement; an endorsement in science is subject area specific – *i.e.*, biological science, chemistry, earth science, physical science, or physics – and allows the holder to teach the sub-areas enumerated thereunder as well as “general sciences in all public schools” without grade restriction. *See N.J.A.C. 6A:9B-9.3(a)(5)*. As such, when the Board deemed it necessary for the Science and STEM supervisors to possess an endorsement that is valid in grades nine through twelve, it had to set forth an appropriate list of specific subjects within the area of science in accordance with the governing regulations.

should be transferred to a supervisory position that includes management of the science curriculum and instructors at the high school level, is simply illogical.

Accordingly, the Initial Decision is adopted as the final decision in this matter – as modified herein – and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.<sup>6</sup>

COMMISSIONER OF EDUCATION

Date of Decision: July 26, 2018

Date of Mailing: July 26, 2018

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<sup>6</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 12848-17

AGENCY DKT. NO. 194-8/17

**ERIKA HACKETT,**

Petitioner,

v.

**ORANGE BOARD OF EDUCATION,**

Respondent.

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**Robert M. Schwartz, Esq.,** for Petitioner (Schwartz Law Group, attorneys)

**Ronald C. Hunt, Esq.,** for Respondent (Hunt, Hamlin & Ridley, attorneys)

Record Closed: April 30, 2018

Decided: June 14, 2018

BEFORE **CAROL I. COHEN**, ALJ (Ret. on recall):

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

The Orange Board of Education instituted a reorganization of a number of departments in the school system, including the Science Department. As a result of the reorganization, Ms. Hackett's position as Science Supervisor, grades K-7 was eliminated and a Science Supervisor, grades K-12 was approved by the Board. Ms. Hackett did not have an endorsement to her supervisory science position for grades K-12, but had an endorsement for grades K-7. On August 16, 2017, Ms. Hackett filed a

petition claiming that the action of the Respondent in reorganizing several supervisory titles, including her former title of Supervisor of Science K-7, was arbitrary and capricious. The District filed an Answer on August 23, 2017. The matter was transferred to the Office of Administrative Law on September 1, 2017, and assigned to Judge Cohen on September 7, 2017. A pre-hearing conference was held on October 24, 2017. The matter was originally scheduled for hearings on February 8 and 9, 2018. However, due to scheduling issues the matter was heard on February 9 and 23, 2018. Summation briefs were received on April 30, 2018, at which time the record was closed.

### **ISSUES**

By requiring a secondary teacher certification for science, did the Board act arbitrarily? If so, what relief should be granted.

### **TESTIMONY**

#### **For Respondent**

#### **Tina Powell**

Dr. Powell testified that she is the director of mathematics and science for the Orange District. In this position she oversees the team of supervisors and coaches in mathematics and science. Her responsibilities include curriculum work, assessment work, professional development and instructional supports. Last year she also became the director of the STEM program, which includes engineering, robotics and computer science under a new program which is called the STEM Innovation Academy of the Oranges. Dr. Powell explained that in the 2016-17 school year there were two science supervisors. One supervisor was for grades K through 7 and the other for grades 8-12. There were also coaching positions, which were teaching-level positions within the department. There was a coach for science K-7. In the mathematics department there were coaches for grades 3-5,6-8, and 9-12.

Dr. Powell stated that in the spring of 2016-17 at a cabinet meeting<sup>7</sup> headed by the Superintendent of the district, they were notified that there was roughly a 10-million-dollar deficit in the District's budget and they should start looking to cut programs, materials, professional development and personnel. As a result, she would have to do a full reorganization of her department. In the math department she collapsed the K-2 and 3-5 into a K-4 supervisory title. Then she had a 5-8 math supervisor and a 9-12 supervisor title. This meant that she eliminated one supervisor position. In the science department, she combined two supervisor titles into one K-12. In addition, because of the new STEM program, she had to appoint a supervisor for that position with a K-12 certification.<sup>8</sup> Dr. Powell explained that when a supervisor had a K-4 title for mathematics, for example, that person had to minimally have a 5-8 endorsement. This was necessary because the supervisor had to know the content of the course after the fourth grade. For grades 6-8, the new job description required a secondary math credential, which is K-12, so that the supervisor would know the curriculum after 8<sup>th</sup> grade. Dr. Powell explained that the reason that the person holding the position of Supervisor would need a K-12 credentials was so that the person would be overseeing all grades up through AP chemistry, AP physics, biology, high school-level course work that would entail a deeper understanding of the content. The supervisor would be providing professional development, coaching support, direct classroom support to the teaching staff, as well as evaluating the teachers. According to Dr. Powell, all the people presently employed within the positions outlined in R-9 (2017-18) have secondary certifications. This means that they all have completed either bachelors- or graduate-level course work within their disciplines; and have successfully passed either the Praxis or comparable assessment, that would grant them the certification to be able to teach and support teachers in grades K through 12.

Once Dr. Powell began reconfiguring the department in response to the budgetary shortfall, on April 6, 2017, she emailed the HR department and asked that they have a formal conversation with the members of her department. The meeting took place on April 10 beginning at 3:15 and all the members of the science department

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<sup>7</sup> The cabinet consist of the higher levels of administration within the district, including superintendent, deputy superintendent, business administrator, director of human resource services, and directors.

<sup>8</sup> See R-9.



were present. The conversation at the meeting centered around the need to consolidate positions due to the budgetary situation. Besides discussing the changes in the math department, they discussed the reconfiguration of the science department, which would eliminate the K-7 and 8-12 supervisors and replace it with a K-12 science supervisor. In addition, there would be a new position of K-12 STEM supervisor.<sup>9</sup> After the initial meeting, she met with Erika Hackett the same day to discuss the impact of the configuration on her and the fact that the new position would require a K-12 science certification, which she did not have at the time. Dr. Powell testified that, in order to obtain the K-12 certification, Ms. Hackett would have to sit for the appropriate Praxis and successfully pass it. Then she could have applied to the state and gotten her certification for K-12. Dr. Powell said that she checked when the Praxis was given in biological sciences. There were two windows of testing for that exam. One was offered from the period April 10-April 22, 2017 at local testing sites. The other was offered from May 8 through May 20, 2017. If Ms. Hackett had taken and passed the Praxis, she would have been eligible for the new position.<sup>10</sup> Dr. Powell said that she had informed Ms. Hackett of the qualifications for the new position.

Dr. Powell explained that Ms. Hackett has three standard certificates. Her standard teaching certificate K-6 means that she has gone through a formal teacher education program; she had been mentored and successfully passed her first and second year of teaching. She also has a certificate in elementary school with subject matter specialization science grades 5-8 and had a standard supervisor certificate. However, these certificates do not cover the K-12 credentials that the school was looking for. What was required for the K-12 science supervisor position was the supervisor certificate and K-12 specialization or K-12 certification in a science content. (i.e. earth physical, biological or physical sciences). The qualifications that the District was looking for in the K-12 science supervisor position included a masters' degree from an accredited college or university; a science degree and a secondary science certificate in any of the areas of science including earth, physical, biological or physics science and hold an administrator certificate with a supervisor endorsement. Dr. Powell

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<sup>9</sup> Ms. Smiley from HR was present at this meeting.

<sup>10</sup> This did not guarantee that she would receive the position, but she would have been eligible to go through the district's interview process.

was asked to compare the job description for standard mathematics teaching certificate with that of science certificate. To hold a standard teaching certificate in mathematics the teacher had to successfully complete all of their provisional work. In addition, the mathematics certification in New Jersey is grades K-12. Any other mathematics title would say mathematics grades 5-8, for example. So a certificate in mathematics is a K-12 certificate. Therefore, in the job description for Supervisor of mathematics, it does not need to say K-12, since that is the normal mathematics certification. Dr. Powell went through the certification requirements for the other fields of study. She asserted that, for example, the teacher of English is a K-12 distinction according to the State of New Jersey and therefore it would be redundant to list the requirement in the job description to say Supervisor K-12. She stated that the other disciplines only identify holders of standard certificates, but the science category for supervisor and the STEM category spell out K-12. Dr. Powell claimed that all of the supervisor positions that were altered or changed or modified as a result of collapsing certain positions required a K-12 certification.

Dr. Powell identified R-3, which was an email she drafted on May 24, 2017, and which was sent to Dr. Paula Howard, her direct reporter, and to members of the superintendent's cabinet. It said that she had arranged for four interviews for the science supervisor K-12 position before the cabinet.<sup>11</sup> They included Erika Hackett. Ms. Hackett had indicated that she wanted to apply to the positions of principal, vice principal, STEM supervisor and science supervisor. The STEM and science supervisor interviews were scheduled for Friday, May 26 at 9:30 a.m. These interviews came after a preliminary screening to see if the candidate had the ability to proceed to complete the process.<sup>12</sup> All of the other candidates indicated that they were available for interviews on May 26; only Ms. Hackett stated that she was not available. Dr. Powell was advised to proceed with the interviews of the three other candidates on May 26. Mr. Benjamin

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<sup>11</sup> Dr. Powell said that although Ms. Hackett did not have the appropriate K-12 certification, she continued the formal interview process, because she could have successfully completed the Praxis in the interim and be eligible for the position. Dr. Powell has not received notification that Ms. Hackett has successfully passed the Praxis exam.

<sup>12</sup> Dr. Powell advanced Ms. Hackett's interview without a preliminary screening, since she already knew Ms. Hackett and her work. The interviews of the candidates were made on May 26, because Ms. Hackett had scheduled vacation time through May 25.

Soro, who had the K-12 certification, was ultimately chosen for the position of supervisor of science for the District.

Dr. Powell testified that by the time of the interviews for the new position, Ms. Hackett had accrued roughly 50 days of absences for the school year, so it had become difficult to schedule interviews up until that point. Dr. Powell claimed that there was no intent on the part of the administration to single, target or otherwise deprive Ms. Hackett of a promotional opportunity.

### **Cross Examination**

There was an extended discussion about certificates and endorsements. Dr. Powell said that you could have a certification in mathematics, which gives you the ability to teach any grade level K-12 or you could have a K-6 certification, which only allows you to teach K-6. If you don't have specific endorsements, you can't teach in a departmentalized setting, meaning you are mainly teaching that content throughout the course of the instructional day. Dr. Powell stated that if a person holds a standard teaching certificate in mathematics, the state defines that as a K-12 certification. If it says certificate "mathematics in grades 5-8," that means that it is a 5-8 endorsement. It is commonly understood that a standard teaching certificate in mathematics means K-12. You have to have the teaching certificate first, then you get to qualify for a 5-8 endorsement in four different areas.

Dr. Powell testified that the new supervisors in the science department for the STEM and K-12 positions were not tenured. She also testified that as a result of budgetary constraints, she reduced the math supervisor titles from four to three. In the science department, however, she went from two supervisors, one K-7 and one K-12, to one science supervisor K-12 and one STEM supervisor K-12. Therefore, there was no reduction in the number of supervisors in the science department and no budgetary reduction. Petitioner's attorney tried to bring out that Ms. Hackett would not have had sufficient time to study for the Praxis and pass prior to the deadline for picking a new K-12 science supervisor. However, Dr. Powell would not concede this point. When asked why she moved Ms. Hackett along on the interview process for K-12 supervisor, Dr.

Powell said that she was advised to do so by HR. The reason offered by HR was that she did not know if there was some pending status in Ms. Hackett's receipt of the K-12 certification. Dr. Powell acknowledged that a standard supervisor certificate could qualify a person to supervise any grade level, depending on the hiring district. Supervisor certification is not grade or subject area specific.

### **Re-direct**

Dr. Powell said that in districts similar to Orange a supervisor's certificate does not entitle you to supervise all grades or areas of study. You need additional content certifications. For example, to supervise high school mathematics you would need content certifications in the area of study and in the grade level, for example science K-12. Dr. Powell testified that in preparation for taking the Praxis, they offer online study guides and opportunities for candidates to get more personalized tutoring.

### **Belinda Smiley**

Ms. Smiley testified that she is the retired administrative assistant to the superintendent for operations and human resource services. She was the administrative assistant in the Orange District for seventeen and a half years. Prior to that she held the title of director of human resources for the Irvington Board of Education. At Orange she was responsible for all human resource services duties, which included recruitment of teachers for any vacancies. She was responsible for preparing the personnel agenda for board approval, which included leaves of absences, separations, stipend positions and appointments. She also sat on the negotiating team and helped to solve grievances at the school level. Ms. Smiley identified R-11 and 12, which was information about certification from the NJ Department of Education. It provides a definition of the types of certificates that are available for instructional staff. The types of certificates available are: CE, which means a certificate of eligibility; CEAS, which is a certificate of eligibility with advanced standing; and a provisional certificate, which is a two-year certificate, which provides the employee time to be mentored and supervised until they receive their standard certificate. The standard certificate is a permanent certificate issued to an individual who has met all requirements for state

certification by successfully completing the provisional teacher program; holds a previously issued NJ instructional certificate or an equivalent standard instructional certificate from another state and has at least two effective years of teaching that were complete with three consecutive years within the last four calendar years. She also explained endorsements. A person can have an endorsement in subject areas. Ms. Smiley explained R-12 entitled "Certificate subject area/grade levels and codes." Besides the first three columns are the certificate types, the endorsements are next. Any endorsement that does not have a grade identified is a K-12 certificate. Ms. Smiley gave an example, in mathematics the category says "middle school subject matter" and it says 5-8. Underneath that in red quotes it says "this certificate requires a co-certificate, which means that you cannot get this certificate without having another certificate. In this case it would be elementary. So the applicant would have to have K-6 certification first and then apply for their middle school endorsement of 5-8 in whatever content area they were applying. The applicant would need to take the Praxis in middle school with content area and they would have to have the right GPA. She further explained that if the endorsement is mathematics grades K-12, you are entitled to teach mathematics grades K-12. If there is a middle school endorsement 5-8, then you can teach middle grade content in grades 5-8.

Ms. Smiley spoke about the budget reduction of 10 million dollars. She said that, as soon as this was realized, the cabinet members came together on several occasions to see how they could handle the situation with the least disruption to the instructional program of the District. They wanted to make sure that they had enough teachers in the classroom. The directors were instructed to look at their departments and see where they could consolidate and how they could give up some money towards the deficit. Everyone in the district was affected. Her job was that if an affected person was tenured, that they were able to go into another tenured position, for which they had certification. She notified the interim superintendent in June that they had to cut 26 positions and at least three or four of which were supervisors. Ms. Smiley explained that under bumping rights, you cannot retain any non-tenured employee who has the same certificate as a tenured employee. Ms. Smiley reviewed R-4, which she prepared for Dr. Howard, so that she would know the staff members who were affected by the reduction in force. Ms. Smiley identified R-1, which was a resolution, which was

approved on April 26, 2017, to revise a job description for the supervisor K-7 and 8-12 into one position, supervisor of science K-12. The new supervisors were to hold a masters' degree, a science degree and a secondary K-12 certificate in certain science areas. R-2 was a resolution to approve the title and job description for the supervisor of the STEM focusing learning K-12. You had to have a masters' degree in science, mathematics or technology and have a secondary K-12 instructional certificate in the area of mathematics, physics, chemistry, biological science, physical science and/or technology education with a supervisor endorsement certificate. Ms. Smiley described attending a meeting with Dr. Powell and her staff in April of 2017. It was a general informational meeting. Ms. Smiley explained the process that was necessary because of the budgetary constraints. Once they decided which positions would be created or which revised, they all had to be posted, after receiving Board approval. She had to meet with everyone affected and had to explain how their salaries were going to be impacted as a reduction in force could put some supervisors back into teaching positions. The department directors looked at resumes and considered internal as well as external candidates for new positions. Then they started to weed out candidates, who were not qualified. The department directors would tell Dr. Powell the names of the internal and external candidates who had applied for certain positions. They would also recommend which candidates should be interviewed. Ms. Smiley referred to R-3, which was a document from Dr. Powell, which included Ms. Hackett's name as someone who should be advanced and considered by the cabinet. Ms. Smiley said that, from the time she spoke with the group, including Ms. Hackett, until the point in time when she advanced Hackett's package to the committee, she did not know if the petitioner had taken a Praxis exam either in April or May to make her eligible for the position of K-12 science supervisor. Ms. Smiley affirmed that she was part of the cabinet that interviewed candidates and Ms. Hackett did not appear for an interview. Ms. Smiley testified that even if Ms. Hackett had the K-12 certification, it did not guarantee that she would get the supervisory position. It just made her eligible for the position. Ms. Smiley also acknowledged that everyone who were currently staff members in the science and math departments had K-12 certifications. They made this requirement because the supervisors would be supervising high school teachers and they wanted to be sure that the supervisors would be able to go in and provide support and feedback for these

teachers. Ms. Smiley said that Orange wanted to make sure that the supervisors had the content in order to supervise the teachers in those instructional areas.

Ms. Smiley identified R-7, which was a letter to Ms. Hackett informing her where she would be placed at Lincoln Avenue School effective September 1 and the salary she would be receiving. Ms. Smiley testified that when a RIF occurs, an employee is given the opportunity to come before the Board. This is called a RICE notice. Ms. Smiley stated that Ms. Hackett was given a RICE notice, but she did not choose to come before the Board. Ms. Smiley testified that in making the changes that were required, the District wanted to make sure that the teachers and supervisors were highly qualified. In addition, the supervisors should have the credentials to support the teachers. Ms. Smiley asserted that no action was taken to target or single out Ms. Hackett to deprive her of a promotional opportunity.

### **Cross-Examination**

When questioned, Ms. Smiley did not know if an alternate date for the K-12 science interview was provided. She did say that the person who was hired for the K-12 science position had the secondary science certificate in one of the areas of science required in the job description.

### **Recall Belinda Smiley**

Ms. Smiley identified R-11, which is a document from the NJ Department of Education website regarding certification and endorsements. Under the category of "Teachers" it provides an overview of the types of certificates that are issued. According to Ms. Smiley, the term "standard" means that the certificate is a permanent one and the person has met the requirements. Standards certificates have no expiration date. She referenced R-12, which she said was from the website and showed the requirements for each of the certificate categories. She explained that the endorsement signifies the type of certificate that is being held. It has to do with the actual instruction of the certificate. She said that, if the certificate does not have a grade limitation or identification, it means that the certificate or the endorsement is a K-

12 certificate. Ms. Smiley pointed out that, if a certificate says Preschool through grade 3, that means that the person who holds the certificate cannot teach above grade three. If the certificate says elementary school teacher in grade K-6, then the person cannot teach above sixth grade, with that particular endorsement.

Ms. Smiley explained that, as a result of the reorganization, she had to look at those employees and positions that were going to be impacted and determine if they had seniority rights or tenure rights to make sure that they were moved into appropriate reassigned positions. There were 26 positions that were reduced; some of which involved people who were being transferred. She tried to give the transfer people the opportunity to see where they wanted to go within the system. In addition, if they were moving from an administrative position to a teaching post, she talked to them about how their salary would be impacted.

Ms. Smiley testified that Ms. Hackett was first hired by the District as a para professional; then she became a teacher. She got her supervisor certificate in June 2014. Ms. Smiley said that there is no test to become a supervisor. You take certain prerequisite courses in order to have a supervisor certificate issued. Ms. Smiley explained the requirement for the new science position in the District. She said that a K-12 certificate, along with the supervisor certificate or endorsement was required. When questioned, Ms. Smiley said that the terms certificate and endorsement were interchangeable and that endorsement was what was listed on R-5 (the list of Ms. Hackett's certificates) Ms. Smiley said that she met with Ms. Hackett's whole department in April and subsequently with the petitioner individually, when the RICE notices were sent out. Ms. Smiley said that, in order for Ms. Hackett to be considered for the new position, she would have been required to have a K-12 endorsement in one of the sciences. In order to get the endorsement, she would have to have taken the Praxis exam in a particular area of science. Ms. Smiley said that she did not know whether Ms. Hackett had taken the Praxis exam, at the time she was scheduled for an interview with the school cabinet.

Ms. Smiley was questioned about the mathematics certificate, which says "standard." She was asked how one would know that that was a K-12 certificate. Ms.



Smiley said that, if there is no special designation, like 5-8 or K-6 (grade specific certificate area), then it is a “standard” K-12 certificate.

### **Cross-Examination on Recall**

Ms. Smiley testified that, when Ms. Hackett was hired as a Science Supervisor, the State told the District that the certificate she held, Principal, did not fit her assignment. She received the supervisor endorsement in June 2014, so that would really be her start date and the date that she would begin accruing tenure in the position as supervisor. However, Ms. Hackett was able to get paid as a supervisor from the date when she assumed the duties of a supervisor in 2012. Ms. Smiley said that, when the reorganization occurred in 2017, Ms. Hackett was tenured as a K-7 science supervisor. According to Ms. Smiley, Ms. Hackett was tenured as a K-7 supervisor, not a “supervisor” generally. Ms. Smiley said that at the initial meeting with staff, she did not discuss the certification requirements for the new positions. She did not tell Ms. Hackett at that meeting that she would not be qualified for the new science positions. Ms. Smiley acknowledged that the man who was hired to supervise K-2 science was not tenured. She also stated that the new position of K-12 science was an endorsement of the K-12 content in science. Ms. Smiley said that, when she had the individual meeting with the petitioner, she did not recall what areas she discussed with Ms. Hackett. However, she did recall discussing with Ms. Hackett, where she would go, if she did not qualify for the supervisor title and what the salary guide would be. Because she would be working ten months per year, her salary would be cut by 1/6 and her salary would be frozen until the teacher guide caught up with what she was earning. Ms. Smiley said that at the point she met to discuss this with Ms. Hackett, the petitioner was not being considered for the K-12 supervisor position. Ms. Smiley said that she had two individual meetings with Ms. Hackett. At the time of the meetings, Ms. Hackett was the only tenured supervisor of science in the district. Mr. Sharif, who became the K-12 science supervisor, was not tenured at the time he was offered the STEM supervisor position. Ms. Smiley said that she did not tell Ms. Hackett that, if she would have taken and passed the PRAXIS, she would have gotten one of the two K-12 science supervisory positions. Ms. Smiley testified that, after the reorganization of the mathematics department, one out of the three supervisors was tenured. Ms. Smiley said that with the

elimination of one supervisor in the math department, the District saved approximately \$100,000. Since there was a new STEM position in the science department, there was no financial impact on the budget shortfall. Ms. Smiley stated that, as a result of the reorganization approximately twenty-six positions were eliminated.

Ms. Smiley was asked about the PRAXIS. She acknowledged that, in order to be considered for the new position, Ms. Hackett had to take the test between April and the beginning of June 2017. She did not know how much of a lead time you had to have in order to take the test or what was the application process. Ms. Smiley said that Ms. Hackett was absent from school from about the middle of May until the middle of June. It was one of the reasons why it was difficult to schedule an interview with her.

### **Re-direct**

In response to questions, Ms. Smiley stated that, if there was another reorganization and there was a K-7 supervisor's position, then Ms. Hackett would have tenure rights for that position. However, with the present reorganization of K-12 supervisor of science, the petitioner would be supervising teachers who were teaching physics, AP chemistry, biology, earth science, etc. in the high school grades. She did not have a certificate to do this. That would be the same for the STEM program. Ms. Smiley was asked what the cabinet looked for when they were interviewing people for the new positions. She said that they looked at the person's knowledge, skills and ability to supervise teachers, who are teaching that instructional subject. They would also like to know whether the candidate had experience in the grade level that they would be teaching and their administrative experience. Ms. Smiley said that the cabinet was definitely looking at the high school experience, because that was the area in which they wanted to expand the AP courses. Also, the teachers need guidance in co-teaching in these areas, so they were looking for experience on the secondary level. Ms. Hackett stated that, once the reorganization was approved, it became public record. In addition, Ms. Hackett had notice because she met with Ms. Smiley about the RICE notice and signed off on it. However, she did not appear before the Board for a RICE hearing.

### **Re-cross**

Ms. Smiley acknowledged that of the three candidates being considered for the science positions, Ms. Hackett was the only one who had tenure as a supervisor. Further, the person who got the position was from another district and therefore, untenured.

### **Re-Direct**

Ms. Smiley testified that school districts have the authority to modify or change the credentials required to hold teaching positions in grades and grade levels.

### **For Petitioner**

#### **Erika Hackett**

Ms. Hackett testified that she began as a para-professional in the District and then became a teacher there in 2006. Then she became a coach, until she became a supervisor in 2012. As a coach she would help teachers with instruction in the classroom and taught teaching practices. She obtained a Principal's certificate and was appointed as a Supervisor in 2012. She got her supervisor's certificate in 2014. Her director, when she was a supervisor, was Dr. Powell. Dr. Powell provided her with a professional improvement plan during the course of the 2016-17 school year. Ms. Hackett objected to the PIP. One of the objections was that Dr. Powell said that she had written Ms. Hackett up three times. However, Ms. Hackett only received two write ups. In addition, Ms. Hackett said that Dr. Powell wrote her up for something that she had very little to do with and was based on hearsay. In addition, she said that she was written up for not following through with job activities. However, Ms. Hackett said that Powell prohibited her from reaching out to vendors, which she needed to contact, in order to complete the assignment. Ms. Hackett claimed that in the first meeting she had with Ms. Smiley, it was not individualized as to whose position would be affected by the reorganization. She was absent for the second meeting in May, where the department

learned about what people would be specifically affected. Ms. Hackett testified that she had a week of vacation in May. Then she got very ill on vacation, with a bacteria/ infection in her lung and kidney and was out another week. She was back to school in the early part of June. She said that she was in and out of the emergency room every other day. By the time she got back to school, the Supervisor positions had been filled. She said that she had received an email saying that she was scheduled to be interviewed on May 26, but she could not make the interview because she was sick. She said that she emailed Dr. Powell and her secretary to inform her that she was sick and to ask to be rescheduled, but she never heard back.

### **Cross-Examination**

Ms. Hackett testified that after she was appointed to her supervisory position, Ms. Smiley realized that she did not have the proper documentation to hold the position. She had to take two additional courses, in order to get the proper certification. She said that with the resubmissions, it took her two years to get the supervisory certification.

Ms. Hackett said that she never attended the Board meeting in which the resolution for reorganization was discussed and passed. She said that she did not speak to her Union representative about the effects of the reorganization. She said that in April there was a departmental meeting, in which they discussed that the department was going to be involved in a RIF. However, she was not told at that time what individuals would be involved. When questioned about the PIP she received from Dr. Powell, Ms. Hackett said that she thought that it pointed out things that the Director thought she should have done, that she did not think had been done. Ms. Hackett said that, as a supervisor, she had never given a teacher a PIP. What she would do was to recommend to the principal that a person might need a PIP or the Principal would feel that the person needed a PIP and she would sit down with the teacher and the principal to do an evaluation. Ms. Hackett said that she grieved the PIP that she received from Dr. Powell. She said that it was discovered that Dr. Powell could not put her on a PIP without having evaluated her. Therefore, Dr. Powell took the scheduled PIP off the table, evaluated her, and then gave her a new PIP, with two deficiencies. It was discovered that one of the deficiencies was an error on Dr. Powell's secretary's part and

that was withdrawn, leaving one deficiency. Ms. Hackett said that the first year that Dr. Powell was employed by the District, she worked very closely with her. However, she felt that at some point Dr. Powell developed a personal animus toward her, which led to the PIP. Ms. Hackett said that after April 26 (possibly the first week of May and before she went on vacation), she became aware that the reorganization could affect her, because the new position required a K-12 certification.

## **ARGUMENTS OF THE PARTIES**

### **Ms. Hackett's Argument**

Ms. Hackett argued that, when the Orange Board of Education reorganized in the spring of 2017, the supervisory titles for the most part required a standard teaching certificate, with the exception of the science position, which required a secondary science certificate, and the STEM position, which was the supervisor of science, math, and technology. Only these two positions required a secondary certificate. All the other supervisory titles only required a standard certificate. At the time of the reorganization, Ms. Hackett held only an elementary instructional certificate and a 5-8 elementary certification with subject-area specialization in science. It was the petitioner's position that this was the District's way of moving her out of her position to make her unqualified for the science or STEM positions. She would be qualified for either position but for the requirement that the holder of either position have a secondary science certificate. The petitioner argued that this change on the District's part was arbitrary, given the fact that other supervisory positions only required a standard teaching certificate. As a result of the reorganization, Ms. Hackett was the only tenured supervisor staff member to lose her supervisor position.

Ms. Hackett pointed out that tenure is a "statutory right imposed upon a teacher's contractual employment status." Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1961.) Dismissals resulting from a reduction in force or a reorganization must be made on the basis of seniority according to the standards established by the Commissioner and approved by the State Board of Education. N.J.S.A. 18A:28-10; N.J.A.C. 5A:32-5.1. A tenured staff member continues to be entitled to retention as against a non-

tenured staff member regardless of seniority rights. Capodilupo v. W. Orange Bd. of Educ., 218 N.J. Super. 510, 514 (1987). Further, the petitioner pointed out that, in Smith v. Board of Education of the City of Orange, EDU 11566-09, Initial Decision (August 4, 2011), <http://njlaw.rutgers.edu/collections/oal/>, Judge Bass concluded that the additional certification requirements imposed by the Board could not serve to defeat the clear tenure entitlements of the petitioner.<sup>13</sup> The petitioner also argued that, although the local boards have broad discretion to establish certification requirements for certain positions, boards could not exercise their authority in a manner that was “anomalous, arbitrary or irrational.” Dennerly v. Bd. of Educ. of Passaic Cnty Reg’l Sch. Dist., 131 N.J. 626, 638 (1983). Ms. Hackett argued that neither the STEM Supervisor position nor the K-12 Science Supervisor position require anything of the supervisor that the Petitioner had not performed as a K-7 supervisor. Neither position requires the supervisor to teach. Further, she argued that Ms. Smiley’s testimony, that the the scope of the supervisory certificate should match the scope of the position, was insufficient to explain how or why the instructional certificates held by the Petitioner would impair her ability to supervise school staff in the K-12 program. Absent a showing that an additional certification is necessary to perform the duties of the new position, the Board cannot sidestep an educator’s tenure rights. Lisa v. Bd. of Educ. of Washington, 97 N.J.A.R.2d (EDU) 478. Ms. Hackett asserted that no explanation was given as to why a K-12 certificate was required for the science supervisor title, but no such requirement was made for the mathematics supervisor title. She argued that the “clear nexus” needed to be shown between the certification requirements and the ability to effectively perform the job was never established. Ms. Hackett’s supervisor endorsement was generic and authorized the holder to supervise any subject area and any grade. Absent a showing that an additional certification is necessary to perform the duties of the position, the District cannot side step an educator’s tenure rights by imposing requirements that are not necessary for the position.

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<sup>13</sup> In that matter petitioners who had accrued tenure as supervisors, had a tenure entitlement to the assistant director titles that the Board had created and to which it had appointed non-tenured staff members.

### **Orange Board of Education's Argument**

The District asserted that the District offered a sound and rational basis for the steps it took in response to the fiscal crisis caused by the loss of ten million dollars in State aid. The District argued that Ms. Hackett was not discriminated against or deprived of a promotional opportunity anymore than anyone else in the District. Rather than maintaining one elementary school science supervisor and one high school science supervisor with restricted K-7 and 8-12 endorsements and one science coach 5-7, the District was better served by consolidating the positions and creating two K-12 supervisor positions; one for the Orange High School and one for the newly created STEM School. The District's design in starting the STEM program, upgrading the credentials of their staff, and responding to the fiscal crisis affected everyone, not just Ms. Hackett. Twenty-Six District employees were eliminated and others enjoyed "bumping" rights and displaced less-senior employees. They argued that there was a basic misunderstanding on the part of the petitioner about what the term "standard certificate" means. When the District upgraded all the different disciplines, they all needed the K-12 certification and the persons who took the positions have the K-12 certification. The fact that they are identified as a "standard certificate" is misleading, because all the occupants of the supervisory positions have the K-12 certification. Ms. Hackett was not singled out. In addition, the petitioner had the opportunity to take certain exams (PRAXIS), that would have given her the K-12 certification, but she did not take the necessary exam. In sum, the District's actions in response to the fiscal crisis and in an attempt to upgrade the qualifications for new positions was neither "arbitrary nor capricious."

The District asserted that Boards of Education have broad discretion to implement a Reduction in Force if done for proper reasons, such as economy or because of reduction in the number of pupils enrolled, the effectuation on force is entirely within the authority and discretion of the board. Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth Cnty, 322 N.J. Super. 530 (App. Div. 1999). The District asserted that the petitioner presented no proof on which to base her assertion that the District's action was motivated by bad faith and otherwise arbitrary and capricious. The District argued that in fact, the implementation of a RIF is a drastic and

painstaking measure that is not entered into lightly and only after consideration of all alternatives. N.J.S.A. 18A:28-9 allows a Board of Education to reduce the number of teaching staff, whenever in the judgment of the board, it is advisable to abolish any such positions for reasons of economy . . . or for other good cause. The Board asserted that they presented substantial evidence to show the undisputed fact that there was a fiscal crisis in the District. While the elimination of Ms. Hackett's position did not solve the crisis, it was taken in good faith as a cost-saving measure. In addition, they argued that Dr. Powell and Ms. Smiley made every effort to meet with Ms. Hackett and explain the changes in her department. However, they were not required to investigate whether an appropriate Praxis exam was scheduled at a time that was convenient for the Petitioner. In addition, the District pointed out that the Petitioner failed to meet to discuss her position with the Board after the RICE notices were sent out and prior to any interviews or hiring of the new science supervisors. The credible evidence presented clearly demonstrates that the measures implemented were not directed at a single administrator or motivated by bad faith.

The Respondent argued that there was no proof of personal animus toward Ms. Hackett and there was no showing that Dr. Powell was trying to circumvent the Petitioner's tenure rights. The only evidence offered by Ms. Hackett was that, years earlier, Hackett received an unfavorable evaluation by Dr. Powell.<sup>14</sup> When questioned as to her basis for a belief of personal animus by Dr. Powell, Ms. Hackett stated that she "had no idea." There was basically no evidence showing personal animus. On the other side of the ledger, there was substantial credible evidence to show that the reorganization was District-wide and in response to exigent circumstances.

The District asserted that it is mindful that following a RIF, an employee may claim tenure rights in a new position based on tenure in the abolished position when the newly created position is "substantially identical" to the abolished one. See Dennerly, 131 N.J. at 639. However, the District pointed out that a position is not substantially identical because there may be a mere overlap of duties. Id. at 640. If the new position requires additional duties or different responsibilities, then the positions are not

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<sup>14</sup> This evaluation was grieved and partially overturned.



substantially similar. Id. at 641. The District posited that the qualifications and focus of the curriculum of the K-7 supervisor and the responsibility for subject content are significantly different. The K-12 science supervisor is required to have a secondary (K-12) endorsement to ensure their ability to monitor and guide instruction in elementary-grade level, high school-grade level, as well as advance placement courses. In addition, the nature and scope of the job is different. The old job descriptions stated as its goal to meet or exceed the “State Core Curriculum Content Standard.” The newly created title states that its goal is to meet and exceed the “Next Generation Science Standards.” In addition, the STEM supervisor’s job description is even more specific and shows an even greater distinction than its predecessor. The District pointed to the testimony of Dr. Powell, who described the new duties of the supervisors. The Director testified that the new supervisors for K-12 would have to oversee elementary grades through AP chemistry, AP physics, biology. The high school-level courses would require a deep understanding of content. The supervisor would have the responsibility of overseeing the work of all grade-level science teachers, K-12, in the entire District. The newly created position would call for a significantly broader and in-depth knowledge of subject content, more than the previous science supervisors. Thus, there is a distinction in title, knowledge, and responsibility—not merely “overlapping.” Therefore, the petitioner cannot assert tenure rights to either the K-12 or STEM positions.

### **FINDINGS OF FACT**

The following Facts were Stipulated by the Parties:

1. Petitioner began her employment with the Respondent in or about 2004 as a teacher assistant.
2. Subsequently, in or about 2005 Petitioner was promoted to the title of teacher of science.
3. In or about 2012 Petitioner was promoted to the title of supervisor of science, K-7.
4. The supervisor position to which Petitioner was assigned required the holder of the position to have a teacher of science certification and a supervisor certification. **Exhibit 10.**

5. Petitioner has an elementary teacher of science K-5 certificate, as well as a middle school teacher of science certificate and a supervisor certificate.
6. Effective July 1, 2017, Respondent abolished the position of supervisor of science, K-7 and the position of supervisor of science, 8-12.
7. In lieu of the supervisor of science, K-7 and supervisor of science, grades 8-12, the Respondent created the title of supervisor science, K-12.
8. The job description for the newly created title of supervisor of science, K-12, attached hereto as **Exhibit 1** requires the holder of the position to possess Master's degree from an accredited college or university, and have a "*Science degree and secondary (k-12) certificate in any of the following areas of Science: Earth, Physical, Biological, or Physics Science and hold a New Jersey administrative certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6)*"
9. The job description for the title of supervisor of mathematics, 9-12, attached hereto as **Exhibit 2** requires the holder of the position to possess a Master's degree from an accredited college or university, and have a New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) and "*hold a standard teaching certification in Mathematics.*"
10. The job description for the title of supervisor of language arts literacy (8-12) and middle and high school media specialists, attached hereto as **Exhibit 3** requires the holder of the position to possess a Master's degree from an accredited college or university, hold a *New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) [and] "hold a standard teacher of English certificate."*
11. The job description for the title of supervisor of bilingual/ESL and World Languages attached hereto as **Exhibit 4** requires the holder of the position to possess a Master's degree from an accredited college or university, hold a New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) and "*hold a*

*standard teaching certificate in Bilingual, ESL, or in the content World Language to be taught.”*

12. The job description for the title of supervisor of social studies, grades 5-12 and technology coordinators attached hereto as **Exhibit 5** requires the holder of the position to possess a Master’s degree from an accredited college or university, hold a New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) and *“hold a standard teaching certificate in Social Studies.”*
13. The job description for the title of supervisor of career and technical education and health/physical education K-7 attached hereto as **Exhibit 6** requires the holder of the position to possess a Master’s degree from an accredited college or university, hold a New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) and *“hold a standard teaching certificate in one of the CTE areas and/or Health and Physical Education.*
14. The job description for the title of supervisor of special services attached hereto as **Exhibit 7** requires the holder of the position to possess a Master’s degree from an accredited college or university in education, psychology, guidance, special education or related field, hold a New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) and *“hold an educational support and/or teaching certificate.*
15. The job description for the title of supervisor of STEM-focused learning K-12 attached hereto as **Exhibit 8** requires the holder of the position to possess a Master’s degree from an accredited college or university in science, mathematics or technology, hold a New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) and *“hold a degree and a secondary (K-12) New Jersey instructional certificate in the area of Mathematics, Physics, Chemistry, Biological Science, Physical Science and/or Technology Education.”*
16. The job description for the title of visual and performing arts attached hereto as **Exhibit 9** requires the holder of the position to possess a

Master's degree from an accredited college or university, hold a New Jersey Administrative Certificate with a supervisor endorsement (N.J.A.C. 6:11-9.3 and 9.6) and *“hold a standard teaching certificate in Music and/or Art.”*

17. The staff member currently serving as the supervisor of science K-12, Benjamin Suro, was hired to serve in this capacity for the 2017-2018 school term. Mr. Suro was not employed by the Respondent before the current school year.

Based on the testimony presented and the exhibits submitted I make the following **FINDINGS OF FACT**:

1. During the 2016-17 school year, the District learned of a budget shortfall of approximately ten million dollars (\$10,000,000) it expected to receive in State Aid.
2. In response to this shortfall, the District called on each department to come up with a reorganization plan that would reduce its budget.
3. The District instituted a Reduction in Force (RIF) consolidating certain supervisory positions and eliminating certain extra curricular activities. In addition to instituting a RIF, the District also sought to upgrade its curriculum and staff qualifications.
4. As a result of the reorganization 26 staff positions were eliminated.
5. The science department proposed eliminating the Supervisor of Science, K-7, as well as the Supervisor of Science 8-12 and replacing it with the single position of Supervisor of Science K-12. In addition, they proposed a position of a STEM Supervisor, grades K-12, for a new program that the District had instituted.
6. These new positions required the holders to possess a Master's degree and have a Science degree and Secondary (K-12) certificate in one of the areas of science including: Earth, Physical, Biological or Physics and hold a New Jersey Administrative Certificate with a Supervisor endorsement.
7. The rationale for modifying the job description was to ensure that the staffs' qualifications were one “notch” above whatever grade level they were assigned, to guarantee that staff not only understood where the instruction was, but where

the content was going. The new Science supervisors would be overseeing grades up through AP Chemistry, AP Physics, and Biology and would need to be well versed in the content of the High School Sciences to properly monitor and supervise their teaching staff.

8. On April 10, 2017 Ms. Belinda Smiley, Administrative Assistant to the Superintendent for Operations and Human Resources Services, along with Dr. Powell met with members of the staff to give an overview of the implementation of a RIF. Powell explained to her staff that the K-2 Supervisor of Math position was being eliminated as well as K-7 and 8-12 for Science. Ms. Hackett was present at this meeting.
9. The new Science Supervisor positions were presented to the Board and approved on April 26, 2017.
10. After passage of the resolution, Ms. Smiley scheduled RICE Hearings before the Board for those affected by the RIF, including Ms. Hackett.
11. Ms. Hackett did not respond to the RICE notice; nor did she appear at the Board meeting.
12. Ms. Hackett did not have the secondary certificate required. Instead she had a K-7 endorsement.
13. Although Ms. Hackett did not have the proper certificate, Tina Powell, the Director of Mathematics and Science, K-12, scheduled Ms. Hackett for an interview for the new K-12 science supervisor position on May 26, 2017, before the District's cabinet, which was made up of the Superintendent and high-level administrators. These District officials were charged with interviewing and deciding what candidates should be offered the new positions. Dr. Powell did not know at the time, if Ms. Hackett's had obtained the specific certification required.
14. Ms. Hackett did not appear at the scheduled time, because she was out sick.
15. Ms. Hackett was never rescheduled for an interview for that position nor did she make any attempt to get a new interview date.
16. Although the Praxis examination, that Ms. Hackett would have needed to obtain the K-12 certification, was given in April and May of 2017, she made no attempt to take the exam to make herself eligible for the position.
17. Ms. Hackett could have interviewed and been considered for the K-12 supervisory position after taking the exam and awaiting results.

18. As of the date of the hearing, Ms. Hackett had still not taken the necessary PRAXIS.
19. On June 8, 2017, the Petitioner was advised that she was to be reassigned to a teaching position for the 2017-18 school term at a salary of \$78,280.00. This was a reduction of \$15,560.00 from her salary in the 2016-17 school year. The reduction was based on pro-rated 10 months, rather than 12 month's salary.
20. Ms. Hackett's salary was also frozen to the 2020-21 school term, until the salary guide caught up with the \$78,280.00 salary.
21. After the reorganization, the District employed a non-tenured staff member in the title of Supervisor of Science, K-12.
22. The District also employed a Supervisor of STEM, K-12, who also was not tenured.

### **ANALYSIS OF THE LAW**

The tenure of education personnel is authorized by the Education Tenure Act, N.J.S.A. 18A:28-1 to -18. Tenure is a status in a particular position created by statute, not the agreement of the parties. Therefore, it is a “statutory right imposed upon a teacher’s contractual employment’ [that] may not be forfeited or waived.” Spiewak v. Rutherford Bd. of Educ., 90 N.J. 63, 77 (1982) (quoting Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962), cert. denied, 371 U.S. 956 (1963), and citing Red Bank Educ. Ass’n v. Red Bank Bd. of Educ., 78 N.J. 122, 141 (1978)). Tenure was designed to protect employees “from dismissal ‘for unfounded, flimsy or political reasons.’” Wright v. Bd. of Educ. of E. Orange, 99 N.J. 112, 118 (1985).

The petitioner has correctly stated that dismissals resulting from a reduction or reorganization must be made on the basis of seniority according to standards established by the Commissioner and approved by the State Board of Education. N.J.S.A. 18A:28-10; N.J.A.C. 6A:32-5.1. In addition, the rights of tenured staff members are more expansive. She cites Smith for the proposition that additional certification requirements imposed by the Board could not serve to defeat clear tenure entitlements. However, the petitioner has failed to point out the distinction between that case and the present matter. N.J.A.C. 6A:9-5.5(a) provides that “[e]ach district board of education

shall assign position titles to teaching staff members that are recognized in these rules.” In the Smith case the Orange Board of Education created position titles that were not recognized under the rules. Under those circumstances, it was incumbent on the district, prior to appointing a candidate, to submit to the county superintendent a written request for permission to use the proposed title, which would include a detailed job description. N.J.A.C. 6A:9-5.5(b)(1). The county superintendent would then determine whether to approve of the position. The District did not follow this procedure and Judge Bass found that this was a violation. In the present case the Supervisory positions were already in place and it was a matter of revising the certification from supervisor K-7 to supervisor K-12.

Boards of Education have broad discretion to implement a Reduction in Force (RIF), “if done for proper reasons, such as economy or because of a reduction in the number of pupil enrolled, the effectuation of force is entirely within the authority and discretion of the board”. Carpenito, 322 N.J. Super. 530. In addition, as Judge Bass pointed out, it is well established that local boards may establish additional certification requirements for a particular supervisory position, but those requirements must have a clear nexus to effective performance of the job. Kendrick v. Bd. of Educ. of S. River, EDU 10331-96, Initial Decision (December 18, 1997), aff’d, Comm’r (February 2, 1998), <http://njlaw.rutgers.edu/collections/oal/>.

There was extensive testimony by both Dr. Powell and Ms. Smiley regarding the reasons why the District had determined to require a K-12 certification, instead of maintaining one elementary school science supervisor and one high school science supervisor with restricted K-7 and 8-12 certifications and one science coach grades 5-8. The new K-12 supervisor would be required to supervised teachers who would be teaching subject matter from kindergarten up through advance placement science courses in both the High School and new STEM program. While some supervisory skills are necessary for both a supervisor of K-7 and K-12, mastery of subject matter on the high school level is essential to supervise teachers who will be teaching biology, physics, earth science, and advance placement science courses. In addition, the STEM supervisor position required the K-12 certification, in order to effectuate the educational standards and focus of the program, which was: “to supervise members of the teaching

staff to ensure that all teachers provide students with the necessary skills such to effectively engage learners, support their unique needs, increase school achievement, and adequately prepare students for college and careers.” I **FIND** Dr. Powell’s and Ms. Smiley’s testimony, on the need to revise the required certification, to be credible. Determinations often turn on credibility. Credibility is the value that a finder of the facts gives to the testimony of a witness. The process of evaluating the credibility of witnesses entails: (a) observing demeanor; (b) evaluating the ability to recall specific details; (c) considering the consistency of the testimony under direct and cross-examination; (d) determining the significance of any inconsistent statements or evidence; and (e) otherwise developing a sense of the witness’s candor. This requires an overall assessment of the witness’s story in light of its rationality, internal consistency and the manner in which it “hangs together” with the other evidence. See Carbo v. U.S., 314 F.2d 718, 749 (9th Cir. 1963), cert. denied sub. nom., Palermo v. U.S., 377 U.S. 953 (1964).

In evaluating the weight, trustworthiness and reliability of the evidence, factors such as motive, bias, confirming witnesses or statements, corroborative evidence, and common sense must be considered. Frequently, the trier of fact relies on the innate sense of whether the testimony has the ring of truth. It is entirely logical and reasonable that the person who was going to supervise teachers in these subjects would himself have the appropriate level of knowledge in those areas. While a supervisor endorsement is generic and authorizes the holder to supervise any subject matter and any grade level, additional certifications may be necessary to perform the duties of the particular position. In this case, I **FIND** that the District has demonstrated the need for the additional certification of K-12. The distinction in title, knowledge, and responsibility was not merely “overlapping,” but plainly distinguishable from the previous positions. Therefore, the petitioner cannot assert tenure rights to the new positions. Baldini v. Bd. of Tr. of the Sussex Charter Sch., EDU 20523-15, Initial Decision (September 12, 2017), <http://njlaw.rutgers.edu/collections/oal/>.

The petitioner has also argued that the K-12 designation was not only arbitrary, but also done with malicious intent. There was extensive testimony as to why the reorganization, which resulted in the reduction of twenty-six positions, was necessary.



While the combining of K-7 and 8-12 certifications only resulted in the reduction of one position,<sup>15</sup> there was an attempt to deal with the fiscal crisis, which was not disputed by the petitioner. There has been no showing that this whole reorganization was done simply to deprive Ms. Hackett of her supervisory position. In addition, the allegation that the reorganization of the science department was done out of some animus toward Ms. Hackett was not substantiated by the petitioner. While there was some allusion to the fact that Dr. Powell had given the petitioner a PIP (Personal Improvement Plan) in the past, Ms. Hackett was unable to show a connection between that PIP and the reorganization of the K-12 program. In fact, there was testimony that, despite the fact that Ms. Hackett did not appear to have the proper certification for the new position, Dr. Powell advanced her to the next level of interviewing before the Cabinet, because the petitioner might have taken and passed the PRAXIS without the District's knowledge. While Ms. Hackett testified that she was sick at the time of the Cabinet interview and was not offered an alternate date for the interview, it was also clear that Ms. Hackett took no initiative in trying to reschedule the interview, nor did she attempt to take the PRAXIS to qualify for the position, up until the present time. In addition, there was no clear explanation as to why she did not ask to speak to the Board after she received the RICE notice. The petitioner tried to make it the District's responsibility to reschedule the interview and move her application forward. In addition, she claimed that she did not have sufficient time to study for the PRAXIS and had health issues that impeded her ability to move forward with the application process. However, that does not explain why she still has not attempted to take the PRAXIS to make herself eligible for other supervisory positions. Despite the fact that the petitioner is an educated person and had Union representation available to explain her tenure rights and the RIF process, she claimed ignorance of how she could have asserted her rights at the time of the reorganization in 2017.

## **CONCLUSION**

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<sup>15</sup> Because of the addition of the STEM program, an additional supervisor had to be appointed.

Based on the **FINDING OF FACTS** and reasoning outlined in the **ARGUMENTS** and **ANALYSIS OF THE LAW** above, I **CONCLUDE** that the Petitioner has failed to meet her burden and her Petition is dismissed.

**ORDER**

It is hereby **ORDERED** that the Petitioner's application for relief is **DENIED** and her appeal is **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.



June 14, 2018 \_\_\_\_\_

DATE

\_\_\_\_\_

**CAROL I. COHEN, ALJ (Ret. on recall)**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

db

**APPENDIX**

**WITNESSES**

For Petitioner:

Erika Hackett

For Orange Board of Education

Dr. Tina Powell

Belinda Smiley

**EXHIBITS**

For Petitioner:

- P-1 Job description for the newly created title of supervisor of science, K-12
- P-2 Job description for the title of supervisor of mathematics, 9-12
- P-3 Job description for the title of supervisor of language arts literacy (8-12) and middle and high school media specialists
- P-4 Job description for the title of supervisor of bilingual/ESL and World Languages
- P-5 Job description for the title of supervisor of social studies, grades 5-12 and technology coordinators
- P-6 Job description for the title of supervisor of career and technical education and health/ physical education K-7
- P-7 Job description for the title of supervisor of special services

- P-8 Job description for the title of supervisor of stem-focused learning K-12
- P-9 Job description for the title of visual and performing arts
- P-10 Copy of the New Jersey State Board of Examiners Supervisor Certificate of Erika L. Hackett

For Respondent:

- R-1 Resolution F17-026 Approving the Revision of Job Descriptions Supervisor of Science (K-7) AND (8-12 TO Supervisor of Science (K-12) Date April 26, 2017
- R-2 Resolution F17-024 Approving the Title and Job Description for Supervisor of STEM-FOCUSED Learning (K-12) Dated April 26, 2017
- R-3 Email for Dr. Powell announcing candidates for interview for Supervisor of Science K-12 and STEM Supervisor K-12 dated May 24, 2017
- R-4 Memo-2017-2018 Staff RIFs List dated June 13, 2017
- R-5 List of all Certifications held by Petitioner according to NJ Department of Education as of February 2018
- R-6 (a-e) List of Certifications held by Supervisors in various disciplines hired for 2017-2018 school year pursuant to new credential according to NJ Department of Education as of February 2018
- R-7 Letter to Petitioner from Dr. Howard, Deputy Superintendent recommending her appointment to the position of Science Teacher dated June 8, 2017
- R-8 Letter to Petitioner from Dr. Howard advising Petitioner that the Board approved her appointment as Science Teacher at Lincoln Avenue School dated June 16, 2017
- R-9 Illustration by Dr. Powell
- R-10 Illustration by Dr. Powell

- R-11 Department of Education document detailing a list and definitions of types of certification issued by the Department of Education
- R-12 Department of Education document citing types of certificates issued by the Department by subject area and grade level
- R-13 2015-2016 Roster of Supervisors for the Orange School District, listed by name, subject supervised and grade level
- R-14-32 Job Descriptions for each Supervisory position in the District for the 2015-2016 School year; qualifications required, nature and scope of positions
- R-33 2016-2017 Roster of Supervisors for the Orange School District listed by name, subject supervised and grade level
- R-34-53 Job Descriptions for each Supervisory position in the District for the 2016-2017 school year; qualifications required, nature and scope of positions