

New Jersey Commissioner of Education

Amended Decision

Jamie Truncellito,

Petitioner,

v.

Board of Education of the Township of
Lyndhurst, Bergen County,

Respondent.

Synopsis

Petitioner, formerly employed by the respondent Board, appealed the non-renewal of her employment and sought reinstatement to the position of guidance counselor. The Board contended that petitioner was a non-tenured employee at the time of her non-renewal due to budgetary constraints. Petitioner asserted that the non-renewal was politically motivated and was therefore arbitrary, capricious and unreasonable.

The ALJ found, *inter alia*, that: petitioner was employed by the Board as a school counselor from August 2018 through June 2018; she received a standard notice of non-renewal on April 25, 2018, stating that she would be non-renewed for the 2018-2019 school year; she was subsequently recommended for re-appointment by the Superintendent of Schools and received a written offer of employment, which she accepted via email on May 23, 2018; at a meeting on May 29, 2018, the Board voted not to renew the petitioner's employment; there was adequate funding available for petitioner's employment in the 2019-2019 district budget; petitioner was non-renewed at the May 2018 Board meeting because a faction of Board members wished to free the position she held so that it could be filled by a Lyndhurst resident; and *N.J.S.A. 18A:27-4.1(b)* stipulates that an employment contract shall renew only upon recommendation of the chief school administrator and by a recorded roll call majority vote of the full board, and that the board shall not withhold its approval for arbitrary and capricious reasons. The ALJ concluded that the Board's motivation to remove petitioner so that a Lyndhurst resident could fill the position was arbitrary and capricious. Accordingly, the ALJ determined that petitioner's non-renewal was improper, and ordered that her appeal be granted.

In a decision dated October 16, 2019, the Commissioner rejected the Initial Decision of the OAL and dismissed the petition. Subsequently, the Board filed a motion to re-open the case based upon the fact that the date of mailing on the respondent's copy of the Initial Decision differed from the date on the Commissioner's copy; as such, the Board contended that its exceptions were timely filed. Upon granting the motion to reopen, the Commissioner comprehensively reviewed the new filings and the record, and again rejected the ALJ's decision and dismissed the petition. In so doing, the Commissioner noted that a board of education has virtually unlimited discretion in renewing non-tenured staff members absent constitutional constraints or legislatively-conferred rights. Where a non-tenured staff member challenges a district board's decision to terminate her employment on the grounds that the reasons provided by the board are not supported by the facts, she is entitled to litigate that question only if the facts she alleges, if true, would constitute a violation of constitutional or legislatively-conferred rights. Petitioner herein has specifically stated that she is not arguing that her constitutional rights were violated, nor has she alleged a violation of any legislatively-conferred right. Accordingly, the petition was dismissed.

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 3, 2019

New Jersey Commissioner of Education
Amended Final Decision

Jamie B. Truncellito,

Petitioner,

v.

Board of Education of the Township of
Lyndhurst, Bergen County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the respondent, Lyndhurst Board of Education (Board), and the reply thereto by petitioner, Jamie Truncellito.¹ This matter involves a decision by the Lyndhurst Board of Education (Board) to non-renew petitioner in her position as guidance counselor. The Administrative Law Judge (ALJ) found that the Board's motivation to non-renew petitioner was to allow a Lyndhurst resident to fill the position and, accordingly, that the decision was arbitrary and capricious. The ALJ reversed the Board's decision and ordered that petitioner be reinstated to her position.

In its exceptions, which recast the arguments made in its post-hearing brief, the Board argues that the ALJ did not consider the bona fide reasons presented by the Board

¹ The Commissioner issued a decision in this matter on October 16, 2019, which stated that exceptions filed by respondent were not timely pursuant to *N.J.A.C.* 1:1-18.4 and were therefore not considered by the Commissioner. After receipt of the decision, respondent filed a motion to re-open this case based upon the fact that the date of mailing on respondent's copy of the Initial Decision was different than the date on the Commissioner's copy. As such, respondent contended that its exceptions were timely filed. By order dated November 22, 2019, the Commissioner re-opened this matter to consider the exceptions filed by respondent.

regarding petitioner's non-renewal – the deficit experienced by the district and the appointment of a State Monitor. The Board contends that the testimony presented the alleged motivations of only one board member, solely through hearsay evidence with no residuum of competent evidence. Furthermore, according to the Board, no competent evidence supported imputing that Board member's motivation to the other four Board members who voted against petitioner's renewal.

In her reply, which includes arguments substantially similar to those made in her post-hearing briefs, petitioner argues that the ALJ carefully reviewed the testimony of all the witnesses, which supports petitioner's assertions of nepotism. Petitioner further contends that the Board refused to honor the recommendation of the superintendent, making its decision arbitrary, capricious, and unreasonable. Petitioner alleges that the Board's claim of economic crisis does not square with the facts because her employment had already been accounted for in the budget and the business administrator, who co-authored the budget, testified that he had no knowledge of why petitioner was not renewed. Respondent filed a reply to petitioner's reply. However, *N.J.A.C. 1:1-18.4* does not permit the filing of a reply to a reply to exceptions; as such, respondent's submission was not considered.

Upon review, the Commissioner finds that the ALJ erroneously reversed the Board's decision. A board of education has virtually unlimited discretion in hiring or renewing non-tenured staff members absent constitutional constraints or legislatively-conferred rights. *Dore v. Bedminster Twp. Bd. of Ed.*, 185 *N.J. Super.* 447, 456 (App. Div. 1982). As such, where a non-tenured staff member challenges a district board's decision to terminate her employment on the grounds that the reasons provided by the board are not supported by the facts, she is entitled to litigate that question only if the facts she alleges, if true, would constitute a violation

of constitutional or legislatively-conferred rights. *Guerrero v. Bd. of Ed. of the Borough of Glen Rock*, decided by the State Board of Education February 5, 1986, *aff'd* Docket #A-3316-85T6 (App. Div. 1986). In this case, petitioner has specifically stated that she is not arguing that her constitutional rights were violated. Furthermore, she has not alleged a violation of any legislatively-conferred right.

Accordingly, the Initial Decision of the OAL is rejected and the petition is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 3, 2019
Date of Mailing: December 3, 2019

² This decision may be appealed to the Appellate Division of the Superior Court 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 10980-18

AGENCY DKT. NO. 150-6/18

JAMIE B. TRUNCELLITO,

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP
OF LYNDHURST, BERGEN COUNTY,**

Respondent.

Alfred Maurice, Esq., for petitioner (Springstead & Maurice, attorneys)

Dennis McKeever, Esq., for respondent (Sciarrillo, Cornell, Merlino, McKeever & Osborne, attorneys)

Record Closed: August 14, 2019

Decided: September 9, 2019

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE

Petitioner, Jamie Truncellito (petitioner or Truncellito), a former guidance counselor employed by the Board of Education of the Township of Lyndhurst (Board) appeals the Board's decision of non-renewal and seeks reinstatement to her former position as a guidance counselor. The Board argues Truncellito was a non-tenured

employee at the time of non-renewal and claims her contract was non-renewed due to budget constraints. Truncellito asserts that the non-renewal was politically motivated and thus arbitrary, capricious, and unreasonable.

ISSUE

Was the non-renewal of Truncellito's contract by the Board a result of a reduction in force due to budget shortfalls or was she non-renewed for political reasons, specifically so that a Lyndhurst Township native could take her position.

PROCEDURAL HISTORY

Petitioner filed the instant petition with the New Jersey Commissioner of Education, on June 20, 2018, where it was received on June 21, 2018, by the Department of Controversies and Disputes.

The matter was transmitted as a contested case on July 30, 2018, to the Office of Administrative Law (OAL) where it was received on July 30, 2018.

The matter was set down for a hearing on May 2, 2019, and May 20, 2019. Final submissions were received on July 10, 2019, and response briefs on August 14, 2019, at which point the record was closed.

STATEMENT OF FACTS

The I **FIND** that the following facts are undisputed, and I therefore **FIND** them to be the **FACTS** of the case:

1. Petitioner was employed as a School Counselor under a Student Services Certificate from August 26, 2016, through June 30, 2018.
2. On April 25, 2018, Truncellito received a standard Notice of Non-Renewal stating that she would be non-renewed for the 2018-2019 school year.

3. Truncellito was recommended for re-appointment by Jamie Stevens, Director of Special Services (her immediate supervisor), the High School Principal Laura Vouno, and the Superintendent of Schools Shauna DeMarco.
4. On May 22, 2018, Truncellito was given a written offer of employment by Superintendent Shauna DeMarco in advance of the May 29, 2018, Public Board Meeting.
5. Truncellito accepted the offer of employment in writing through an email communication with the Superintendent on May 23, 2018.
6. At the May 29, 2018, Lyndhurst Board of Education Meeting, the Board voted five to four not to renew Truncellito's employment.
7. During the fall and winter months of the 2017-2018 school year, a budget deficit was discovered by the Superintendent of Schools and the Business Administrator.
8. The initial deficit was projected at approximately \$1.8 million dollars and subsequently determined to be approximately \$3.8 million dollars.
9. The Business Administrator advised the Acting Bergen County Superintendent of Schools of the deficit in writing on March 31, 2018, identifying the amount of the deficit and the District's plan to address the same.
10. The Business Administrator, with the assistance of the Superintendent of Schools Demarco, prepared a budget for the 2018-2019 school year and submitted the same to the County Superintendent.
11. The budget presented to and approved by the County Superintendent reflected cuts taken to address the deficit that was reported to him.
12. The 2018-2019 budget contained numerous cuts in non-tenured personnel, reductions in tenured staff, and other operational cuts in spending.
13. The approved 2018-2019 budget was adopted by the Board included the salary for Truncellito's employment.
14. Petitioner's salary for the 2017-2018 school year was \$83,910.
15. Petitioner's salary, unadjusted for collective bargaining for the 2018-2019 school year would have been \$88,080.
16. A fiscal monitor, Thomas Egan (Egan), was appointed to manage the District's finances in August 2018.

17. The monitor possesses the powers as set forth under New Jersey State Law and the New Jersey Administrative code, including the power to amend the 2018-2019 budget and corresponding personnel decisions.
18. The monitor chose not to amend the approved 2018-2019 budget and corresponding personnel decisions.
19. When Egan took control of the District's finances, he did not non-renew any of the non-tenured employees approved in the 2018-2019 budget.
20. Shauna DeMarco resigned as Superintendent in February of 2018, effective June 30, 2018.
21. Shauna DeMarco was replaced by Anthony Grieco as Superintendent in July of 2018.
22. When Truncellito's renewal was defeated by the Board, neither Superintendent DeMarco nor her successor recommended any individual to fill the position.

Shauna Demarco

Shauna DeMarco (DeMarco) has been employed by the Lyndhurst School District since 2006, first as a substitute, then a full-time teacher, and then the Superintendent. As the Superintendent, she was fully involved with the budgetary process and made recommendations to the Board that considered these budget constraints.

DeMarco testified that at the end of the 2017-2018 school year, all non-tenured staff, including petitioner, were sent notice of non-renewal. She would then decide who of these were essential to re-hire. In analyzing who to re-hire, DeMarco took recommendations from the principals, vice principals, and supervisors within the district.

When conferring with the guidance department regarding who to re-hire, everyone agreed that Jamie Truncellito was essential to the department. She testified that she felt that Truncellito could handle a crisis if need be, as Truncellito regularly dealt with very sensitive issues and her expertise was very valuable to the district. There were three counselors who had been non-renewed (Truncellito, Samantha Foti,

and Laura Tunnell) but the decision was made that Truncellito's would be the only re-hire. While the other counselors were excellent, they were new and less experienced than Truncellito.

The serious financial situation in the district was carefully examined while making all of these determinations. Jamie Truncellito was making over \$83,000 and the other two were making \$59,000. These facts were taken into careful consideration when recommending to re-hire Jamie Truncellito. Her salary was included in the budget that was sent to the Board and to the County for approval.

DeMarco then testified that there came a time when certain Board members tried to influence personnel decisions by persuading other members to vote to non-renew certain non-tenured employees, such as Truncellito, so that these certain Board members could offer the position to people they knew.

With respect to the Guidance Counselor position, the principal and others began receiving signals from a certain Board member that an individual named Laura Tunnell should get the position occupied by Truncellito. Notwithstanding these influences, DeMarco explained to her staff that the best candidates should be put forward regardless of political bias and that she alone would make the final recommendation.

DeMarco testified that in January of 2018, she was advised by the Director of Curriculum that a certain Board member inquired about who would be recommended for the guidance counselor position (occupied by Truncellito). DeMarco was surprised that the Board was interfering with personnel recommendations and she therefore reached out to the Board member for a conversation. This Board member advised DeMarco that the only candidate the Board would support would be Laura Tunnell because she was a "good kid" from Lyndhurst. There was never a discussion about money or budget.

DeMarco explained to the Board member that it was improper for the Board and its members to influence personnel decisions in this manner. DeMarco then had a conversation with the Board president and vice president because she was concerned about what she considered the non-ethical behavior of certain members of the Board.

DeMarco resigned from the District February 2, 2018, even though she had a five-year contract. She testified that she resigned because she felt that she was not able to accomplish what she wanted to in this district.

With respect to the Jamie Truncellito recommendation, DeMarco testified that she was in contact with the business administrator and her recommendation in favor of Truncellito was clear. When she made the recommendation for Truncellito, she was acutely aware of the financial problems and that there was sufficient money in the budget for Truncellito. She was also aware that there would be lay-offs of the two other counselors whose salaries totaled \$120,000 plus benefits. This recommendation was made because DeMarco believed it was essential that the District retain Jamie Truncellito and the funds were available to do so.

DeMarco then testified with regard to executive session that occurred before the Board vote at the May 29, 2018, Board of Education Meeting. At this meeting, there were two names given to be voted upon separate and apart from the list of people being recommended for re-hire. DeMarco asked why these individuals were being separated from the larger list of pre-approved, recommended candidates. DeMarco was advised that the Board wanted Truncellito to be voted on separately. DeMarco then testified that in response to this conversation, Board member Jim Donovan got up and said "are you kidding me?" He was upset with Susan Alcuri and with the Board. He said "this isn't about money. It's about Susan wanting to put in a position for Laura Tunnell."

The Board decided to remove Jamie Truncellito's name for the larger block of names being approved and vote on her re-employment by a separate line item. Once Truncellito's name was removed, the larger block of names was ultimately voted on and approved by the Board. The vote on Truncellito alone was 5-4 against re-hiring Truncellito. This vote created a vacancy for Truncellito's position.

DeMarco was asked by the Board to make another recommendation for the position, but she refused. DeMarco added that she was shocked by the vote of the Board. Laura Tunnell has multiple family members in the Lyndhurst school system.

DeMarco opined that the Board was attempting to create a vacancy so that they could hire Laura Tunnell.

Lisa Klein

Lisa Klein (Klein) is a staff developer in the Lyndhurst School district. She has been an administrator there for twenty years. Klein had a role in the development of the budget. She had monthly meetings with Scott Bisig and Shauna DeMarco and she was aware of the budget constraints.

Klein made recommendations on how many positions were needed and she knew certain personnel cuts would have to be made. Klein testified that a determination was made to keep Jamie Truncellito and cut the other two counselors. This decision was made because Truncellito provided classroom experience, she ran many programs, she helped students in crisis, she partook in confidential meetings, and she went out of her way for students. One example was with an English student who was having problems and she would work every day to help him complete a project. Klein felt the retention of Truncellito was essential.

Klein testified that at the May 29, 2018, Lyndhurst Board of Education meeting related to budget and staffing, motions were made to appoint a large list of non-tenured staff. Jamie Truncellito was the only non-tenured staff member who was singled out and taken off the list.

Laura Vuono

Laura Vuono (Vuono) is employed as the Lyndhurst High School principal. She is very familiar with the school board budget process and the budgetary problems facing the Lyndhurst school district. Vuono recommended re-hiring Jamie Truncellito for the position of guidance counselor. Vuono testified that Truncellito did excellent work with the students, was the liaison for the Gay Straight Alliance, she had the ability to deal with students in crisis and sensitive issues and the skills to handle large caseloads. Vuono's recommendation was based on Truncellito's performance and work ethic and took the

budgetary constraints of the District into account when making the decision.

Jamie Stevens

Jamie Stevens (Stevens) is the Supervisor of the Special Education and Guidance in Lyndhurst and she supervised Jamie Truncellito. Stevens was aware of the budget problems facing the district at the time. She recommended Truncellito and was advised there were adequate funds in the budget for her position. Stevens made a conscious choice to let two other counselors go and keep Truncellito as a priority re-hire. She felt petitioner was the best qualified and made this decision keeping in mind the best interests of the students. If Stevens had been advised there was a financial issue with Truncellito's re-hire, she would have moved some line items in our budget to allow her to remain. She felt Truncellito was essential to the district.

James Vuono

James Vuono (Vuono) is a member of the Board. He was indirectly part of the budget process and was present at Board meetings, committee meetings, and caucuses where the budget was discussed. He is aware of the budget deficit issue that the previous business administrator left behind.

Vuono testified that at the May 29, 2018, Board meeting, there was a block of names of personnel recommended to be voted on. He recalls that Jamie Truncellito was on the recommended list and that there was money in place in the budget to fund her position.

Vuono recalls Board conversations regarding a motion for her re-appointment. He received a phone call from Board member Susan Alcuri asking him if he would support Laura Tunnell instead of Jamie Truncellito. He said no.

Vuono then testified that at the May 29 Board Meeting, Truncellito's name was taken off a long list of names of people who were recommended for hiring and her name was made a separate line item. The motion passed to move her name and then the vote

was 5-4 against re-hiring her.

The person who called for Jamie Truncellito's name to be separate also voted against hiring her was Board member Susan Alcuri. James Vuono believes that he was excluded from some of the private conversations among other Board members regarding Truncellito's re-hire because he had already made it known that he would be voting in favor of Truncellito. The context of these private discussions was to remove Truncellito because she was not from Lyndhurst and to then fill her position with someone who was from Lyndhurst. There was no discussion of District finances regarding the decision to remove Truncellito. James Vuono opines that Jamie Truncellito lost 5-4 as she was not a "Lyndhurst person."

James Donovan

James Donovan (Donovan) is a Lyndhurst Board of Education Trustee, elected in 2016. He was present for the budget crisis and served on several committees. The town did not raise taxes to pay for this.

Donovan was present at the May 29, 2018, Board of Education meeting and he voted in favor of the Superintendent's recommendations. The money for Jamie Truncellito's salary was included in the budget and he voted in favor of her re-hire. As a Board member, he does not tell the Superintendent who to hire. He bases his vote on her recommendation and he testified that the Board is not able to hire anyone who is not recommended.

Prior to this May 29 Board meeting, there were discussions between himself and other Board members regarding who should remain employed by the District and who should not. Donovan testified that someone on the Board was attempting to influence him and that he was being pressured. He testified that certain members of the Board did not want Jamie Truncellito hired because she was from Rutherford and not from Lyndhurst.

Donovan testified that there were two other non-tenured guidance counselors non-renewed but Truncellito was the only one recommended by the Superintendent. Laura

Tunnell was offered a job by the District in August of 2018 which she accepted. He testified that she was not recommended by the Superintendent.

Erin Keefe (by telephone conference)

Erin Keefe (Keefe) was sworn onto the Board of Education in January of 2018, and she serves as the current president. She was made aware of the financial crisis within a month of taking office. She was not on the finance committee, but she did participate in meetings and discussions regarding the deficit, which was substantial.

The new budget for 2018-2019 was prepared by Shauna Demarco and Scott Bisig. The purpose of the March 28, 2018, letter from Scott Bisig to the County Superintendent was to alert the County of the deficit and the corrective actions being taken. The budget was submitted and approved. The budget included personnel decisions, policy decisions, budget cuts, and it was mindful of the deficit. It also included Jamie Truncellito's salary.

Keefe was present at the executive session held before the May 29, 2018, Board of Education meeting. There was discussions of staffing and cuts. The guidance counselor positions were discussed. The decision was made for Lisa Klein and Jamie Truncellito to be voted on separately. Truncellito was the only non-tenured staff member listed for re-appointment who was taken off the list. She had been recommended by the Superintendent.

Board member Susan Alcuri discussed that two counselors cut were from Lyndhurst and Truncellito was not. She stated that Lyndhurst people should be hired first. She also stated that they made less money than Truncellito. Susan Alcuri voted "no" for Truncellito. The vote was 5-4 against her re-hire.

Keefe testified that the Superintendent's recommendations on cuts and retention were made in the best interests of the District. She felt that Truncellito was essential and voted "yes" for Truncellito. Keefe believes that residency was made a factor by Ms. Alcuri and was a factor in the vote not to re-hire Truncellito.

Jamie Truncellito

Truncellito was hired by the Lyndhurst School District in August 2016, and she worked from October 2016 until June 30, 2018, as a guidance counselor. She was responsible for administering SAT, AP, and other testing. She oversaw the anxiety group and the Gay Straight Alliance, ran the lunch and learn program, totally revamped the INRS process, and provided academic, college, and crisis counseling.

Truncellito testified that In January of 2018, she learned of serious budget issues in the district and noted that all of the non-tenured staff were worried. Truncellito testified that there were two other non-tenured guidance counselors at the school; Samantha Foti, who was hired in 2017, and Laura Tunnell, who had just been hired January of 2018. In light of the budget issues and her non-tenured status, Truncellito began sending out resumes. Truncellito's supervisor, Jamie Stevens, heard that she was looking for another job and told Truncellito not to send out any more resumes as there were no plans to let her go. Truncellito testified that she was also advised by her principal, Laura Vuono, that her job would be safe.

On April 25, 2018, Truncellito received a letter of non-renewal along with all of the other non-tenured staff. On May 22, 2018, she was given a letter by Laura Vuono indicating that the Superintendent was recommending her for the position of guidance counselor. She accepted this position by email on May 23, 2019. She was told that her job would be approved at the May 29, 2018, Board of Education meeting. On May 30, Truncellito learned that she was not re-hired and that her name had been singled out and voted on separately. She testified that the vote was 5-4 against her. She was distraught by the news and inconsolable at the time.

Truncellito then testified that later, at a school award ceremony, she saw Board member Erin Keefe and thanked her for her "yes" vote. Keefe apologized to Truncellito and said that she could give Truncellito no reason as to why she had lost her job. Keefe stated she was still trying to figure out the various relationships among Board members and that her leaving would be a loss to the District. She never mentioned finances.

Truncellito is currently working in Tenafly in a temporary job making \$76,000. It is a maternity leave position with no pension credits. Truncellito holds six certifications K-5 elementary, 5-8 with language arts, teacher of the handicapped, reading specialist, teacher of reading, and school counseling. In her last year working at Lyndhurst, she was making \$83,910. If was working there today, her salary, pursuant to the guide, would be \$88,080.

When Truncellito was employed at Lyndhurst there were nine counselors and she believes there are now six. Laura Tunnell was hired in August 2018, and then resigned in September 2018. Truncellito does not know if her former job description was ever posted and she has been advised that ultimately, the Board did not re-hire anyone for this position.

Scott Bisig

Scott Bisig (Bisig) testified on behalf of the Board. His testimony was offered to show how Truncellito's non-renewal was directly related to a reduction in force due to budgetary shortfalls. He was hired by the Lyndhurst School District as the business administrator in 2017. Prior to this, he was employed in Oradell as the business secretary and prior to that, he was employed as a teacher in Bergenfield. He was made aware of glaring accounting discrepancies in November 2017. He contacted Shauna DeMarco and told her of a 1.2 million dollar deficit.

An audit was conducted and a second audit completed in January. After the audits, he was informed that the deficit could be as high as 4.5 million dollars.

On April 16, 2018, the District sent non-renewal notices to all non-tenured staff. Jamie Truncellito received a notice. When the 2018-2019 budget was prepared it include Truncellito's salary.

There were two other non-tenured counselors being cut. To date, the Board has not rehired this guidance counselor position. There was a maternity leave position offered to Laura Tunnell, but she did not accept it. That money has since been used to pay other

expenses.

Bisig testified that he had no knowledge as to why Truncellito was not hired.

CREDIBILITY DETERMINATION

I **FIND** each and every witness in this case to be entirely credible.

FINDINGS OF FACT

In light of the above testimony, and having assessed the credibility of each witness, I **FIND** the following **FACTS**:

The moneys necessary to fund Truncellito's employment for the 2018-2019 school year were available and accounted for in the 2018-2019 District Budget. Truncellito was non-renewed at the May 29, 2018, Board meeting because a faction of Board members, including Member Alcuri, wished to free the position held by Truncellito so that it may be filled by a Lyndhurst resident. The decision by these Board members was not motivated by concerns regarding any budget shortfalls but instead the decision was purely motivated by in interest to employ Lyndhurst residents over non-Lyndhurst residents.

Legal Discussion

In the Case at bar, Truncellito was recommended for re-hire by the Superintendent, received a written offer of employment, and accepted same. Truncellito was ultimately not re-hired by the Board because a faction of the Board members wished to free-up her position as counselor so that a Lyndhurst resident may be hired to fill it.

N.J.S.A. 18A:27-4.1 b states:

A Board of Education shall renew the employment contract of a certified or non-certified employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the

board. The board shall not withhold its approval for arbitrary and capricious reasons.

In light of the above, I **FIND** the Board's motivation to remove Truncellito so that a Lyndhurst resident may fill it to be arbitrary and capricious and I **CONCLUDE** the Board's non-renewal of Truncellito was improper and should be reversed.

ORDER

It is hereby **ORDERED** that petitioner Jamie Truncellito's petition be **GRANTED** and that she be reinstated to her position of school counselor on the appropriate salary guide step for the 2019-2020 school year. It is further **ORDERED** that Truncellito be awarded the difference between what her earnings and benefits for the 2018-2019 school year would have been had she not been wrongfully removed from her position and what she actually received.


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 9, 2019

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency: 9/9/19

Date Mailed to Parties:

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