

New Jersey Commissioner of Education

Decision

Cynthia Adams-Buffaloe, Gay Brown,
Robert Atwell, Jerry Brown, Leon
Mashore, and Hope Edwards-Perry,

Petitioners,

v.

State-Operated School District of the
City of Camden,

Respondent.

Synopsis

Petitioners were tenured vice principals employed by the State-Operated School District of Camden when their positions were eliminated as part of a reduction in force (RIF) in July 2016; they were subsequently reassigned as classroom teachers. Petitioners appealed their reassignment based on the contention that their status as tenured vice principals entitled them to the lead educator positions that were created by the District to replace the vice principal role. Respondent asserted that petitioners are not entitled to the positions by virtue of tenure rights, contending that the positions were not substantially similar.

The ALJ found, *inter alia*, that: petitioners claim in this matter arises from the tenure rights that accrued to their abolished positions as vice principals; a district-wide reorganization and RIF in 2016 resulted in the abolishment of all vice principal positions and the creation of new leadership roles, including the position of lead educator; none of the within petitioners were hired for this new role, but non-tenured staff were hired as lead educators; the security of tenure and the ensuing rights of teaching staff members resulting from the abolishment of positions is set forth in *N.J.S.A.* 18A:28-1 et seq.; regulations set forth categories of prior employment to which a tenured employee may assert an entitlement if faced with a RIF, and case law recognizes that a tenured staff member is entitled to retention over non-tenured staff; in this case, the lead educator and vice principal roles are substantially similar, both dealing with instruction that endeavors to improve students' academic success; and the majority of the witnesses at hearing testified that there is no difference between the role of the vice principal and the role of the lead educator, as both are utilized in the same way. As such, the ALJ concluded that petitioners' tenure rights extend to the newly-created position of lead educator.

Upon review, the Commissioner agreed with the ALJ's conclusion that, given the facts in this matter, the roles of vice principal and lead educator are substantially similar. Accordingly, the Commissioner determined, *inter alia*, that the petitioners are entitled to appointment as "lead educators" retroactive to July 1, 2016, with all salary, benefits, and emoluments of that position, subject to mitigation. Further, the Commissioner directed the Board to review the tenure and seniority rights, if applicable, of petitioners and all individuals appointed as lead educators in the district as of the beginning of the 2016-17 school year and noted that if a dispute arises following the Board's review, a new petition should be filed.

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 17, 2019

New Jersey Commissioner of Education
Final Decision

Cynthia Adams-Buffaloe, Gay Brown,
Robert Atwell, Jerry Brown, Leon
Mashore, and Hope Edwards-Perry,

Petitioners,

v.

State-Operated School District of the
City of Camden,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioners, respondent, and intervenors, and the replies thereto by respondent and petitioners, have been reviewed and considered.

This matter involves six tenured vice principals whose positions were abolished, and now claim tenure entitlement to “lead educator” titles. The Administrative Law Judge (ALJ) found that the lead educator and vice principal roles are substantially similar, both dealing with instruction that endeavors to improve students’ academic success. The majority of the witnesses testified that there is no difference between the role of the vice principal and the role of the lead educator, as both are utilized in the same way. As such, the ALJ concluded that petitioners’ tenure rights extend to the newly-created position of lead educator.

Petitioners filed exceptions to the Initial Decision, arguing that their reassignment to the lead educator title should be retroactive to July 1, 2016, when the vice principal title was abolished, and that the award should include a retroactive adjustment in salary.

In reply, respondent argued that the ALJ did not address the issue of monetary relief or whether it should be retroactive to the date when the vice principal positions were abolished. Respondent further asserts that, even if affirmed, the Initial Decision provides insufficient information as to a potential remedy because the district has several types of lead educator positions, including positions that are district-wide rather than specific to a single school and positions that require additional qualifications and certifications. Furthermore, respondent contends that there has been no evidence presented as to the application of tenure and seniority rights of petitioners to any of the specific lead educator titles, and requests that if the Initial Decision is affirmed, the order be limited and determined after further hearing or submissions.

Respondent also filed exceptions, arguing that the ALJ neglected to consider the testimony of respondent's witnesses or documentary evidence demonstrating that the roles of vice principal and lead educator are not substantially similar. Respondent maintains that the lead educator position has a more expansive role in instructional coaching and data analysis while eliminating the duties related to school climate and building operations, making the two positions dissimilar. According to respondent, the Initial Decision erroneously relied on the generic and hearsay testimony of petitioners, none of whom have served as lead educators and thus cannot speak to the similarities and differences of the positions; the only other witness to speak to this issue was a single principal who interchanged the roles of lead educator and vice principal in her building despite district directives. Furthermore, respondent contends that tenure accrued as vice principal does not extend to any other administrative or supervisory position, and the fact that petitioners hold the appropriate certification for the lead educator position is not dispositive

when the actual duties of the jobs are distinguishable, since a mere overlap in duties is not sufficient to deem them equivalent for tenure purposes.

Exceptions were also filed by intervenors, who are individuals currently employed in lead educator positions.¹ They argue that vice principal is a position enumerated in the tenure statute and that tenure acquired as a vice principal does not extend to any other administrative or supervisory position. According to intervenors, because petitioners were never employed as lead educators, they have no tenure entitlement to that position.

Petitioners replied to the exceptions filed by respondent, substantially reiterating arguments made in their briefs below. Petitioners contend that respondent did not have the approval of the executive county superintendent to use the unrecognized title of lead educator. They point to case law holding, generally, that tenure is to be liberally construed and, specifically, that tenured staff members should be given preference over non-tenured staff members in unenumerated titles requiring the same certificate. Petitioners further argue that they are not required to show that the two titles are substantially similar as they would need to in a seniority case; rather, they are only required to show that the certification of vice principals and lead educators are the same, and that the functions of both titles “boil down to the fact that each contains duties that are instructional, that encompass supervising and evaluating staff and that each are intended to assist the principal in the management of the instructional component of the school.” (Petitioners’ Reply Exceptions at 8). After recounting the testimony of the witnesses at length, petitioners note that they all testified from their personal knowledge, not hearsay as alleged by the respondent in its exceptions. Further, both respondent’s and petitioners’ witnesses testified that both titles were involved in supervising teachers and the instructional component of

¹ Intervenors and respondents also joined in each other’s exceptions. Respondent further replied to intervenors’ exceptions by making substantially the same arguments made by intervenors and in respondent’s own exceptions and briefs below.

the school; ultimately, the duties given to the lead educators were duties previously performed by vice principals.

Initially, the Commissioner notes that “lead educator” is an unrecognized position title and is, therefore, subject to the requirements of *N.J.A.C. 6A:9-5.5*. That regulation provides that the district must submit to the county superintendent a written request for permission to use the proposed title, together with a detailed job description, prior to appointing a candidate. *N.J.A.C. 6A:9-5.5(b)1*. The county superintendent is then required to approve or disapprove the use of the title and, if approved, to specify the appropriate certification and identify the actual title under which the teaching staff member will accrue tenure and seniority rights. Here, there was a gap in the county superintendent’s approval of the lead educator title for the 2016-2017 school year and, even in the years before and after the title was approved, the approval lacked specifics regarding the appropriate certification. However, the ultimate authority to determine the appropriate certification and title rests with the Commissioner. See *Nicholas Duva v. State-operated School District of the City of Jersey City, Hudson County*, State Board Decision No. 56-99, decided March 6, 2002, and *Jack A. Perna v. State-Operated School District of the City of Paterson, Passaic County*, Commissioner’s Decision No. 2-12, decided January 4, 2012. The Commissioner hereby approves the district’s request to use the unrecognized title of “lead educator,” requiring an administrative certificate with a principal endorsement.²

This matter presents the question of whether tenure accrued through service in one of the positions specifically enumerated in the tenure statute can extend to an unenumerated position. *N.J.S.A. 18A:28-5(c)* provides that tenure in any of the administrative or supervisory positions enumerated in the statute – principal, other than administrative principal, assistant

² The county superintendent shall continue to review annually the use of the lead educator title and determine whether it will be continued for the next school year, pursuant to *N.J.A.C. 6A:9B-5.5(c)*.

principal, vice principal, and assistant superintendent – shall accrue only by employment in that position. Here, petitioners are not seeking to transfer their tenure from the enumerated position of vice principal to any other enumerated position, but rather to the unenumerated position of lead educator. For this reason, respondent’s and intervenors’ reliance on *Nelson v. Bd. of Educ. of the Twp. of Old Bridge, Middlesex County*, 148 N.J. 358 (Mar. 1997) is misplaced. *Nelson* involved an individual seeking to transfer tenure accrued in an unenumerated position to an enumerated one. The Supreme Court, consistent with the then-recently amended tenure statute, held that enumerated positions are separately tenurable and require service in that specific position in order for tenure to accrue.³ The Court’s decision did not address the reverse situation, such as that presented by petitioners herein, although it did note that tenure rights decisions have recognized the distinction between separately-tenurable enumerated positions and unenumerated ones. *Id.* at 365.

The tenure statute further states, “Tenure so accrued shall not extend to any other administrative or supervisory position. . .”. *N.J.S.A.* 18A:28-5(c). Respondent and intervenors suggest that this language precludes petitioners from transferring their tenure from vice principal to any other position of an administrative or supervisory nature, such as lead educator. This language is located in a subsection of the statute that specifically addresses the accrual of tenure in enumerated positions, enacted to rectify case law holding that tenure could be transferred into

³ Similarly, respondent and intervenors rely on *Taylor v. Bd. of Educ. of the Twp. of Hardyston, Sussex County*, Commissioner Decision 36-98 (Jan. 30, 1998) for the proposition that employment in a position with broad duties does not confer tenure rights in a position with some of the same, but narrower, duties. In *Taylor*, a principal whose position had been eliminated claimed that he was entitled to a position as vice principal because he had performed all of the duties of that position. His claim was rejected, but the basis for the decision was that both the principal and vice principal positions were separately enumerated in the tenure statute. Accordingly, the analysis does not apply to petitioners’ circumstances.

an enumerated position in which an individual had not served.⁴ Accordingly, the Commissioner concludes that this language applies only to prevent the assertion of tenure in an enumerated position in which an individual had not served for the requisite period of time. This portion of the statute does not override the long-standing principle that a district may not abolish a title – even an unenumerated one – and rename it in order to circumvent tenure rights. *Viemeister v. Board of Ed. of the Borough of Prospect Park*, 5 N.J. Super. 215 (App. Div. 1949).

Because petitioners are seeking to transfer their tenure to an unenumerated position, the analysis is governed by *Duva, supra*. The starting point for determining the scope of tenure protection is the certification that was required to serve in the employee’s former position. *Id.* at 11. Here, an administrative certificate with a principal endorsement was required to serve as vice principal, N.J.A.C. 9B-12.3(b), which is also required for the lead educator position.

Next, the Commissioner must examine the duties and responsibilities of both positions. As the ALJ indicated in a thorough summary of the testimony, three individuals currently employed by the district as principals, who currently supervise lead educators and have served as or supervised vice principals in the past, testified that there is no difference between the duties performed in the two roles. An individual who had served as both a vice principal and a lead educator testified that the core duties she performed as a vice principal were the same as the core duties she performed as a lead educator. The petitioners also testified to their job duties when they served as vice principals, which the ALJ found are substantially similar to the job duties required of lead educators. For respondent, one principal testified that

⁴ In a statement to the amendment, the Legislature found and declared that “due to the interpretation of N.J.S.A. 18A:28-5 by the Appellate Division in the case of *Nelson v. Board of Education of the Township of Old Bridge*, a clarification of that statute is necessary in order to continue the traditional practice of providing that tenure is acquired in one of the specifically enumerated positions only if the individual has served for the requisite period of time in that position.” L. 1996, c. 58, § 1.

her vice principal focused on school culture, behavior and discipline, lunch duty, and building operations, while the lead educator focused on coaching, instruction, and professional development. However, she also testified that her vice principal sometimes evaluated and observed staff members and provide recommendations on improvements. One individual, who was formerly a vice principal and is now a lead educator, testified that although the lead educator position deals more with instructional duties, his job responsibilities and his instructional role as vice principal were similar to those of lead educator. Even the district’s chief support officer at the time of the reorganization – who was involved in the decision-making process surrounding these positions, and who testified most specifically as to the differences between the positions – acknowledged that vice principals had an instructional role prior to the reorganization.⁵

Having heard the abundance of testimony, the ALJ determined that the roles of vice principal and lead educator are substantially similar, and the Commissioner accepts that conclusion. Petitioners are entitled to appointment as “lead educators” retroactive to July 1, 2016, with all salary, benefits, and emoluments of that position, subject to mitigation.⁶ While the record is lacking in evidence regarding the tenure and seniority rights of individuals currently holding the position of lead educator, that does not preclude the Commissioner from awarding relief to

⁵ Respondent also presented the testimony of a witness who is currently a lead educator but has never served as or supervised a vice principal, which the Commissioner does not find persuasive due to her lack of experience with the vice principal position. A second individual who formerly served as vice principal and is now a bilingual lead educator also testified regarding the differences in job duties. However, given that bilingual lead educator is a distinct job description requiring an additional certification, her testimony is not particularly revealing of the nature of the general lead educator role.

⁶ The Commissioner does not find that petitioners are entitled to any of the variations of the lead educator title for district-wide positions or positions that have additional requirements based on the specialty, such as the Lead Educator, Special Educator position that requires a Teacher of Students with Disabilities certification.

petitioners. The Board is directed to review the tenure and, if applicable, seniority rights⁷ of petitioners and all individuals appointed as lead educators as of the beginning of the 2016-17 school year. If a dispute arises following the Board's review, a new petition shall be filed.

IT IS SO ORDERED.⁸

COMMISSIONER OF EDUCATION

Date of Decision: December 17, 2019

Date of Mailing: December 18, 2019

⁷ Tenured staff members are entitled to retention following a RIF over non-tenured staff, regardless of seniority rights. *Capodilupo v. Bd. of Educ. of the Twp. of West Orange*, 218 N.J. Super. 510, 514. Accordingly, petitioners are entitled to lead educator positions over any staff members appointed to those positions who were not tenured as of July 1, 2016. However, the Commissioner recognizes that seniority rights may be implicated if the number of tenured staff members entitled to lead educator positions exceeds the number of positions available or as part of the Board's determination of which non-tenured staff members may need to be removed from their lead educator positions in order to appoint petitioners.

⁸ 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 13906-16

AGENCY DKT. NO. 180-6/16

**CYNTHIA ADAMS-BUFFALOE, GAY BROWN,
ROBERT ATWELL, JERRY BROWN, LEON
MASHORE, AND HOPE EDWARDS-PERRY,**

Petitioners,

v.

**STATE-OPERATED SCHOOL DISTRICT OF THE
CITY OF CAMDEN,**

Respondent.

Robert M. Schwartz, Esq., for petitioners (Schwartz Law Group, LLC)

Cherie L. Adams, Esq., for respondent (Adams, Guitierrez & Lattiboudere, LLC)

Wayne J. Oppito, Esq., for intervenors Cameron Baynes, Johari Sykes, Jonathan Taylor and Jason Waugh

BEFORE **CARL V. BUCK III**, ALJ:

Record Closed: August 28, 2018

Decided: October 8, 2019

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners Cynthia Adams-Buffaloe, Gay Brown, Robert Atwell, Jerry Brown, Leon Mashore, and Hope Edwards-Perry were tenured vice principals (VPs) employed by the State-Operated School District of the City of Camden (District or respondent). Their positions were eliminated as part of a reduction in force and district-wide reorganization in July 2016, and they were subsequently reassigned as classroom teachers. They appeal their reassignment on the grounds that based upon their status as tenured VPs they were entitled to the lead educator (LE) positions then created by the District to replace the VP role. Respondent asserts that petitioners are not entitled to the positions by virtue of tenure rights.

This litigation began as a result of the District's decision to abolish the VP positions effective July 1, 2016. On or about June 27, 2016, petitioners filed a Petition of Appeal on behalf of six individuals claiming a violation of tenure rights, that the District acted in bad faith by abolishing the VP positions, and that the District failed to comply with State regulations relative to obtaining approval to utilize unrecognized titles.

Former counsel for the District filed a Motion in Lieu of an Answer on September 6, 2016. Petitioners filed an opposition to this motion on September 23, 2016. The District withdrew its motion on January 19, 2017. An Answer to the Petition of Appeal was filed on February 3, 2017. Petitioners filed a Motion for Summary Decision on August 17, 2017. The respondent filed a Motion for Summary Decision on August 24, 2017. Petitioners filed an opposition to this motion on September 29, 2017, but did not oppose any of the facts set forth by the respondent. Respondent filed an opposition brief on October 2, 2017. Oral argument for these motions took place on October 13, 2017. A conference call took place between the parties and the judge on December 8, 2017, to discuss the status of the pending motions. The hearing commenced, without a decision on these motions, on December 12, 2017, and was completed on March 1, 2018. The parties submitted post-hearing briefs and the record closed on August 28, 2018. Extensions were requested and granted for the filing of this Initial Decision.

FACTUAL DISCUSSION

Many of the material facts are not in dispute:

1. Petitioner Cynthia Adams-Buffaloe began her employment with the District as a classroom teacher in 1988.
2. Petitioner Adams-Buffaloe was promoted to the VP position in 2008 and remained in that position until the 2015–2016 school year.
3. Petitioner Gay Brown began her employment with the District as a mathematics teacher in September 1992.
4. Petitioner Brown was subsequently promoted to the VP position and remained there through the 2015–2016 school year.
5. Petitioner Robert Atwell began his employment with the District in September 1992.
6. Petitioner Atwell was promoted to the title of VP in 2000 and remained in that position until the 2015–2016 school year.
7. Petitioner Jerry Brown began his employment with the District as a classroom teacher in March 1992.
8. Petitioner Brown was subsequently appointed to VP and remained in the role through the 2015–2016 school year.
9. Petitioner Leon Mashore was initially employed by the District as a classroom teacher in 1992.
10. Petitioner Mashore was promoted to the VP role in 1997 and remained in that position through the 2015–2016 school year.

11. Petitioner Hope Edwards-Perry began her employment with the District as a classroom teacher in 1988.

12. Petitioner Edwards-Perry was subsequently promoted to the VP position and remained there through the 2015–2016 school year.

13. The District first introduced the lead educator position in the 2014–2015 school year.

14. The VP position was abolished after the 2015–2016 school year.

15. The VP role was split into three different positions—the LE, the operations manager, and the dean of climate and culture.

16. The operations manager position addresses the daily operations of the building, manages office and security staff, and handles school budget, ordering and procurement, technology needs, teacher needs, and anything to do with operational strategy.

17. The dean of climate and culture position deals with student behavior and discipline, conducts parent conferences with regard to the District behavior policy, and has the responsibility to ensure that students are in the building and in the classroom during the school day.

18. The primary duties of an LE are instructional coaching, teacher evaluations, classroom walkthroughs, reviewing lesson plans, and proposing recommendations for teacher and instructional improvement.

19. Both the VP and LE positions require a principal certification.

20. All VPs were invited to apply for the LE position.

21. All petitioners, with the exception of petitioner Atwell, applied to become LEs.
22. No petitioner was chosen for the LE role, and all were reassigned to a classroom teaching position.

The issues in this matter arise out of the district-wide reorganization and reduction in force conducted by the respondent in 2016. That reorganization resulted in the abolishment of all VP positions and the creation of three separate roles—the operations manager, the dean of climate and culture, and the LE. When none of the petitioners were hired for the LE role and non-tenured staff were instead hired, this appeal ensued. With many of the underlying facts agreed upon by the parties, the testimony in this matter focused mainly on the scope of the duties performed by the LEs, and whether in reality this newly created position was actually the old VP position disguised under a new name.

Dr. Davida Coe-Brockington

Dr. Coe-Brockington has been employed with the Camden City Board of Education for thirty-one years and is currently a principal at the Creative Arts Morgan Village Academy. She testified that the VPs who worked with her evaluated and observed teachers, as well as conducted walkthroughs of the classrooms. The VPs also coached, meaning they met with teachers to discuss what was observed, and provided professional development to teachers. In addition, the VPs assisted with discipline, conducted parent conferences, and assisted in the overall running of the school. The LE who works with her evaluates, observes, coaches, and conducts professional development of teachers. The LE is also involved in discipline and meets with parents. Both the VPs and LEs utilized research-based strategies, such as student-data collection, to assist with instructional improvements in the school. Dr. Coe-Brockington testified that she sees no difference between the roles of the VP and the LE, and, more specifically, she utilizes the LE the same way she did the VP. She stated that only the senior LEs, who travel to multiple schools and are housed in the central district office, differ from the VP position, but the LE placed within her specific school performs the same duties as a VP.

Evelyn Ruiz

Ms. Ruiz has been employed with the Camden City Board of Education for twenty-five years and is currently the principal of the Harry C. Sharp Family School. She has an LE assigned to her who helps with teacher evaluations, observations, classroom walkthroughs, and professional development. Ms. Ruiz testified that the LE also deals with discipline issues and parental complaints and conferences. The LE assists with attendance records, as well as monitoring of the facility and operational needs of the building. Prior to becoming a principal, Ms. Ruiz was a VP. In that role, she evaluated and coached teachers, met with parents, and handled disciplinary issues. She stated that the role of a VP and the role of an LE are the same. Specifically, there is no distinction between the duties that the LE performs and the duties that VPs performed.

Herbert Simons

Mr. Simons has been employed with Camden City public schools since 1997 and at the time of his testimony was the principal of the Riletta Twyne Cream Family School. He was previously a VP for five years, and a teacher prior to that. He testified that the LEs he worked with observed, evaluated, coached, and held professional development for teachers. The LEs were also involved with student discipline and parent conferences. Mr. Simons stated that there were no differences between the duties LEs performed and the duties VPs performed. The only differences between the two positions are the title and the job description. There was no LE at his school that year, and he therefore handled all the instructional duties, but an operations manager deals with the budget, and monitoring and scheduling of the extracurricular activities. Mr. Simons testified that he and the operations manager served as the liaison with the police and probation and child welfare.

Gay Brown

Ms. Brown has worked in the Camden City School District since 1992. She is currently employed as a teacher, but previously served as a VP in various different schools from 2009 to 2016. She was suspended for the 2014–2015 school year because the District filed a tenure charge for inefficiency, but she returned to her position as VP with back pay. As a VP, she received her duties from her principal. These duties included observation and evaluation of teachers, conducting walkthroughs, coaching and providing feedback to teachers to ensure academic improvement for students, overseeing certain departments within a school, supervising clerks, holding additional practice for high-stakes State assessments, and ensuring that teachers were adhering to the curriculum. Ms. Brown utilized the Charlotte Danielson framework for teacher evaluations. As a VP, she also handled student discipline and held parent conferences.

Ms. Brown said that while employed as a VP, she provided professional development regarding student-growth objectives and participated in a school improvement panel. She further testified that she attended the same mandatory professional development programs that LEs attended. Although she acknowledged that a rubric allowed LEs to evaluate VPs, she stated that never occurred at her school while she was a VP. Ms. Brown had applied for the role of LE but did not obtain the job. She affirmed that she filed two complaints against the District after the abolishment of the VP position—one for discrimination and one for retaliation for increment withholding.

Cynthia Adams-Buffaloe

Ms. Adams-Buffaloe has been employed with the Camden City School District for twenty-nine years. She is currently a teacher, but previously held the title of VP for eight years at Woodrow Wilson High School. As VP, she observed teachers who worked with ninth-grade students, checked lesson plans, conducted walkthroughs, coached teachers, reviewed student data and discipline data, and met with parents. More specifically, she ensured that the teachers' instruction aligned to specific

expectations the principal had and reviewed instruction to improve academic performance.

During the 2014–2015 school year, Woodrow Wilson High School had two LEs and two VPs, with each individual being assigned a specific grade level for which they were responsible. Ms. Adams-Buffaloe testified that the LEs at her school dealt with disciplinary issues for their respective grades, met with parents, and coached teachers. During the 2015–2016 school year she was the only VP, and she attended administrative-team meetings with the LEs and the principal where they discussed teacher observations, coaching, walkthroughs, and lesson-plan review, and provided feedback on lesson plans. They also discussed disciplinary issues and problematic teachers. Both LEs and VPs had lunch duty, participated in the same professional-development meetings, and were evaluated using the same rubric components. She was unaware of a pay difference between the LE and VP positions and believed the two positions to be equal. After the VP positions were abolished, she filed an age-discrimination complaint against the District. She had applied and interviewed for the LE position, but was not chosen, and was assigned to a teaching role.

Jerry Brown

Mr. Brown is currently employed as a teacher with the Camden City public schools and previously held the position of VP for eight years. As a VP, Mr. Brown provided feedback to teachers regarding what he witnessed in his evaluations, walkthroughs, and review of lesson plans. He discussed improvements in the classroom and issued letters to teachers regarding reprimand. Furthermore, he conducted professional development and provided a syllabus for this development. Mr. Brown stated that LEs performed the same duties as VPs. Both observed and evaluated teachers, handled student discipline, and dealt with parental issues. Mr. Brown testified that he has never been evaluated by an LE and only worked side by side with them. He was unaware of a pay difference between the two positions and believed the roles were equal.

Leon Mashore

Mr. Mashore was a VP for the Camden City public schools for twenty years before being assigned as a sixth-grade math teacher. He worked alongside an LE at Veterans Memorial Family School for the 2015–2016 school year. He testified that as a VP he was on the same salary guide as LEs and was never evaluated by an LE.

Hope Edwards-Perry

Ms. Edwards-Perry was previously employed as a VP with the Camden Board of Education for nineteen years. She is currently assigned as a math teacher. She testified that when she was a VP she was never evaluated by an LE, and when she worked alongside an LE they had the same responsibilities. She did not know if she was paid on the same salary guide as the LE.

Robert Atwell

Mr. Atwell was a VP with the Camden City Board of Education for sixteen years before being assigned as a classroom teacher for the 2016–2017 school year. He testified that he had never been evaluated by an LE when he was a VP. He and the LE split responsibilities in the school. Mr. Atwell did not know whether he was on the same salary guide as an LE. He applied for the LE title but did not get the job.

Pia Garbutt

Ms. Garbutt has worked with the Camden City Board of Education since 2015, first as a teacher, and then as an LE of Camden High School. As an LE, she observed teachers, provided feedback regarding instruction, held data meetings, and conducted professional development. She did not deal with any responsibilities related to operations or discipline. Ms. Garbutt had a certification of eligibility when she applied for and accepted the LE position, and received her provisional certification after August 2016.

Tracey Reed-Thompson

Ms. Thompson has been employed in the Camden City School District since 1994, first as a teacher, then a math coach, then a VP, and she is currently the principal of Yorkship Family School. During her time as a VP, she did not conduct professional development or coach teachers. She testified that the VP she worked with focused on the school culture, behavior and discipline, lunch duty, and building operations, while the LE focused on coaching and instruction, and provided professional development. However, Ms. Thompson testified that her VP did sometimes evaluate and observe specific-content-area staff members and would provide recommendations on improvements.

Charles Jennings Dawson

Mr. Dawson is an LE in the Camden City School District, but was previously employed as a teacher, school counselor, education program specialist, and VP within the District. As an LE he does not deal with discipline, parent conferences, or operations within the school, he instead only focuses on evaluations and observations of teachers. During his time as a VP, he was involved in discipline, school climate and culture, and operations. As a VP, Mr. Dawson also shared evaluation and observation duties with the principal, conducted walkthroughs, and made recommendations for instructional improvement with teachers. He testified that his instructional role as a VP was similar to his instructional role as an LE because he evaluated, observed, and coached in both positions. However, his LE position deals much more with instructional duties than his VP position did.

Anna Schwartz Shurak

Ms. Shurak has been employed with the Camden City School District since 2015 and currently serves as the chief school support officer of high schools. She testified that when she first started working in the District, the VP role was very generalized. While she stated that some VPs did have instructional duties such as walkthroughs, evaluations, and coaching, this was not a regular occurrence and only happened at

some schools where a principal decided to assign these instructional duties. If a VP had an instructional role, their personal evaluations included instruction. Ms. Shaurak further testified that the LE position was necessary to deal with instruction to ensure better educational outcomes for students. She had input on the LE job formation and job description. She acknowledged that the LE role was the only new job that required certification, whereas the operations manager and dean did not require any certification. Ms. Shurak stated that only one VP, Charles Dawson, was chosen for an LE role.

Yolanda Babilonia

Ms. Babilonia is a bilingual LE with the Camden City School District. Prior to securing an LE role, she was a fourth-grade bilingual teacher, math coach, and then a VP from 2011 to 2016. She testified that her duties as a VP included operational duties, such as breakfast, lunch and dismissal duties, creating schedules, handling student discipline, and conducting teacher evaluations and observations. She testified that she did not coach as a VP, but she did make recommendations to teachers when she observed them, and followed up on those recommendations. As an LE, she focuses solely on instruction and she coaches, observes, and evaluates teachers. She does not handle any scheduling, discipline, or operational duties.

Kristen Reid

Ms. Reid was a VP for the Camden City School District for two years at Camden High School. She testified that her duties included instructional leadership, evaluations, observations, feedback, reviewing lesson plans, parent/student conferences, discipline, and hall duty. She also oversaw the guidance, special education, and fine arts departments. She stated that she spent 80 percent of her time on instruction and observed and evaluated thirty to forty teachers. She further testified that she conducted walkthroughs, made recommendations to the principal regarding teacher renewals, and provided professional development on instructional strategies.

Ms. Reid became an LE at Camden High School for the 2015–2016 school year. Her duties as an LE included evaluations, observations, and attending administrative-

team meetings. She was assigned close to forty teachers to observe. She stated that the core duties she performed as a VP were the same core duties that LEs performed. She was reassigned to a teaching role for the 2017–2018 school year because her role as LE was not renewed due to unsatisfactory performance. Ms. Reid currently has an EEOC claim alleging racial and gender discrimination against the District.

Jason Wall

Mr. Wall has been employed with the Camden City School District for four years and is currently employed as an LE for strategic conditions and operations with the Camden School District. Prior to holding this position, Mr. Wall was a special education LE in the District. He testified that as a special education LE he supervised teachers at eight different buildings, and his duties included evaluating special education teachers to ensure that these teachers complied with students' individualized education programs, assisting with implementation of the curriculum, and coaching teachers with regard to instruction.

In his current role as an LE for strategic conditions and operations, Mr. Wall works in five high schools to ensure that the vision and mission of the school is being met through teacher instruction. Specifically, he continues to coach teachers by conducting walkthroughs, meeting with teachers to discuss his observations, and following up with them. As an LE, he does not have any managerial duties, such as lunch or dismissal duties, nor did he ever deal with any disciplinary issues. His LE position requires that he have the Charlotte Danielson Certification. When he first started in an LE role, Mr. Wall met with principals to discuss the evaluations he conducted, his observations of teachers, and his review of lesson plans. In his current role, he is not supervised nor evaluated by any school principal, rather, he is supervised through the central District office.

Andrew Travis Bell

Mr. Bell has worked in the Camden City School District since 1998 and currently holds the chief strategy officer position. He spent two and a half years working as a VP

and four years working as a principal. As a VP, he conducted some teacher evaluations, but his main role focused on operational and managerial duties, such as recess duty, lunch duty, dismissal, and discipline. In the 2014–2015 school year, he was put in charge of LEs. Mr. Bell testified that, initially, the LE role was based on evaluations conducted in accordance with the Charlotte Danielson framework. The role later evolved into responsibility for instructional development in school buildings and instituting new programs and guidelines to aid student success. LEs did not deal with student discipline nor operations of the building. Mr. Bell testified that although both the VPs and LEs evaluated students using the Charlotte Danielson framework, the roles differed in that LEs focused on instructional duties and VPs mainly focused on managerial duties, with an occasional focus on instruction. He specifically stated that the titles of VP and LE are similar, but the critical aspects of the jobs are much different. The operations manager role replaced the VP role. However, only the VP and LE roles required a certification.

LEGAL DISCUSSION

The petitioners assert their entitlement to the LE positions newly created by the District in its 2016 reorganization. Their claim arises from the tenure rights that accrued to their abolished positions as VPs. The security of tenure and the ensuing rights of teaching-staff members as a result of abolishment of positions are set forth in N.J.S.A. 18A:28-1 et seq. Tenure is a “statutory right imposed upon a teacher’s contractual employment status.” Zimmerman v. Newark Bd. of Educ., 38 N.J. 65, 72 (1962), cert. denied, 371 U.S. 956 (1963).

A reduction in force (RIF) can challenge the parameters of those tenure rights, as the resulting dismissals must be made on the basis of seniority as set in statute and regulations. N.J.S.A. 18A:28-10; see N.J.A.C. 6A:32-5.1. Seniority provides a way to rank tenured school-staff members so reductions in that staff can be equitable and in accordance with sound educational policies. Capodilupo v. Bd. of Educ., 218 N.J. Super. 510, 514 (App. Div. 1987). Regulations set forth categories of prior employment to which a tenured employee may assert an entitlement if faced with a RIF. Additionally, case law recognizes that a tenured staff member is entitled to retention

over non-tenured staff, regardless of seniority rights. Id. at 514–15. To hold otherwise would defeat the purpose of tenure, which provides a measure of security to educational staff after a certain number of years of service. Ibid.

Determining which positions fall within the scope of an employee's tenure protection can be complex. A teaching-staff member has tenure in either a specifically designated position as set forth in N.J.S.A. 18A:28-5 or another position for which an appropriate certificate is required. Ellicott v. Frankford Twp. Bd. of Educ., 251 N.J. Super. 342, 347 (App. Div. 1991). There are three types of educational certificates established by the Department: instructional, educational services, and administrative. N.J.A.C. 6A:9B-5.2 et seq. An endorsement on the certificate then specifies a category in which an individual is allowed to teach or provide a service within a public school. This matter involves tenure rights accruing to the holder of a principal certificate. Pursuant to N.J.A.C. 6A:9B-12.3(b), that certificate allows endorsements for assistant superintendent for curriculum and instruction, principal, assistant principal, vice principal, director, and supervisor. If an administrative officer position is enumerated in the tenure statute, such a position has been held to be “separately tenurable.” Nelson v. Old Bridge Bd. of Educ., 148 N.J. 358, 363 (1997). A tenured staff member therefore may “bump” a less senior or non-tenured principal only by having served in that position. N.J.S.A. 18A:28-5(c) provides that “[f]or purposes of this chapter, tenure in any of the administrative or supervisory positions enumerated herein shall accrue only by employment in that administrative or supervisory position. Tenure so accrued shall not extend to any other administrative or supervisory position.”

Each of the petitioners here were tenured VPs and do not assert their entitlement to any of the separately enumerated positions in N.J.S.A. 18:28-5. Instead, they contend that their tenure protection extends to the newly created, unrecognized LE positions. They argue that their rights are determined by Duva v. State-Operated School District of Jersey City, EDU 9801-98, State Bd. of Educ. (March 6, 2002), <http://njlaw.rutgers.edu/collections/oal/>, which held that since neither “director” nor “supervisor” is among those positions enumerated in N.J.S.A. 18:25-5, a tenured supervisor was entitled to employment requiring a supervisor endorsement in preference to any non-tenured individuals. See also Sahagian v. N. Bergen Bd. of

Educ., 1989 S.L.D. 2878, 2883–84, which held that a tenured supervisor was entitled to any other supervisory position in the district over a non-tenured individual.

Building upon the principal enunciated in Duva, petitioners argue that the more recent decision in Nicholson et al. v. Asbury Park Board of Education, EDU 9228-10, Initial Decision (August 1, 2013), adopted, Comm'r (September 16, 2013), <http://njlaw.rutgers.edu/collections/oal/>, is directly on point with their case. In his Final Decision the Commissioner upheld the decision by an administrative law judge that tenured supervisors were entitled to the new assistant director position. The school board in Asbury Park abolished the supervisors' positions and created a new title of assistant director, but required an additional curriculum-based endorsement for the new position. Each of the petitioners who possessed both endorsements claimed a tenure right. The Commissioner reinstated the petitioners who were qualified to hold the title of assistant director, finding that as compared to the non-tenured holders of the title, they had a superior claim. Duva and its progeny therefore establish petitioners' right to claim other non-enumerated positions within the range of their administrative certificate over non-tenured individuals.

In this matter, the LE positions were approved by the executive county superintendent. N.J.A.C. 6A:9B-5.5(b)(1) provides that in order for board of education to use an unrecognized title, the board must submit a written request to the county superintendent to use the title proposed, including a detailed job description. Here, the LE title was initially approved for the 2015–2016 school year, but the title was not re-approved until the 2017–2018 school year, a year and a half after the petitioners had lost their VP positions. While approval for the position was delayed for a school year, it is clear that the executive county superintendent did not disapprove the District's creation of a new title nor contest the overall reorganization of the Camden City School District. Although petitioners contest the timing of review and ultimate approval, the record indicates that the superintendent did in fact review the LE job description and approved the new title.

The gravamen of petitioners' case is that the District violated their tenure rights when, in using its statutory authority under N.J.S.A. 18A:28-9, it abolished their VP

positions in which each of them had accrued tenure and failed to assign them to the newly created, unrecognized LE title. They argue that the role of the LEs is the same or substantially similar to the role played by VPs with respect to instruction. Although the LE position is narrower than the VP position, in that the LEs do not have all of the administrative functions previously performed by VPs, the two positions both require the same certification and same instructional job duties. Petitioners argue that the primary reason for abolishing the VP role and creating the LE role was to remove them from their administrative assignments altogether. Petitioners acknowledge that the District is entitled to dismiss staff members under N.J.S.A. 18A:28-10; however, they argue that a RIF should not be used as an end-run to abrogate their rights of tenure. See Viemeister v. Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949) (“The tenure provisions in our school laws were designed to aid in the establishment of a competent and efficient school system by affording to principals and teachers a measure of security in the ranks they hold after years of service.”).

While the District does not dispute that the LE position requires the same certification as the VP position did, it argues that the two positions are not interchangeable. The District points to Denney v. Passaic County Regional High School District #1, 131 N.J. 626, 640 (1993), which held that “[a] mere overlap in duties . . . does not mean that two positions are equivalent for tenure purposes. If a newly-created position is similar to a tenure holder’s abolished position, but also requires additional duties or different responsibilities, then the newly-created position is not considered to be substantially similar to the former position.” Denney thus establishes that even if the duties of the LE and VP positions are similar, the positions are not necessarily equivalent for tenure purposes because the scopes of the positions may be different. The District alleges that an LE’s primary responsibility is to ensure that the best instructional practices are being implemented in the classroom, whereas the VP had a generalized role which focused mainly on managerial and operational duties in the school building and was limited in terms of moving student progress and instruction forward.

It is clear from the record that the LE and the VP roles are substantially similar. Both positions dealt with instruction in an attempt to improve students’ academic

success. All of the petitioners, Andrew Bell, and Dr. Davida Coe-Brockington testified that both VPs and LEs evaluated and observed teachers, coached teachers, conducted classroom walkthroughs, and provided professional developmental. More importantly, the majority of these witnesses stated that there is no difference between the role of the VP and the role of the LE, as both are utilized in the same way. Respondent's reliance on Dennerly is misplaced because there are no additional duties or different responsibilities with the LE role. Rather, the new role is actually narrower than the VP role and eliminates the managerial duties that the VPs performed. The duties of an LE are substantially identical to those of a VP, and therefore petitioners' tenure rights extend to this newly created position. See Dennerly, 131 N.J. 626, 639–40 (“When the duties of the position in which a teaching-staff member has acquired tenure are substantially identical to those of the position that the person seeks, a local school board may not sidestep an educator’s tenure rights by simply renaming the position or tacking on additional meaningless requirements. The local board must extend the teaching-staff member’s tenure rights to the newly-created position.”).

I therefore **CONCLUDE** that the petitioners were entitled by virtue of their tenure to the lead educator positions.

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, PO 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.



October 8, 2019
DATE

CARL V. BUCK III, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/lam

WITNESSES

For Petitioner:

Davida Coe-Brockington

Evelyn Ruiz

Herbert Simons

Gay Brown

Cynthia Adams-Buffaloe

Jerry Brown

Leon Mashore

Hope Edwards-Perry

Robert Atwell

Kristen Reid

Jason Wall

Andrew Travis Bell

For Respondent:

Pia Garbutt

Tracy Reed Thompson

Charles Dawson

Anna Shurak

Yolanda Babilonia

EXHIBITS

For Petitioner:

P-1 VP/High School/Middle School/Elementary School Job Description

- P-2 Vice Principal/Principal Overview
- P-3 Professional Dev. Vice Principal/Lead Educator
- P-4 Principal/Assistant Principal Evaluation Rubric
- P-5 Observation schedule for Gay Brown
- P-6 Email from Shannon James to County Supt seeking approval for unrecognized title – 2/11/16
- P-7 Approvals given by county supt. 11/5/14; 7/2/15; 6/8/16; 8/25/16;
- P-8 Nonrenewal Notice of Gay Brown
- P-9 Non-renewal Notice of Cynthia Adams Buffaloe
- P-10 Non-renewal notice of Jerry Brown/Hope Edwards Perry/Robert Atwell/Leon Mashore
- P-11 Lead Educator/Bilingual Employment Application
- P-12 Lead Educator Evaluation Rubric
- P-13 Lead Educator Job Description
- P-14 Lead Educator Evaluation Overview
- P-15 2/16 evaluation of Kristen Reid by Andrea Kerwin
- P-16 2/16 evaluation of J. Brown by Anna Shurak
- P-17 2/16 evaluation of Cynthia Buffaloe by Anna Shurak
- P-18 2/16 evaluation of G. Brown by Anna Shurak

For Respondent:

- R-1. Letter from Interim County Superintendent of Schools to Superintendent of Camden City School District regarding approval for unrecognized title 0001-2 November 5, 2014
- R-2. Letter from Interim County Superintendent of Schools to Superintendent of Camden City School District regarding approval for unrecognized title 0003-5 July 2, 2015
- R-3. Email from the District to the county Superintendent applying for annual approval of the positions 0006-0209 February 11, 2016
- R-4. Letter from Interim Executive County Superintendent to Superintendent of Camden City School District regarding approval for unrecognized title 0210-211 April 27, 2016

- R-5. Letter from Chief Talent Officer to Cynthia Adams-Buffaloe regarding abolishment 0212-213 April 29, 2016
- R-6. Letter from Chief Talent Officer to Gay Brown regarding abolishment 0214-215 April 29, 2016
- R-7. Letter from Chief Talent Officer to Robert Atwell regarding abolishment 0216-217 April 29, 2016
- R-8. Letter from Chief Talent Officer to Jerry Brown regarding abolishment 0218-219 April 29, 2016
- R-9. Letter from Chief Talent Officer to Leon Mashore regarding abolishment 0220-221 April 29, 2016
- R-10. Letter from Chief Talent Officer to Hope Edwards-Perry regarding abolishment 0222-0223 April 29, 2016
- R-11. Minutes of Division of Talent and Labor Relations reflecting the abolishment of the VP positions 0224-285 May 10, 2016
- R-12. Letter from Interim Executive County Superintendent to Superintendent of Camden city School District regarding approved for unrecognized title 0286-287 June 8, 2016
- R-13. Interview Notes for Cynthia Adams-Buffaloe 0288-300 July 15, 2016
- R-14. Interview Notes for Hope Edwards-Perry 0301-317 July 15, 2016
- R-15. Interview Notes for Leon Mashore 0318-329 July 15, 2016
- R-16. Interview Notes for Jerry Brown 0330-336
- R-17. Letter from Interim Executive County Superintendent to Superintendent of Camden city School District regarding approved for unrecognized title 0337-338 August 25, 2016
- R-18. Policies 0339-345
- R-19. Job Descriptions 0346-376
- R-20. Lead Educator Professional Development 0377-379 October 15, 2015
- R-21. Lead Educator Professional Development 0380-384 October 22, 2015
- R-22. Professional Development Cream School 0385-388 2015-2016
- R-23. Professional Development Sharp School 0389-395 2015
- R-24. Principal Checklist for Operation Manager "On boarding" 0396-398
- R-25. School Leader Professional Learning PowerPoint 0399-406 April 28, 2016
- R-26. Operation Manager Training 0407-432 August 15, 2016

- R-27. Operational Updates – School Leader Institute 0433-440 June 30, 2016
- R-28. Operation Manager Training 0441-451 August 16, 2017
- R-29. Principal and Vice Principal Policies and Procedure 0452-458
- R-30. Lead Educator Evaluation Policies and Procedure 0459-479
- R-31. Climate Coordinator performance rubric for Yorkship School 0480-486
- R-32. Professional Development PowerPoint for School Climate and Culture Position
0487-510
- R-33. Employment Application Manager School Operation 0511-516
- R-34. Dean of Culture and Climate Job Description 0517-520
- R-35. List reflecting number of administrators in each school 0521-523
- R-36. Sign in sheet for School Leader Professional Development 0524-543
August 2017
- R-37. Lead Educator Rubric 0544-0564
- R-38. Email from the District to the county Superintendent applying for annual approval
of job descriptions 0565-610
- R-39. Letter from Interim Executive County Superintendent to Superintendent of
Camden city School District December 17, 2019
- R-40. Submission discussed but not received