

New Jersey Commissioner of Education

Final Decision

East Greenwich Education Association,

Petitioner,

v.

Board of Education of the Township of
East Greenwich, Gloucester County,

Respondent.

Synopsis

The petitioner, the East Greenwich Education Association (Association), alleged that the East Greenwich Board of Education (Board) violated *N.J.S.A.* 18A:6-119 and *N.J.A.C.* 6A:10-1.2 when it hired a part-time (not more than 6 days per month) Interim Coordinator of Special Projects to conduct teacher observations. The Association contended that the person hired for this position, Terry Van Zoeren (Van Zoeren), is not eligible to conduct formal observations of the teaching staff members because he is not “employed in the district in a supervisory role and capacity,” as required in the above statute and regulation. The Board maintained that Van Zoeren is acting in a supervisory role and capacity because he performs teacher observations as part of his duties and possesses all of the credentials required to do so. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact in this case, and the matter is ripe for summary decision; the Board hired Van Zoeren as the part-time Interim Coordinator of Special Projects, commencing in the 2016-2017 school year and continuing to the present; there is no dispute as to whether Van Zoeren is properly certified; the issue herein is whether Van Zoeren is employed by the Board in a “supervisory role and capacity”; the Association maintained that Van Zoeren’s job description does not confer or assign him any supervisory duties and he is only employed on a part-time basis; Van Zoeren should therefore be prohibited from conducting teacher observations; however, Van Zoeren is in fact acting in the role and capacity of a supervisor when he performs observations of teaching staff; he is not assisting the Superintendent or the Director of Curriculum, but is rather hired to perform teacher observations, conduct post-observation meetings with teachers, and prepare the required reports. The ALJ concluded that Van Zoeren is acting in a supervisory role and capacity in his position as Interim Coordinator of Special Projects. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the Association’s appeal.

Upon comprehensive review, the Commissioner remanded the matter to the OAL for further fact finding to determine whether Van Zoeren is serving in a “supervisory role and capacity” that comports with the definition of “Supervisor” under *N.J.A.C.* 6A:32-2.1. In so doing, the Commissioner noted that throughout the record, the parties and the ALJ have incorrectly cited to *N.J.A.C.* 6A:9-2.1 for a definition of “Observation.” The correct citation is *N.J.A.C.* 6A:10-1.2.

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.

May 22, 2019

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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 pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, East Greenwich Education Association (Association), and the East Greenwich Board of Education’s (Board) reply thereto. In this case, the Association claims that the Board violated *N.J.S.A.* 18A:6-119 and *N.J.A.C.* 6A:10-1.2* by hiring Terry Van Zoeren on a part-time basis to conduct teacher observations under the title of Interim Coordinator of Special Projects. The Administrative Law Judge (ALJ) found that there were no material facts in dispute and granted summary decision in favor of the Board. In so doing, the ALJ determined that the Board did not violate *N.J.S.A.* 18A:6-119 or *N.J.A.C.* 6A:10-1.2 because Van Zoeren is acting in a “supervisory role and capacity” when he performs the duties assigned to his job description.

* In the petition and the Initial Decision, this reference to New Jersey Administrative Code was improperly cited as *N.J.A.C.* 6A:9-2.1. The proper citation – *N.J.A.C.* 6A:10-1.2 – will be used herein.

Upon a comprehensive review of the record, the Commissioner finds that additional fact finding is necessary to reach a determination as to whether Van Zoeren is acting in a “supervisory role and capacity.” Pursuant to *N.J.S.A.* 18A:6-119, the term “Evaluation” is defined as:

...a process based on the individual's job description, professional standards and Statewide evaluation criteria that incorporates analysis of multiple measures of student progress and multiple data sources. Such evaluation shall include formal observations, as well as post conferences, **conducted and prepared by an individual employed in the district in a supervisory role and capacity** and possessing a school administrator certificate, principal certificate, or supervisor certificate. (emphasis added).

This definition is echoed in the administrative code, as *N.J.A.C.* 6A:10-1.2 defines “Observation” as:

...a method of collecting data on the performance of a teaching staff member’s assigned duties and responsibilities. An observation for the purpose of evaluation will be included in the determination of the annual summative evaluation rating and shall be **conducted by an individual employed in the school district in a supervisory role and capacity** and possessing a school administrator, principal, or supervisor endorsement ... (emphasis added).

Moreover, because “supervisory role” and “supervisory capacity” are not defined in the code, it is helpful to consider the definition of “Supervisor” found in *N.J.A.C.* 6A:32-2.1, *i.e.*: “any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members.”

In this case, it is undisputed that Van Zoeren possesses the requisite certificates to conduct evaluations; however, it is not clear from the current record if Van Zoeren is, in fact, acting in a “supervisory role and capacity” while performing the duties of the Interim Coordinator of Special Projects. The job description states that Van Zoeren is responsible for performing teacher observations, conducting post-observation meetings, and writing reports.

Yet, there is no additional information in the record to indicate the nature of the post-observation meetings, the type of information that is provided in the written reports, or the number of observations of specific teachers that Van Zoeren performs. The record is also silent regarding whether Van Zoeren provides direction and guidance to the teachers he observes and evaluates. The extent of Van Zoeren's role in the district is simply not ascertainable based on the facts before the Commissioner; thus, a determination as to whether Van Zoeren is acting in a "supervisory role and capacity" in his position as Interim Coordinator of Special Projects cannot be made on the current record.

Accordingly, this matter is remanded to the OAL for the additional fact finding necessary to determine whether Van Zoeren is acting in a "supervisory role and capacity" pursuant to *N.J.S.A.* 18A:6-119 that also comports with the definition of "supervisor" contained in *N.J.A.C.* 6A:32-2.1.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date of Decision: May 22, 2019

Date of Mailing: May 24, 2019