

**New Jersey Commissioner of Education**  
**Final Decision**

Eleanor Elcock,

Petitioner,

v.

Essex County Regional Educational Services,  
Commission,

Respondent.

**Synopsis**

The petitioner – a tenured certified student assistance coordinator (SAC) employed by the respondent Essex Regional Educational Services Commission (ERESC) prior to a Reduction in Force (RIF) – challenged ERES’s decision to abolish her position. The petitioner argued that the Board violated *N.J.S.A. 18A:40A-18* when it distributed her former duties to other existing staff members and contended that she is entitled to reinstatement as a SAC, with back pay and benefits. The ERES contended that its actions were consistent with law and regulations, and filed a motion for summary decision which was opposed by the petitioner.

The ALJ found, *inter alia*, that: there is no genuine issue as to any material fact in this case and the matter is ripe for summary decision; *N.J.S.A. 18A:40A-18* does not require districts to provide a designated SAC employee; districts may instead provide SAC services through other certificated staff; the two employees – both guidance counselors – assigned to perform SAC-related duties after petitioner’s SAC position was eliminated are properly certified to perform said duties; petitioner does not hold any other certifications besides an educational services certificate with a SAC endorsement and therefore does not have any bumping rights over other employees. The ALJ concluded that petitioner’s tenure and seniority rights were not violated and she is not entitled to reinstatement or back pay. Accordingly, the ALJ granted the ERES’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. 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.

24-22

OAL Dkt. No. EDU 17294-19

Agency Dkt. No. 298-11/19

## New Jersey Commissioner of Education

### Decision

Eleanor Elcock,

Petitioner,

v.

Essex County Regional Educational Services  
Commission,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

The petitioner, a certified student assistance coordinator (SAC), challenges the decision of respondent Essex Regional Educational Services Commission (ERESC) to terminate her employment as part of a reduction in force (RIF). The petitioner argues that the elimination of the SAC position and reassignment of the duties to other less senior employees who do not hold SAC certifications violated her tenure and seniority rights. The Administrative Law Judge (ALJ) found that ERESK did not violate petitioner's rights by eliminating the position of SAC and assigning the duties to two school guidance counselors because *N.J.S.A. 18A:40A-18* does not require districts to provide a designated SAC employee and may instead provide SAC services through other certificated staff. Additionally, the petitioner does not hold any other

certifications besides an educational services certificate with a SAC endorsement, so she does not have “bumping” rights over other employees.

Upon review, the Commissioner agrees with the ALJ that ERESA did not violate petitioner’s tenure and seniority rights when it eliminated the SAC position as part of a RIF and assigned the duties to existing employees. *See Kate Romeo v. Board of Education of the High Point Regional High School District, Sussex County, Commissioner’s Decision No. 32-19, decided January 29, 2019, affirmed, New Jersey Superior Court Appellate Division, A-2602-18T4 (July 23, 2020); Morris Lucky v. Board of Education of the City of Englewood, Bergen County, Commissioner’s Decision No. 82-19, decided March 27, 2019.*

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 4, 2022  
Date of Mailing: February 7, 2022

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



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

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 17294-19

AGENCY DKT. NO. 298-11/19

**ELEANOR ELCOCK,**

Petitioner,

v.

**ESSEX COUNTY REGIONAL**

**EDUCATIONAL SERVICES COMMISSION,**

Respondent.

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**Gail Oxfeld Kanef**, Esq., for Petitioner (Oxfeld Cohen, PC, attorneys)

**Sandra N. Varano**, Esq., for Respondent (Nirenberg & Varano, LLP, attorneys)

Record Closed: November 9, 2021

Decided: December 21, 2021

BEFORE **LESLIE Z. CELENTANO**, ALJ:

**STATEMENT OF THE CASE**

Petitioner Eleanor Elcock (Elcock), is a certified student assistance coordinator (SAC), formerly employed by the respondent, the Essex Regional Educational Services Commission (ERESC). She appeals the action of ERESC terminating her employment, effective August 2019, pursuant to a reduction in force (RIF). Elcock alleges that this was

done without regard to her tenure and seniority rights. She seeks reinstatement and back pay. ERESC claims that its actions were consistent with the applicable law and regulations.

### **PROCEDURAL HISTORY**

This matter arose with the filing of a petition of appeal by Elcock on November 15, 2019. The matter was transmitted to the Office of Administrative Law on December 9, 2019, as a contested case.

Multiple status conferences were held, and in a June 2020 conference, the parties advised that they were still exchanging discovery, and requested a January 2021 hearing, anticipating that in-person hearings would return by then. January dates were scheduled, but subsequently adjourned in a December 20, 2020, telephone conference at the request of the parties, who indicated a preference for an in-person hearing.

Respondent ERESC filed a motion for summary decision on September 21, 2021. On October 25, 2021, Elcock filed a brief in opposition to ERESC's summary decision motion. ERESC filed a reply to Elcock's opposition on November 9, 2021.

### **ISSUES PRESENTED**

The petition raises the following issues:

1. Whether the employees assigned to perform the SAC-related duties formerly done by Elcock are authorized to do so by N.J.S.A. 18A:40A-18 and N.J.A.C. 6A:9-13.2?
2. Whether ERESC's elimination of the full-time SAC position and subsequent reassignment of SAC-related duties to existing certificated employees violated Elcock's tenure and seniority rights?

## **FINDINGS OF FACT**

The following facts are not in dispute, and I **FIND**:

1. Elcock holds a standard New Jersey Educational Services Certificate endorsed as a Student Assistance Coordinator (SAC). She holds no other endorsements.
2. Elcock was employed by ERESO as a SAC from 1998 to August 31, 2019. She worked exclusively as a SAC during her twenty-one years at ERESO.
3. In June 2019, Elcock was advised that a recommendation had been made to non-renew her employment for the 2019-2020 school year due to a lack of funding.
4. In July 2019, Elcock was informed that ERESO eliminated her SAC position and as she held no certifications other than as a SAC, that her employment was terminated, effective August 31, 2019. At the time of her termination, Elcock was the most senior SAC employed by ERESO.
5. Since the RIF eliminating the SAC positions, ERESO has not employed any full-time, dedicated SACs.
6. After Elcock's termination, the SAC-related duties were assigned to two guidance counselors for the 2019-2020 school year. Both hold School Counselor certifications and one has a SAC certification.
7. ERESO also employed two social workers and a school psychologist during the 2019-2020 school year. The school counselors and one social worker provided counseling to students on drug and alcohol abuse.

## **ANALYSIS AND CONCLUSIONS OF LAW**

To prevail on a motion for summary decision, the moving party must show that there is no genuine issue of material fact, and that they are entitled to prevail as a matter

of law. N.J.A.C. 1:1-12.1 et seq. To prevail, a nonmoving party must, by responding affidavit, set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding. Ibid. The motion judge must “consider whether component evidential materials presented, when viewed in the light most favorable to the non-moving party . . . are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the nonmoving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536.

**1. The employees assigned by ERESO to perform SAC-related duties after the SAC position was eliminated are properly certified to perform said duties**

In her petition, Elcock contends that in September 2019, she learned that “less senior employees” were performing the duties she previously performed as a SAC, and that these employees were not sanctioned by statute to provide SAC services.

N.J.S.A. 18A:40A-18 does not preclude districts from providing SAC services through other properly certified staff. Romeo v. Bd. of Educ. of the High Point Reg'l High Sch. Dist., 2020 N.J. Super. Unpub. LEXIS 1479, at \*4. The statute was enacted in 1987 as a vehicle through which to pilot the introduction of SAC services to local school districts. Id. at \*14. The statutory language provides districts with the option to participate in this program. Id. at \*15. If they do so, the statute stipulates that the SAC position must be separate and distinct from other district positions. Ibid. However, nowhere does the statute preclude districts from providing services through other certified staff. Id. at \*17. Thus, Elcock’s argument that ERESO employees are performing SAC-related duties in contravention of the statute is unavailing. Redistributing Elcock’s duties among existing staff who are properly certified is clearly permitted. Romeo, at \*9.

**2. Elcock’s tenure and seniority rights were not violated and Elcock is not entitled to reinstatement or back pay**

Elcock's main argument is that ERESC's assignment of her former SAC duties to employees "who do not hold the proper certification" and who were "less senior than Ms. Elcock" violated her tenure and seniority rights. ERESC argues that the district is not required to have a designated SAC position, and thus cannot be prohibited from reassigning SAC-related duties to certified employees when such position is abolished.

The purpose of the Tenure Act, N.J.S.A. 18A:28-1 to -18, is "to aid in the establishment of a competent and efficient school system by affording teaching staff members 'a measure of security in the ranks they hold after years of service.'" Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 528-29 (App. Div. 1999) (quoting Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App.Div.1949)). A district may reduce the number of teaching staff members for reasons of economy or in response to a decline in student enrollment, referred to as a "reduction of force" (RIF). N.J.S.A. 18A:28-9. Any dismissals resulting from a RIF must be made based on seniority. N.J.S.A. 18A:28-10. Seniority is determined based on the number of academic or calendar years of employment in the school district. N.J.S.A. 18A:28-13; N.J.A.C. 6A:32-5.1(b).

The prerogative of a school district to reduce force is well established. School districts may reduce ranks or reorganize the delivery of services to its students. Eliminating and consolidating positions are among the actions within a local board's authority. Francin v Maywood Bd. of Educ., EDU 09131-08, Initial Decision (July 6, 2009), adopted Commissioner (August 20, 2009), <<http://njlaw.rutgers.edu/collections/oal/>>, citing Dunellen Bd. of Educ. v Dunellen Ed. Ass'n. 64 N.J. 17, 30 (1973).

First, it should be noted that Elcock is not a tenured teacher; she is tenured exclusively as a SAC under an educational services certificate. The employment of SACs in certain school districts is governed by N.J.S.A. 18A:40A-18 and N.J.A.C. 6A:9B-14.2. The statute specifies that the SAC position must be separate and distinct from any other employment position in the district, including – but not limited to – district guidance counselors, school social workers, and school psychologists. N.J.S.A. 18A:40A-18(b).



Tenure accrues to teaching staff members under a certificate *only* if they have served in a position under that same certificate for the requisite period. Denney v. Bd. of Educ., 131 N.J. 626, 638 (1993). Thus, any tenure and seniority rights an employee possesses are restricted to positions in that certification. Aiello v. Bd. of Educ. of Westwood Reg'l Sch. Dist., 2009 N.J. Super. Unpub. LEXIS 1690, at \*5.

The SAC endorsement authorizes the holder to perform the functions of a SAC in preschool through grade 12. N.J.A.C. 6A:9B-14.2(a). Such functions may include:

1. Assisting with training of school staff on how to combat substance abuse;
2. Serving as an information resource for substance abuse prevention, curriculum development, and instruction;
3. Assisting with district in revising and implementing substance abuse and related policies and procedures;
4. Developing and administering substance abuse and related intervention services;
5. Providing counseling and referral services to students regarding substance abuse and related problems; and
6. Cooperating with community service providers or other officials in the rendering of substance abuse and related treatment services. N.J.A.C. 6A:9B-14.2(a).

In Lucky v. Bd. of Educ., the Commissioner found that a school employee, who lost his job when his position as a full-time SAC was abolished and the duties of that position were combined with the duties of a School Counselor in a new position, failed to establish that such conduct violated the employee's tenure and seniority rights. EDU 13727-17, Initial Decision (February 14, 2019), adopted Comm'r (March 27, 2019), < <https://njlaw.rutgers.edu/collections/oal/>. The Commissioner agreed with the ALJ that the employee was not certified as a school counselor, that such certification was needed to serve in that position, and that the board presented valid educational reasons for combining the two positions, including efficiency and the delivery of better integrated counseling services. Id. Because petitioner admittedly did not possess the requisite School Counselor endorsement to serve in the position, he did not have entitlement over the SAC/School Counselor position, and it was properly filled by someone who did. Id.

Here, there is no dispute that Elcock achieved tenure in her position as a SAC. However, the district has subsequently eliminated all designated SAC positions due to budget constraints. For the 2019-2020 school year, the district assigned the SAC-related duties to two school counselors, Brenda Moretti and Patricia Cuttino. Moretti previously held the positions of Secretary and Educational Coordinator. Cuttino previously held the positions of Instructional Aide, Home Instructor, and SAC. Moretti has a School Counselor educational services certification and Cuttino has both a School Counselor *and* SAC certifications. According to the record, Moretti and Cuttino currently work solely as school counselors in the district.

Therefore, despite Elcock's many years of service as a dedicated SAC for the district, she does not have tenure or seniority in any existing district position that entitles her to "bumping rights" over other employees. The SAC endorsement is the only endorsement on her educational services certificate, and no other positions are available that require only this endorsement.

Second, Elcock has not alleged or provided evidence that the RIF was undertaken by ERESA in bad faith, such as combining positions to "defeat" Elcock's tenure and seniority rights. A local board of education may engage in a reduction of the work force, even if tenured positions are affected, if done for reasons of economy. Klinger v. Cranbury BOE, 190 N.J. Super. 354, 357 (App.Div. 1982); Trigani v. Monmouth Beach BOE, EDU 8644-00 and 8645-00, Initial Decision, (Oct. 11, 2002), <<http://lawlibrary.rutgers.edu/oal/search>>, adopted, Comm'r (Dec. 2, 2002) <<http://lawlibrary.rutgers.edu/oal/search>>. Such decisions are subject to review to determine whether a position has been abolished or merely transferred in violation of the tenure statutes. Viemeister v. Prospect Park BOE, 5 N.J. Super. 215 (App. Div. 1949).

The controlling statute, N.J.S.A. 18A:28-9, provides that

[n]othing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members employed in the district whenever, in the judgment of the board, it is advisable to abolish such positions for reasons of economy or because of a

reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with provisions of this article.

In sum, a local board of education may reduce its teaching staff so long as it "is genuinely for reasons of economy." Impey v. Shrewsbury BOE, 142 N.J. 388, 398 (1995).

Deciding to reduce the teaching force by abolishing specific positions need not eliminate the services related to those positions. See Impey, 142 N.J. at 399; see also Klinger, 190 N.J. Super. at 357 (concluding that a local school board may alter the full-time status of a tenured employee to restructure a department to meet financial constraints while continuing to provide identical services). Whether services are eliminated, reduced, or modified may be relevant in determining whether abolishing the position genuinely helps advance the goals of economy and efficiency, and was done in good faith. Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949) (the "substance" rather than the "form" of the change controls; if a Principal, for example, was replaced with an identical position but different title, it would not be a valid reduction in force).

After the RIF eliminated the SACs, ERESO did not employ anyone else in those positions. Rather, the SAC-related duties were assigned to two school guidance counselors. One of the counselors has a SAC certification. Both counselors and a social worker provide counseling to students regarding drug and alcohol abuse. And all three were already employed by ERESO prior to Elcock's termination.

I therefore **CONCLUDE** that the record reveals nothing improper in the ERESO's action in eliminating Elcock's SAC position. I **CONCLUDE** that the position was abolished as part of an overall reorganization for legitimate reasons of economy, and her duties were distributed among existing certificated staff. Elcock offers no legal support or any evidence to the contrary. I further **CONCLUDE** that the ERESO did not violate Elcock's tenure and seniority rights and there are no indications in the record of bad faith or arbitrariness on part of ERESO in taking such actions.

**ORDER**

Based on the foregoing, it is **ORDERED** that respondent's Motion for Summary Decision is **GRANTED** and the petition is **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, 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.

December 21, 2021  
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DATE

  
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**LESLIE Z. CELENTANO, ALJ**

Date Received at Agency:

December 21, 2021  
\_\_\_\_\_

Date Mailed to Parties:  
dr

December 21, 2021  
\_\_\_\_\_